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INTRODUCED BY

House BILL NO. 196
Swanson Harold Hestel Timish

BY REQUEST OF THE DEPARTMENT OF COMMERCE

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAW RELATING TO OUTFITTERS AND GUIDES; CREATING THE MASTER GUIDE LICENSE; REVISING LICENSING REQUIREMENTS AND QUALIFICATIONS FOR OUTFITTERS AND GUIDES; REQUIRING SUBMISSION OF AN AREA OPERATING PLAN FOR OUTFITTERS AND ESTABLISHING A SYSTEM FOR REVIEW OF THE PLAN; REVISING DUTIES AND LIABILITIES RELATED TO OUTFITTING TO INCLUDE MASTER GUIDES; REVISING QUALIFICATIONS AND CONDITIONS APPLICABLE TO OUTFITTER-SPONSORED CLASS B-10 AND B-11 LICENSES; ALLOWING THE BOARD OF OUTFITTERS TO HIRE QUALIFIED INVESTIGATORS; GRANTING THE EXECUTIVE DIRECTOR OF THE BOARD OF OUTFITTERS AND BOARD INVESTIGATORS EX OFFICIO WARDEN STATUS; AMENDING SECTIONS 37-47-101, 37-47-201, 37-47-301, 37-47-302, 37-47-303, 37-47-304, 37-47-305, 37-47-306, 37-47-307, 37-47-341, 37-47-343, 37-47-345, 37-47-401, 37-47-402, 37-47-403, 37-47-404, 87-2-511, AND 87-1-503, MCA; REPEALING SECTIONS 37-47-102 AND 37-47-309, MCA; AND PROVIDING EFFECTIVE DATES AND A TERMINATION DATE."

STATEMENT OF INTENT

A statement of intent is required for this bill because rulemaking authority is granted to the board of outfitters in 37-47-201 requiring the board to establish qualifications for two levels of guides and to review proposed operating area plans and changes to operating area plans.

The legislature intends that at a minimum the rules on master guide qualifications address experience, and if the board considers it appropriate, additional training and a qualifying examination to ensure that licensed master guides are qualified to safely provide services for compensation to clients of the endorsing outfitter.

The legislature intends that rules on operating area plans be directed toward a reduction in new commercial uses of areas by outfitters when the new uses will conflict with existing uses of the areas.

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

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

2 **"37-47-101. Definitions.** As used in this chapter, unless the context requires otherwise, the
3 following definitions apply:

4 (1) "Accompany" means to go with or be together with a participant as an escort, companion, or
5 other service provider, with an actual physical presence in the area where the activity is being conducted
6 and within sight or sound of the participant at any time during the furnishing of service.

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

8 (3) "Consideration" means something of value given or done in exchange for something of value
9 given or done by another.

10 ~~(2)~~(4) "Department" means the department of commerce provided for in Title 2, chapter 15, part
11 18.

12 (5) "Guide" means a person who is employed by or who has contracted independently with a
13 licensed outfitter and who accompanies a participant during outdoor recreational activities that are directly
14 related to activities for which the outfitter is licensed.

15 ~~(3)~~(6) "License year" means that period ~~commencing~~ beginning January 1 and ending December
16 31 of the same year.

17 (7) "Master guide" means a guide who has met experience, training, and testing qualifications for
18 designation as a master guide, as set by board rule.

19 ~~(4)~~(8) "Nonresident" means a person other than a resident.

20 ~~(5)~~(9) "Outfitter" means any person, except a person providing services on real property that he
21 the person owns for the primary pursuit of bona fide agricultural interests, who:

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

24 ~~(b) for consideration provides any saddle or pack animal; facilities; camping equipment; vehicle,~~
25 watercraft, or other conveyance; or personal service ~~for hunting or fishing parties or camping equipment,~~
26 ~~vehicles, or other conveyance, except boats,~~ for any person to hunt, trap, capture, take, ~~or~~ kill, pursue, or
27 retrieve any varmint, predator, or game, including fish, and who accompanies such a party or that person,
28 either part or all of the way, on an expedition for any of these purposes or supervises a licensed guide or
29 master guide in accompanying that person.

30 ~~(c) for consideration furnishes a boat or other floating craft and accompanies any person for the~~

1 ~~purpose of catching fish; or~~

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

3 ~~(6)(10) "Participant" means a person using the services offered by a licensed outfitter or~~
4 ~~professional guide.~~

5 ~~(7) "Professional guide" and "guide" mean a person:~~

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

9 ~~(b) who has contracted independently with an outfitter and who furnishes personal guiding services~~
10 ~~and facilities, transportation, or equipment that he owns in assisting a person to hunt or take game birds~~
11 ~~or fish. A guide who provides independent contractor services to an outfitter may not provide facilities,~~
12 ~~equipment, or services for overnight use.~~

13 ~~(8)(11) "Resident" means a person who qualifies for a resident Montana hunting or fishing license~~
14 ~~under 87-2-102."~~

15
16 **NEW SECTION. Section 2. Shuttle and rental services -- exemption.** (1) Nothing in this chapter
17 prohibits the furnishing of shuttle or rental services as long as those services do not include in-field
18 assistance to a customer.

- 19 (2) In-field assistance includes but is not limited to:
- 20 (a) setting up a camp;
 - 21 (b) field instruction for the activity to be conducted by the customer; or
 - 22 (c) other services considered to be services of an outfitter, as defined in 37-47-101.

23
24 **Section 3.** Section 37-47-201, MCA, is amended to read:

25 **"37-47-201. Powers and duties of board relating to outfitters, guides, and master guides.** The
26 board shall:

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

- 1 (2) cooperate with the federal government in matters of mutual concern regarding the business of
2 outfitting and guiding in Montana;
- 3 (3) enforce the provisions of this chapter and rules adopted pursuant to this chapter;
- 4 (4) establish outfitter standards, ~~and professional guide standards,~~ and master guide standards;
- 5 (5) adopt:
- 6 (a) rules of procedure;
- 7 (b) rules to administer and enforce this chapter, including ~~but not limited to~~ rules prescribing all
8 requisite qualifications for licensure as an outfitter, guide, or master guide. ~~These qualifications~~
9 Qualifications for outfitters must include training, testing, experience in activities similar to the service to
10 be provided, knowledge of rules of governmental bodies pertaining to outfitting, and condition and type of
11 gear and equipment, and the filing of an operating area plan.
- 12 (c) any reasonable rules, not in conflict with this chapter, necessary for safeguarding the public
13 health, safety, and welfare ~~of these persons using the services of outfitters and for the protection of~~
14 landowners, the general public, and outfitters' employees, agents, and representatives, including evidence
15 of qualification and licensure under this chapter for any person practicing or offering to practice as an
16 outfitter, guide, or master guide;
- 17 (d) rules specifying standards for review and approval of proposed new operating area plans or the
18 proposed expansion of an existing operating area plan in order to determine if the proposal will increase
19 existing use or cause an undue conflict with existing use of the area. The board may not approve a new
20 operating area plan or the proposed expansion of an existing operating area plan if it finds that the proposal
21 will cause an undue conflict with existing use of the area. Approval is not required when part or all of an
22 existing operating area plan is transferred from one licensed outfitter to another licensed outfitter if the
23 transfer will not increase existing use of the area.
- 24 (6) hold hearings and proceedings to suspend or revoke licenses of outfitters, ~~and professional~~
25 guides, and master guides for due cause."

26

27 **Section 4.** Section 37-47-301, MCA, is amended to read:

28 **"37-47-301. License required -- services performed -- standards.** (1) A person may not act as an
29 outfitter, ~~or professional~~ guide, or master guide or advertise as or otherwise represent to the public that the
30 person is an outfitter, guide, or master guide without first securing a license in accordance with the

1 provisions of this part.

2 (2) Whenever an outfitter is engaged by ~~any person~~ a participant, the outfitter shall keep and
3 submit records as required by the board.

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

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

10 (5) Outfitters may not willfully and substantially misrepresent their facilities, prices, equipment,
11 services, or hunting or fishing opportunities.

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

14 (7) ~~A person may not hold more than one Montana outfitter's license or hold an outfitter's license~~
15 ~~for more than one corporation, proprietorship, or partnership. An outfitter may not hire or retain a guide or~~
16 ~~master guide who does not hold a current license as provided under this part.~~

17 (8) The operating area of a licensed outfitter, as set out in the outfitter's operating area plan
18 pursuant to 37-47-304, constitutes the limit of operations for that outfitter and for any guide or master
19 guide hired or retained by the outfitter. The conduct of outfitting outside the limits of the operating area
20 plan is considered outfitting without a license and is punishable as provided in 37-47-344(2)."

21
22 **Section 5.** Section 37-47-302, MCA, is amended to read:

23 **"37-47-302. Outfitter's qualifications.** ~~Each~~ An applicant for ~~and holder of~~ an outfitter's license
24 or ~~any~~ renewal of a license ~~shall~~ must meet the following qualifications:

25 (1) ~~be a person of at least 18 years of age who is or older, be~~ physically capable and mentally
26 competent to perform the duties of an outfitter, and meet experience, training, and testing requirements
27 as prescribed by ~~the~~ board rule;

28 (2) own or hold under written lease or represent a company, corporation, or partnership who owns
29 or holds under written lease the equipment and facilities ~~as~~ that are necessary to provide the services
30 advertised, contracted for, or agreed upon between the outfitter and the outfitter's clients (all equipment

1 and facilities are subject to inspection at all reasonable times and places by the board or its designated
2 agent);

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

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

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

13 ~~(6)~~(5) have not, at any time, promulgated any false or misleading advertising relating to the
14 business of outfitting;

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

18 ~~(8) have not committed any negligent act or misconduct while acting as an outfitter or professional~~
19 ~~guide that caused a danger or unreasonable risk of danger to person or property of any client of the outfitter~~
20 ~~or professional guide during the license year immediately preceding that for which the application is made;~~

21 ~~(9) have not, at any time, pleaded guilty to or been adjudged by a court guilty of a felony, unless~~
22 ~~civil rights have been restored pursuant to law. A person may not apply for or hold an outfitter's license~~
23 ~~during any period of time in which a sentence has been deferred or suspended for a felony."~~

24

25 **Section 6.** Section 37-47-303, MCA, is amended to read:

26 "**37-47-303. Professional Guide's and master guide's qualifications.** (1) An applicant for a
27 ~~professional guide's or master guide's license shall~~ must meet the following ~~requirements~~ qualifications:

28 (a) ~~be a person of at least 18 years of age who is or older and be~~ physically capable and mentally
29 competent to perform the duties of a ~~professional~~ guide or master guide;

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

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

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

7 (e) ~~have not, at any time, pleaded guilty to or been adjudged by a court guilty of a felony, unless~~
 8 ~~civil rights have been restored pursuant to law. A person may not apply for or hold a professional guide's~~
 9 ~~license during any period of time in which a sentence has been deferred or suspended for a felony. have~~
 10 ~~been issued a valid wildlife conservation license; and~~

11 (d) possess a current cardiopulmonary resuscitation card, a first-aid card, or an equivalent card
 12 issued by a board-approved certifying agency.

13 (2) ~~A professional guide shall have been issued a valid wildlife conservation license. In addition to~~
 14 ~~the requirements listed in subsection (1), an applicant for licensure as a master guide must meet additional~~
 15 ~~experience requirements, to be set by board rule, and may be required to show proof of training or pass~~
 16 ~~a qualifying examination when required by board rule.~~

17
 18 **Section 7.** Section 37-47-304, MCA, is amended to read:

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

22 (2) The application for an outfitter's license which shall must include:

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

25 (b) the address of the applicant's principal place of business in the state of Montana;

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

28 (d) the experience of the applicant, including years of experience as an outfitter, ~~or professional~~
 29 guide, or master guide; the applicant's knowledge of areas in which the applicant has operated and intends
 30 to operate; ~~and~~ the applicant's ability to cope with weather conditions and terrain;

1 (e) a signed statement of the licensed outfitter ~~by whom the professional guide is~~ for each guide
 2 and master guide to be employed or retained as an independent contractor stating that the ~~professional~~
 3 guide or master guide is ~~in fact~~ to be employed ~~or retained as an independent contractor~~ by the outfitter
 4 and stating that the outfitter recommends the ~~applicant~~ guide or master guide for ~~the applicant's~~
 5 qualifications licensure;

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

9 (g) a statement of the maximum number of ~~guests~~ participants to be ~~taken~~ accompanied at any
 10 one time;

11 (h) the written approval of the appropriate agency or landowner on whose lands the applicant will
 12 provide services or establish hunting camps; and

13 (i) an operating area plan that specifies the boundaries of the proposed operation, stating when
 14 applicable:

15 (i) the name and portion of river;

16 (ii) the county of location;

17 (iii) the legal owner of the property;

18 (iv) the name of the ranch;

19 (v) the proposed service, including the type of game sought;

20 (vi) the name of the agency granting use authority; and

21 (vii) other means of identifying boundaries as established by board rule.

22 ~~(2)(3)~~ Applications for an outfitter's license must be in the name of an individual person only.
 23 Applications involving corporations, proprietorships, or partnerships must be made by one individual person
 24 who qualifies under the provisions of this part. ~~Any~~ A license issued pursuant to this part must be in the
 25 name of that person. The license must specifically state that the license is issued for the use and benefit
 26 of the named corporation, proprietorship, or partnership involved. Any revocation or suspension of a license
 27 is binding upon the individual person and the corporation, proprietorship, or partnership for the use and
 28 benefit of which the license was originally issued.

29 ~~(3)(4)~~ Application must be made to and filed with the board.

30 ~~(4)(5)~~ Only one application for an outfitter's license may be made in any ~~one~~ license year. ~~If any~~

1 an application is denied, subsequent applications by the same applicant for the license year involved are
 2 void, except as provided in 37-47-308."

3
 4 **Section 8.** Section 37-47-305, MCA, is amended to read:

5 "37-47-305. **Outfitter's examination.** Each applicant for an outfitter's license ~~shall, after meeting~~
 6 the experience and training specifications and other qualifications set by this chapter or rules adopted
 7 pursuant to this chapter, is entitled to take and must pass a standard examination administered by the
 8 board or its agent. The examination must require general and sufficient knowledge displaying and indicating
 9 ability to perform the services contemplated with efficiency and with safety to the health and welfare of
 10 ~~persons employing the services participants.~~ The examination must test the applicant's knowledge of
 11 subjects that apply to the type of license applied for and may include the following subjects:

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

25
 26 **Section 9.** Section 37-47-306, MCA, is amended to read:

27 "37-47-306. **Fees.** (1) The board shall establish fees commensurate with costs as provided in
 28 37-1-134.

- 29 (2) Applications ~~shall~~ must be accompanied by a license fee as specified by ~~the board~~ rule.
- 30 (3) If a nonresident resides in a state requiring residents of the state of Montana to pay in excess

1 of the amount established by the board for a similar license, the fee for ~~each~~ the nonresident outfitter's,
 2 ~~or professional guide's, or master guide's~~ license shall must be the same amount as the higher fee charged
 3 in the state where the nonresident resides.

4 (4) The license fees must be deposited in the state special revenue fund and must be used by the
 5 board to investigate the applicant, to enforce this part, and for administrative costs, subject to
 6 37-1-101(6)."

7
 8 **Section 10.** Section 37-47-307, MCA, is amended to read:

9 **"37-47-307. Investigation of applicant -- issuance or denial of license.** (1) The board shall
 10 investigate each applicant for an outfitter's, ~~or professional guide's, or master guide's~~ license and determine
 11 the applicant's qualifications.

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

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

19 ~~{4}~~ A licensee in good standing is entitled to a new license for the ensuing license year upon
 20 complying with the provisions of this chapter ~~and renewal deadlines and fees imposed by rule of the board~~
 21 or rules adopted pursuant to this chapter and upon completing an application for license renewal on a form
 22 provided by the board."

23
 24 **NEW SECTION. Section 11. License for previously licensed guide.** The board shall issue a guide's
 25 license to an applicant who meets the following qualifications as of July 1, 1995:

26 (1) previous licensure as a guide in this state and practice as a guide for at least one season, as
 27 defined by board rule;

28 (2) payment of a license fee; and

29 (3) submission of a current cardiopulmonary resuscitation card, a first-aid card, or an equivalent card
 30 issued by a board-approved certifying agency.

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

2 "**37-47-341. Grounds for denial, suspension, or revocation of license.** ~~Every~~ A license or right to
3 apply for and hold ~~the~~ a license issued under this part may be denied, suspended, or revoked or other
4 disciplinary conditions may be applied upon any of the following grounds:

5 (1) having ceased to meet all of the qualifications for holding a license, as required under this
6 chapter and rules adopted pursuant to this chapter;

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

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

9 (4) having pleaded guilty to or been adjudged by a court guilty of a felony, including a case in
10 which the sentence is suspended or imposition of the sentence is deferred, unless civil rights have been
11 restored pursuant to law; A person may not apply for or hold an outfitter's, guide's, or master guide's
12 license during any period of time in which a sentence for a felony has been deferred or suspended.

13 (5) ~~two convictions~~ one conviction or bond ~~forfeitures of \$100 or more~~ forfeiture as to ~~violations~~
14 a violation of the fish and game or outfitting laws or regulations of any state or the United States ~~within~~
15 the past 5 years;

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

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

20 (8) negligence or misconduct while acting as an outfitter, ~~or professional guide, or master guide~~
21 that causes an accident or injury to the person or property of ~~any client of the outfitter or professional guide~~
22 a participant; ~~or~~

23 (9) misconduct as defined by board rule; or

24 (10) any violation of this chapter or a rule adopted pursuant to this chapter."

25

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

27 "**37-47-343. Appeal procedure.** ~~Any~~ A person who feels aggrieved by a final order of the board
28 denying issuance of, ~~suspension of, or revocation of~~ a license or suspending or revoking a license as an
29 outfitter, ~~or professional guide, or master guide~~ may petition for judicial review as provided in Title 2,
30 chapter 4, part 7."

1 **Section 14.** Section 37-47-345, MCA, is amended to read:

2 "**37-47-345. Enforcement.** Investigations and arrests for violations of this chapter or rules adopted
3 pursuant to this chapter may be made by any peace officer; warden of the department of fish, wildlife, and
4 parks; or federal agency enforcement personnel."

5

6 **Section 15.** Section 37-47-401, MCA, is amended to read:

7 "**37-47-401. Purpose.** It is recognized that some activities conducted by outfitters, guides, and
8 master guides within the scope of their authorized services are inherently hazardous to participants
9 regardless of all feasible safety measures that ~~can~~ may be taken. It is the purpose of this part to define
10 those areas of responsibility and affirmative acts or omissions for which outfitters, guides, and master
11 guides are liable for loss, damage, or injury and those risks for which the participant expressly assumes or
12 ~~shall be~~ is considered to have voluntarily assumed the risk of loss or damage."

13

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

15 "**37-47-402. Duties of outfitters, guides, and master guides.** An outfitter, guide, or master guide
16 offering professional services in this state shall:

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

19 (2) comply with all standards adopted by board rule ~~by the board~~."

20

21 **Section 17.** Section 37-47-403, MCA, is amended to read:

22 "**37-47-403. Duties of participants.** (1) A participant shall:

23 (a) act as would a reasonably prudent person when engaging in the activities offered by a licensed
24 outfitter, guide, or master guide in this state;

25 (b) receive permission from the outfitter, guide, or master guide prior to embarking on any
26 self-initiated activity and inform the outfitter, guide, or master guide of ~~his~~ the participant's plans and
27 intentions upon receiving permission to engage in ~~such~~ the self-initiated activity.

