

BEFORE THE BOARD OF OUTFITTERS  
DEPARTMENT OF LABOR AND INDUSTRY  
STATE OF MONTANA

In the matter of the amendment of ) NOTICE OF PUBLIC HEARING ON  
ARM 24.171.410 outfitter assistants ) PROPOSED AMENDMENT  
and 24.171.2301 unprofessional )  
conduct and misconduct )

TO: All Concerned Persons

1. On April 12, 2018, at 10:00 a.m., a public hearing will be held in the Small Conference Room, 301 South Park Avenue, 4th Floor, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Outfitters no later than 5:00 p.m., on April 5, 2018, to advise us of the nature of the accommodation that you need. Please contact Steve Gallus, Board of Outfitters, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2370; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; or [dlibsout@mt.gov](mailto:dlibsout@mt.gov) (board's e-mail).

3. GENERAL STATEMENT OF REASONABLE NECESSITY: The 2017 Montana Legislature enacted Chapter 217, Laws of 2017 (House Bill 289), an act revising outfitter's assistant laws. The bill became effective October 1, 2017. The board determined it is reasonably necessary to amend existing rules to coincide with the 2017 legislative changes and implement the legislation by further defining emergencies for which outfitters may hire outfitter's assistants. When defining emergency, the board determined that outfitters cannot be the cause of the emergency triggering the need to hire outfitter's assistants. Using already established concepts of "cause" from other areas of law, the board may determine, on a case-by-case basis, whether the outfitter caused the emergency.

Additionally, House Bill 289 specifically required that board rules identify the data on outfitter's assistant use that may be collected. The board is also amending the rules to clarify the data that outfitters must submit to the board and further reorganizing the rules to clearly delineate for outfitters the maintenance and disclosure of this information. Implementation citations are being amended to accurately reflect the statutes implemented through the rules. Where additional specific bases for a proposed action exist, the board will identify those reasons immediately following that rule.

4. The rules proposed to be amended are as follows, stricken matter interlined, new matter underlined:

24.171.410 OUTFITTER'S ASSISTANTS (1) An outfitter may only employ or contract with an outfitter's assistant in an emergency. Emergency, as defined in 37-47-101, MCA, includes unforeseen staffing shortages, not caused by the outfitter's action or inaction, for which employing or contracting with an outfitter's assistant is necessary to protect the public health, safety, and welfare while serving a client.

(2) Before an outfitter's assistant serves a client, the outfitter shall:

(a) disclose to each client that the outfitter's assistant is not a licensed guide or outfitter;

(b) explain the emergency causing the need to employ or contract with the outfitter's assistant; and

(c) disclose whether the outfitter's assistant has received first aid certification.

(4) (3) For each outfitter's assistant employed or contracted with by an outfitter, the following documentation procedures shall be followed:

(a) An outfitter shall document the employment or retention of each outfitter's assistant in writing. The outfitter's assistant shall keep a copy of the employment documentation at all times during the service period. Within 15 days of the first date the outfitter's assistant serves a client, the outfitter shall submit to the department a copy of the employment documentation and fee required in ARM 24.171.401. The writing employment documentation shall include each of the following characteristics:

(i) remains the same.

~~(ii) an explanation for the emergency replacement of a licensed guide with the outfitter assistant;~~

(iii) remains the same but is renumbered (ii).

~~(iv) (iii) the name, date of birth, address, telephone number, and, if available, e-mail address of the outfitter's assistant; and~~

(v) remains the same but is renumbered (iv).

~~(b) The outfitter assistant shall keep a copy of the documentation at all times during the service period.~~

~~(c) Within 15 days of the first date the outfitter assistant serves any client for the outfitter under the particular emergency use, the outfitter shall send the documentation to the board's official e-mail address or facsimile number, or shall deposit it in the U.S. mail to the board's address, or shall personally deliver it to the board office.~~

(b) Within 15 days of the first date the outfitter's assistant serves any client, the outfitter shall submit the following information to the department:

(i) an explanation of the emergency causing the need to employ or contract with the outfitter's assistant;

(ii) an explanation for why the outfitter's assistant could not obtain a guide license before serving a client;

(iii) a statement indicating whether the outfitter's assistant has applied for a guide license;

(iv) confirmation that the outfitter properly disclosed to the client information required by this rule; and

(v) an affidavit by the outfitter that the outfitter has complied with all laws and rules relating to outfitter's assistants.

(c) Outfitters shall maintain a copy of this documentation and make the records available at all times in accordance with ARM 24.171.408 following the provision of services by the outfitter's assistant.

~~(2) Before an outfitter assistant serves a client, the outfitter shall disclose to each client that the outfitter assistant is not a licensed guide or outfitter and shall also disclose whether the outfitter assistant has received first aid certification.~~

~~(3)~~ (4) Unless otherwise authorized under ARM 24.171.405, regarding booking agents and advertising, an outfitter's assistant may not:

~~(a) be designated by an outfitter to collect fees from clients;~~

(b) and (c) remain the same but are renumbered (a) and (b).

(4) (5) Except where an outfitter's assistant's conduct is further limited by statute or rule, the standards of conduct set forth in ARM 24.171.2301 applicable to guides shall also be observed by the outfitter's assistant.

