

ALASKA LEGISLATURE COMMITTEE FILES 1987-1988 8672

4954 HRES HB 183 (FILE 1) - HB 183 (FILE 2)

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Yoder, Asst. Atty. Gen., Cheyenne, for respondents.

Before THOMAS, C.J., and ROSE,* ROONEY,** BROWN and CARDINE, JJ.

ROSE, Justice.

This case is presented to us through the certification of a constitutional issue from the District Court of the First Judicial District in Wyoming. The question presented is whether § 23-2-402(a)(iii), W.S.1977, violates the Privileges and Immunities Clause of the United States Constitution. Because the challenged statute burdens a fundamental right, and because the degree of discrimination does not bear a close relation to any of the State's asserted reasons for the discriminatory treatment, we hold that § 23-2-402(a)(iii) impermissibly infringes upon the privileges and immunities of the citizens of states other than Wyoming.

BACKGROUND

Petitioner Calvin Powell resides in Idaho Falls, Idaho. Powell applied to the Wyoming Game and Fish Commission for a guide license so that he could guide hunters and fishermen in Wyoming. Powell stated in his application that he had 30 years of hunting and fishing experience in Idaho, Montana, and Wyoming, and four years of hunting experience on the private ranches in Wyoming where he would be working as a guide.

The game and fish officer in Laramie County rejected Powell's application because Powell was not a resident of the state of Wyoming. Powell appealed this rejection to the Wyoming Game and Fish Commission (Commission) requesting a "waiver" of the residency requirement of § 23-2-402(a)(iii).

Section 23-2-402(a), W.S.1977, states:

"(a) No person shall engage in the business of guiding for any consideration or compensation without a professional guide's license. Any competent person

who possesses the following qualifications shall upon payment of the license fee, receive a professional guide's license:

"(i) Citizen of the United States;

"(ii) At least eighteen (18) years of age;

"(iii) Resident of Wyoming;

"(iv) Knowledgeable of trophy care and appropriate game and fish laws;

"(v) Can satisfactorily pass a written or oral examination which is devised and administered at the discretion of the commission. The examination may include knowledge of the area, of hunting practices, of big game, or guiding practices and of game and fish laws."

The Commission refused to "waive" the statutory requirement and, relying upon our decision in *Belco Petroleum Corporation v. State Board of Equalization*, Wyo., 587 P.2d 204 (1978), refrained from passing upon the constitutional questions Powell attempted to raise concerning the statute.

Powell filed a petition for review in district court, which resulted in the court's upholding the Commission's refusal to consider the constitutional questions involved. Powell then filed a declaratory-judgment action in the same court seeking to have the court hold the residency requirement of § 23-2-402(a)(iii) to be void, and to order the Commission to disregard the requirement in acting upon his application. The district court certified the constitutional question involved to this court, after stipulation of the parties, pursuant to §§ 1-13-101 through 1-13-107, W.S.1977, and Rule 52(c), W.R.C.P.

The question to be answered is:

"Whether W.S. 23-2-402(a)(iii) which requires an applicant as a Game and Fish Guide to be a resident of the State of Wyoming for a period of one (1) year is contrary to constitutional right, power, or immunity (Article I, Sections 2 and 4 of the Wyoming Constitution and Article

* Retired November 1, 1985.

** Retired November 30, 1985.

IV, Section 2 and Amendment XIV of the United States Constitution) in that it infringes upon the applicant's rights of national citizenship and effectively restricts his right to interstate travel in pursuance of and in furtherance of his right to earn a living in his chosen field."

Powell claims that the statutory scheme which requires a guide to be a resident of Wyoming for not less than one year¹ restricts his fundamental constitutional right to pursue his chosen means of livelihood, establishes a discriminatory scheme which does not bear a close relation to a valid interest of the State, and relies upon a durational residency requirement. Thus, Powell contends that the statute is fatally deficient.

The State, on the other hand, maintains that "guiding" is not a fundamental right, but is instead merely a recreational privilege and that restricting that privilege to residents is a valid exercise of the State's police power. The State also urges that because protection of wildlife lies peculiarly within the ambit of the State's police power, we must give the legislature great latitude in determining what means are appropriate for wildlife protection.

PRIVILEGES AND IMMUNITIES CLAUSE ANALYSIS

Article IV, § 2 of the United States Constitution provides in relevant part:

"The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States."

This court has recently dealt with another challenge to a state enactment under the Privileges and Immunities Clause in *State v. Antonich*, Wyo., 604 P.2d 60, 61-62 (1985).

"An examination of a state enactment to determine its validity under the privileges-and-immunities clause involves a two-step analysis. First, the reviewing

1. The definition of resident for purposes of § 23-2-102(a)(iii) is found in § 23-1-102(a)(ix), W.S.1977, 1985 Cum.Supp:

"'Resident' means a United States citizen who has been a resident of Wyoming for not less

court must determine whether the statute burdens a fundamental right or activity, since only those 'privileges' and 'immunities' which bear upon the concept of interstate harmony fall within the scope and purpose of the clause. *United Building and Construction Trades Council of Camden County and Vicinity v. Mayor and Council of the City of Camden*, 465 U.S. 208, —, 104 S.Ct. 1020, 1027, 79 L.Ed.2d 249, 258-259 (1984); *Baldwin v. Fish and Game Commission of Montana*, 436 U.S. 371, 383-388, 98 S.Ct. 1852, 1860-1862, 56 L.Ed.2d 354 (1978); *Toomer v. Witsell*, 334 U.S. 385, 395-396, 68 S.Ct. 1156, 1161-1162, 92 L.Ed. 1460 (1948). Second, the court must examine the reasons for the discriminatory treatment to determine their validity and their relation to the degree of discrimination imposed by the statute. This portion of the test was developed by the United States Supreme Court in *Toomer v. Witsell*, supra:

" 'Like many other constitutional provisions, the privileges and immunities clause is not an absolute. It does bar discrimination against citizens of other States where there is no substantial reason for the discrimination beyond the mere fact that they are citizens of other States. But it does not preclude disparity of treatment in the many situations where there are perfectly valid independent reasons for it. Thus the inquiry in each case must be concerned with whether such reasons do exist and whether the degree of discrimination bears a close relation to them. The inquiry must also, of course, be conducted with due regard for the principle that the States should have considerable leeway in analyzing local evils and in prescribing appropriate cures.' (Emphasis added.) 334 U.S. at 396, 68 S.Ct. at 1162.

than one (1) year and who has not claimed residency elsewhere for any purpose during that one (1) year period immediately preceding the date of application for a license, permit or certificate. * * *

Toomer court established that classifications based on non-citizenship can be unconstitutional.

"... unless there is something to indicate that non-citizens constitute a peculiar source of the evil at which the statute is aimed." 334 U.S. at 398, 68 S.Ct. at 1163."

Fundamental Right

In *State v. Antonich*, supra, the statute at issue was the Wyoming Preference Act of 1971, §§ 16-6-201 through 16-6-203, 1977 (October 1982 Replacement), which required contractors to employ available Wyoming laborers for public projects in preference to nonresident laborers. The State conceded, in *State v. Antonich*, supra, that the act burdened a fundamental right. 694 P.2d at 62. Here, the State claims that guiding, which is not a fundamental right but is "merely a recreational activity." We cannot agree with the State's conclusion.

[T]he pursuit of a common calling is one of the most fundamental of those rights protected by the [Privileges and Immunities] Clause." *Supreme Court of Massachusetts v. Piper*, — U.S. —, 451 U.S. 1272, 1277 n. 9, 84 L.Ed.2d 205 (1981). The clause "has long been held to prohibit States' attempts to discriminate against nonresidents who seek to ply their trade interstate." *Id.* at 1281 (Rehnquist, concurring). The Supreme Court has repeatedly found that "one of the privileges which the Clause guarantees to citizens of State A is that of doing business in State B on terms of substantial equality with the citizens of that State." *Id.* at 1281 (quoting *Toomer v. Witsell*, 334 U.S. 385, 68 S.Ct. 1156, 1162, 92 L.Ed. 1466 (1950)). All of these statements make clear that pursuing a common calling, plying a trade, and doing business in another state are fundamental rights protected by the clause.

The State maintains that guiding is not any of the above activities but is, instead, a recreation. According to the State, guiding is rarely a sole means of livelihood for Wyomingites, and part-time seasonal hunting and fishing guiding may well be considered a recreational activity. The State relies on *Baldwin v. Fish and Game Commission of Montana*, 436 U.S. 371, 98 S.Ct. 1852, 56 L.Ed.2d 354 (1978), as support for this contention. In *Baldwin* the United States Supreme Court was confronted with the question of whether a hunting license fee seven and one-half times greater² for nonresidents than that charged for residents violated the Privileges and Immunities Clause. The Court stated:

"... [A] state's interest in its wildlife and other resources must yield when, without reason, it interferes with a nonresident's right to pursue a livelihood in a State other than his own, a right that is protected by the Privileges and Immunities Clause." 436 U.S. at 386, 98 S.Ct. at 1861.

However, the right to hunt for elk was no more than a chance to engage temporarily in a recreational activity in a sister state, and was not fundamental. Elk hunting was not a means of the nonresident's livelihood; there, the mastery of the animal and the trophy were the ends sought. *Baldwin v. Fish and Game Commission of Montana*, supra, 436 U.S. at 388, 98 S.Ct. at 1862.

Clearly the Supreme Court has held that the hunter is only engaging in a recreational activity and that receiving such an opportunity is not a fundamental right. On the other hand, pursuing a common calling, plying a trade, and doing business in another state are fundamental rights protected by the clause. The State would have this court hold that the guide is a hunter, not a businessperson.

[2] The question of whether "guiding" is within the ambit of a common calling, trade or business or whether it is merely recreational can be answered by reading

² The difference in fees was based on a combination license; the nonresident who wished to

hunt only elk paid 25 times as much as the resident. 436 U.S. at 374, 98 S.Ct. at 1855.

preserve, protect, and nurture the wild game—not an arbitrary power to make discriminatory laws affecting the hunting thereof.”

Likewise, the United States Supreme Court has noted that state ownership does not place a statute completely beyond the Privileges and Immunities Clause. *Hicklin v. Orbeck*, 437 U.S. 518, 529, 98 S.Ct. 2482, 2489, 57 L.Ed.2d 397 (1978). Speaking of a state's relation to its natural resources, the United States Supreme Court has stated that the ownership theory is but a fiction expressing in legal shorthand the importance to its people of a state's power to preserve and regulate the exploitation of an important resource.

“ * * * [T]here is no necessary conflict between that vital policy consideration and the constitutional command that the State exercise that power, like its other powers, so as not to discriminate without reason against citizens of other States.” *Toomer v. Witsell*, supra, 334 U.S. at 402, 68 S.Ct. at 1165.

“ * * * [A] State's interest in its wildlife * * * must yield when, without reason, it interferes with a nonresident's right to pursue a livelihood in a State other than his own * * *.” *Baldwin v. Fish and Game Commission of Montana*, supra, 436 U.S. at 386, 98 S.Ct. at 1861.

We recognize the importance of scarce resources such as elk, moose and other game animals to both Wyoming and the entire country. The importance of the resource and the State's duty to use such resources for the benefit of its people cannot, however, change the fact that this statute discriminates against nonresidents when they have not been identified as a peculiar source of evil. We have previously said that classifications based on non-citizenship cannot stand

“ * * * unless there is something to indicate that non-citizens constitute a peculiar source of the evil at which the statute is aimed.” [*Toomer v. Witsell*, supra,] 334 U.S. at 398, 68 S.Ct. at 1163.” *State v. Antonich*, supra, 694 P.2d at 62.

Even if the State has pointed to a particular evil caused by nonresidents, the statute prohibiting all nonresidents from guiding in Wyoming does not precisely fit any evil identified. The Supreme Court of Montana dealt with a similar statute requiring outfitters to be residents of Montana. That court found that such classification did not even bear a reasonable relationship to a legitimate governmental interest. *Godfrey v. Montana State Fish & Game Commission*, supra. We believe that the statute in the present case burdens a fundamental right and so must overcome even a stricter test than that applied by the Montana court. A statute burdening a fundamental right “offends the privileges-and-immunities clause unless a close link exists between valid reasons for the Act and the discrimination practiced.” *State v. Antonich*, supra, 694 P.2d at 62. The statute fails to pass this test.

[4] Section 23-2-402(a)(iii) burdens a fundamental right. Because it does so and because the degree of discrimination does not bear a close relation to any of the State's asserted reasons for the discriminatory treatment, we hold that the statute violates the Privileges and Immunities Clause of Art. IV, § 2 of the United States Constitution.

Remanded for further proceedings consistent with this opinion.

ROONEY, Justice, dissenting, with whom BROWN, Justice, joins.

I agree with the general law set forth in the majority opinion, but I do not believe that we have sufficient facts before us upon which to apply such law. Accordingly, the opinion in this case is an advisory one and, thus, is improper. The matter should be remanded to the district court for the purpose of an evidentiary hearing to establish the facts, if such exist, upon which a determination of a constitutional question will be dispositive.

Rule 52(c), W.R.C.P., provides:

“In all cases in which a district court reserves an important and difficult constitutional question arising in an action

or proceeding pending before it, the district court before sending the question to the Supreme Court for decision, shall (1) dispose of all necessary and controlling questions of fact and make special findings of fact thereon, and (2) state its conclusions of law on all points of common law and of construction, interpretation and meaning of statutes and of all instruments necessary for a complete decision of the case. No constitutional question shall be deemed to arise in an action unless, after all necessary special findings of fact and conclusions of law have been made by the district court, a decision on the constitutional question is necessary to the rendition of final judgment. The question reserved shall be specific, and shall identify the constitutional provision to be interpreted. The special findings of fact and conclusions of law required by this subdivision of this rule shall be deemed to be a final order from which either party may appeal, and such appeal may be considered by the Supreme Court simultaneously with the reserved question."

Pursuant to this subsection, the district court must dispose of all necessary and controlling questions of fact and state its conclusions of law on all points of construction, interpretation and meaning of statutes. *Griffith ex rel. Workmen's Compensation Department v. Stephenson*, Wyo., 494 P.2d 546 (1972); *Harding v. State*, Wyo., 478 P.2d 64 (1970).

The power of the Supreme Court to decide reserved constitutional questions does not authorize the court to render advisory opinions. *State v. Rosachi*, Wyo., 549 P.2d 318 (1976); *Tobin v. Pursel*, Wyo., 539 P.2d 361 (1975).

In this case, the certification from the district court contains a section captioned "Statement of Facts," but it is no more than a recital of the previous procedure in the matter; i.e., plaintiff submitted his application for a guide license to the game warden; it was refused because plaintiff was not a resident of Wyoming as required by statute; the refusal of the game warden

was appealed to the Wyoming Game and Fish Commission; the commission, after consultation with the Attorney General's office, supported the decision of the game warden; an appeal of the administrative ruling to the district court resulted in affirmance of the decision of the Wyoming Game and Fish Commission; plaintiff filed a declaratory judgment action; and the question before us was certified to this court. The trial court did not make any conclusions of law.

The record also contains findings by the trial court which recite:

"THIS MATTER having come before the Court upon the Stipulation of the parties to reserve a constitutional question to the Wyoming Supreme Court pursuant to the provisions of Rule 52(c) of the Wyoming Rules of Civil Procedure, the Court does find as follows:

"1. The parties have stipulated to all necessary and controlling questions of fact;

"2. The only question of law necessary for a complete decision of the case is the constitutional question being reserved to the Wyoming Supreme Court;

"3. A decision on the constitutional question is necessary to the rendition of final judgment."

However, the only stipulation in the record reads:

"The parties to this matter hereby stipulate that it is appropriate to reserve the constitutional question presented herein to the Supreme Court of the State of Wyoming and, for that reason, that Petitioner's Motion to that effect should be granted by the Court without further hearing."

The complaint for the declaratory judgment also makes only a recital of previous procedures taken in the case. Through denials, the answer places in issue the refusal by the Wyoming Game and Fish Commission to accept plaintiff's request for a guide license. The majority opinion reflects the undecided factual issue.

"Powell claims that the statutory scheme which requires a guide to be a resident of Wyoming for not less than one year restricts *his* fundamental constitutional right to pursue *his* chosen means of livelihood, establishes a discriminatory scheme which does not bear a close relation to a valid interest of the State,¹¹ and relies upon a durational residency requirement. Thus, Powell contends that the statute is fatally deficient.

"The State, on the other hand, maintains that 'guiding' is not a fundamental right, but is instead merely a recreational privilege and that restricting that privilege to residents is a valid exercise of the State's police power. The State also urges that because protection of wildlife lies peculiarly within the ambit of the State's police power, we must give the legislature great latitude in determining what means are appropriate for wildlife protection." (Emphasis added and footnote omitted.)

The factual condition behind these two contentions has not been resolved.

There is no finding by the trial court that guiding is plaintiff's "chosen means of livelihood." Plaintiff's application for a guide license (attached to the complaint) reflects that he will guide for Bolten Ranch Outfitters and that he has "4 years hunting experience on private ranches in Wyoming, where I will be working." The obvious fact questions then are whether the "working" is other than "guiding," and, if no., what the "means of livelihood" is during the time other than that in the short hunting season each year.

Included in the correspondence presented during the review of the administrative action was a letter from plaintiff's attorney to the senior assistant attorney general in which it was represented that plaintiff was "involved in the 'blue print' business" in Idaho Falls, Idaho. It also stated that he " * * * spends a considerable amount of his time (upwards of six months each year) in the State of Wyoming actively

involved in hunting and fishing activities which he pursues for compensation. * * *

The question is not whether plaintiff has been violating the law for the past activities pursued for compensation, but whether plaintiff desires the guide license as a means of livelihood. The "business of guiding for any consideration or compensation" as recited in the statute does not mean that one receiving a guide license is using it to provide his livelihood. He may never actually use it, or he may use it primarily as a recreational activity which provides a little "pocket money." Many people use an avocation as a recreational activity. If plaintiff is doing so here, he is not concerned with a fundamental right and lacks the required standing to test the constitutionality of the statute. We should have the facts in this respect before addressing the issue certified to us. Perhaps such facts would make proper the result reached by the majority opinion. Justice White wrote in an opinion concurring in the result in *Supreme Court of New Hampshire v. Piper*. — U.S. —, 105 S.Ct. 1272, 1281, 84 L.Ed.2d 205 (1985):

"Respondent Piper lives only 400 yards from the New Hampshire border. She has passed the New Hampshire bar and intends to practice law in New Hampshire. Indeed, insofar as this record reveals, the only law office she will maintain is in New Hampshire. But because she will commute from Vermont rather than reside in New Hampshire, she will not be allowed to practice in the latter state.