28 (2) A participant may not:

29 (a) interfere with the running or operation of an outfitter's, guide's, or master guide's activities
30 when ~~such~~ those activities conform to the standards of care set forth in 37-47-402;

1 (b) use the outfitter's, guide's, or master guide's equipment, facilities, or services unless the
2 participant has requested and received permission from the outfitter, guide, or master guide;

3 (c) knowingly, purposely, or negligently engage in any type of conduct that contributes to or
4 causes injury to ~~himself~~ the participant or any other person."

5
6 **Section 18.** Section 37-47-404, MCA, is amended to read:

7 "**37-47-404. Responsibility for violations of law.** (1) ~~Any~~ A person accompanying a hunting or
8 fishing party as an outfitter or ~~agent~~ guide, master guide, or other employee of the outfitter is equally
9 responsible with any person or party employing the person as an outfitter for any violation of fish and game
10 laws unless the violation is reported to a peace officer by the outfitter, ~~agent~~ guide, master guide, or
11 employee and the outfitter, ~~agent~~ guide, master guide, or employee was not an active participant. An
12 outfitter or ~~agent~~ guide, master guide, or other employee of an outfitter who willfully fails or refuses to
13 report any violation of fish and game laws is liable to the penalties provided in this section. If any
14 ~~professional~~ guide or master guide violates the laws or applicable regulations relating to fish and game,
15 outfitting, or guiding with actual or implied knowledge of an outfitter employing the guide or master guide,
16 the outfitter is legally responsible for the violation for all purposes under the laws or regulations if the
17 outfitter fails to report the violation to the proper authority.

18 (2) An outfitter, guide, or ~~professional~~ master guide shall report any violation or suspected violation
19 of fish and game laws that the outfitter, guide, or master guide knows or reasonably should have known
20 has been committed by the employees, agents, representatives, clients, or participants in the outfitting or
21 guiding activity. The violation or suspected violation must be reported to a peace officer at the earliest
22 possible opportunity.

23 (3) A person may not hire or retain ~~any~~ an outfitter ~~or professional guide~~ unless the outfitter ~~or~~
24 ~~professional guide~~ is currently licensed in accordance with the laws of the state of Montana. A person may
25 not use the services of a guide or master guide and a guide or master guide may not offer services unless
26 the services are obtained through an endorsing outfitter."

27
28 **Section 19.** Section 87-2-511, MCA, is amended to read:

29 "**87-2-511. Sale of Class B-10 and Class B-11 licenses.** (1) The department shall offer the Class
30 B-10 and Class B-11 licenses for sale on March 15, with 5,600 of the authorized Class B-10 licenses and

1 2,000 Class B-11 licenses reserved for applicants ~~indicating their intent to use~~ using the services of a
2 licensed outfitter, and 2,000 of the authorized Class B-11 licenses reserved for applicants indicating their
3 intent to hunt with a resident sponsor on land owned by that sponsor, as provided in subsections (2) and
4 (3).

5 (2) Each application for a ~~reserved~~ resident-sponsored license under subsection (1) must contain
6 a written affirmation by the applicant that the applicant intends to hunt with ~~a licensed outfitter or~~ a
7 resident sponsor and must indicate the name of the ~~licensed outfitter or~~ resident sponsor with whom the
8 applicant intends to hunt. In addition, the application must be accompanied by a certificate that is signed
9 by a ~~licensed outfitter or~~ resident sponsor and ~~which that~~ affirms that the ~~outfitter or~~ resident sponsor will:

10 (a) direct the applicant's hunting and advise the applicant of game and trespass laws of the state;

11 (b) submit to the department, in a manner prescribed by the department, complete records of who
12 hunted with ~~him~~ the resident sponsor, where they hunted, and what game was taken; and

13 (c) accept no monetary consideration for enabling the nonresident applicant to obtain a license or
14 for providing any services or assistance to the nonresident applicant, except as provided in Title 37, chapter
15 47, and this title.

16 (3) The certificate signed by the resident sponsor pursuant to subsection (2) must also affirm that
17 the sponsor is a landowner and that the applicant under the certificate will hunt only on land owned by the
18 sponsor.

19 (4) Each application for an outfitter-sponsored license under subsection (1) must contain a written
20 affirmation by the applicant that the applicant will hunt with a licensed outfitter for all big game hunted by
21 the applicant under the license and must indicate the name of the licensed outfitter with whom the
22 applicant will hunt. In addition, the application must be accompanied by a certificate that is signed by a
23 licensed outfitter and that affirms that the outfitter will:

24 (a) accompany the applicant;

25 (b) provide guiding services for the species hunted by the applicant;

26 (c) direct the applicant's hunting for all big game hunted by the applicant under the license and
27 advise the applicant of game and trespass laws of the state;

28 (d) submit to the department, in a manner prescribed by the department, complete records of who
29 hunted with the outfitter, where they hunted, and what game was taken; and

30 (e) accept no monetary consideration for enabling the nonresident applicant to obtain a license or

1 for providing any services or assistance to the nonresident applicant, except as provided in Title 37, chapter
 2 47, and this title.

3 (5) An outfitter-sponsored license under subsection (1) is valid only when used in compliance with
 4 the affirmations of the applicant and outfitter required under subsection (4). If the sponsoring outfitter is
 5 unavailable or if the applicant wishes to use the services of separate outfitters for hunting different species
 6 of game, an outfitter-sponsored license may be used with a substitute licensed outfitter, in compliance with
 7 the affirmations under subsection (4), upon advance written notification to the board by the sponsoring
 8 licensed outfitter or the substitute outfitter.

9 ~~(4)(6)~~ The department shall make the reserved Class B-10 and Class B-11 licenses that remain
 10 unsold on April 15 available to nonresident applicants without restriction as to hunting with a licensed
 11 outfitter or resident sponsor.

12 ~~(5)(7)~~ All Class B-10 and Class B-11 licenses that are not reserved under subsection (1) and all
 13 unsold reserved licenses that are available under subsection ~~(4)~~ (6) must be issued by a drawing among all
 14 applicants for the respective unreserved licenses."
 15

16 NEW SECTION. Section 20. Investigators -- qualifications. (1) The department may hire
 17 investigators to assist the board in investigations and inspections authorized by this chapter.

18 (2) To qualify as an investigator, a person must:

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

20 (b) have knowledge of outfitting and guiding through prior experience as a licensed outfitter, guide,
 21 or master guide or as a regulator of the outfitting profession; and

22 (c) have not less than 2 years' experience as a licensed private investigator or as an investigator,
 23 detective, special agent, or peace officer of a city, county, or state or of a federal agency.
 24

25 **Section 21.** Section 87-1-503, MCA, is amended to read:

26 **"87-1-503. Ex officio wardens.** All sheriffs and their deputies; all constables; all peace officers
 27 of the state or any subdivision of the state; the executive director and investigators of the board of
 28 outfitters; all state forest officers, ~~and;~~ as authorized by cooperative agreement, ~~at~~ any officers of the
 29 United States forest service, agents of the United States fish and wildlife service, and peace officers of the
 30 bureau of land management, national park service, and corps of engineers that are assigned to duty in this

1 state; and field personnel of the department, as the director may appoint, are ex officio wardens, without
2 pay, except that the department may, in its discretion, allow ~~traveling~~ travel expenses as provided for in
3 2-18-501 through 2-18-503, which, if allowed, must be paid upon proper vouchers from the state fish and
4 game funds. Ex officio wardens have the same powers with reference to the enforcement of the fish and
5 game laws of this state and the laws relating to parks and outdoor recreation contained in ~~chapters 1 and~~
6 ~~2~~ of Title 23, chapters 1 and 2, except chapter 2, part 7, as regularly appointed wardens, and it is their
7 duty to assist, whenever possible, in the enforcement of those laws."

8
9 **NEW SECTION. Section 22. Repealer.** Sections 37-47-102 and 37-47-309, MCA, are repealed.

10
11 **NEW SECTION. Section 23. Severability.** If a part of [this act] is invalid, all valid parts that are
12 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its
13 applications, the part remains in effect in all valid applications that are severable from the invalid
14 applications.

15
16 **NEW SECTION. Section 24. Codification instruction.** [Sections 2 and 20] are intended to be
17 codified as an integral part of Title 37, chapter 47, and the provisions of Title 37, chapter 47, apply to
18 [sections 2 and 20].

19
20 **NEW SECTION. Section 25. Effective dates.** (1) [Sections 20 and 21 and this section] are
21 effective July 1, 1995.

22 (2) [Sections 1 through 19, 22 through 24, and 26] are effective October 1, 1995.

23
24 **NEW SECTION. Section 26. Termination.** [Section 11] terminates October 1, 1996.

25 -END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0196, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

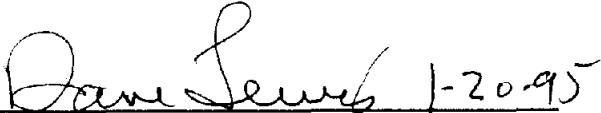
An act generally revising the law relating to outfitters and guides, creating the master guide license; revising licensing requirements and qualifications for outfitters and guides; requiring submission of an area operating plan for outfitters and establishing a system for review of the plan; revising duties and liabilities related to outfitting to include master guides; revising qualifications and conditions applicable to outfitter-sponsored class B-10 and B-11 licenses; allowing the Board of Outfitters to hire qualified investigators; granting the executive director of the Board of Outfitters and board investigators ex officio warden status.

ASSUMPTIONS:


1. A new proposal has been included in the Executive Budget recommendation that includes 3.25 FTE and state special revenue authority of \$99,909 in FY96 and \$100,165 in FY97 for the licensing and regulating functions of the outfitting industry.
2. The budget recommendation includes 2.00 FTE investigator positions and 1.25 FTE administrative support, plus operating expenses for a total of \$99,909 in FY96 and \$100,165 in FY97.
3. The Board of Outfitters will review the current fee schedule to determine if fees are sufficient to cover the costs of the outfitter program.

FISCAL IMPACT:

There will be no additional fiscal impact beyond the recommendations in the Executive Budget.



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



EMILY SWANSON, PRIMARY SPONSOR DATE

Fiscal Note for HB0196, as introduced

HB 196

1 HOUSE BILL NO. 196

2 INTRODUCED BY SWANSON, HIBBARD, HERTEL, PIPINICH

3 BY REQUEST OF THE DEPARTMENT OF COMMERCE

4

5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAW RELATING TO OUTFITTERS
6 AND GUIDES; CREATING THE ~~MASTER~~ PROFESSIONAL GUIDE LICENSE; REVISING LICENSING
7 REQUIREMENTS AND QUALIFICATIONS FOR OUTFITTERS AND GUIDES; REQUIRING SUBMISSION OF
8 AN ~~AREA OPERATING~~ OPERATIONS PLAN FOR OUTFITTERS AND ESTABLISHING A SYSTEM FOR
9 REVIEW OF THE PLAN; REVISING DUTIES AND LIABILITIES RELATED TO OUTFITTING TO INCLUDE
10 ~~MASTER~~ PROFESSIONAL GUIDES; REVISING QUALIFICATIONS AND CONDITIONS APPLICABLE TO
11 OUTFITTER-SPONSORED CLASS B-10 AND B-11 LICENSES; ALLOWING THE BOARD OF OUTFITTERS TO
12 HIRE QUALIFIED INVESTIGATORS; GRANTING THE EXECUTIVE DIRECTOR OF THE BOARD OF
13 OUTFITTERS AND BOARD INVESTIGATORS EX OFFICIO WARDEN STATUS; AMENDING SECTIONS
14 37-47-101, 37-47-201, 37-47-301, 37-47-302, 37-47-303, 37-47-304, 37-47-305, 37-47-306,
15 37-47-307, 37-47-341, 37-47-343, 37-47-345, 37-47-401, 37-47-402, 37-47-403, 37-47-404, 87-2-511,
16 AND 87-1-503, MCA; REPEALING SECTIONS 37-47-102 AND 37-47-309, MCA; AND PROVIDING
17 EFFECTIVE DATES AND A TERMINATION DATE."

18
19 STATEMENT OF INTENT

20 A statement of intent is required for this bill because rulemaking authority is granted to the board
21 of outfitters in 37-47-201 requiring the board to establish qualifications for two levels of guides and to
22 review proposed ~~operating-area~~ OPERATIONS plans and changes to ~~operating-area~~ OPERATIONS plans.

23 The legislature intends that at a minimum the rules on ~~master~~ PROFESSIONAL guide qualifications
24 address experience, and if the board considers it appropriate, additional training and a qualifying
25 examination to ensure that licensed ~~master~~ PROFESSIONAL guides are qualified to safely provide services
26 for compensation to clients of the endorsing outfitter.

27 The legislature intends that rules on ~~operating-area~~ OPERATIONS plans be directed toward a
28 reduction in new ~~commercial~~ HUNTING uses of areas by outfitters when the new uses will CAUSE UNDUE
29 conflict with existing HUNTING uses of the areas.

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

2
3 **Section 1.** Section 37-47-101, MCA, is amended to read:

4 **"37-47-101. Definitions.** As used in this chapter, unless the context requires otherwise, the
5 following definitions apply:

6 (1) "Accompany" means to go with or be together with a participant as an escort, companion, or
7 other service provider, with an actual physical presence in the area where the activity is being conducted
8 and within sight or sound of the participant at any SOME time during the furnishing of service.

9 (2) "Board" means the board of outfitters provided for in 2-15-383.

10 (3) "Consideration" means something of value given or done in exchange for something of value
11 given or done by another.

12 ~~(2)(4)~~ (4) "Department" means the department of commerce provided for in Title 2, chapter 15, part
13 18.

14 (5) "Guide" means a person who is employed by or who has contracted independently with a
15 licensed outfitter and who accompanies a participant during outdoor recreational activities that are directly
16 related to activities for which the outfitter is licensed.

17 ~~(3)(6)~~ (6) "License year" means that period ~~commencing~~ beginning January 1 and ending December
18 31 of the same year.

19 ~~(7) "Master guide" means a guide who has met experience, training, and testing qualifications for~~
20 ~~designation as a master guide, as set by board rule.~~

21 ~~(4)(8)~~ (7) "Nonresident" means a person other than a resident.

22 ~~(5)(9)~~ (8) "Outfitter" means any person, except a person providing services on real property that
23 ~~he~~ the person owns for the primary pursuit of bona fide agricultural interests, who:

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

26 (b) ~~for consideration provides any saddle or pack animal; facilities; camping equipment; vehicle,~~
27 ~~watercraft, or other conveyance; or personal service for hunting or fishing parties or camping equipment,~~
28 ~~vehicles, or other conveyance, except boats, for any person to hunt, trap, capture, take, or kill, pursue, or~~
29 ~~retrieve any varmint, predator, or game, including fish, and who accompanies such a party or that person,~~
30 either part or all of the way, on an expedition for any of these purposes or supervises a licensed guide or

1 master guide in accompanying that person;

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

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

5 ~~(6)(10)(9)~~ "Participant" means a person using the services offered by a licensed outfitter or
6 professional guide.

7 ~~(7) "Professional guide" and "guide" mean a person:~~

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

11 ~~(b) who has contracted independently with an outfitter and who furnishes personal guiding services~~
12 ~~and facilities, transportation, or equipment that he owns in assisting a person to hunt or take game birds~~
13 ~~or fish. A guide who provides independent contractor services to an outfitter may not provide facilities,~~
14 ~~equipment, or services for overnight use.~~

15 (10) "PROFESSIONAL GUIDE" MEANS A GUIDE WHO HAS MET EXPERIENCE, TRAINING, AND
16 TESTING QUALIFICATIONS FOR DESIGNATION AS A PROFESSIONAL GUIDE, AS SET BY BOARD RULE.

17 ~~(8)(11)~~ "Resident" means a person who qualifies for a resident Montana hunting or fishing license
18 under 87-2-102."

19

20 NEW SECTION. Section 2. Shuttle and rental services -- exemption. (1) Nothing in this chapter
21 prohibits the furnishing of shuttle or rental services as long as those services do not include in-field
22 assistance to a customer.

23 (2) In-field assistance includes but is not limited to:

24 (a) setting up a camp;

25 (b) field instruction for the activity to be conducted by the customer; or

26 (c) other services considered to be services of an outfitter, as defined in 37-47-101.

27

28 **Section 3.** Section 37-47-201, MCA, is amended to read:

29 **"37-47-201. Powers and duties of board relating to outfitters, guides, and master PROFESSIONAL**
30 **guides.** The board shall:

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

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

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

8 (4) establish outfitter standards, ~~and professional guide standards, and master PROFESSIONAL~~
 9 guide standards;

10 (5) adopt:

11 (a) rules of procedure;

12 (b) rules to administer and enforce this chapter, including ~~but not limited to~~ rules prescribing all
 13 requisite qualifications for licensure as an outfitter, guide, or master PROFESSIONAL guide. These
 14 ~~qualifications~~ Qualifications for outfitters must include training, testing, experience in activities similar to
 15 the service to be provided, knowledge of rules of governmental bodies pertaining to outfitting, and condition
 16 and type of gear and equipment, and the filing of an operating-area OPERATIONS plan.

17 (c) any reasonable rules, not in conflict with this chapter, necessary for safeguarding the public
 18 health, safety, and welfare of those persons using the services of outfitters and for the protection of
 19 landowners, the general public, and outfitters' employees, agents, and representatives, including evidence
 20 of qualification and licensure under this chapter for any person practicing or offering to practice as an
 21 outfitter, guide, or master PROFESSIONAL guide;

22 (d) rules specifying standards for review and approval of proposed new operating-area
 23 OPERATIONS plans INVOLVING HUNTING USE or the proposed expansion of NET CLIENT HUNTING USE
 24 UNDER an OUTFITTER'S existing operating-area OPERATIONS plan in order to determine if the proposal
 25 will increase existing use or cause an undue conflict with existing HUNTING use of the area,
 26 CONSTITUTING A THREAT TO THE PUBLIC HEALTH, SAFETY, OR WELFARE. The board may not approve
 27 a new operating-area OPERATIONS plan or the proposed expansion of an NET CLIENT HUNTING USE
 28 UNDER THE existing operating-area OPERATIONS plan if it finds that the proposal will cause an undue
 29 conflict with existing HUNTING use of the area. Approval is not required when part or all of an existing
 30 operating-area OPERATIONS plan is transferred from one licensed outfitter to another licensed outfitter if

1 ~~the transfer will not increase existing use of the area.~~ RULES ADOPTED PURSUANT TO THIS SECTION
 2 MUST PROVIDE FOR SOLICITATION AND CONSIDERATION OF COMMENTS FROM HUNTERS AND
 3 SPORTSPERSONS IN THE AREA TO BE AFFECTED BY THE PROPOSAL WHO DO NOT MAKE USE OF
 4 OUTFITTER SERVICES.

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

7

8 **Section 4.** Section 37-47-301, MCA, is amended to read:

9 **"37-47-301. License required -- services performed -- standards.** (1) A person may not act as an
 10 outfitter, ~~or professional guide, or master PROFESSIONAL guide~~ or advertise ~~as~~ or otherwise represent to
 11 the public that the person is an outfitter, guide, or master PROFESSIONAL guide without first securing a
 12 license in accordance with the provisions of this part.

13 (2) Whenever an outfitter is engaged by ~~any person~~ a participant, the outfitter shall keep and
 14 submit records as required by the board.

