

Fifty-seventh
Legislative Assembly
of North Dakota

ENGROSSED SENATE BILL NO. 2394

Introduced by

Senators Cook, Fischer, Stenehjem

Representatives Hanson, Porter

1 A BILL for an Act to create and enact two new sections to chapter 20.1-01 and three new
2 subsections to section 20.1-03-12 of the North Dakota Century Code, relating to fee hunting
3 and guide license fees; and to amend and reenact section 20.1-01-02, subsection 17 of section
4 20.1-02-05, section 20.1-03-11.2, subsections 34, 35, 36, and 42 of section 20.1-03-12, section
5 20.1-03-36, and subsections 7, 8, and 9 of section 57-39.2-01 of the North Dakota Century
6 Code, relating to licensing of outfitters and guides and sales tax definitions.

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

8 **SECTION 1. AMENDMENT.** Section 20.1-01-02 of the 1999 Supplement to the North
9 Dakota Century Code is amended and reenacted as follows:

10 **20.1-01-02. Definitions.** In this title, unless the context or subject matter otherwise
11 requires:

- 12 1. "Afield" means being away from one's home or camp. The term does not include
13 driving or being in actual physical control of a motor vehicle in violation of section
14 39-08-01 or equivalent ordinance.
- 15 2. "Any part thereof" or "the parts thereof" includes the hide, horns, or hoofs of any
16 animal specified and the plumage, skin, and every other part of any bird specified.
- 17 3. "Associated equipment" means:
 - 18 a. Any system, part, or component of a boat as originally manufactured or any
19 similar part or component manufactured or sold for replacement, repair, or
20 improvement of such system, part, or component;
 - 21 b. Any accessory or equipment for, or appurtenance to, a boat; and
 - 22 c. Any marine safety article, accessory, or equipment intended for use by a
23 person on board a boat; but
 - 24 d. Excluding radio equipment.

- 1 4. "Big game" means deer, moose, elk, bighorn sheep, mountain goats, and
2 antelope.
- 3 5. "Boat" means any vessel:
4 a. Manufactured or used primarily for noncommercial use;
5 b. Leased, rented, or chartered to another for the latter's noncommercial use; or
6 c. Engaged in the carrying of six or fewer passengers.
- 7 6. "Confiscate" or "confiscated" means to hold subject to the order of a court of
8 competent jurisdiction.
- 9 7. "Department" means the game and fish department.
- 10 8. "Deputy director" means the deputy director of the department.
- 11 9. "Director" means the director of the department.
- 12 10. "Endangered species" means any species whose prospects of survival or
13 recruitment within the state are in jeopardy due to any of the following factors:
14 a. The destruction, drastic modification, or severe curtailment of its habitat.
15 b. Its overutilization for scientific, commercial, or sporting purposes.
16 c. The effect on it of disease, pollution, or predation.
17 d. Other natural or manmade factors affecting its prospects of survival or
18 recruitment within the state.
19 e. Any combination of the foregoing factors.
20 The term also includes any species classified as endangered pursuant to the
21 Endangered Species Act of 1973, Public Law 93-205.
- 22 11. "Established road or trail" means any public highway or road, improved or
23 otherwise, dedicated for public ingress or egress, or any other road or trail
24 normally used for travel but does not include temporary trails across cultivated land
25 used for agricultural purposes.
- 26 12. "Fur-bearers" includes mink, muskrats, weasels, wolverines, otters, martens,
27 fishers, kit or swift foxes, beavers, raccoons, badgers, wolves, coyotes, bobcats,
28 lynx, mountain lions, black bears, and red or gray foxes.
- 29 13. "Game birds" includes all varieties of geese, brant, swans, ducks, plovers, snipes,
30 woodcocks, grouse, sagehens, pheasants, Hungarian partridges, quails,
31 partridges, cranes, rails, coots, wild turkeys, mourning doves, and crows.