"I have no doubt that the New Hampshire residency requirement is invalid as applied to respondent Piper. Except for the fact that she will commute from Vermont, she would be indistinguishable from other New Hampshire lawyers. There is every reason to believe that she will be as able as other New Hampshire lawyers to maintain professional competence, to stay abreast of local rules and procedures, to be available for sudden hearings, and to satisfy any require-

1. The majority opinion refers to defendants as

the "State."

ments of a member of the New Hampshire bar to perform pro bono and volunteer work. It does not appear that her nonresidency presents a special threat to any of the state's interests that is not shared by lawyers living in New Hampshire. Hence, I conclude that the Privileges and Immunities Clause forbids her exclusion from the New Hampshire bar. "The foregoing is enough to dispose of this case. I do not, and the Court itself need not, reach out to decide the facial validity of the New Hampshire residency requirement. I would postpone to another day such questions as whether a state may constitutionally condition membership in the New Hampshire bar upon maintaining an office for the practice of law in the state of New Hampshire.

"I concur in the judgment invalidating the New Hampshire residency requirement as applied to respondent Piper." (Emphasis added.)

We do not pass on constitutional questions until matters of fact or of statutory construction which may dispose of the case have been decided by the trial court. *Boode v. Allied Mutual Insurance Company*, Wyo., 458 P.2d 653 (1969); *McFarland v. City of Cheyenne*, 48 Wyo. 86, 42 P.2d 413 (1935); *In re Gillette Daily Journal*, 44 Wyo. 226, 11 P.2d 265 (1932), as supplemented by 45 Wyo. 173, 17 P.2d 665 (1933).

Finally, I direct attention to the nature of this action, which is one for a declaratory judgment. This fact does not circumvent the proscription against advisory opinions or the requirement of justiciable controversy. *Aetna Casualty and Surety Company v. Langdon*, Wyo., 624 P.2d 240 (1981); *Witzenburger v. State ex rel. Wyoming Community Development Authority*, Wyo., 577 P.2d 1386 (1978), *Police Protective Association of Casper v. City of Casper*, Wyo., 575 P.2d 1146 (1978).

I would return this case to the district court for reception of evidence and findings thereon relative to the need on the part of plaintiff for a guide license to enable him

to exercise his fundamental right to earn a livelihood rather than a desire on his part to use it primarily to further his recreational activity. I would refuse to answer the certified question in a vacuum. After the facts have been determined by the trial court, the question can properly be certified.



George DOTSON, Appellant
(Defendant),

v.

The STATE of Wyoming,
Appellee (Plaintiff).

No. 85-134.

Supreme Court of Wyoming.

Jan. 8, 1986.

Defendant was found guilty and sentenced in the justice of the peace court for knowingly making a false statement and document required for sale and transfer of a motor vehicle, and he appealed. The District Court, Park County, John T. Dixon, J., affirmed the judgment, and defendant appealed. The Supreme Court, Guthrie, J., Retired, held that fact that prosecutor who prosecuted defendant was not a member of the state bar, even though he was acting as deputy county attorney, did not justify granting relief from judgment.

Affirmed.

1. Criminal Law §1163(1)

Defendant who seeks relief from criminal conviction based on alleged errors has burden of establishing that the errors prejudiced him. Rules Crim.Proc., Rule 49(a); Justice and Municipal Courts Criminal Rule 23(g)(1).

the entire record and are convinced the defendant was afforded fair, complete, and unbiased hearings on his sentence and motion. In its judgment and sentence the trial court recommended that psychiatric treatment be given defendant if needed. We are certain this recommendation will be given proper consideration by those charged with the administration of the penitentiary and State Hospital, taking into account the method of accomplishing any such needs as shall reasonably protect the interests of the public.

The judgment and sentence of the trial court is affirmed.

Affirmed.

McCLINTOCK, J., was not a member of this court at the time of oral argument, and he therefore did not participate in the consideration or decision of the case.



Karl W. SCHAHEL, a/k/a Karl Schakel,
Appellant (Defendant below),

v.

The STATE of Wyoming, Appellee
(Plaintiff below).

No. 4200.

Supreme Court of Wyoming.
Aug. 27, 1973.

Holder of nonresident deer license was convicted before the District Court, Albany County, Vernon G. Bentley, J., of hunting deer on national forest lands without guide and he appealed. The Supreme Court, Guthrie, J., held that statute prohibiting any person not the owner of a resident license or permit from hunting certain animal species on national land within the State unless accompanied by a licensed guide did not operate to preserve or pro-

tect wildlife or promote the safety of hunters and constituted a denial of equal protection.

Reversed and remanded with directions.

McClintock, J., did not participate.

1. Constitutional Law ⇨46(1)

Question of whether statute under which defendant had been convicted was unconstitutional was not moot even though statute had been repealed after defendant's conviction as judgment of conviction had been entered and general savings clause permitted it to be carried into effect. W. S.1957, § 8-21; Sec. 23-54, W.S.1957, C. 1967.

2. Criminal Law ⇨1134(3)

Question of validity of judgment is moot when judgment cannot be carried into effect.

3. Constitutional Law ⇨208(3)

State cannot discriminate against citizens of other states merely because of their citizenship.

4. Game ⇨3½

State is not the owner of wildlife within State but holds such wildlife as trustee; thus, State is not free to attach any conditions to hunting of such wildlife as it desires but has only the power and duty to preserve, protect and nurture the wild game, not an arbitrary power to make discriminatory laws affecting the hunting thereof. Sec. 23-54, W.S.1957, C. 1967.

5. Constitutional Law ⇨230(1)

Game ⇨4

Statute prohibiting any person not the owner of a resident license or permit from hunting certain animal species on national land within State unless accompanied by licensed guide did not operate to preserve and protect wildlife or promote safety of hunters and, therefore, was not within police power of the State but, rather, denied nonresident hunters equal protection. Sec. 23-54, W.S.1957, C. 1967; Const. art. 21, § 26; Wilderness Act, § 2(c), 16 U.S.C.A. §

1131(c); U.S.C.A.Const. art. 1, § 8; art. 4, § 2; art. 6, cl. 1 et seq., Amend. 14.

John E. Stanfield, Smith, Stanfield & Mendicino, Laramie, for appellant.

Clarence A. Brimmer, Atty. Gen., Donald H. Hall, Sp. Asst. Atty. Gen., Cheyenne, for appellee.

Before PARKER, C. J., and McEWAN, GUTHRIE, and McINTYRE, JJ.

Mr. Justice GUTHRIE delivered the opinion of the court.

This appeal is from a judgment against the appellant, finding him guilty of violating § 23-54, W.S.1957.¹ The sole question raised is the constitutionality of that section.

Schakel, who had purchased a nonresident deer license, was arrested on October

6, 1972, while hunting deer on National Forest lands without a guide. In all other particulars he was complying with the regulations as they govern hunting. Schakel was a resident of Colorado, although he owned substantial properties in Wyoming and had owned property here for some years. He was well acquainted with this area.

Schakel moved to dismiss the original complaint in justice of the peace court upon the basis of the unconstitutionality of this statute. This motion was overruled, and when no other evidence was submitted in his defense the court entered its finding of guilty and assessed a fine of \$100 and \$4 in costs. Upon appeal to the district court Schakel again raised the question of the constitutionality thereof and introduced his testimony and that of Dewey Henderson, Deputy Supervisor of the Wyoming Game and Fish Commission for the district

1. " * * * It shall be unlawful for any person who is not the owner of a resident license or permit lawfully authorizing the same to hunt, pursue or kill, or attempt to hunt, pursue or kill any elk, deer, bear, moose or mountain sheep on any land within any national forest, national park or national game refuge within the boundaries of the State of Wyoming, any part of which is open to the hunting of deer, elk, moose or mountain sheep at any time during the calendar year in which said hunting is done, unless accompanied by a licensed guide; provided, however, that parties of two or more such persons hunting together need not be accompanied by more than one licensed guide for each two such persons. " * * * No such licensed guide shall be required for not more than two non-residents hunting together when accompanied without compensation or gratuity by a resident of the State of Wyoming who is the owner of a resident big game license and a resident guiding permit. A resident guiding permit shall be issued, without charge and without bond, by the Cheyenne office or by any district supervisor or by any resident deputy game warden of the Wyoming game and fish commission to any resident of Wyoming owning a big game license in effect if and when such resident shall make and file an affidavit stating the names and ad-

dresses of not more than two non-resident hunters to be guided, the game to be hunted, the area in which they will hunt, and that such resident has not received nor will accept directly or indirectly any remuneration whatsoever. A resident guide shall not guide more than two non-residents in each calendar year regardless of the number of resident guiding permits issued to him in each calendar year.

" * * * A resident landowner may guide non-resident hunters on land owned by or deeded land leased to such resident landowner without any guide license or permit, or authorize non-residents to hunt without a guide on land owned by or deeded land leased to such resident landowner.

" * * * Any person convicted of guiding or hunting contrary to the provisions of this section or of violating or permitting the violation of any of the game and fish laws of the state while acting as a guide, shall be fined not less than twenty-five dollars (\$25.00) nor more than one hundred dollars (\$100.00) or imprisoned in the county jail for not less than thirty (30) days nor more than three (3) months and it shall be mandatory on the part of the commission to revoke said resident guiding permit and refuse to issue a further permit for the succeeding year."

covering Albany, Platte, Goshen, Laramie, and the eastern half of Carbon Counties.

Although other constitutional questions were raised in the motion, appellant argues and relies only upon the Fourteenth Amendment and Art. 4, § 2, Art. 1, § 8, and Art. 6 of the Constitution of the United States, and Art. 21, § 26 of the Wyoming Constitution.

[1, 2] The State suggests that this matter is moot because § 23-54 has been repealed in its entirety and replaced with ch. 249, § 3, S.L. of Wyoming, 1973. This is not moot because of the judgment heretofore entered herein and the effect of our general savings clause, § 8-21, W.S.1957. The test is as set out in *Belondon v. State, Wyo.*, 379 P.2d 828, 829, and cases cited therein, which recognized that a judgment is moot when it cannot be carried into effect—unlike this judgment. This appeal is in no particular changed or modified by such repeal and the amended statute, which was not before the trial court nor is it before us. We will not consider the provisions thereof as they do not apply herein. There might be some inference drawn that the legislature recognized certain weaknesses in this statute by the inclusion of all big game or trophy animals, which now include antelope, and the inclusion of wilderness areas in such enactment.

The State contends that Schakel has no constitutional right herein which has been infringed upon or denied. This position is based upon two premises, i. e., that the State being the owner of the wildlife is free to attach any such conditions it desires, and that a hunting license is a mere boon or privilege with the apparent inference there is no limit upon the power to attach conditions thereto. We have heretofore held that the validity of game and fish laws is subject to examination under the limitations of police power, *Cross v. State, Wyo.*, 370 P.2d 371, 374, 93 A.L.R.2d 1357.

[3] The State, conceding that proper classification is essential to the constitu-

tionality of the statute, suggests that because this law applies equally to all nonresidents and appellant was not treated any differently than other nonresidents, this is not discriminatory. This does not end judicial inquiry but still leaves a burden upon the court to decide if the classifications created by the statute are proper in accomplishing their purpose under the equal protection clause, *McLaughlin v. State of Florida*, 379 U.S. 184, 85 S.Ct. 283, 288, 13 L.Ed.2d 222, on remand, *Fla.*, 172 So.2d 460, and *Carrington v. Rash*, 380 U.S. 89, 85 S.Ct. 775, 778, 13 L.Ed.2d 675, on remand, *Tex.*, 389 S.W.2d 945. The State cannot discriminate against citizens of other states merely because of their different citizenship, *Toomer v. Witsell*, 334 U.S. 385, 68 S.Ct. 1156, 1162, 92 L.Ed. 1460, rehearing denied, 335 U.S. 837, 69 S.Ct. 12, 93 L.Ed. 389.

[4] This law must be viewed as having been exercised under the general police power and in furtherance of the preservation, nurture, and management of the wildlife of the State, and that the State holds as a trustee rather than as owner of such wildlife. We have so held insofar as the waters of this State are concerned under our constitutional provision declaring waters to be the property of the State, *Merrill v. Bishop*, 74 Wyo. 298, 287 P.2d 620, 625, and *Lake De Smet Reservoir Company v. Kaufmann*, 75 Wyo. 27, 292 P.2d 482, 486. We think this most persuasive in face of the fact that the ownership theory as it affects wildlife is merely statutory. This trust relationship would give the State the power and the duty to preserve, protect, and nurture the wild game—not an arbitrary power to make discriminatory laws affecting the hunting thereof.

We have heretofore noted that police power is not unlimited but that it is subject to the limitations of due process, *State v. Langley*, 53 Wyo. 332, 84 P.2d 767, 770, and *Cross v. State*, supra. In the case of *Bulova Watch Company v. Zale Jewelry Company, Wyo.*, 371 P.2d 409, 417, while

recognizing the large scope of police power, we clearly delineated certain necessary requirements for its validity:

" * * * the means adopted for its exercise must be reasonable and designed to accomplish the end in view; that the purposes for which the police power is invoked must have relation to the public weal, must be within the scope and in furtherance of that power, and the means adopted must be reasonable and appropriate for the accomplishment of and have a substantial connection with the end in view; * * *"

Under these clear guidelines and the record in this case we must examine this statute.

[5] The record in this case and the only evidence presented in connection with the application of this statute was by an officer of the Game and Fish Commission and was directed to the question of proper management and control of wildlife in his district, and that testimony shows that the section herein attacked had created serious problems and caused over hunting on adjoining Bureau of Land Management lands and had resulted since 1964 in the serious depletion of deer in areas adjoining the National Forest. The deer herds in the Iron Mountain, the Shirley Mountain areas of Medicine Bow, and the Saratoga Valley next to the forest had been over harvested, and other parts of the areas had been under harvested as a result of the operation of this statute. The State offered no evidence in this area whatever, suggesting by argument only that if the law be held void a heavier kill may be shifted to the forest lands because nonresidents may not wish to secure permission to hunt on private land and suggested a possibility of overkill upon them. This is based solely on inference and in no manner upon any evidence. From the record here before us this statute has operated not to subserve the purposes of the preservation and protection of wildlife but to its detriment. This fails the test we have heretofore recognized in connection with police power that the means

adopted be reasonable and designed to accomplish the end in view and be appropriate for the accomplishment of this duty to protect and nurture the game, *Bulova Watch Company v. Zale Jewelry Company*, supra.

The State asserts another proposition to sustain this statute, which is the safety of the hunter. An examination of the statute demonstrates that it can have little if any relationship to such objective. The dangers to a hunter of antelope would seem as great as to a hunter of deer. We can see no manner in which it would be any less dangerous for an antelope hunter than a deer hunter in the same area at the same time. A wilderness area by its definition would be clearly a more dangerous area to one not acquainted with the area. See 16 U.S.C.A., ch. 23, § 1131(c), p. 178, 1973 Cum.P.P. Yet under this statute no guide would be required.

We think it also proper to judicially notice the fact that at least Sections 16 and 36 would be State lands lying within the boundaries of National Forests all over the State and that if safety were a prime factor these should have been included. The addition of the provision that any resident owner of a big game license may receive a guide license and guide two nonresident hunters without bond or without any qualifications whatsoever without remuneration therefor is impossible to reconcile with the theory of safety unless one indulges in the violent presumption that mere residence in this State makes a competent, knowing guide whether he be acquainted with the area or not. It may also be suggested that no reason appears why after two such guiding expeditions the resident licensed hunter would then become an incompetent guide and expose the third such nonresident hunter to danger.

This statute has been recognized as discriminatory in a most sensitive area, being confined in its operations to territory owned and administered by the federal government. This has not escaped the notice of the Public Land Review Commis-

JUNE 24, 1973

sion, which recommended the revision of such discriminatory differences between residents and nonresidents and styles them as unjustified in noticing this statute.²

Because this statute created a discriminatory classification and because the record in this case demonstrates that it did not reasonably tend to accomplish or have any substantial connection with any of the purposes stated by the State and it is not rea-

sonable and appropriate for the accomplishment of these ends, this statute was therefore void.

Reversed and remanded with an order to set aside the fine and costs which were charged to the defendant.

McCLINTOCK, J., was not a member of the court at the time of the hearing of this case and took no part in this decision.

2. One-Third of the Nation's Land: A Report to the President and to the Congress

by the Public Land Law Review Commission, pp. 174, 175 (June 20, 1970).

PUBLIC OPINION MESSAGE

DEAR: REPRESENTATIVE HERRMANN

RECEIVED FEB - 1 1988

NAME: W.M. FRENCHY DE RUSHE'

TITLE:

ADDRESS: PO BOX 58018

CITY: FAIRBANKS

PHONE: 451-8304

ZIP: 99711

BILL NO:

SUBJECT: APPT. TO GUIDE BOARD

MESSAGE: I RECOMMEND YOU SUPPORT PETE BUIST FOR APPOINTMENT TO GUIDE BOARD. KNOWLEDGEABLE; SENSIBLE; DEPENDABLE; PETE WILL AFFORD REPRESENTATION ON THE BOARD FOR THE INTERIOR, AND WILL MOST CERTAINLY EXEMPLIFY THE POSITION.

EOM/MJD

POMID: 07150417

DATE: 02/01/88

TIME: 15:04:17

LIONAME: FAIRBANKS LIO

COPIES: REPRESENTATIVES REPRESENTATIVES

ADAMS	BARNES
BOUCHER	BOYER
BROWN	CATO
COLLINS	COTTEN
DAVIDSON	DAVIS
DOHLEY	ELLIS
FRANK	FURNACE
GOLL	GRUENBERG
GRUSSENDORF	HANLEY
HOFFMAN	HUDSON
KOPONEN	LARSON
MARTIN	MENARD
MILLER	NAVARRE
PEARCE	PETTYJOHN
PHILLIPS	POURCHOT
RIEGER	SHULTZ
SPRINGER	SUND
SWACKHAMMER	TAYLOR
ULMER	WALLIS
ZAWACKI	

KENNETH OWSICHEK vs STATE OF ALASKA, GUIDE LICENSING AND CONTROL BOARD

The case of Owsicheck vs State of Alaska, Guide Licensing and Control Board involves a broad challenge to the exclusive use guiding area system.