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

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

22 (5) Outfitters may not willfully and substantially misrepresent their facilities, prices, equipment,
 23 services, or hunting or fishing opportunities.

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

26 (7) ~~A person may not hold more than one Montana outfitter's license or hold an outfitter's license~~
 27 ~~for more than one corporation, proprietorship, or partnership.~~ An outfitter may not hire or retain a guide
 28 or master PROFESSIONAL guide who does not hold a current license as provided under this part.

29 ~~(8) The operating area of a licensed outfitter, as set out in the outfitter's operating area plan~~
 30 ~~pursuant to 37-47-304, constitutes the limit of operations for that outfitter and for any guide or master~~

1 ~~guide hired or retained by the outfitter. The conduct of outfitting outside the limits of the operating area~~
 2 ~~plan is considered outfitting without a license and is punishable as provided in 37-47-344(2)."~~

3

4 **Section 5.** Section 37-47-302, MCA, is amended to read:

5 **"37-47-302. Outfitter's qualifications.** Each An applicant for ~~and holder of~~ an outfitter's license
 6 or any renewal of a license ~~shall~~ must meet the following qualifications:

7 (1) ~~be a person of at least 18 years of age who is or older,~~ be physically capable and mentally
 8 competent to perform the duties of an outfitter, and meet experience, training, and testing requirements
 9 as prescribed by ~~the board rule~~;

10 (2) own or hold under written lease or represent a company, corporation, or partnership who owns
 11 or holds under written lease the equipment and facilities ~~as that~~ are necessary to provide the services
 12 advertised, contracted for, or agreed upon between the outfitter and the outfitter's clients (all equipment
 13 and facilities are subject to inspection at all reasonable times and places by the board or its designated
 14 agent);

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

19 (4) ~~have not been convicted or forfeited bond of \$100 or more on more than one violation of this~~
 20 ~~chapter or the fish and game laws or applicable regulations of any state or the United States within the past~~
 21 ~~5 years;~~

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

25 ~~(6)~~(5) have not, at any time, promulgated any false or misleading advertising relating to the
 26 business of outfitting;

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

30 ~~(8)~~ ~~have not committed any negligent act or misconduct while acting as an outfitter or professional~~

1 ~~guide that caused a danger or unreasonable risk of danger to person or property of any client of the outfitter~~
 2 ~~or professional guide during the license year immediately preceding that for which the application is made;~~
 3 ~~(9) have not, at any time, pleaded guilty to or been adjudged by a court guilty of a felony, unless~~
 4 ~~civil rights have been restored pursuant to law. A person may not apply for or hold an outfitter's license~~
 5 ~~during any period of time in which a sentence has been deferred or suspended for a felony."~~

6
 7 **Section 6.** Section 37-47-303, MCA, is amended to read:

8 "**37-47-303. Professional Guide's and master PROFESSIONAL guide's qualifications.** (1) An
 9 applicant for a professional guide's or master PROFESSIONAL guide's license ~~shall~~ must meet the following
 10 requirements qualifications:

11 (a) ~~be a person of at least 18 years of age who is or older and be~~ physically capable and mentally
 12 competent to perform the duties of a professional guide or master PROFESSIONAL guide;

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

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

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

20 (e) ~~have not, at any time, pleaded guilty to or been adjudged by a court guilty of a felony, unless~~
 21 ~~civil rights have been restored pursuant to law. A person may not apply for or hold a professional guide's~~
 22 ~~license during any period of time in which a sentence has been deferred or suspended for a felony. have~~
 23 ~~been issued a valid wildlife conservation license; and~~

24 (d) ~~possess a current cardiopulmonary resuscitation card, a first aid card, or an equivalent card~~
 25 ~~issued by a board approved certifying agency.~~

26 (2) ~~A professional guide shall have been issued a valid wildlife conservation license. In addition~~
 27 ~~to the requirements listed in subsection (1), an applicant for licensure as a master PROFESSIONAL guide~~
 28 ~~must meet additional experience requirements, to be set by board rule, and may be required to show proof~~
 29 ~~of training or pass a qualifying examination when required by board rule."~~

1 **Section 7.** Section 37-47-304, MCA, is amended to read:

2 "**37-47-304. Application.** (1) Each applicant for an outfitter's, ~~or professional~~ guide's, ~~or master~~
3 PROFESSIONAL guide's license shall make application for license ~~upon~~ on a form ~~to be~~ prescribed and
4 furnished by the board.

5 (2) ~~The application for an outfitter's license which shall~~ FORMS THE BASIS FOR THE OUTFITTER'S
6 OPERATIONS PLAN AND must include:

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

9 (b) the address of the applicant's principal place of business in the state of Montana;

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

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

15 (e) a signed statement of the licensed outfitter ~~by whom the professional guide is~~ for each guide
16 and master PROFESSIONAL guide to be employed or retained as an independent contractor stating that the
17 professional guide or master PROFESSIONAL guide is ~~in fact~~ to be employed ~~or retained as an independent~~
18 contractor by the outfitter and stating that the outfitter recommends the applicant guide or master
19 PROFESSIONAL guide ~~for the applicant's qualifications~~ licensure;

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

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

25 (h) the written approval of the appropriate agency or landowner on whose lands the applicant will
26 provide services or establish hunting camps; and

27 (i) ~~an operating area plan that specifies~~ the boundaries of the proposed operation, stating when
28 applicable:

29 (i) the name and portion of river;

30 (ii) the county of location;

1 (iii) the legal owner of the property;

2 (iv) the name of the ranch;

3 (v) the proposed service, including the type of game sought;

4 (vi) the name of the agency granting use authority; and

5 (vii) other means of identifying boundaries as established by board rule.

6 ~~(2)~~(3) Applications for an outfitter's license must be in the name of an individual person only.

7 Applications involving corporations, proprietorships, or partnerships must be made by one individual person
8 who qualifies under the provisions of this part. ~~Any~~ A license issued pursuant to this part must be in the
9 name of that person. The license must specifically state that the license is issued for the use and benefit
10 of the named corporation, proprietorship, or partnership involved. Any revocation or suspension of a
11 license is binding upon the individual person and the corporation, proprietorship, or partnership for the use
12 and benefit of which the license was originally issued.

13 ~~(3)~~(4) Application must be made to and filed with the board.

14 ~~(4)~~(5) Only one application for an outfitter's license may be made in any ~~one~~ license year. If ~~any~~
15 an application is denied, subsequent applications by the same applicant for the license year involved are
16 void, except as provided in 37-47-308."

17
18 **Section 8.** Section 37-47-305, MCA, is amended to read:

19 "**37-47-305. Outfitter's examination.** Each applicant for an outfitter's license ~~shall~~ after meeting
20 the experience and training specifications and other qualifications set by this chapter or rules adopted
21 pursuant to this chapter, is entitled to take and must pass a standard examination administered by the
22 board or its agent. The examination must require general and sufficient knowledge displaying and indicating
23 ability to perform the services contemplated with efficiency and with safety to the health and welfare of
24 ~~persons employing the services~~ participants. The examination must test the applicant's knowledge of
25 subjects that apply to the type of license applied for and may include the following subjects:

26 (1) federal and state fish and game laws and regulations;

27 (2) practical woodsmanship;

28 (3) general knowledge of big game;

29 (4) field preparation of trophies;

30 (5) care of game meat;

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

9

10 **Section 9.** Section 37-47-306, MCA, is amended to read:

11 **"37-47-306. Fees.** (1) The board shall establish fees commensurate with costs as provided in
12 37-1-134.

13 (2) Applications ~~shall~~ must be accompanied by a license fee as specified by ~~the board~~ rule.

14 (3) If a nonresident resides in a state requiring residents of the state of Montana to pay in excess
15 of the amount established by the board for a similar license, the fee for ~~such the~~ nonresident outfitter's,
16 ~~or professional guide's, or master~~ PROFESSIONAL guide's license ~~shall~~ must be the same amount as the
17 higher fee charged in the state where the nonresident resides.

18 (4) The license fees must be deposited in the state special revenue fund and must be used by the
19 board to investigate the applicant, to enforce this part, and for administrative costs, subject to
20 37-1-101(6)."

21

22 **Section 10.** Section 37-47-307, MCA, is amended to read:

23 **"37-47-307. Investigation of applicant -- issuance or denial of license.** (1) The board shall
24 investigate each applicant for an outfitter's, ~~or professional~~ guide's, or master PROFESSIONAL guide's
25 license and determine the applicant's qualifications.

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

30 (3) ~~Final decision as to issuance of renewal licenses must be made not later than 30 days from the~~

1 ~~date of receipt of the completed application for renewal and not later than 90 days from the date of receipt~~
 2 ~~of a completed application for a new license.~~

3 (4) A licensee in good standing is entitled to a new license for the ensuing license year upon
 4 complying with the provisions of this chapter ~~and renewal deadlines and fees imposed by rule of the board~~
 5 or rules adopted pursuant to this chapter and upon completing an application for license renewal on a form
 6 provided by the board."

7

8 **NEW SECTION. Section 11. License for previously licensed guide.** The board shall issue a guide's
 9 license to an applicant who meets the following qualifications as of July 1, 1995:

10 (1) previous licensure as a guide in this state and practice as a guide for at least one season, as
 11 defined by board rule;

12 (2) payment of a license fee; and

13 (3) submission of a current cardiopulmonary resuscitation card, a first-aid card, or an equivalent
 14 card issued by a board-approved certifying agency.

15

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

17 "**37-47-341. Grounds for denial, suspension, or revocation of license.** ~~Every~~ A license or right to
 18 apply for and hold ~~the~~ a license issued under this part may be denied, suspended, or revoked or other
 19 disciplinary conditions may be applied upon any of the following grounds:

20 (1) having ceased to meet all of the qualifications for holding a license, as required under this
 21 chapter and rules adopted pursuant to this chapter;

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

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

24 (4) having pleaded guilty to or been adjudged by a court guilty of a felony, including a case in
 25 which the sentence is suspended or imposition of the sentence is deferred, unless civil rights have been
 26 restored pursuant to law; A person may not apply for or hold an outfitter's, guide's, or master
 27 PROFESSIONAL guide's license during any period of time in which a sentence for a felony has been
 28 deferred or suspended.

29 (5) ~~two convictions~~ one conviction or bond forfeitures of \$100 or more forfeiture as to violations
 30 a violation of the fish and game or outfitting laws or regulations of any state or the United States ~~within~~

1 ~~the past 5 years;~~

2 (6) a substantial breach of ~~any a~~ contract with ~~any person using the services of the license holder~~
3 a participant provided that the breach is established as a matter of final judgment in a court of law;

4 (7) the willful employment of or contracting with an unlicensed guide ~~or master~~ PROFESSIONAL
5 guide by an outfitter;

6 (8) negligence or misconduct while acting as an outfitter, ~~or professional guide, or master~~
7 PROFESSIONAL guide that causes an accident or injury to the person or property of ~~any client of the~~
8 ~~outfitter or professional guide~~ a participant; ~~or~~

9 (9) misconduct as defined by board rule; or

10 (10) any violation of this chapter or a rule adopted pursuant to this chapter."

11

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

13 "**37-47-343. Appeal procedure.** ~~Any A~~ person who feels aggrieved by a final order of the board
14 denying issuance of, ~~suspension of, or revocation of~~ a license or suspending or revoking a license as an
15 outfitter, ~~or professional guide, or master~~ PROFESSIONAL guide may petition for judicial review as provided
16 in Title 2, chapter 4, part 7."

17

18 **Section 14.** Section 37-47-345, MCA, is amended to read:

19 "**37-47-345. Enforcement.** Investigations and arrests for violations of this chapter or rules adopted
20 pursuant to this chapter may be made by any peace officer; warden of the department of fish, wildlife, and
21 parks; or federal agency enforcement personnel."

22

23 **Section 15.** Section 37-47-401, MCA, is amended to read:

24 "**37-47-401. Purpose.** It is recognized that some activities conducted by outfitters, guides, and
25 ~~master~~ PROFESSIONAL guides within the scope of their authorized services are inherently hazardous to
26 participants regardless of all feasible safety measures that ~~can~~ may be taken. It is the purpose of this part
27 to define those areas of responsibility and affirmative acts or omissions for which outfitters, guides, and
28 ~~master~~ PROFESSIONAL guides are liable for loss, damage, or injury and those risks for which the participant
29 expressly assumes or ~~shall be~~ is considered to have voluntarily assumed the risk of loss or damage."

30

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

2 "**37-47-402. Duties of outfitters, guides, and ~~master~~ PROFESSIONAL guides.** An outfitter, guide,
3 or ~~master~~ PROFESSIONAL guide offering professional services in this state shall:

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

6 (2) comply with all standards adopted by board rule ~~by the board.~~"

7

8 **Section 17.** Section 37-47-403, MCA, is amended to read:

9 "**37-47-403. Duties of participants.** (1) A participant shall:

10 (a) act as would a reasonably prudent person when engaging in the activities offered by a licensed
11 outfitter, guide, or ~~master~~ PROFESSIONAL guide in this state;

12 (b) receive permission from the outfitter, guide, or ~~master~~ PROFESSIONAL guide prior to embarking
13 on any self-initiated activity and inform the outfitter, guide, or ~~master~~ PROFESSIONAL guide of ~~his~~ the
14 participant's plans and intentions upon receiving permission to engage in ~~such~~ the self-initiated activity.

15 (2) A participant may not:

16 (a) interfere with the running or operation of an outfitter's, guide's, or ~~master~~ PROFESSIONAL
17 guide's activities when ~~such~~ those activities conform to the standards of care set forth in 37-47-402;

18 (b) use the outfitter's, guide's, or ~~master~~ PROFESSIONAL guide's equipment, facilities, or services
19 unless the participant has requested and received permission from the outfitter, guide, or ~~master~~
20 PROFESSIONAL guide;

21 (c) knowingly, purposely, or negligently engage in any type of conduct that contributes to or
22 causes injury to ~~himself~~ the participant or any other person."

23

24 **Section 18.** Section 37-47-404, MCA, is amended to read:

25 "**37-47-404. Responsibility for violations of law.** (1) ~~Any~~ A person accompanying a hunting or
26 fishing party as an outfitter or ~~agent~~ guide, ~~master~~ PROFESSIONAL guide, or other employee of the outfitter
27 is equally responsible with any person or party employing the person as an outfitter for any violation of fish
28 and game laws unless the violation is reported to a peace officer by the outfitter, ~~agent~~ guide, ~~master~~
29 PROFESSIONAL guide, or employee and the outfitter, ~~agent~~ guide, ~~master~~ PROFESSIONAL guide, or
30 employee was not an active participant. An outfitter or ~~agent~~ guide, ~~master~~ PROFESSIONAL guide, or other

1 employee of an outfitter who willfully fails or refuses to report any violation of fish and game laws is liable
 2 to the penalties provided in this section. If any ~~professional guide or master~~ PROFESSIONAL guide violates
 3 the laws or applicable regulations relating to fish and game, outfitting, or guiding with actual or implied
 4 knowledge of an outfitter employing the guide ~~or master~~ PROFESSIONAL guide, the outfitter is legally
 5 responsible for the violation for all purposes under the laws or regulations if the outfitter fails to report the
 6 violation to the proper authority.

7 (2) An outfitter, ~~guide, or professional~~ master PROFESSIONAL guide shall report any violation or
 8 suspected violation of fish and game laws that the outfitter, ~~guide, or master~~ PROFESSIONAL guide knows
 9 or reasonably should have known has been committed by the employees, agents, representatives, clients,
 10 or participants in the outfitting or guiding activity. The violation or suspected violation must be reported
 11 to a peace officer at the earliest possible opportunity.

12 (3) A person may not hire or retain ~~any an~~ an outfitter ~~or professional guide~~ unless the outfitter ~~or~~
 13 ~~professional guide~~ is currently licensed in accordance with the laws of the state of Montana. A person may
 14 not use the services of a guide or master PROFESSIONAL guide and a guide or master PROFESSIONAL
 15 guide may not offer services unless the services are obtained through an endorsing outfitter."

16
 17 **Section 19.** Section 87-2-511, MCA, is amended to read:

18 **"87-2-511. Sale of Class B-10 and Class B-11 licenses.** (1) The department shall offer the Class
 19 B-10 and Class B-11 licenses for sale on March 15, with 5,600 of the authorized Class B-10 licenses and
 20 2,000 Class B-11 licenses reserved for applicants ~~indicating their intent to use~~ using the services of a
 21 licensed outfitter, and 2,000 of the authorized Class B-11 licenses reserved for applicants indicating their
 22 intent to hunt with a resident sponsor on land owned by that sponsor, as provided in subsections (2) and
 23 (3).

24 (2) Each application for a ~~reserved~~ resident-sponsored license under subsection (1) must contain
 25 a written affirmation by the applicant that the applicant intends to hunt with ~~a licensed outfitter or~~ a
 26 resident sponsor and must indicate the name of the ~~licensed outfitter or~~ resident sponsor with whom the
 27 applicant intends to hunt. In addition, the application must be accompanied by a certificate that is signed
 28 by a ~~licensed outfitter or~~ resident sponsor and ~~which~~ that affirms that the ~~outfitter or~~ resident sponsor will:

- 29 (a) direct the applicant's hunting and advise the applicant of game and trespass laws of the state;
 30 (b) submit to the department, in a manner prescribed by the department, complete records of who

1 hunted with ~~him~~ the resident sponsor, where they hunted, and what game was taken; and

2 (c) accept no monetary consideration for enabling the nonresident applicant to obtain a license or
3 for providing any services or assistance to the nonresident applicant, except as provided in Title 37, chapter
4 47, and this title.

5 (3) The certificate signed by the resident sponsor pursuant to subsection (2) must also affirm that
6 the sponsor is a landowner and that the applicant under the certificate will hunt only on land owned by the
7 sponsor.

8 (4) Each application for an outfitter-sponsored license under subsection (1) must contain a written
9 affirmation by the applicant that the applicant will hunt with a licensed outfitter for all big game hunted by
10 the applicant under the license and must indicate the name of the licensed outfitter with whom the
11 applicant will hunt. In addition, the application must be accompanied by a certificate that is signed by a
12 licensed outfitter and that affirms that the outfitter will:

13 (a) accompany the applicant;

14 (b) provide guiding services for the species hunted by the applicant;

15 (c) direct the applicant's hunting for all big game hunted by the applicant under the license and
16 advise the applicant of game and trespass laws of the state;

17 (d) submit to the department, in a manner prescribed by the department, complete records of who
18 hunted with the outfitter, where they hunted, and what game was taken; and

19 (e) accept no monetary consideration for enabling the nonresident applicant to obtain a license or
20 for providing any services or assistance to the nonresident applicant, except as provided in Title 37, chapter
21 47, and this title.

22 (5) An outfitter-sponsored license under subsection (1) is valid only when used in compliance with
23 the affirmations of the applicant and outfitter required under subsection (4). If the sponsoring outfitter is
24 unavailable or if the applicant wishes to use the services of separate outfitters for hunting different species
25 of game, an outfitter-sponsored license may be used with a substitute licensed outfitter, in compliance with
26 the affirmations under subsection (4), upon advance written notification to the board by the sponsoring
27 licensed outfitter or the substitute outfitter.

28 (4)(6) The department shall make the reserved Class B-10 and Class B-11 licenses that remain
29 unsold on April 15 available to nonresident applicants without restriction as to hunting with a licensed
30 outfitter or resident sponsor.