- 1 14. ~~"Guide" or "outfitter" means any resident who holds that person out to the public as~~
2 ~~a guide or outfitter, and who provides, for compensation, transportation,~~
3 ~~equipment, arrangement of lodging, or that person's own or another's personal~~
4 ~~services for the primary purpose of assisting a person or persons to locate or catch~~
5 ~~fish or to locate, pursue, or hunt small game, big game, or fur bearers~~ is employed
6 by a licensed outfitter to furnish personal services for the conduct of outdoor
7 recreational activities directly related to the conduct of activities for which the
8 employing outfitter is licensed. Nonresidents are not entitled to act as guides ~~or~~
9 ~~outfitters~~ in this state.
- 10 15. "Gun dogs" includes any dog used to hunt protected wildlife.
- 11 16. "Harmful wild birds" includes blackbirds, magpies, English sparrows, and starlings.
- 12 17. "Harmless wild birds" includes all wild birds not defined herein as "harmful wild
13 birds" or "game birds".
- 14 18. "Hunt" or "hunting" means shooting, shooting at, pursuing, taking, attempting to
15 take, or killing any game animals and game birds; searching for or attempting to
16 locate or flush any game animals and game birds; luring, calling, or attempting to
17 attract game animals and game birds; hiding for the purpose of taking or
18 attempting to take game animals and game birds; and walking, crawling, or
19 advancing toward wildlife while possessing implements or equipment useful in the
20 taking of game animals or game birds. The term does not include possessing or
21 using photographic equipment.
- 22 19. "Lessee" means a person renting the land for agricultural purposes and a person
23 defined as an outfitter in this section.
- 24 20. "Manufacturer" means any person engaged in:
25 a. The manufacture, construction, or assembly of boats or associated
26 equipment.
27 b. The manufacture or construction of components for boats and associated
28 equipment to be sold for subsequent assembly.
29 c. The importation into the state for sale of boats, associated equipment, or
30 components thereof.

- 1 ~~20.~~ 21. "Motorboat" means any vessel propelled by machinery, whether or not the
2 machinery is the principal source of propulsion. The term does not include a
3 vessel having a valid marine document issued by the bureau of customs of the
4 United States government or any federal agency successor thereto.
- 5 ~~21.~~ 22. "Motor-driven vehicle" means any land vehicle, with or without wheels, that is
6 propelled by any motor.
- 7 ~~22.~~ 23. "Operate" means to navigate or otherwise use a motorboat or a vessel.
- 8 ~~23.~~ 24. "Outfitter" means a person who, while engaging in any of the acts enumerated in
9 this subsection in any manner, advertises or otherwise holds that person out to the
10 public for hire; provides facilities or services for consideration; and maintains,
11 leases, or otherwise uses equipment or accommodations for compensation for the
12 conduct of outdoor recreational activities including hunting animals or birds and
13 fishing on lakes, reservoirs, rivers, and streams. Any person operating as an
14 outfitter shall designate one or more individuals as agents who are, together with
15 the licensed outfitter, to be held responsible for the conduct of the licensed
16 outfitter's operations. An outfitter may act as a guide. A nonresident is not entitled
17 to act as an outfitter in this state.
- 18 25. "Owner" means a person, other than a lienholder, having the property in or title to
19 a motorboat. The term includes a person entitled to the use or possession of a
20 motorboat subject to an interest in another person, reserved or created by
21 agreement and securing payment or performance of an obligation, but the term
22 excludes a lessee under a lease not intended as security.
- 23 ~~24.~~ 26. "Passenger" means every person carried on board a vessel other than:
24 a. The owner or the owner's representative.
25 b. The operator.
26 c. Bona fide members of the crew engaged in the business of the vessel who
27 have contributed no consideration for their carriage and who are paid for their
28 services.
29 d. Any guest on board a vessel which is being used exclusively for pleasure
30 purposes who has not contributed any consideration, directly or indirectly, for
31 that person's carriage.

