

**OUTFITTER AND GUIDES BOARD
LAWS
AS OF THE 2019 LEGISLATIVE SESSION**

**TITLE 37, CHAPTER 47
OUTFITTERS AND GUIDES**

This version of the Montana Code Annotated is provided as a tool for board members and department staff. In case of inconsistencies, the text in the West Publishing hardbound copy or the MCA online version from Legislative Services is the official rule text and will prevail.

CHAPTER 47 OUTFITTERS AND GUIDES

Chapter Compiler's Comments

Severability Clause: Section 8, Ch. 541, L. 1975, read: "If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

Section 17, Ch. 221, L. 1971, read: "The provisions of this act shall be severable, and if any of its sections, provisions, exceptions, sentences, clauses, phrases or parts be held unconstitutional or void, the remainder of this act shall continue in full force and effect."

Chapter Administrative Rules

Title 24, chapter 171, ARM Board of Outfitters.

Chapter Law Review Articles

Outfitting on Public Lands: A Study of Federal and State Regulation, Smith, 26 Idaho L. Rev. 9 (1990).

Part 1 General

Part Compiler's Comments

Preamble: The preamble attached to Ch. 543, L. 1999, provided: "WHEREAS, private property rights and free market principles will result in a certain amount of ebb and flow of outfitter presence statewide or in any particular geographical region; and

WHEREAS, approval or denial of an outfitter's request for expansion of client service base is predicated upon the state's broad power to regulate for the public health, welfare, and safety, which includes wildlife held in public trust, public hunting, private property rights, and private enterprise; and

WHEREAS, approval or denial of a net client hunter use expansion request must provide due process for outfitters and the opportunity for public comment under the Montana Administrative Procedure Act, including agency response to those public comments; and

WHEREAS, implementing the regulations necessary to meet the Legislature's goal of a reduction in new hunting use of areas by outfitters when the new use will cause undue conflict with existing hunting uses in the areas, providing necessary due process to outfitters, and providing for and responding to public comment will require time, staff, and resources not currently available in agency budgets."

37-47-101. Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Accompany" means to go with or be together with a participant as an escort, companion, or other service provider, with an actual physical presence in the area where the activity is being conducted and within sight or sound of the participant at some time during the furnishing of service.

(2) "Board" means the board of outfitters provided for in 2-15-1773.

(3) "Business entity" means any version of a proprietorship, partnership, corporation, or limited liability company.

(4) "Consideration" means something of value given or done in exchange for something of value given or done by another.

(5) "Department" means the department of labor and industry provided for in Title 2, chapter 15, part 17.

(6) "Emergency" means an unforeseen combination of circumstances or the resulting state that calls for immediate action.

(7) "Guide" means 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 activities for which the outfitter is licensed.

(8) "License year" means the period indicated on the face of the license for which the license is valid.

(9) "Net client hunter use" or "NCHU" means the number of clients authorized to be served by an outfitter on private and state land and on any federal land where an outfitter's use of the federal land is not limited by some means other than NCHU.

(10) "Outfitter" means any 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 any saddle or pack animal, facilities, camping equipment, vehicle, watercraft, or other conveyance, or personal service for any person to hunt, trap, capture, take, kill, or pursue any game, including fish, and who accompanies that person, either part or all of the way, on an expedition for any of these purposes or supervises a licensed guide or outfitter's assistant in accompanying that person.

(11) "Outfitter's assistant" means a person who is employed or retained by and directed by a licensed outfitter to perform the tasks of a guide when a guide's license cannot be readily attained prior to or during the service of a participant due to an emergency. The person may not represent to the public that the person is an outfitter or guide.

(12) "Participant" means a person using the services offered by a licensed outfitter.

History: Ap. p. Sec. 1, Ch. 221, L. 1971; amd. Sec. 37, Ch. 511, L. 1973; amd. Sec. 17, Ch. 9, L. 1977; Sec. 26-908, R.C.M. 1947; Ap. p. Sec. 69, Ch. 173, L. 1917; re-en. Sec. 3748, R.C.M. 1921; re-en. Sec. 3748, R.C.M. 1935; amd. Sec. 4, Ch. 173, L. 1949; amd. Sec. 3, Ch. 184, L. 1951; amd. Sec. 2, Ch. 223, L. 1955; amd. Sec. 1, Ch. 541, L. 1975; amd. Sec. 16, Ch. 9, L. 1977; Sec. 26-904, R.C.M. 1947; R.C.M. 1947, 26-904(1), 26-908; amd. Sec. 1, Ch. 170, L. 1981; amd. Sec. 2, Ch. 545, L. 1981; amd. Sec. 1, Ch. 410, L. 1983; amd. Sec. 2, Ch. 528, L. 1987; Sec. 87-4-101, MCA 1985; redes. 37-47-101 by Sec. 11, Ch. 528, L. 1987; amd. Sec. 1, Ch. 565, L. 1989; amd. Sec. 38, Ch. 16, L. 1991; amd. Sec. 1, Ch. 328, L. 1995; amd. Sec. 2, Ch. 543, L. 1999; amd. Sec. 142, Ch. 483, L. 2001; amd. Sec. 97, Ch. 467, L. 2005; amd. Sec. 3, Ch. 241, L. 2013; amd. Sec. 1, Ch. 341, L. 2013; amd. Sec. 16, Ch. 55, L. 2015; amd. Sec. 1, Ch. 217, L. 2017.

Compiler's Comments

2017 Amendment: Chapter 217 inserted definition of emergency; in definition of outfitter's assistant after "guide" inserted "when a guide's license cannot be readily attained prior to or during the service of a participant due to an emergency"; and made minor changes in style. Amendment effective October 1, 2017.

Termination Provision Repealed: Section 1, Ch. 142, L. 2017, and sec. 5, Ch. 217, L. 2017, repealed sec. 11, Ch. 241, L. 2013, and sec. 1, Ch. 136, L. 2015, which terminated the Ch. 241, L. 2013, amendments to this section December 31, 2017. Effective October 1, 2017.

2015 Amendment: (Temporary version) Chapter 55 in (10) at end substituted "outfitter or guide" for "outfitter, guide, [or professional guide]". Amendment effective October 1, 2015.

Extension of Termination Date: Section 1, Ch. 136, L. 2015, amended sec. 11, Ch. 241, L. 2013, by extending the termination date imposed by Ch. 241 to December 31, 2017. Effective March 27, 2015.

2013 Amendments — Composite Section: Chapter 241 inserted definition of outfitter's assistant; in definition of outfitter near end inserted "or outfitter's assistant"; and made minor changes in style. Amendment effective September 1, 2013, and terminates August 31, 2015.

Chapter 341 deleted definition that read: "'Base of operations" means the primary physical location where an outfitter receives mail and telephone calls, conducts regular daily business, and bases livestock, equipment, and staff during the hunting season"; deleted definition that read: "'Camp" means each individual facility or group of facilities that an outfitter uses to lodge a client for a client's trip or uses to lodge a client in the operating area designated in the outfitter's operations plan, including a motel, campground, bed and breakfast, lodge, tent camp, cabin, camper, trailer, or house"; inserted definition of business entity; in definition of net client hunter use after "means" substituted current text for "the most actual clients served by an outfitter in any NCHU license category in any license year, as documented by verifiable client logs or other documents maintained by the board pursuant to 37-47-201"; deleted definition that read: "'Nonresident" means a person other than a resident"; in definition of outfitter after "a licensed guide" deleted "or professional guide"; deleted definition that read: "'Professional guide" means a guide who meets experience, training, and testing qualifications for designation as a professional guide, as set by board rule"; deleted definition that read: "'Resident" means a person who qualifies for a resident Montana hunting or fishing license under 87-2-102"; and made minor changes in style. Amendment effective October 1, 2013.

Code Commissioner Correction: In definition of outfitter's assistant in temporary version, the code commissioner has inserted brackets around "or professional guide" to reflect the deletion of the definition of professional guide and the elimination of professional guide licensure by Ch. 341, L. 2013.

2005 Amendment: Chapter 467 in definition of license year after "period" substituted "indicated on the face of the license for which the license is valid" for "beginning January 1 and ending December 31 of the same year"; in definition of net client hunter use at end after "37-47-201" deleted "(7)"; and made minor changes in style. Amendment effective July 1, 2005.

2001 Amendment: Chapter 483 in definition of department substituted reference to department of labor and industry for reference to department of commerce and substituted "part 17" for "part 18". Amendment effective July 1, 2001.

1999 Amendment: Chapter 543 inserted definitions of base of operations, camp, and net client hunter use; and made minor changes in style. Amendment effective April 30, 1999.

1995 Amendment: Chapter 328 inserted definitions of accompany, consideration, and guide; in definition of outfitter deleted (a) that read: "(a) engages in the business of outfitting for hunting or fishing parties, as the term is commonly understood", after "pack animal" inserted "facilities; camping equipment; vehicle, watercraft, or other conveyance", after "personal service" deleted "for hunting or fishing parties or camping equipment, vehicles, or other conveyance, except boats", after "kill" inserted "or pursue", after "game" inserted "including fish", after "person" inserted "either part or all of the way", and after "purposes" inserted "or supervises a licensed guide or professional guide in accompanying that person" and deleted (c) and (d) that read: "(c) for consideration furnishes a boat or other floating craft and accompanies any person for the purpose of catching fish; or

(d) for consideration aids or assists any person in locating or pursuing any game animal"; in definition of participant, after "licensed outfitter", deleted "or professional guide"; substituted current definition of professional guide for former definition that read: "'Professional guide" and "guide" mean a person:

(a) who is an employee of an outfitter and who furnishes only personal guiding services in assisting a person to hunt or take game animals or fish and who does not furnish any facilities, transportation, or equipment; or

(b) who has contracted independently with an outfitter and who furnishes personal guiding services and facilities, transportation, or equipment that he owns in assisting a person to hunt or take game birds or fish. A guide who provides independent contractor services to an outfitter may not provide facilities, equipment, or services for overnight use"; and made minor changes in style.

Severability: Section 23, Ch. 328, L. 1995, was a severability clause.

1991 Amendment: Although sec. 38, Ch. 16, L. 1991, purported to amend the version of this section that was to become effective July 1, 1991, the amendment was rendered ineffective by the approval of sec. 1, Ch. 143, L. 1991, on March 25, 1991, which made permanent the Board of Outfitters.

Termination Provision Repealed: Section 1, Ch. 143, L. 1991, repealed sec. 14, Ch. 528, L. 1987, which terminated the 1987 amendments to this section July 1, 1991. Repealer effective March 25, 1991.

1989 Amendment: In definition of professional guide, after "'Professional guide'", inserted "and 'guide'" and inserted (b) relating to a person who contracts independently as a guide; and made minor changes in phraseology.

1987 Amendment: In introductory clause substituted "chapter" for "part"; inserted definitions of license year and nonresident; deleted former (4) that read: "(4) 'Outfitters' council' means the Montana outfitters' council provided for in 2-15-3403"; and made minor grammatical change.

Transfer of Agency: Section 10, Ch. 528, L. 1987, provided: "Transfer of agency — name change — duties transferred. (1) The Montana outfitters' council is transferred to the department of commerce and is renamed the board of outfitters.

(2) The authority and functions of the department of fish, wildlife, and parks regarding licensing of outfitters and guides are transferred to the board of outfitters, and any reference in 87-4-122, 87-4-124, 87-4-125, 87-4-129, 87-4-131, and 87-4-143 to the department of fish, wildlife, and parks or to the department or director, meaning the department of fish, wildlife, and parks or the director of that department, is changed to the board, meaning the board of outfitters."

1983 Amendment: In (3), following "person" deleted "persons, company, or corporation" and inserted clause creating exception from definition.

1981 Amendments: Chapter 170 added "for consideration" at the beginning of (3)(d); and added (7) defining participant.

Chapter 545 deleted definition of advisory council; changed license year in (1) from May 1 through April 30 of the next year to January 1 through December 31 of the same year; added "and accompanies such a party or person on an expedition for any of these purposes" to (3)(b); inserted "for consideration" at the beginning of (3)(d); inserted (4) defining outfitters' council; and deleted "'Resident guide" means a resident who guides resident or nonresident friends for the purpose of hunting game animals without compensation."

Cross-References

Outfitter to perform all activities listed under definition or more restrictive special license, 37-47-308.

Case Notes

Illegal Outfitting Chargeable in County Where Some Outfitting Acts Occur: Ruiz was charged in a fish and game sting operation with outfitting without a license after meeting officers in Missoula County and taking them to Flathead Lake to hunt. The charge was filed in Missoula County, and Ruiz contended that because the actual hunting activity took place in a different county, the charge was filed in an improper venue. The Supreme Court noted that the definition of an outfitter includes a person who provides a personal service for a person to hunt and who accompanies that person, either part or all of the way, on a hunting expedition. Ruiz met the officers in Missoula County and accompanied them on their hunting expedition, so the outfitting violation occurred at least in part in Missoula County. Therefore, charging the crime in Missoula County was a proper venue. *St. v. Ruiz*, 2004 MT 135, 321 M 357, 91 P3d 565 (2004).