1 ~~(5)~~(7) All Class B-10 and Class B-11 licenses that are not reserved under subsection (1) and all
 2 unsold reserved licenses that are available under subsection ~~(4)~~ (6) must be issued by a drawing among all
 3 applicants for the respective unreserved licenses."

4

5 **NEW SECTION.** **Section 20. Investigators -- qualifications.** (1) The department may hire
 6 investigators to assist the board in investigations and inspections authorized by this chapter.

7 (2) To qualify as an investigator, a person must:

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

9 (b) have knowledge of outfitting and guiding through prior experience as a licensed outfitter, guide,
 10 or master guide or as a regulator of the outfitting profession; and

11 (c) have not less than 2 years' experience as a licensed private investigator or as an investigator,
 12 detective, special agent, or peace officer of a city, county, or state or of a federal agency.

13

14 **Section 21.** Section 87-1-503, MCA, is amended to read:

15 "**87-1-503. Ex officio wardens.** All sheriffs and their deputies;; all constables;; all peace officers
 16 of the state or any subdivision of the state;; the executive director and investigators of the board of
 17 outfitters; all state forest officers,~~and;~~ as authorized by cooperative agreement, ~~all~~ any officers of the
 18 United States forest service, agents of the United States fish and wildlife service, and peace officers of the
 19 bureau of land management, national park service, and corps of engineers that are assigned to duty in this
 20 state;; and field personnel of the department, as the director may appoint, are ex officio wardens, without
 21 pay, except that the department may, in its discretion, allow ~~traveling~~ travel expenses as provided for in
 22 2-18-501 through 2-18-503, which, if allowed, must be paid upon proper vouchers from the state fish and
 23 game funds. Ex officio wardens have the same powers with reference to the enforcement of the fish and
 24 game laws of this state and the laws relating to parks and outdoor recreation contained in ~~chapters 1 and~~
 25 ~~2~~ of Title 23, chapters 1 and 2, except chapter 2, part 7, as regularly appointed wardens, and it is their
 26 duty to assist, whenever possible, in the enforcement of those laws."

27

28 **NEW SECTION.** **Section 22. Repealer.** Sections 37-47-102 and 37-47-309, MCA, are repealed.

29

30 **NEW SECTION.** **Section 23. Severability.** If a part of [this act] is invalid, all valid parts that are

1 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its
2 applications, the part remains in effect in all valid applications that are severable from the invalid
3 applications.

4
5 NEW SECTION. **Section 24. Codification instruction.** [Sections 2 and 20] are intended to be
6 codified as an integral part of Title 37, chapter 47, and the provisions of Title 37, chapter 47, apply to
7 [sections 2 and 20].

8
9 NEW SECTION. **Section 25. Effective dates.** (1) [Sections 20 and 21 and this section] are
10 effective July 1, 1995.

11 (2) [Sections 1 through 19, 22 through 24, and 26] are effective October 1, 1995.

12
13 NEW SECTION. **Section 26. Termination.** [Section 11] terminates October 1, 1996.

14 -END-

1 HOUSE BILL NO. 196

2 INTRODUCED BY SWANSON, HIBBARD, HERTEL, PIPINICH

3 BY REQUEST OF THE DEPARTMENT OF COMMERCE

4

5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAW RELATING TO OUTFITTERS
6 AND GUIDES; CREATING THE MASTER PROFESSIONAL GUIDE LICENSE; REVISING LICENSING
7 REQUIREMENTS AND QUALIFICATIONS FOR OUTFITTERS AND GUIDES; REQUIRING SUBMISSION OF
8 AN ~~AREA OPERATING~~ OPERATIONS PLAN FOR OUTFITTERS AND ESTABLISHING A SYSTEM FOR
9 REVIEW OF THE PLAN; REVISING DUTIES AND LIABILITIES RELATED TO OUTFITTING TO INCLUDE
10 MASTER PROFESSIONAL GUIDES; REVISING QUALIFICATIONS AND CONDITIONS APPLICABLE TO
11 OUTFITTER-SPONSORED CLASS B-10 AND B-11 LICENSES; ALLOWING THE BOARD OF OUTFITTERS TO
12 HIRE QUALIFIED INVESTIGATORS; GRANTING THE EXECUTIVE DIRECTOR OF THE BOARD OF
13 OUTFITTERS AND BOARD INVESTIGATORS EX OFFICIO WARDEN STATUS; AMENDING SECTIONS
14 37-47-101, 37-47-201, 37-47-301, 37-47-302, 37-47-303, 37-47-304, 37-47-305, 37-47-306,
15 37-47-307, 37-47-341, 37-47-343, 37-47-345, 37-47-401, 37-47-402, 37-47-403, 37-47-404, 87-2-511,
16 AND 87-1-503, MCA; REPEALING SECTIONS 37-47-102 AND 37-47-309, MCA; AND PROVIDING
17 EFFECTIVE DATES AND A TERMINATION DATE."

18

19

STATEMENT OF INTENT

20 A statement of intent is required for this bill because rulemaking authority is granted to the board
21 of outfitters in 37-47-201 requiring the board to establish qualifications for two levels of guides and to
22 review proposed ~~operating area~~ OPERATIONS plans and changes to ~~operating area~~ OPERATIONS plans.

23 The legislature intends that at a minimum the rules on ~~master~~ PROFESSIONAL guide qualifications
24 address experience, and if the board considers it appropriate, additional training and a qualifying
25 examination to ensure that licensed ~~master~~ PROFESSIONAL guides are qualified to safely provide services
26 for compensation to clients of the endorsing outfitter.

27 The legislature intends that rules on ~~operating area~~ OPERATIONS plans be directed toward a
28 reduction in new ~~commercial~~ HUNTING uses of areas by outfitters when the new uses will CAUSE UNDUE
29 conflict with existing HUNTING uses of the areas.

30

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

2
3 **Section 1.** Section 37-47-101, MCA, is amended to read:

4 **"37-47-101. Definitions.** As used in this chapter, unless the context requires otherwise, the
5 following definitions apply:

6 (1) "Accompany" means to go with or be together with a participant as an escort, companion, or
7 other service provider, with an actual physical presence in the area where the activity is being conducted
8 and within sight or sound of the participant at any SOME time during the furnishing of service.

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

10 (3) "Consideration" means something of value given or done in exchange for something of value
11 given or done by another.

12 ~~(2)~~(4) "Department" means the department of commerce provided for in Title 2, chapter 15, part
13 18.

14 (5) "Guide" means a person who is employed by or who has contracted independently with a
15 licensed outfitter and who accompanies a participant during outdoor recreational activities that are directly
16 related to activities for which the outfitter is licensed.

17 ~~(3)~~(6) "License year" means that period ~~commencing~~ beginning January 1 and ending December
18 31 of the same year.

19 ~~(7) "Master guide" means a guide who has met experience, training, and testing qualifications for~~
20 ~~designation as a master guide, as set by board rule.~~

21 ~~(4)~~(8)(7) "Nonresident" means a person other than a resident.

22 ~~(5)~~(9)(8) "Outfitter" means any person, except a person providing services on real property that
23 ~~he~~ the person owns for the primary pursuit of bona fide agricultural interests, who:

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

26 ~~(b) for consideration provides any saddle or pack animal; facilities; camping equipment; vehicle,~~
27 ~~watercraft, or other conveyance; or personal service for hunting or fishing parties or camping equipment,~~
28 ~~vehicles, or other conveyance, except boats, for any person to hunt, trap, capture, take, or kill, OR pursue,~~
29 ~~or retrieve any varmint, predator, or game, including fish, and who accompanies such a party or that~~
30 ~~person, either part or all of the way, on an expedition for any of these purposes or supervises a licensed~~

1 guide or master guide in accompanying that person;

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

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

5 ~~(6)(10)(9)~~ "Participant" means a person using the services offered by a licensed outfitter or
6 professional guide.

7 ~~(7) "Professional guide" and "guide" mean a person:~~

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

11 ~~(b) who has contracted independently with an outfitter and who furnishes personal guiding services~~
12 ~~and facilities, transportation, or equipment that he owns in assisting a person to hunt or take game birds~~
13 ~~or fish. A guide who provides independent contractor services to an outfitter may not provide facilities,~~
14 ~~equipment, or services for overnight use.~~

15 (10) "PROFESSIONAL GUIDE" MEANS A GUIDE WHO HAS MET EXPERIENCE, TRAINING, AND
16 TESTING QUALIFICATIONS FOR DESIGNATION AS A PROFESSIONAL GUIDE, AS SET BY BOARD RULE.

17 ~~(8)(11)~~ "Resident" means a person who qualifies for a resident Montana hunting or fishing license
18 under 87-2-102."

19

20 NEW SECTION. Section 2. Shuttle and rental services -- exemption. (1) Nothing in this chapter
21 prohibits the furnishing of shuttle or rental services as long as those services do not include in-field
22 assistance to a customer.

23 (2) In-field assistance includes but is not limited to:

24 (a) setting up a camp;

25 (b) field instruction for the activity to be conducted by the customer; or

26 (c) other services considered to be services of an outfitter, as defined in 37-47-101.

27

28 **Section 3.** Section 37-47-201, MCA, is amended to read:

29 **"37-47-201. Powers and duties of board relating to outfitters, guides, and master PROFESSIONAL**
30 **guides.** The board shall:

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

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

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

8 (4) establish outfitter standards, ~~and professional guide standards, and master~~ PROFESSIONAL
9 guide standards;

10 (5) adopt:

11 (a) rules of procedure;

12 (b) rules to administer and enforce this chapter, including ~~but not limited to~~ rules prescribing all
13 requisite qualifications for licensure as an outfitter, guide, or master PROFESSIONAL guide. These
14 qualifications Qualifications for outfitters must include training, testing, experience in activities similar to
15 the service to be provided, knowledge of rules of governmental bodies pertaining to outfitting, and condition
16 and type of gear and equipment, and the filing of an operating-area OPERATIONS plan.

17 (c) any reasonable rules, not in conflict with this chapter, necessary for safeguarding the public
18 health, safety, and welfare of those persons using the services of outfitters and for the protection of
19 landowners, the general public, and outfitters' employees, agents, and representatives, including evidence
20 of qualification and licensure under this chapter for any person practicing or offering to practice as an
21 outfitter, guide, or master PROFESSIONAL guide;

22 (d) rules specifying standards for review and approval of proposed new operating-area
23 OPERATIONS plans INVOLVING HUNTING USE or the proposed expansion of NET CLIENT HUNTING USE
24 UNDER an OUTFITTER'S existing operating-area OPERATIONS plan in order to determine if the proposal
25 will increase existing use or cause an undue conflict with existing HUNTING use of the area,
26 CONSTITUTING A THREAT TO THE PUBLIC HEALTH, SAFETY, OR WELFARE. The board may not approve
27 a new operating-area OPERATIONS plan or the proposed expansion of an NET CLIENT HUNTING USE
28 UNDER THE existing operating-area OPERATIONS plan if it finds that the proposal will cause an undue
29 conflict with existing HUNTING use of the area. Approval is not required when part or all of an existing
30 operating-area OPERATIONS plan is transferred from one licensed outfitter to another licensed outfitter if

1 ~~the transfer will not increase existing use of the area.~~ RULES ADOPTED PURSUANT TO THIS SECTION
 2 MUST PROVIDE FOR SOLICITATION AND CONSIDERATION OF COMMENTS FROM HUNTERS AND
 3 SPORTSPERSONS IN THE AREA TO BE AFFECTED BY THE PROPOSAL WHO DO NOT MAKE USE OF
 4 OUTFITTER SERVICES.

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

7

8 **Section 4.** Section 37-47-301, MCA, is amended to read:

9 **"37-47-301. License required -- services performed -- standards.** (1) A person may not act as an
 10 outfitter, ~~or professional guide, or master~~ PROFESSIONAL guide or advertise ~~as~~ or otherwise represent to
 11 the public that the person is an outfitter, guide, or master PROFESSIONAL guide without first securing a
 12 license in accordance with the provisions of this part.

13 (2) Whenever an outfitter is engaged by ~~any person~~ a participant, the outfitter shall keep and
 14 submit records as required by the board.

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

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

22 (5) Outfitters may not willfully and substantially misrepresent their facilities, prices, equipment,
 23 services, or hunting or fishing opportunities.

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

26 (7) ~~A person may not hold more than one Montana outfitter's license or hold an outfitter's license~~
 27 ~~for more than one corporation, proprietorship, or partnership.~~ An outfitter may not hire or retain a guide
 28 or master PROFESSIONAL guide who does not hold a current license as provided under this part.

29 ~~(8) The operating area of a licensed outfitter, as set out in the outfitter's operating area plan~~
 30 ~~pursuant to 37-47-304, constitutes the limit of operations for that outfitter and for any guide or master~~

~~guide hired or retained by the outfitter. The conduct of outfitting outside the limits of the operating area plan is considered outfitting without a license and is punishable as provided in 37-47-344(2)."~~

Section 5. Section 37-47-302, MCA, is amended to read:

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

(1) ~~be a person of at least~~ 18 years of age ~~who is~~ or older, be physically capable and mentally competent to perform the duties of an outfitter, and meet experience, training, and testing requirements as prescribed by ~~the board~~ rule;

(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~~ that are necessary to provide the services advertised, contracted for, or agreed upon between the outfitter and the outfitter's clients (all equipment and facilities are subject to inspection at all reasonable times and places by the board or its designated agent);

(3) ~~be a person who has~~ have demonstrated a respect for and compliance with the laws of any state or of the United States and all rules promulgated under those laws ~~as~~ related to ~~matters of~~ fish and game, conservation of natural resources, and preservation of the natural ecosystem without pollution 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, master PROFESSIONAL guide's, or conservation license from the state of Montana;

~~(6)~~(5) 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 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

1 ~~guide that caused a danger or unreasonable risk of danger to person or property of any client of the outfitter~~
 2 ~~or professional guide during the license year immediately preceding that for which the application is made;~~
 3 ~~(9) have not, at any time, pleaded guilty to or been adjudged by a court guilty of a felony, unless~~
 4 ~~civil rights have been restored pursuant to law. A person may not apply for or hold an outfitter's license~~
 5 ~~during any period of time in which a sentence has been deferred or suspended for a felony."~~

6
 7 **Section 6.** Section 37-47-303, MCA, is amended to read:

8 **"37-47-303. Professional Guide's and master PROFESSIONAL guide's qualifications.** (1) An
 9 applicant for a professional guide's or master PROFESSIONAL guide's license ~~shall~~ must meet the following
 10 requirements qualifications:

11 (a) ~~be a person of at least 18 years of age who is or older and be~~ physically capable and mentally
 12 competent to perform the duties of a professional guide or master PROFESSIONAL guide;

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

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

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

20 (e) ~~have not, at any time, pleaded guilty to or been adjudged by a court guilty of a felony, unless~~
 21 ~~civil rights have been restored pursuant to law. A person may not apply for or hold a professional guide's~~
 22 ~~license during any period of time in which a sentence has been deferred or suspended for a felony. have~~
 23 ~~been issued a valid wildlife conservation license; and~~

24 (d) ~~possess a current cardiopulmonary resuscitation card, a first aid card, or an equivalent card~~
 25 ~~issued by a board approved certifying agency.~~

26 (2) ~~A professional guide shall have been issued a valid wildlife conservation license. In addition~~
 27 ~~to the requirements listed in subsection (1), an applicant for licensure as a master PROFESSIONAL guide~~
 28 ~~must meet additional experience requirements, to be set by board rule, and may be required to show proof~~
 29 ~~of training or pass a qualifying examination when required by board rule."~~

1 **Section 7.** Section 37-47-304, MCA, is amended to read:

2 "**37-47-304. Application.** (1) Each applicant for an outfitter's, ~~or professional guide's, or master~~
3 PROFESSIONAL guide's license shall make application for license ~~upon~~ on a form ~~to be~~ prescribed and
4 furnished by the board.

5 (2) The application for an outfitter's license which shall FORMS THE BASIS FOR THE OUTFITTER'S
6 OPERATIONS PLAN AND must include:

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

9 (b) the address of the applicant's principal place of business in the state of Montana;

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

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

15 (e) a signed statement of the licensed outfitter ~~by whom the professional guide is~~ for each guide
16 and master PROFESSIONAL guide to be employed or retained as an independent contractor stating that the
17 professional guide or master PROFESSIONAL guide is ~~in fact~~ to be employed ~~or retained as an independent~~
18 ~~contractor~~ by the outfitter and stating that the outfitter recommends the applicant guide or master
19 PROFESSIONAL guide for the applicant's qualifications licensure;

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

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

25 (h) the written approval of the appropriate agency or landowner on whose lands the applicant will
26 provide services or establish hunting camps; and

27 ~~(i) an operating area plan that specifies the boundaries of the proposed operation, stating when~~
28 applicable:

29 (i) the name and portion of river;

30 (ii) the county of location;

1 (iii) the legal owner of the property;

2 (iv) the name of the ranch;

3 (v) the proposed service, including the type of game sought;

4 (vi) the name of the agency granting use authority; and

5 (vii) other means of identifying boundaries as established by board rule.

6 ~~(2)~~(3) Applications for an outfitter's license must be in the name of an individual person only.

7 Applications involving corporations, proprietorships, or partnerships must be made by one individual person
8 who qualifies under the provisions of this part. ~~Any~~ A license issued pursuant to this part must be in the
9 name of that person. The license must specifically state that the license is issued for the use and benefit
10 of the named corporation, proprietorship, or partnership involved. Any revocation or suspension of a
11 license is binding upon the individual person and the corporation, proprietorship, or partnership for the use
12 and benefit of which the license was originally issued.

13 ~~(3)~~(4) Application must be made to and filed with the board.

14 ~~(4)~~(5) Only one application for an outfitter's license may be made in any ~~one~~ license year. If ~~any~~
15 an application is denied, subsequent applications by the same applicant for the license year involved are
16 void, except as provided in 37-47-308."

17
18 **Section 8.** Section 37-47-305, MCA, is amended to read:

19 **"37-47-305. Outfitter's examination.** Each applicant for an outfitter's license ~~shall~~, after meeting
20 the experience and training specifications and other qualifications set by this chapter or rules adopted
21 pursuant to this chapter, is entitled to take and must pass a standard examination administered by the
22 board or its agent. The examination must require general and sufficient knowledge displaying and indicating
23 ability to perform the services contemplated with efficiency and with safety to the health and welfare of
24 ~~persons employing the services~~ participants. The examination must test the applicant's knowledge of
25 subjects that apply to the type of license applied for and may include the following subjects:

26 (1) federal and state fish and game laws and regulations;

27 (2) practical woodsmanship;

28 (3) general knowledge of big game;

29 (4) field preparation of trophies;

30 (5) care of game meat;

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

9
 10 **Section 9.** Section 37-47-306, MCA, is amended to read:

11 **"37-47-306. Fees.** (1) The board shall establish fees commensurate with costs as provided in
 12 37-1-134.

13 (2) Applications ~~shall~~ must be accompanied by a license fee as specified by ~~the board~~ rule.

14 (3) If a nonresident resides in a state requiring residents of the state of Montana to pay in excess
 15 of the amount established by the board for a similar license, the fee for ~~such~~ the nonresident outfitter's,
 16 ~~or professional guide's, or master PROFESSIONAL guide's~~ license ~~shall~~ must be the same amount as the
 17 higher fee charged in the state where the nonresident resides.