- 1 ~~25.~~ 27. "Person" includes every partnership, association, corporation, and limited liability
2 company. No violation of this title may be excused because it was done as the
3 agent or employee of another, nor because it was committed by or through an
4 agent or employee of the person charged.
- 5 ~~26.~~ 28. "Personal watercraft" means a motorboat that is powered by an inboard motor
6 powering a water jet pump or by an inboard or outboard marine engine and which
7 is designed to be operated by a person sitting, standing, or kneeling on the craft,
8 rather than in a conventional manner of sitting or standing inside a motorboat.
- 9 ~~27.~~ 29. "Possession" means control, actual possession, and constructive possession of
10 the article or thing specified.
- 11 ~~28.~~ 30. "Private fish hatchery" means a body of water, whether natural or artificial, and any
12 other facilities used, maintained, or operated by any private person, firm,
13 corporation, or limited liability company for the propagation and production of fish
14 for sale or planting in other waters. Except in the case of trout, walleye, northern
15 pike, and crappie, which may be raised in a private fish hatchery without the
16 director's approval, the director may, by rule, regulate the species of fish which
17 may be raised in a private fish hatchery. No waters stocked by any state or federal
18 governmental agency may be considered a private fish hatchery.
- 19 ~~29.~~ 31. "Public waters" means waters to which the general public has a right to access.
- 20 ~~30.~~ 32. "Resident" means any person who has actually lived within this state or maintained
21 that person's home therein for at least six months immediately preceding the date
22 that residence is to be determined. A "nonresident" is any person who has not
23 done so.
- 24 ~~31.~~ 33. "Resident species" means any species nearly all of whose individuals in this state
25 are located within this state for at least three-fourths of annual cycle of the species.
- 26 ~~32.~~ 34. "Retrieve" means to have taken possession and made ready for transportation.
- 27 ~~33.~~ 35. "Sell" and "sale" means any sale or offer to sell, or possession with intent to sell,
28 use, or dispose of, the article or thing specified, contrary to law.
- 29 ~~34.~~ 36. "Shooting preserve" or "preserve" means any privately owned or leased acreage
30 [hectarage] on which hatchery-raised game birds are released to be hunted for a
31 fee over an extended season.

~~35.~~ 37. "Sinkbox" or "sunken device" means a raft or any type of low floating device having a depression that affords a hunter a means of concealing that person below the surface of the water.

~~36.~~ 38. "Slow or no wake speed" means the slowest possible speed necessary to maintain steerage.

~~37.~~ 39. "Small game" includes all game birds and tree squirrels.

~~38.~~ 40. "Species" includes any subspecies of wildlife and any other group of wildlife of the same species or smaller taxa in common spatial arrangement that interbreed when mature.

~~39.~~ 41. "Threatened species" means any species which is likely to become an endangered species within the foreseeable future and includes any species classified as threatened pursuant to the Endangered Species Act of 1973, Public Law 93-205.

~~40.~~ 42. "Undocumented vessel" means a vessel which does not have a valid marine document as a vessel of the United States.

~~41.~~ 43. "Vessel" means any watercraft, other than a seaplane on the water, used or capable of being used as a means of transportation on water.

~~42.~~ 44. "Waterfowl" includes all varieties of geese, brant, swans, ducks, rails, and coots.

~~43.~~ 45. "Waters" when not qualified means waters not open to the general public.

~~44.~~ 46. "Waters of the state" means all waters of this state, including boundary waters. This title extends to and is in force and effect over, upon, and in all such waters.

~~45.~~ 47. "Wildlife" means any member of the animal kingdom including any mammal, fish, bird (including any migratory, nonmigratory, or endangered bird for which protection is also afforded by treaty or other international agreement), amphibian, reptile, mollusk, crustacean, or other invertebrate, and includes any part, product, egg, or offspring thereof, or the dead body or parts thereof. Wildlife does not include domestic animals as defined by section 36-01-00.1 or birds or animals held in private ownership.

SECTION 2. A new section to chapter 20.1-01 of the North Dakota Century Code is created and enacted as follows:

Fee hunting - Posting. If a landowner or lessee charges a fee to hunt on that person's land, the landowner or lessee must possess a valid outfitter's license and must post the land in

1 the same manner as required by section 20.1-01-17 indicating that the land is open for hunting
2 for a fee. An individual hunting on land that is posted as open for hunting for a fee must have in
3 that individual's possession all required hunting licenses and a sales tax receipt indicating the
4 sales tax permit number of the outfitter furnishing access to the land.

5 **SECTION 3.** A new section to chapter 20.1-01 of the North Dakota Century Code is
6 created and enacted as follows:

7 **Fee hunting - Information supplied to director.** Within thirty days of the close of a
8 hunting season, an outfitter charging a fee to hunt on that person's land must file with the
9 director a register containing a record of all hunting fees collected on that land, the amount of
10 fees collected on that land, from whom the fees were collected, and any other information
11 required by the director. Information filed with the director under this section is not an open
12 record but must be shared with the tax commissioner.