Traversing State Lands to Conduct Outfitting on Private Land as Not Constituting Outfitting on State Lands: The Weitzs owned a ranch, and within the boundaries of their land was state land that they leased. The Weitzs were using roads on their leased land to spot game and were traveling across the leased land on existing roads to get to their own property to hunt. The Department of Natural Resources and Conservation concluded that the defendants were engaged in recreational use of state lands and were in violation of a Department rule prohibiting vehicle travel across state lands. The Supreme Court upheld the District Court's decision that noted that the hearings examiner had acknowledged that no elk or deer had been killed, shot at, or pursued on leased state land by the defendants and therefore reversed the hearings examiner's decision as being based upon faulty reasoning, conjecture, and speculation. The Supreme Court also upheld the lower court's ruling that the Department's application of the rule prohibiting travel across state lands by a lessee to conduct activity elsewhere was an overbroad and unlawful application of the rule. In addition, the Supreme Court held that crossing state lands to conduct outfitting on private lands does not constitute outfitting on state lands. *Weitz v. Dept. of Natural Resources and Conservation*, 284 M 130, 943 P2d 990, 54 St. Rep. 807 (1997).

37-47-102. Repealed. Sec. 22, Ch. 328, L. 1995.

History: En. Sec. 69, Ch. 173, L. 1917; re-en. Sec. 3748, R.C.M. 1921; re-en. Sec. 3748, R.C.M. 1935; amd. Sec. 4, Ch. 173, L. 1949; amd. Sec. 3, Ch. 184, L. 1951; amd. Sec. 2, Ch. 223, L. 1955; amd. Sec. 1, Ch. 541, L. 1975; amd. Sec. 16, Ch. 9, L. 1977; R.C.M. 1947, 26-904(2); amd. Sec. 3, Ch. 545, L. 1981; amd. Sec. 3, Ch. 528, L. 1987; Sec. 87-4-102, MCA 1985; redes. 37-47-102 by Sec. 11, Ch. 528, L. 1987.

37-47-103. Repealed. Sec. 19, Ch. 341, L. 2013.

History: En. Sec. 23, Ch. 502, L. 2007.

Part 2 Board of Outfitters

Part Compiler's Comments

Preamble: The preamble attached to Ch. 543, L. 1999, provided: "WHEREAS, private property rights and free market principles will result in a certain amount of ebb and flow of outfitter presence statewide or in any particular geographical region; and

WHEREAS, approval or denial of an outfitter's request for expansion of client service base is predicated upon the state's broad power to regulate for the public health, welfare, and safety, which includes wildlife held in public trust, public hunting, private property rights, and private enterprise; and

WHEREAS, approval or denial of a net client hunter use expansion request must provide due process for outfitters and the opportunity for public comment under the Montana Administrative Procedure Act, including agency response to those public comments; and

WHEREAS, implementing the regulations necessary to meet the Legislature's goal of a reduction in new hunting use of areas by outfitters when the new use will cause undue conflict with existing hunting uses in the areas, providing necessary due process to outfitters, and providing for and responding to public comment will require time, staff, and resources not currently available in agency budgets."

37-47-201. Powers and duties of board relating to outfitters and guides. The board shall:

(1) cooperate with the federal government in matters of mutual concern regarding the business of outfitting and guiding in Montana;

(2) enforce the provisions of this chapter and rules adopted pursuant to this chapter;

(3) establish outfitter standards and guide standards;

(4) adopt:

(a) rules to administer and enforce this chapter, including rules prescribing all requisite qualifications for licensure as an outfitter or guide. Qualifications for outfitters may include training, testing, experience, and knowledge of rules of governmental bodies pertaining to outfitting.

(b) any reasonable rules, not in conflict with this chapter, necessary for safeguarding the public health, safety, and welfare, including evidence of qualification and licensure under this chapter for any person practicing or offering to practice as an outfitter or guide;

(c) rules specifying components and standards for review and approval of operations plans.

Operations plans must:

(i) be updated at least annually if there has been a substantive change; and

(ii) report all forms of use of private land acreage where licensed outfitters are authorized by the landowner to operate, except for the use of private lands that allow unrestricted public access and are managed under cooperative agreements with adjacent public lands.

(d) rules establishing outfitter reporting requirements. The reports must be filed annually and report:

(i) client names or automated licensing system numbers;

(ii) names or license numbers of outfitters, guides, and outfitter's assistants providing client services; and

(iii) dates of client services.

(e) rules specifying what constitutes an emergency for which an outfitter's assistant may be hired, standards for outfitter's assistants, and documentation standards for proof of employment or retention required of outfitter's assistants. The rules must also identify data that may be collected regarding use of outfitter's assistants.

(5) hold hearings and proceedings to suspend or revoke licenses of outfitters and guides for due cause; and

(6) maintain records of net client hunter use.

History: En. Sec. 4, Ch. 221, L. 1971; amd. Sec. 38, Ch. 511, L. 1973; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-911; amd. Sec. 1, Ch. 490, L. 1981; amd. Sec. 5, Ch. 545, L. 1981; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 4, Ch. 528, L. 1987; Sec. 87-4-104, MCA 1985; redes. 37-47-201 by Sec. 11, Ch. 528, L. 1987; amd. Sec. 1, Ch. 220, L. 1993; amd. Sec. 3, Ch. 328, L. 1995; amd. Sec. 3, Ch. 543, L. 1999; amd. Sec. 98, Ch. 467, L. 2005; amd. Sec. 45, Ch. 44, L. 2007; amd. Sec. 2, Ch. 328, L. 2011; amd. Sec. 4, Ch. 241, L. 2013; amd. Sec. 2, Ch. 341, L. 2013; amd. Sec. 2, Ch. 217, L. 2017; amd. Sec. 1, Ch. 236, L. 2019.

Compiler's Comments

2019 Amendment: Chapter 236 inserted (4)(c)(i) and (4)(c)(ii) concerning requirements for operations plans; in (4)(d)(i) inserted "or automated licensing system numbers"; in (4)(d)(ii) substituted "names or license numbers of outfitters, guides, and outfitter's assistants" for "outfitters and guides"; in (4)(d)(iii) substituted "dates of client services" for "the license numbers of those outfitters and guides, dates of client services, and private land acreage where licensed outfitters are authorized by the landowner to operate, including exclusive arrangements and lease agreements"; and made minor changes in style. Amendment effective October 1, 2019.

2017 Amendment: Chapter 217 in (4)(e) after "rules specifying" inserted "what constitutes an emergency for which an outfitter's assistant may be hired" and after "The rules" substituted "must" for "may"; and made minor changes in style. Amendment effective October 1, 2017.

Termination Provision Repealed: Section 1, Ch. 142, L. 2017, and sec. 5, Ch. 217, L. 2017, repealed sec. 11, Ch. 241, L. 2013, and sec. 1, Ch. 136, L. 2015, which terminated the Ch. 241, L. 2013, amendments to this section December 31, 2017. Effective October 1, 2017.

Extension of Termination Date: Section 1, Ch. 136, L. 2015, amended sec. 11, Ch. 241, L. 2013, by extending the termination date imposed by Ch. 241 to December 31, 2017. Effective March 27, 2015.

2013 Amendments — Composite Section: Chapter 241 inserted (4)(e) regarding rules pertaining to outfitter's assistants. Amendment effective September 1, 2013, and terminates August 31, 2015.

Chapter 341 in (3) substituted "outfitter standards and guide standards" for "outfitter standards, guide standards, and professional guide standards"; in (4)(a), (4)(b), and (5) substituted references to outfitters and guides for references to outfitters, guides, and professional guides; in (4)(a) in second sentence substituted "may include" for "must include", after "experience" deleted "in activities similar to the service to be provided" and at end deleted "and condition and type of gear and equipment, and the filing of an operations plan"; in (4)(c) inserted "components and", substituted "operations plans" for "proposed new operations plans involving hunting use", and deleted former last sentence that read: "Approval is not required when part or all of an existing operations plan is transferred from one licensed outfitter to another licensed outfitter"; in (1)(d) substituted last sentence for former last sentence that read: "The reports must be filed annually and report actual leased acreage actively used by clients during that year and actual leased acres unused by clients during that year, plus any other information designated by the board and developed in collaboration with the department of fish, wildlife, and parks or the review committee established in 87-1-269 that is considered necessary to evaluate the effectiveness of the hunter management and hunting access enhancement programs"; deleted former (6) that read: "(6) maintain records of actual clients served by all Montana outfitters that fulfill the requirements of subsection (4)(d)"; and made minor changes in style. Amendment effective October 1, 2013.

2011 Amendment: Chapter 328 in (4)(c) in first sentence after "use" deleted "or the proposed expansion of net client hunter use, as set forth in 37-47-316 and 37-47-317, under an outfitter's existing operations plan" and deleted former third sentence that read: "Rules adopted pursuant to this section must provide for solicitation and consideration of comments from hunters and sportspersons in the area to be affected by the proposal who do not make use of outfitter services"; inserted (7) regarding records of net client hunter use; and made minor changes in style. Amendment effective October 1, 2011.

2007 Amendment: Chapter 44 in (4)(d) near end after "access" substituted "enhancement" for "management". Amendment effective October 1, 2007.

2005 Amendment: Chapter 467 deleted former (1) that read: "(1) prepare and publish an information pamphlet that contains the names and addresses of all licensed outfitters. This pamphlet must be available for free distribution as early as possible during each calendar year but not later than the second Friday in March. The pamphlet must contain the names and addresses of only those outfitters who have a valid license for the current license year"; deleted former (5)(a) that read: "(a) rules of procedure"; and made minor changes in style. Amendment effective July 1, 2005.

1999 Amendment: Chapter 543 in (5)(d) after "client" substituted "hunter use, as set forth in 37-47-316 and 37-47-317" for "hunting use" and after "plan" deleted "in order to determine if the proposal will cause an undue conflict with existing hunting use of the area, constituting a threat to the public health, safety, or welfare. The board may not approve a new operations plan or the proposed expansion of net client hunting use under the existing operations plan if it finds that the proposal will cause an undue conflict with existing hunting use of the area"; inserted (5)(e) requiring board to adopt rules establishing outfitter reporting requirements and requiring annual reports on actual leased acreage used and unused by clients; and inserted (7) requiring board to maintain records of actual clients served by certain Montana outfitters. Amendment effective April 30, 1999.

1995 Amendment: Chapter 328 in (4) inserted "guide standards"; in (5)(b), after "including", deleted "but not limited to" and after "licensure" inserted "as an outfitter, guide, or professional guide" and at beginning of second sentence substituted "Qualifications for outfitters" for "These qualifications", after "training" inserted "testing", and at end inserted "and the filing of an operations plan"; in (5)(c), before "health", inserted "public" and after "welfare" substituted "including evidence of qualification and licensure under this chapter for any person practicing or offering to practice as an outfitter, guide, or professional guide" for "of those persons using the services of outfitters and for the protection of landowners, the

general public, and outfitters' employees, agents, and representatives"; inserted (5)(d) relating to rules setting standards for new operations plans and expansion of net client hunting use; at end of (6), after "outfitters", inserted "guides"; and made minor changes in style.

1995 Statement of Intent: The statement of intent attached to Ch. 328, L. 1995, provided: "A statement of intent is required for this bill because rulemaking authority is granted to the board of outfitters in 37-47-201 requiring the board to establish qualifications for two levels of guides and to review proposed operations plans and changes to operations plans.

The legislature intends that at a minimum the rules on professional guide qualifications address experience, and if the board considers it appropriate, additional training and a qualifying examination to ensure that licensed professional guides are qualified to safely provide services for compensation to clients of the endorsing outfitter.

The legislature intends that rules on operations plans be directed toward a reduction in new hunting uses of areas by outfitters when the new uses will cause undue conflict with existing hunting uses of the areas."

Severability: Section 23, Ch. 328, L. 1995, was a severability clause.

1993 Amendment: Chapter 220 in (5)(b), in second sentence after "experience", inserted "in activities similar to the service to be provided"; at end of (5)(c) inserted "and outfitters' employees, agents, and representatives"; and made minor changes in style. Amendment effective July 1, 1993.

Severability: Section 18, Ch. 220, L. 1993, was a severability clause.

Termination Provision Repealed: Section 1, Ch. 143, L. 1991, repealed sec. 14, Ch. 528, L. 1987, which terminated the 1987 amendments to this section July 1, 1991. Effective March 25, 1991.

1987 Amendment: In introductory clause substituted "board" for "department"; deleted last sentence of (1) that read: "The costs of publication of the pamphlet shall be paid from the state special revenue fund, fish and game account"; in (2), after "government", deleted "through its appropriate agencies or instrumentalities"; and substituted (3) through (6) (see 1987 Session Law for text) for former (3) through (6) that read: "(3) establish a minimum of two meetings annually with the outfitters' council; (4) consult with the outfitters' council to develop policy concerning the administration of outfitting; (5) designate a warden with no conflict of interest whose primary duties are to administer outfitting and guiding laws and regulations;

(6) when the commission determines it necessary to protect the fishing resource, public health, public safety, or public welfare, establish and regulate a moratorium on either or both the Madison River or Big Hole River, the issuance of outfitter licenses for the purpose of float fishing as defined in 87-4-101(3)(c) except that those fishing outfitters licensed in 1980 may receive renewal licenses, if qualified. The total number of professional guide licenses endorsed by fishing outfitters under a moratorium may not be less than the total number issued in 1980."

