

**HOUSE BILL NO. 1276**

Introduced by

Representatives Porter, S. Kelsh

Senators Freborg, Wardner

1 A BILL for an Act to create and enact two new sections to chapter 20.1-03 of the North Dakota  
2 Century Code, relating to powers of the game and fish director and guiding on prohibited lands;  
3 to amend and reenact subsection 25 of section 20.1-01-02 and sections 20.1-03-37,  
4 20.1-03-38, 20.1-03-39, and 20.1-03-40 of the North Dakota Century Code, relating to licensing  
5 and qualifications of guides and outfitters; and to provide a penalty.

6 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

7 **SECTION 1. AMENDMENT.** Subsection 25 of section 20.1-01-02 of the North Dakota  
8 Century Code is amended and reenacted as follows:

9 25. "Outfitter" means ~~an individual who, while engaging in any of the acts enumerated~~  
10 ~~in this subsection in any manner, advises or otherwise a person that~~ holds the  
11 ~~individual's~~ person's business operation out to the public for hire or consideration;  
12 provides facilities or services for consideration; ~~or~~ maintains, leases, or provides  
13 compensation for the use of land; or otherwise uses equipment or  
14 accommodations for consideration for the conduct of outdoor recreational activities,  
15 including hunting animals or birds and fishing on lakes, reservoirs, rivers, and  
16 streams. An outfitter may act as a guide. The term does not include a person  
17 holding title or an equitable interest in business operations if the ~~primary~~ purpose  
18 of the business operation is to provide food or lodging to the general public,  
19 chamber of commerce activities, travel agencies, or others that offer free  
20 information to attract outdoor and recreational use of their communities.

21 **SECTION 2.** Two new sections to chapter 20.1-03 of the North Dakota Century Code  
22 are created and enacted as follows:

23 **Director's powers for immediate suspension.** If the director determines by clear and  
24 convincing evidence that an intentional violation of state or federal criminal hunting, fishing, or

1 trapping laws of this chapter by a guide or outfitter has occurred, the director may suspend,  
2 revoke, or deny a guide or outfitter license to the person violating the laws or provisions. In  
3 such a case, a hearing must be held within ten days of the director's intended action and the  
4 person must be given notice of the hearing. The person may waive the hearing after having  
5 been notified of the person's right to a hearing, in which case the action of the director takes  
6 effect upon signing the waiver. The director may serve notice of the hearing by publication if  
7 reasonable efforts to make personal service have failed.

8 **Guiding on prohibited lands.** A person may not act as a hunting guide or hunting  
9 outfitter on any state-owned land managed by the department, private land enrolled by the  
10 department for purposes of hunting, on land on which the department pays in lieu of taxes, on  
11 any other state-owned land unless the appropriate state agency authorizes or permits the  
12 specific guiding or outfitting activity, on federal lands without being authorized or permitted as  
13 required by the appropriate federal agency, or on private lands without first obtaining written  
14 permission from the landowner to conduct guiding or outfitting on the land regardless of  
15 whether the land is posted against hunting or trespass.

16 **SECTION 3. AMENDMENT.** Section 20.1-03-37 of the North Dakota Century Code is  
17 amended and reenacted as follows:

18 **20.1-03-37. Guides and outfitters license qualifications.**

- 19 1. An individual who is eighteen years of age or more may apply for a guide or  
20 outfitter license.
- 21 2. An applicant for a hunting guide license and an outfitter acting as a guide shall  
22 provide the director proof that the individual is certified in adult cardiopulmonary  
23 resuscitation or its equivalent and in standard or first aid or its equivalent.
- 24 3. An applicant for a hunting outfitter or fishing outfitter license shall provide to the  
25 director proof that the individual and the individual's business operation are  
26 covered by general liability insurance against loss or expense due to accident or  
27 injury from outfitting services, at a minimum of one hundred thousand dollars per  
28 individual and three hundred thousand dollars per accident.
- 29 4. An individual must hold a hunting guide license for two years to be eligible to apply  
30 for a hunting outfitter license.

