

CHAPTER 360

PROFESSIONS AND OCCUPATIONS

HOUSE BILL 14-1180

BY REPRESENTATIVE(S) Becker, Fields, Fischer, Ginal, Hullinghorst, Labuda, Lebsock, Rosenthal, Schafer, Singer, Young, Duran, Mitsch Bush, Salazar;
also SENATOR(S) Tochtrop, Guzman, Heath, Schwartz.

AN ACT

CONCERNING THE SUNSET REVIEW OF THE REGULATION OF OUTFITTERS FOR THE TAKING OF WILDLIFE BY THE DIRECTOR OF THE DIVISION OF PROFESSIONS AND OCCUPATIONS, AND, IN CONNECTION THEREWITH, IMPLEMENTING THE RECOMMENDATIONS CONTAINED IN THE SUNSET REPORT PREPARED BY THE DEPARTMENT OF REGULATORY AGENCIES.

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

SECTION 1. In Colorado Revised Statutes, 24-34-104, **add** (56); and **repeal** (45) (b) as follows:

24-34-104. General assembly review of regulatory agencies and functions for termination, continuation, or reestablishment. (45) The following agencies, functions, or both, terminate on July 1, 2014:

(b) ~~The regulation of outfitters by the director of the division of professions and occupations pursuant to article 55.5 of title 12, C.R.S.;~~

(56) THE FOLLOWING AGENCIES, FUNCTIONS, OR BOTH, TERMINATE ON SEPTEMBER 1, 2025:

(a) THE REGULATION OF OUTFITTERS BY THE DIRECTOR OF THE DIVISION OF PROFESSIONS AND OCCUPATIONS UNDER ARTICLE 55.5 OF TITLE 12, C.R.S.

SECTION 2. In Colorado Revised Statutes, 12-55.5-102, **amend** (5); and **add** (8) as follows:

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

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

(5) "Outfitter" means ~~any individual~~ A PERSON soliciting to provide or providing, for compensation, outfitting services for the purpose of hunting or fishing on land that ~~such individual~~ THE PERSON does not own.

(8) "PERSON" MEANS AN INDIVIDUAL OR ENTITY.

SECTION 3. In Colorado Revised Statutes, **amend** 12-55.5-102.5 as follows:

12-55.5-102.5. Applicability. (1) This article ~~shall~~ DOES not apply to a person who only authorizes a person to hunt, fish, or take wildlife on property the person owns, rents, or leases, including ~~without limitation,~~ providing ~~such~~ THE authorization for compensation.

(2) THIS ARTICLE DOES NOT REQUIRE A PERSON TO REGISTER AS AN OUTFITTER IF THE PERSON ONLY RENTS MOTOR VEHICLES, LIVESTOCK, OR EQUIPMENT.

SECTION 4. In Colorado Revised Statutes, 12-55.5-103, **amend** (1) as follows:

12-55.5-103. Registration required - fees. (1) ~~No individual~~ A PERSON shall NOT engage in activities as an outfitter, ~~or~~ advertise in any publication AS AN OUTFITTER, or represent himself, HERSELF, OR ITSELF as an outfitter unless ~~he~~ THE PERSON first obtains a ~~certificate of~~ registration from the division and unless ~~such certificate of~~ THE registration is in full force and effect and in ~~such individual's~~ THE PERSON'S immediate possession. ~~No individual~~ A PERSON shall NOT continue to act as an outfitter if ~~such~~ THE PERSON'S registration has been suspended or revoked or has expired.

SECTION 5. In Colorado Revised Statutes, **amend** 12-55.5-103.5 as follows:

12-55.5-103.5. Guide qualifications. (1) ~~A person~~ AN INDIVIDUAL who works as a guide ~~shall~~ MUST be eighteen years of age or older and ~~shall~~ hold either a valid first aid or first aid instructor's card issued by the American red cross or evidence of equivalent training ~~credentials~~ as approved by the director. ~~A person~~ AN INDIVIDUAL who violates this subsection (1) is guilty of a misdemeanor and shall be punished by a fine of one hundred dollars.

