

LEGISLATURE OF NEBRASKA

ONE HUNDRED SECOND LEGISLATURE

FIRST SESSION

LEGISLATIVE BILL 442

Introduced by Avery, 28.

Read first time January 14, 2011

Committee: Natural Resources

A BILL

1 FOR AN ACT relating to outdoor outfitters; to adopt the Outdoor

2 Outfitters and Guides Licensure Act.

3 Be it enacted by the people of the State of Nebraska,

1 Section 1. This act shall be known and may be cited as
2 the Outdoor Outfitters and Guides Licensure Act.

3 Sec. 2. (1) The Legislature finds that: (a) Nebraska has
4 a tremendous amount of pristine land; (b) that the vast expanses of
5 prairie, sandhills, and waterways provide unique habitat for numerous
6 species of birds, fish, and wildlife; and (c) and that the economic
7 development provided through the outdoor outfitters and guides
8 industry is of vital importance to the State of Nebraska and
9 contributes substantially to the economy of the state.

10 (2) It is the intent of the Legislature to promote and
11 encourage utilization of the vast natural resources of this state
12 through travel and tourism activities enhanced by the outdoor
13 outfitters and guides industry.

14 Sec. 3. (1) The purposes of the Outdoor Outfitters and
15 Guides Licensure Act are to (a) regulate and license persons who
16 undertake for compensation the business of providing equipment,
17 facilities, or services to individuals for the purpose of taking or
18 attempting to take fish, birds, or wildlife or navigation of waters
19 of the state and (b) safeguard the health, safety, welfare, and
20 freedom from danger of residents and nonresidents of Nebraska.

21 (2) The Outdoor Outfitters and Guides Licensure Act shall
22 not be interpreted to (a) interfere with any privately owned
23 livestock business operations, (b) prevent the general public from
24 enjoying recreational activities on public and private lands when a
25 licensed outfitter or guide is not utilized, (c) interfere with any

1 fishing or hunting seasons, permits, stamps, certifications, daily
2 bag limits, or possession limits or fish and wildlife population
3 control strategies established by the Game and Parks Commission, (d)
4 interfere with administration of the state park system, or (e)
5 interfere with the right of the United States to manage federal lands
6 and waters under its control.

7 Sec. 4. For purposes of the Outdoor Outfitters and Guides
8 Licensure Act, the definitions found in sections 5 to 18 of this act
9 apply.

10 Sec. 5. Advertise means attempting by any means to induce
11 individuals to enter into an agreement with a licensed outfitter or
12 guide for purposes of taking or attempting to take fish, birds, or
13 wildlife on any public or private lands or navigation of waters on
14 any public or private lake, reservoir, river, or stream.

15 Sec. 6. Big game means (1) antelope, bighorn sheep, deer,
16 or elk in Nebraska and (2) other trophy or exotic game recognized as
17 such by another state or country.

18 Sec. 7. Big game fish means any fish generally recognized
19 as a trophy fish taken by offshore game fishing or sport fishing.

20 Sec. 8. Booking agent means a person or entity who or
21 which makes travel arrangements only and is not associated with or
22 employed by an outdoor outfitter or guide.

23 Sec. 9. Client means an individual who uses the services,
24 facilities, or equipment of a licensed outdoor outfitter or guide.

25 Sec. 10. Commission means the Game and Parks Commission.

1 Sec. 11. Guide means a person employed by an outdoor
2 outfitter or who advertises or holds himself or herself out to the
3 public for purposes of providing personal services consisting of
4 accompanying, supervising, instructing, or training clients in
5 outdoor recreational activities directly related to the advertised
6 activities for which the outdoor outfitter is licensed. Guide does
7 not include:

8 (1) A bona fide camp the purpose of which is to provide
9 outdoor experiences for persons under nineteen years of age and its
10 employees;

11 (2) A nonprofit organization that is exempt from the
12 payment of federal income taxes under the provisions of section
13 501(c)(3) of the Internal Revenue Code;

14 (3) An individual who provides services, equipment, or
15 facilities for recreational activity to a direct family member;

16 (4) An individual or organization engaged in scheduled
17 dog trials as defined in section 37-412;

18 (5) An individual or organization engaged in fur
19 harvesting as defined in section 37-225; and

20 (6) An individual or organization engaged in falconry
21 pursuant to a license issued under sections 37-497 to 37-4,103.

