

**FIRST ENGROSSMENT
with Senate Amendments**

Fifty-ninth
Legislative Assembly
of North Dakota

ENGROSSED 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 otherwise
13 provides compensation for the use of land and which receives compensation from
14 a third party for use of that land; or otherwise uses equipment or accommodations
15 for consideration for the conduct of outdoor recreational activities, including
16 hunting animals or birds and fishing on lakes, reservoirs, rivers, and streams. An
17 outfitter may act as a guide. The term does not include a person holding title or an
18 equitable interest in business operations if the ~~primary~~ purpose of the business
19 operation is to provide food or lodging to the general public, chamber of commerce
20 activities, travel agencies, or others that offer free information to attract outdoor
21 and recreational use of their communities.

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

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

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

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

20 **20.1-03-37. Guides and outfitters license qualifications.**

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

- 1 4. An individual must hold a hunting guide license for two years to be eligible to apply
2 for a hunting outfitter license unless that individual provides proof to the
3 department that the individual has been exempt under subsection 4 of section
4 20.1-03-36.1 and has been conducting outfitter or guide service as an exempt
5 individual for at least two years.
- 6 5. The director may not issue a license to an individual who has been convicted of a
7 state or federal criminal game or fish violation in the last three years or whose
8 license to hunt or fish is under suspension or revocation. As used in this chapter,
9 "conviction" means a finding of guilt, a guilty plea, a plea of no contest, a plea of
10 nolo contendere, a judgment of conviction even though the court suspended
11 execution of a sentence in accordance with subsection 3 of section 12.1-32-02, or
12 a deferred imposition of sentence in accordance with subsection 4 of section
13 12.1-32-02 or an equivalent statute. The term does not include a finding of guilt
14 which is reversed on appeal.
- 15 6. If an application is for a business association, the applicant must be an agent of
16 the association to be held personally responsible for the conduct of the licensed
17 outfitter's operations, in addition to the association, and the applicant must be
18 actively and regularly employed in and responsible for the management,
19 supervision, and operation of the outfitting business. The department may only
20 issue an outfitter license to a business applicant if the applicant is qualified to
21 conduct the business of outfitting. A corporation or association may qualify for an
22 outfitter license if a majority of stock is owned by licensed outfitters in good
23 standing or landowners who own agricultural land used for the outfitting business,
24 or if a limited liability company, the majority membership interest is owned by
25 licensed outfitters in good standing or by landowners who own agricultural land
26 used for the outfitting business. If a business entity owns, is a leaseholder in land,
27 or provides compensation for the use of land, and directly or indirectly receives
28 remuneration from hunting on that land, the business entity must be licensed under
29 this title unless exempt under subsection 4 of section 20.1-03-36.1. A business
30 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

1 federal laws on the hunting of wild game. The director shall create and administer
2 a written examination to test proficiency of hunting guides and outfitters in these
3 laws. The director shall administer examinations at least twice a year; however, an
4 examination may not be given within ninety days after the previous examination.

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

7 **20.1-03-39. Guides and outfitters restrictions —~~Administrative sanctions.~~**

- 8 1. The license of a guide or outfitter may be denied, revoked, or suspended, or
9 placed on probation by the director if:
- 10 a. The licensee, while carrying out the business of guiding or outfitting, engages
11 in conduct detrimental to the image and professional integrity of the guiding
12 and outfitting industry;
 - 13 b. The licensee willfully and substantially misrepresented that person's facilities,
14 prices, equipment, services, or hunting or fishing opportunities as a guide or
15 outfitter;
 - 16 c. The licensee has been convicted of an offense not listed in ~~subsection 2~~ this
17 section which is determined by the director to have a direct bearing on the
18 licensee's ability to serve the public as a guide or outfitter;
 - 19 d. The licensee is addicted to the use of intoxicating liquors, narcotics, or
20 stimulants to the extent the licensee's performance of professional duties is
21 affected; ~~or~~
 - 22 e. The licensee has become not qualified, or has violated any rule for the
23 licensing of a guide or outfitter by the director;
- 24 ~~2. The license of a guide or outfitter may be revoked if:~~
- 25 ~~a.~~ f. The licensee is convicted of violating state or federal criminal law pertaining to
26 hunting, fishing, or trapping, or if the director finds by clear and convincing
27 evidence that such a violation has occurred;
 - 28 ~~b. The licensee acted as a hunting guide or hunting outfitter on land owned or~~
29 ~~private land enrolled by the department for the purposes of hunting or on land~~
30 ~~for which the department pays in lieu of tax payments; or~~

- 1 e. g. The licensee provided guiding or outfitting services to a person that had not
2 obtained the appropriate license for the species sought by that person; or
3 h. A licensed outfitter utilized any unlicensed person to perform outfitter or guide
4 services on behalf of the outfitter. This subsection applies to outfitters
5 regardless of whether the person who performed the service is otherwise
6 exempt under subsection 4 of section 20.1-03-36.1.

- 7 ~~3.~~ 2. For the purpose of administrative sanctions, an outfitter is liable if a guide
8 ~~intentionally~~ violates a criminal provision of this chapter or a state or federal
9 criminal law pertaining to hunting, fishing, or trapping ~~if the outfitter knowingly aids~~
10 ~~in the violation or knows of the violation but fails to report the violation to the~~
11 ~~department within a reasonable time~~ while guiding on behalf of the outfitter. It is
12 an affirmative defense if the outfitter reported the violation to the department or law
13 enforcement when the outfitter discovered the violation or has not had more than
14 two independent violations by a guide working on behalf of the outfitter in the
15 previous three-year period and the outfitter did not aid in or attempt to conceal
16 evidence of the violation. A guide is liable if a client violates a state or federal
17 criminal law pertaining to hunting, fishing, or trapping if the guide knowingly aids in
18 the violation or knows of the violation and the guide or client fail to report the
19 violation to the department within a reasonable time.

- 20 ~~4.~~ 3. Notwithstanding chapters 45-11 and 47-25, another person may not use a name,
21 business name, fictitious name, trade name, internet address, world wide web
22 uniform resource identifier, place of business, or telephone number of an outfitter
23 who has been convicted of a violation at least three years from the time of the
24 conviction except on permission from the director after a determination by the
25 director that the new business is significantly separate from the previous business
26 and the new business does not employ, contract with, or receive assistance from
27 any person who has been prohibited from guiding or outfitting.

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

30 **20.1-03-40. Penalty.** Any ~~individual~~ person providing guide or outfitter services without
31 a license, or while under suspension, revocation, or denial is guilty of a class ~~B~~ A

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