(2) It is a violation of this article for ~~any person~~ AN INDIVIDUAL whose outfitter registration has been revoked or suspended to work as a guide.

SECTION 6. In Colorado Revised Statutes, 12-55.5-104, **amend** (1) (a) and (1) (b) as follows:

12-55.5-104. Powers and duties of the director. (1) In addition to all other powers and duties conferred or imposed upon the director by this article or by any other law, the director:

(a) May promulgate rules ~~and regulations pursuant to the provisions of~~ UNDER section 24-4-103, C.R.S., to govern the registration of outfitters AND to carry out the purposes of this article;

(b) (I) May administer oaths, take affirmations of witnesses, and issue subpoenas to compel the attendance of witnesses and the production of all relevant papers, books, records, documentary evidence, and materials in any hearing, investigation, accusation, or other matter coming before the ~~board~~ DIRECTOR. The director may appoint an administrative law judge pursuant to part 10 of article 30 of title 24, C.R.S., to perform the functions of this subparagraph (I) and to take evidence and to make findings and report them to the director.

(II) Upon failure of any witness to comply with such subpoena or process, the district court of the county in which the subpoenaed person or ~~licensee~~ REGISTRANT resides or conducts business, upon application by the ~~board or~~ director with notice to the subpoenaed person or ~~licensee~~ REGISTRANT, may issue to the person or ~~licensee~~ REGISTRANT an order requiring that person or ~~licensee~~ REGISTRANT to appear before the director; to produce the relevant papers, books, records, documentary evidence, or materials if so ordered; or to give evidence ~~touching~~ RELEVANT TO the matter under investigation or in question. Failure to obey the order of the court may be punished by the court as a contempt of court.

SECTION 7. In Colorado Revised Statutes, 12-55.5-105, **amend** (1) introductory portion, (1) (b), (1) (c), (1) (d), and (5); and **repeal** (1) (e) as follows:

12-55.5-105. Issuance 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~~ AN individual who pays the required fee and furnishes evidence satisfactory to the director that ~~such~~ THE individual:

(b) Holds a valid ~~instructor's card in~~ first aid CARD or a ~~standard~~ first aid INSTRUCTOR'S 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~~ INDIVIDUAL in ~~any~~ A single accident and one hundred thousand dollars for bodily injury to all ~~persons~~ INDIVIDUALS in ~~any~~ A single accident;

(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~~ THE bond ~~shall~~ MUST be conditioned upon compliance with ~~the provisions of~~ this article and with the rules ~~and regulations~~ promulgated under this article.

(e) ~~Holds a valid first aid or first aid instructor's card issued by the American red cross or evidence of equivalent training credentials as approved by the director; and~~

(5) (a) Renewals and reinstatement of ~~certificates shall be pursuant to~~ A REGISTRATION ARE MADE UNDER a schedule established by the director, ~~of the division of professions and occupations within the department of regulatory agencies and shall~~ REGISTRATIONS MUST be renewed or reinstated ~~pursuant to~~ IN ACCORDANCE WITH section 24-34-102 (8), C.R.S.

(b) ~~The director of the division of professions and occupations within the~~

~~department of regulatory agencies may establish renewal fees and delinquency fees for reinstatement pursuant to~~ IN ACCORDANCE WITH section 24-34-105, C.R.S.

(c) If a person fails to renew ~~his or her certification pursuant to~~ A REGISTRATION IN ACCORDANCE WITH the schedule established by the director, ~~of the division of professions and occupations, such certificate shall expire~~ THE REGISTRATION EXPIRES.

(d) ~~Any~~ A person whose ~~certificate~~ REGISTRATION has expired ~~shall be~~ AND WHO OFFERS OR PROVIDES OUTFITTER SERVICES IS subject to the penalties provided in this article or section 24-34-102 (8), C.R.S.