18 (4) The license fees must be deposited in the state special revenue fund and must be used by the
 19 board to investigate the applicant, to enforce this part, and for administrative costs, subject to
 20 37-1-101(6)."

21
 22 **Section 10.** Section 37-47-307, MCA, is amended to read:

23 **"37-47-307. Investigation of applicant -- issuance or denial of license.** (1) The board shall
 24 investigate each applicant for an outfitter's, ~~or professional~~ guide's, or master PROFESSIONAL guide's
 25 license and determine the applicant's qualifications.

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

30 (3) ~~Final decision as to issuance of renewal licenses must be made not later than 30 days from the~~

1 ~~date of receipt of the completed application for renewal and not later than 90 days from the date of receipt~~
 2 ~~of a completed application for a new license.~~

3 ~~(4) A licensee in good standing is entitled to a new license for the ensuing license year upon~~
 4 ~~complying with the provisions of this chapter and renewal deadlines and fees imposed by rule of the board~~
 5 ~~or rules adopted pursuant to this chapter and upon completing an application for license renewal on a form~~
 6 ~~provided by the board."~~

7

8 **NEW SECTION. Section 11. License for previously licensed guide.** The board shall issue a guide's
 9 license to an applicant who meets the following qualifications as of July 1, 1995:

10 (1) previous licensure as a guide in this state and practice as a guide for at least one season, as
 11 defined by board rule;

12 (2) payment of a license fee; and

13 (3) submission of a current cardiopulmonary resuscitation card, a first-aid card, or an equivalent
 14 card issued by a board-approved certifying agency.

15

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

17 **"37-47-341. Grounds for denial, suspension, or revocation of license.** ~~Every~~ A license or right to
 18 apply for and hold ~~the~~ a license issued under this part may be denied, suspended, or revoked or other
 19 disciplinary conditions may be applied upon any of the following grounds:

20 (1) having ceased to meet all of the qualifications for holding a license, as required under this
 21 chapter and rules adopted pursuant to this chapter;

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

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

24 (4) having pleaded guilty to or been adjudged by a court guilty of a felony, including a case in
 25 which the sentence is suspended or imposition of the sentence is deferred, unless civil rights have been
 26 restored pursuant to law; A person may not apply for or hold an outfitter's, guide's, or master
 27 PROFESSIONAL guide's license during any period of time in which a sentence for a felony has been
 28 deferred or suspended.

29 (5) ~~two convictions~~ one conviction or bond forfeitures of \$100 or more forfeiture as to violations
 30 a violation of the fish and game or outfitting laws or regulations of any state or the United States ~~within~~

1 ~~the past 5 years;~~

2 (6) a substantial breach of ~~any a~~ contract with ~~any person using the services of the license holder~~
3 a participant provided that the breach is established as a matter of final judgment in a court of law;

4 (7) the willful employment of or contracting with an unlicensed guide ~~or master~~ PROFESSIONAL
5 guide by an outfitter;

6 (8) negligence or misconduct while acting as an outfitter, ~~or professional guide, or master~~
7 PROFESSIONAL guide that causes an accident or injury to the person or property of ~~any client of the~~
8 ~~outfitter or professional guide~~ a participant; ~~or~~

9 (9) misconduct as defined by board rule; ~~or~~

10 (10) any violation of this chapter or a rule adopted pursuant to this chapter."

11

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

13 **"37-47-343. Appeal procedure.** ~~Any A~~ person who feels aggrieved by a final order of the board
14 denying issuance of, ~~suspension of, or revocation of~~ a license or suspending or revoking a license as an
15 outfitter, ~~or professional guide, or master~~ PROFESSIONAL guide may petition for judicial review as provided
16 in Title 2, chapter 4, part 7."

17

18 **Section 14.** Section 37-47-345, MCA, is amended to read:

19 **"37-47-345. Enforcement.** Investigations and arrests for violations of this chapter ~~or rules adopted~~
20 pursuant to this chapter may be made by any peace officer; warden of the department of fish, wildlife, and
21 parks; or federal agency enforcement personnel."

22

23 **Section 15.** Section 37-47-401, MCA, is amended to read:

24 **"37-47-401. Purpose.** It is recognized that some activities conducted by outfitters, guides, and
25 ~~master~~ PROFESSIONAL guides within the scope of their authorized services are inherently hazardous to
26 participants regardless of all feasible safety measures that ~~can~~ may be taken. It is the purpose of this part
27 to define those areas of responsibility and affirmative acts or omissions for which outfitters, guides, and
28 ~~master~~ PROFESSIONAL guides are liable for loss, damage, or injury and those risks for which the participant
29 expressly assumes or ~~shall be~~ is considered to have voluntarily assumed the risk of loss or damage."

30

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

2 "**37-47-402. Duties of outfitters, guides, and ~~master~~ PROFESSIONAL guides.** An outfitter, guide,
3 or ~~master~~ PROFESSIONAL guide offering professional services in this state shall:

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

6 (2) comply with all standards adopted by board rule ~~by the board.~~"

7
8 **Section 17.** Section 37-47-403, MCA, is amended to read:

9 "**37-47-403. Duties of participants.** (1) A participant shall:

10 (a) act as would a reasonably prudent person when engaging in the activities offered by a licensed
11 outfitter, guide, or ~~master~~ PROFESSIONAL guide in this state;

12 (b) receive permission from the outfitter, guide, or ~~master~~ PROFESSIONAL guide prior to embarking
13 on any self-initiated activity and inform the outfitter, guide, or ~~master~~ PROFESSIONAL guide of his the
14 participant's plans and intentions upon receiving permission to engage in ~~such~~ the self-initiated activity.

15 (2) A participant may not:

16 (a) interfere with the running or operation of an outfitter's, guide's, or ~~master~~ PROFESSIONAL
17 guide's activities when ~~such~~ those activities conform to the standards of care set forth in 37-47-402;

18 (b) use the outfitter's, guide's, or ~~master~~ PROFESSIONAL guide's equipment, facilities, or services
19 unless the participant has requested and received permission from the outfitter, guide, or ~~master~~
20 PROFESSIONAL guide;

21 (c) knowingly, purposely, or negligently engage in any type of conduct that contributes to or
22 causes injury to ~~himself~~ the participant or any other person."

23
24 **Section 18.** Section 37-47-404, MCA, is amended to read:

25 "**37-47-404. Responsibility for violations of law.** (1) ~~Any~~ A person accompanying a hunting or
26 fishing party as an outfitter or ~~agent~~ guide, ~~master~~ PROFESSIONAL guide, or other employee of the outfitter
27 is equally responsible with any person or party employing the person as an outfitter for any violation of fish
28 and game laws unless the violation is reported to a peace officer by the outfitter, ~~agent~~ guide, ~~master~~
29 PROFESSIONAL guide, or employee and the outfitter, ~~agent~~ guide, ~~master~~ PROFESSIONAL guide, or
30 employee was not an active participant. An outfitter or ~~agent~~ guide, ~~master~~ PROFESSIONAL guide, or other

1 employee of an outfitter who willfully fails or refuses to report any violation of fish and game laws is liable
 2 to the penalties provided in this section. If any ~~professional guide or master~~ PROFESSIONAL guide violates
 3 the laws or applicable regulations relating to fish and game, outfitting, or guiding with actual or implied
 4 knowledge of an outfitter employing the guide ~~or master~~ PROFESSIONAL guide, the outfitter is legally
 5 responsible for the violation for all purposes under the laws or regulations if the outfitter fails to report the
 6 violation to the proper authority.

7 (2) An outfitter, ~~guide, or professional~~ master PROFESSIONAL guide shall report any violation or
 8 suspected violation of fish and game laws that the outfitter, ~~guide, or master~~ PROFESSIONAL guide knows
 9 or reasonably should have known has been committed by the employees, agents, representatives, clients,
 10 or participants in the outfitting or guiding activity. The violation or suspected violation must be reported
 11 to a peace officer at the earliest possible opportunity.

12 (3) A person may not hire or retain ~~any an~~ an outfitter ~~or professional guide~~ unless the outfitter ~~or~~
 13 ~~professional guide~~ is currently licensed in accordance with the laws of the state of Montana. A person may
 14 not use the services of a guide or master PROFESSIONAL guide and a guide or master PROFESSIONAL
 15 guide may not offer services unless the services are obtained through an endorsing outfitter."

16
 17 **Section 19.** Section 87-2-511, MCA, is amended to read:

18 **"87-2-511. Sale of Class B-10 and Class B-11 licenses.** (1) The department shall offer the Class
 19 B-10 and Class B-11 licenses for sale on March 15, with 5,600 of the authorized Class B-10 licenses and
 20 2,000 Class B-11 licenses reserved for applicants ~~indicating their intent to use~~ using the services of a
 21 licensed outfitter, and 2,000 of the authorized Class B-11 licenses reserved for applicants indicating their
 22 intent to hunt with a resident sponsor on land owned by that sponsor, as provided in subsections (2) and
 23 (3).

24 (2) Each application for a ~~reserved~~ resident-sponsored license under subsection (1) must contain
 25 a written affirmation by the applicant that the applicant intends to hunt with a ~~licensed outfitter or a~~
 26 resident sponsor and must indicate the name of the ~~licensed outfitter or~~ resident sponsor with whom the
 27 applicant intends to hunt. In addition, the application must be accompanied by a certificate that is signed
 28 by a ~~licensed outfitter or~~ resident sponsor and ~~which that~~ affirms that the ~~outfitter or~~ resident sponsor will:

- 29 (a) direct the applicant's hunting and advise the applicant of game and trespass laws of the state;
 30 (b) submit to the department, in a manner prescribed by the department, complete records of who

1 hunted with ~~him~~ the resident sponsor, where they hunted, and what game was taken; and

2 (c) accept no monetary consideration for enabling the nonresident applicant to obtain a license or
3 for providing any services or assistance to the nonresident applicant, except as provided in Title 37, chapter
4 47, and this title.

5 (3) The certificate signed by the resident sponsor pursuant to subsection (2) must also affirm that
6 the sponsor is a landowner and that the applicant under the certificate will hunt only on land owned by the
7 sponsor.

8 (4) Each application for an outfitter-sponsored license under subsection (1) must contain a written
9 affirmation by the applicant that the applicant will hunt with a licensed outfitter for all big game hunted by
10 the applicant under the license and must indicate the name of the licensed outfitter with whom the
11 applicant will hunt. In addition, the application must be accompanied by a certificate that is signed by a
12 licensed outfitter and that affirms that the outfitter will:

13 (a) accompany the applicant;

14 (b) provide guiding services for the species hunted by the applicant;

15 (c) direct the applicant's hunting for all big game hunted by the applicant under the license and
16 advise the applicant of game and trespass laws of the state;

17 (d) submit to the department, in a manner prescribed by the department, complete records of who
18 hunted with the outfitter, where they hunted, and what game was taken; and

19 (e) accept no monetary consideration for enabling the nonresident applicant to obtain a license or
20 for providing any services or assistance to the nonresident applicant, except as provided in Title 37, chapter
21 47, and this title.

22 (5) An outfitter-sponsored license under subsection (1) is valid only when used in compliance with
23 the affirmations of the applicant and outfitter required under subsection (4). If the sponsoring outfitter is
24 unavailable or if the applicant wishes to use the services of separate outfitters for hunting different species
25 of game, an outfitter-sponsored license may be used with a substitute licensed outfitter, in compliance with
26 the affirmations under subsection (4), upon advance written notification to the board by the sponsoring
27 licensed outfitter or the substitute outfitter.

28 ~~(4)~~(6) The department shall make the reserved Class B-10 and Class B-11 licenses that remain
29 unsold on April 15 available to nonresident applicants without restriction as to hunting with a licensed
30 outfitter or resident sponsor.

1 ~~(5)~~(7) All Class B-10 and Class B-11 licenses that are not reserved under subsection (1) and all
2 unsold reserved licenses that are available under subsection ~~(4)~~ (6) must be issued by a drawing among all
3 applicants for the respective unreserved licenses."
4

5 NEW SECTION. Section 20. Investigators -- qualifications. (1) The department may hire
6 investigators to assist the board in investigations and inspections authorized by this chapter.

7 (2) To qualify as an investigator, a person must:

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

9 (b) have knowledge of outfitting and guiding through prior experience as a licensed outfitter, guide,
10 or master guide or as a regulator of the outfitting profession; and

11 (c) have not less than 2 years' experience as a licensed private investigator or as an investigator,
12 detective, special agent, or peace officer of a city, county, or state or of a federal agency.
13

14 **Section 21.** Section 87-1-503, MCA, is amended to read:

15 "**87-1-503. Ex officio wardens.** All sheriffs and their deputies; all constables; all peace officers
16 of the state or any subdivision of the state; the executive director and investigators of the board of
17 outfitters; all state forest officers; ~~and;~~ as authorized by cooperative agreement, ~~all~~ any officers of the
18 United States forest service, agents of the United States fish and wildlife service, and peace officers of the
19 bureau of land management, national park service, and corps of engineers that are assigned to duty in this
20 state; and field personnel of the department; as the director may appoint, are ex officio wardens, without
21 pay, except that the department may, in its discretion, allow ~~traveling~~ travel expenses as provided for in
22 2-18-501 through 2-18-503, which, if allowed, must be paid upon proper vouchers from the state fish and
23 game funds. Ex officio wardens have the same powers with reference to the enforcement of the fish and
24 game laws of this state and the laws relating to parks and outdoor recreation contained in ~~chapters 1 and~~
25 ~~2~~ of Title 23, chapters 1 and 2, except chapter 2, part 7, as regularly appointed wardens, and it is their
26 duty to assist, whenever possible, in the enforcement of those laws."
27

28 NEW SECTION. Section 22. Repealer. Sections 37-47-102 and 37-47-309, MCA, are repealed.
29

30 NEW SECTION. Section 23. Severability. If a part of [this act] is invalid, all valid parts that are

1 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its
2 applications, the part remains in effect in all valid applications that are severable from the invalid
3 applications.

4

5 **NEW SECTION.** **Section 24. Codification instruction.** [Sections 2 and 20] are intended to be
6 codified as an integral part of Title 37, chapter 47, and the provisions of Title 37, chapter 47, apply to
7 [sections 2 and 20].

8

9 **NEW SECTION.** **Section 25. Effective dates.** (1) [Sections 20 and 21 and this section] are
10 effective July 1, 1995.

11 (2) [Sections 1 through 19, 22 through 24, and 26] are effective October 1, 1995.

12

13 **NEW SECTION.** **Section 26. Termination.** [Section 11] terminates October 1, 1996.

14

-END-

1 HOUSE BILL NO. 196

2 INTRODUCED BY SWANSON, HIBBARD, HERTEL, PIPINICH

3 BY REQUEST OF THE DEPARTMENT OF COMMERCE
4

5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAW RELATING TO OUTFITTERS
6 AND GUIDES; CREATING THE MASTER PROFESSIONAL GUIDE LICENSE; REVISING LICENSING
7 REQUIREMENTS AND QUALIFICATIONS FOR OUTFITTERS AND GUIDES; REQUIRING SUBMISSION OF
8 AN ~~AREA-OPERATING~~ OPERATIONS PLAN FOR OUTFITTERS AND ESTABLISHING A SYSTEM FOR
9 REVIEW OF THE PLAN; REVISING DUTIES AND LIABILITIES RELATED TO OUTFITTING TO INCLUDE
10 MASTER PROFESSIONAL GUIDES; REVISING QUALIFICATIONS AND CONDITIONS APPLICABLE TO
11 OUTFITTER-SPONSORED CLASS B-10 AND B-11 LICENSES; ALLOWING THE BOARD OF OUTFITTERS TO
12 HIRE QUALIFIED INVESTIGATORS; GRANTING THE EXECUTIVE DIRECTOR OF THE BOARD OF
13 OUTFITTERS AND BOARD INVESTIGATORS EX OFFICIO WARDEN STATUS; AMENDING SECTIONS
14 37-47-101, 37-47-201, 37-47-301, 37-47-302, 37-47-303, 37-47-304, 37-47-305, 37-47-306,
15 37-47-307, 37-47-341, 37-47-343, 37-47-345, 37-47-401, 37-47-402, 37-47-403, 37-47-404, 87-2-511,
16 AND 87-1-503, MCA; REPEALING SECTIONS 37-47-102 AND 37-47-309, MCA; AND PROVIDING
17 EFFECTIVE DATES AND A TERMINATION DATE."

18
19 STATEMENT OF INTENT

20 A statement of intent is required for this bill because rulemaking authority is granted to the board
21 of outfitters in 37-47-201 requiring the board to establish qualifications for two levels of guides and to
22 review proposed ~~operating-area~~ OPERATIONS plans and changes to ~~operating-area~~ OPERATIONS plans.

23 The legislature intends that at a minimum the rules on ~~master~~ PROFESSIONAL guide qualifications
24 address experience, and if the board considers it appropriate, additional training and a qualifying
25 examination to ensure that licensed ~~master~~ PROFESSIONAL guides are qualified to safely provide services
26 for compensation to clients of the endorsing outfitter.

27 The legislature intends that rules on ~~operating-area~~ OPERATIONS plans be directed toward a
28 reduction in new ~~commercial~~ HUNTING uses of areas by outfitters when the new uses will CAUSE UNDUE
29 conflict with existing HUNTING uses of the areas.

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

2

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

4 **"37-47-101. Definitions.** As used in this chapter, unless the context requires otherwise, the
5 following definitions apply:

6 (1) "Accompany" means to go with or be together with a participant as an escort, companion, or
7 other service provider, with an actual physical presence in the area where the activity is being conducted
8 and within sight or sound of the participant at any SOME time during the furnishing of service.

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

10 (3) "Consideration" means something of value given or done in exchange for something of value
11 given or done by another.

12 ~~(2)(4)~~ "Department" means the department of commerce provided for in Title 2, chapter 15, part
13 18.

14 (5) "Guide" means a person who is employed by or who has contracted independently with a
15 licensed outfitter and who accompanies a participant during outdoor recreational activities that are directly
16 related to activities for which the outfitter is licensed.

17 ~~(3)(6)~~ "License year" means that period ~~commencing~~ beginning January 1 and ending December
18 31 of the same year.

19 ~~(7) "Master guide" means a guide who has met experience, training, and testing qualifications for~~
20 ~~designation as a master guide, as set by board rule.~~

21 ~~(4)(9)(7)~~ "Nonresident" means a person other than a resident.

22 ~~(5)(9)(8)~~ "Outfitter" means any person, except a person providing services on real property that
23 ~~he~~ the person owns for the primary pursuit of bona fide agricultural interests, who:

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

26 ~~(b) for consideration provides any saddle or pack animal; facilities; camping equipment; vehicle,~~
27 ~~watercraft, or other conveyance; or personal service for hunting or fishing parties or camping equipment,~~
28 ~~vehicles, or other conveyance, except boats, for any person to hunt, trap, capture, take, or kill, OR pursue,~~
29 ~~or retrieve any varmint, predator, or game, including fish, and who accompanies such a party or that~~
30 ~~person, either part or all of the way, on an expedition for any of these purposes or supervises a licensed~~

1 guide or master guide in accompanying that person;

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

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

5 ~~(6)(10)(9)~~ "Participant" means a person using the services offered by a licensed outfitter ~~or~~
6 professional guide.