1987 Statement of Intent: The statement of intent attached to Ch. 528, L. 1987, provided: "A statement of intent is submitted for this bill because the board of outfitters established in section 1 [2-15-3403] is required to adopt rules under section 4 [87-4-104] concerning the licensing of outfitters and guides. Because the licensing and enforcement authority is simply being transferred from the department of fish, wildlife, and parks to the board with no substantive change in requirements, it is intended that the board of outfitters should adopt rules substantially similar to those currently in place as adopted by the department."

1983 Amendment: Substituted reference to state special revenue fund for reference to earmarked revenue fund.

1981 Amendments: Chapter 490 added (6) relating to an outfitting moratorium on the Madison or Big Hole River.

Chapter 545 inserted "license" before "year" in second sentence of (1); changed "advisory council" to "outfitters' council" in (3) and (4); and deleted "or ex officio warden" from (5).

Administrative Rules

Title 24, chapter 171, subchapter 1, ARM Organizational rule.

Title 24, chapter 171, subchapter 2, ARM Procedural rules.

Attorney General's Opinions

Failure of Board of Outfitters to Adopt Required Rules — Ruling on Case-by-Case Basis Ruled Improper Implementation of Statute: Subsection (5)(d) of this section required the Board of Outfitters to adopt rules containing standards for review and approval of outfitter operation plans in order for the Board

to determine whether a proposed outfitter operation would cause an undue conflict with existing hunting use that would constitute a threat to public health, safety, or welfare. The statutory requirement for the Board to adopt rules was sufficiently clear, definite, and certain that the failure of the Board to initially adopt the rules required by the statute and instead determine on a case-by-case basis whether the proposed use would cause "undue conflict" was not a proper implementation of the statute. 47 A.G. Op. 22 (1998).

37-47-202. Executive director. The department may hire an executive director to assist the board in carrying out its duties under this chapter.

History: En. Sec. 1, Ch. 183, L. 1993; amd. Sec. 32, Ch. 492, L. 2001; amd. Sec. 11, Ch. 100, L. 2011.

Compiler's Comments

2011 Amendment: Chapter 100 deleted former (2) that read: "(2) The duties of the executive director include:

(a) processing and investigating applications for licensure as an outfitter or guide;
(b) conducting investigations of outfitters and guides that involve violations of this chapter or rules of the board and reporting to the board regarding complaints and investigations of complaints;
(c) coordinating inspections, investigations, and training activities of investigators under this chapter; and

(d) coordinating investigations with other local, state, and federal agencies"; and made minor changes in style. Amendment effective October 1, 2011.

2001 Amendment: Chapter 492 deleted former (2) that read: "(2) The executive director must:
(a) be a citizen of the United States and a resident of Montana;
(b) have knowledge of outfitting and guiding; and
(c) have at least 2 years' experience in management or equivalent training or education"; and made minor changes in style. Amendment effective October 1, 2001.

Effective Date: Section 3, Ch. 183, L. 1993, provided: "[This act] is effective July 1, 1993."

Part 3 Licensing

Part Compiler's Comments

Preamble: The preamble attached to Ch. 543, L. 1999, provided: "WHEREAS, private property rights and free market principles will result in a certain amount of ebb and flow of outfitter presence statewide or in any particular geographical region; and

WHEREAS, approval or denial of an outfitter's request for expansion of client service base is predicated upon the state's broad power to regulate for the public health, welfare, and safety, which includes wildlife held in public trust, public hunting, private property rights, and private enterprise; and

WHEREAS, approval or denial of a net client hunter use expansion request must provide due process for outfitters and the opportunity for public comment under the Montana Administrative Procedure Act, including agency response to those public comments; and

WHEREAS, implementing the regulations necessary to meet the Legislature's goal of a reduction in new hunting use of areas by outfitters when the new use will cause undue conflict with existing hunting uses in the areas, providing necessary due process to outfitters, and providing for and responding to public comment will require time, staff, and resources not currently available in agency budgets."

Severability: Section 18, Ch. 220, L. 1993, was a severability clause.

37-47-301. License required — services performed — standards. (1) A person may not act as an outfitter or guide or advertise or otherwise represent to the public that the person is an outfitter or guide without first securing a license in accordance with the provisions of this part.

(2) Whenever an outfitter is engaged by a participant, the outfitter shall keep and submit records as required by the board.

(3) Outfitters, guides, and other employees of an outfitter may not shoot, kill, or take big game animals for or in competition with those employing them while acting as outfitters, guides, or employees of an outfitter.

(4) Outfitters utilizing lands under the control of the United States government shall obtain the proper permits required by the government office responsible for the area in which the outfitter intends to operate and shall comply with all applicable rules and regulations established for these lands.

(5) Outfitters may not willfully and substantially misrepresent their facilities, prices, equipment, services, or hunting or fishing opportunities.

(6) Outfitters and their contractors, employees, agents, and representatives shall take every reasonable measure to provide the outfitter's advertised services.

(7) An outfitter may not hire or retain a guide who does not hold a current license as provided under this part.

History: En. Sec. 7, Ch. 221, L. 1971; amd. Sec. 20, Ch. 9, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-914; amd. Sec. 8, Ch. 545, L. 1981; Sec. 87-4-121, MCA 1985; redes. 37-47-301 by Sec. 11, Ch. 528, L. 1987; amd. Sec. 2, Ch. 565, L. 1989; amd. Sec. 2, Ch. 220, L. 1993; amd. Sec. 4, Ch. 328, L. 1995; amd. Sec. 3, Ch. 341, L. 2013.

Compiler's Comments

2013 Amendment: Chapter 341 in (1) in two places substituted "outfitter or guide" for "outfitter, guide, or professional guide"; in (3) at beginning substituted "outfitters, guides, and other employees" for "outfitters and guides, professional guides, and other employees" and at end after "guides" deleted "professional guides"; in (4) substituted "all applicable rules and regulations" for "environmental protection standards"; in (6) near beginning after "their" inserted "contractors" and substituted "the outfitter's advertised services" for "their advertised services to their clients"; in (7) after "guide" deleted "or professional guide"; and made minor changes in style. Amendment effective October 1, 2013.

1995 Amendment: Chapter 328 throughout section inserted references to guide; in (1) substituted "advertise or otherwise represent to the public that the person is an outfitter, guide, or professional guide" for "advertise as an outfitter"; in (2) substituted "a participant" for "any person"; in (3), after "acting", deleted "under employment" and at end inserted "or employees of an outfitter"; in (7) substituted current sentence requiring persons hired or retained by outfitter to be licensed for "A person may not hold more than one Montana outfitter's license or hold an outfitter's license for more than one corporation, proprietorship, or partnership"; and made minor changes in style.

Severability: Section 23, Ch. 328, L. 1995, was a severability clause.

1993 Amendment: Chapter 220 in (2) substituted "board" for "department"; in (6), after "employees", inserted "agents, and representatives"; inserted (7) limiting a person to one outfitter's license; and made minor changes in style. Amendment effective July 1, 1993.

1989 Amendment: Near beginning of (3) inserted "professional guides" and at end substituted "outfitters or professional guides" for "an outfitter".

1981 Amendment: Deleted "or resident guide" after "professional guide" in (1); deleted "or a resident guide takes out nonresident friends" after "person" and "or resident guide" before "shall keep" in (2); deleted "and resident guides" after "outfitters" twice in (4); and added "or fishing opportunities" to (5).

Administrative Rules

Title 24, chapter 171, subchapter 5, ARM Outfitter licensing.

Title 24, chapter 171, subchapter 6, ARM Guide licensing.

Case Notes

Outfitter's Obligation to Ensure Licensure of Guide — Board's Failure to Notify Outfitter of Unlicensed Guide Not Due Process Violation: Crismore hired an unlicensed guide and was sanctioned by the Board of Outfitters. Crismore appealed on grounds that he was denied due process because he was not informed until after the contested case hearing that the guide had applied for a license through a different outfitter but the application was returned for administrative reasons, denying Crismore of the opportunity to present a full and complete defense at the hearing. Although acknowledging that Crismore had a property interest in the outfitter's license that entitled him to due process protections, the Supreme Court nevertheless affirmed that Crismore was not denied due process. It is the responsibility of an outfitter to employ only licensed guides and to sign a guide's license when the guide is employed. It is not the responsibility of the Board to inform every licensed outfitter of the name of each person who unsuccessfully applies for a guide's license. Crismore was given a timely and meaningful opportunity to

present his case to the Board as to why he hired an unlicensed guide. *Crismore v. Bd. of Outfitters*, 2005 MT 109, 327 M 71, 111 P3d 681 (2005).

Illegal Outfitting Chargeable in County Where Some Outfitting Acts Occur: Ruiz was charged in a fish and game sting operation with outfitting without a license after meeting officers in Missoula County and taking them to Flathead Lake to hunt. The charge was filed in Missoula County, and Ruiz contended that because the actual hunting activity took place in a different county, the charge was filed in an improper venue. The Supreme Court noted that the definition of an outfitter includes a person who provides a personal service for a person to hunt and who accompanies that person, either part or all of the way, on a hunting expedition. Ruiz met the officers in Missoula County and accompanied them on their hunting expedition, so the outfitting violation occurred at least in part in Missoula County. Therefore, charging the crime in Missoula County was a proper venue. *St. v. Ruiz*, 2004 MT 135, 321 M 357, 91 P3d 565 (2004).

37-47-302. Outfitter's qualifications. An applicant for an outfitter's license or renewal of a license must meet the following qualifications:

(1) be 18 years of age or older, be physically capable and mentally competent to perform the duties of an outfitter, and meet experience, training, and testing requirements as prescribed by board rule; and

(2) own, hold under written lease, or contract for or represent a business entity who owns, holds under written lease, or contracts for the equipment and facilities that are necessary to provide the services advertised, contracted for, or agreed upon between the outfitter and the outfitter's clients. All equipment and facilities are subject to inspection at all reasonable times and places by the board or its designated agent.

History: En. Sec. 8, Ch. 221, L. 1971; amd. Sec. 13, Ch. 94, L. 1973; amd. Sec. 3, Ch. 541, L. 1975; amd. Sec. 21, Ch. 9, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-915(3)(a) thru (3)(k); amd. Sec. 9, Ch. 545, L. 1981; amd. Sec. 8, Ch. 239, L. 1983; amd. Sec. 10, Ch. 528, L. 1987; Sec. 87-4-122, MCA 1985; redes. 37-47-302 by Sec. 11, Ch. 528, L. 1987; amd. Sec. 3, Ch. 220, L. 1993; amd. Sec. 5, Ch. 328, L. 1995; amd. Sec. 39, Ch. 109, L. 2009; amd. Sec. 1, Ch. 179, L. 2011; amd. Sec. 4, Ch. 341, L. 2013.

Compiler's Comments

2013 Amendment: Chapter 341 in (2) substituted "business entity" for "company, corporation, or partnership"; deleted former (3) that read: "(3) have demonstrated a respect for and compliance with the laws of any state or of the United States and all rules promulgated under those laws related to fish and game, conservation of natural resources, and preservation of the natural ecosystem without pollution of the ecosystem"; and made minor changes in style. Amendment effective October 1, 2013.

2011 Amendment: Chapter 179 in (2) in two places after "lease" inserted reference to contract for; and made minor changes in style. Amendment effective April 14, 2011.

2009 Amendment: Chapter 109 deleted former (4) and (5) that read: "(4) have not, at any time, practiced fraud, deception, or material misrepresentation in procuring any previous outfitter's, guide's, professional guide's, or conservation license from the state of Montana;

(5) have not, at any time, promulgated any false or misleading advertising relating to the business of outfitting"; and made minor changes in style. Amendment effective October 1, 2009.

Saving Clause: Section 53, Ch. 109, L. 2009, was a saving clause.

Severability: Section 54, Ch. 109, L. 2009, was a severability clause.

1995 Amendment: Chapter 328 in introductory clause, after "applicant for", deleted "and holder of"; in (1), at beginning, substituted "be 18 years of age or older" for "be a person of at least 18 years of age", after "outfitter" inserted "and meet experience, training, and testing requirements", and after "board" inserted "rule"; deleted former (4) that read: "(4) have not been convicted or forfeited bond of \$100 or more on more than one violation of this chapter or the fish and game laws or applicable regulations of any state or the United States within the past 5 years"; in (4) inserted "guide's"; deleted (7) through (9) that read: "(7) have not been finally adjudged by a court of law guilty of any substantial breach of written or oral contract with any person utilizing the applicant's services as an outfitter or professional guide during the 2 years preceding that for which the application is made;

(8) have not committed any negligent act or misconduct while acting as an outfitter or professional guide that caused a danger or unreasonable risk of danger to person or property of any client of the outfitter or professional guide during the license year immediately preceding that for which the application is made;

(9) have not, at any time, pleaded guilty to or been adjudged by a court guilty of a felony, unless civil rights have been restored pursuant to law. A person may not apply for or hold an outfitter's license during any period of time in which a sentence has been deferred or suspended for a felony"; and made minor changes in style.

Severability: Section 23, Ch. 328, L. 1995, was a severability clause.

1993 Amendment: Chapter 220 at end of (1) inserted "as prescribed by the board"; in (4), after "violation of", inserted "this chapter or"; in (7) extended violation period to "2 years preceding" from "the license year immediately preceding"; deleted (10) that read: "(10) have substantially complied with all board regulations and state and federal laws concerning outfitters and professional guides, if the applicant has previously held a license as an outfitter or professional guide"; and made minor changes in style. Amendment effective July 1, 1993.