A decision on the case is pending in the Alaska Supreme Court. Final arguments have been made and the court has until approximately May 1st to do something. It is expected that a draft decision will be circulated at that time. A final decision will most likely be made sometime in the fall of 1988, however, the court has the prerogative to hold the case indefinitely.

The two main issues being addressed are:

1. Does state law relating to guiding, AS 08.54.040(7) or AS 08.54.195, violate article VIII, section 3, of the Alaska Constitution?

The section states:

"Whenever occurring in their natural state, fish, wildlife, and waters are reserved to the people for common use."

2. Did the guide board treat Owsicheck equally in applying its regulations?

HISTORY OF THE CASE

Kenneth Owsicheck applied for an area in 1976 but did not meet the Board's application criteria and so his application was denied. He reapplied in 1978, was found qualified based upon his history of guiding in a particular area and was assigned that area for his exclusive guiding use.

The application covered an extremely large area straddling the border of two units, 17 and 19. Based on his use of the area, evidence of its carrying capacity and the situations of the other guides in the vicinity the board granted Owsicheck the open portion of the application area. This area was comparable to other areas assigned to other guides and Owsicheck had hunted successfully there in the past.

He was not happy with the area and appealed the board's decision. He alleges that the statutes and regulations authorizing the area system are invalid and that even if the statutes and regulations are valid, the board somehow discriminated against him.

STATE OF ALASKA



GUIDE BOARD

CENTRALIZED LICENSING STATUTES, AS 08.01-AS 08.03
GUIDE BOARD STATUTES, AS 08.54
OCCUPATIONAL LICENSING REGULATIONS, 12 AAC 02.
GUIDE BOARD REGULATIONS, 12 AAC 38

REVISED EDITION

ATTENTION ALL GUIDES!

Please read this booklet thoroughly. It contains new statutes and regulations including

1. new centralized licensing statutes passed in 1987 (ch 49, SLA 1987);
2. statute changes made by the Legislature in 1986 (ch 71 SLA 1986);
3. the rearranging and renumbering of all Guide Board regulations; and
4. new regulations effective August 20, 1987, including 12 AAC 38.250(d), 12 AAC 38.260(g), 12 AAC 38.280(f) and 12 AAC 38.315.

Revised: July 1987

CENTRALIZED LICENSING ACT, AS 08.01

MISCELLANEOUS PROVISIONS, AS 08.02

REESTABLISHMENT OF REGULATORY BOARDS, AS 08.03

**CHAPTER 01
CENTRALIZED LICENSING**

Section

- 10. Applicability of chapter
- 20. Board organization
- 25. Public members
- 30. Quorum
- 35. Appointments
- 40. Transportation and per diem
- 50. Administrative duties of department
- 60. Application for license
- 65. Fees established by regulation
- 70. Administrative duties of boards
- 75. Disciplinary powers of the boards
- 80. Department regulations
- 87. Powers and duties of department
- 90. Applicability of the Administrative Procedure Act
- 100. License renewal, lapse and reinstatement
- 102. Citation for unlicensed practice
- 103. Procedure and form of citation
- 104. Failure to obey citation
- 105. Penalty for improper payment
- 110. Definitions

Sec. 08.01.010. Applicability of chapter. This chapter applies to the

- (1) Board of Public Accountancy (AS 08.04.010);
- (2) Board of Chiropractic Examiners (AS 08.20.010);
- (3) Board of Dental Examiners (AS 08.36.010);
- (4) Repealed by § 48 ch 94 SLA 1987;
- (5) State Board of Registration for Architects, Engineers and Land Surveyors (AS 08.48.011);
- (6) State Medical Board (AS 08.64.010);
- (7) Board of Nursing (AS 08.68.010);
- (8) Board of Examiners in Optometry (AS 08.72.010);
- (9) Board of Pharmacy (AS 08.80.010);
- (10) Board of Veterinary Examiners (AS 08.98.010);
- (11) Board of Psychologist and Psychological Associate Examiners (AS 08.86.010);
- (12) Board of Marine Pilots (AS 08.62.010);
- (13) Board of Dispensing Opticians (AS 08.71.010);
- (14) Guide Board (AS 08.54.010);
- (15) State Physical Therapy Board (AS 08.84.010);
- (16) Board of Nursing Home Administrators (AS 08.70.010);
- (17) regulation of professional geologists under AS 08.02.011;
- (18) Board of Barbers and Hairdressers (AS 08.13.010);
- (19) Athletic Commission (AS 05.05 and AS 05.10);
- (20) regulation of construction contractors under AS 08.18;
- (21) regulation of collection agencies under AS 08.24;
- (22) regulation of morticians under AS 08.42;
- (23) regulation of concert promoters under AS 08.92;
- (24) regulation of the practice of naturopathy under AS 08.45;
- (25) regulation of audiologists under AS 08.11;
- (26) regulations of hearing aid dealers under AS 08.55;
- (27) Real Estate Commission (AS 08.88.011).

Sec. 08.01.020. Board organization. Board members are appointed by the governor and serve at the pleasure of the governor. Unless otherwise provided, the governor may designate the chair of a board, and all other officers shall be elected by the board members. Unless otherwise provided, officers of a board are the chair and the secretary. A board may provide by regulation that three or more unexcused absences from meetings are cause for removal. (§ 1 ch 59 SLA 1966; am § 2 ch 94 SLA 1987)

Sec. 08.01.025. Public members. No public member of a board may:

- (1) be engaged in the occupation which the board regulates;
- (2) be associated by legal contract with a member of the occupation which the board regulates except as a consumer of the services provided by a practitioner of the occupation; or
- (3) have a direct financial interest in the occupation which the board regulates. (§ 1 ch 258 SLA 1976)

Sec. 08.01.030. Quorum. A majority of the membership of the board constitutes a quorum unless otherwise provided. (§ 1 ch 59 SLA 1966)

Sec. 08.01.035. Appointments. Members of boards subject to this chapter and members of the Real Estate Commission under AS 08.88 are appointed for staggered terms of four years. A member of a board serves until a successor is appointed. An appointment to fill a vacancy on a board is for the remainder of the unexpired term. A member who has served all or part of two successive terms on a board may not be reappointed to that board unless four years have elapsed since the person has last served on the board. (§ 3 ch 94 SLA 1987)

Sec. 08.01.040. Transportation and per diem. A board member is entitled to transportation expenses and per diem as set out in AS 39.20.180. (§ 1 ch 59 SLA 1966)

Sec. 08.01.050. Administrative duties of department. (a) The department shall perform the following administrative and budgetary services when appropriate:

- (1) collect and record fees;
- (2) maintain records and files;
- (3) issue and receive application forms;
- (4) notify applicants of acceptance or rejection as determined by the board or as determined by the department under AS 08.11 for audiologists, under AS 08.40 for electrical administrators, under AS 08.45 for naturopaths, or under AS 08.55 for hearing aid dealers;
- (5) designate dates examinations are to be held and notify applicants;
- (6) publish notice of examinations and proceedings;
- (7) arrange space for holding examinations and proceedings;
- (8) notify applicants of results of examinations;
- (9) issue licenses or temporary licenses as authorized by the board or as authorized by the department under AS 08.11 for audiologists, under AS 08.40 for electrical administrators, under AS 08.45 for naturopaths, or under AS 08.55 for hearing aid dealers;
- (10) issue duplicate licenses upon submission of a written request by the licensee attesting to loss of or the failure to receive the original and payment by the licensee of a fee established by regulation adopted by the department;

- (11) notify licensees of renewal dates at least 30 days before the expiration date of their licenses;
- (12) compile and maintain a current register of licensees;
- (13) answer routine inquiries;
- (14) maintain files relating to individual licensees;
- (15) arrange for printing and advertising;
- (16) purchase supplies;
- (17) employ additional help when needed;
- (18) perform other services that may be requested by the board;
- (19) provide inspection, enforcement, and investigative services to the boards and for the occupations listed in AS 08.01.010, regarding all licenses issued by or through the department;
- (20) retain and safeguard the official seal of a board and prepare, sign, and affix a board seal, as appropriate, for licenses approved by the board.

(b) The form and content of a license, authorized by a board listed in AS 08.01.010, including any document evidencing renewal of a license, shall be determined by the department after consultation with and consideration of the views of the board concerned.

(c) Repealed by § 49 ch 94 SLA 1987. (§ 1 ch 59 SLA 1966; am § 1 ch 102 SLA 1976; am § 39 ch 218 SLA 1976; am § 2 ch 258 SLA 1976; am §§ 1, 2 ch 49 SLA 1980; am § 1 ch 82 SLA 1980; am § 2 ch 141 SLA 1980; am § 1 ch 166 SLA 1980; am § 1 ch 48 SLA 1983; am § 3 ch 56 SLA 1986; am § 3 ch 131 SLA 1986; am §§ 4, 49 ch 94 SLA 1987)

Sec. 08.01.060. Application for license. All applications for examination or licensing to engage in the business or profession covered by this chapter shall be made in writing to the department. (§ 1 ch 59 SLA 1966)

Sec. 08.01.065. Fees Established by Regulation. (a) The department shall adopt regulations that establish the amount and manner of payment of application fees, examination fees, license fees, registration fees, permit fees, investigation fees, and all other fees as appropriate for the occupations covered by this chapter.

(b) The department may not adopt a regulation under (a) of this section unless the board responsible for regulating the affected occupation concurs.

(c) A fee established under this section should reflect, but should not exceed, the actual costs to the department of the activity for which the fee is charged except that the department may establish a fee that is less than the cost of the activity for which the fee is charged if the department determines that it is not reasonable to impose the full cost of the activity on the applicant or licensee.

(d) The commissioner of administration shall separately account for occupational licensing fees deposited in the general fund by the department. The annual estimated balance in the account may be used by the legislature to make appropriations to the department to carry out the activities of the division of occupational licensing. (§ 2 ch 37 SLA 1985; am § 4 ch 138 SLA 1986; am § 3 ch 74 SLA 1987; am § 5 ch 94 SLA 1987)

Sec. 08.01.070. Administrative duties of boards. Each board shall perform the following duties in addition to those provided in its respective law:

- (1) take minutes and records of all proceedings;
- (2) hold a minimum of one meeting each year;
- (3) hold at least one examination each year;
- (4) request, through the department, investigation of violations of its laws and regulations;
- (5) prepare and grade board examinations;
- (6) set minimum qualifications for applicants for examination and license;
- (7) forward a draft of the minutes of proceedings to the department within 20 days after the proceedings;
- (8) forward results of board examinations to the department within 20 days after the examination is given;
- (9) notify the department of meeting dates and agenda items at least 15 days before meetings and other proceedings are held;
- (10) submit before the end of the fiscal year an annual performance report to the department stating the board's accomplishments, activities, and needs. (§ 1 ch 59 SLA 1966; am § 6 ch 94 SLA 1987)

Sec. 08.01.075. Disciplinary powers of boards. (a) A board may take the following disciplinary actions, singly or in combination:

- (1) permanently revoke a license;
- (2) suspend a license for a specified period;
- (3) censure or reprimand a licensee;
- (4) impose limitations or conditions on the professional practice of a licensee;
- (5) require a licensee to submit to peer review;
- (6) impose requirements for remedial professional education to correct deficiencies in the education, training, and skill of the licensee;
- (7) impose probation requiring a licensee to report regularly to the board on matters related to the grounds for probation;
- (8) impose a civil fine not to exceed \$5,000.

(b) A board may withdraw probationary status if the deficiencies that required the sanction are remedied;

(c) A board may summarily suspend a licensee from the practice of the profession before a final hearing is held or during an appeal if the board finds that the licensee poses a clear and immediate danger to the public health and safety. A person is entitled to a hearing before the board to appeal the

summary suspension within seven days after the order of suspension is issued. A person may appeal an adverse decision of the board on an appeal of a summary suspension of a court of competent jurisdiction.

(d) A board may reinstate a suspended or revoked license if, after a hearing, the board finds that the applicant is able to practice the profession with skill and safety.

(e) A board may accept the voluntary surrender of a license. A license may not be returned unless the board determines that the licensee is competent to resume practice and the licensee pays the appropriate renewal fee.

(f) A board shall seek consistency in the application of disciplinary sanctions. A board shall explain a significant departure from prior decisions involving similar facts in the order imposing the sanction. (§ 7 ch 94 SLA 1987)

Sec. 08.01.080. Department regulations. The department shall adopt regulations to carry out the purposes of this chapter including but not limited to describing

- (1) how an examination is to be conducted;
- (2) what is contained in application forms;
- (3) how a person applies for an examination or license. (§ 1 ch 59 SLA 1966)

Sec. 08.01.087. Powers and duties of department. (a) The department may, upon its own motion, conduct investigations to determine whether a person has violated a provision of this chapter or a regulation adopted under it, or a provision of this title or regulation adopted under this title dealing with an occupation or board listed in AS 08.01.010, or to secure information useful in the administration of this chapter.

(b) If it appears to the commissioner that a person has engaged in or is about to engage in an act or practice in violation of a provision of this chapter or a regulation adopted under it, or a provision of this title or regulation adopted under this title dealing with an occupation or board listed in AS 08.01.010 the commissioner may, if the commissioner considers it in the public interest, and after notification of a proposed order or action by telephone or telegraph to all board members, if a board regulates the act or practice involved, unless a majority of the members of the board object within 10 days,

(1) issue an order directing the person to stop the act or practice; however, reasonable notice of and an opportunity for a hearing must first be given to the person, except that the commissioner may issue a temporary order before a hearing is held; a temporary order remains in effect until a final order affirming, modifying, or reversing the temporary order is issued or until 15 days after the person receives the notice and has not requested a hearing by that time; a temporary order becomes final if the person to whom the notice is addressed does not request a hearing within 15 days after receiving the notice; the commissioner or the commissioner's designee shall be the hearing officer at the hearing and shall issue a final order within 10 days after the hearing;

(2) bring an action in the superior court to enjoin the acts or practices and to enforce compliance with this chapter, a regulation adopted under it, an order issued under it, or with a provision of this title or regulation adopted under this title dealing with an occupation or board listed in AS 08.01.010;

(3) examine or have examined the books and records of a person whose business activities require licensure by a board listed in AS 08.01.010, or whose occupation is listed in AS 08.01.010; the commissioner may require the person to pay the reasonable costs of the examination; and

(4) issue subpoenas for the attendance of witnesses, and the production of books, records and other documents. (§ 3 ch 258 SLA 1976; am § 4 ch 56 SLA 1986; am § 4 ch 131 SLA 1986)

Sec. 08.01.090. Applicability of the Administrative Procedure Act. The Administrative Procedure Act (AS 44.62) applies to regulations adopted and proceedings held under this chapter, except those under AS 08.01.087(b). (§ 1 ch 59 SLA 1966; am § 4 ch 258 SLA 1976)

Sec. 08.01.100. License renewal, lapse and reinstatement. (a) Licenses shall be renewed biennially on the dates set by the department with the approval of the respective board.

(b) A license subject to renewal shall be renewed on or before the date set by the department. If the license is not renewed by the date set by the department, the license lapses. In addition to renewal fees required for reinstatement of the lapsed license, the department may impose a delayed renewal penalty, established by regulation, that shall be paid before a license that has been lapsed for more than 60 days may be renewed. The department may adopt a delayed renewal penalty only with concurrence of the appropriate board.

(c) When continuing education or other requirements are made a condition of license renewal, the requirements shall be satisfied before a license is renewed.

(d) Except as otherwise provided, a license may not be renewed if it has lapsed for five years or more. (§ 1 ch 59 SLA 1966; am § 2 ch 94 SLA 1968; am § 3 ch 49 SLA 1980; am § 1 ch 56 SLA 1980; am § 1 ch 58 SLA 1980; am § 1 ch 75 SLA 1980; am § 1 ch 130 SLA 1980; am § 1 ch 162 SLA 1980; am § 2 ch 166 SLA 1980; am § 3 ch 37 SLA 1985; am §§ 8, 9, 10 ch 94 SLA 1987)

Sec. 08.01.102. Citation for unlicensed practice. The department may issue a citation for a violation of a license requirement of a board or profession listed in AS 08.01.010 if there is probable cause to believe a person has practiced a profession for which a license is required without holding the license. Each day a violation continues after a citation for the violation has been issued constitutes a separate violation. (§ 11 ch 94 SLA 1987)

AS 08.01.103. Procedure and form of citation. (a) A citation issued under AS 08.01.102 must be in writing. A person receiving the citation is not required to sign a notice to appear in court.

(b) The time specified in the notice to appear on a citation issued under AS 08.01.102 shall be at least five days, not including weekends and holidays, after the issuance of the citation, unless the person cited requests an earlier hearing.

(c) The department is responsible for the issuance of books containing appropriate citations, and shall maintain a record of each book issued and each citation contained in it. The department shall require and retain a receipt for every book issued to an employee of the department.

(d) The department shall deposit the original or a copy of the citation with a court having jurisdiction over the alleged offense. Upon its deposit with the court, the citation may be disposed of only by trial in the court or other official action taken by the magistrate, judge or prosecutor. The department may not dispose of a citation, copies of it, or of the record of its issuance except as required under this subsection and (e) of this section.

(e) The department shall require the return of a copy of every citation issued by the department and of all copies of a citation that has been spoiled or upon which an entry has been made and not issued to an alleged violator. The department shall also maintain, in connection with each citation, a record of the disposition of the charge by the court where the original or copy of the citation was deposited.

