

GUIDES AND OUTFITTERS - OTHER STATES' LAWS

This memorandum reviews state laws relating to regulation of guides and outfitters in the states of Alaska, Colorado, Idaho, Montana, New Mexico, Oregon, South Dakota, and Wyoming.

ALASKA

In Alaska a person may be an assistant guide, a Class A assistant guide, and a registered guide. Under Alaska Statutes Section 08.54.790, to guide means "to provide, for compensation . . . services, equipment, or facilities to a big game hunter in the field by a person who accompanies or is present with the big game hunter in the field either personally or through an assistant. . . ." To outfit means "to provide, for compensation . . . services, supplies, or facilities to a big game hunter in the field, by a person who neither accompanies nor is present with the big game hunter in the field either personally or by an assistant."

There are general eligibility requirements for all guides. Under Alaska Statutes Section 08.54.605, to be a guide, a person must not have violated a state hunting or guiding statute or rule within the last five years, for which the person was fined more than \$1,000 or imprisoned more than five days; been convicted of certain felonies within certain periods of time; or have had that person's hunting, guiding, or outfitting license suspended or revoked in any state.

Under Alaska Statutes Section 08.54.610, to be qualified as a registered guide, a person must pass a test to demonstrate that the person is generally qualified to guide. In particular, the person must possess knowledge of game, fish, and guiding laws. If the person is to provide big game hunting services, the person must show knowledge of the game management area in which that person will be hunting. The person must know the terrain, transportation problems, game, and other characteristics of the game management area. Another option for a person to be qualified as a registered guide is to have 25 years of experience as a Class A assistant guide. In both cases, the person must have five years of hunting experience in the state and have been licensed as a Class A assistant guide or assistant guide in the state for a part of each of three years. The person must have favorable recommendations from eight big game hunters. The person must provide proof of financial responsibility up to the amount of \$100,000. The person must be capable of performing the essential duties and have paid the appropriate fees.

Under Alaska Statutes Section 08.54.620, to be qualified as a Class A assistant guide, a person must

have been employed at least three years as any class of guide and have at least 10 years of hunting experience in the state. In the alternative, a person must physically reside in the game management unit in which the person is to be employed, have 15 years hunting experience in the game management unit, and have a written recommendation from a registered guide, state trooper, state fish and wildlife officer, or state fish or game biologist. A Class A guide may not contract to guide or outfit a big game hunter. Instead, a Class A assistant guide is employed by and under the supervision of a registered guide and may supervise a hunt in the field.

Under Alaska Statutes Section 08.54.630, to be qualified as an assistant guide, a person must have legally hunted in the state for two calendar years, possess a first-aid card, and must have a written recommendation from a registered guide, state trooper, state fish and wildlife law enforcement officer, or state fish or game biologist. An assistant guide may not contract to guide or outfit a big game hunt. Instead, an assistant guide must be under the supervision of a registered guide or Class A assistant guide while the assistant guide is in the field.

A state agency, the Department of Community and Economic Development, adopts rules and administers the guide licensing program. In addition, under Alaska Statutes Section 08.54.760, the department collects and maintains detailed hunting records, including a list of all big game hunters who use guiding and outfitting services. The records are made available to state and federal agencies for law enforcement purposes. Aggregated data may be used by the department in reports. For all other purposes, the records are confidential and are not subject to inspection or copying.

If a guide violates a state statute or rule relating to hunting or guiding, the department may impose disciplinary sanctions. These disciplinary sanctions include revocation, suspension, or limitations on the license; censure or reprimand of the licensee; imposition of requirements for remedial professional education to correct deficiencies; imposition of probation requiring a licensee to report regularly to the department; or the imposition of a civil fine not to exceed \$1,000. Under Alaska Statutes Section 08.54.740, a registered guide who contracts to guide or outfit a big game hunt is equally administratively responsible for the violations of an individual while in the course of that individual's employment for the registered guide. Otherwise, the criminal penalty for hunting violations appears to be the same as those for other hunters; however, there are some special criminal provisions applicable to guides.