1987 Amendment: In introductory clause, after "shall", deleted "in the opinion of the director"; and in (2) and (10) substituted "board" for "department".

1983 Amendment: Deleted former (2), which read: "be a resident of Montana";.

1981 Amendment: Changed "in possession of all natural faculties, of ordinary intelligence, and in such physical condition as to be able to perform" to "who is physically capable and mentally competent to perform" in (1); changed "be a citizen of the United States and a resident of Montana for a full 2 years, unless the residency requirement is waived by the department" to "be a resident of Montana" in (2); inserted "or applicable regulations" after "laws" in (5); inserted "professional" and "or conservation" before "license" in (6); inserted "professional" before "guide" in (8); inserted "professional" before "guide" twice and changed "which negligence or misconduct caused" to "that caused" before "a danger" in (9); changed "been convicted of a felony" to "pleaded guilty to or been adjudged by a court guilty of a felony" and changed "a deferred sentence has been imposed" to "a sentence has been deferred or suspended" in (10); and inserted "professional" before "guide" twice in (11).

Administrative Rules

ARM 24.171.413 Watercraft identification.

ARM 24.171.502 Outfitter qualifications.

Case Notes

Operating Business Across State Lines Not a Fundamental Right: The right to operate an outfitting business across state lines is not a fundamental right within the meaning of the Equal Protection Clause. In re Outfitter's License of Godfrey v. Fish & Game Comm'n, 193 M 304, 631 P2d 1265, 38 St. Rep. 661 (1981).

Outfitter's Residency Requirements Violative of Equal Protection: Prior to 1983 amendment of 87-4-122 (renumbered 37-47-302) and repeal of 87-4-126, in-state residency requirements for holders of an outfitter's license violated the Equal Protection Clause of the Montana Constitution. None of the reasons advanced by the state in defense of the statutes justified the inequities engendered by the statutes. Following St. v. Jack, 167 M 456, 539 P2d 726 (1975). Further, the two exceptions contained in the statutes bore little relationship to what the statute sought to accomplish. In re Outfitter's License of Godfrey v. Fish & Game Comm'n, 193 M 304, 631 P2d 1265, 38 St. Rep. 661 (1981).

Attorney General's Opinions

Statutory Qualifications Not Exclusive: A rule of the Board of Outfitters that requires certain experience as a condition to outfitter licensure and that may not be satisfied by an applicant based on experience in Montana prior to his 18th birthday is not inconsistent with this section, which conditions licensure on an applicant's being at least 18 years of age. 42 A.G. Op. 128 (1988).

37-47-303. Guide's qualifications. An applicant for a guide's license must:

(1) be 18 years of age or older and be physically capable and mentally competent to perform the duties of a guide;

(2) be endorsed and recommended by an outfitter with a valid license, unless otherwise qualified under guide standards established by the board pursuant to 37-47-201(4); and

(3) have been issued a valid wildlife conservation license.

History: En. Sec. 8, Ch. 221, L. 1971; amd. Sec. 13, Ch. 94, L. 1973; amd. Sec. 3, Ch. 541, L. 1975; amd. Sec. 21, Ch. 9, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-915(4), (5); amd. Sec. 10, Ch. 545, L. 1981; Sec. 87-4-123, MCA 1985; redes. 37-47-303 by Sec. 11, Ch. 528, L. 1987; amd. Sec. 4, Ch. 220, L. 1993; amd. Sec. 6, Ch. 328, L. 1995; amd. Sec. 1, Ch. 172, L. 2005; amd. Sec. 5, Ch. 341, L. 2013.

Compiler's Comments

2013 Amendment: Chapter 341 near beginning after "guide's" substituted "license must" for "or professional guide's license must meet the following qualifications"; in (1) and (2) after "guide" deleted "or professional guide"; deleted former (2) that read: "(2) In addition to the requirements listed in subsection (1), an applicant for licensure as a professional guide must meet additional experience requirements, to be set by board rule, and may be required to show proof of training or pass a qualifying examination when required by board rule"; and made minor changes in style. Amendment effective October 1, 2013.

2005 Amendment: Chapter 172 in (1)(b) after "license" inserted "unless otherwise qualified under guide or professional guide standards established by the board pursuant to 37-47-201(4)"; and made minor changes in style. Amendment effective October 1, 2005.

1995 Amendment: Chapter 328 in (1), in introductory clause, inserted reference to guide's license; in (1)(a) substituted "be 18 years of age or older" for "be a person of at least 18 years of age" and at end inserted reference to guide's duties; inserted (1)(c) relating to valid wildlife conservation license; deleted former (1)(c) through (1)(e) that read: "(c) have not been convicted or forfeited bond of \$100 or more on more than one violation of this chapter or the fish and game laws or applicable regulations of the state of Montana or the United States within the past 5 years;

(d) have not committed any gross negligent act or misconduct while acting as a guide that caused an accident or injury to person or property of any client of an outfitter during the license year immediately preceding that for which the application is made;

(e) have not, at any time, pleaded guilty to or been adjudged by a court guilty of a felony, unless civil rights have been restored pursuant to law. A person may not apply for or hold a professional guide's license during any period of time in which a sentence has been deferred or suspended for a felony"; in (2) substituted current language relating to additional requirements for professional guide for "A professional guide shall have been issued a valid wildlife conservation license"; and made minor changes in style.

Severability: Section 23, Ch. 328, L. 1995, was a severability clause.

1993 Amendment: Chapter 220 in (1)(c), after "violation of", inserted "this chapter or"; and made minor changes in style. Amendment effective July 1, 1993.

1981 Amendment: Changed "in possession of all natural faculties, of ordinary intelligence, and in such physical condition as to be able to perform" to "who is physically capable and mentally competent to perform" in (1)(a); deleted residency requirement; inserted (1)(c) relating to conviction of fish and game law violation; inserted (1)(d) relating to gross negligence or misconduct; inserted (1)(e) relating to conviction of a felony; and changed "resident guide" to "professional guide" and deleted "resident" after "valid" in (2).

Administrative Rules

ARM 24.171.601 Guide or professional guide qualifications.

37-47-304. Application. (1) Each applicant for an outfitter's or guide's license shall apply for a license on a form furnished by the department.

(2) The application for an outfitter's license must include:

(a) the applicant's full name, address, [wildlife] conservation license number, and telephone number;

(b) the applicant's years of experience as an outfitter or guide; and

(c) components of the outfitter's operations plan as required by board rule, which may include:

(i) an affidavit by the outfitter to the board that the amount and kind of equipment that is owned, leased, or contracted for by the applicant is sufficient and satisfactory for the services advertised or contemplated to be performed by the applicant; and

(ii) a description of any land, water body, or portion of a water body that will be utilized by the applicant while providing services. A description is not required for the use of private lands that allow unrestricted public access and are managed under cooperative agreements with adjacent public lands.

(3) An application for an outfitter's license must be in the name of an individual person only. An application involving a business entity must be made by one individual person who qualifies under the provisions of this part. A license issued pursuant to this part must be in the name of that person. Any revocation or suspension of a license is binding upon the individual person and the business entity for the use and benefit of which the license was originally issued.

(4) Application must be made to and filed with the board.

(5) Only one application for an outfitter's license may be made in any license year. If an application is denied, subsequent applications by the same applicant for the license year involved are void, except as provided in 37-47-308. (*Bracketed language in subsection (2)(a) effective March 1, 2020—sec. 21, Ch. 221, L. 2019.*)

History: En. Sec. 8, Ch. 221, L. 1971; amd. Sec. 13, Ch. 94, L. 1973; amd. Sec. 3, Ch. 541, L. 1975; amd. Sec. 21, Ch. 9, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-915(1), (2), (13); amd. Sec. 11, Ch. 545, L. 1981; amd. Sec. 10, Ch. 528, L. 1987; Sec. 87-4-124, MCA 1985; redes. 37-47-304 by Sec. 11, Ch. 528, L. 1987; amd. Sec. 3, Ch. 565, L. 1989; amd. Sec. 5, Ch. 220, L. 1993; amd. Sec. 7, Ch. 328, L. 1995; amd. Sec. 2, Ch. 196, L. 2003; amd. Sec. 99, Ch. 467, L. 2005; amd. Sec. 2, Ch. 179, L. 2011; amd. Sec. 6, Ch. 341, L. 2013; amd. Sec. 1, Ch. 221, L. 2019; amd. Sec. 2, Ch. 236, L. 2019.

Compiler's Comments

2019 Amendments — Composite Section: Chapter 221 in (2)(a) substituted "wildlife conservation license number" for "conservation license number". Amendment effective March 1, 2020.

Chapter 236 in (2)(c)(ii) inserted last sentence concerning when a description is not required. Amendment effective October 1, 2019.

2013 Amendment: Chapter 341 in (1) substituted "outfitter's or guide's license" for "outfitter's, guide's, or professional guide's license"; in (2) substituted current text for former text that read: "(2) The application for an outfitter's license forms the basis for the outfitter's operations plan and must include:

- (a) the applicant's full name, residence, address, conservation license number, driver's license number, birth date, physical description, and telephone number;
- (b) the address of the applicant's principal place of business in the state of Montana;
- (c) the amount and kind of property and equipment owned and used in the outfitting business of the applicant;
- (d) the experience of the applicant, including:
 - (i) years of experience as an outfitter, guide, or professional guide;
 - (ii) the applicant's knowledge of areas in which the applicant has operated and intends to operate;

and

- (iii) the applicant's ability to cope with weather conditions and terrain;
- (e) a signed statement of the licensed outfitter for each guide and professional guide to be employed or retained as an independent contractor, stating that the guide or professional guide is to be employed by the outfitter and stating that the outfitter recommends the guide or professional guide for licensure;

(f) an affidavit by the outfitter to the board that the equipment listed on the application is in fact owned, leased, or contracted for by the applicant, is in good operating condition, and is sufficient and satisfactory for the services advertised or contemplated to be performed by the applicant;

- (g) a statement of the maximum number of participants to be accompanied at any one time;
- (h) the written approval of the appropriate agency or landowner on whose lands the applicant intends to provide services or establish hunting camps; and

(i) the boundaries of the proposed operation, stating when applicable:

- (i) the name and portion of river;
- (ii) the county of location;
- (iii) the legal owner of the property;
- (iv) the name of the ranch;
- (v) the proposed service, including the type of game sought;
- (vi) the name of the agency granting use authority; and
- (vii) other means of identifying boundaries as established by board rule"; and in (3) in two places substituted "business entity" for references to corporations, proprietorships, or partnerships. Amendment effective October 1, 2013.

2011 Amendment: Chapter 179 in (2)(f) after "leased" inserted "or contracted for"; and made minor changes in style. Amendment effective April 14, 2011.

2005 Amendment: Chapter 467 in (1) at end after "form" substituted "furnished by the department" for "prescribed and furnished by the board"; in (2)(h) after "applicant" substituted "intends to" for "will"; and made minor changes in style. Amendment effective July 1, 2005.

2003 Amendment: Chapter 196 in (3) deleted former fourth sentence that read: "The license must specifically state that the license is issued for the use and benefit of the named corporation, proprietorship, or partnership involved"; and made minor changes in style. Amendment effective October 1, 2003.

1995 Amendment: Chapter 328 in (1) inserted reference to guide's license; at beginning of (2) inserted "The application for an outfitter's license forms the basis for the outfitter's operations plan"; in (2)(d) inserted reference to guide's experience; in (2)(e), after "outfitter", substituted "for each guide and professional guide to be employed" for "by whom the professional guide is to be employed", after "independent contractor" inserted "stating", before "professional guide" inserted "guide or", after "is" deleted "in fact", after "employed" deleted "or retained as an independent contractor", and at end substituted "recommends the guide or professional guide for licensure" for "recommends the applicant for the applicant's qualifications"; in (2)(g) substituted "number of participants to be accompanied" for "number of guests to be taken"; inserted (2)(i) relating to boundaries of proposed operation and information relating to services; in (5), near end of first sentence before "license year", deleted "one"; and made minor changes in style.

Severability: Section 23, Ch. 328, L. 1995, was a severability clause.

1993 Amendment: Chapter 220 in (1)(h) inserted "provide services or"; in (2) in three places inserted references to proprietorships; in (4), after "outfitter's", deleted "or professional guide's"; and made minor changes in style. Amendment effective July 1, 1993.

1989 Amendment: In (1)(e), in two places following "employed", inserted "or retained as an independent contractor".

1987 Amendment: In introductory clause substituted "board" for "department"; and in (1)(f) and (3) substituted "board" for "director".

1981 Amendment: Inserted "residence" and "conservation license number, driver's license number, birth date, physical description" in (1)(a); inserted "professional" before "guide" in (1)(d) and (1)(e); changed "a statement by a warden" to "an affidavit by the outfitter" and deleted "has been inspected by the warden and that the same" after "application" in (1)(f); changed "rangers in whose district" to "appropriate agency or landowner on whose lands" and deleted "if the applicant intends to outfit on a national forest" at the end of (1)(h); and inserted "professional" before "guide's" in (4).

Administrative Rules

ARM 24.171.505 Fishing outfitter operations plan.