7 ~~(7) "Professional guide" and "guide" mean a person:~~

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

11 ~~(b) who has contracted independently with an outfitter and who furnishes personal guiding services~~
12 ~~and facilities, transportation, or equipment that he owns in assisting a person to hunt or take game birds~~
13 ~~or fish. A guide who provides independent contractor services to an outfitter may not provide facilities,~~
14 ~~equipment, or services for overnight use.~~

15 (10) "PROFESSIONAL GUIDE" MEANS A GUIDE WHO HAS MET EXPERIENCE, TRAINING, AND
16 TESTING QUALIFICATIONS FOR DESIGNATION AS A PROFESSIONAL GUIDE, AS SET BY BOARD RULE.

17 ~~(8)(11)~~ "Resident" means a person who qualifies for a resident Montana hunting or fishing license
18 under 87-2-102."

19
20 NEW SECTION. Section 2. Shuttle and rental services -- exemption. (1) Nothing in this chapter
21 prohibits the furnishing of shuttle or rental services as long as those services do not include in-field
22 assistance to a customer.

23 (2) In-field assistance includes but is not limited to:

24 (a) setting up a camp;

25 (b) field instruction for the activity to be conducted by the customer; or

26 (c) other services considered to be services of an outfitter, as defined in 37-47-101.

27
28 Section 3. Section 37-47-201, MCA, is amended to read:

29 "37-47-201. Powers and duties of board relating to outfitters, guides, and master PROFESSIONAL
30 guides. The board shall:

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

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

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

8 (4) establish outfitter standards, ~~and professional~~ guide standards, and ~~master~~ PROFESSIONAL
 9 guide standards;

10 (5) adopt:

11 (a) rules of procedure;

12 (b) rules to administer and enforce this chapter, including ~~but not limited to~~ rules prescribing all
 13 requisite qualifications for licensure as an outfitter, guide, or ~~master~~ PROFESSIONAL guide. These
 14 qualifications Qualifications for outfitters must include training, testing, experience in activities similar to
 15 the service to be provided, knowledge of rules of governmental bodies pertaining to outfitting, and condition
 16 and type of gear and equipment, and the filing of an ~~operating area~~ OPERATIONS plan.

17 (c) any reasonable rules, not in conflict with this chapter, necessary for safeguarding the public
 18 health, safety, and welfare of those persons using the services of outfitters and for the protection of
 19 landowners, the general public, and outfitters' employees, agents, and representatives, including evidence
 20 of qualification and licensure under this chapter for any person practicing or offering to practice as an
 21 outfitter, guide, or ~~master~~ PROFESSIONAL guide;

22 (d) rules specifying standards for review and approval of proposed new ~~operating area~~
 23 OPERATIONS plans INVOLVING HUNTING USE or the proposed expansion of NET CLIENT HUNTING USE
 24 UNDER an OUTFITTER'S existing ~~operating area~~ OPERATIONS plan in order to determine if the proposal
 25 will increase existing use or cause an undue conflict with existing HUNTING use of the area,
 26 CONSTITUTING A THREAT TO THE PUBLIC HEALTH, SAFETY, OR WELFARE. The board may not approve
 27 a new ~~operating area~~ OPERATIONS plan or the proposed expansion of an NET CLIENT HUNTING USE
 28 UNDER THE existing ~~operating area~~ OPERATIONS plan if it finds that the proposal will cause an undue
 29 conflict with existing HUNTING use of the area. Approval is not required when part or all of an existing
 30 ~~operating area~~ OPERATIONS plan is transferred from one licensed outfitter to another licensed outfitter if

1 ~~the transfer will not increase existing use of the area.~~ RULES ADOPTED PURSUANT TO THIS SECTION
 2 MUST PROVIDE FOR SOLICITATION AND CONSIDERATION OF COMMENTS FROM HUNTERS AND
 3 SPORTSPERSONS IN THE AREA TO BE AFFECTED BY THE PROPOSAL WHO DO NOT MAKE USE OF
 4 OUTFITTER SERVICES.

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

7
 8 **Section 4.** Section 37-47-301, MCA, is amended to read:

9 **"37-47-301. License required -- services performed -- standards.** (1) A person may not act as an
 10 outfitter, ~~or professional guide, or master~~ PROFESSIONAL guide or advertise ~~as~~ or otherwise represent to
 11 the public that the person is an outfitter, guide, or master PROFESSIONAL guide without first securing a
 12 license in accordance with the provisions of this part.

13 (2) Whenever an outfitter is engaged by ~~any person~~ a participant, the outfitter shall keep and
 14 submit records as required by the board.

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

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

22 (5) Outfitters may not willfully and substantially misrepresent their facilities, prices, equipment,
 23 services, or hunting or fishing opportunities.

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

26 (7) ~~A person may not hold more than one Montana outfitter's license or hold an outfitter's license~~
 27 ~~for more than one corporation, proprietorship, or partnership.~~ An outfitter may not hire or retain a guide
 28 or master PROFESSIONAL guide who does not hold a current license as provided under this part.

29 ~~(8) The operating area of a licensed outfitter, as set out in the outfitter's operating area plan~~
 30 ~~pursuant to 37-47-304, constitutes the limit of operations for that outfitter and for any guide or master~~

~~guide hired or retained by the outfitter. The conduct of outfitting outside the limits of the operating area plan is considered outfitting without a license and is punishable as provided in 37-47-344(2)."~~

Section 5. Section 37-47-302, MCA, is amended to read:

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

(1) ~~be a person of at least 18 years of age who is or older, be~~ physically capable and mentally competent to perform the duties of an outfitter, and meet experience, training, and testing requirements as prescribed by ~~the board~~ rule;

(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 that~~ are necessary to provide the services advertised, contracted for, or agreed upon between the outfitter and the outfitter's clients (all equipment and facilities are subject to inspection at all reasonable times and places by the board or its designated agent);

(3) ~~be a person who has~~ have demonstrated a respect for and compliance with the laws of any state or of the United States and all rules promulgated under those laws ~~as related to matters of~~ as related to fish and game, conservation of natural resources, and preservation of the natural ecosystem without pollution 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, master PROFESSIONAL guide's, or conservation license from the state of Montana;

~~(6)~~(5) 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 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

1 ~~guide that caused a danger or unreasonable risk of danger to person or property of any client of the outfitter~~
 2 ~~or professional guide during the license year immediately preceding that for which the application is made;~~
 3 ~~(9) have not, at any time, pleaded guilty to or been adjudged by a court guilty of a felony, unless~~
 4 ~~civil rights have been restored pursuant to law. A person may not apply for or hold an outfitter's license~~
 5 ~~during any period of time in which a sentence has been deferred or suspended for a felony."~~

6
 7 **Section 6.** Section 37-47-303, MCA, is amended to read:

8 **"37-47-303. Professional Guide's and master PROFESSIONAL guide's qualifications.** (1) An
 9 applicant for a professional guide's or master PROFESSIONAL guide's license shall must meet the following
 10 requirements qualifications:

11 (a) ~~be a person of at least 18 years of age who is or older and be~~ physically capable and mentally
 12 competent to perform the duties of a ~~professional guide or master PROFESSIONAL guide;~~

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

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

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

20 (e) ~~have not, at any time, pleaded guilty to or been adjudged by a court guilty of a felony, unless~~
 21 ~~civil rights have been restored pursuant to law. A person may not apply for or hold a professional guide's~~
 22 ~~license during any period of time in which a sentence has been deferred or suspended for a felony. have~~
 23 been issued a valid wildlife conservation license; and

24 ~~(d) possess a current cardiopulmonary resuscitation card, a first aid card, or an equivalent card~~
 25 issued by a board approved certifying agency.

26 (2) ~~A professional guide shall have been issued a valid wildlife conservation license. In addition~~
 27 to the requirements listed in subsection (1), an applicant for licensure as a master PROFESSIONAL guide
 28 must meet additional experience requirements, to be set by board rule, and may be required to show proof
 29 of training or pass a qualifying examination when required by board rule."

1 **Section 7.** Section 37-47-304, MCA, is amended to read:

2 **"37-47-304. Application.** (1) Each applicant for an outfitter's, ~~or professional guide's, or master~~
3 PROFESSIONAL guide's license shall make application for license ~~upon~~ on a form ~~to be~~ prescribed and
4 furnished by the board.

5 (2) ~~The application for an outfitter's license which shall~~ FORMS THE BASIS FOR THE OUTFITTER'S
6 OPERATIONS PLAN AND must include:

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

9 (b) the address of the applicant's principal place of business in the state of Montana;

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

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

15 (e) a signed statement of the licensed outfitter ~~by whom the professional guide is~~ for each guide
16 and master PROFESSIONAL guide to be employed or retained as an independent contractor stating that the
17 professional guide or master PROFESSIONAL guide is in fact to be employed or retained as an independent
18 contractor by the outfitter and stating that the outfitter recommends the applicant guide or master
19 PROFESSIONAL guide for the applicant's qualifications licensure;

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

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

25 (h) the written approval of the appropriate agency or landowner on whose lands the applicant will
26 provide services or establish hunting camps; and

27 (i) ~~an operating area plan that specifies the boundaries of the proposed operation, stating when~~
28 applicable:

29 (i) the name and portion of river;

30 (ii) the county of location;

1 (iii) the legal owner of the property;

2 (iv) the name of the ranch;

3 (v) the proposed service, including the type of game sought;

4 (vi) the name of the agency granting use authority; and

5 (vii) other means of identifying boundaries as established by board rule.

6 ~~(2)~~(3) Applications for an outfitter's license must be in the name of an individual person only.

7 Applications involving corporations, proprietorships, or partnerships must be made by one individual person
8 who qualifies under the provisions of this part. ~~Any~~ A license issued pursuant to this part must be in the
9 name of that person. The license must specifically state that the license is issued for the use and benefit
10 of the named corporation, proprietorship, or partnership involved. Any revocation or suspension of a
11 license is binding upon the individual person and the corporation, proprietorship, or partnership for the use
12 and benefit of which the license was originally issued.

13 ~~(3)~~(4) Application must be made to and filed with the board.

14 ~~(4)~~(5) Only one application for an outfitter's license may be made in any ~~one~~ license year. If ~~any~~
15 an application is denied, subsequent applications by the same applicant for the license year involved are
16 void, except as provided in 37-47-308."

17
18 **Section 8.** Section 37-47-305, MCA, is amended to read:

19 "**37-47-305. Outfitter's examination.** Each applicant for an outfitter's license ~~shall~~, after meeting
20 the experience and training specifications and other qualifications set by this chapter or rules adopted
21 pursuant to this chapter, is entitled to take and must pass a standard examination administered by the
22 board or its agent. The examination must require general and sufficient knowledge displaying and indicating
23 ability to perform the services contemplated with efficiency and with safety to the health and welfare of
24 ~~persons employing the services~~ participants. The examination must test the applicant's knowledge of
25 subjects that apply to the type of license applied for and may include the following subjects:

26 (1) federal and state fish and game laws and regulations;

27 (2) practical woodsmanship;

28 (3) general knowledge of big game;

29 (4) field preparation of trophies;

30 (5) care of game meat;

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

9

10 **Section 9.** Section 37-47-306, MCA, is amended to read:

11 **"37-47-306. Fees.** (1) The board shall establish fees commensurate with costs as provided in
 12 37-1-134.

13 (2) Applications ~~shall~~ must be accompanied by a license fee as specified by ~~the board rule.~~

14 (3) If a nonresident resides in a state requiring residents of the state of Montana to pay in excess
 15 of the amount established by the board for a similar license, the fee for ~~such the~~ nonresident outfitter's,
 16 ~~or professional guide's, or master~~ PROFESSIONAL guide's license ~~shall~~ must be the same amount as the
 17 higher fee charged in the state where the nonresident resides.

18 (4) The license fees must be deposited in the state special revenue fund and must be used by the
 19 board to investigate the applicant, to enforce this part, and for administrative costs, subject to
 20 37-1-101(6)."

21

22 **Section 10.** Section 37-47-307, MCA, is amended to read:

23 **"37-47-307. Investigation of applicant -- issuance or denial of license.** (1) The board shall
 24 investigate each applicant for an outfitter's, ~~or professional guide's, or master~~ PROFESSIONAL guide's
 25 license and determine the applicant's qualifications.

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

30 (3) ~~Final decision as to issuance of renewal licenses must be made not later than 30 days from the~~

1 ~~date of receipt of the completed application for renewal and not later than 90 days from the date of receipt~~
 2 ~~of a completed application for a new license.~~

3 (4) A licensee in good standing is entitled to a new license for the ensuing license year upon
 4 complying with the provisions of this chapter ~~and renewal deadlines and fees imposed by rule of the board~~
 5 or rules adopted pursuant to this chapter and upon completing an application for license renewal on a form
 6 provided by the board."

7
 8 **NEW SECTION. Section 11. License for previously licensed guide.** The board shall issue a guide's
 9 license to an applicant who meets the following qualifications as of July 1, 1995:

10 (1) previous licensure as a guide in this state and practice as a guide for at least one season, as
 11 defined by board rule;

12 (2) payment of a license fee; and

13 (3) submission of a current cardiopulmonary resuscitation card, a first-aid card, or an equivalent
 14 card issued by a board-approved certifying agency.

15
 16 **Section 12.** Section 37-47-341, MCA, is amended to read:

17 "**37-47-341. Grounds for denial, suspension, or revocation of license.** ~~Every~~ A license or right to
 18 apply for and hold ~~the~~ a license issued under this part may be denied, suspended, or revoked or other
 19 disciplinary conditions may be applied upon any of the following grounds:

20 (1) having ceased to meet all of the qualifications for holding a license, as required under this
 21 chapter and rules adopted pursuant to this chapter;

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

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

24 (4) having pleaded guilty to or been adjudged by a court guilty of a felony, including a case in
 25 which the sentence is suspended or imposition of the sentence is deferred, unless civil rights have been
 26 restored pursuant to law; A person may not apply for or hold an outfitter's, guide's, or master
 27 PROFESSIONAL guide's license during any period of time in which a sentence for a felony has been
 28 deferred or suspended.

29 (5) ~~two convictions~~ one conviction or bond forfeitures ~~of \$100 or more~~ forfeiture as to violations
 30 a violation of the fish and game or outfitting laws or regulations of any state or the United States ~~within~~

1 ~~the past 5 years;~~

2 (6) a substantial breach of ~~any a~~ contract with ~~any person using the services of the license holder~~
3 a participant provided that the breach is established as a matter of final judgment in a court of law;

4 (7) the willful employment of or contracting with an unlicensed guide ~~or master~~ PROFESSIONAL
5 guide by an outfitter;

6 (8) negligence or misconduct while acting as an outfitter, ~~or professional guide, or master~~
7 PROFESSIONAL guide that causes an accident or injury to the person or property of ~~any client of the~~
8 ~~outfitter or professional guide~~ a participant; ~~or~~

9 (9) misconduct as defined by board rule; or

10 (10) any violation of this chapter or a rule adopted pursuant to this chapter."

11
12 **Section 13.** Section 37-47-343, MCA, is amended to read:

13 "**37-47-343. Appeal procedure.** ~~Any A~~ person who feels aggrieved by a final order of the board
14 denying issuance of, ~~suspension of, or revocation of a license or suspending or revoking~~ a license as an
15 outfitter, ~~or professional guide, or master~~ PROFESSIONAL guide may petition for judicial review as provided
16 in Title 2, chapter 4, part 7."

17
18 **Section 14.** Section 37-47-345, MCA, is amended to read:

19 "**37-47-345. Enforcement.** Investigations and arrests for violations of this chapter or rules adopted
20 pursuant to this chapter may be made by any peace officer; warden of the department of fish, wildlife, and
21 parks; or federal agency enforcement personnel."

22
23 **Section 15.** Section 37-47-401, MCA, is amended to read:

24 "**37-47-401. Purpose.** It is recognized that some activities conducted by outfitters, guides, and
25 ~~master~~ PROFESSIONAL guides within the scope of their authorized services are inherently hazardous to
26 participants regardless of all feasible safety measures that ~~can~~ may be taken. It is the purpose of this part
27 to define those areas of responsibility and affirmative acts or omissions for which outfitters, guides, and
28 ~~master~~ PROFESSIONAL guides are liable for loss, damage, or injury and those risks for which the participant
29 expressly assumes or ~~shall be~~ is considered to have voluntarily assumed the risk of loss or damage."

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

2 "**37-47-402. Duties of outfitters, guides, and ~~master~~ PROFESSIONAL guides.** An outfitter, guide,
3 or ~~master~~ PROFESSIONAL guide offering professional services in this state shall:

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

6 (2) comply with all standards adopted by board rule ~~by the board.~~"

7

8 **Section 17.** Section 37-47-403, MCA, is amended to read:

9 "**37-47-403. Duties of participants.** (1) A participant shall:

10 (a) act as would a reasonably prudent person when engaging in the activities offered by a licensed
11 outfitter, guide, or ~~master~~ PROFESSIONAL guide in this state;

12 (b) receive permission from the outfitter, guide, or ~~master~~ PROFESSIONAL guide prior to embarking
13 on any self-initiated activity and inform the outfitter, guide, or ~~master~~ PROFESSIONAL guide of ~~his~~ the
14 participant's plans and intentions upon receiving permission to engage in ~~such~~ the self-initiated activity.

15 (2) A participant may not:

16 (a) interfere with the running or operation of an outfitter's, guide's, or ~~master~~ PROFESSIONAL
17 guide's activities when ~~such~~ those activities conform to the standards of care set forth in 37-47-402;

18 (b) use the outfitter's, guide's, or ~~master~~ PROFESSIONAL guide's equipment, facilities, or services
19 unless the participant has requested and received permission from the outfitter, guide, or ~~master~~
20 PROFESSIONAL guide;

21 (c) knowingly, purposely, or negligently engage in any type of conduct that contributes to or
22 causes injury to ~~himself~~ the participant or any other person."

23

24 **Section 18.** Section 37-47-404, MCA, is amended to read:

25 "**37-47-404. Responsibility for violations of law.** (1) ~~Any~~ A person accompanying a hunting or
26 fishing party as an outfitter or ~~agent~~ guide, ~~master~~ PROFESSIONAL guide, or other employee of the outfitter
27 is equally responsible with any person or party employing the person as an outfitter for any violation of fish
28 and game laws unless the violation is reported to a peace officer by the outfitter, ~~agent~~ guide, ~~master~~
29 PROFESSIONAL guide, or employee and the outfitter, ~~agent~~ guide, ~~master~~ PROFESSIONAL guide, or
30 employee was not an active participant. An outfitter or ~~agent~~ guide, ~~master~~ PROFESSIONAL guide, or other

1 employee of an outfitter who willfully fails or refuses to report any violation of fish and game laws is liable
 2 to the penalties provided in this section. If any ~~professional guide or master~~ PROFESSIONAL guide violates
 3 the laws or applicable regulations relating to fish and game, outfitting, or guiding with actual or implied
 4 knowledge of an outfitter employing the guide or ~~master~~ PROFESSIONAL guide, the outfitter is legally
 5 responsible for the violation for all purposes under the laws or regulations if the outfitter fails to report the
 6 violation to the proper authority.

7 (2) An outfitter, guide, or ~~professional master~~ PROFESSIONAL guide shall report any violation or
 8 suspected violation of fish and game laws that the outfitter, guide, or ~~master~~ PROFESSIONAL guide knows
 9 or reasonably should have known has been committed by the employees, agents, representatives, clients,
 10 or participants in the outfitting or guiding activity. The violation or suspected violation must be reported
 11 to a peace officer at the earliest possible opportunity.