Under Alaska Statutes Section 08.54.720, there are 17 unlawful acts that apply to guides. These acts include knowingly failing to report the violation of a hunting law or regulation that the guide reasonably believes was committed by a client or an employee of the guide; intentionally obstructing or hindering lawful hunting engaged in by an individual who is not a client of the guide; exceeding the privileges of a particular license; trespassing on private land; knowingly committing or aiding in the commission of a violation of guiding or hunting laws; or permitting the violation of guiding or hunting laws without attempting to prevent it and reporting the violation. It is also an unlawful act for a guide to knowingly personally take big game while accompanying a client in the field. Generally, the remainder of the unlawful acts relate to operating within the parameters of the license.

Most of these violations are punishable as a misdemeanor by a fine of not more than \$10,000 or imprisonment up to one year, or both. Some are punishable as misdemeanors by a fine of not more than \$30,000 or imprisonment up to one year, or both. Upon conviction of an individual for committing an unlawful act, the execution of sentence may not be suspended and probation may not be granted except on the condition that the minimum term of imprisonment is served. The imposition of sentence may not be suspended. In addition, any gun, fishing tackle, boat, aircraft, automobile, or other vehicle, camping gear, or other equipment and paraphernalia used in a violation may be seized by persons authorized to enforce guide and hunting laws.

COLORADO

Colorado has separate definitions for guide and outfitter. Under Colorado Revised Statutes Section 12-55.5-102, a guide is defined as an "individual employed for compensation by an outfitter for the purpose of guiding, leading, or assisting any other individual to and from a given place." An outfitter is defined as an "individual soliciting to provide or providing, for compensation, outfitting services for the purpose of hunting or fishing on land that such individual does not own."

An outfitter is required to be licensed. To be qualified as a licensed outfitter, an individual must have a standard first-aid card, minimum liability insurance, and a bond. The Director of the Division of Registrations in the Department of Regulatory Agencies has the broad authority to promulgate rules relating to outfitters. The director may deny, suspend, revoke, or place on probation an outfitter's license for the violation of laws, rules, or orders relating to hunting, including trespass, advertising, and alcohol laws.

Under Colorado Revised Statutes Section 12-55.5-107, in an administrative proceeding against a licensee, a fine not less than \$300, but not more than \$500, per violation is penalized against the licensee. In

any subsequent administrative proceeding for a new violation, a fine of not less than \$1,000, but not more than \$2,000, is penalized against a licensee. The licensee is required to pay the cost incurred in bringing and conducting the administrative proceeding. In addition, under Section 12-55.5-108, the director may issue a cease and desist order. Under Section 12-55.5-110, items used in a violation of the law may be forfeited and sold.

IDAHO

In Idaho there is a difference in the definitions of outfitter and guide. Under Idaho Official Code Section 36-2102, an outfitter advertises, provides facilities and services for consideration, and maintains equipment or accommodation for compensation for the conduct of hunting animals or birds. A guide is employed by a licensed outfitter to provide personal services for the outfitter which are directly involved with hunting. Under Section 36-2104 both a guide and outfitter must be licensed. Under Section 36-2105 guides and outfitters are self-governed through the Idaho Outfitters and Guides Licensing Board. The board consists of four members appointed by the Governor and one member appointed by the Idaho Fish and Game Commission. Under Section 36-2106 the Governor selects three members on the board which are qualified and licensed outfitters and guides who have not less than five years' experience in the business of outfitting and guiding in Idaho and one member from the public.

Under Idaho Official Code Section 36-21-07, the board may conduct examinations, issue licenses, prescribe and establish rules of procedure, including rules relating to qualifications of training, experience, knowledge of rules of governmental bodies, the condition and type of gear and equipment, and examinations to be given to the applicant. The board may conduct hearings and proceedings to suspend, revoke, or restrict licenses. The board has the power to hire enforcement agents to conduct investigations and enforce laws relating to guides and outfitters.