22 Sec. 12. Hunting club means a formal private association
23 of hunters who hold membership through the payment of fees to the
24 club.

25 Sec. 13. License number means a unique number or code on

1 a license issued under the Outdoor Outfitters and Guides Licensure
2 Act.

3 Sec. 14. License year means the period of time starting
4 on the date a license is issued under the Outdoor Outfitters and
5 Guides Licensure Act and ending on the anniversary date of issuance
6 in the following year.

7 Sec. 15. Navigation of waters means the use of any vessel
8 as defined in section 37-1203 which is rented or leased for
9 recreational purposes.

10 Sec. 16. Outdoor outfitter means a person, firm,
11 partnership, hunting club, or corporation who or which advertises or
12 holds himself, herself, or itself out to the public for purposes of
13 providing facilities or services or maintaining, leasing, or
14 otherwise using equipment or accommodations privately owned by the
15 outdoor outfitter, for compensation, for taking or attempting to take
16 fish, birds, or wildlife on any public or private lands or navigation
17 of waters on any public or private lake, reservoir, river, or stream.
18 Outdoor outfitter does not include:

19 (1) A bona fide camp the purpose of which is to provide
20 outdoor experiences for persons under nineteen years of age and its
21 employees;

22 (2) A nonprofit organization that is exempt from the
23 payment of federal income taxes under the provisions of section
24 501(c)(3) of the Internal Revenue Code;

25 (3) An individual who provides services, equipment, or

1 facilities for recreational activity to a direct family member;

2 (4) An individual or organization engaged in scheduled
3 dog trials as defined in section 37-412;

4 (5) An individual or organization engaged in fur
5 harvesting as defined in section 37-225; and

6 (6) An individual or organization engaged in falconry
7 pursuant to a license issued under sections 37-497 to 37-4,103.

8 Sec. 17. Take has the definition found in section 37-242.

9 Sec. 18. Third-party accommodations means a hotel, a
10 motel, a rooming house, a boarding house, or an apartment house, as
11 such terms are defined in sections 41-202 to 41-206, respectively,
12 which is not associated with an outdoor outfitter or guide.

13 Sec. 19. An outdoor outfitter licensed under the Outdoor
14 Outfitters and Guides Licensure Act and offering professional
15 services in this state shall:

16 (1) Provide services, facilities, and equipment as
17 advertised or contractually agreed upon between the outdoor outfitter
18 and a client;

19 (2) Provide services, facilities, and equipment which
20 conform to state safety and other codes as required by law;

21 (3) Cooperate fully with private landowners and public
22 land management agencies and respect their rights and privileges; and

23 (4) Advise clients of any applicable state game, fish,
24 wildlife, and conservation laws, rules, and regulations and
25 applicable federal and international laws, rules, regulations, and

1 standards.

2 Sec. 20. A guide licensed under the Outdoor Outfitters
3 and Guides Licensure Act shall:

4 (1) Conform to the standard of care expected of members
5 of his or her profession;

6 (2) Advise clients of any applicable state game, fish,
7 wildlife, and conservation laws, rules, and regulations and
8 applicable federal and international laws, rules, regulations, and
9 standards;

10 (3) Cooperate fully with private landowners and public
11 land management agencies and respect their rights and privileges; and

12 (4) Possess proof of valid hunting or fishing permits
13 issued under the Game Law or a valid open water rescue certification
14 issued by the American Red Cross or the equivalent, as applicable.

