

**Fifty-ninth Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 4, 2005**

HOUSE BILL NO. 1276
(Representatives Porter, S. Kelsh)
(Senators Freborg, Wardner)

AN ACT to create and enact two new sections to chapter 20.1-03 of the North Dakota Century Code, relating to powers of the game and fish director and guiding on prohibited lands; to amend and reenact subsection 25 of section 20.1-01-02 and sections 20.1-03-37, 20.1-03-38, 20.1-03-39, and 20.1-03-40 of the North Dakota Century Code, relating to licensing and qualifications of guides and outfitters; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

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

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

Director's powers for immediate suspension. If the director determines by clear and convincing evidence that a substantial violation of state or federal criminal hunting, fishing, or trapping laws of this chapter by a guide or outfitter has occurred, the director may suspend, revoke, or deny a guide or outfitter license to the person violating the laws or provisions. In such a case, a hearing must be held within ten days of the director's intended action and the person must be given notice of the hearing. The person may waive the hearing after having been notified of the person's right to a hearing, in which case the action of the director takes effect upon signing the waiver. The director may serve notice of the hearing by publication if reasonable efforts to make personal service have failed.

Guiding on prohibited lands. A person may not act as a hunting guide or hunting outfitter on land the person knows is owned by the state unless the appropriate state agency permits or authorizes the guiding or outfitting, on private land enrolled by the department for purposes of hunting, on land in which the department pays in lieu of taxes, on federal lands without being authorized or permitted as required by the appropriate federal agency, or on private lands posted against hunting or trespassing without first informing and obtaining permission from the landowner to conduct guiding or outfitting on the land. If the landowner did not grant the permission in writing, there is a presumption that the permission did not exist.

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

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

1. An individual who is eighteen years of age or more may apply for a guide or outfitter license.
2. An applicant for a hunting guide license and an outfitter acting as a guide shall provide the director proof that the individual is certified in adult cardiopulmonary resuscitation or its equivalent and in standard or first aid or its equivalent.
3. An applicant for a hunting outfitter or fishing outfitter license shall provide to the director proof that the individual and the individual's business operation are covered by general liability insurance against loss or expense due to accident or injury from outfitting services, at a minimum of one hundred thousand dollars per individual and three hundred thousand dollars per accident.
4. An individual must hold a hunting guide license for two years to be eligible to apply for a hunting outfitter license unless that individual provides proof to the department that the individual has been exempt under subsection 4 of section 20.1-03-36.1 and has been conducting outfitter or guide service as an exempt individual for at least two years.
5. The director may not issue a license to an individual who has been convicted of a state or federal criminal game or fish violation in the last three years or whose license to hunt or fish is under suspension or revocation. As used in this chapter, "conviction" means a finding of guilt, a guilty plea, a plea of no contest, a plea of nolo contendere, a judgment of conviction even though the court suspended execution of a sentence in accordance with subsection 3 of section 12.1-32-02, or a deferred imposition of sentence in accordance with subsection 4 of section 12.1-32-02 or an equivalent statute. The term does not include a finding of guilt which is reversed on appeal.
6. If an application is for a business association, the applicant must be an agent of the association to be held personally responsible for the conduct of the licensed outfitter's operations, in addition to the association, and the applicant must be actively and regularly employed in and responsible for the management, supervision, and operation of the outfitting business. The department may only issue an outfitter license to a business applicant if the applicant is qualified to conduct the business of outfitting. A corporation or association may qualify for an outfitter license if a majority of stock is owned by licensed outfitters in good standing or landowners who own agricultural land used for the outfitting business, or if a limited liability company, the majority membership interest is owned by licensed outfitters in good standing or by landowners who own agricultural land used for the outfitting business. If a business entity owns, is a leaseholder in land, or provides compensation for the use of land, and directly or indirectly receives remuneration from hunting on that land, the business entity must be licensed under this title unless exempt under subsection 4 of section 20.1-03-36.1. A business entity may not conduct business operations through a subsidiary, contractor, or an agent that would permit the business entity to avoid this chapter. This section does not authorize any act or transaction prohibited by any other law of this state.
7. An applicant for a hunting guide or hunting outfitter license must have legally hunted in this state for part of each of any three years in a manner directly contributing to the individual's experience and competency as a guide. The department may waive this requirement if the applicant proves that the applicant has legally hunted for parts of at least three years in other states and an outfitter employing that individual would suffer an undue hardship without that individual.