12 (3) A person may not hire or retain ~~any an~~ an outfitter ~~or professional guide~~ unless the outfitter ~~or~~
 13 ~~professional guide~~ is currently licensed in accordance with the laws of the state of Montana. A person may
 14 not use the services of a guide or master PROFESSIONAL guide and a guide or master PROFESSIONAL
 15 guide may not offer services unless the services are obtained through an endorsing outfitter."

16

17 **Section 19.** Section 87-2-511, MCA, is amended to read:

18 **"87-2-511. Sale of Class B-10 and Class B-11 licenses.** (1) The department shall offer the Class
 19 B-10 and Class B-11 licenses for sale on March 15, with 5,600 of the authorized Class B-10 licenses and
 20 2,000 Class B-11 licenses reserved for applicants ~~indicating their intent to use~~ using the services of a
 21 licensed outfitter, and 2,000 of the authorized Class B-11 licenses reserved for applicants indicating their
 22 intent to hunt with a resident sponsor on land owned by that sponsor, as provided in subsections (2) and
 23 (3).

24 (2) Each application for a ~~reserved~~ resident-sponsored license under subsection (1) must contain
 25 a written affirmation by the applicant that the applicant intends to hunt with ~~a licensed outfitter or~~ a
 26 resident sponsor and must indicate the name of the ~~licensed outfitter or~~ resident sponsor with whom the
 27 applicant intends to hunt. In addition, the application must be accompanied by a certificate that is signed
 28 by a ~~licensed outfitter or~~ resident sponsor and ~~which that~~ affirms that the ~~outfitter or~~ resident sponsor will:

- 29 (a) direct the applicant's hunting and advise the applicant of game and trespass laws of the state;
 30 (b) submit to the department, in a manner prescribed by the department, complete records of who

1 hunted with ~~him~~ the resident sponsor, where they hunted, and what game was taken; and

2 (c) accept no monetary consideration for enabling the nonresident applicant to obtain a license or
3 for providing any services or assistance to the nonresident applicant, except as provided in Title 37, chapter
4 47, and this title.

5 (3) The certificate signed by the resident sponsor pursuant to subsection (2) must also affirm that
6 the sponsor is a landowner and that the applicant under the certificate will hunt only on land owned by the
7 sponsor.

8 (4) Each application for an outfitter-sponsored license under subsection (1) must contain a written
9 affirmation by the applicant that the applicant will hunt with a licensed outfitter for all big game hunted by
10 the applicant under the license and must indicate the name of the licensed outfitter with whom the
11 applicant will hunt. In addition, the application must be accompanied by a certificate that is signed by a
12 licensed outfitter and that affirms that the outfitter will:

13 (a) accompany the applicant;

14 (b) provide guiding services for the species hunted by the applicant;

15 (c) direct the applicant's hunting for all big game hunted by the applicant under the license and
16 advise the applicant of game and trespass laws of the state;

17 (d) submit to the department, in a manner prescribed by the department, complete records of who
18 hunted with the outfitter, where they hunted, and what game was taken; and

19 (e) accept no monetary consideration for enabling the nonresident applicant to obtain a license or
20 for providing any services or assistance to the nonresident applicant, except as provided in Title 37, chapter
21 47, and this title.

22 (5) An outfitter-sponsored license under subsection (1) is valid only when used in compliance with
23 the affirmations of the applicant and outfitter required under subsection (4). If the sponsoring outfitter is
24 unavailable or if the applicant wishes to use the services of separate outfitters for hunting different species
25 of game, an outfitter-sponsored license may be used with a substitute licensed outfitter, in compliance with
26 the affirmations under subsection (4), upon advance written notification to the board by the sponsoring
27 licensed outfitter or the substitute outfitter.

28 ~~(4)~~(6) The department shall make the reserved Class B-10 and Class B-11 licenses that remain
29 unsold on April 15 available to nonresident applicants without restriction as to hunting with a licensed
30 outfitter or resident sponsor.

1 ~~{6}~~(7) All Class B-10 and Class B-11 licenses that are not reserved under subsection (1) and all
 2 unsold reserved licenses that are available under subsection ~~{4}~~ (6) must be issued by a drawing among all
 3 applicants for the respective unreserved licenses."
 4

5 **NEW SECTION.** **Section 20. Investigators -- qualifications.** (1) The department may hire
 6 investigators to assist the board in investigations and inspections authorized by this chapter.

7 (2) To qualify as an investigator, a person must:

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

9 (b) have knowledge of outfitting and guiding through prior experience as a licensed outfitter, guide,
 10 or master guide or as a regulator of the outfitting profession; and

11 (c) have not less than 2 years' experience as a licensed private investigator or as an investigator,
 12 detective, special agent, or peace officer of a city, county, or state or of a federal agency.
 13

14 **Section 21.** Section 87-1-503, MCA, is amended to read:

15 "**87-1-503. Ex officio wardens.** All sheriffs and their deputies; all constables; all peace officers
 16 of the state or any subdivision of the state; the executive director and investigators of the board of
 17 outfitters; all state forest officers, ~~and;~~ as authorized by cooperative agreement, ~~all~~ any officers of the
 18 United States forest service, agents of the United States fish and wildlife service, and peace officers of the
 19 bureau of land management, national park service, and corps of engineers that are assigned to duty in this
 20 state; and field personnel of the department, as the director may appoint, are ex officio wardens, without
 21 pay, except that the department may, in its discretion, allow ~~traveling~~ travel expenses as provided for in
 22 2-18-501 through 2-18-503, which, if allowed, must be paid upon proper vouchers from the state fish and
 23 game funds. Ex officio wardens have the same powers with reference to the enforcement of the fish and
 24 game laws of this state and the laws relating to parks and outdoor recreation contained in ~~chapters 1 and~~
 25 ~~2~~ of Title 23, chapters 1 and 2, except chapter 2, part 7, as regularly appointed wardens, and it is their
 26 duty to assist, whenever possible, in the enforcement of those laws."
 27

28 **NEW SECTION.** **Section 22. Repealer.** Sections 37-47-102 and 37-47-309, MCA, are repealed.
 29

30 **NEW SECTION.** **Section 23. Severability.** If a part of [this act] is invalid, all valid parts that are

1 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its
2 applications, the part remains in effect in all valid applications that are severable from the invalid
3 applications.

4

5 NEW SECTION. **Section 24. Codification instruction.** [Sections 2 and 20] are intended to be
6 codified as an integral part of Title 37, chapter 47, and the provisions of Title 37, chapter 47, apply to
7 [sections 2 and 20].

8

9 NEW SECTION. **Section 25. Effective dates.** (1) [Sections 20 and 21 and this section] are
10 effective July 1, 1995.

11 (2) [Sections 1 through 19, 22 through 24, and 26] are effective October 1, 1995.

12

13 NEW SECTION. **Section 26. Termination.** [Section 11] terminates October 1, 1996.

14

-END-

1 HOUSE BILL NO. 196

2 INTRODUCED BY SWANSON, HIBBARD, HERTEL, PIPINICH

3 BY REQUEST OF THE DEPARTMENT OF COMMERCE

4

5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAW RELATING TO OUTFITTERS
6 AND GUIDES; CREATING THE ~~MASTER~~ PROFESSIONAL GUIDE LICENSE; REVISING LICENSING
7 REQUIREMENTS AND QUALIFICATIONS FOR OUTFITTERS AND GUIDES; REQUIRING SUBMISSION OF
8 AN ~~AREA OPERATING~~ OPERATIONS PLAN FOR OUTFITTERS AND ESTABLISHING A SYSTEM FOR
9 REVIEW OF THE PLAN; REVISING DUTIES AND LIABILITIES RELATED TO OUTFITTING TO INCLUDE
10 ~~MASTER~~ PROFESSIONAL GUIDES; REVISING QUALIFICATIONS AND CONDITIONS APPLICABLE TO
11 OUTFITTER-SPONSORED CLASS B-10 AND B-11 LICENSES; ALLOWING THE BOARD OF OUTFITTERS TO
12 HIRE QUALIFIED INVESTIGATORS; GRANTING THE EXECUTIVE DIRECTOR OF THE BOARD OF
13 OUTFITTERS AND BOARD INVESTIGATORS EX OFFICIO WARDEN STATUS; AMENDING SECTIONS
14 37-47-101, 37-47-201, 37-47-301, 37-47-302, 37-47-303, 37-47-304, 37-47-305, 37-47-306,
15 37-47-307, 37-47-341, 37-47-343, 37-47-345, 37-47-401, 37-47-402, 37-47-403, 37-47-404, 87-2-511,
16 AND 87-1-503, MCA; REPEALING SECTIONS 37-47-102 AND 37-47-309, MCA; AND PROVIDING
17 EFFECTIVE DATES AND A TERMINATION DATE."

18
19 STATEMENT OF INTENT

20 A statement of intent is required for this bill because rulemaking authority is granted to the board
21 of outfitters in 37-47-201 requiring the board to establish qualifications for two levels of guides and to
22 review proposed ~~operating-area~~ OPERATIONS plans and changes to ~~operating-area~~ OPERATIONS plans.

23 The legislature intends that at a minimum the rules on ~~master~~ PROFESSIONAL guide qualifications
24 address experience, and if the board considers it appropriate, additional training and a qualifying
25 examination to ensure that licensed ~~master~~ PROFESSIONAL guides are qualified to safely provide services
26 for compensation to clients of the endorsing outfitter.

27 The legislature intends that rules on ~~operating-area~~ OPERATIONS plans be directed toward a
28 reduction in new ~~commercial~~ HUNTING uses of areas by outfitters when the new uses will CAUSE UNDUE
29 conflict with existing HUNTING uses of the areas.

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

2
3 Section 1. Section 37-47-101, MCA, is amended to read:

4 "37-47-101. Definitions. As used in this chapter, unless the context requires otherwise, the
5 following definitions apply:

6 (1) "Accompany" means to go with or be together with a participant as an escort, companion, or
7 other service provider, with an actual physical presence in the area where the activity is being conducted
8 and within sight or sound of the participant at any SOME time during the furnishing of service.

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

10 (3) "Consideration" means something of value given or done in exchange for something of value
11 given or done by another.

12 ~~(2)~~(4) "Department" means the department of commerce provided for in Title 2, chapter 15, part
13 18.

14 (5) "Guide" means a person who is employed by or who has contracted independently with a
15 licensed outfitter and who accompanies a participant during outdoor recreational activities that are directly
16 related to activities for which the outfitter is licensed.

17 ~~(3)~~(6) "License year" means that period ~~commencing~~ beginning January 1 and ending December
18 31 of the same year.

19 ~~(7) "Master guide" means a guide who has met experience, training, and testing qualifications for~~
20 ~~designation as a master guide, as set by board rule.~~

21 ~~(4)~~(8)(7) "Nonresident" means a person other than a resident.

22 ~~(5)~~(9)(8) "Outfitter" means any person, except a person providing services on real property that
23 ~~he~~ the person owns for the primary pursuit of bona fide agricultural interests, who:

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

26 (b) for consideration provides any saddle or pack animal; facilities; camping equipment; vehicle,
27 watercraft, or other conveyance; or personal service for hunting or fishing parties or camping equipment,
28 vehicles, or other conveyance, except boats, for any person to hunt, trap, capture, take, or kill, OR pursue,
29 or retrieve any varmint, predator, or game, including fish, and who accompanies such a party or that
30 person, either part or all of the way, on an expedition for any of these purposes or supervises a licensed

1 guide or master PROFESSIONAL guide in accompanying that person;

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

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

5 ~~(6)(10)(9) "Participant" means a person using the services offered by a licensed outfitter or~~
6 ~~professional guide.~~

7 ~~(7) "Professional guide" and "guide" mean a person:~~

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

11 ~~(b) who has contracted independently with an outfitter and who furnishes personal guiding services~~
12 ~~and facilities, transportation, or equipment that he owns in assisting a person to hunt or take game birds~~
13 ~~or fish. A guide who provides independent contractor services to an outfitter may not provide facilities,~~
14 ~~equipment, or services for overnight use.~~

15 (10) "PROFESSIONAL GUIDE" MEANS A GUIDE WHO HAS MET EXPERIENCE, TRAINING, AND
16 TESTING QUALIFICATIONS FOR DESIGNATION AS A PROFESSIONAL GUIDE, AS SET BY BOARD RULE.

17 ~~(8)(11) "Resident" means a person who qualifies for a resident Montana hunting or fishing license~~
18 ~~under 87-2-102."~~

19
20 NEW SECTION. Section 2. Shuttle and rental services -- exemption. (1) Nothing in this chapter
21 prohibits the furnishing of shuttle or rental services as long as those services do not include in-field
22 assistance to a customer.

23 (2) In-field assistance includes but is not limited to:

24 (a) setting up a camp;

25 (b) field instruction for the activity to be conducted by the customer; or

26 (c) other services considered to be services of an outfitter, as defined in 37-47-101.

27
28 **Section 3.** Section 37-47-201, MCA, is amended to read:

29 **"37-47-201. Powers and duties of board relating to outfitters, guides, and master PROFESSIONAL**
30 **guides.** The board shall:

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

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

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

8 (4) establish outfitter standards, ~~and professional~~ guide standards, and master PROFESSIONAL
9 guide standards;

10 (5) adopt:

11 (a) rules of procedure;

12 (b) rules to administer and enforce this chapter, including ~~but not limited to~~ rules prescribing all
13 requisite qualifications for licensure as an outfitter, guide, or master PROFESSIONAL guide. These
14 qualifications Qualifications for outfitters must include training, testing, experience in activities similar to
15 the service to be provided, knowledge of rules of governmental bodies pertaining to outfitting, and condition
16 and type of gear and equipment, and the filing of an operating area OPERATIONS plan.

17 (c) any reasonable rules, not in conflict with this chapter, necessary for safeguarding the public
18 health, safety, and welfare of those persons using the services of outfitters and for the protection of
19 landowners, the general public, and outfitters' employees, agents, and representatives, including evidence
20 of qualification and licensure under this chapter for any person practicing or offering to practice as an
21 outfitter, guide, or master PROFESSIONAL guide;

22 (d) rules specifying standards for review and approval of proposed new operating area
23 OPERATIONS plans INVOLVING HUNTING USE or the proposed expansion of NET CLIENT HUNTING USE
24 UNDER an OUTFITTER'S existing operating area OPERATIONS plan in order to determine if the proposal
25 will increase existing use or cause an undue conflict with existing HUNTING use of the area,
26 CONSTITUTING A THREAT TO THE PUBLIC HEALTH, SAFETY, OR WELFARE. The board may not approve
27 a new operating area OPERATIONS plan or the proposed expansion of an NET CLIENT HUNTING USE
28 UNDER THE existing operating area OPERATIONS plan if it finds that the proposal will cause an undue
29 conflict with existing HUNTING use of the area. Approval is not required when part or all of an existing
30 operating area OPERATIONS plan is transferred from one licensed outfitter to another licensed outfitter if

1 ~~the transfer will not increase existing use of the area.~~ RULES ADOPTED PURSUANT TO THIS SECTION
 2 MUST PROVIDE FOR SOLICITATION AND CONSIDERATION OF COMMENTS FROM HUNTERS AND
 3 SPORTSPERSONS IN THE AREA TO BE AFFECTED BY THE PROPOSAL WHO DO NOT MAKE USE OF
 4 OUTFITTER SERVICES.

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

7

8 **Section 4.** Section 37-47-301, MCA, is amended to read:

9 **"37-47-301. License required -- services performed -- standards.** (1) A person may not act as an
 10 outfitter, ~~or professional guide, or master~~ PROFESSIONAL guide or advertise ~~as or otherwise represent to~~
 11 the public that the person is an outfitter, guide, or master PROFESSIONAL guide without first securing a
 12 license in accordance with the provisions of this part.

13 (2) Whenever an outfitter is engaged by ~~any person~~ a participant, the outfitter shall keep and
 14 submit records as required by the board.

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

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

22 (5) Outfitters may not willfully and substantially misrepresent their facilities, prices, equipment,
 23 services, or hunting or fishing opportunities.

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

26 (7) ~~A person may not hold more than one Montana outfitter's license or hold an outfitter's license~~
 27 ~~for more than one corporation, proprietorship, or partnership.~~ An outfitter may not hire or retain a guide
 28 or master PROFESSIONAL guide who does not hold a current license as provided under this part.

29 ~~(8) The operating area of a licensed outfitter, as set out in the outfitter's operating area plan~~
 30 ~~pursuant to 37-47-304, constitutes the limit of operations for that outfitter and for any guide or master~~

1 ~~guide hired or retained by the outfitter. The conduct of outfitting outside the limits of the operating area~~
 2 ~~plan is considered outfitting without a license and is punishable as provided in 37-47-344(2)."~~

3

4 **Section 5.** Section 37-47-302, MCA, is amended to read:

5 **"37-47-302. Outfitter's qualifications.** ~~Each~~ An applicant for ~~and holder of~~ an outfitter's license
 6 or any renewal of a license shall must meet the following qualifications:

7 (1) ~~be a person of at least 18 years of age who is or older, be~~ physically capable and mentally
 8 competent to perform the duties of an outfitter, and meet experience, training, and testing requirements
 9 as prescribed by ~~the board rule;~~

10 (2) own or hold under written lease or represent a company, corporation, or partnership who owns
 11 or holds under written lease the equipment and facilities as that are necessary to provide the services
 12 advertised, contracted for, or agreed upon between the outfitter and the outfitter's clients (all equipment
 13 and facilities are subject to inspection at all reasonable times and places by the board or its designated
 14 agent);

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

19 (4) ~~have not been convicted or forfeited bond of \$100 or more on more than one violation of this~~
 20 ~~chapter or the fish and game laws or applicable regulations of any state or the United States within the past~~
 21 ~~5 years;~~

22 ~~{5}~~ have not, at any time, practiced fraud, deception, or material misrepresentation in procuring
 23 any previous outfitter's, ~~professional guide's,~~ master PROFESSIONAL guide's, or conservation license from
 24 the state of Montana;

25 ~~{6}~~{5} have not, at any time, promulgated any false or misleading advertising relating to the
 26 business of outfitting;

27 ~~{7}~~ ~~have not been finally adjudged by a court of law guilty of any substantial breach of written or~~
 28 ~~oral contract with any person utilizing the applicant's services as an outfitter or professional guide during~~
 29 ~~the 2 years preceding that for which the application is made;~~

30 ~~{8}~~ ~~have not committed any negligent act or misconduct while acting as an outfitter or professional~~

1 ~~guide that caused a danger or unreasonable risk of danger to person or property of any client of the outfitter~~
 2 ~~or professional guide during the license year immediately preceding that for which the application is made;~~
 3 ~~(9) have not, at any time, pleaded guilty to or been adjudged by a court guilty of a felony, unless~~
 4 ~~civil rights have been restored pursuant to law. A person may not apply for or hold an outfitter's license~~
 5 ~~during any period of time in which a sentence has been deferred or suspended for a felony."~~

6
 7 **Section 6.** Section 37-47-303, MCA, is amended to read:

8 **"37-47-303. Professional Guide's and master PROFESSIONAL guide's qualifications.** (1) An
 9 applicant for a ~~professional guide's or master PROFESSIONAL guide's~~ license shall must meet the following
 10 ~~requirements~~ qualifications:

11 (a) ~~be a person of at least 18 years of age who is or older and be~~ physically capable and mentally
 12 competent to perform the duties of a ~~professional guide or master PROFESSIONAL guide;~~

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

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

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

20 (e) ~~have not, at any time, pleaded guilty to or been adjudged by a court guilty of a felony, unless~~
 21 ~~civil rights have been restored pursuant to law. A person may not apply for or hold a professional guide's~~
 22 ~~license during any period of time in which a sentence has been deferred or suspended for a felony. have~~
 23 ~~been issued a valid wildlife conservation license; and~~

24 (d) ~~possess a current cardiopulmonary resuscitation card, a first aid card, or an equivalent card~~
 25 ~~issued by a board approved certifying agency.~~

26 (2) ~~A professional guide shall have been issued a valid wildlife conservation license. In addition~~
 27 ~~to the requirements listed in subsection (1), an applicant for licensure as a master PROFESSIONAL guide~~
 28 ~~must meet additional experience requirements, to be set by board rule, and may be required to show proof~~
 29 ~~of training or pass a qualifying examination when required by board rule."~~

1 Section 7. Section 37-47-304, MCA, is amended to read:

2 "37-47-304. Application. (1) Each applicant for an outfitter's, ~~or professional guide's, or master~~
3 PROFESSIONAL guide's license shall make application for license ~~upon~~ on a form ~~to be~~ prescribed and
4 furnished by the board.