13 **SECTION 4. AMENDMENT.** Subsection 17 of section 20.1-02-05 of the 1999
14 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15 17. Subject to ~~the provisions of~~ chapter 28-32, adopt rules for the licensing of guides
16 ~~or~~ and outfitters, and may require records and reports as the director determines
17 necessary. The director may, after due hearing as provided in chapter 28-32,
18 revoke or refuse to renew the license of ~~any~~ a person who violates the rules or
19 fails to provide the records and reports. ~~Any~~ A person who acts as a guide or
20 outfitter without a license is guilty of a class B misdemeanor.

21 **SECTION 5. AMENDMENT.** Section 20.1-03-11.2 of the 1999 Supplement to the
22 North Dakota Century Code is amended and reenacted as follows:

23 **20.1-03-11.2. ~~Guides and outfitters~~ Outfitters - White-tailed deer licenses - Fees.**

24 The governor shall make one-half of the antlered white-tailed deer licenses and permits
25 allocated to nonresidents under subsection 4 of section 20.1-03-11, up to a maximum of one
26 hundred licenses, available to ~~guides or~~ outfitters licensed in this state. ~~A guide or~~ An outfitter
27 may not purchase or obtain more than five white-tailed deer licenses under this section in any
28 one year. ~~A guide or~~ An outfitter shall pay the fee required for a white-tailed deer license sold
29 to ~~guides or~~ outfitters and provided by them to nonresidents for each license purchased under
30 this section. ~~A guide or~~ An outfitter may provide to nonresidents, for compensation, big game
31 guiding and outfitting services and one white-tailed deer license per nonresident as provided in

this section to hunt white-tailed deer in the manner, at the places, and during the times the governor prescribes by proclamation.

SECTION 6. AMENDMENT. Subsections 34, 35, 36, and 42 of section 20.1-03-12 of the 1999 Supplement to the North Dakota Century Code are amended and reenacted as follows:

34. For an annual outfitter's license ~~to guide~~ for both hunting and fishing, one hundred fifty dollars.

35. For an annual outfitter's license ~~to guide~~ only for hunting, one hundred dollars.

36. For an annual outfitter's license ~~to guide~~ only for fishing, one hundred dollars.

42. For a white-tailed deer license sold to ~~guides or~~ outfitters and provided by them to nonresidents, two hundred fifty dollars.

SECTION 7. Three new subsections to section 20.1-03-12 of the 1999 Supplement to the North Dakota Century Code are created and enacted as follows:

For an annual license to guide for both hunting and fishing, one hundred dollars.

For an annual license to guide only for hunting, fifty dollars.

For an annual license to guide only for fishing, fifty dollars.

SECTION 8. AMENDMENT. Section 20.1-03-36 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

20.1-03-36. Certified guides and outfitters - Requirements. An individual may not be issued a certified guide license without first providing the director:

1. Proof that the individual is covered by general liability insurance against loss or expense due to accident or injury from guiding ~~or outfitting~~ services, at a minimum of one hundred thousand dollars per individual and three hundred thousand dollars per incident;
2. Proof that the individual is currently certified in adult cardiopulmonary resuscitation or its equivalent; and
3. Proof that the individual is currently certified in standard first aid or its equivalent.

SECTION 9. AMENDMENT. Subsections 7, 8, and 9 of section 57-39.2-01 of the North Dakota Century Code are amended and reenacted as follows:

7. a. "Retail sale" or "sale at retail" means the sale, including the leasing or renting, to a consumer or to any person for any purpose, other than for processing or for resale, of ~~tangible~~:

(1) Tangible personal property; ~~the sale of steam~~

(2) Steam, gas, and communication service to retail consumers or users; ~~the sale of vulcanizing~~

(3) Vulcanizing, recapping, and retreading services for tires; ~~the furnishing of bingo~~

(4) Bingo cards; ~~the ordering~~

(5) Ordering, selecting, or aiding a customer to select any goods, wares, or merchandise from any price list or catalog, which the customer might order, or be ordered for such customer to be shipped directly to such customer; ~~the sale or furnishing of hotel~~

(6) Hotel, motel, or tourist court accommodations, tickets, or admissions to any place of amusement, athletic event, or place of entertainment including the playing of any machine for amusement or entertainment in response to the use of a coin; ~~and the sales of magazines~~

(7) Access or membership giving the purchaser the right to hunt on land posted under section 2 of this Act and outfitting services as defined under subsection 23 of section 20.1-01-02; and

(8) Magazines and other periodicals.