37-47-305. Outfitter's examination. Each applicant for an outfitter's license, after meeting the experience and training specifications and other qualifications set by this chapter or rules adopted pursuant to this chapter, is entitled to take and must pass a standard examination administered by the board or its agent. The examination must require general and sufficient knowledge displaying and indicating ability to perform the services contemplated with efficiency and with safety to the health and welfare of participants. The examination must test the applicant's knowledge of subjects that apply to the type of license applied for and may include the following subjects:

- (1) federal and state fish and game laws and regulations;
- (2) federal and state regulations as applicable to outfitting;
- (3) boat safety; and
- (4) water safety.

History: En. Sec. 8, Ch. 221, L. 1971; amd. Sec. 13, Ch. 94, L. 1973; amd. Sec. 3, Ch. 541, L. 1975; amd. Sec. 21, Ch. 9, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-915(3)(l); amd. Sec. 12, Ch. 545, L. 1981; amd. Sec. 10, Ch. 528, L. 1987; Sec. 87-4-125, MCA 1985; redes. 37-47-305 by Sec. 11, Ch. 528, L. 1987; amd. Sec. 6, Ch. 220, L. 1993; amd. Sec. 8, Ch. 328, L. 1995; amd. Sec. 7, Ch. 341, L. 2013.

Compiler's Comments

2013 Amendment: Chapter 341 deleted former (2) through (8) that read: "(2) practical woodsmanship;

- (3) general knowledge of big game;
- (4) field preparation of trophies;
- (5) care of game meat;
- (6) use of outfitter's gear as listed on the application;
- (7) knowledge of area and terrain;

(8) knowledge of firearms"; deleted former (10) that read: "(10) first aid"; deleted former (13) that read: "(13) care and safety of livestock"; and made minor changes in style. Amendment effective October 1, 2013.

1995 Amendment: Chapter 328 in first sentence inserted "after meeting the experience and training specifications and other qualifications set by this chapter or rules adopted pursuant to this chapter, is entitled to take" and at end of second sentence substituted "participants" for "persons employing the services"; and made minor changes in style.

Severability: Section 23, Ch. 328, L. 1995, was a severability clause.

1993 Amendment: Chapter 220 in third sentence substituted "and may include" for "in"; and made minor changes in style. Amendment effective July 1, 1993.

1987 Amendment: In introductory clause substituted "board or its agent" for "director or an agent designated by him".

1981 Amendment: Inserted "federal and state" before "fish and game laws" in (1); changed "shown" to "listed" in (6); deleted "practical" before "first aid" in (10); and added (11), (12), and (13), concerning boat safety, water safety, and care and safety of livestock, respectively.

Administrative Rules

ARM 24.171.507 Outfitter examination.

37-47-306. Fees. (1) The board shall establish fees commensurate with costs as provided in 37-1-134.

(2) Applications must be accompanied by a license fee as specified by board rule.

(3) The license fees must be deposited in the state special revenue fund and must be used by the board to investigate the applicant, to enforce this part, and for administrative costs, subject to 37-1-101(6).

History: Ap. p. Sec. 8, Ch. 221, L. 1971; amd. Sec. 13, Ch. 94, L. 1973; amd. Sec. 3, Ch. 541, L. 1975; amd. Sec. 21, Ch. 9, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; Sec. 26-915, R.C.M. 1947; Ap. p. Sec. 10, Ch. 221, L. 1971; amd. Sec. 23, Ch. 9, L. 1977; Sec. 26-917, R.C.M. 1947; R.C.M. 1947, 26-915(8) thru (11), 26-917; amd. Sec. 14, Ch. 545, L. 1981; amd. Sec. 4, Ch. 192, L. 1983; amd. Sec. 5, Ch. 528, L. 1987; Sec. 87-4-127, MCA 1985; redes. 37-47-306 by Sec. 11, Ch. 528, L. 1987; amd. Sec. 9, Ch. 328, L. 1995; amd. Sec. 4, Ch. 543, L. 1999; amd. Sec. 8, Ch. 341, L. 2013.

Compiler's Comments

2013 Amendment: Chapter 341 deleted former (3) that read: "(3) If a nonresident license applicant resides in a state that requires residents of the state of Montana to pay in excess of the amount established by the board for a similar license, then the fee for the nonresident outfitter's, guide's, or professional guide's license must be the same amount as the higher fee charged in the state where the nonresident license applicant resides. A nonresident hunting outfitter is subject to the same rules and regulations that apply to a resident hunting outfitter"; and made minor changes in style. Amendment effective October 1, 2013.

1999 Amendment: Chapter 543 in first sentence in (3) in two places substituted "nonresident license applicant" for "nonresident"; inserted second sentence concerning nonresident hunting outfitter subject to rules and regulations that apply to resident outfitter; and made minor changes in style. Amendment effective April 30, 1999.

1995 Amendment: Chapter 328 at end of (2) substituted "by board rule" for "by the board"; in (3), after "outfitter's", inserted "guide's"; and made minor changes in style.

Severability: Section 23, Ch. 328, L. 1995, was a severability clause.

Termination Provision Repealed: Section 1, Ch. 143, L. 1991, repealed sec. 14, Ch. 528, L. 1987, which terminated the 1987 amendments to this section July 1, 1991. Effective March 25, 1991.

1987 Amendment: Throughout section substituted "board" for "department"; deleted last sentence of (3) that read: "All fees collected under this part shall be deposited as provided in 87-1-601"; and in (4) substituted "fees must be deposited in the state special revenue fund and must be used by the board" for "fee shall be used" and inserted "subject to 37-1-101(6)".

1983 Amendment: Inserted (1) requiring fees commensurate with costs; in (2), after "license fee as" substituted "specified by the department" for "herein stipulated, which will be refunded if and when the application is denied":

(a) resident outfitter's license fee.....\$50;

(b) resident professional guide's fee.....\$15;

(c) nonresident outfitter's license fee.....\$150;

(d) nonresident professional guide's fee.....\$100"; at beginning of (3), after "If" substituted "a" for "the"; after "excess of" substituted "the amount established by the department" for "such amounts".

Statement of Intent: The statement of intent attached to Ch. 192, L. 1983, provided: "Senate Bill No. 132 requires a statement of intent because section 5 [4, amending 87-4-127 (renumbered 37-47-306)] requires the Department of Fish, Wildlife, and Parks, to establish fees for outfitters and guides. Presently fees charged as [are] set by law, and are not based on actual costs incurred.

It is the intent of the legislature that fees be set by rule by the department which will adequately cover the costs of administering the licensing and regulatory programs relating to outfitters and the ongoing operations of the Montana Outfitters Council [now Board of Outfitters]."

1981 Amendment: Deleted former subsection (2) that provided: "A resident guide's license is a valid Montana wildlife conservation license"; and changed "outfitters or guides" to "outfitter's or professional guide's license".

Administrative Rules

ARM 24.171.401 Fees.

37-47-307. Investigation of applicant — issuance or denial of license. (1) The department shall investigate each applicant for an outfitter's or guide's license. The board shall determine the applicant's qualifications.

(2) The board may deny or refuse to issue any new license or to renew any previous license if the applicant does not meet the qualifications stated in this chapter or rules adopted pursuant to this chapter. In the event that any application for a license is denied or refused, the board shall immediately notify the applicant, setting forth in the notice the grounds upon which the denial or refusal is based.

(3) A licensee in good standing is entitled to a new license for the ensuing license year upon complying with the provisions of this chapter or rules adopted pursuant to this chapter and upon completing an application for license renewal on a form provided by the board.

(4) This section may not be interpreted to conflict with 37-1-138.

History: En. Sec. 8, Ch. 221, L. 1971; amd. Sec. 13, Ch. 94, L. 1973; amd. Sec. 3, Ch. 541, L. 1975; amd. Sec. 21, Ch. 9, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-915(12); amd. Sec. 15, Ch. 545, L. 1981; amd. Sec. 9, Ch. 239, L. 1983; amd. Sec. 6, Ch. 528, L. 1987; Sec. 87-4-128, MCA 1985; redes. 37-47-307 by Sec. 11, Ch. 528, L. 1987; amd. Sec. 7, Ch. 220, L. 1993; amd. Sec. 10, Ch. 328, L. 1995; amd. Sec. 100, Ch. 429, L. 1995; amd. Sec. 46, Ch. 271, L. 2003; amd. Sec. 9, Ch. 341, L. 2013.

Compiler's Comments

2013 Amendment: Chapter 341 in (1) substituted "outfitter's or guide's license" for "outfitter's, guide's, or professional guide's license". Amendment effective October 1, 2013.

2003 Amendment: Chapter 271 inserted (4) to provide that this section may not be interpreted to conflict with 37-1-138; and made minor changes in style. Amendment effective April 9, 2003.

Retroactive Applicability: Section 63, Ch. 271, L. 2003, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to occurrences after December 31, 2002."

1995 Amendments: Chapter 328 in (1), after "outfitter's", inserted "guide's"; in (2) substituted "in this chapter or rules adopted pursuant to this chapter" for "in this section"; deleted former (3) that read: "(3) Final decision as to issuance of renewal licenses must be made not later than 30 days from the date of receipt of the completed application for renewal and not later than 90 days from the date of receipt of a completed application for a new license"; in (3), after "chapter", substituted "or rules adopted pursuant to this chapter" for "and renewal deadlines and fees imposed by rule of the board"; and made minor changes in style.

Chapter 429 in (1), at beginning of first sentence, substituted "department" for "board" and at beginning of second sentence inserted "The board shall"; and made minor changes in style.

Severability: Section 23, Ch. 328, L. 1995, was a severability clause.

Section 131, Ch. 429, L. 1995, was a severability clause.

Saving Clause: Section 132, Ch. 429, L. 1995, was a saving clause.

Applicability: Section 133, Ch. 429, L. 1995, provided: "[This act] applies to licenses applied for, complaints submitted, and proceedings begun after [the effective date of this section]." Effective October 1, 1995.

1993 Amendment: Chapter 220 in (4), after "chapter", inserted "and renewal deadlines and fees imposed by rule of the board and" and after "provided by the board" deleted "and payment of the renewal fee, but is exempt from having to retake the written examination"; deleted (5) that read "(5) An outfitter licensee must make an application for license renewal by January 1 of the license year. A penalty fee of

\$50 will be charged in addition to the regular resident or nonresident outfitter's license fee if the application for such license is not completed and made by January 1 of the license year. This subsection does not apply to a new applicant for an outfitter's license"; and made minor changes in style. Amendment effective July 1, 1993.

Termination Provision Repealed: Section 1, Ch. 143, L. 1991, repealed sec. 14, Ch. 528, L. 1987, which terminated the 1987 amendments to this section July 1, 1991. Effective March 25, 1991.

1987 Amendment: In (1) in temporary version substituted language directing Board to investigate an applicant's qualifications for "The director in his discretion may cause to be made such additional investigation and inquiry relative to the applicant for outfitter's or professional guide's license and an applicant's qualifications as he considers advisable"; in (2), in two places, substituted "board" for "director"; in (4) substituted "chapter" for "part" and "board" for "department" and inserted "and payment of the renewal fee"; and made minor changes in phraseology.

1983 Amendment: Near middle of (5), after "license" inserted "fee".

1981 Amendment: Inserted "or professional guide's" before "license" in (1); inserted "and completing an application for license renewal on a form provided by the department" in (4); and added (5) requiring application for license renewal by January 1.

37-47-308. Kinds of licenses. (1) When all the conditions of licensure have been satisfied, the board shall issue a license stating the outfitter or guide functions that the applicant is qualified and approved to perform.

(2) The license must be in the form prescribed and is valid for the licensing year in which issued.

(3) If the application is denied, the board shall notify the applicant in writing of the reasons for the denial, and if the reasons are corrected, a license must be issued upon reapplication.

History: En. Sec. 9, Ch. 221, L. 1971; amd. Sec. 4, Ch. 541, L. 1975; amd. Sec. 22, Ch. 9, L. 1977; R.C.M. 1947, 26-916(1); amd. Sec. 10, Ch. 528, L. 1987; Sec. 87-4-129, MCA 1985; redes. 37-47-308 by Sec. 11, Ch. 528, L. 1987; amd. Sec. 8, Ch. 220, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 220 at beginning of (1) substituted "When all the conditions of licensure have been satisfied" for "After receipt of the application and when all the conditions and requirements of this part have been satisfied" and after "board shall issue" substituted "a license stating the outfitter or guide functions that the applicant is qualified and approved to perform" for "either of the following licenses, depending upon its determination of the applicant's ability and the service that the applicant can perform with the equipment listed on his application:

(a) a general license authorizing him to perform all the functions of an outfitter as that term is defined in 37-47-101; or

(b) a special license authorizing him to perform only the function of outfitting listed on the license"; and made minor changes in style. Amendment effective July 1, 1993.

1987 Amendment: In (1) substituted "board" for "director" and "its determination" for "his determination"; and in (3) substituted "board" for "director".

Cross-References

Limit on application for outfitter's or guide's license, 37-47-304.

37-47-309. Repealed. Sec. 22, Ch. 328, L. 1995.

History: En. Sec. 9, Ch. 221, L. 1971; amd. Sec. 4, Ch. 541, L. 1975; amd. Sec. 22, Ch. 9, L. 1977; R.C.M. 1947, 26-916(2), (3); amd. Sec. 16, Ch. 545, L. 1981; Sec. 87-4-130, MCA 1985; redes. 37-47-309 by Sec. 11, Ch. 528, L. 1987; amd. Sec. 4, Ch. 565, L. 1989; amd. Sec. 9, Ch. 220, L. 1993.

