

CHAPTER 264

PROFESSIONS AND OCCUPATIONS

SENATE BILL 93-1

BY SENATOR Bishop;
also REPRESENTATIVES Fleming, Acquafresca, Armstrong, Chlouber, Entz, George, and Taylor.

AN ACT

CONCERNING THE REGULATION OF THE ACTIVITIES OF OUTFITTERS, AND, IN CONNECTION THEREWITH, CONTINUING THE AUTHORITY FOR THE REGISTRATION OF OUTFITTERS BY THE DIRECTOR OF THE DIVISION OF REGISTRATIONS.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. 12-55.5-101, Colorado Revised Statutes, 1991 Repl. Vol., is amended to read:

12-55.5-101. Legislative declaration. It is the intent of the general assembly to promote and encourage residents and nonresidents alike to participate in the enjoyment and use of the mountains, rivers, and streams of Colorado and the state's fish and game and, to that end, in the exercise of the police power of this state for the purpose of safeguarding the health, safety, welfare, and freedom from injury or danger of such residents and nonresidents, to register and regulate those persons who, for compensation, provide equipment or personal services to such residents and nonresidents for the purpose of hunting and fishing. It is neither the intent of the general assembly to interfere in any way with the business of livestock operations or to prevent ~~such livestock operators or~~ owners from loaning or leasing buildings or animals to persons, nor is it intended to prevent said owner ~~or operator~~ from accompanying a person or persons on land that ~~he~~ SUCH PERSON owns, ~~or operates~~, nor is it the intent of the general assembly to interfere in any way with the general public's ability to enjoy the recreational value of Colorado's mountains, rivers, and streams when the services of commercial outfitters are not utilized nor to interfere with the right of the United States to manage the public lands under its control.

SECTION 2. 12-55.5-102 (1) and (5), Colorado Revised Statutes, 1991 Repl. Vol., are amended, and the said 12-55.5-102 is further amended BY THE

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

ADDITION OF THE FOLLOWING NEW SUBSECTIONS, to read:

12-55.5-102. Definitions. As used in this article, unless the context otherwise requires:

(1) ~~"Consultant" means a person who is hired by the director to assist in any investigation initiated under this article or any member of an advisory committee appointed pursuant to section 12-55.5-111.~~ "COMPENSATION" MEANS MAKING, OR ATTEMPTING TO MAKE, A PROFIT, SALARY, OR INCREASE IN BUSINESS OR FINANCIAL STANDING, OR SUPPORTING ANY PART OF OTHER PROGRAMS OR ACTIVITIES, TO INCLUDE RECEIVING FEES, CHARGES, DUES, SERVICE SWAPS, OR SOMETHING WHICH IS NOT STRICTLY A SHARING OF ACTUAL EXPENSES INCURRED FROM AMOUNTS RECEIVED FROM OR FOR OUTFITTING SERVICES RENDERED OR TO BE RENDERED.

(1.5) "CONSULTANT" MEANS A PERSON WHO IS HIRED BY THE DIRECTOR TO ASSIST IN ANY INVESTIGATION INITIATED UNDER THIS ARTICLE OR ANY MEMBER OF AN ADVISORY COMMITTEE APPOINTED PURSUANT TO SECTION 12-55.5-111.

(5) "Outfitter" means any individual soliciting to provide or providing, for compensation, ~~facilities, guide services, or transportation~~ OUTFITTING SERVICES for the purpose of hunting or fishing on land that ~~he~~ SUCH INDIVIDUAL does not own. "Outfitter" does not include an individual whose only service is providing motor vehicles, horses, or other equipment for rent.

(5.5) "OUTFITTING SERVICES" MEANS PROVIDING TRANSPORTATION OF INDIVIDUALS, EQUIPMENT, SUPPLIES, OR WILDLIFE BY MEANS OF VEHICLE, VESSEL, OR PACK ANIMAL, FACILITIES INCLUDING BUT NOT LIMITED TO TENTS, CABINS, CAMP GEAR, FOOD, OR SIMILAR SUPPLIES, EQUIPMENT, OR ACCOMMODATIONS, AND GUIDING, LEADING, PACKING, PROTECTING, SUPERVISING, INSTRUCTING, OR TRAINING PERSONS OR GROUPS OF PERSONS IN THE TAKE OR ATTEMPTED TAKE OF WILDLIFE.

SECTION 3. 12-55.5-105 (1), (2), and (3), Colorado Revised Statutes, 1991 Repl. Vol., are amended to read:

12-55.5-105. Issuance of certificate of registration - violations. (1) Except as otherwise provided in this article, the director shall issue an initial or renewed certificate of registration as an outfitter to any individual who pays the required fee and furnishes evidence satisfactory to the director that ~~he~~ SUCH INDIVIDUAL:

- (a) Is ~~twenty-one~~ EIGHTEEN years of age or older;
- (b) Holds a valid instructor's card in first aid or a standard first aid card issued by the American red cross or evidence of equivalent training;
- (c) Possesses minimum liability insurance coverage in the amount of fifty thousand dollars for bodily injury to one person in any single accident and one hundred thousand dollars for bodily injury to all persons in any single accident; and
- (d) Has submitted to the director a surety bond in the minimum sum of ten thousand dollars, executed by the applicant as principal and by a surety company qualified and authorized to do business in this state as surety. Such bond shall be

conditioned upon compliance with the provisions of this article and with the rules and regulations promulgated under this article.