15 Sec. 21. A client shall act as a reasonably prudent
16 person when engaging in recreational activities provided by a
17 licensed outdoor outfitter or licensed guide. A client shall not:

18 (1) Interfere with a licensee's activities when such
19 activities conform to the Outdoor Outfitters and Guides Licensure
20 Act;

21 (2) Willfully or negligently engage in harmful conduct,
22 including the intentional misuse of a licensee's equipment; or

23 (3) Initiate an activity not agreed upon in the contract
24 between the client and the licensee except with the express
25 permission of the licensee.

1 Sec. 22. The commission shall:

2 (1) Develop application requirements and review
3 procedures pursuant to the Outdoor Outfitters and Guides Licensure
4 Act;

5 (2) Accept applications and conduct licensure
6 examinations pursuant to rules and regulations;

7 (3) Conduct hearings, meetings, or teleconferences to
8 review applications filed under the act;

9 (4) Issue or deny licenses to outdoor outfitters and
10 guides;

11 (5) Provide license numbers to licensees;

12 (6) Cooperate with federal and other state agencies in
13 matters of mutual concern regarding outdoor outfitters and guides;
14 and

15 (7) Authorize conservation officers or other commission
16 staff to investigate or otherwise enforce the Outdoor Outfitters and
17 Guides Licensure Act.

18 Sec. 23. (1) An applicant for an outdoor outfitters
19 license shall apply on a form prescribed by the commission. The
20 application shall include, but need not be limited to:

21 (a) The name and address of the applicant or the
22 corporate business or trade name authorized under the Nebraska
23 Business Corporation Act of the applicant and the name and address of
24 each corporate officer;

25 (b) A description of the physical boundaries of the land

1 on or the location of the water on or in which recreational
2 activities will be conducted by the applicant;

3 (c) The applicant's safety records when available and an
4 emergency management plan which includes vehicle accessibility to the
5 area and the location of the nearest emergency or trauma center; and

6 (d) Proof of liability insurance coverage of not less
7 than fifty thousand dollars per one person in a single accident,
8 unless the applicant will offer big game services, in which case he
9 or she shall provide proof of liability insurance coverage of not
10 less than seventy-five thousand dollars per one person in a single
11 accident.

12 (2) The application shall be signed by the applicant
13 under oath or affirmation and shall be duly notarized and accompanied
14 by the applicable license fee established in section 29 or 30 of this
15 act.

16 (3) The commission may make additional inquiries and
17 investigations with respect to an applicant as it deems necessary and
18 advisable for purposes of making a determination to issue or deny a
19 license pursuant to the application.

20 Sec. 24. (1) An applicant for a license as a guide shall
21 apply on a form prescribed by the commission. The application shall
22 include, but need not be limited to:

23 (a) The name and address of the applicant;

24 (b) A description of the physical boundaries of the land
25 on or the location of the water on or in which recreational

1 activities will be conducted by the applicant;

2 (c) The applicant's safety records when available and an
3 emergency management plan which includes vehicle accessibility to the
4 area and the location of the nearest emergency or trauma center;

5 (d) A valid first-aid card issued and signed by a
6 representative of the American Red Cross, signifying successful
7 completion of a first-aid class or its equivalent as approved by the
8 commission;

9 (e) Proof of valid hunting or fishing permits issued
10 under the Game Law or a valid open water rescue certification issued
11 by the American Red Cross or the equivalent, as applicable;

12 (f) Proof of liability insurance coverage of not less
13 than fifty thousand dollars per one person in a single accident,
14 unless the applicant will offer big game services, in which case he
15 or she shall provide proof of liability insurance coverage of not
16 less than seventy-five thousand dollars per one person in a single
17 accident; and

18 (g) Any other information deemed necessary by the
19 commission.

20 (2) The application shall be signed by the applicant
21 under oath or affirmation and shall be duly notarized and accompanied
22 by the applicable license fee established under section 29 or 30 of
23 this act.