37-47-310. Transfer or amendment of outfitter's license — transfer of river-use days to new owner of fishing outfitter business. (1) An outfitter's license may not be transferred.

(2) An individual person may, upon proper showing, have that person's outfitter's license amended to indicate that the license is being held for the use and benefit of a named business entity.

(3) Subject to approval by the board, a person designated by the family of an outfitter who is deceased or incapacitated due to physical or mental disease or injury or who is unable to carry out the responsibilities of an outfitter due to the outfitter's status as an active member of the military may continue

to provide outfitting services for the outfitter's unexpired license year, or until the family sells the outfitting business, until the designee obtains an outfitter license.

(4) (a) When a fishing outfitter's business is sold or transferred in its entirety, any river-use days that have been allocated to that fishing outfitter through the fishing outfitter's historic use of or activities on restricted-use streams are transferable to the new owner of the fishing outfitter's business. Upon the sale or transfer of a fishing outfitter's business, the outfitter who sells or transfers the business shall notify the new owner that the use of any transferred river-use days is subject to change pursuant to rules adopted by the fish and wildlife commission and that a property right does not attach to the transferred river-use days.

(b) Any transferred river-use days on the Smith River are subject to change pursuant to rules adopted by the state parks and recreation board pursuant to 23-2-408.

History: En. Sec. 9, Ch. 221, L. 1971; amd. Sec. 4, Ch. 541, L. 1975; amd. Sec. 22, Ch. 9, L. 1977; R.C.M. 1947, 26-916(4); amd. Sec. 17, Ch. 545, L. 1981; amd. Sec. 10, Ch. 528, L. 1987; Sec. 87-4-131, MCA 1985; redes. 37-47-310 by Sec. 11, Ch. 528, L. 1987; amd. Sec. 10, Ch. 220, L. 1993; amd. Sec. 1, Ch. 91, L. 2003; amd. Sec. 1, Ch. 197, L. 2005; amd. Sec. 12, Ch. 100, L. 2011; amd. Sec. 20, Ch. 235, L. 2013; amd. Sec. 10, Ch. 341, L. 2013.

Compiler's Comments

2013 Amendments — Composite Section: Chapter 235 in (4)(a) near end substituted "fish and wildlife commission" for "fish, wildlife, and parks commission"; inserted (4)(b) concerning transferred river-use days on the Smith River; and made minor changes in style. Amendment effective July 1, 2013.

Chapter 341 in (2) substituted "business entity" for "proprietorship, partnership, or corporation". Amendment effective October 1, 2013.

Saving Clause: Section 40, Ch. 235, L. 2013, was a saving clause.

2011 Amendment: Chapter 100 in (3) after "by the family of" substituted current text for "a deceased licensed outfitter may continue to outfit for the deceased outfitter's unexpired license year or until the heirs or personal representative of the estate sells the outfitting business or obtains relicensure of the business". Amendment effective October 1, 2011.

2005 Amendment: Chapter 197 in (1) at end after "transferred" deleted "during any license year"; in (3) near beginning after "board" substituted "a person designated by" for "an immediate member of"; and made minor changes in style. Amendment effective October 1, 2005.

2003 Amendment: Chapter 91 inserted (4) providing that upon the sale or transfer of an outfitter's business, river-use days are transferable to the new owner and requiring an outfitter to notify the new owner that river-use days are subject to change by the fish, wildlife, and parks commission. Amendment effective March 24, 2003.

1993 Amendment: Chapter 220 near end of (2) inserted "proprietorship"; and made minor changes in style. Amendment effective July 1, 1993.

1987 Amendment: In (3) substituted "board" for "director".

1981 Amendment: Added (3) relating to the continued operation of a deceased outfitter's operation.

Administrative Rules

ARM 24.171.701 Net client hunter use (NCHU) categories, transfers, and records.

37-47-311. Limit one license. (1) An individual may not hold more than one outfitter's license either for the individual's own benefit or for the use and benefit of a business entity. However, the name of a business entity may appear on more than one current outfitter's license.

(2) Subsection (1) does not prevent a licensee from:

(a) owning or operating more than one business entity under one license; or

(b) filing more than one operations plan with the board.

History: En. Sec. 9, Ch. 221, L. 1971; amd. Sec. 4, Ch. 541, L. 1975; amd. Sec. 22, Ch. 9, L. 1977; R.C.M. 1947, 26-916(5); Sec. 87-4-132, MCA 1985; redes. 37-47-311 by Sec. 11, Ch. 528, L. 1987; amd. Sec. 2, Ch. 197, L. 2005; amd. Sec. 11, Ch. 341, L. 2013.

Compiler's Comments

2013 Amendment: Chapter 341 in (1) in two places substituted "business entity" for "partnership, limited liability partnership, limited liability company, or corporation"; in (2) substituted current language for "within more than one operation plan filed with the board"; and made minor changes in style. Amendment effective October 1, 2013.

2005 Amendment: Chapter 197 near end of first sentence and near beginning of second sentence after "partnership" inserted "limited liability partnership, limited liability company", at end of first sentence after "corporation" deleted "nor may the", and in second sentence after "corporation" inserted "may" and at end after "license" inserted "and within more than one operation plan filed with the board"; and made minor changes in style. Amendment effective October 1, 2005.

37-47-312. Repealed. Sec. 127, Ch. 467, L. 2005.

History: En. Sec. 9, Ch. 221, L. 1971; amd. Sec. 4, Ch. 541, L. 1975; amd. Sec. 22, Ch. 9, L. 1977; R.C.M. 1947, 26-916(6); Sec. 87-4-133, MCA 1985; redes. 37-47-312 by Sec. 11, Ch. 528, L. 1987.

37-47-313. Shuttle and rental services — exemption . (1) Nothing in this chapter prohibits the furnishing of shuttle or rental services as long as those services do not include in-field assistance to a customer.

(2) In-field assistance includes but is not limited to:

(a) setting up a camp;

(b) field instruction for the activity to be conducted by the customer; or

(c) other services considered to be services of an outfitter, as defined in 37-47-101.

History: En. Sec. 2, Ch. 328, L. 1995.

Compiler's Comments

Severability: Section 23, Ch. 328, L. 1995, was a severability clause.

37-47-314. Terminated. Sec. 26, Ch. 328, L. 1995.

History: En. Sec. 11, Ch. 328, L. 1995.

37-47-315. Terminated. Sec. 6, Ch. 544, L. 1999.

History: En. Sec. 11, Ch. 459, L. 1995; amd. Sec. 1, Ch. 544, L. 1999.

37-47-316. Repealed. Sec. 19, Ch. 341, L. 2013.

History: En. Sec. 5, Ch. 543, L. 1999; amd. Sec. 1, Ch. 393, L. 2001; amd. Sec. 3, Ch. 328, L. 2011.

37-47-317. Repealed. Sec. 5, Ch. 328, L. 2011.

History: En. Sec. 6, Ch. 543, L. 1999.

37-47-318. Repealed. Sec. 19, Ch. 341, L. 2013.

History: En. Sec. 7, Ch. 543, L. 1999; amd. Sec. 21, Ch. 502, L. 2007; amd. Sec. 4, Ch. 328, L. 2011.

37-47-319 through 37-47-324 reserved.

37-47-325. Outfitter's assistants — exemption from licensing. (1) An outfitter may hire or retain an outfitter's assistant.

(2) An outfitter's assistant is not required to obtain a license under this chapter.

(3) The outfitter's assistant must carry proof of employment as required by the board by rule.

(4) (a) An outfitter who employs or retains an outfitter's assistant is responsible for ensuring that the outfitter's assistant:

(i) safeguards the public health, safety, and welfare while providing services; and

(ii) is qualified and competent to perform the tasks of a guide.

(b) The board shall hold an outfitter who employs or retains an outfitter's assistant responsible under the provisions of 37-1-316, 37-47-341, and 37-47-402 for any acts or omissions by the outfitter's assistant in the ordinary course and scope of duties assigned by the outfitter.

(5) The outfitter's assistant may not be employed or retained by an outfitter for more than 15 days in a calendar year unless the outfitter's assistant is actively obtaining a guide's license pursuant to this part and the board determines that the license application is routine for purposes of 37-1-101.

(6) An outfitter may use more than one outfitter's assistant in a calendar year.

(7) An outfitter's assistant may be employed or retained by an outfitter on more than one occasion in a calendar year if:

(a) the outfitter's assistant is not employed or retained for more than 15 days as an outfitter's assistant in that calendar year; or

(b) the outfitter's assistant is actively obtaining a guide's license and the board determines that the license application is routine for purposes of 37-1-101.

History: En. Sec. 1, Ch. 241, L. 2013; amd. Sec. 3, Ch. 217, L. 2017.

Compiler's Comments

2017 Amendment: Chapter 217 in (3) after "employment as" substituted "required by the board by rule" for "provided in 37-47-404(4)(b) pending adoption of proof of employment by the board by rule". Amendment effective October 1, 2017.

Termination Provision Repealed: Section 1, Ch. 142, L. 2017, and sec. 5, Ch. 217, L. 2017, repealed sec. 11, Ch. 241, L. 2013, and sec. 1, Ch. 136, L. 2015, which terminated this section December 31, 2017. Effective October 1, 2017.

Extension of Termination Date: Section 1, Ch. 136, L. 2015, amended sec. 11, Ch. 241, L. 2013, by extending the termination date imposed by Ch. 241 to December 31, 2017. Effective March 27, 2015.

Effective Date: Section 10, Ch. 241, L. 2013, provided: "[This act] is effective September 1, 2013."

Termination: Section 11, Ch. 241, L. 2013, provided: "[This act] terminates August 31, 2015."

37-47-326 through 37-47-340 reserved.

37-47-341. Grounds for denial, suspension, or revocation of license. A license or right to apply for and hold a license issued under this part may be denied, suspended, or revoked or other disciplinary conditions may be applied upon any of the following grounds:

(1) having ceased to meet all of the qualifications for holding a license, as required under this chapter and rules adopted pursuant to this chapter;

(2) fraud or deception in procuring a license;

(3) fraudulent, untruthful, or misleading advertising;

(4) having pleaded guilty to or been adjudged by a court guilty of a felony, including a case in which the sentence is suspended or imposition of the sentence is deferred, unless civil rights have been restored pursuant to law;

(5) one conviction or bond forfeiture for a violation of the fish and game or outfitting laws or regulations of any state, the United States, or other jurisdictions;

(6) a substantial breach of a contract with a participant provided that the breach is established as a matter of final judgment in a court of law;

(7) the willful employment of or contracting with an unlicensed guide by an outfitter;

(8) negligence or misconduct while acting as an outfitter or guide that causes an accident or injury to the person or property of a participant;

(9) misconduct as defined by board rule; or

(10) any violation of this chapter or a rule adopted pursuant to this chapter.

History: En. Sec. 11, Ch. 221, L. 1971; amd. Sec. 5, Ch. 541, L. 1975; amd. Sec. 8, Ch. 417, L. 1977; R.C.M. 1947, 26-918; amd. Sec. 18, Ch. 545, L. 1981; Sec. 87-4-141, MCA 1985; redes. 37-47-341 by Sec. 11, Ch. 528, L. 1987; amd. Sec. 5, Ch. 565, L. 1989; amd. Sec. 11, Ch. 220, L. 1993; amd. Sec. 12, Ch. 328, L. 1995; amd. Sec. 22, Ch. 502, L. 2007; amd. Sec. 12, Ch. 341, L. 2013.

Compiler's Comments

2013 Amendment: Chapter 341 in (5) inserted "or other jurisdictions"; in (7) after "guide" deleted "or professional guide"; in (8) substituted "outfitter or guide" for "outfitter, guide, or professional guide"; and made minor changes in style. Amendment effective October 1, 2013.

2007 Amendment: Chapter 502 in (4) deleted former second sentence that read: "A person may not apply for or hold an outfitter's, guide's, or professional guide's license during any period of time in which a sentence for a felony has been deferred or suspended." Amendment effective October 1, 2007.

Saving Clause: Section 52, Ch. 502, L. 2007, was a saving clause.

1995 Amendment: Chapter 328 in introductory clause, after "license", inserted "issued under this part" and after "revoked" inserted "or other disciplinary conditions may be applied"; in (1), at end, inserted "as required under this chapter and rules adopted pursuant to this chapter"; in (4) inserted last sentence relating to deferred or suspended felony sentence; in (5) substituted "one conviction or bond forfeiture as to a violation" for "two convictions or bond forfeitures of \$100 or more as to violations" and after "United States" deleted "within the past 5 years"; in (6) substituted "with a participant" for "with any person using the services of the license holder"; in (7) inserted "or professional guide"; in (8), after "outfitter", inserted "guide" and at end substituted "property of a participant" for "property of any client of the outfitter or professional guide"; inserted (10) relating to violation of chapter or rule; and made minor changes in style.

Severability: Section 23, Ch. 328, L. 1995, was a severability clause.

Purported Repeal — Coordination: Section 128, Ch. 429, L. 1995, repealed this section, but sec. 130, Ch. 429, L. 1995, a coordination section, voided the repeal.

1993 Amendment: Chapter 220 in introductory clause inserted "denied"; in (5) substituted "any state" for "the state of Montana"; in (7), after "unlicensed", deleted "professional"; inserted (9) concerning misconduct; and made minor changes in style. Amendment effective July 1, 1993.