(f) If the form of citation includes the essential facts constituting the offense charged, and if the citation is sworn to as required under the laws of this state for a complaint charging commission of the offense alleged in the citation, then the citation when filed with a court having jurisdiction is considered to be a lawful complaint for the purpose of prosecution. (§ 11 ch 94 SLA 1987)

Sec 08.01.104. Failure to obey citation. Unless the citation has been voided or otherwise dismissed by the magistrate, judge, or prosecutor, a person who without lawful justification or excuse fails to appear in court to answer a citation issued under AS 08.01.102, regardless of the disposition of the charge for which the citation was issued, is guilty of a class B misdemeanor. (§ 11 ch 94 SLA 1987)

Sec. 08.01.105. Penalty for improper payment. An applicant shall pay a penalty of \$10 each time a negotiable instrument is presented to the department in payment of an amount due and payment is subsequently refused by the named payor. (§ 3 ch 258 SLA 1976)

Sec. 08.01.110. Definitions. In this chapter

- (1) "board" includes the boards and commissions listed in AS 08.01.010;
- (2) "department" means the Department of Commerce and Economic Development;
- (3) "commissioner" means the commissioner of commerce and economic development;
- (4) "license" means a license, certificate, permit, or registration or similar evidence of authority issued for an occupation or board listed in AS 08.01.010;
- (5) "licensee" means a person who holds a license;
- (6) "occupation" means a trade or profession listed in AS 08.01.010. (§ 1 ch 59 SLA 1966; am § 40 ch 218 SLA 1976; am § 5 ch 258 SLA 1976; am § 5 ch 56 SLA 1986; am § 5 ch 131 SLA 1986)

CHAPTER 02 MISCELLANEOUS PROVISIONS

Section

10. Professional designation requirements
11. Professional geologist
20. Limitation of liability for members of licensing boards

Sec. 08.02.010. Professional designation requirements. (a) An audiologist licensed under AS 08.11, a person licensed in the state as a chiropractor under AS 08.20, a dentist under AS 08.36, a medical practitioner or osteopath under AS 08.64, a registered nurse under AS 08.68, an optometrist under AS 08.72, a registered pharmacist under AS 08.80, a registered physical therapist under AS 08.84, or a psychologist under AS 08.86, shall use as professional identification appropriate letters or a title after that person's name which represents that person's specific field of practice. The letters or title shall appear on all signs, stationery or other advertising in which the person offers or displays personal professional services to the public. In addition, a person engaged in the practice of medicine or osteopathy under AS 08.64.380(2), or a person engaged in any manner in the healing arts who diagnoses, treats, tests, or counsels other persons in relation to human health or disease and uses the letters "M.D." or the title "doctor" or "physician" or another title that tends to show that the person is willing or qualified to diagnose, treat, test, or counsel another person, shall clarify the letters or title by adding the appropriate specialist designation, if any, such as "dermatologist", "radiologist", "audiologist", "naturopath", or the like.

(b) A person subject to (a) of this section who fails to comply with the requirements of (a) of this section shall be given notice of noncompliance by that person's appropriate licensing board. If, after a reasonable time, with opportunity for a hearing, the person's noncompliance continues, the board may suspend or revoke the person's license or registration, or administer other disciplinary action which in its determination is appropriate. (§ 1 ch 6 SLA 1973; am § 11 ch 6 SLA 1984)

Sec. 08.02.011. Professional geologist. The commissioner of commerce and economic development shall certify an applicant as a professional geologist if the applicant is certified as a professional geologist by the American Institute of Professional Geologists. (§ 2 ch 142 SLA 1980; AS 08.53.010)

Sec. 08.02.020. Limitation of liability for members of licensing boards and peer review committees. A person is not liable for damages or other relief in an action by reason of the person's performance of a duty, function, or activity as a member of a licensing board or peer review committee established to review a licensing matter, or by reason of a recommendation or action of the board or peer review committee when the person acts in the reasonable belief that the action or recommendation is warranted by facts known to the person or to the board or peer review committee after reasonable efforts to ascertain the facts upon which the action or recommendation is made. (§ 45 ch 102 SLA 1976; am § 12 ch 94 SLA 1987)

CHAPTER 03 TERMINATION, CONTINUATION AND REESTABLISHMENT OF REGULATORY BOARDS

Section

- 10. Termination dates for regulatory boards
- 20. Procedures governing termination, transition and continuation

Sec. 08.03.010. Termination dates for regulatory boards.

(a) Repealed by § 4 ch 14 SLA 1987.

(b) Repealed by § 4 ch 14 SLA 1987.

(c) The following boards have the termination date provided by this subsection:

- (1) Board of Nursing (AS 08.68.010)—June 30, 1991.
- (2) Board of Chiropractic Examiners (AS 08.20.010)—June 30, 1988
- (3) Board of Examiners in Optometry (AS 08.72.010)—June 30, 1988.
- (4) Board of Pharmacy (AS 08.80.010)—June 30, 1989.
- (5) Board of Dispensing Opticians (AS 08.71.010)—June 30, 1988.
- (6) Board of Dental Examiners (AS 08.36.010)—June 30, 1988.
- (7) Board of Veterinary Examiners (AS 08.98.010)—June 30, 1989.
- (8) State Physical Therapy Board (AS 08.84.010)—June 30, 1989.
- (9) Board of Nursing Home Administrators (AS 08.70.010)—June 30, 1990.
- (10) Board of Psychologist and Psychological Associate Examiners (AS 08.86.010)—June 30, 1991.
- (11) State Medical Board (AS 08.64.010)—June 30, 1991.
- (12) Board of Marine Pilots (AS 08.62.010)—June 30, 1991.
- (13) Repealed by § 13 ch 6 SLA 1984.
- (14) Repealed by § 48 ch 94 SLA 1987.
- (15) State Board of Registration for Architects, Engineers and Land Surveyors (AS 08.48.011)—June 30, 1988.
- (16) Board of Barbers and Hairdressers (AS 08.13.010)—June 30, 1989.
- (17) Board of Public Accountancy (AS 08.04.010)—June 30, 1988.
- (18) Real Estate Commission (AS 08.88.011)—June 30, 1991.
- (19) Board of Governors of the Alaska Bar Association (AS 08.08.040)—June 30, 1989.
- (20) Guide Board (AS 08.54.010)—June 30, 1988.

(d) Repealed by § 3 ch 78 SLA 1979.

(e) Repealed by § 3 ch 78 SLA 1979.

Sec. 08.03.020. Procedures governing termination, transition and continuation. (a) Upon termination, each board listed in AS 08.03.010 shall continue in existence until June 30 of the next succeeding year for the purpose of concluding its affairs. During this period, termination does not reduce or otherwise limit the powers or authority of each board. One year after the date of termination, a board not continued shall cease all activities.

(b) The termination, dissolution, continuation or reestablishment of a regulatory board shall be governed by the legislative oversight procedures of AS 44.66.050.

(c) a board scheduled for termination under AS 08.03.010—08.03.020 may be continued or reestablished by the legislature for a period not to exceed four years unless the board is continued or reestablished for a longer period under AS 08.03.010. (§ 2 ch 74 SLA 1979; am § 2 ch 36 SLA 1980; am § 2 ch 37 SLA 1980; am § 2 ch 38 SLA 1980; am § 2 ch 39 SLA 1980; am § 2 ch 40 SLA 1980; am § 2 ch 41 SLA 1980; am § 2 ch 42 SLA 1980; am § 2 ch 67 SLA 1980; am § 2 ch 87 SLA 1980)

GUIDE BOARD STATUTES, AS 08.54

CHAPTER 54. GUIDES.

Article

1. Guide Board (§§08.54.010—08.54.070)
2. Licensing (§§08.54.100—08.54.220)
3. General Provisions (§§ 08.54.230—08.54.240)

ARTICLE 1.
GUIDE BOARD

Section

10. Creation and membership of board
20. Appointment and term of office
30. Chairman of board
35. Quorum; voting requirement
40. Powers and duties
45. Special guide license
50. Board regulations
60. Board hearing
70. Compensation and expenses

Sec. 08.54.010. Creation and membership of board. For the purposes of licensing and regulating the activities of guides in the interest of the state's wildlife resources there is created the Guide Board consisting of seven members. No more than three members of the board shall hold or have held a registered, master, or class A assistant guide license. The other members must have a general knowledge of the game resources of the state and may not have a vested interest in the guiding industry. A minimum 10 years residence in the state is required for all members of the board. For administrative purposes, the board is in the Department of Commerce and Economic Development. (§ 1 ch 17 SLA 1973; am § 3 ch 71 SLA 1986)

Sec. 08.54.020. Appointment and term of office. The members of the board shall be appointed by the governor and confirmed by the legislature for staggered terms of three years or until their successors are appointed. A member may be removed at the pleasure of the governor. (§ 1 ch 17 SLA 1973; am § 4 ch 71 SLA 1986)

Sec. 08.54.030. Chairman of the board. The board shall elect one of its members as chairman. (§ 1 ch 17 SLA 1973)

Sec. 08.54.035. Quorum: voting requirement. Four members of the board constitute a quorum for the transaction of business, for the performance of a duty, and for the exercise of any power under this chapter. The board may not adopt a regulation, revoke, suspend, or deny renewal of a license, or assign, modify, or revoke a restricted guide area unless the action is approved by a vote of a majority of the full membership of the board. (§ 5 ch 71 SLA 1986)

Sec. 08.54.040. Powers and duties. (a) Except as provided in AS 08.54.045, the board shall

(1) prepare, grade and administer examinations, which may include oral examinations of applicants who demonstrate limited ability to read or write the English language;

(2) determine qualifications of applicants for licenses and authorize the issuance of licenses to those who qualify;

(3) establish guide performance standards and regulate activity;

(4) compile, maintain and publish an annual register of master and registered guides who have not been convicted of a violation of a state game or guiding statute or regulation; a guide listed in the register whose license is revoked or suspended shall be removed from the register while the guide's license is revoked or suspended;

(5) prohibit guiding activities which are unsportsmanlike, unethical, unsafe, against principles of conservation, degrading to the guiding profession, or which adversely affect the natural resources;

(6) after a hearing, revoke, suspend or deny renewal of a license in accordance with AS 08.54.200;

(7) establish a quota of licensed operating guides who may operate within designated geographical game units or subunits of the state and provide for an equitable and reasonable procedure for limiting the number of guides to that quota; preference shall be given to qualified available and willing licensed guides who reside within the designated game unit or subunit.

(8) meets at least twice annually, once in Anchorage and once in another municipality.

(b) Repealed by § 27 ch 31 SLA 1976 (§ 1 ch 17 SLA 1973; am § 1 ch 133 SLA 1976; am §§ 6, 27 ch 71 SLA 1986)

Sec. 08.54.045. Special guide license. The board may issue a special guide license to a person who applies to conduct a guided hunt for a specific species of marine mammal in a specifically designated area if the applicant

(1) is 21 years of age or older;

(2) has, for at least 10 years, resided and hunted in the area of the state in which the applicant is to guide;

(3) is able to perform the duties of a special guide;

(4) has demonstrated knowledge of the following areas to an extent and degree satisfactory to the board:

- (A) fish and game laws and regulations;

(B) relevant characteristics of the specific species to be hunted;

(C) field preparation of trophies;

(D) care of game meat;

(E) use of guiding gear;

(F) firearm safety;

(G) practical first aid;

(H) booking and contracting hunts;

(5) has not been convicted of a game or guiding law violation during the previous five years;

(6) has not been convicted of a crime involving moral turpitude. (§ 1 ch 17 SLA 1973; am § 7 ch 71 SLA 1986)

Sec. 08.54.050. Board regulations. The board shall adopt procedural and substantive regulations, under the Administrative Procedure Act (AS 44.62), required by this chapter or reasonably necessary for its administration. (§ 1 ch 17 SLA 1973)

Sec. 08.54.060. Board hearing. The Administrative Procedure Act (AS 44.62) applies to proceedings and hearings under this chapter. (§ 1 ch 17 SLA 1973)

Sec. 08.54.070. Compensation and expenses. Members of the board receive no salary, but are entitled to per diem and travel expenses authorized by law for other boards. (§ 1 ch 17 SLA 1973)

ARTICLE 2. LICENSING

Section

- 100. Qualifications for a master guide license
- 110. Qualifications for registered guide license
- 120. Qualifications for a class-A assistant guide license
- 130. Privileges and limitations of class-A assistant guide license
- 140. Qualifications for assistant guide license
- 141. Privileges and limitations of assistant guide license
- 142. [Repealed]
- 144. [Repealed]
- 146. [Repealed]
- 150. Responsibility of registered or master guide for violations
- 160. Licensing of marine mammal guides
- 170. License fees
- 180. Examination fee
- 185. [Repealed]
- 186. Registered guide examination
- 190. Failure to renew
- 195. Restricted guide areas
- 200. Discipline of licensees
- 210. Unlawful acts
- 220. Injunction against unlawful action

Sec. 08.54.100. Qualifications for a master guide license. A person is entitled to be licensed as a master guide if the person:

(1) has legally hunted in the state for a part of each of 10 years during which time a substantial source of the person's income was from guiding or related activities directly contributing to the person's experience and competency as a guide;

(2) meets all the requirements of a registered guide and has been actively engaged in licensed guiding activities in the state for at least five years preceding application;

(3) has not been convicted of a violation of federal or state sport fishing, game or guiding laws or regulations within the preceding five years;

(4) has consistently performed in a superior manner as evidenced by required reports submitted to the board and by inquiries made by the board to at least two of the guide's clients of record; and

(5) meets additional qualifications which the board may require. (§ 1 ch 17 SLA 1973)

Sec. 08.54.110. Qualifications for registered guide license. (a) A person is entitled to be licensed as a registered guide if the person

(1) is 21 years of age or older;

(2) has practical field experience in the handling of firearms, hunting, judging trophies, field preparation of trophies, first aid and photography;

(3) is familiar with the terrain and transportation problems in the district for which the license is requested;

(4) has passed the qualification examination prepared and administered by the board;

(5) has demonstrated to the board sufficient standards of competence and ethical conduct and has not been convicted of a crime involving moral turpitude;

(6) has legally hunted in the state during any five years in a manner directly contributing to the person's experience and competency as a guide;

(7) has been licensed as and performed the services of an assistant guide in the state for a part of each of three years, or has guided in the state for a part of each of three years under a special guide license issued under AS 08.54.045;

(8) submits a written recommendation to the board from a registered guide for whom the applicant has worked or from two registered guides; however, the requirements of this paragraph do not apply to a person who has guided under a special guide license for three years;

(9) is capable of performing the essential duties associated with guiding;

(10) has been favorably recommended in writing by two hunters that the person has guided or assisted in guiding during each year of the person's three years as an assistant guide, whose recommendations have been solicited by the board from a list provided by the applicant.

(b) The commissioner of commerce and economic development may order that an applicant for an initial license under this section be allowed to take the license examination or be issued the license if, after reviewing a petition filed by the applicant, the commissioner finds that

(1) the board denied the applicant an opportunity to take the license examination, or refused to approve issuance of the license;

(2) the board's denial or refusal has been upheld by a final administrative order, and the order has not been appealed to the superior court under AS 44.62.560;

(3) the board's denial or refusal was based on

(A) an error of fact by the board;

(B) the applicant's failure of the license examination due to faulty or unfair examination questions or procedures; or

(C) an erroneous or false statement in a recommendation submitted under (a)(8) of this section;

(4) the applicant is otherwise qualified to take the examination or to be issued the license; and

(5) sustaining the board's denial or refusal would work a substantial injustice on the applicant. (§ 1 ch 17 SLA 1973; am § 19 ch 67 SLA 1983; am §§ 8, 9 ch 71 SLA 1986)

Sec. 08.54.120. Qualifications for a class-A assistant guide license. A person is entitled to be licensed as a class-A assistant guide if the person

(1) has been employed for at least one season as a licensed assistant guide;

(2) has had at least 20 years experience in the guide district in which the person is to be employed; for the purposes of this paragraph physical presence at some time of the year during each of the 20 years constitutes adequate evidence of experience, and military service outside the state for no more than six years shall be accepted as part of the required 20 years experience;

(3) has been recommended in writing as qualified by a registered or master guide to the board. (§ 1 ch 17 SLA 1973)

Sec. 08.54.130. Privileges and limitations of class-A assistant guides. A class-A assistant guide

(1) may not contract for hunts;

(2) shall be under the supervision of a registered or master guide who has contracted with the client for whom the class-A assistant guide is conducting the hunt;

(3) may take charge of a camp and conduct hunts from it without the registered or master guide necessarily being present in the area if the registered or master guide is physically present in the state and is actively supervising in guiding activities. (§ 1 ch 17 SLA 1973)

Sec. 08.54.140. Qualifications for assistant guide license. A person is entitled to be licensed as an assistant guide if the person

(1) is 19 years of age or more;

(2) Repealed by § 19 ch 67 SLA 1983.

(3) is favorably recommended to the board, in writing, by a registered guide;

(4) meets additional qualifications which the board may require;

(5) is in sound physical condition. (§ 1 ch 17 SLA 1973; am § 19 ch 67 SLA 1983)

Sec. 08.54.141. Privilege and limitations of assistant guide license. An assistant guide

(1) may not contract to conduct a guided hunt; and

—(2) shall be employed and supervised by a registered or master guide at all times while the assistant guide is in the field on guided hunts. (§ 10 ch 71 SLA 1986)

Sec. 08.54.142. Qualifications for transporter license. Repealed by § 27 ch 71 SLA 1986.

Sec. 08.54.144. Restriction to transportation. Repealed by § 27 ch 71 SLA 1986.

Sec. 08.54.146. Transporter report. Repealed by § 27 ch 71 SLA 1986.

Sec. 08.54.150. Responsibility of registered or master guide for violations. A registered or master guide contracting for a hunt is equally responsible under AS 08.54.200 for a violation of a federal or state sport fish, game or guide statute or regulation committed by a class-A assistant guide or assistant guide while in the course of the class-A assistant guide's or assistant guide's employment. (§ 1 ch 17 SLA 1973)

Sec. 08.54.160. Licensing of marine mammal guides. The board may establish qualifications and issue licenses for marine mammal guides. (§ 2 ch 13 SLA 1983; am § 32 ch 37 SLA 1985)

Sec. 08.54.170. License fees. (a) The Department of Commerce and Economic Development shall set license fees under AS 08.01.065 for each of the following:

(1) master guide;

(2) registered guide;

- (3) class-A assistant guide;
- (4) assistant guide;
- (5) special guide.

(b) The license fee for a master guide, registered guide, special guide, class-A assistant guide, or assistant guide license is in addition to the fee required for a hunting license. (§ 1 ch 17 SLA 1973; am § 3 ch 106 SLA 1976 am § 4 ch 81 SLA 1984; am §§ 33, 54 ch 37 SLA 1985; am § 11 ch 71 SLA 1986)

Sec. 08.54.180. Examination fee. An applicant for a guide examination shall pay a fee established by regulations adopted under AS 08.01.065. (§ 1 ch 17 SLA 1973; am § 34 ch 37 SLA 1985)

Sec. 08.54.185. Additional fees. Repealed by § 27 ch 71 SLA 1986.