AUTH: 37-1-131, 37-47-201, MCA

IMP: 37-1-131, 37-47-101, 37-47-201, 37-47-301, 37-47-325, 37-47-404, 37-47-405, MCA

24.171.2301 UNPROFESSIONAL CONDUCT AND MISCONDUCT (1) A violation of (1) or (3) by an outfitter, or (2) or (3) by a guide or outfitter's assistant is misconduct, specified as a basis for disciplinary action under 37-47-341, MCA. Such violation is also determined by the board to be unprofessional conduct, as provided in 37-1-319, MCA, specified as a ground for disciplinary action under 37-1-312, MCA. A violation of this rule may result in any sanction provided by 37-1-312 or 37-47-341, MCA. Unprofessional conduct by an outfitter's assistant is grounds for disciplinary action against the outfitter who employed or contracted with the outfitter's assistant. An outfitter shall:

(a) remains the same.

(b) not conduct any services or allow services to be conducted by a supervised guide or outfitter's assistant on private or public land, except legal transportation across such lands, without first having obtained written permission from the landowner or written authorization from the agency administering public land, unless the landowner or agency does not require such permission;

(c) not provide services or allow services to be conducted by a supervised guide or outfitter's assistant to clients outside the boundaries of the outfitter's approved operations plan;

(d) through (l) remain the same.

(m) obtain and maintain a reasonable degree of supervision over each guide and outfitter's assistant to ensure that the services offered are being provided in accordance with the laws and rules, with particular regard to those laws and rules pertaining to the health, safety, and welfare of the participants, the public, and landowners;

(n) through (p) remain the same.

(q) not use a guide with an inactive license; ~~and~~

(r) comply with all laws and rules relating to outfitter's assistants; and

(r) remains the same but is renumbered (s).

(2) A guide Guides shall:

- (a) through (d) remain the same.
- (3) All licensees shall:
  - (a) through (c) remain the same.
  - (d) report to the board office, at their earliest opportunity, any violation of fish and game laws or outfitter, ~~and guide,~~ and outfitter's assistant laws of which they have knowledge;
  - (e) and (f) remain the same.
  - (g) not harass, assault, or abuse clients, employees, outfitters, guides, or ~~professional guides~~ outfitter's assistants, or members of the general public, verbally or otherwise;
  - (h) remains the same.
  - (i) produce their current license or employment documentation required by ARM 24.171.410 at the request of law enforcement or a representative of the board;
  - (j) through (p) remain the same.
  - (q) ~~not fail to~~ comply with the statutes and rules applicable to licensees of the board.

AUTH: 37-1-131, 37-1-319, 37-47-201, MCA

IMP: 37-1-312, 37-1-316, 37-1-319, 37-47-201, 37-47-325, 37-47-341, MCA

REASON: During the legislative session and the board's consideration of rule amendments to implement House Bill 289, members of the public expressed concern that outfitters may be abusing their ability to employ or contract with outfitter's assistants. To address these concerns, the board is amending this rule to clarify that outfitters may be held accountable for violating outfitter's assistant laws, that outfitter's assistants are held to the same standard of conduct as licensed guides while serving clients, and that employing outfitters may be held accountable for unprofessional conduct committed by outfitter's assistants. Other amendments to this rule provide clarity in language and ease of use for the reader.

5. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Board of Outfitters, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or e-mail to [dlibsout@mt.gov](mailto:dlibsout@mt.gov), and must be received no later than 5:00 p.m., April 13, 2018.

6. An electronic copy of this notice of public hearing is available at [www.outfitter.mt.gov](http://www.outfitter.mt.gov) (department and board's web site). Although the department strives to keep its web sites accessible at all times, concerned persons should be aware that web sites may be unavailable during some periods, due to system maintenance or technical problems, and that technical difficulties in accessing a web site do not excuse late submission of comments.

7. The board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this board. Persons who wish to have their name added to the list shall make a written request that includes the name, e-

mail, and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding all board administrative rulemaking proceedings or other administrative proceedings. The request must indicate whether e-mail or standard mail is preferred. Such written request may be sent or delivered to the Board of Outfitters, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; faxed to the office at (406) 841-2305; e-mailed to [dlibsout@mt.gov](mailto:dlibsout@mt.gov); or made by completing a request form at any rules hearing held by the agency.

8. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted on August 3, 2017, by phone.

9. Regarding the requirements of 2-4-111, MCA, the board has determined that the amendment of ARM 24.171.410 and 24.171.2301 will not significantly and directly impact small businesses.

Documentation of the board's above-stated determination is available upon request to the Board of Outfitters, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2370; facsimile (406) 841-2305; or to [dlibsout@mt.gov](mailto:dlibsout@mt.gov).

10. Steve Gallus, Executive Officer, has been designated to preside over and conduct this hearing.

BOARD OF OUTFITTERS  
JOHN WAY, CHAIRPERSON

/s/ DARCEE L. MOE  
Darcee L. Moe  
Rule Reviewer

/s/ GALEN HOLLENBAUGH  
Galen Hollenbaugh, Commissioner  
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State March 6, 2018.