1989 Amendment: In (7) inserted "or contracting with".

1981 Amendment: Rewrote (4) (see 1981 Session Law), which formerly read: "conviction of a felony, until civil rights are restored or until time of any deferred sentence for a felony has expired"; added "within the past 5 years" to (5); inserted "professional" before "guide" in (7); and inserted "professional" before "guide" twice and changed "which negligence or misconduct causes a danger or unreasonable risk of danger to person" to "that causes an accident or injury to person" in (8).

Administrative Rules

ARM 24.171.2301 Unprofessional conduct and misconduct.

37-47-342. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 12, Ch. 221, L. 1971; amd. Sec. 6, Ch. 541, L. 1975; amd. Sec. 9, Ch. 417, L. 1977; R.C.M. 1947, 26-919; amd. Sec. 19, Ch. 545, L. 1981; amd. Sec. 7, Ch. 528, L. 1987; Sec. 87-4-142, MCA 1985; redes. 37-47-342 by Sec. 11, Ch. 528, L. 1987.

37-47-343. Appeal procedure. A person who feels aggrieved by a final order of the board denying issuance of a license or suspending or revoking a license as an outfitter or guide may petition for judicial review as provided in Title 2, chapter 4, part 7.

History: En. Sec. 13, Ch. 221, L. 1971; amd. Sec. 7, Ch. 541, L. 1975; amd. Sec. 10, Ch. 417, L. 1977; R.C.M. 1947, 26-920; amd. Sec. 20, Ch. 545, L. 1981; amd. Sec. 10, Ch. 528, L. 1987; Sec. 87-4-143, MCA 1985; redes. 37-47-343 by Sec. 11, Ch. 528, L. 1987; amd. Sec. 12, Ch. 220, L. 1993; amd. Sec. 13, Ch. 328, L. 1995; amd. Sec. 13, Ch. 341, L. 2013.

Compiler's Comments

2013 Amendment: Chapter 341 substituted "outfitter or guide" for "outfitter, guide, or professional guide". Amendment effective October 1, 2013.

1995 Amendment: Chapter 328 after "outfitter" inserted "guide"; and made minor changes in style.

Severability: Section 23, Ch. 328, L. 1995, was a severability clause.

Purported Repeal — Coordination: Section 128, Ch. 429, L. 1995, repealed this section, but sec. 130, Ch. 429, L. 1995, a coordination section, voided the repeal.

1993 Amendment: Chapter 220 substituted language regarding judicial review of final order concerning denial of or suspension or revocation of a license for former language providing an appeal to the District Court (see 1993 Session Law for text). Amendment effective July 1, 1993.

1987 Amendment: Throughout section changed references to Director to references to Board.

1981 Amendment: Inserted "professional" before "guide" in the first sentence; and changed "commission" to "director" throughout the section.

Cross-References

37-47-344. Penalties — disposition of fines. (1) A person who violates any provision of this chapter or rule adopted under this chapter is guilty of a misdemeanor and is punishable, unless otherwise specified, by a fine not exceeding \$500.

(2) Fifty percent of all fines paid under this section must be deposited in the general fund of the county in which the conviction is obtained, and 50% must be deposited in the state special revenue fund for the use of the board in enforcing this chapter. All investigation, preparation, and trial costs paid under this section must be deposited in the state special revenue fund for the use of the board in enforcing the provisions of this chapter. The board may reimburse other agencies for costs reasonably incurred in the enforcement of this chapter.

History: En. Sec. 8, Ch. 528, L. 1987; amd. Sec. 13, Ch. 220, L. 1993; amd. Sec. 2, Ch. 445, L. 2007.

Compiler's Comments

2007 Amendment: Chapter 445 in (1) near end after "punishable" inserted "unless otherwise specified"; deleted former (2) that read: "(2) A person who represents to the public that the person is an outfitter or who purposely engages in outfitting without a license as required by this chapter is guilty of a misdemeanor and is punishable by a fine of not less than \$200 and not more than \$1,000, up to 1 year in the county jail, or both. Each day of violation is a separate offense. In addition, the person must be assessed and pay to the board the amount of all costs incurred by the board in investigating and preparing the case for trial and all prosecution costs, including but not limited to witness, transportation, and per diem expenses"; deleted former (4) that read: "(4) A person convicted of engaging in outfitting without a license shall reimburse the full amount of any fees received to the person to whom illegal outfitter services were provided"; and made minor changes in style. Amendment effective July 1, 2007.

1993 Amendment: Chapter 220 in (2), in first sentence, increased maximum penalty from a \$500 fine to a \$1,000 fine, imprisonment, or both, inserted second sentence establishing each day of violation as a separate offense, and in third sentence, after "assessed", inserted "and pay to the board", and at end inserted requirement for payment of all prosecution costs and expenses; in (3) inserted last two sentences regarding deposit of costs in special revenue fund and reimbursement of enforcement costs; inserted (4) regarding reimbursement of outfitter fees paid for illegal services; and made minor changes in style. Amendment effective July 1, 1993.

Termination Provision Repealed: Section 1, Ch. 143, L. 1991, repealed sec. 14, Ch. 528, L. 1987, which terminated this section July 1, 1991. Effective March 25, 1991.

Case Notes

Sentencing Under Version of Statute in Effect at Time of Offense — No Error When Penalty Not Reduced in Current Version of Statute: The defendant was convicted of outfitting without a license. Although he was alleged to have committed the acts in 2005, he was sentenced under the 2007 version of the criminalizing statute. On appeal, the defendant argued that the District Court erred in sentencing him under the 2007 statute. The Supreme Court disagreed, finding that the penalty for a violation of the statute had not been reduced in the later version, and affirmed. *St. v. Kebble*, 2015 MT 195, 380 Mont. 69, 353 P.3d 1175.

No Error in Suspending Hunting and Fishing Privileges for Outfitting Without License When Suspension Also Assessed for Fish and Game Violations: Ruiz was convicted of outfitting without a license and for several fish and game violations. The sentencing court suspended Ruiz's hunting and fishing privileges for both violations, designating the suspension periods to run concurrently. Ruiz appealed on grounds that it was error to suspend privileges for outfitting without a license. The Supreme Court agreed that this section does not allow for the suspension of privileges for outfitting violations. However, 87-1-102 (now repealed) allows suspension for fish and game violations. The practical effect of the concurrent sentences was suspension in any event, and the District Court did not abuse its lawful discretion in suspending hunting and fishing privileges for Ruiz's violations. *St. v. Ruiz*, 2005 MT 117, 327 M 109, 112 P3d 1001 (2005).

Administrative, Not Criminal, Sanctions Properly Imposed by Board of Outfitters Against Outfitter Who Hired Unlicensed Guide: Crismore hired an unlicensed guide. Pursuant to 37-1-312, the Board of Outfitters fined Crismore \$1,000, placed him on probation for 18 months, and ordered him to complete remedial education. Crismore contended that the Board should have applied this section, which is the

misdemeanor criminal statute that specifically applies to outfitters and guides and provides a maximum fine of \$500. The Supreme Court found that Crismore's argument had no basis in law. The Board of Outfitters has no authority to conduct a criminal proceeding that may lead to a misdemeanor sentence under this section. That authority is vested in courts of limited jurisdiction. Rather, the Board has authority to enforce license regulations and conduct administrative contested case hearings pursuant to 37-1-303 and therefore properly exercised its authority to sanction Crismore pursuant to 37-1-312. *Crismore v. Bd. of Outfitters*, 2005 MT 109, 327 M 71, 111 P3d 681 (2005).

Three-Year Statute of Limitations Reasonable for Prosecution of Misdemeanor Fish and Game Violations — Equal Protection and Due Process Not Violated: Defendant was charged with five misdemeanor fish and game and outfitter violations that occurred nearly 2 years earlier. Although misdemeanor violations must generally be charged within 1 year, 45-1-205(5) and (6) allow charges for misdemeanor fish and game crimes to be brought within 3 years of violation. Defendant contended that the extended statute of limitations for charging fish and game crimes violated equal protection and due process guarantees. The District Court reviewed the legislative history of 45-1-205(5) and (6) and concluded that the extended statute of limitations served a reasonable relation to the proper legislative purpose of protecting wildlife and that in order to effectively enforce fish and game laws, additional time to discover and investigate fish and game violations was warranted. The Supreme Court agreed. A separate class of misdemeanors for fish and game violations did not violate equal protection because all persons who commit such crimes are in a similarly situated class and subject to the same treatment. Further, because fish and game and outfitter violations sometimes require investigation over several hunting seasons and involve perpetrators who reside out of state, an extended statute of limitations is a reasonable exercise of the state's legitimate police power in preserving wildlife and does not violate substantive due process. *St. v. Egdorf*, 2003 MT 264, 317 M 436, 77 P3d 517 (2003).

37-47-345. Enforcement. Investigations and arrests for violations of this chapter or rules adopted pursuant to this chapter may be made by any peace officer; warden of the department of fish, wildlife, and parks; or federal agency enforcement personnel.

History: En. Sec. 9, Ch. 528, L. 1987; amd. Sec. 14, Ch. 328, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 328 after "chapter" inserted "or rules adopted pursuant to this chapter".

Severability: Section 23, Ch. 328, L. 1995, was a severability clause.

Termination Provision Repealed: Section 1, Ch. 143, L. 1991, repealed sec. 14, Ch. 528, L. 1987, which terminated this section July 1, 1991. Effective March 25, 1991.

Preamble: The preamble attached to Ch. 336, L. 1991, provided: "WHEREAS, under the provisions of section 37-47-306, MCA, fees collected by the Board of Outfitters may be used for investigation of license applicants, administrative costs, and enforcement of statutes and rules related to outfitters and guides; and

WHEREAS, wardens of the Department of Fish, Wildlife, and Parks have authority under section 37-47-345, MCA, to enforce violations of Title 37, chapter 47, MCA, relating to outfitters and guides, and this authority should be clearly provided in Title 87, MCA; and

WHEREAS, the Legislature intends that costs to the Department of Fish, Wildlife, and Parks related to enforcement of Title 37, chapter 47, MCA, by wardens of the Department be funded from the fees that are collected by the Board of Outfitters and transferred to the Department through memorandums of understanding or other agreements."

Cross-References

Enforcement powers of wardens, 87-1-506.

37-47-346. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 14, Ch. 220, L. 1993.

37-47-347 through 37-47-350 reserved.

37-47-351. Investigators. The department may hire investigators to assist the board in investigations and inspections authorized by this chapter.

History: En. Sec. 20, Ch. 328, L. 1995; amd. Sec. 13, Ch. 100, L. 2011.

Compiler's Comments

2011 Amendment: Chapter 100 deleted former (2) that read: "(2) To qualify as an investigator, a person must:

(a) be a citizen of the United States and be a Montana resident;

(b) have knowledge of outfitting and guiding through prior experience as a licensed outfitter, guide, or professional guide or as a regulator of the outfitting profession; and

(c) have not less than 2 years' experience as a licensed private investigator or as an investigator, detective, special agent, or peace officer of a city, county, or state or of a federal agency"; and made minor changes in style. Amendment effective October 1, 2011.

Severability: Section 23, Ch. 328, L. 1995, was a severability clause.

Effective Date: Section 25, Ch. 328, L. 1995, provided that this section is effective July 1, 1995.

Part 4

Relative Duties of Outfitters, Guides, and Participants

Part Case Notes

Application of Federal Lacey Act to Outfitting and Guiding — Statute of Limitations on Charges of Conspiracy: While a prosecution under the federal Lacey Act, 16 U.S.C. § 3371, et seq., which prohibits transportation or acquisition in interstate commerce of wildlife in violation of state laws, may not properly be had for the substantive acts of selling guiding services and hunting permits, a prosecution can be maintained for conspiracies to violate the Act while providing outfitting and guiding services, such as arranging for out-of-state hunters to use elk licenses and permits belonging to other hunters, knowing that any elk taken would be transported out of state. The Act applied when evidence was sufficient to establish the involvement of defendant, a hunting guide and outfitter, in a conspiracy to transport elk in interstate commerce in violation of Montana law. Further, the 5-year "catchall" statute of limitations set out in 18 U.S.C. § 3282 applied to charges of conspiring to violate the Act. U.S. v. Thomas, 887 F2d 1341 (9th Cir. 1989), distinguishing U.S. v. Stenberg, 803 F2d 422 (9th Cir. 1986).

37-47-401. Purpose. It is recognized that some activities conducted by outfitters, guides, and outfitter's assistants within the scope of their authorized services are inherently hazardous to participants regardless of all feasible safety measures that may be taken. It is the purpose of this part to define those areas of responsibility and affirmative acts or omissions for which outfitters, guides, and outfitter's assistants are liable for loss, damage, or injury and those risks for which the participant expressly assumes or is considered to have voluntarily assumed the risk of loss or damage.

History: En. Sec. 2, Ch. 170, L. 1981; Sec. 87-4-161, MCA 1985; redes. 37-47-401 by Sec. 11, Ch. 528, L. 1987; amd. Sec. 15, Ch. 328, L. 1995; amd. Sec. 5, Ch. 241, L. 2013; amd. Sec. 14, Ch. 341, L. 2013.

Compiler's Comments

Termination Provision Repealed: Section 1, Ch. 142, L. 2017, and sec. 5, Ch. 217, L. 2017, repealed sec. 11, Ch. 241, L. 2013, and sec. 1, Ch. 136, L. 2015, which terminated the Ch. 241, L. 2013, amendments to this section December 31, 2017. Effective October 1, 2017.