SECTION 8. In Colorado Revised Statutes, 12-55.5-106, **amend** (1) (a), (1) (c), (1) (g), (1) (j), (1) (k), (1) (l), (2), (3) (a), (3) (b), and (4) introductory portion; and **add** (1) (m), (3.5), (4.5), and (6) as follows:

12-55.5-106. Disciplinary actions - grounds for discipline. (1) The director may deny, suspend, revoke, or place on probation an outfitter's registration OR ISSUE A LETTER OF ADMONITION TO AN APPLICANT FOR OR HOLDER OF AN OUTFITTER'S REGISTRATION if the applicant or holder:

(a) Violates any order of the division or the director or any provision of this article or the rules ~~and regulations~~ established under this article;

(c) Violates any local, state, or federal law ~~related to~~ OR REGULATION CONCERNING public land management, wildlife, health, or cruelty to animals, including, but not limited to, section 33-6-113, C.R.S.;

(g) ~~Is addicted to or dependent upon~~ USES alcohol or any controlled substance AS DEFINED IN SECTION 18-18-102 (5), C.R.S., TO THE EXTENT THAT THE USE PLACES THE USER OR OTHER PERSONS AT RISK WHILE PROVIDING OUTFITTING SERVICES or is a habitual user of ALCOHOL OR a controlled substance as defined in section 18-18-102 (5), C.R.S., TO THE EXTENT THAT THE USE PLACES THE USER OR OTHER PERSONS AT RISK WHILE PROVIDING OUTFITTING SERVICES;

(j) Hires ~~any person~~ AN INDIVIDUAL as a guide who fails to meet the requirements of section 12-55.5-103.5, unless such hiring is a result of an emergency situation, as defined by rules promulgated by the director, in which case the outfitter may hire a guide who does not possess a valid first aid card or first aid instructor's card;

(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; ~~or~~

(l) Violates section 18-4-503 or 18-4-504, C.R.S., resulting in two or more second or third degree criminal trespass convictions within any three- to five-year period while acting as an outfitter or guide; OR

(m) FAILS TO RESPOND TO A COMPLAINT AGAINST THE REGISTERED OUTFITTER.

(2) ~~Any~~ TO BE VALID, A proceeding to deny, suspend, revoke, or place on probation a registration ~~shall~~ MUST be conducted ~~pursuant to~~ IN ACCORDANCE WITH

sections 24-4-104 and 24-4-105, C.R.S. The director may use an administrative law judge employed by the office of administrative courts in the department of personnel to conduct hearings. ~~Any person whose registration is denied, suspended, placed on probation, or revoked shall pay for the costs incurred in bringing and conducting such proceeding.~~

(3) (a) When a complaint or investigation discloses an instance of misconduct that, in the opinion of the director, does not warrant formal action by the director but that should not be dismissed as being without merit, ~~THE DIRECTOR MAY ISSUE AND SEND a letter of admonition may be issued and sent, by certified mail,~~ to the registrant.

(b) When a letter of admonition is sent by the director ~~by certified mail,~~ to a registrant, ~~such registrant shall be advised~~ THE LETTER MUST ADVISE THE REGISTRANT ~~that he or she~~ THE REGISTRANT has the right to request in writing, within twenty days after receipt of the letter, that formal disciplinary proceedings be initiated to adjudicate the propriety of the conduct upon which the letter of admonition is based.

(3.5) WHEN A COMPLAINT OR INVESTIGATION DISCLOSES AN INSTANCE OF CONDUCT THAT DOES NOT WARRANT FORMAL ACTION BY THE DIRECTOR AND, IN THE OPINION OF THE DIRECTOR, SHOULD BE DISMISSED, BUT THE DIRECTOR HAS NOTICED POSSIBLE ERRANT CONDUCT BY THE REGISTRANT THAT COULD LEAD TO SERIOUS CONSEQUENCES IF NOT CORRECTED, THE DIRECTOR MAY SEND THE REGISTRANT A CONFIDENTIAL LETTER OF CONCERN.