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

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

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

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

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

1. The license of a guide or outfitter may be denied, revoked, or suspended, or placed on probation by the director if:
 - a. The licensee, while carrying out the business of guiding or outfitting, engages in conduct detrimental to the image and professional integrity of the guiding and outfitting industry;
 - b. The licensee willfully and substantially misrepresented that person's facilities, prices, equipment, services, or hunting or fishing opportunities as a guide or outfitter;
 - c. The licensee has been convicted of an offense not listed in ~~subsection 2~~ this section which is determined by the director to have a direct bearing on the licensee's ability to serve the public as a guide or outfitter;
 - d. The licensee is addicted to the use of intoxicating liquors, narcotics, or stimulants to the extent the licensee's performance of professional duties is affected; ~~or~~
 - e. The licensee has become not qualified, or has violated any rule for the licensing of a guide or outfitter by the director;;
2. ~~The license of a guide or outfitter may be revoked if:~~
 - a. f. The licensee is convicted of violating state or federal criminal law pertaining to hunting, fishing, or trapping, or if the director finds by clear and convincing evidence that such a violation has occurred;

- ~~b.~~ The licensee acted as a hunting guide or hunting outfitter on land owned or private land enrolled by the department for the purposes of hunting or on land for which the department pays in lieu of tax payments; or
 - e. g. The licensee provided guiding or outfitting services to a person that had not obtained the appropriate license for the species sought by that person; or
 - h. A licensed outfitter utilized any unlicensed person to perform outfitter or guide services on behalf of the outfitter. This subsection applies to outfitters regardless of whether the person who performed the service is otherwise exempt under subsection 4 of section 20.1-03-36.1.
3. 2. For the purpose of administrative sanctions, an outfitter is liable if a guide ~~intentionally~~ violates a criminal provision of this chapter or a state or federal criminal law pertaining to hunting, fishing, or trapping if the outfitter knowingly aids in the violation or knows of the violation but fails to report the violation to the department within a reasonable time while guiding on behalf of the outfitter. It is an affirmative defense if the outfitter reported the violation to the department or law enforcement when the outfitter discovered the violation or has not had more than two independent violations by a guide working on behalf of the outfitter in the previous three-year period and the outfitter did not aid in or attempt to conceal evidence of the violation. A guide is liable if a client violates a state or federal criminal law pertaining to hunting, fishing, or trapping if the guide knowingly aids in the violation or knows of the violation and the guide or client fail to report the violation to the department within a reasonable time.
4. 3. Notwithstanding chapters 45-11 and 47-25, another person may not use a name, business name, fictitious name, trade name, internet address, world wide web uniform resource identifier, place of business, or telephone number of an outfitter who has been convicted of a violation at least three years from the time of the conviction except on permission from the director after a determination by the director that the new business is significantly separate from the previous business and the new business does not employ, contract with, or receive assistance from any person who has been prohibited from guiding or outfitting.

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

20.1-03-40. Penalty. Any ~~individual~~ person providing guide or outfitter services without a license, or while under suspension, revocation, or denial is guilty of a class ~~B~~ A misdemeanor. ~~The court must suspend an individual's hunting, trapping, and fishing privileges for at least one year under section 20.1-01-26 if an individual provided guide or outfitter services without a license, or while under suspension, revocation, or denial, or guided on prohibited lands. Unless otherwise specified, other violations of this chapter are a class B misdemeanor.~~ Each client guided is subject to separate and distinct offenses. In addition to this penalty, the director may initiate civil action in a court of competent jurisdiction as necessary to enforce this chapter or any rule adopted under this chapter, including an injunction to restrain a violation, without proof of actual damages sustained by any person. ~~Any individual guiding or outfitting while under suspension, revocation, or denial is guilty of a class A misdemeanor.~~ Any individual who commits for remuneration or compensation an act of fraud involving hunting or fishing or any individual who illegally takes or causes death to fish or wildlife for remuneration or compensation may be prosecuted for theft, fraud, or conspiracy under title 12.1 and is, upon conviction, liable for the higher amount between the actual compensation received or the value of the fish or wildlife illegally taken or killed.

Speaker of the House

President of the Senate

Chief Clerk of the House

Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Fifty-ninth Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1276.

House Vote: Yeas 86 Nays 4 Absent 4

Senate Vote: Yeas 47 Nays 0 Absent 0

Chief Clerk of the House

Received by the Governor at _____ M. on _____, 2005.

Approved at _____ M. on _____, 2005.

Governor

Filed in this office this _____ day of _____, 2005,

at _____ o'clock _____ M.

Secretary of State