Sec. 08.54.186. Registered guide examination. The board shall administer the qualification examination required under AS 08.54.110 at least twice a year. An examination may not be given within 90 days after the previous exam. At least once every other year the board shall give the examination at a location other than Anchorage. (§ 12 ch 71 SLA 1986)

Sec. 08.54.190. Failure to renew. (a) Repealed by § 23 ch 81 SLA 1984.

(b) A license may not be issued to a class-A assistant guide or assistant guide who has failed to renew a license issued under this chapter for two consecutive years unless the class-A assistant guide or assistant guide again meets the qualifications for initial issuance of the license.

(c) A master or registered guide who fails to renew a license is not required to requalify under AS 08.54.100(2) or AS 08.54.110(8), respectively.

(d) A master guide, registered guide, special guide, class-A assistant guide, or assistant guide license expires biennially, on a date set by the Department of Commerce and Economic Development. (§ 1 ch 17 SLA 1973; am § 12 ch 127 SLA 1974; am § 4 ch 106 SLA 1976; am § 23 ch 81 SLA 1984; am § 13 ch 71 SLA 1986)

Sec. 08.54.195. Restricted guide areas. (a) Under AS 08.54.040(a)(7), the board may establish and assign restricted guide areas for master guides or registered guides. The board shall adopt regulations that establish uniform and consistent criteria, including a point system, to be used by the board when it establishes and assigns a restricted guide area.

(b) The board shall consider the following factors before it assigns a restricted guide area:

- (1) the extent to which the guide who has applied for the area has guided in the game management unit in which the area is located;
- (2) the extent to which the guide occupied and invested in the area;
- (3) the effects, including the economic effect, on other guides that would result from creation of the area;
- (4) big game population in the area;
- (5) the land ownership status of the area; and

(6) other relevant facts or circumstances.

(c) The board may adopt regulations limiting the number of clients with which a guide may contract for hunts in a restricted guide area used by more than one guide.

(d) Unless the board determines after a public hearing that it is not in the public interest to do so, the board may transfer a restricted guide area to a person qualified for assignment who has been recommended by the guide to whom the area is assigned, or by a person authorized to represent the guide, if the recommendation is made

(1) after five years have elapsed from the date of the assignment of the guide area; or

(2) during the first five years after the date of assignment and the guide has died or suffered a major disability, as defined by the board.

(e) A guide may not sell or lease a restricted guide area. A guide may sell or otherwise transfer a lodge, camp, or other lawful improvement to property located in a restricted guide area. Sales price may not exceed fair market value. (§ 14 ch 71 SLA 1986)

Sec. 08.54.200. Grounds for disciplining a licensee. (a) The board shall hold a hearing to determine whether a licensee should be disciplined within a reasonable time after (1) complaints concerning a licensee's guiding activities are filed with the board by three or more of the licensee's clients from separate parties; (2) a complaint concerning a guide's conduct during a life-threatening situation is filed with the board; or (3) a licensee has been convicted of a violation of a federal or state hunting or guiding statute or regulation. The board may hold a hearing to determine whether disciplinary action is necessary if a complaint concerning a licensee's guiding activities is filed with the board by a client of the licensee.

(b) After a hearing, the board may revoke, suspend, or deny renewal of a license, and may withdraw a licensee's restricted guide area assignment, if the board finds that the licensee

(1) engaged in unethical activity, unsafe activity, or activity that adversely effects the natural resources of the state when the activity is related to the purposes of the contract hunt; or

(2) violated a provision of a federal or state game or guide statute or regulation.

(c) After a hearing, the board shall revoke a license and shall withdraw a licensee's restricted guide area assignment if the board finds that the licensee

(1) does not meet the qualifications specified by statute or regulation for the class of license held;

(2) is incompetent as a master guide, registered guide, special guide, class-A assistant guide, or assistant guide;

(3) during the five years immediately preceding the hearing has been convicted of a violation of a federal or state statute or regulation prohibiting

(A) waste of a wild food animal;

(B) hunting on the same day airborne;

(C) hunting during a closed hunting season; or

(D) hunting in an area closed by federal regulation; or

(4) during the five years immediately preceding the hearing, has been convicted of two violations of a state statute or regulation prohibiting hunting in a restricted area not assigned to the licensee and without proper written permission.

(d) A person who is disciplined under this section may not engage in a guiding activity during the period of license revocation or disciplinary action. A person licensed under this chapter may not hire as a guide a person whose guide license is suspended or revoked under this section. A guide whose license is suspended or revoked may not guide in the employ of a person licensed under this chapter.

(e) If the board revokes a license it shall notify the Department of Revenue, and the person whose license has been revoked shall return the license to the Department of Commerce and Economic Development.

(f) If a certified copy of a judgment of conviction of a guide for an offense described under (c)(3) of this section, or for each of two offenses under (c)(4) of this section, is filed with the board, the board shall immediately suspend the guide's license. The suspension may be ordered even if the conviction resulted from a plea of nolo contendere or if the conviction is under appeal. The order remains in effect until after final disposition of the disciplinary proceeding under this section.

(g) A certified copy of a judgment of conviction of a guide for an offense is conclusive evidence of the commission of that in a disciplinary proceeding instituted against the guide under this section based on that conviction.

(h) Within 30 days after a hearing under this section, the board shall notify the complainant of the results of the hearing, including written reasons justifying a decision not to take disciplinary action. If the board decides not to hold a discretionary hearing, the board shall give the complainant written notice of its reasons within 30 days after making the decision.

(i) In this section "two violations of a state statute or regulations" means two violations of a single statute or a single regulation, or violations of two statutes or two regulations, or one violation of a statute and one violation of a regulation. (§ 1 ch 17 SLA 1973; am § 2 ch 43 SLA 1975; am § 5 ch 106 SLA 1976; am § 47 ch 218 SLA 1976; am §§ 15—19 ch 71 SLA 1986)

Sec. 08.54.210. Unlawful acts. (a) It is unlawful for

(1) a master guide, registered guide, special guide, class-A assistant guide, or assistant guide to fail to timely report to the Department of Public Safety, division of fish and wildlife protection, and in no event later than 30 days, a violation of a state fish, game, or guiding statute or regulation that the guide reasonably believes was committed by a client or an employee of the guide;

(2) a guide, to commit or aid the commission of a violation of this chapter or of a state game or guiding statute or regulation or to permit the commission of a violation that the guide knows or reasonably believes is being or will be committed without attempting to prevent it, short of using force, and without reporting it;

(3) a person to guide without having a current valid guide license and resident * hunting license in actual possession;

(4) a person to advertise as or represent to be a guide, without holding a current valid guide license;

(5) a guide to intentionally obstruct or hinder or attempt to obstruct or hinder lawful hunting engaged in by a person who is not a client of the guide;

* The Department of Law has determined the "resident" requirement in AS 08.54.210(a)(3) and (a)(6) is unconstitutional, therefore this requirement is not enforced.

(6) a person to guide without being validly licensed as a guide under this chapter and as a resident * hunter under AS 16;

(7) an assistant guide to contract to conduct a guided hunt;

(8) an assistant guide to be in the field on a guided hunt except while employed and supervised by a registered or master guide.

(b) A person who violates (a)(1)-(5) of this section is guilty of a misdemeanor and upon conviction is punishable by a fine of not more than \$1,000 or by imprisonment for not more than one year, or by both, and the person's license may be revoked for a period up to five years. However, a person who engages in guiding activity during the period for which the person's license is suspended or revoked under this chapter, or who violates (a)(6) - (8) of this section, is guilty of a felony punishable, upon conviction, by a fine of not more than \$5,000 and by imprisonment for not less than one year nor more than three years. In addition to punishment for a felony, all guns, fishing tackle, boats, aircraft, automobiles or other vehicles, camping gear and other equipment and paraphernalia used in, or in aid of, guiding activity engaged in during the period of suspension or revocation may be seized by persons authorized to enforce this chapter and may be forfeited to the state as provided under AS 16.05.195. (§ 1 ch 17 SLA 1973; am §§ 3, 4 ch 43 SLA 1975; am § 6 ch 106 SLA 1976; am § 3 ch 133 SLA 1976; am §§ 5, 6 ch 268 SLA 1976; am §§ 20, 21 ch 71 SLA 1986)

Sec. 08.54.220. Injunction against unlawful action. When in the judgment of the board a person or corporation or other entity has engaged in an act in violation of AS 08.54.130 and AS 08.54.200-08.54.210 or the regulations promulgated under them, the board may apply to the appropriate court for an order enjoining the act. Upon a showing by the board that the person is engaging in the act, the court shall grant injunctive relief or other appropriate order without bond. (§ 1 ch 17 SLA 1973; am § 5 ch 43 SLA 1975)

ARTICLE 3 GENERAL PROVISIONS

Section

230. Records of guided hunts

240. Definitions

Sec. 08.54.230. Records of guided hunts. The Department of Commerce and Economic Development shall collect and maintain records of hunts conducted by guides. The department shall make the records available to state and federal agencies charged with the enforcement of statutes and regulations relating to guiding or game if requested for enforcement purposes. For all other purposes, the records are confidential and are not subject to inspection or copying under AS 09.25.110—09.25.121. (§ 22 ch 71 SLA 1986)

Sec. 08.54.240. DEFINITIONS. In this chapter

(1) "big game" means brown bear, grizzly bear, polar bear, caribou, moose, black bear, bison, Sitka blacktail deer, elk, mountain goat, musk-ox, wolf, wolverine, mountain or Dall sheep, and walrus;

(2) "board" means the Guide Board;

(3) "guide," or "guiding" means accompanying or directing a hunter in the field, personally or through an assistant, for compensation or with the intent or an agreement to receive compensation, while the hunter or the person accompanying or directing the hunter spots, stalks, pursues, tracks, kills, or attempts to kill big game; in this paragraph, "in the field" does not include being present in a boat with living quarters or at a lodge or base camp;

* *The Department of Law has determined the "resident" requirement in AS 08.54.210(a)(3) and (a)(6) is unconstitutional, therefore this requirement is not enforced.*

(4) "resident" has the meaning given in AS 16.05.940;

(5) "restricted guide area" is a geographical area of the state the boundaries of which are determined by the board, and in which guided hunts may be conducted only by the guides to whom the area is assigned under AS 08.54.195;

(6) "unethical activity" means

(A) deception or misrepresentation involving prospective or actual clients either before, during, or following a contract hunt, including misrepresentation through private or public advertising of the type, duration, cost or conditions of the contract hunt;

(B) making a guaranty that a species or certain number of species of game will be taken on a contract hunt;

(C) engaging in unsafe or unsportmanlike activities that are detrimental to the game resources of the state, as defined by regulations of the board, including violations of state hunting or guiding statutes or regulations; or

(D) accepting a deposit for guiding services without providing before the hunt a signed contract to provide the services. (§ 1 ch 17 SLA 1973; am §§ 7, 8 ch 106 SLA 1976; am § 2 ch 133 SLA 1976; am § 19 ch 67 SLA 1983; am § 23 ch 71 SLA 1986)

OCCUPATIONAL LICENSING REGULATIONS
12 AAC 02

Title 12. PROFESSIONAL AND VOCATIONAL REGULATIONS

Part 1. Boards and Commissions Subject to Centralized Licensing (12 AAC 04—12 AAC 72)

Part 1 Boards and Commissions Subject to Centralized Licensing

Chapter

- 02. Department of Commerce and Economic Development, Division of Occupational Licensing (12 AAC 02.010—12 AAC 02.900)
04. Board of Public Accountancy (12 AAC 04.005—12 AAC 04.430)
06. Athletic Commission (12 AAC 06.010—12 AAC 06.990)
08. (Repealed)
09. Board of Barbers and Hairdressers (12 AAC 09.005—12 AAC 09.915)
16. Board of Chiropractic Examiners (12 AAC 16.010—12 AAC 16.910)
20. Collection Agency Board (No regulations filed)
21. Construction Contractors (12 AAC 21.010—12 AAC 21.300)
24. (Repealed)
28. Board of Dental Examiners (12 AAC 28.010—12 AAC 28.990)
30. Board of Dispensing Opticians (12 AAC 30.010—12 AAC 30.050)
32. Board of Electrical Examiners (12 AAC 32.010—12 AAC 32.990)
36. State Board of Registration for Architects, Engineers and Land Surveyors (12 AAC 36.010—12 AAC 36.250)
38. Guide Licensing (12 AAC 38.010—12 AAC 38.190)
40. State Medical Board (12 AAC 40.010—12 AAC 40.990)
44. Board of Nursing (12 AAC 44.010—12 AAC 44.940)
46. Board of Nursing Home Administrators (12 AAC 46.010—12 AAC 46.900)
48. Board of Examiners in Optometry (12 AAC 48.010—12 AAC 48.080)
52. Board of Pharmacy (12 AAC 52.010—12 AAC 52.900)
54. State Physical Therapy Board (12 AAC 54.010—12 AAC 54.940)

- 56. Board of Marine Pilots (12 AAC 56.010—12 AAC 56.990)
60. Board of Psychologist and Psychological Associate Examiners (12 AAC 60.010—12 AAC 60.900)
64. Real Estate Commission (12 AAC 64.010—12 AAC 64.950)
68. Board of Veterinary Examiners (12 AAC 68.010—12 AAC 68.900)
72. (Deleted)

CHAPTER 2 DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT DIVISION OF OCCUPATIONAL LICENSING

Article

- 1. Collection of Fees (12 AAC 02.010—12 AAC 02.030)
2. Occupational Licensing Fees (12 AAC 02.100—12 AAC 02.270)
3. General Provisions (12 AAC 02.900)

ARTICLE 1 COLLECTION OF FEES

Section

- 10. Licensing and renewal fees
20. Prorating renewal fees
30. Prorating initial renewal fees

12 AAC 02.010. LICENSING AND RENEWAL FEES. (a) The department will collect fees and issue receipts for licensing and for license renewal for the boards listed in AS 08.01.010.

(b) The department will not issue a license or renew a license unless the applicable fees established in AS 08 dealing with one of the boards listed in AS 08.01.010 have been collected and a receipt has been prepared.

(c) Except as otherwise provided in 12 AAC, applications for initial licensure or renewal of license will be considered filed as of the date stamped on the document, when it is received in the division office.

(d) Except as otherwise provided in 12 AAC, an incomplete application, and supporting documentation for initial licensure, or renewal of a license, will be considered abandoned after one year from the date of the last correspondence in the file.

Ref

(e) An application fee is not refundable. (Eff. 10/2/81, Reg. 80; am 12/5/84, Reg. 92)

Authority: AS 08.01.050
AS 08.01.060
AS 08.01.080
AS 08.01.100

shall pay the entire license fee, and shall , half of the prescribed renewal fee at the ti. renewal;

(3) more than 24 months before the date date by which the license must be renewed, the applicant shall pay the entire prescribed renewal fee at the time of renewal.

12 AAC 02.020. PRORATING RENEWAL FEES.

The department will prorate the first license renewal fees following initial licensure, in accordance with 12 AAC 02.030. All renewal fees, including penalty and delinquent fees must be paid by the licensee applying for renewal of a license, except as provided for in 12 AAC 02.030 (a)(1) and (b)(1). (Eff. 10/2/81, Reg. 80; am 12/5/84, Reg. 92)

Authority: AS 08.01.050
AS 08.01.080
AS 08.01.100

(c) The department will not prorate renewal fees if the initial licensing fee is \$100.00 or less.

(d) The department will not prorate fees for applications, examinations, reexaminations, credential review or investigations, temporary or emergency permits, locum tenens permits, certificates or other such fees prescribed by statute, or by regulation, of one of the boards listed in AS 08.01.010. (Eff. 10/2/81, Reg. 80; am 3/28/82, Reg. 81; am 12/5/84, Reg. 92)

Authority: AS 08.01.080
AS 08.01.100

12 AAC 02.030. PRORATING INITIAL RENEWAL FEES. (a) When the department issues an initial biennial license

(1) within the 30 days before the date by which it must be renewed, the applicant shall pay the entire license fee but is not required to pay the prescribed renewal fee until the second renewal date;

(2) within the 12 months before the date by which the license must be renewed, the applicant shall pay the entire license fee, and shall pay one-half of the prescribed renewal fee at the time of renewal or

(3) more than 12 months before the date by which the license must be renewed, the applicant shall pay the entire license fee, and shall pay the entire prescribed renewal fee at the time of renewal.

(b) When the department issues a quadrennial initial license

(1) within the 60 days before the date by which the license must be renewed, the applicant shall pay the entire license fee but is not required to pay the prescribed renewal fee until the second renewal date;

(2) within 24 months before the date by which the license must be renewed, the applicant

**ARTICLE 2
OCCUPATIONAL LICENSING FEES**

Section

- 100. Fees established by department
- 105. Administrative fees
- 230. Guide board

12 AAC 02.100. FEES ESTABLISHED BY DEPARTMENT. The fees established in this chapter have been adopted by the department with the concurrence of the applicable board or commission listed in AS 08.01.010. (Eff. 3/6/86, Reg. 97)

Authority: AS 08.01.065

12 AAC 02.105. ADMINISTRATIVE FEES. Except as otherwise provided in this chapter for a particular board or occupation, the following fees apply to all boards and professions listed in AS 08.01.010.

- (1) duplicate license fee, \$5;
- (2) fee for verification or certification to another state of Alaska license or registration, \$5;
- (3) name change, except for construction contractors, \$5;
- (4) photocopy fee, \$.25 per page;
- (5) returned check fee, \$20;
- (6) penalty for reinstatement of a registration, license, permit or certificate which remains lapsed for more than 60 days, \$20;
- (7) exam postponement fee, \$20; and
- (8) duplicate wall certificate fee, \$20. (Eff. 9/27/86, Reg. 99; am 11/20/86, Reg. 100)

Authority: AS 08.01.065
AS 08.01.100

12 AAC 02.230. GUIDE BOARD. The following fees are established

- (1) application fee, \$30;
- (2) guide examination fee, \$25;
- (3) master guide license fee, for all or part of a biennial license period, \$240;

(4) registered guide license, for all or part of a biennial license period, \$240;

(5) class-A assistant guide license, for all or part of a biennial license period, \$50;

(6) assistant guide license, for all or part of a biennial license period, \$50; and

(7) transporter license, for all or part of a biennial license period, \$50. (Eff. 3/6/86, Reg. 97)

Authority: AS 08.01.010(14)
AS 08.01.065
AS 08.54.170
AS 08.54.180

**ARTICLE 3
GENERAL PROVISIONS**

Section

900. Definitions

12 AAC 02.900. DEFINITIONS. As used in this chapter .

(1) "department" means the Department of Commerce and Economic Development;

(2) "division" means the division of occupational licensing, Department of Commerce and Economic Development;

(3) "license" means a license, certificate, permit, registration or similar evidence of authority issued by the division or by one of the boards listed in AS 08.01.010;

(4) "licensee" means person who holds a license issued by the division or by one of the boards listed in AS 08.01.010. (Eff. 12/5/84, Reg. 92)

Authority: AS 08.01.050
AS 08.01.080
AS 08.01.100

GUIDE BOARD REGULATIONS, 12 AAC 38

INTRODUCTION TO
TABLES OF COMPARATIVE SECTIONS

On December 1, 1986 the Department of Commerce and Economic Development recodified Title 12, Chapter 38, of the Alaska Administrative Code (AAC) relating to the Guide Board in an effort to make the chapter easier to use by both the Guide Board and the general public and to allow for the future adoption of new sections. The standard codifying procedure used in the AAC has been retained. History notes under the sections in their new location carry forward the history in their former location.