b. By the term "processing" is meant any tangible personal property including containers which it is intended, by means of fabrication, compounding, manufacturing, producing, or germination shall become an integral or an ingredient, or component part of other tangible personal property intended to be sold ultimately at retail.

c. The sale of an item of tangible personal property for the purpose of incorporating it in or attaching it to real property must be considered as a sale of tangible personal property for a purpose other than for processing; the delivery of possession within the state of North Dakota of tangible personal property by a wholesaler or distributor to an out-of-state retailer who does not

1 hold a North Dakota retail sales tax permit or to a person who by contract
2 incorporates such tangible personal property into, or attaches it to, real
3 property situated in another state may not be considered a taxable sale if
4 such delivery of possession would not be treated as a taxable sale in that
5 state.

6 d. As used in this subsection the word "consumer" includes any hospital,
7 infirmary, sanatorium, nursing home, home for the aged, or similar institution
8 that furnishes services to any patient or occupant.

9 e. The sale of an item of tangible personal property to a purchaser who rents or
10 leases it to a person under a finance leasing agreement over the term of
11 which the property will be substantially consumed must be considered a retail
12 sale if the purchaser elects to treat it as such by paying or causing the
13 transferor to pay the sales tax thereon to the commissioner on or before the
14 last day on which payments may be made without penalty as provided in
15 section 57-39.2-12.

16 8. a. "Retailer" includes every ~~person~~;

17 (1) Person engaged in the business of leasing or renting hotel, motel, or
18 tourist court accommodations; ~~and every person~~;

19 (2) Person engaged in the business of selling tangible goods, wares, or
20 merchandise at retail; ~~or furnishing of~~;

21 (3) Person furnishing steam, gas, and communication services; ~~or~~;

22 (4) Person furnishing tickets or admissions to places of amusement,
23 entertainment, and athletic events including the playing of any machine
24 for amusement or entertainment in response to the use of a coin; ~~or~~;
25 (5) Person furnishing access or membership giving the purchaser the right
26 to hunt on land posted under section 2 of this Act or outfitting services
27 as defined under subsection 23 of section 20.1-01-02;

28 (6) Person furnishing magazines; or other periodicals; ~~any organization~~

29 (7) Organization licensed by the attorney general to conduct bingo games
30 pursuant to section 53-06.1-03; ~~and includes any person~~

(8) Person as herein defined who by contract or otherwise agrees to furnish for a consideration a totally or partially finished product consisting in whole or in part of tangible personal property subject to the sales tax herein provided, and all items of tangible personal property entering into the performance of such contract as a component part of the product agreed to be furnished under said contract shall be subject to the sales tax herein provided and the sales tax thereon shall be collected by the contractor from the person for whom the contract has been performed in addition to the contract price agreed upon, and shall be remitted to the state in the manner provided in this chapter; and ~~shall include the state~~

(9) State or any municipality furnishing steam, gas, or communication service to members of the public in its proprietary capacity.

b. For the purpose of this chapter, retailer shall also include every clerk, auctioneer, agent, or factor selling tangible personal property owned by any other retailer.

c. A retailer also includes every person who engages in regular or systematic solicitation of a consumer market in this state by the distribution of catalogs, periodicals, advertising flyers, or other advertising, or by means of print, radio or television media, by mail, telegraphy, telephone, computer data base, cable, optic, microwave, or other communication system.

9. "Sale" means any transfer of title or possession, exchange or barter, conditional or otherwise, in any manner or by any means whatever, for a consideration, and includes ~~the~~:

a. The furnishing or service of steam, gas, or communication, ~~the~~;

b. The furnishing of bingo cards, ~~the~~;

c. The furnishing of hotel, motel, or tourist court accommodations, ~~the~~;

d. The furnishing of tickets or admissions to any place of amusement, athletic event, or place of entertainment including the playing of any machine for amusement or entertainment in response to the use of a coin, ~~and sales~~;

- 1 e. The furnishing of access or membership giving the purchaser the right to hunt
2 on land posted under section 2 of this Act or outfitting services as defined
3 under subsection 23 of section 20.1-01-02; and
4 f. The sale of magazines and other periodicals. Provided, the words
5 "magazines and other periodicals" as used in this subsection do not include
6 newspapers nor magazines or periodicals that are furnished free by a
7 nonprofit corporation or organization to its members or because of payment
8 by its members of membership fees or dues.