24 (3) The commission may make additional inquiries and
25 investigations with respect to an applicant as it deems necessary and

1 advisable for purposes of making a determination to issue or deny a
2 license pursuant to the application.

3 Sec. 25. If the commission finds that substantial
4 material information was misrepresented in an application, the
5 commission may immediately revoke the license of the licensee for no
6 fewer than three years.

7 Sec. 26. Licenses issued under the Outdoor Outfitters and
8 Guides Licensure Act shall be valid for one license year following
9 issuance and may be renewed. Application for renewal shall be made on
10 a form prescribed by the commission and shall be accompanied by the
11 renewal fee required under the act. Failure to timely renew a license
12 shall result in the penalties described in sections 29 and 30 of this
13 act.

14 Sec. 27. (1) The commission shall notify an applicant in
15 writing by certified mail of denial of an application under the
16 Outdoor Outfitters and Guides Licensure Act and the reasons for the
17 denial within twenty-one days after submission of the application.
18 Fees submitted with the application are nonrefundable.

19 (2) An applicant whose application is denied may petition
20 the commission to review the denial within twenty-one days after
21 receipt of the denial. A decision by the commission after such review
22 shall be final.

23 Sec. 28. The following actions are grounds for immediate
24 revocation of an outdoor outfitter's license issued under the Outdoor
25 Outfitters and Guides Licensure Act, and the person whose license is

1 revoked shall not be eligible to reapply for licensure for three
2 years from the date of revocation:

3 (1) Selling, assigning, or otherwise transferring a
4 license, except as prescribed by the commission;

5 (2) Supplying fraudulent, untruthful, or misleading
6 information to the commission or to clients;

7 (3) Conviction of a felony;

8 (4) Engaging in false advertising;

9 (5) Expiration or termination of the required minimum
10 liability insurance coverage;

11 (6) Willful violation of any state fish, bird, wildlife,
12 or conservation laws, rules, and regulations or federal laws, rules,
13 regulations, or standards enforced by the federal Bureau of Land
14 Management or the United States Fish and Wildlife Service;

15 (7) Material breach of a contract with a client;

16 (8) Employment of an unlicensed guide;

17 (9) Willfully operating in an area or engaging in any
18 activity not described in the license application;

19 (10) Inhumane treatment of any animal used in the course
20 of an outdoor event, including failure to provide shelter, water, or
21 food; and

22 (11) Unauthorized hunting, trapping, or fishing of
23 protected species, as identified by state or federal law.

24 A licensee whose license is revoked may petition the
25 commission to review the revocation within twenty-one days after the

1 date of revocation. A decision by the commission after such review
 2 shall be final.

3 Sec. 29. (1) License fees for an outdoor outfitter whose
 4 recreational activities involve fishing, taking of game other than
 5 big game, or navigation of waters:

6	<u>For a license year ending in 2012:</u>	<u>\$550.00;</u>
7	<u>For a license year ending in 2013:</u>	<u>\$650.00;</u>
8	<u>For a license year ending in 2014:</u>	<u>\$800.00; and</u>
9	<u>For a license year ending in 2015 and each</u>	
10	<u>license year thereafter:</u>	<u>\$1,000.00.</u>

11 (2) License fees for a guide whose recreational
 12 activities involve fishing, taking of game other than big game, or
 13 navigation of waters:

14	<u>For a license year ending in 2012:</u>	<u>\$450.00;</u>
15	<u>For a license year ending in 2013:</u>	<u>\$600.00;</u>
16	<u>For a license year ending in 2014:</u>	<u>\$750.00; and</u>
17	<u>For a license year ending in 2015 and each</u>	
18	<u>license year thereafter:</u>	<u>\$800.00.</u>

19 (3) Failure to timely renew an outdoor outfitter's
 20 license whose recreational activities involve fishing, taking of game
 21 other than big game, and navigation of waters shall result in a
 22 penalty of fifty dollars per day.