~~(2) Any person who violates the provisions of this article is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than one thousand dollars nor more than five thousand dollars, or by imprisonment in the county jail for not more than one year, or by both such fine and imprisonment. Upon a second or subsequent conviction, such person commits a class 5 felony and shall be punished as provided in section 18-1-105, C.R.S. Notwithstanding any other provision of law to the contrary, all fines collected pursuant to this section shall be distributed as provided in section 12-55.5-107 (4).~~

~~(3) All fines collected pursuant to this article shall be distributed as follows:~~

~~(a) Twenty-five percent to any federal, state, or local law enforcement agency assisting with an investigation;~~

~~(b) Seventy-five percent to the division for the cost of administering this article.~~

SECTION 4. 12-55.5-106 (1) (i) and (1) (j), Colorado Revised Statutes, 1991 Repl. Vol., are amended, and the said 12-55.5-106 (1) is further amended BY THE ADDITION OF A NEW PARAGRAPH, to read:

12-55.5-106. Disciplinary actions - grounds for discipline. (1) The director may deny, suspend, revoke, or place on probation an outfitter's registration if the applicant or holder:

(i) Has been convicted of second or third degree criminal trespass pursuant to section 18-4-503 ~~(2)(a)~~ or 18-4-504, ~~(2)(a)~~; C.R.S.; except that the director shall be governed by the provisions of section 24-5-101, C.R.S., in considering such conviction; ~~or~~

(j) Hires any person as a guide who fails to meet the requirements of section 12-55.5-108 (2); OR

(k) SERVES OR CONSUMES ALCOHOL WHILE ENGAGED IN THE ACTIVITIES OF AN OUTFITTER, IF THE APPLICANT OR HOLDER IS UNDER TWENTY-ONE YEARS OF AGE.

SECTION 5. The introductory portion to 12-55.5-107 (1) and 12-55.5-107 (4), Colorado Revised Statutes, 1991 Repl. Vol., are amended to read:

12-55.5-107. Penalties. (1) Any person who violates the provisions of this article ~~other than section 12-55.5-105~~ or the rules and regulations of the director promulgated under this article may be penalized by the director upon a finding of a violation pursuant to article 4 of title 24, C.R.S., as follows:

~~(4) All fines collected pursuant to this article shall be distributed as follows:~~

~~(a) Twenty-five percent to any federal, state, or local law enforcement agency assisting with an investigation;~~

~~(b) Seventy-five percent to the division for the cost of administering this article.~~

SECTION 6. Article 55.5 of title 12, Colorado Revised Statutes, 1991 Repl. Vol., is amended BY THE ADDITION OF A NEW SECTION to read:

12-55.5-107.5. Violations - penalties - distribution of fines collected. (1) ANY PERSON WHO VIOLATES SECTION 12-55.5-103 (1) IS GUILTY OF A MISDEMEANOR AND, UPON CONVICTION THEREOF, SHALL BE PUNISHED BY A FINE OF NOT LESS THAN ONE THOUSAND DOLLARS NOR MORE THAN FIVE THOUSAND DOLLARS, OR BY IMPRISONMENT IN THE COUNTY JAIL FOR NOT MORE THAN ONE YEAR, OR BY BOTH SUCH FINE AND IMPRISONMENT. UPON A SECOND OR SUBSEQUENT CONVICTION, SUCH PERSON COMMITS A CLASS 5 FELONY AND SHALL BE PUNISHED AS PROVIDED IN SECTION 18-1-105, C.R.S.

(2) ALL FINES COLLECTED PURSUANT TO THIS ARTICLE SHALL BE DISTRIBUTED AS FOLLOWS:

(a) FIFTY PERCENT DIVIDED BY THE COURT BETWEEN ANY FEDERAL, STATE, OR LOCAL LAW ENFORCEMENT AGENCY ASSISTING WITH AN INVESTIGATION;

(b) FIFTY PERCENT TO THE DIVISION FOR THE COST OF ADMINISTERING THIS ARTICLE.

SECTION 7. 12-55.5-108, Colorado Revised Statutes, 1991 Repl. Vol., is amended BY THE ADDITION OF A NEW SUBSECTION to read:

12-55.5-108. Penalties - cease and desist orders. (3) IT IS A VIOLATION OF THIS ARTICLE FOR ANY PERSON WHOSE OUTFITTER REGISTRATION HAS BEEN REVOKED OR SUSPENDED TO WORK AS A GUIDE.