Under Idaho Official Code Section 36-21-08, to become a licensed outfitter or guide, a person must apply for a license. Applications must be accompanied by proof of eligibility for a bond in the sum of \$10,000 for outfitters. In addition, a fee must be paid. Under Section 36-2112 a licensed outfitter may act as a guide with an outfitter's license.

Under Idaho Official Code Section 36-2113, multiple grounds are listed for revoking or suspending a license, including false advertising, unethical or unprofessional conduct, violation of any state or any federal fish and game law, failure to provide any animal used by the licensed outfitter or guide with humane treatment, or violation of any lawful rule or order of the Outfitters and Guides Licensing Board.

Under Idaho Official Code Section 36-2117, any person convicted for violating the provisions governing guides and outfitters is punished by a fine not less than \$100 or more than \$5,000 or by imprisonment for a term not to exceed 90 days, or both. In addition, under Section 36-2117A the board may provide for civil enforcement through a civil penalty which shall not be less than \$100 or more than \$5,000 for each separate violation. A person found in violation is assessed the board's costs, including the reasonable value of attorney services, for preparing and litigating the case.

MONTANA

Under Montana Code Annotated Section 37-47-101, a guide is "a person who is employed by or who has contracted independently with a licensed outfitter and who accompanies a participant during outdoor recreational activities that are directly related to the activities for which the outfitter is licensed." An outfitter is "a person, except a person providing services on real property that the person owns for the primary pursuit of bona fide agricultural interests, who for consideration provides . . ." animals, facilities, equipment, vehicles, ". . . or personal service for any person to hunt, trap, capture, take, kill, or pursue any game, including fish, and who accompanies that person . . . for any of these purposes."

Under Montana Code Annotated Section 2-15-1773, the outfitters are governed by a board consisting of seven members appointed by the Governor. One member is a big game outfitter, one member is a fishing outfitter, two members are engaged in the fishing or hunting outfitting business, two members are sports persons, and one member is from the general public. Under Section 37-47-201, the board prepares and publishes a pamphlet containing the names and addresses of all licensed outfitters, enforces the provisions of law and rules relating to outfitters, establishes outfitter and guide standards, adopts rules of procedure and rules to administer and enforce the regulation of guides and outfitters, and holds hearings to suspend or revoke licenses of outfitters and guides. In addition, the board adopts rules establishing outfitter reporting requirements. The reports are filed annually and report actual leased acreage actively used by clients during that year and actual leased acreage unused by clients during that year plus other information.

Under Montana Code Annotated Section 37-47-301, there are separate licenses required for a person to be an outfitter or guide. Under Montana Code Annotated Section 37-47-306, both an applicant for an outfitter's or guide's license must pay a fee determined by the board to receive a license.

To be qualified as an outfitter, under Montana Code Annotated Section 37-47-302, a person must own or lease the equipment and facilities that are necessary to provide the services advertised or contracted for with

clients. In addition, a person must demonstrate a respect for and compliance with the laws relating to game and fish, conservation of natural resources, and preservation of the natural ecosystem without pollution of the ecosystem. Under Section 37-47-301, an outfitter must keep and submit required records, obtain proper permits, provide advertised services, and hire guides that are licensed.

Under Montana Code Annotated Section 37-47-305, an applicant for an outfitter's license must take a test. The test may be on federal and state fish and game laws and regulations, practical woodsmanship, general knowledge of big game, field preparation of trophies, care of game meat, use of outfitter's gear as listed on the application, knowledge of area and terrain, knowledge of firearms, federal and state regulations as applicable to outfitting, first aid, boat safety, water safety, and care and safety of livestock.

To be qualified as a guide or professional guide under Montana Code Annotated Section 37-47-303, a person must be endorsed and recommended by an outfitter with a valid license and have a valid wildlife conservation license. In addition, an applicant for a license as a professional guide must meet additional experience requirements and pass a qualifying examination as determined by the board. In addition, under Section 37-47-301, both an outfitter or guide may not hunt in competition with those employing them while acting as an outfitter or guide.