For the convenience of the reader, two tables of comparative sections are set out below. The first table sets out the old 12 AAC 38 section numbers in the first column and the new location in the second column. The second table reverses the order.

TABLE OF COMPARATIVE SECTIONS

Previous Reference Number	New Reference Number
12 AAC 38.010	12 AAC 38.015
12 AAC 38.020	12 AAC 38.900
12 AAC 38.030	12 AAC 38.005
12 AAC 38.040	12 AAC 38.200
12 AAC 38.050	12 AAC 38.050
12 AAC 38.051	12 AAC 38.210
12 AAC 38.052	12 AAC 38.250
12 AAC 38.053	12 AAC 38.220
12 AAC 38.054	12 AAC 38.260
12 AAC 38.055	12 AAC 38.270
12 AAC 38.056	12 AAC 38.280
12 AAC 38.057	12 AAC 38.230
12 AAC 38.058	12 AAC 38.290
12 AAC 38.060	12 AAC 38.240
12 AAC 38.070	12 AAC 38.300
12 AAC 38.080	12 AAC 38.310
12 AAC 38.090	12 AAC 38.320
12 AAC 38.100	12 AAC 38.330
12 AAC 38.110	12 AAC 38.340
12 AAC 38.120	12 AAC 38.350
12 AAC 38.130	12 AAC 38.130
12 AAC 38.140	12 AAC 38.025
12 AAC 38.150	12 AAC 38.035
12 AAC 38.155	12 AAC 38.065
12 AAC 38.156	12 AAC 38.075
12 AAC 38.160	12 AAC 38.360
12 AAC 38.170	12 AAC 38.370
12 AAC 38.175	12 AAC 38.380
12 AAC 38.180	12 AAC 38.390
12 AAC 38.190	12 AAC 38.990

REVERSE TABLE OF COMPARATIVE SECTIONS

New Reference Number	Previous Reference Number
12 AAC 38.005	12 AAC 38.030
12 AAC 38.015	12 AAC 38.010
12 AAC 38.025	12 AAC 38.140
12 AAC 38.035	12 AAC 38.150
12 AAC 38.050	12 AAC 38.050
12 AAC 38.065	12 AAC 38.155
12 AAC 38.075	12 AAC 38.156
12 AAC 38.130	12 AAC 38.130
12 AAC 38.200	12 AAC 38.040
12 AAC 38.210	12 AAC 38.051
12 AAC 38.220	12 AAC 38.053
12 AAC 38.230	12 AAC 38.057
12 AAC 38.240	12 AAC 38.060
12 AAC 38.250	12 AAC 38.052
12 AAC 38.260	12 AAC 38.054
12 AAC 38.270	12 AAC 38.055
12 AAC 38.280	12 AAC 38.056
12 AAC 38.290	12 AAC 38.058
12 AAC 38.300	12 AAC 38.070
12 AAC 38.310	12 AAC 38.080
12 AAC 38.320	12 AAC 38.090
12 AAC 38.330	12 AAC 38.100
12 AAC 38.340	12 AAC 38.110
12 AAC 38.350	12 AAC 38.120
12 AAC 38.360	12 AAC 38.160
12 AAC 38.370	12 AAC 38.170
12 AAC 38.380	12 AAC 38.175
12 AAC 38.390	12 AAC 38.180
12 AAC 38.900	12 AAC 38.020
12 AAC 38.990	12 AAC 38.190

**CHAPTER 38
GUIDE LICENSING**

Article

1. License Requirements
(§§12 AAC 38.005—12 AAC 38.130)
2. Guiding Area Permits
(§§12 AAC 38.200—12 AAC 38.290)
3. Professional Conduct
(§§12 AAC 38.300—12 AAC 38.390)
4. General Provisions
(12 AAC 38.900—12 AAC 38.990)

**ARTICLE 1
LICENSE REQUIREMENTS**

Section

05. Licenses
15. Examinations
25. [Deleted]
35. Requirements for a master guide license
50. [Repealed]
65. Requirements for a marine mammal guide license
75. Requirements for assistant marine mammal guide license
130. [Repealed]

12 AAC 38.005. LICENSES. (a) A person must purchase his registered guide license within one year of passing the guiding examination or his eligibility lapses.

(b) An application for a guide license shall be made to the Division of Occupational Licensing, Department of Commerce, P.O. Box D, Juneau, Alaska 99811. (Eff. 6/28/74, Reg. 50)

Authority: AS 08.54.050

12 AAC 38.015. EXAMINATIONS. (a) The application for a guide examination must be made at least five months before the examination date on a form provided by the board. The application for examination shall include a listing of all hunters the applicant has guided or assisted in guiding during his apprenticeship and a letter of recommendation from any registered or master guide for whom he has worked.

(b) Guide examinations will be administered by the board or its authorized representatives at times and places as announced by the board.

(c) The registered guide examination will consist of a written and an oral portion. Successful completion of the written portion is a prerequisite to eligibility to take the oral portion. The registered guide examination will be designed to reveal the qualifications of the candidate to engage in guiding in the district of his choice. However, an applicant who, because of a language barrier, is unable to read and competently understand the English language may be excused from taking the written examination, and may be issued a license based on successful completion of the oral portion of the examination and demonstration of the applicant's capabilities and experience. Failure to achieve a passing score of at least 80 percent on either the written or oral portion of the examination constitutes a failure of the entire examination. A candidate receiving a failing score is eligible to be reexamined at the next available date of examination, and must retake both the written and oral portions of the examination unless excused from the written portion as provided in this subsection.

(d) A person contesting the results of any portion of the registered guide examination shall direct his appeal and the grounds for it in writing to the Chairman, Guide Licensing and Control Board, Department of Commerce and Economic Development, Division of Occupational Licensing, P.O. Box D, Juneau, Alaska 99811, within 30 days after written notice was personally served or mailed to the applicant. (Eff. 6/26/74, Reg. 50; am 6/15/80, Reg. 74; am 3/28/82, Reg. 81; am 11/21/84, Reg. 92)

Authority: AS 08.54.040(a)(1) & (2)
AS 08.54.050

12 AAC 38.025. REQUIREMENT FOR A REGISTERED GUIDE LICENSE. Deleted 8/20/87.

Editor's Note: This section, formerly designated 12 AAC 38.140, was deleted from Reg. 103 on 8/20/87 by the Department of Law under AS 44.62.125(b)(6) and AS 01.05.031(b)(11) because in §8 ch 71 SLA 1986, the Legislature repealed the board's previous authority under former AS 08.54.110(12) to require additional qualification of applicants for registered guide licenses.

12 AAC 38.035. REQUIREMENTS FOR A MASTER GUIDE LICENSE. In addition to the requirements of AS 08.54.100, to be qualified for a master guide license a person must have acted as a registered guide for 12 consecutive years. (Eff. 6/18/74, Reg. 50)

Authority: AS 08.54.050
AS 08.54.100(5)

12 AAC 38.050. REGISTRATION OF MAIN CAMP.
Repealed 5/12/78.

12 AAC 38.065. REQUIREMENTS FOR A MARINE MAMMAL GUIDE LICENSE. (a) To help provide economic opportunity for residents of rural coastal Alaska who engage in subsistence uses of marine mammals, the board will, in its discretion, issue a marine mammal guide license to an applicant who meets the following criteria:

- (1) is at least 21 years old;
- (2) has legally hunted marine mammals during each of at least ten years, in a manner directly contributing to his experience and competency as a marine mammal guide;
- (3) is physically able to perform the services of a marine mammal guide;
- (4) demonstrates to the board sufficient standards of competence and ethical conduct and has not been convicted of a crime of moral turpitude;
- (5) passes a qualification examination approved by the board and administered by the board or its agent, which covers the following areas:
 - (A) fishing, hunting, and guiding regulations;
 - (B) relevant characteristics of marine mammals;
 - (C) relevant characteristics of the ice, ocean, currents, and weather;
 - (D) field preparation of trophies;
 - (E) care of meat;
 - (F) firearms safety;
 - (G) practical first aid;

(H) photography; and

(I) booking and contracting guided hunts.

(b) A marine mammal guide will be authorized only to contract for and conduct guided hunts for species of marine mammals and in geographic areas of the state designated by the board.

(c) No marine mammal guide may contract for, or guide, more than two hunters in the field on any one hunt.

(d) A marine mammal guide must comply with AS 08.54 and 12 AAC 38. (Eff. 10/15/82, Reg. 84)

Authority: AS 08.54.040(a) and (b)
AS 08.54.050

12 AAC 38.075. REQUIREMENTS FOR ASSISTANT MARINE MAMMAL GUIDE LICENSE. (a) To help provide economic opportunity for residents of rural coastal Alaska who engage in subsistence uses of marine mammals, the board will, in its discretion, issue an assistant marine mammal guide license to an applicant who meets the following criteria:

- (1) is at least 19 years old;
- (2) has legally hunted marine mammals during each of at least seven years, in a manner directly contributing to his experience and competency as an assistant marine mammal guide;
- (3) is physically able to perform the duties of an assistant marine mammal guide; and
- (4) demonstrates to the board sufficient standards of competence and ethical conduct and has not been convicted of a crime of moral turpitude.
 - (b) No assistant marine mammal guide may
 - (1) book or contract for a guided marine mammal hunt;
 - (2) conduct a guided hunt for marine mammals; or
 - (3) guide for a marine mammal, unless under the immediate supervision of a licensed marine mammal guide. (Eff. 10/15/82, Reg. 84)

Authority: AS 08.54.040(a) and (b)
AS 08.54.050

12 AAC 38.130. REQUIREMENTS FOR AN ASSISTANT GUIDE LICENSE. Repealed 5/12/79.**ARTICLE 2
GUIDING AREA PERMITS****Section.**

- 200. Restrictions to districts
- 210. Guiding area permits
- 220. Application and qualification for guiding area permit
- 230. Minimum use of guiding area permit
- 240. Statement of financial remuneration
- 250. Use of a guiding area assigned to another guide
- 260. Reassignment of guiding area permit
- 270. Death or mental incapacity of guiding area permit holder
- 280. Changes to guiding area permits
- 290. Ground for revocation or suspension of a guiding area permit

12 AAC 38.200. RESTRICTION TO DISTRICTS. (a) A guide may conduct guiding activities only in districts for which he is certified.

(b) Twenty-six guide districts are established and defined as being identical to those areas described as game management units by the Board of Fish and Game in 5 AAC 90.010, as of January 1, 1974, with the addition of the following subdistrict:

(1) repealed 6/15/80;

(2) repealed 6/6/79;

(3) 27—Arctic Coastal, consisting of all land, including islands, and waters within the jurisdiction of the State of Alaska extending seaward from a point one mile inland from the mean high tide line north of 58 North latitude, beginning at the mouth of the King Salmon River near Egegik and extending northward around the western and northern Alaska coastline to the eastern boundary of District 26. This district is designated for the hunting of marine mammals exclusively. "Marine mammals" means those mammals identified by the Alaska Board of Game as marine mammals.

(c) A guide licensed under AS 08.54 as of June 28, 1974 is restricted to certification to guide in those districts for which he was certified on that date. A guide licensed or entitled to renewal under AS 08.54 as of April 11, 1980 and certified in Districts 18, 18A, 22, 23, or 26 is hereby certified for Unit 27.

(d) Except as provided in (c) above, no guide may be certified for more than three districts, in addition to District 27.

(e) A master guide or registered guide may serve as a class-A assistant guide in districts for which he is not certified.

(f) Notwithstanding any provision of this section, a guide may petition the board for a transfer of certification to another district if he demonstrates to the satisfaction of the board

(1) that he will incur substantial hardship if a transfer is not permitted as evidenced by

(A) substantial land withdrawals from hunting within his district;

(B) significant reclassifications of land within his district;

(C) depletion of game as evidenced by actions of the Department of Fish and Game; or

(D) other demonstrations of hardship; and

(2) that he is qualified to guide in the district to which he wishes to be transferred. (Eff. 6/28/74, Reg. 50; am 2/25/77, Reg. 61; am 6/6/79, Reg. 70; am 6/15/80, Reg. 74; am 3/28/82, Reg. 81)

Authority: AS 08.54.040(3) and (6)
AS 08.54.050

12 AAC 38.210. GUIDING AREA PERMITS. (a) Guiding area permits will be issued by the board to guides qualifying under 12 AAC 38.220 and 12 AAC 38.260 for exclusive or joint use of a specified area in order to limit the number of guides allowed to guide for big game animals in that area.

(b) The board will determine the size, boundaries and number of guiding areas assigned to a master or registered guide and is not limited by number or boundaries of guide districts that may be included. In determining the size and boundaries of a guiding area, the board will consider, but is not limited to, the following criteria:

(1) size and boundaries applied for by the guide applicant;

(2) abundance and distribution of game populations in the area and adjacent areas that may be affected, and the ability of these populations to sustain hunting pressures;

Regi

(3) Repealed.

(4) value and location of applicant's investments in the area;

(5) likely impact of the applicant's guiding business on other guides in joint use or in adjacent areas;

(6) applicant's past use of and experience in the area;

(7) applicant's local residency;

(8) availability of alternative areas and applicant's dependence on guiding in the requested area;

(9) effect of hunting and land use regulations in that area.

(c) Each guiding area will be assigned a unique identification code.

(d) Notwithstanding any other provisions of this section, no new exclusive guiding area permits will be issued for District 27, as defined in 12 AAC 38.200(a)(3); however, this subsection does not affect valid existing guiding area permits issued for Nunivak Island before March 1, 1981.

(e) An applicant who is aggrieved by a board decision regarding the size or boundaries of a guiding area is entitled to a hearing under AS 44.62.370 to review the board's action; a hearing must be requested within 15 days after the guide receives written notice of the board's action. (Ef. 5/12/78, Reg. 66; am 6/27/81, Reg. 78; am 11/21/84, Reg. 92)

Authority: AS 08.54.040(a)(3), (6) & (8)
AS 08.54.050

12 AAC 38.220. APPLICATION AND QUALIFICATION FOR GUIDING AREA PERMIT. (a) An applicant for initial issuance of a guiding area permit must, at the time of application and at the time the application is reviewed by the board, be a registered or master guide in good standing and must be certified in the district or districts in which the applied for guiding area is located. If civil or criminal charges for violation of a state or federal sport fish, game, or guiding law or regulation are pending against a guide at the time

the board is to review the application, the board may defer action on the application until conclusion of the civil or criminal action.

(b) In order to be considered, an applicant must submit to the board, on or before the published deadline, an application which describes the proposed geographic boundaries of the guiding area being applied for and a 1:250,000 scale map showing the proposed boundaries.

(c) Each application must include satisfactory documentation of the applicant's past use, occupancy, or financial investment in the guiding area applied for. The application may include other relevant information if it is substantiated by satisfactory documentation.

(d) The board will, in its discretion, issue a permanent guiding area permit to a qualified applicant who can substantiate his use, occupancy, or financial investment in the guiding area for at least three of the five years immediately preceding the published deadline for filing the application for that particular unit. The board will, in its discretion, issue a temporary guiding area permit to a qualified applicant who can substantiate his use, occupancy or financial investment in the guiding area for at least two of the five years immediately preceding the published deadline for filing the application for that particular unit. In determining whether to issue a guiding area permit, the board will give preference to qualifying guides whose permanent residence is within the district in which the area is located and will consider criteria including the following:

(1) ability of the area to sustain an additional guided hunting operation, in terms of game populations, terrain, methods of hunting, and use by other guides or hunters; and

(2) amount of investments in the applied for area, and length of use in the district.

(e) The holder of a temporary guiding area permit may apply for a permanent permit after one additional year of use, in the temporary guiding area.

(f) The board will not issue to a master or registered guide more than three exclusive or joint use guide area permits, either on a temporary or permanent basis.

(g) In this section "use" means conducting guided hunts as a registered or master guide in the district in which the applied for area is located, as evidenced by statements of financial remuneration submitted under 12 AAC 38.240(b). (Eff. 5/12/78, Reg. 66; am 10/15/82, Reg. 84)

Authority: AS 08.54.040(a)
AS 08.54.050

12 AAC 38.230. MINIMUM USE OF GUIDING AREA. Each holder of a guiding area permit must be a currently licensed guide and must conduct at least two contracted big game hunts during each calendar year within each guiding area, as evidenced by statements of financial remuneration filed in accordance with 12 AAC 38.240. The board will, in its discretion, require any other documentation to demonstrate that the contracts were fulfilled. If, in any calendar year, the holder of a guiding area permit fails to conduct two guided big game hunts in that guiding area, the permit holder must submit to the department by January 31 of the following calendar year, a written statement explaining the failure to use the area. Failure to conduct at least two guided big game hunts each calendar year in the guiding area as required by this section constitutes grounds for revocation of the guiding area permit, unless the permit holder can demonstrate to the satisfaction of the board that circumstances beyond the permit holder's control precluded conducting the required hunts. (Eff. 5/12/78, Reg. 66; am 6/27/81, Reg. 78; am 11/21/84, Reg. 92)

Authority: AS 08.54.040(a)(3), (6) & (8)
AS 08.54.050

12 AAC 38.240. STATEMENT OF FINANCIAL REMUNERATION. (a) Before hunting with a client, a guide shall complete or have completed a statement of financial remuneration or "SFR" in triplicate on a form provided by the board for this purpose, and shall state

- (1) that financial or material remuneration for services was received;
- (2) the dates of the contract hunt;
- (3) the species to be hunted for and
 - (A) the client's hunting license number;
 - (B) the big game tag numbers, by species;

(C) the harvest ticket numbers, by species;

(4) the signature of the guide area permit holder, if applicable;

(5) the legal signatures of the guide contracting the hunt and of the client.