5 (2) The application for an outfitter's license which shall FORMS THE BASIS FOR THE OUTFITTER'S
6 OPERATIONS PLAN AND must include:

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

9 (b) the address of the applicant's principal place of business in the state of Montana;

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

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

15 (e) a signed statement of the licensed outfitter ~~by whom the professional guide is~~ for each guide
16 and master PROFESSIONAL guide to be employed or retained as an independent contractor stating that the
17 professional guide or master PROFESSIONAL guide is ~~in fact~~ to be employed ~~or retained as an independent~~
18 ~~contractor~~ by the outfitter and stating that the outfitter recommends the applicant guide or master
19 PROFESSIONAL guide for ~~the applicant's qualifications~~ licensure;

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

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

25 (h) the written approval of the appropriate agency or landowner on whose lands the applicant will
26 provide services or establish hunting camps; and

27 (i) ~~an operating area plan that specifies the boundaries of the proposed operation, stating when~~
28 applicable:

29 (i) the name and portion of river;

30 (ii) the county of location;

1 (iii) the legal owner of the property;

2 (iv) the name of the ranch;

3 (v) the proposed service, including the type of game sought;

4 (vi) the name of the agency granting use authority; and

5 (vii) other means of identifying boundaries as established by board rule.

6 ~~(2)~~(3) Applications for an outfitter's license must be in the name of an individual person only.

7 Applications involving corporations, proprietorships, or partnerships must be made by one individual person
8 who qualifies under the provisions of this part. ~~Any~~ A license issued pursuant to this part must be in the
9 name of that person. The license must specifically state that the license is issued for the use and benefit
10 of the named corporation, proprietorship, or partnership involved. Any revocation or suspension of a
11 license is binding upon the individual person and the corporation, proprietorship, or partnership for the use
12 and benefit of which the license was originally issued.

13 ~~(3)~~(4) Application must be made to and filed with the board.

14 ~~(4)~~(5) Only one application for an outfitter's license may be made in any ~~one~~ license year. If ~~any~~
15 an application is denied, subsequent applications by the same applicant for the license year involved are
16 void, except as provided in 37-47-308."

17
18 **Section 8.** Section 37-47-305, MCA, is amended to read:

19 "**37-47-305. Outfitter's examination.** Each applicant for an outfitter's license ~~shall~~, after meeting
20 the experience and training specifications and other qualifications set by this chapter or rules adopted
21 pursuant to this chapter, is entitled to take and must pass a standard examination administered by the
22 board or its agent. The examination must require general and sufficient knowledge displaying and indicating
23 ability to perform the services contemplated with efficiency and with safety to the health and welfare of
24 ~~persons employing the services~~ participants. The examination must test the applicant's knowledge of
25 subjects that apply to the type of license applied for and may include the following subjects:

26 (1) federal and state fish and game laws and regulations;

27 (2) practical woodsmanship;

28 (3) general knowledge of big game;

29 (4) field preparation of trophies;

30 (5) care of game meat;

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

10 **Section 9.** Section 37-47-306, MCA, is amended to read:

11 **"37-47-306. Fees.** (1) The board shall establish fees commensurate with costs as provided in
12 37-1-134.

13 (2) Applications ~~shall~~ must be accompanied by a license fee as specified by ~~the board~~ rule.

14 (3) If a nonresident resides in a state requiring residents of the state of Montana to pay in excess
15 of the amount established by the board for a similar license, the fee for ~~such~~ the nonresident outfitter's,
16 ~~or professional guide's, or master~~ PROFESSIONAL guide's license ~~shall~~ must be the same amount as the
17 higher fee charged in the state where the nonresident resides.

18 (4) The license fees must be deposited in the state special revenue fund and must be used by the
19 board to investigate the applicant, to enforce this part, and for administrative costs, subject to
20 37-1-101(6)."

21

22 **Section 10.** Section 37-47-307, MCA, is amended to read:

23 **"37-47-307. Investigation of applicant -- issuance or denial of license.** (1) The board shall
24 investigate each applicant for an outfitter's, ~~or professional guide's, or master~~ PROFESSIONAL guide's
25 license and determine the applicant's qualifications.

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

30 (3) ~~Final decision as to issuance of renewal licenses must be made not later than 30 days from the~~

1 ~~date of receipt of the completed application for renewal and not later than 90 days from the date of receipt~~
 2 ~~of a completed application for a new license.~~

3 (4) A licensee in good standing is entitled to a new license for the ensuing license year upon
 4 complying with the provisions of this chapter ~~and renewal deadlines and fees imposed by rule of the board~~
 5 or rules adopted pursuant to this chapter and upon completing an application for license renewal on a form
 6 provided by the board."

7
 8 **NEW SECTION. Section 11. License for previously licensed guide.** The board shall issue a guide's
 9 license to an applicant who meets the following qualifications as of July 1, 1995:

10 (1) previous licensure as a guide in this state and practice as a guide for at least one season, as
 11 defined by board rule;

12 (2) payment of a license fee; and

13 (3) submission of a current cardiopulmonary resuscitation card, a first-aid card, or an equivalent
 14 card issued by a board-approved certifying agency.

15
 16 **Section 12.** Section 37-47-341, MCA, is amended to read:

17 "**37-47-341. Grounds for denial, suspension, or revocation of license.** ~~Every~~ A license or right to
 18 apply for and hold ~~the~~ a license issued under this part may be denied, suspended, or revoked or other
 19 disciplinary conditions may be applied upon any of the following grounds:

20 (1) having ceased to meet all of the qualifications for holding a license, as required under this
 21 chapter and rules adopted pursuant to this chapter;

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

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

24 (4) having pleaded guilty to or been adjudged by a court guilty of a felony, including a case in
 25 which the sentence is suspended or imposition of the sentence is deferred, unless civil rights have been
 26 restored pursuant to law; A person may not apply for or hold an outfitter's, guide's, or master
 27 PROFESSIONAL guide's license during any period of time in which a sentence for a felony has been
 28 deferred or suspended.

29 (5) ~~two convictions~~ one conviction or bond forfeitures of \$100 or more forfeiture as to ~~violations~~
 30 a violation of the fish and game or outfitting laws or regulations of any state or the United States ~~within~~

1 ~~the past 5 years;~~

2 (6) a substantial breach of ~~any a~~ contract with ~~any person using the services of the license holder~~
3 a participant provided that the breach is established as a matter of final judgment in a court of law;

4 (7) the willful employment of or contracting with an unlicensed guide ~~or master~~ PROFESSIONAL
5 guide by an outfitter;

6 (8) negligence or misconduct while acting as an outfitter, ~~or professional guide, or master~~
7 PROFESSIONAL guide that causes an accident or injury to the person or property of ~~any client of the~~
8 ~~outfitter or professional guide~~ a participant; ~~or~~

9 (9) misconduct as defined by board rule; or

10 (10) any violation of this chapter or a rule adopted pursuant to this chapter."

11
12 **Section 13.** Section 37-47-343, MCA, is amended to read:

13 "**37-47-343. Appeal procedure.** ~~Any A~~ person who feels aggrieved by a final order of the board
14 denying issuance of, ~~suspension of, or revocation of a license or suspending or revoking~~ a license as an
15 outfitter, ~~or professional guide, or master~~ PROFESSIONAL guide may petition for judicial review as provided
16 in Title 2, chapter 4, part 7."

17
18 **Section 14.** Section 37-47-345, MCA, is amended to read:

19 "**37-47-345. Enforcement.** Investigations and arrests for violations of this chapter or rules adopted
20 pursuant to this chapter may be made by any peace officer; warden of the department of fish, wildlife, and
21 parks; or federal agency enforcement personnel."

22
23 **Section 15.** Section 37-47-401, MCA, is amended to read:

24 "**37-47-401. Purpose.** It is recognized that some activities conducted by outfitters, guides, and
25 ~~master~~ PROFESSIONAL guides within the scope of their authorized services are inherently hazardous to
26 participants regardless of all feasible safety measures that ~~can~~ may be taken. It is the purpose of this part
27 to define those areas of responsibility and affirmative acts or omissions for which outfitters, guides, and
28 ~~master~~ PROFESSIONAL guides are liable for loss, damage, or injury and those risks for which the participant
29 expressly assumes or ~~shall be~~ is considered to have voluntarily assumed the risk of loss or damage."

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

2 "**37-47-402. Duties of outfitters, guides, and ~~master~~ PROFESSIONAL guides.** An outfitter, guide,
3 or ~~master~~ PROFESSIONAL guide offering professional services in this state shall:

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

6 (2) comply with all standards adopted by board rule ~~by the board.~~"

7

8 **Section 17.** Section 37-47-403, MCA, is amended to read:

9 "**37-47-403. Duties of participants.** (1) A participant shall:

10 (a) act as would a reasonably prudent person when engaging in the activities offered by a licensed
11 outfitter, guide, or ~~master~~ PROFESSIONAL guide in this state;

12 (b) receive permission from the outfitter, guide, or ~~master~~ PROFESSIONAL guide prior to embarking
13 on any self-initiated activity and inform the outfitter, guide, or ~~master~~ PROFESSIONAL guide of ~~his~~ the
14 participant's plans and intentions upon receiving permission to engage in ~~such~~ the self-initiated activity.

15 (2) A participant may not:

16 (a) interfere with the running or operation of an outfitter's, guide's, or ~~master~~ PROFESSIONAL
17 guide's activities when ~~such~~ those activities conform to the standards of care set forth in 37-47-402;

18 (b) use the outfitter's, guide's, or ~~master~~ PROFESSIONAL guide's equipment, facilities, or services
19 unless the participant has requested and received permission from the outfitter, guide, or ~~master~~
20 PROFESSIONAL guide;

21 (c) knowingly, purposely, or negligently engage in any type of conduct that contributes to or
22 causes injury to ~~himself~~ the participant or any other person."

23

24 **Section 18.** Section 37-47-404, MCA, is amended to read:

25 "**37-47-404. Responsibility for violations of law.** (1) ~~Any~~ A person accompanying a hunting or
26 fishing party as an outfitter or ~~agent~~ guide, ~~master~~ PROFESSIONAL guide, or other employee of the outfitter
27 is equally responsible with any person or party employing the person as an outfitter for any violation of fish
28 and game laws unless the violation is reported to a peace officer by the outfitter, ~~agent~~ guide, ~~master~~
29 PROFESSIONAL guide, or employee and the outfitter, ~~agent~~ guide, ~~master~~ PROFESSIONAL guide, or
30 employee was not an active participant. An outfitter or ~~agent~~ guide, ~~master~~ PROFESSIONAL guide, or other

1 employee of an outfitter who willfully fails or refuses to report any violation of fish and game laws is liable
 2 to the penalties provided in this section. If any ~~professional guide or master~~ PROFESSIONAL guide violates
 3 the laws or applicable regulations relating to fish and game, outfitting, or guiding with actual or implied
 4 knowledge of an outfitter employing the guide ~~or master~~ PROFESSIONAL guide, the outfitter is legally
 5 responsible for the violation for all purposes under the laws or regulations if the outfitter fails to report the
 6 violation to the proper authority.

7 (2) An outfitter, ~~guide,~~ or ~~professional~~ master PROFESSIONAL guide shall report any violation or
 8 suspected violation of fish and game laws that the outfitter, ~~guide,~~ or ~~master~~ PROFESSIONAL guide knows
 9 or reasonably should have known has been committed by the employees, agents, representatives, clients,
 10 or participants in the outfitting or guiding activity. The violation or suspected violation must be reported
 11 to a peace officer at the earliest possible opportunity.

12 (3) A person may not hire or retain ~~any an~~ an outfitter ~~or professional guide~~ unless the outfitter ~~or~~
 13 ~~professional guide~~ is currently licensed in accordance with the laws of the state of Montana. A person may
 14 not use the services of a guide or master PROFESSIONAL guide and a guide or master PROFESSIONAL
 15 guide may not offer services unless the services are obtained through an endorsing outfitter."

16
 17 **Section 19.** Section 87-2-511, MCA, is amended to read:

18 **"87-2-511. Sale of Class B-10 and Class B-11 licenses.** (1) The department shall offer the Class
 19 B-10 and Class B-11 licenses for sale on March 15, with 5,600 of the authorized Class B-10 licenses and
 20 2,000 Class B-11 licenses reserved for applicants ~~indicating their intent to use~~ using the services of a
 21 licensed outfitter, and 2,000 of the authorized Class B-11 licenses reserved for applicants indicating their
 22 intent to hunt with a resident sponsor on land owned by that sponsor, as provided in subsections (2) and
 23 (3).

24 (2) Each application for a ~~reserved~~ resident-sponsored license under subsection (1) must contain
 25 a written affirmation by the applicant that the applicant intends to hunt with ~~a licensed outfitter or~~ a
 26 resident sponsor and must indicate the name of the ~~licensed outfitter or~~ resident sponsor with whom the
 27 applicant intends to hunt. In addition, the application must be accompanied by a certificate that is signed
 28 by a ~~licensed outfitter or~~ resident sponsor and ~~which~~ that affirms that the ~~outfitter or~~ resident sponsor will:

- 29 (a) direct the applicant's hunting and advise the applicant of game and trespass laws of the state;
 30 (b) submit to the department, in a manner prescribed by the department, complete records of who

1 hunted with ~~him~~ the resident sponsor, where they hunted, and what game was taken; and

2 (c) accept no monetary consideration for enabling the nonresident applicant to obtain a license or
3 for providing any services or assistance to the nonresident applicant, except as provided in Title 37, chapter
4 47, and this title.

5 (3) The certificate signed by the resident sponsor pursuant to subsection (2) must also affirm that
6 the sponsor is a landowner and that the applicant under the certificate will hunt only on land owned by the
7 sponsor.

8 (4) Each application for an outfitter-sponsored license under subsection (1) must contain a written
9 affirmation by the applicant that the applicant will hunt with a licensed outfitter for all big game hunted by
10 the applicant under the license and must indicate the name of the licensed outfitter with whom the
11 applicant will hunt. In addition, the application must be accompanied by a certificate that is signed by a
12 licensed outfitter and that affirms that the outfitter will:

13 (a) accompany the applicant;

14 (b) provide guiding services for the species hunted by the applicant;

15 (c) direct the applicant's hunting for all big game hunted by the applicant under the license and
16 advise the applicant of game and trespass laws of the state;

17 (d) submit to the department, in a manner prescribed by the department, complete records of who
18 hunted with the outfitter, where they hunted, and what game was taken; and

19 (e) accept no monetary consideration for enabling the nonresident applicant to obtain a license or
20 for providing any services or assistance to the nonresident applicant, except as provided in Title 37, chapter
21 47, and this title.

22 (5) An outfitter-sponsored license under subsection (1) is valid only when used in compliance with
23 the affirmations of the applicant and outfitter required under subsection (4). If the sponsoring outfitter is
24 unavailable or if the applicant wishes to use the services of separate outfitters for hunting different species
25 of game, an outfitter-sponsored license may be used with a substitute licensed outfitter, in compliance with
26 the affirmations under subsection (4), upon advance written notification to the board by the sponsoring
27 licensed outfitter or the substitute outfitter.

28 ~~(4)(6)~~ The department shall make the reserved Class B-10 and Class B-11 licenses that remain
29 unsold on April 15 available to nonresident applicants without restriction as to hunting with a licensed
30 outfitter or resident sponsor.

1 ~~(5)(7)~~ All Class B-10 and Class B-11 licenses that are not reserved under subsection (1) and all
 2 unsold reserved licenses that are available under subsection ~~(4)~~ (6) must be issued by a drawing among all
 3 applicants for the respective unreserved licenses."

4
 5 **NEW SECTION.** **Section 20. Investigators -- qualifications.** (1) The department may hire
 6 investigators to assist the board in investigations and inspections authorized by this chapter.

7 (2) To qualify as an investigator, a person must:

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

9 (b) have knowledge of outfitting and guiding through prior experience as a licensed outfitter, guide,
 10 or ~~master~~ PROFESSIONAL guide or as a regulator of the outfitting profession; and

11 (c) have not less than 2 years' experience as a licensed private investigator or as an investigator,
 12 detective, special agent, or peace officer of a city, county, or state or of a federal agency.

13
 14 **Section 21.** Section 87-1-503, MCA, is amended to read:

15 "**87-1-503. Ex officio wardens.** All sheriffs and their deputies, all constables, all peace officers
 16 of the state or any subdivision of the state, the executive director and investigators of the board of
 17 outfitters, all state forest officers, ~~and,~~ as authorized by cooperative agreement, ~~all~~ any officers of the
 18 United States forest service, agents of the United States fish and wildlife service, and peace officers of the
 19 bureau of land management, national park service, and corps of engineers that are assigned to duty in this
 20 state, and field personnel of the department, as the director may appoint, are ex officio wardens, without
 21 pay, except that the department may, in its discretion, allow ~~traveling~~ travel expenses as provided for in
 22 2-18-501 through 2-18-503, which, if allowed, must be paid upon proper vouchers from the state fish and
 23 game funds. Ex officio wardens have the same powers with reference to the enforcement of the fish and
 24 game laws of this state and the laws relating to parks and outdoor recreation contained in ~~chapters 1 and~~
 25 ~~2~~ of Title 23, chapters 1 and 2, except chapter 2, part 7, as regularly appointed wardens, and it is their
 26 duty to assist, whenever possible, in the enforcement of those laws."

27
 28 **NEW SECTION.** **Section 22. Repealer.** Sections 37-47-102 and 37-47-309, MCA, are repealed.

29
 30 **NEW SECTION.** **Section 23. Severability.** If a part of [this act] is invalid, all valid parts that are

1 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its
2 applications, the part remains in effect in all valid applications that are severable from the invalid
3 applications.

4
5 NEW SECTION. **Section 24. Codification instruction.** [Sections 2 and 20] are intended to be
6 codified as an integral part of Title 37, chapter 47, and the provisions of Title 37, chapter 47, apply to
7 [sections 2 and 20].

8
9 NEW SECTION. **Section 25. Effective dates.** (1) [Sections 20 and 21 and this section] are
10 effective July 1, 1995.

11 (2) [Sections 1 through 19, 22 through 24, and 26] are effective October 1, 1995.

12

13 NEW SECTION. **Section 26. Termination.** [Section 11] terminates October 1, 1996.

14

-END-