SECTION 8. 12-55.5-109, Colorado Revised Statutes, 1991 Repl. Vol., is amended to read:

12-55.5-109. Contracts for outfitting services - writing required. (1) Prior to engaging in any activity as an outfitter, an outfitter shall provide a written contract to the client signed by both the outfitter and the client, stating at least the following terms:

(a) Type of services to be provided;

(b) Dates of service;

(c) Transportation arrangements;

(d) Costs of the services;

(e) Ratio of clients to guides; and

(f) The outfitter's policy regarding cancellation of the contract AND REFUND OF ANY DEPOSIT;

(2) No action may be maintained by an outfitter for breach of a contract or agreement to provide outfitting services or for the recovery of compensation for services rendered under such contract or agreement if the outfitter has failed to comply with the provisions of this article.

(3) ANY WRITTEN CONTRACT PROVIDED PURSUANT TO THIS SECTION SHALL ALSO CONTAIN A WRITTEN STATEMENT THAT PURSUANT TO SECTION 12-55.5-105 (1) (c) AND (1) (d) OUTFITTERS ARE BONDED AND REQUIRED TO POSSESS THE MINIMUM LEVEL OF LIABILITY INSURANCE AND THAT THE ACTIVITIES OF OUTFITTERS ARE REGULATED BY THE DIRECTOR OF THE DIVISION OF REGISTRATIONS IN THE DEPARTMENT OF REGULATORY AGENCIES.

SECTION 9. 12-55.5-110 (2), Colorado Revised Statutes, 1991 Repl. Vol., is amended to read:

12-55.5-110. Other remedies - contracts void - public nuisance - seizure of equipment. (2) (a) Every motor vehicle, trailer, vessel, firearm, weapon, trap, equipment, livestock, or other personal property used in outfitting services in violation of the provisions of this article is declared to be a CLASS 2 public nuisance. ~~Every such item shall be subject to seizure, confiscation, and forfeiture or destruction as provided in this section, unless the owner of said property was not a party to the violation~~ UNLESS IN CONFLICT WITH THE SPECIFIC PROVISIONS OF THIS SECTION, THE PROVISIONS OF ARTICLE 13 OF TITLE 16, C.R.S., SHALL APPLY TO ANY ACTION TAKEN PURSUANT TO THIS SECTION.

~~(b) The several district courts of this state shall have original jurisdiction of proceedings under this subsection (2):~~

~~(c) An action to abate a public nuisance under this subsection (2) shall be brought in the judicial district in which the subject matter of the action, or some part thereof, is located or found.~~

~~(d) Except as otherwise provided in this subsection (2), the practice and procedure to abate a public nuisance shall be governed by the Colorado rules of civil procedure.~~

~~(e) An action to abate a public nuisance under this subsection (2) may be brought by a district attorney in the name of the people of the state of Colorado.~~

SECTION 10. 12-55.5-111, Colorado Revised Statutes, 1991 Repl. Vol., is amended to read:

12-55.5-111. Advisory committee. The director ~~may~~ SHALL appoint an advisory committee to make recommendations concerning outfitters, which committee shall serve at the request and pleasure of the director. The members of the advisory committee shall receive no compensation but shall be reimbursed for actual and necessary expenses incurred in the performance of their duties under this article.

SECTION 11. 12-55.5-117, Colorado Revised Statutes, 1991 Repl. Vol., is amended to read:

12-55.5-117. Repeal of article - review of functions. Unless continued by the

general assembly, this article is repealed, effective July 1, 1993 2003, and those powers, duties, and functions of the division specified in this article are abolished. The provisions of section 24-34-104 (5) to (12), C.R.S., concerning a windup period, an analysis and evaluation, public hearings, and claims by or against an agency shall apply to the powers, duties, and functions of the division specified in this article.

SECTION 12. 24-34-104 (22) (d), Colorado Revised Statutes, 1988 Repl. Vol., as amended, is amended, and the said 24-34-104 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

24-34-104. General assembly review of regulatory agencies and functions for termination, continuation, or reestablishment. (22) (d) ~~The following function of the director of the division of registrations shall terminate on July 1, 1993: The regulation of outfitters pursuant to article 55.5 of title 12, C.R.S.~~

(32) THE FOLLOWING FUNCTION OF THE DIRECTOR OF THE DIVISION OF REGISTRATIONS SHALL TERMINATE ON JULY 1, 2003: THE REGULATION OF OUTFITTERS PURSUANT TO ARTICLE 55.5 OF TITLE 12, C.R.S.

SECTION 13. No appropriation. The general assembly has determined that this act can be implemented within existing appropriations, and therefore no separate appropriation of state moneys is necessary to carry out the purposes of this act.

SECTION 14. Effective date. This act shall take effect July 1, 1993.

SECTION 15. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: June 6, 1993