(6) the typed or printed names and addresses of the guide and the client;

(7) the guiding area permit unique identifying code assigned under 12 AAC 38.210, or if an open area, the Game Management Unit number.

(b) The original of the statement required in (a) of this section must be sent to the department within 21 days after completion of the hunt.

(c) The guide is responsible for furnishing one copy of the statement to the client.

(d) One copy of the statement must be filed in camp for the duration of the hunt, and after that, at the guide's regular place of business for four years, and must be produced for inspection upon request by an agent of the department or anyone authorized under AS 16 to enforce game regulations.

(e) Statements of financial remuneration as well as other supporting documentation regarding guide/client contractual agreements which are maintained on file by the department will be considered confidential information requiring a court order for production to a person or an agency other than the Guide Board.

(f) Statements of financial remuneration cancelled before a hunt must be reported to the department within 21 days after the date of cancellation. (Eff. 6/28/74, Reg. 50; am 5/12/78, Reg. 66, am 11/21/84, Reg.92)

Authority: AS 08.54.050

12 AAC 38.250. USE OF GUIDING AREA ASSIGNED TO ANOTHER GUIDE. (a) No guide may contract for or conduct a guided big game hunt in an exclusive guiding area not assigned to him by the board without first obtaining written permission from the guide to whom the guiding area is assigned.

(b) No guide may conduct a guided big game

hunt in a joint use guiding area not assigned to him by the board without first obtaining written permission from each joint use permit holder.

(c) As used in this section, the "written permission" must include the following information:

- (1) dates for which the permission is valid;
- (2) species and number of big game animals to be hunted;
- (3) date permission is signed and signature of each person holding a permit for the area.

(d) A copy of the written permission required in (a) and (b) of this section must, at all times during the hunt, be carried on the person of the guide conducting the hunt or in the base camp from which the hunt is conducted, and a copy must also be carried on the person of each employee of the master or registered guide to whom the permission was given. The permission must be written on the statement of financial remuneration required by 12 AAC 38 to be filed for that hunt.

(e) No guide may lease or rent a guide area to another guide for monetary or material gain. The only lawful reasons for allowing use of another's area are the following:

(1) the guide seeking to grant permission to another is unable to conduct a contracted hunt due to physical or mental incapacity;

(2) a state or federal law or regulation adopted not more than nine months before the date of proposed use has closed or otherwise restricted hunting in the guiding area of the guide seeking use of another's area, making guiding in his own area infeasible; or

(3) migration or movement of caribou out of a guide's own area necessitates guiding in another's area.

(f) Each guide who gives written permission to another to use his exclusive or joint use guiding area, may be held equally responsible with the guide receiving the permission, in a hearing before the board for revocation of the permit, for any violations in or misuse of the guiding area committed during the time authorized in the written permission. (Eff. 5/12/78, Reg. 66; am 10/11/81, Reg. 80; am 10/15/82, Reg. 84; am 6/16/85, Reg. 94; am 8/20/87, Reg. 103)

Authority: AS 08.54.040(a)
AS 08.54.050

12 AAC 38.260. REASSIGNMENT OF GUIDING AREA PERMIT. (a) Guiding area permits are not transferable by the permit holder. The board will, in its discretion, reassign a guiding area permit

(1) upon the death of the permit holder or on a judicial determination that the permit holder is mentally incompetent;

(2) upon revocation or suspension of a guiding area permit;

(3) if the permit holder voluntarily relinquishes the guiding area permit; and

(4) upon application for reassignment.

(b) Under (a)(4) of this section, a permit holder may apply to the board for reassignment of his or her guiding area permit to a designated master or registered guide; the application must be made jointly by the permit holder and the designated master or registered guide. Approval of the reassignment will be given only upon a finding by the board, after notice and opportunity for a hearing, that the designated registered or master guide is qualified to guide in the area, is certified in the district or districts in which the applied for guiding area is located, and that the reassignment is consistent with the public interest. The board will consider the designated master or registered guide's past use, occupancy, or financial investment in the guiding area and other relevant and reliable information in determining whether the designated master or registered guide is qualified.

(c) Except as otherwise provided in this chapter, an applicant for a guiding area permit which is to be reassigned must meet the requirements of 12 AAC 38.220(a) and make application in the manner prescribed for initial issuance of a guiding area permit.

(d) If an applicant cannot establish past use of the guiding area to be transferred or is not certified in the district or districts in which the guiding area is located, the board will consider experience and current use in another area of similar terrain if the applicant can establish to the satisfaction of the board that he or she is competent because of other relevant factors to conduct guiding activities in the guiding area.

(e) The board will consider the recommendations of the prior holder of the guiding area permit to be reassigned and will, in areas of joint use, consider the recommendations of the other holders of permits for the guiding area.

(f) When an area has been revoked or suspended under (a)(2) of this section, the area is closed to all guided hunting until it is reassigned.

(g) The board will, in its discretion and consistent with AS 08.54.040 and 12 AAC 38.210, adjust a guiding area permit when reassigning that permit. (Eff. 5/12/78, Reg. 66; am 10/15/82, Reg. 84; am 8/20/87, Reg. 103)

Authority: AS 08.54.040(a)
AS 08.54.050

12 AAC 38.270. DEATH OR MENTAL INCAPACITY OF GUIDING AREA PERMIT HOLDER. (a) Upon the death of a holder of a guiding area permit, the board will, in its discretion, grant a waiver, for a time specified by the board, of the requirements of 12 AAC 38.230 if application is made by the estate within 90 days after death. Failure to make application within 90 days is considered a voluntary relinquishment of the permit. At any time during the period of the waiver, an heir may apply to the board for a reassignment of the permit to a person designated by the heir.

(b) Upon a judicial determination that a guiding area permit holder is mentally incompetent, the board will, in its discretion, grant a waiver, for a time specified by the board, of the requirements of 12 AAC 38.230 if application is made by the permit holder's guardian within 90 days after a judicial determination of the permit holder's mental incompetency. Failure to make application within 90 days is considered a voluntary relinquishment of the permit. At any time during the period of the waiver the guardian may apply to the board for a reassignment of the permit to a person designated by the guardian. (Eff. 5/12/78, Reg. 66)

Authority: AS 08.54.040(a)(3), (6) & (8)
AS 08.54.050

12 AAC 38.280. CHANGES TO GUIDING AREA PERMITS. (a) Petitions for amendments to guide area permits will be accepted for all guide districts and will be reviewed at a regularly scheduled meeting of the board. Petitions are limited to the following amendments:

(1) reassignment of a guiding area permit;

(2) changes within the boundaries of a guide area assigned to the petitioner including reducing permit area size, clarifying boundaries, and creating exclusive guiding areas in areas already assigned in joint use, as provided in (d) of this section; however, no petition will be accepted seeking expansion of guiding permit area size.

(b) The board will give each petitioner reasonable notice of the date and place of the meeting during which his petition is scheduled for review. No petition will be heard by the board unless the petitioner, or a person authorized by him in writing to appear in his behalf, personally appears at the scheduled time.

(c) When a petition concerns a joint use guiding area permit, the board will send each joint use permit holder a copy of the petition and reasonable notice of the date and place of the meeting at which the petition is scheduled to be heard; each joint use permit holder may appear before the board and present testimony relevant to the petition.

(d) the board will, in its discretion, issue an exclusive guiding area permit for an area or portion of an area already granted in joint use only upon finding that

(1) all other affected guides in joint use agree to the change; or

(2) creation of an exclusive guiding area is required by changes in game populations, hunting regulations, weather patterns, or land use laws or regulations, and other guides in joint use of the area will not be detrimentally affected by the change; in determining whether other guides may be detrimentally affected, the board will consider projected loss of hunting clients, revenue, investments, access and other similar concerns.

(e) A guide aggrieved by a board decision under this section is entitled to an administrative hearing to review the decision in accordance with AS 44.52.370. The guide must request such a hearing within 15 days after receipt of a notice from the board of the board's action.

(f) Before a matter covered by this section will be heard by the board at a meeting, the petitioner must contact all area permit holders affected by certified mail - return receipt requested and the

petitioner must submit the return receipts along with any replies received to the board. (Eff. 5/12/78, Reg. 66; am 6/16/80, Reg. 74; am 6/27/81, Reg. 78; am 8/20/87, Reg. 103)

Authority: AS 08.54.040
AS 08.54.050

12 AAC 38.290. GROUNDS FOR REVOCATION OR SUSPENSION OF A GUIDING AREA PERMIT. The board will, in its discretion, revoke or suspend a guiding area permit or permits if the permit holder

(1) violates a federal or state sport fish, game or guiding statute or regulation while guiding;

(2) has a guide license revoked or suspended, or is denied renewal of a license, for violation of a federal or state sport fish, game or guiding statute or regulation, other than for nonpayment of current license fees; or

(3) is found by the board to have misused a guiding area.

(b) The board will, in its discretion, revoke or suspend a guiding area permit if it finds that the application for the guiding area permit or reassignment of the guiding area contained false or misleading information. (Eff. 5/12/78, Reg. 66, am 11/21/84, Reg. 92)

Authority: AS 08.54.040(a)(3), (6) & (8)
AS 08.54.050

**ARTICLE 3.
PROFESSIONAL CONDUCT**

Section

- 300. Responsibility of guide to his client
- 310. Survival gear
- 315. Bases of operation in southeast Alaska
- 320. Presence of guide required
- 330. Taking of game by guides
- 340. Transporting meat
- 350. Cooperation with officials
- 360. Improper certification
- 370. Improper reporting
- 380. Employment and supervision of assistants
- 390. Guiding ethics

12 AAC 38.300. RESPONSIBILITY OF GUIDE TO HIS CLIENT. (a) It is the responsibility of a guide to ascertain that a client has a proper license and

appropriate tags and harvest reports, in his possession, for the big game species being hunted before hunting. The guide is responsible for attaching appropriate tags to any game taken by his client and is responsible for having all game sealed or marked as required by Alaska Department of Fish and Game regulations.

(b) A guide shall take every reasonable measure to assure the safety and comfort of his clients. He is responsible for having available the following:

(1) adequate first aid supplies;

(2) sufficient food to provide for emergencies that might render the party immobile;

(3) shelter which is normally considered satisfactory and comfortable under field conditions;

(4) transportation or communications or arrangements to obtain them without hardship or unreasonable delay. (Eff. 6/28/74, Reg. 50)

Authority: AS 08.54.050

12 AAC 38.310. SURVIVAL GEAR. A guide is responsible for assuring that each aircraft operated by him and used in any phase of a hunt conducted by him, carries survival gear as required by AS 02.35.110. (Eff. 6/28/74, Reg. 50)

Authority: AS 08.54.050

12 AAC 38.315. BASES OF OPERATION IN SOUTHEAST ALASKA. A guiding area permit holder in game management units one through four may not conduct or supervise guided hunts from more than one vessel over 18 feet or from no more than one land camp. (Eff. 8/20/87, Reg. 103)

Authority: AS 08.54.040(a)
AS 08.54.050

12 AAC 38.320. PRESENCE OF GUIDE REQUIRED. A master, registered or class A assistant guide must be in the field and participating in the conduct of the guided hunt whenever assistant guides are guiding. (Eff. 6/28/74, Reg. 50; am 11/2/75, Reg. 56)

Authority: AS 08.54.050

12 AAC 38.330. TAKING OF GAME BY GUIDES.

(a) No guide may take big game animals or marine mammals while acting as a guide, except in cases of actual emergency when a bear or other animal is attacking or when a bear or other animal is about to escape after being wounded. It is then the duty of the guide to take such actions as he considers necessary.

(b) It is unlawful for a master guide, registered guide, class-A assistant guide or assistant guide guiding a hunter for walrus to take or assist in taking any walrus other than the animal taken by the client he is guiding; however, one crewman other than the guide may take one single cow walrus and its calf if this taking does not exceed the bag limit as prescribed by regulations of the board of Game. (Eff. 6/28/74, Reg. 50; am 6/12/77, Reg. 62)

Authority: AS 08.54.050

12 AAC 38.340. TRANSPORTING MEAT. A guide is responsible for transporting the meat of big game animals, except bear, wolves, and wolverine, taken by his client from the site of the kill to its destination or to a common carrier for shipping to its destination for the purpose of human consumption. If the meat is delivered to a person other than the person who took the animal, a signed and dated statement or receipt stating the kind and quantity of meat received in approximate pounds or named portions of the carcass must be obtained from the recipient and presented upon request to any officer authorized to enforce this chapter. (Eff. 6/28/74, Reg. 50)

Authority: AS 08.54.050

12 AAC 38.350. COOPERATION WITH OFFICIALS. Failure on the part of a guide to assist the Departments of Fish and Game, Public Safety and Commerce and Economic Development in determining the truth of any statements reported in accordance with 12 AAC 38 is considered a violation of ethical conduct. (Eff. 6/28/74, Reg. 50; am 6/12/77, Reg. 62; am 11/21/84, Reg. 92)

Authority: AS 08.54.050

12 AAC 38.360. IMPROPER CERTIFICATION. No master or registered guide may improperly certify that a person has met the qualifications for a guide license. (Eff. 6/28/74, Reg. 50)

Authority: AS 08.54.050

12 AAC 38.370. IMPROPER REPORTING. No guide may knowingly falsify any information required to be set out on any form required by the Alaska Department of Fish and Game or the Guide Board. (Eff. 6/28/74, Reg. 50)

Authority: AS 08.54.050

12 AAC 38.380. EMPLOYMENT AND SUPERVISION OF ASSISTANTS. A registered or master guide may employ an unlimited number of registered, master, or class A guides to assist in his guiding operation; a registered or master guide may employ or have under his supervision an unlimited number of employees and helpers who hold assistant guide licenses, but not more than three employees may act in the capacity of, or be employed as, assistant guides at the same time by the same registered or master guide. No assistant guide employed or acting in a capacity other than as assistant guide may count any period of such other employment toward qualification for a registered, master or class A guide license. (Eff. 6/15/80, Reg. 74)

Authority: AS 08.54.210(a)(6)
AS 08.54.050
AS 08.54.040(a)(2)

12 AAC 38.390. GUIDING ETHICS. Unethical activity includes, but is not limited to

(1) not fully cooperating with state and federal wildlife officials or not abiding by and advising clients and personnel of all applicable conservation and game laws and regulations or condoning their violation;

(2) misrepresenting or not clearly defining rates, accommodations and services to prospective clients prior to booking and acceptance of deposit, or otherwise misleading prospective clients through false or fictitious advertising;

(3) being unwilling or incapable of making financial restitution to a client for any breach of contract by the guide or his employees, owing to no fault of the client;

(4) not advising clients of game population to the best of the guide's ability based on past performances in hunting areas and advising him of his chances of encountering the species he desire in the time allotted;

(5) making "guarantees" as to the success of a hunt or the number of pieces of game to be collected;

(6) not maintaining and providing stock, mechanical equipment, gear, food supplies and facilities to a quality and condition to provide services equal to or better than described in the guide's advertising, correspondence, verbal declaration or contractual agreements;

(7) not maintaining a neat, orderly and sanitary camp at all times, or not providing reasonably well-prepared, palatable and balanced camp meals for clients and personnel in keeping with the conditions of the hunt;

(8) contracting for more hunts or for more hunters at any one time than the guide or his employees can adequately facilitate rendering services for;

(9) hiring guides that are improperly licensed, or ill trained in the arts of woodsmanship, judging trophies, cooking, first aid, photography, firearms, trophy preparation and caring for clients;

(10) failing, while guiding a client, to take all precautions if an animal is wounded;

(11) failing to use every means at his disposal to bag any wounded animal while it is in danger of escaping, or if in a serious emergency, human life or well-being is endangered;

(12) filling a client's game tag or bag limit;

(13) failing, barring unforeseen conditions, to properly prepare, according to generally accepted procedures, all antlers, horn, hides and capes to be delivered to the taxidermist or to the client at the conclusion of a hunt in a satisfactory and unspoiled condition;

(14) failing to endeavor to salvage all meats of trophies taken by his client, in accordance with existing state law;

(15) promoting hunting or the taking of trophies by means other than fair chase: specifically, the pursuit of a trophy in an illegal or unsportsmanlike manner, by herding, driving or chasing of animals with the use of any mechanically powered equipment;

(16) failing to practice sound wildlife conservation or failing to create an awareness of conservation needs and practices during his associations with the public. (Eff. 6/28/74, Reg. 50)

Authority: AS 08.54.040(6)
AS 08.54.050

ARTICLE 4
GENERAL PROVISIONS

- Section
- 900. Guide register
- 990. Definitions

12 AAC 38.900. GUIDE REGISTER. (a) On February 15 of the register year, the names of all persons holding a master guide or registered guide license will be entered by the board and must be published for distribution to the public.

(b) All guides shall advise the board of their current address and all changes of address. (Eff. 6/28/74, Reg. 50; am 2/25/77, Reg. 61; am 11/21/84, Reg. 92)

Authority: AS 08.54.040(a)(4) & (5)
AS 08.54.050

12 AAC 38.990. DEFINITIONS. Unless otherwise indicated, in this chapter

(1) "competence" means a professional standard of conduct which satisfactorily implements, under field conditions, the knowledge and qualifications of a guide;

(2) "transport" means shipping, carrying, importing, exporting, or receiving or delivering for shipment, carriage or export.

(3) "board" means the Alaska Guide Board;

(4) "department" means the Department of Commerce and Economic Development. (Eff. 6/28/74, Reg. 50 am 11/2/84, Reg. 92)

Authority: AS 08.54.040
AS 08.54.050

STATE OF ALASKA
DEPARTMENT OF COMMERCE AND
ECONOMIC DEVELOPMENT
DIVISION OF OCCUPATIONAL LICENSING
GUIDE BOARD
P.O. BOX D-LIC
JUNEAU, ALASKA 99811-0800

BULK RATE
U.S. Postage
PAID
Juneau, AK 99811
Permit No. 63

POSTMASTER: This parcel may be opened
for postal inspection if necessary.