Under Montana Code Annotated Section 37-47-304, an applicant for an outfitter's or guide's license must include, in addition to basic information, the amount of property owned and used, a description of experience, a recommendation from an outfitter if a guide, and written approval of the agency or landowner on whose lands the applicant will provide services.

Montana Code Annotated Section 37-47-315 creates a temporary moratorium on the issuance of a hunting outfitter's license. An outfitter previously licensed may receive a renewal; however, the total number of land-based hunting outfitter licenses may not exceed 543. Under Sections 37-47-316 and 37-47-317 the number of clients that an outfitter may have is established by the board. Under Section 37-47-318, an outfitter pays additional fees for each client and for each potential client.

Under Montana Code Annotated Section 37-47-341, an outfitter's or guide's license may be suspended, revoked, or denied for a number of reasons, including fraud, conviction of felony, conviction as to a violation of state or federal fish and game or outfitting laws or regulations, or misconduct. Under Section 37-47-344 a guide or outfitter that violates any guide or outfitter law or rule is guilty of a misdemeanor that is punishable by a fine not exceeding \$500.

Under Montana Code Annotated Section 37-47-404, a guide or outfitter is equally responsible with any

person or party employing the person as an outfitter for any violation of fish and game laws unless the violation is reported and the guide or outfitter was not a participant. A guide or outfitter who willfully fails or refuses to report a fish or game violation is liable for the penalties. If any guide violates fish or game laws or regulations with actual or implied knowledge of an outfitter, the outfitter is legally responsible for the violation if the outfitter fails to report the violation to the proper authority. In addition, an outfitter or guide must report any violation or suspected violation of fish or game laws.

NEW MEXICO

New Mexico Statutes Annotated Sections 17-2A-1 et seq. provides for rulemaking authority for the licensing of guides and outfitters. The law provides that a point system for the suspension or revocation of a guide or outfitter registration must be developed by the State Game Commission. New Mexico's rules define a guide as "any person employed or contracted by a registered outfitter to furnish personal services for the purpose of hunting or taking game animals . . ." An outfitter is defined as "any person who advertises or holds himself out for hire to the public or accepts compensation for providing . . . equipment or services for hunting activities." A landowner or his agent who is guiding or outfitting on the landowner's property or pursuant to a landowner's permit is exempted from the registration process.

To be an outfitter, an applicant must have operated as a registered guide for three years, have been granted an interim outfitter's registration, or submitted evidence of three years of outfitting experience or other substantial knowledge of guiding or outfitting. The applicant must pass a department-approved examination with a minimum passing grade of 70 percent. An applicant must have completed a certified hunter education course as well. Outfitter applicants must have insurance for a minimum of \$500,000.

There are certain requirements placed upon outfitters. An outfitter must have a guide-to-client ratio of four to one or fewer and must report illegal outfitting and guiding services or any violation of related federal or state laws or any violation of regulations to the State Game Commission. In addition, outfitters may not willfully allow a violation of law by their clients.

An applicant for a guide's registration must pay a registration fee and pass a department-approved examination. Guides must report illegal activity like outfitters and must work under the supervision of an outfitter.

New Mexico has a point system under which a guide or outfitter accumulating 20 or more points within three consecutive years must be considered for revocation or suspension. All administrative violations are punished in the same manner as other licensed activities, and criminal violations are treated in the same manner as for other violators. Under New Mexico

Statutes Annotated Section 17-2-10, a first criminal violation is punishable by up to six months' imprisonment and a fine particular to each offense ranging from \$200 to \$2,000. For a second offense, the punishment is up to 364 days' imprisonment and a fine ranging from \$400 to \$4,000. For a third or subsequent offense, the punishment is up to 364 days', but not less than 90 days', imprisonment and a fine ranging from \$1,000 to \$6,000.