23 (4) Failure to timely renew a guide's license whose
 24 recreational activities involve fishing, taking of game other than

1 big game, and navigation of waters shall result in a penalty of
2 twenty-five dollars per day.

3 Sec. 30. License fees for an outdoor outfitter or a guide
4 whose recreational activities involve taking of big game or big game
5 fishing shall be:

6 For a license year ending in 2012: \$800.00;

7 For a license year ending in 2013: \$950.00;

8 For a license year ending in 2014: \$1,200.00; and

9 For a license year ending in 2015 and each
10 license year thereafter: \$1,500.00.

11 Failure to timely renew an outdoor outfitter's or a
12 guide's license whose recreational activities involve the taking of
13 big game and big game fishing shall result in a penalty of one
14 hundred dollars per day.

15 Sec. 31. The Outdoor Outfitters and Guides Cash Fund is
16 created. All license fees collected under the Outdoor Outfitters and
17 Guides Licensure Act shall be remitted to the State Treasurer for
18 credit to the fund. Money in the fund shall be used by the commission
19 to carry out the Outdoor Outfitters and Guides Licensure Act.

20 Penalties collected under the act shall be remitted to
21 the State Treasurer for distribution in accordance with Article VII,
22 section 5, of the Constitution of Nebraska.

23 Sec. 32. Any Nebraska-based outdoor outfitter or guide
24 incorporated under the Business Corporation Act and doing business in

1 another state or country shall be licensed under the Outdoor
2 Outfitters and Guides Licensure Act.

3 Any nonresident individual or foreign firm, partnership,
4 hunting club, or corporation who or which advertises or holds
5 himself, herself, or itself out to the public for purposes of
6 providing in Nebraska facilities or services or maintaining, leasing,
7 or otherwise using equipment or accommodations, for compensation, for
8 taking or attempting to take wildlife, birds, or fish on any public
9 or private lands in Nebraska or navigation of waters on or in any
10 public or private lake, reservoir, river, or stream in Nebraska or
11 who is employed by an outdoor outfitter and furnishes in Nebraska
12 personal services consisting of accompanying, supervising,
13 instructing, or training clients in outdoor recreational activities
14 directly related to the advertised activities for such nonresident
15 individual or foreign firm, partnership, hunting club, or corporation
16 shall be licensed under the act or shall show proof of licensure by
17 or incorporation in its home state or country.

18 Sec. 33. A licensed outdoor outfitter may use or allow
19 clients to use a booking agent for travel arrangements or third-party
20 accommodations. A licensed outdoor outfitter is not liable for
21 breaches of a contract between a booking agent or a third-party
22 accommodations agent and a client.

23 Sec. 34. (1) A licensed outdoor outfitter or guide shall
24 provide a waiver form to each client, describing any potential
25 environmental hazards, weather, or terrain conditions and any

1 applicable state, federal, or international laws, rules, regulations,
2 and standards that apply to an outdoor event for which the client is
3 engaging the licensee. The client or the client's guardian shall sign
4 the waiver, acknowledging receipt of information. Any misleading or
5 falsification of information in the waiver by the licensee is a Class
6 IV misdemeanor and shall result in immediate revocation of the
7 license for no fewer than three years.

8 (2) The client or the client's guardian, upon signing
9 such waiver, assumes all reasonable risks and dangers posed during
10 the customary use of facilities, equipment, or services used. The
11 licensee shall not be liable for reasonable or unforeseeable risk
12 associated with weather, conditions, and terrain.

13 Sec. 35. Any person convicted of violating section 28 of
14 this act is guilty of a Class IV misdemeanor and in addition shall
15 have his, her, or its license revoked as provided in such section.

16 Sec. 36. The commission may adopt and promulgate rules
17 and regulations to carry out the Outdoor Outfitters and Guides
18 Licensure Act.