(4) Notwithstanding any other provision of this article, the director may deny an initial ~~or renewal~~ application for registration if:

(4.5) THE DIRECTOR MAY DISCIPLINE AN APPLICANT OR REGISTRANT UNDER THIS SECTION FOR THE ACTS OF A PERSON WHO:

(a) IS ACTING ON BEHALF OF THE APPLICANT OR REGISTRANT; AND

(b) (I) IS AN OFFICER, DIRECTOR, MEMBER, OR PARTNER OF, OR OWNER OF AT LEAST A TEN-PERCENT INTEREST IN, THE APPLICANT OR REGISTRANT;

(II) HAS MANAGING OR CONTROLLING AUTHORITY OF THE APPLICANT OR REGISTRANT; OR

(III) IS AN EMPLOYEE, CONTRACTOR, OR AUTHORIZED BOOKING AGENT OF THE APPLICANT OR REGISTRANT.

(6) IF A PERSON'S REGISTRATION IS REVOKED UNDER THIS SECTION OR SURRENDERED IN LIEU OF DISCIPLINE, THE PERSON IS INELIGIBLE TO SUBMIT A NEW APPLICATION FOR REGISTRATION OR REGISTER FOR TWO YEARS AFTER THE DATE THE REGISTRATION IS REVOKED.

SECTION 9. In Colorado Revised Statutes, 12-55.5-107, **amend** (3) as follows:

12-55.5-107. Penalties - distribution of fines. (3) ~~Any~~ A person who engages

in activities as an outfitter shall maintain all applicable documents, records, and other items, for the current year and the preceding four years at the address listed on the registration, required to be maintained by this article or by the rules or regulations of the director when requested to do so by ~~any~~ THE DIRECTOR OR a peace officer. ~~Any such person~~ A REGISTRANT who refuses to permit the inspection of such documents, records, or items is guilty of a misdemeanor and shall be punished by a fine of one hundred dollars.

SECTION 10. In Colorado Revised Statutes, 12-55.5-109, **amend** (3) as follows:

12-55.5-109. Contracts for outfitting services - writing required. (3) Any written contract provided pursuant to IN ACCORDANCE WITH this section shall MUST 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 professions and occupations in the department of regulatory agencies.~~

SECTION 11. In Colorado Revised Statutes, 12-55.5-110, **amend** (3) (b) as follows:

12-55.5-110. Other remedies - contracts void - public nuisance - seizure of equipment. (3) (b) The court may order ~~any such~~ THE property sold by the director in the manner provided for sales on execution.

SECTION 12. In Colorado Revised Statutes, **amend** 12-55.5-112 as follows:

12-55.5-112. Immunity. The director, the director's staff, any person acting as a witness or consultant to the director, any witness testifying in a proceeding authorized under this article, and any person who lodges FILES a complaint pursuant to UNDER this article shall be IS immune from liability in ~~any~~ A civil action brought against him or her for acts occurring while acting in his or her capacity as director, staff, consultant, or witness, respectively, if ~~such individual~~ THE PERSON was acting in good faith within the scope of his or her respective capacity, made a reasonable effort to obtain the facts of the matter as to which he or she acted, and acted in the reasonable belief that the action taken by him or her was warranted by the facts. Any person participating in good faith in lodging FILING a complaint or participating in any investigative or administrative proceeding pursuant to UNDER this article shall be IS immune from ~~any~~ civil or criminal liability that may result RESULTING from ~~such~~ THE participation.

SECTION 13. In Colorado Revised Statutes, **amend** 12-55.5-117 as follows:

12-55.5-117. Repeal of article - review of functions. Unless continued by the general assembly, this article is repealed, effective ~~July~~ SEPTEMBER 1, 2014 2025, 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 wind-up 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 14. In Colorado Revised Statutes, **repeal** 12-55.5-118 as follows:

12-55.5-118. Applicability. ~~This article shall not require a person or entity to register as an outfitter if such person or entity only rents motor vehicles, livestock, or equipment.~~

SECTION 15. Effective date. This act takes effect July 1, 2014.

SECTION 16. 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, 2014