OREGON

Oregon defines an outfitter and guide in the same manner. Under Oregon Revised Statutes Section 704.010, an outfitter or guide is "any person who provides, or who offers to provide, for compensation or other pecuniary gain outfitting and guiding services" which include "leading, protecting, instructing, training, cooking, packing, guiding, transporting, supervising, interpreting, or otherwise assisting any person in the conduct of outdoor recreational activities." Under Section 704.020 any person who acts as a guide or outfitter must be registered. To be registered, the person must pay a registration fee, have completed the American Red Cross multimedia course, have proof of liability insurance in an amount of not less than \$300,000 combined single limit per occurrence general liability coverage, and describe services, equipment, and experience. A person who is registered as an outfitter or guide and who accepts deposits from clients in excess of \$100 is required to have a bond or other financial security in the amount of \$5,000.

The civil penalty for violating guide and outfitting laws may not be more than \$500 per violation, and the criminal penalties are Class B misdemeanors.

SOUTH DAKOTA

South Dakota does not license guides or outfitters; however, South Dakota Codified Laws Section 41-4-12 defines a hunting guide as "a person who holds him or herself out to the public as a hunting guide and, for compensation or remuneration, directs or provides services to any person for the purpose of hunting any wild animal." This definition is needed because under Section 41-4-13, hunting guides are prohibited from guiding on state-owned or state-managed game production areas, state parks, recreation areas, and lakeside use areas, federal land leased or under agreement to the state which is posted as a game production area and managed for wildlife purposes, or private land leased or under agreement with the Game, Fish and Parks Department for the purposes of providing public access or on highways or other public rights of way within the state.

WYOMING

Wyoming defines outfitters and professional guides separately. Under Wyoming Statutes Annotated Section 23-2-406, an outfitter is "a person including a hunting club who advertises or holds himself out to the public for hire or remuneration to provide guide or packing services for the purpose of taking any big or trophy game animal . . ." and does not include any landowner providing outfitter services on private lands owned or leased by the landowner. The landowner is defined as a "person, firm or corporation holding title to, or occupying under a contract of purchase, agricultural land or any persons whose family owns at least a majority of the stock in a Wyoming corporation . . . and the land is used primarily for agricultural purposes." A professional guide is a person employed by or operating under an independent contract with a licensed outfitter.

Under Wyoming Statutes Annotated Section 23-2-407, an outfitter or guide must be licensed by the Wyoming State Board of Outfitters and Professional Guides. Under Section 23-2-428 this board consists of seven members. Two members are appointed by the Governor from the public at large and who are not employed by and do not receive any income or compensation from outfitters or professional guides, one member is appointed by the Wyoming Game and Fish Commission, and four members represent a variety of types and sizes of outfitters appointed by the Governor from a list of nominations submitted by licensed outfitters in Wyoming. The board examines applicants, conducts hearings, imposes reasonable restrictions and limitations upon licensees, and designates areas within the state in which a licensee may conduct outfitting or professional guiding.

Under Wyoming Statutes Annotated Section 23-2-411, an outfitter must be experienced as a professional guide for not less than one year or have similar experience and possess, through ownership or lease, equipment and facilities necessary for the type of services the applicant offers. Under Section 23-2-412 a professional guide must be employed by or be operating under an independent contract with a licensed outfitter.

Under Wyoming Statutes Annotated Section 23-2-413, each applicant for an outfitter's or guide's license must submit to examination. The applicant must show sufficient knowledge of the services to be provided under the license, the ability of the applicant to perform services under the license in a safe manner, and any special knowledge applicable to the particular type of license. In addition, liability insurance is required in an amount not less than \$25,000 for property damage, for personal injury or death not less than \$100,000 for injury to or death of one person, and not less than \$300,000 for all injuries or deaths from any one occurrence.

Under Wyoming Statutes Annotated Section 23-2-416, the board may suspend or revoke a license for a number of acts, including violation of any act or rule of the board, violation of state or federal law, fraud or misrepresentation, or inhuman treatment of any animal. Under Section 23-2-415 an outfitter or guide is required to promptly report to the board any violation of federal or state law or regulation relating to wildlife, game, or fish observed by the outfitter or guide.

Under Section 23-2-417 an outfitter or guide violating outfitter- and guide-related law is guilty of a misdemeanor punishable by a fine not to exceed \$2,000, imprisonment for not more than one year, or both.