- 1           5. The director may not issue a license to an individual who has been convicted of a  
2           state or federal criminal game or fish violation in the last three years or whose  
3           license to hunt or fish is under suspension or revocation. As used in this chapter,  
4           "conviction" means a finding of guilt, a guilty plea, a plea of no contest, a plea of  
5           nolo contendere, a judgment of conviction even though the court suspended  
6           execution of a sentence in accordance with subsection 3 of section 12.1-32-02, or  
7           a deferred imposition of sentence in accordance with subsection 4 of section  
8           12.1-32-02 or an equivalent statute. The term does not include a finding of guilt  
9           which is reversed on appeal.
- 10          6. If an application is for a business association, the applicant must be an agent of the  
11          association to be held personally responsible for the conduct of the licensed  
12          outfitter's operations, in addition to the association. The department may only  
13          issue an outfitter license to a business applicant if the applicant is qualified to  
14          conduct the business of outfitting. A corporation or association may qualify for an  
15          outfitter license if a majority of stock is owned by licensed outfitters in good  
16          standing, or if a limited liability company, the majority membership interest is  
17          owned by a licensed outfitter in good standing, actively and regularly employed in  
18          and responsible for the management, supervision, and operation of the outfitting  
19          business. If a business entity owns, is a leaseholder in land, or provides  
20          compensation for the use of land, and directly or indirectly receives remuneration  
21          from hunting on that land, the business entity must be licensed under this title  
22          unless exempt under subsection 4 of section 20.1-03-36.1. A business entity may  
23          not conduct business operations through a subsidiary, contractor, or an agent that  
24          would permit the business entity to avoid this chapter. This section does not  
25          authorize any act or transaction prohibited by any other law of this state.
- 26          7. An applicant for a hunting guide license must have legally hunted in this state for  
27          part of each of any three years in a manner directly contributing to the individual's  
28          experience and competency as a guide.

29           **SECTION 4. AMENDMENT.** Section 20.1-03-38 of the North Dakota Century Code is  
30    amended and reenacted as follows:

1           **20.1-03-38. Licensing guides and outfitters by the department - Rules -**  
2 **Inspections.**

- 3           1. The director may license guides and outfitters and may adopt rules to regulate  
4 guides and outfitters. If the director requests a trade secret or proprietary  
5 information, the director shall request the information on a separate form, and that  
6 information is confidential and is not a public record subject to section 44-04-18  
7 and section 6 of article XI of the Constitution of North Dakota. The director may  
8 release this information, however, if it is aggregated so as not to identify any guide,  
9 outfitter, or client. Before engaging in rulemaking activities with respect to guides  
10 and outfitters, the director shall appoint a committee composed of guides,  
11 outfitters, and interested individuals and shall consult with the committee when  
12 preparing rules.
- 13           2. The director shall periodically inspect or cause to be inspected all outfitter  
14 businesses. All records, facilities, and equipment kept or used by the outfitter are  
15 open to inspection by the director or a game warden. Records may not be  
16 deceptive and must be kept in a manner and location that is readily accessible to  
17 the director or a game warden.
- 18           3. The director shall perform a background search for criminal and game and fish  
19 violations on each applicant on initial application and on each renewal.
- 20           4. The director may not issue a license to an individual to be a hunting guide or  
21 hunting outfitter unless the individual is proficient in the application of state and  
22 federal laws on the hunting of wild game. The director shall create and administer  
23 a written examination to test proficiency of hunting guides and outfitters in these  
24 laws. The director shall administer examinations at least twice a year; however, an  
25 examination may not be given within ninety days after the previous examination.

26           **SECTION 5. AMENDMENT.** Section 20.1-03-39 of the North Dakota Century Code is  
27 amended and reenacted as follows:

28           **20.1-03-39. Guides and outfitters restrictions –~~Administrative sanctions.~~**

- 29           1. The license of a guide or outfitter may be denied, revoked, or suspended, or placed  
30 on probation by the director if:

- 1 a. The licensee, while carrying out the business of guiding or outfitting, engages  
2 in conduct detrimental to the image and professional integrity of the guiding  
3 and outfitting industry;
- 4 b. The licensee willfully and substantially misrepresented that person's facilities,  
5 prices, equipment, services, or hunting or fishing opportunities as a guide or  
6 outfitter;
- 7 c. The licensee has been convicted of an offense not listed in ~~subsection 2~~ this  
8 section which is determined by the director to have a direct bearing on the  
9 licensee's ability to serve the public as a guide or outfitter;
- 10 d. The licensee is addicted to the use of intoxicating liquors, narcotics, or  
11 stimulants to the extent the licensee's performance of professional duties is  
12 affected; ~~or~~
- 13 e. The licensee has become not qualified, or has violated any rule for the  
14 licensing of a guide or outfitter by the director;
- 15 ~~2. The license of a guide or outfitter may be revoked if:~~
- 16 ~~a.~~ f. The licensee is convicted of violating state or federal criminal law pertaining to  
17 hunting, fishing, or trapping, or if the director finds by clear and convincing  
18 evidence that such a violation has occurred;
- 19 ~~b. The licensee acted as a hunting guide or hunting outfitter on land owned or~~  
20 ~~private land enrolled by the department for the purposes of hunting or on land~~  
21 ~~for which the department pays in lieu of tax payments; or~~
- 22 ~~e.~~ g. The licensee provided guiding or outfitting services to a person that had not  
23 obtained the appropriate license for the species sought by that person; or
- 24 h. A licensed outfitter utilized any unlicensed person to perform outfitter or guide  
25 services on behalf of the outfitter. This subsection applies to outfitters  
26 regardless of whether the person who performed the service is otherwise  
27 exempt under subsection 4 of section 20.1-03-36.1.
- 28 ~~3.~~ 2. For the purpose of administrative sanctions, an outfitter is liable if a guide  
29 ~~intentionally~~ violates this chapter or a state or federal criminal law pertaining to  
30 hunting, fishing, or trapping ~~if the outfitter knowingly aids in the violation or knows~~  
31 ~~of the violation but fails to report the violation to the department within a reasonable~~

1 ~~time while guiding on behalf of the outfitter. It is an affirmative defense if the~~  
2 ~~outfitter reported the violation to the department or law enforcement when the~~  
3 ~~outfitter discovered the violation or has not had any other violation by a guide~~  
4 ~~working on behalf of the outfitter in the previous three-year period and the outfitter~~  
5 ~~did not aid in or attempt to conceal evidence of the violation.~~ A guide is liable if a  
6 client violates a state or federal criminal law pertaining to hunting, fishing, or  
7 trapping if the guide knowingly aids in the violation or knows of the violation and  
8 the guide or client fail to report the violation to the department within a reasonable  
9 time.

10 4. ~~3.~~ Notwithstanding chapters 45-11 and 47-25, another person may not use a name,  
11 business name, fictitious name, trade name, internet address, world wide web  
12 uniform resource identifier, place of business, or telephone number of an outfitter  
13 who has been convicted of a violation at least three years from the time of the  
14 conviction except on permission from the director after a determination by the  
15 director that the new business is significantly separate from the previous business  
16 and the new business does not employ, contract with, associate with, or receive  
17 assistance from any person who has been prohibited from guiding or outfitting.

18 **SECTION 6. AMENDMENT.** Section 20.1-03-40 of the North Dakota Century Code is  
19 amended and reenacted as follows:

20 **20.1-03-40. Penalty.** Any ~~individual~~ person providing guide or outfitter services without  
21 a license, or while under suspension, revocation, or denial is guilty of a class ~~B~~ A  
22 misdemeanor. The court must suspend an individual's hunting, trapping, and fishing privileges  
23 for at least one year under section 20.1-01-26 if an individual provided guide or outfitter  
24 services without a license, or while under suspension, revocation, or denial, or guided on  
25 prohibited lands. Unless otherwise specified, other violations of this chapter are a class B  
26 misdemeanor. Each client guided is subject to separate and distinct offenses. In addition to  
27 this penalty, the director may initiate civil action in a court of competent jurisdiction as  
28 necessary to enforce this chapter or any rule adopted under this chapter, including an injunction  
29 to restrain a violation, without proof of actual damages sustained by any person. ~~Any individual~~  
30 ~~guiding or outfitting while under suspension, revocation, or denial is guilty of a class A~~  
31 ~~misdemeanor.~~ Any individual who commits for remuneration or compensation an act of fraud

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- 1 involving hunting or fishing or any individual who illegally takes or causes death to fish or
- 2 wildlife for remuneration or compensation may be prosecuted for theft, fraud, or conspiracy
- 3 under title 12.1 and is, upon conviction, liable for the higher amount between the actual
- 4 compensation received or the value of the fish or wildlife illegally taken or killed.