Extension of Termination Date: Section 1, Ch. 136, L. 2015, amended sec. 11, Ch. 241, L. 2013, by extending the termination date imposed by Ch. 241 to December 31, 2017. Effective March 27, 2015.

2013 Amendments — Composite Section: Chapter 241 in two places after "professional guides" inserted "and outfitter's assistants"; and made minor changes in style. Amendment effective September 1, 2013, and terminates August 31, 2015.

Chapter 341 in two places substituted "outfitters and guides" for "outfitters, guides, and professional guides". Amendment effective October 1, 2013.

1995 Amendment: Chapter 328 in two places, after "guides", inserted "professional guides"; and made minor changes in style.

Severability: Section 23, Ch. 328, L. 1995, was a severability clause.

37-47-402. Duties of outfitters and guides. An outfitter or guide offering professional services in this state shall:

(1) act as would a reasonably prudent member of the profession while engaging in providing the services authorized to be performed by a licensed member of the profession;

(2) comply with all standards adopted by board rule.

History: En. Sec. 3, Ch. 170, L. 1981; Sec. 87-4-162, MCA 1985; redes. 37-47-402 by Sec. 11, Ch. 528, L. 1987; amd. Sec. 15, Ch. 220, L. 1993; amd. Sec. 16, Ch. 328, L. 1995; amd. Sec. 15, Ch. 341, L. 2013.

Compiler's Comments

2013 Amendment: Chapter 341 near beginning substituted "outfitter or guide" for "outfitter, guide, or professional guide". Amendment effective October 1, 2013.

1995 Amendment: Chapter 328 in introductory clause, after "guide", inserted "professional guide"; and made minor changes in style.

Severability: Section 23, Ch. 328, L. 1995, was a severability clause.

1993 Amendment: Chapter 220 in (2), at end, substituted "board" for "department of fish, wildlife, and parks"; and made minor changes in style. Amendment effective July 1, 1993.

Severability: Section 18, Ch. 220, L. 1993, was a severability clause.

Administrative Rules

ARM 24.171.412 Safety provisions.

37-47-403. Duties of participants. (1) A participant shall:

(a) act as would a reasonably prudent person when engaging in the activities offered by a licensed outfitter or guide or by an unlicensed outfitter's assistant in this state;

(b) receive permission from the outfitter or guide prior to embarking on any self-initiated activity and inform the outfitter or guide of the participant's plans and intentions upon receiving permission to engage in the self-initiated activity.

(2) A participant may not:

(a) interfere with the running or operation of an outfitter's, guide's, or outfitter's assistant's activities when those activities conform to the standards of care set forth in 37-47-402 or 37-47-405;

(b) use the outfitter's, guide's, or outfitter's assistant's equipment, facilities, or services unless the participant has requested and received permission from the outfitter, guide, or outfitter's assistant;

(c) knowingly, purposely, or negligently engage in any type of conduct that contributes to or causes injury to the participant or any other person.

History: En. Sec. 4, Ch. 170, L. 1981; Sec. 87-4-163, MCA 1985; redes. 37-47-403 by Sec. 11, Ch. 528, L. 1987; amd. Sec. 17, Ch. 328, L. 1995; amd. Sec. 6, Ch. 241, L. 2013; amd. Sec. 16, Ch. 341, L. 2013.

Compiler's Comments

Termination Provision Repealed: Section 1, Ch. 142, L. 2017, and sec. 5, Ch. 217, L. 2017, repealed sec. 11, Ch. 241, L. 2013, and sec. 1, Ch. 136, L. 2015, which terminated the Ch. 241, L. 2013, amendments to this section December 31, 2017. Effective October 1, 2017.

Extension of Termination Date: Section 1, Ch. 136, L. 2015, amended sec. 11, Ch. 241, L. 2013, by extending the termination date imposed by Ch. 241 to December 31, 2017. Effective March 27, 2015.

2013 Amendments — Composite Section: Chapter 241 in (1)(a) near end inserted "or by an unlicensed outfitter's assistant"; in (2)(a) and in (2)(b) in two places inserted reference to outfitter's assistant; in (2)(a) at end inserted "or 37-47-405"; and made minor changes in style. Amendment effective September 1, 2013, and terminates August 31, 2015.

Chapter 341 in (1)(a), (1)(b) in two places, (2)(a), and (2)(b) in two places substituted references to outfitter or guide for references to outfitter, guide, or professional guide. Amendment effective October 1, 2013.

1995 Amendment: Chapter 328 throughout section, after references to guide, inserted references to professional guide; and made minor changes in style.

Severability: Section 23, Ch. 328, L. 1995, was a severability clause.

37-47-404. Responsibility for violations of law. (1) A person accompanying a hunting or fishing party as an outfitter, guide, or outfitter's assistant is equally responsible with any person or party engaging the person as an outfitter for any violation of fish and game laws unless the violation is reported to a peace officer by the outfitter, guide, or outfitter's assistant and the outfitter, guide, or outfitter's assistant was not an active participant. An outfitter, guide, or outfitter's assistant who willfully fails or refuses to report any violation of fish and game laws is liable for the penalties provided in this chapter. If a guide or outfitter's assistant violates the laws or applicable regulations relating to fish and game, outfitting, or guiding with actual knowledge of an outfitter engaging the guide or outfitter's assistant, the outfitter is legally responsible for the violation for all purposes under the laws or regulations if the outfitter fails to report the violation to the proper authority.

(2) An outfitter, guide, or outfitter's assistant shall report any violation or suspected violation of fish and game laws that the outfitter, guide, or outfitter's assistant knows has been committed by the employees, contractors, agents, representatives, clients, or participants in the outfitting or guiding activity. The violation or suspected violation must be reported to a peace officer at the earliest possible opportunity.

(3) A person may not hire or retain an outfitter unless the outfitter is currently licensed in accordance with the laws of the state of Montana. A person may not use the services of a guide, and a guide may not offer services unless the services are obtained through an endorsing outfitter.

(4) An outfitter may not place a hired or retained outfitter's assistant in a position of providing services to participants until the outfitter has documentation as specified by board rule under 37-47-201(4)(e).

History: En. Sec. 71, Ch. 173, L. 1917; re-en. Sec. 3750, R.C.M. 1921; re-en. Sec. 3750, R.C.M. 1935; amd. Sec. 6, Ch. 173, L. 1949; amd. Sec. 5, Ch. 184, L. 1951; amd. Sec. 3, Ch. 223, L. 1955; amd. Sec. 2, Ch. 541, L. 1975; R.C.M. 1947, 26-906; amd. Sec. 4, Ch. 545, L. 1981; Sec. 87-4-103, MCA 1985; redes. 37-47-404 by Sec. 11, Ch. 528, L. 1987; amd. Sec. 16, Ch. 220, L. 1993; amd. Sec. 18, Ch. 328, L. 1995; amd. Sec. 40, Ch. 109, L. 2009; amd. Sec. 7, Ch. 241, L. 2013; amd. Sec. 17, Ch. 341, L. 2013; amd. Sec. 4, Ch. 217, L. 2017.

Compiler's Comments

2017 Amendment: Chapter 217 in (4) at beginning deleted "Except as provided in subsection (4)(b)"; deleted former (4)(b) that read: "(b) (i) Prior to adoption of the rules, an outfitter may use temporary documentation to place a hired or retained outfitter's assistant in a position of providing services to participants. The temporary documentation must be mailed to the board within the time period of the outfitter's assistant's service, and a copy must be provided to the outfitter's assistant. The outfitter's assistant shall carry the temporary documentation at all times in the field.

(ii) The temporary documentation must include the following:

(A) the outfitter's name, license number, and contact information;

(B) the outfitter's assistant's name and home address and the starting date and expiration date for the period of service;

(C) a brief explanation of why an emergency replacement is needed; and

(D) the outfitter's signature, which must be on the original and on the copy of the temporary documentation and must affirm the provisions in this subsection (4)(b)(ii).

(iii) The outfitter shall collect the temporary documentation from the outfitter's assistant after the period of service.

(iv) The temporary documentation may not be used after adoption of the rules under 37-47-201(4)(e)"; and made minor changes in style. Amendment effective October 1, 2017.

Termination Provision Repealed: Section 1, Ch. 142, L. 2017, and sec. 5, Ch. 217, L. 2017, repealed sec. 11, Ch. 241, L. 2013, and sec. 1, Ch. 136, L. 2015, which terminated the Ch. 241, L. 2013, amendments to this section December 31, 2017. Effective October 1, 2017.

Extension of Termination Date: Section 1, Ch. 136, L. 2015, amended sec. 11, Ch. 241, L. 2013, by extending the termination date imposed by Ch. 241 to December 31, 2017. Effective March 27, 2015.

2013 Amendments — Composite Section: Chapter 241 in (1) in six places and in (2) in two places after "professional guide" inserted "or outfitter's assistant"; inserted (4) regarding requirements for

outfitter to use outfitter's assistant to provide services; and made minor changes in style. Amendment effective September 1, 2013, and terminates August 31, 2015.

Chapter 341 throughout section substituted "outfitter or guide" for "outfitter, guide, or professional guide"; in (1) in third sentence in two places and in (3) in second sentence in two places after "guide" deleted "or professional guide"; in (1) in third sentence substituted "actual knowledge" for "actual or implied knowledge"; and in (2) after "knows" deleted "or reasonably should have known" and after "employees" inserted "contractors". Amendment effective October 1, 2013.

2009 Amendment: Chapter 109 in (1) near beginning of first sentence after "professional guide" deleted "or other employee of the outfitter", after "party" substituted "engaging" for "employing", and near end in two places after "professional guide" deleted "or employee", in second sentence near beginning after "professional guide" deleted "or other employee of an outfitter" and at end substituted "chapter" for "section", and in third sentence near middle after "outfitter" substituted "engaging" for "employing"; and made minor changes in style. Amendment effective October 1, 2009.

Saving Clause: Section 53, Ch. 109, L. 2009, was a saving clause.

Severability: Section 54, Ch. 109, L. 2009, was a severability clause.

1995 Amendment: Chapter 328 in (1), in first and second sentences in four places, substituted "guide, professional guide" for "agent" and in third sentence, after "If any", inserted "guide or" and after "employing the guide" inserted "or professional guide"; in (2), at beginning after "An outfitter", inserted "guide" and near middle, after "guide", inserted "professional guide"; in (3), in first sentence in two places after "outfitter", deleted "or professional guide" and inserted second sentence requiring endorsement of guide or professional guide; and made minor changes in style.

Severability: Section 23, Ch. 328, L. 1995, was a severability clause.

1993 Amendment: Chapter 220 in (1), at end of first sentence after "fish and game laws", inserted remainder of sentence concerning reporting of violation and the lack of participation by the outfitter or an agent; inserted (2) concerning reporting of violations; and made minor changes in style. Amendment effective July 1, 1993.

Severability: Section 18, Ch. 220, L. 1993, was a severability clause.

1981 Amendment: Changed "the law" to "fish and game laws" twice in first sentence of (1).

Case Notes

Three-Year Statute of Limitations Reasonable for Prosecution of Misdemeanor Fish and Game Violations — Equal Protection and Due Process Not Violated: Defendant was charged with five misdemeanor fish and game and outfitter violations that occurred nearly 2 years earlier. Although misdemeanor violations must generally be charged within 1 year, 45-1-205(5) and (6) allow charges for misdemeanor fish and game crimes to be brought within 3 years of violation. Defendant contended that the extended statute of limitations for charging fish and game crimes violated equal protection and due process guarantees. The District Court reviewed the legislative history of 45-1-205(5) and (6) and concluded that the extended statute of limitations served a reasonable relation to the proper legislative purpose of protecting wildlife and that in order to effectively enforce fish and games laws, additional time to discover and investigate fish and game violations was warranted. The Supreme Court agreed. A separate class of misdemeanors for fish and game violations did not violate equal protection because all persons who commit such crimes are in a similarly situated class and subject to the same treatment. Further, because fish and game and outfitter violations sometimes require investigation over several hunting seasons and involve perpetrators who reside out of state, an extended statute of limitations is a reasonable exercise of the state's legitimate police power in preserving wildlife and does not violate substantive due process. *St. v. Egdorf*, 2003 MT 264, 317 M 436, 77 P3d 517 (2003).

37-47-405. Duties of outfitter's assistants. An outfitter's assistant shall:

- (1) act as would a reasonably prudent member of the profession while engaging in providing the services authorized to be performed while employed or retained by a licensed outfitter; and
- (2) comply with all standards adopted by board rule.

History: En. Sec. 2, Ch. 241, L. 2013.

Compiler's Comments

Termination Provision Repealed: Section 1, Ch. 142, L. 2017, and sec. 5, Ch. 217, L. 2017, repealed sec. 11, Ch. 241, L. 2013, and sec. 1, Ch. 136, L. 2015, which terminated this section December 31, 2017. Effective October 1, 2017.

Extension of Termination Date: Section 1, Ch. 136, L. 2015, amended sec. 11, Ch. 241, L. 2013, by extending the termination date imposed by Ch. 241 to December 31, 2017. Effective March 27, 2015.

Effective Date: Section 10, Ch. 241, L. 2013, provided: "[This act] is effective September 1, 2013."

Termination: Section 11, Ch. 241, L. 2013, provided: "[This act] terminates August 31, 2015."