DRAFT 3/21/88

POST SEASON RESOURCE EVALUATION REPORT

Party Name/No. Htrs _____

Dates: From: _____ To: _____

Exact Location: _____

Total No. Spotted: _____ Kills: Detail time, size, cal/bullet

Moose Bulls	_____	_____	_____
	_____	_____	_____
	_____	_____	_____
	_____	_____	_____
Moose Cows	_____	_____	_____
Moose Calves	_____	_____	_____
Brown Bears	_____	_____	_____
Wolves	_____	_____	_____
Black Bears	_____	_____	_____
Caribou	_____	_____	_____
	_____	_____	_____
	_____	_____	_____
	_____	_____	_____

MOOSE: Was bull called _____ did he charge _____ was he spotted, in willows _____, meadows _____, slough _____, hilltop _____ or timber _____.

Number of other hunters seen: _____, game other hunters had already taken when seen _____

No., kind and size of fish caught: _____

Describe suspicions of illegal or unethical activity on reverse, identification of hunters or airplane, reported to whom and when.

Other positive or negative factors or situations noticed, note on reverse.

Quantity of meat taken home _____ lbs, donated _____ lbs

From the above information, the outfitter calculates opportunity rate, kill rate, average size, tracks no. of bulls and hunters seen by the year for a given area to note increases/decreases in game and hunters. Outfitter also notes factors that may have adversely affected hunt; examples: (7 days of solid rain, too warm, late rut, etc.)

Print Name _____ Signature _____ Date _____

RECEIVED APR - 7 1988

DAVID L. LAZER

MASTER GUIDE
AND OUTFITTER

Hunting — Fishing — Photography



LAZER'S GUIDE SERVICE

STAR ROUTE A, BOX 6877

PALMER, ALASKA 99645

907-745-4504

4-7-88

Dear Sir,

I have been actively guiding and outfitting in Alaska for 20 yrs. I am totally opposed to any new regulation that would change the present guide system to include other big game.

I do believe the non-resident outfitters should be controlled but not at the expense of resident Alaskan outfitters. I am a member of the AOA (Alaska Outfitters Association).

The exclusive use, big money guides are trying to monopolize all big game which will make Alaska strictly a rich man's hunt and will eliminate the livelihood of many long time Alaskans. Approx. half my income is from outfitted caribou and deer hunts. I cannot make a living on my sheep area alone. I average 4-5 sheep ^{hunters} per year. I also have to joint use my area with 3 other guides. They have bigger and more areas than I.

SB 191, proposed amendment page 1 #4, seeks to eliminate outfitters from taking any big game hunts. And page 2 #B (sec. AS 08.54.240(3)), is absolutely no good. "lawfully established or permanent lodge". It is not legal to build structures on Federal land. I've been using tents for base camp. I would rather it read "Base camp".

Also I am totally against HB 183, 331, 431.

Sincerely David Lazer

PROPOSED AMENDMENT TO SENATE BILL #191 (FINANCE CS)

ADD A NEW SECTION TO READ AS FOLLOWS, AND ADD A SECOND EFFECTIVE DATE FOR THIS SECTION 60 DAYS AFTER THE REST OF THE BILL:

* Sec. ____ AS 08.54.210(a) is amended to read:

Sec. 08.54.210. UNLAWFUL ACTS. (a) It is unlawful for

(1) a guide [MASTER GUIDE, REGISTERED GUIDE, SPECIAL GUIDE, CLASS A ASSISTANT GUIDE, OR ASSISTANT GUIDE] to fail to promptly [TIMELY] report to the Department of Public Safety, division of fish and wildlife protection, and in no event later than 30 days, a violation of a state fish, game, or guiding statute or regulation that the guide reasonably believes was committed by a client or an employee of the guide;

(2) a guide to commit or aid the commission of a violation of this chapter or of a state game or guiding statute or regulation or to permit the commission of a violation that the guide knows or reasonably believes is being or will be committed without attempting to prevent it, short of using force, and without reporting it;

(3) a person to guide without having a current valid guide license and resident hunting license in actual possession;

(4) a person without a current valid registered or master guide license to advertise as or represent to be

(A) a guide; or

(B) an outfitter offering "big game" hunting services

[WITHOUT HOLDING A CURRENT VALID GUIDE LICENSE];

(5) a guide to intentionally obstruct or hinder or attempt to obstruct or hinder lawful hunting engaged in by a person who is not a client of the guide;

(6) a person to guide without being validly licensed as a guide under this chapter and as a resident hunter under AS 16;

(7) an assistant guide to contract to conduct a guided hunt;

(8) an assistant guide to be in the field on a guided hunt except while employed and supervised by a registered or master guide.

(?)

(

)

PROPOSED AMENDMENT TO SENATE BILL #191 (FINANCE CS)

ADD A NEW SECTION TO READ AS FOLLOWS:

* Sec. ____ AS 08.54.240(3) is repealed and reenacted to read:

(3) "guide" or "guiding" means accompanying or being present with, or providing a camp or personal service for, a big game hunter in the field, personally or through an assistant, for compensation or with the intent or an agreement to receive compensation; "guide" or "guiding" does not include accompanying or being present with a hunter

(A) in a boat with living quarters;

(B) at a lawfully established cabin, or permanent lodge;

(C) while providing transportation to or from the field, if the persons providing transportation and the persons being transported do not stalk, pursue, track, kill, or attempt to kill big game; or

*add
base camp),
not legal to have
cabin or permanent
structure in Fed. land.*

RECEIVED MAR 29 1988

I am writing concerning a proposed new law (HB 183, HB 331, HB 451, and SB 191) concerning guides & outfitters for non-resident hunters in the great state of Alaska. Please help to not let outfitters be outlawed because there are lots of people like me that cannot afford to hire a guide. The money we contribute to the economy of Alaska would stop because we would no longer be able to hunt if we are forced to hire a guide. I love Alaska and hope to return many times so please leave us a choice between guides & outfitters. Thank you very much

Jerry W. Ditch
P.O. Box 572
Mayfield, Ky.
42066

P. O. Box 670071
Chugiak, Ak. 99567
February 22, 1988

Mr. Mike Davis
Alaska State Legislature
P.O. Box V (MS3100)
Juneau, Ak. 99811

Dear Mr. Davis,

Our precious wildlife resources are being raped by a group illegally guiding hunters who are calling themselves outfitters. In the past three to five years this activity has exploded into a major problem.

The fate of the wildlife resource in this case, rests entirely upon the laws that you pass regarding these illegal outfitters.

Persons who didn't have the ambition to become licensed guides found a loophole, and so many operations have started that they seriously threaten our valuable wildlife resources.

The illegal outfitters mode of operation is generally to wholesale Alaska resources. To make their operation pay they need to sell alot of game. One illegal outfitter on Ugashik Lake took more than 30 caribou hunters last fall.

Most of the illegal outfitters are borderline guiding to outright guiding hunters, which is a felony, but they are still operating.

Mr. Mike Davis -2- February 22, 1988

Since there are no controls, they usually go into one area, wipe out the game and move on. Several illegal outfitters even use this as a selling point when selling their hunts.

Several illegal outfitters are not even residents of Alaska.

A licensed registered guide is limited to his area of operation so it would be foolish for him not to be a good steward of the game resources. However, he is at the mercy of the outfitters who move in and out of guide areas wiping out the game population.

You are going to hear cries that we are putting illegal outfitters out of business. Absolutely every last one of these illegal outfitters knew they were walking a very gray, thin line between legal and illegal. Everyone knew they were testing the law to the limit.

We should not have let them make such a fool out of our system to this point, and we must pass a tough law to protect the resources ethics and order of our State now.

This is a serious problem. You are the one that can make the difference. I urge you to support S.B. 191, EXCLUDING SECTION 11. Every resident of this State will benefit from properly controlled game harvest.

Sincerely,

Dennis Harms

Dennis Harms
Alaska Master Guide

P.S. Feel free to call me if you need more specific information.



RECEIVED MAR 23 1988

Mountain Monarchs of Alaska

P.O. BOX 1426 • Kenai, Alaska 99611 • (907) 283-4010 • (907) 688-1569

March 11, 1988

Dear Adelheid,

My name is Dave Leonard, I'm thirty years old and a representative character of the younger guides in the State of Alaska. I'm writing in support of Senate Bill 191 which addresses the current problem Alaskans, and their game resources, face with illegitimate guides posing as outfitters. I've been in the guiding industry for thirteen years now. I started out working as a horse wrangler and packer for a Master Guide. My wages were merely room and board. I had a goal of someday becoming a licensed Alaskan guide. I studied the long ago established system and began the steps of becoming an Alaskan guide. The apprentice program seemed rather difficult at times I must admit. However, I wanted to someday be a guide & outfitter so I stuck with the apprenticeship realizing if I had chose to be a doctor, lawyer, or other professional, I also would have been faced with a training and apprenticeship to serve.

Gradually I worked my way up through the system, meeting criteria established by the State of Alaska for the various levels of guide classification. I went on to meet the State's criteria for Registered Guide in 1981. I was very proud that day as I had worked hard and reached a major goal in my life. I continued working for various Registered and Master Guides across Alaska, to endeavor to get a better general working knowledge of the industry as well as the resource. I put alot of time and effort into studying the system established by the state, and in 1985 I applied for two restrictive guide areas. I was assigned one but denied the other. I appealed the board's decision on the denial and won. Today I hold two restrictive guide areas and operate my own professional guiding & outfitting business in NorthWest Alaska. I personally know of a good many young Registered Guides who are applying and being assigned restrictive guide areas. The system works well, however it has no place for freeloaders or individuals not willing to work hard toward reaching a goal of professionalism. This particular system is no different than any other licensed profession.

The State of Alaska itself, has never recognized the term "outfitter" as a single term. In Canada or any of the lower forty-eight states, a person refers to an "outfitter" as the individual who owns a professional guiding business and met criteria established by that particular state or province. When a client books a hunt with a "illegitimate guide", posing as an outfitter, he or she is more than upset when they learn that the State of Alaska actually allowed them to be taken advantage of. Which is most often the case.

(cont.)



Mountain Monarchs of Alaska

P.O. BOX 1426 • Kenai, Alaska 99611 • (907) 283-4010 • (907) 688-1569

(2)

Simply speaking an active guide must have an outfit in order to conduct business. That is where the term " Guide & Outfitter " came from years ago. A guide is an outfitter and an outfitter is a guide , the two terms go hand in hand. The english language is sometimes a bit tricky and even confusing. I would like to make an analogy of the " Guide & Outfitter" vs. "illegitimate guide (outfitters) problem currently under discussion, with hope that it will help you as legislators, comprehend the problem as the professional guides of Alaska see it. .

Analogy:

Joe is an intelligent, highly motivated individual. He wants to practice law but he does not want to be a lawyer. Law school would take years of work and be extremely costly. There Joe decides to take a bit of a short-cut. He doesn't want to attend school or deal with an exam administered by the B.A.R. association. So he does some reading, obtains a business license and prints cards up referring to himself as a " Legal Advisor ". He represents the client outside the courtroom and does every service an Attorney does except personally stand up before the Judge and defend his client. However he sits in the courtroom and coaches his client along each step of the way. Joe receives monetary remuneration for his services but he is not responsible for circumstances caused by his " legal advice because other than a business license he has circumvented the professional board which he falls under. He is operating in what is known as a grey area of the law. He is not an Attorney, hence his B.A.R. license cannot be revoked. Since Joe is already operating in a grey area of the law he decides to go for broke, each case over stepping the law a bit more and a bit more. Law school dropouts and B.A.R. flunkies are watching Joe and are quite envious of his situation not to mention his income. Several years pass by and now there are almost as many legal advisors as there are attorneys. Like a magnet this line of work has drawn individuals whom are out to make a fast buck then head on to the next city where they can find new faces to take advantage of. Remember though, Joe is not an Attorney he is a " legal advisor".

This exemplifies our situation in Alaska with the illegitimate guides posing as outfitters. Throughout the English language a large number of terms can often describe the same object or person. Attorney or Legal Advisor ? Guide or Outfitter? This is the question you as legislators will have to answer.

Like the licensed guides, the attorneys join together and complain about the exploitation of the law field by these " legal advisors". They take this problem to the legislature in the form of a bill which would tighten any grey areas of the law regarding qualifications of legal practice. Such as S B 191 which would close the current loophole in Alaska's law.

(cont.)



Mountain Monarchs of Alaska

P.O. BOX 1426 • Kenai, Alaska 99611 • (907) 283-4010 • (907) 688-1569

(3)

Like the guides, the attorneys have some good points on which to base their stand.

Just like the State of Alaska did by establishing criteria for guiding requirements and ethics, the B.A.R. established criteria and statutes by which law shall be practiced and each person met this before becoming an attorney. It took a lot of time and money, however these were the rules if an individual chose to practice law. The criteria was established and the system works toward keeping up the professional standards of the industry. Call yourself a legal advisor if you like but you must meet the same requirements of an Attorney. The same should pertain to illegitimate guides posing as outfitters, they too should be required to meet the requirements for the specific field in which they fall under. " Guiding ".

This situation leads to the law industry as a whole being dragged down due to sub-standard quality not to mention a black mark for the state in which the misrepresentation took place.

Such is the same case with the illegitimate guides posing as outfitters. In the professional hunting world we are learning that many would be Alaskan hunters are choosing the Canadian provinces for their big game excursions primarily due to the illegitimate guiding situation which has infiltrated our system. In Canada, the government gives recognition to the guiding industry as it's a viable industry and treated as such. Their Provincial governments have not and would not stand for their game populations to be abused by incompetent individuals whom are circumventing the law.

The legal advisors claim that there never should have been a loophole in the law in the first place. Also they claim someone should have stopped them before they had vested interest in the business. They go on to argue that legislation covering the loophole would put them out of business or make them become Attorneys and come under a restrictive board.

We as professional guides and outfitters have a very strict set of statutes and ethics to abide by, failure to do so can mean revocation of our licences and our restrictive areas. We fall under the Guide Licensing and Control Board.

The "legal advisors" just like the " illegitimate guides" posing as outfitters, claim that making them come under a licensing board would be an invasion of "free enterprise". Maybe we should let free enterprise reign through society. If an individual wants to be a doctor, he's a medicine

(cont)



Mountain Monarchs of Alaska

P.O. BOX 1426 • Kenai, Alaska 99611 • (907) 283-4010 • (907) 688-1569

(4)

man. If an individual wishes to be a Certified Public Accountant he or she is a "figurehead". You wish to commercial fish but have no permit you call yourself a "fish catcher" rather than a commercial fisherman. A grey area exists in any occupation or profession.

However, in the event of negligence, who is responsible? No one any longer has to meet any professional standards and therefore chaos infiltrates a once working system.

Likewise we have a very similar problem with professional guiding vs. illegitimate guiding (outfitting) in the State of Alaska.

I trust that you as our legislators are very well informed and up on this situation. If so you are aware that a considerably higher percentage of illegitimate guide (outfitters) are non-residents rather than Alaskans. I have spent alot of time talking to many of these individuals at the various hunting shows across the continental U.S.A. Their main sales pitch seems to be, "Why pay a professional guide \$ 4000 for a moose when you can hire an outfitter to do exactly the same thing for \$ 500?" I asked an illegitimate guide (outfitter) at a show in Houston Texas, "Just how many moose can you harvest in a fall season?" His reply, "As many hunters as I can book. You see Alaska is a very large state, there are lots of moose." "Last year we took forty-some odd bulls but we're gonna hunt more area next year so our harvest should be quite a bit higher."

I walked away totally appalled. My restricted guide area hosts a healthy moose population, however I could'nt imagine harvesting over five bulls per season looking at it from the game management point of view.

Those kind of numbers are overwhelming and in the end all legitimate Alaskan user groups, subsistence users included, will be the losers.


It's been said before, "Ninety percent of a solution is fully understanding the overall problem". Good sound judgement and common logic are two qualities one might exercise when addressing this situation you as legislators are faced with this session.

If senate bill 191 passes into law, you our legislators, would not be invading anyone's free enterprise. You would merely be managing Alaska's game resources in a responsible manner.

However, if it doesn't pass you as Alaskans will see our states game resources depleted to a level that would take nothing short of a miracle to undue. Not to mention an "Old Time" viable industry destroyed that was once our great state's second largest, outranked only by commercial fishing.

In the end, the oil tycoons will have killed the salmon runs off and be squabbling over the last drop of oil and rural Alaskans will be left with a raped and garbage strewn "WILDERNESS". We can all go on welfare and dream of the "Old Days". Thank you for your time.

Sincerely,


Dave Leonard
Registered Guide
State # AA495

Proposed timber cut may affect recreational area

by Russ Redick, executive director, ASA

The Department of Natural Resources (DNR), after being deluged with criticism about a proposed timber sale in northern Cook Inlet, has agreed to rewrite its proposal.

DNR is proposing to lease 215,000 acres of state-owned timber in the second highest used recreation area in the state with essentially no planning. Apparently they would dispose of the timber under the terms of something called the Forest Management Act (FMA) which is not even a state law and will not be unless currently proposed SB 112 is enacted.

Organizations such as the Alaska Sportfishing Association were not even notified of the proposal. With almost no public hearings and absolutely no evaluation of impact on other businesses and industries, DNR closed testimony January 4, 1988 on plans to initiate the major timber cut.

According to an Anchorage Daily News report, state forestry officials have been bombarded with complaints about the plan and now will "take a fresh look" and rewrite the proposal in an attempt to satisfy critics.

Critics ask what this new economic project will do for the region, the salmon resource, sport fishermen, lodges and guides? Major timber cuts, bridges and roads will have a great impact on the regions booming sportfishing industry.

The recently completed sport fish economic survey shows the sport fishery in that area was worth 8 million dollars in 1986 and growing with little, if any, state involvement. This area also produces about 30% of all commercially caught Cook Inlet salmon, the bulk of Cook Inlet's coho and the largest king salmon population of any Cook Inlet water.

Approximately 16% of the state's sport fishing effort, some 250,000 man days, is expended in this area.

In response to the proposed cut, the Department of Fish & Game produced a 4 page criticism of just about every aspect of the project.

Has any of this been given any serious consideration? Absolutely not!

When asked, one of the foresters states that they planned to cut within the proposed corridors reserved for public recreation under HB 93 (the recreational rivers bill)

Logging may or may not be good business for state land in Cook Inlet. However the method and process being used by DNR is wrong. They are not considering the recreational or economic benefits of sport fishing. This project must be put onto a normal planning and public review time schedule.

Incidentally, you anglers who fish other areas of the state have a stake in this proposal. If fishing in northern Cook Inlet declines or becomes less attractive, those fisherman can always come and join you.

Outdoor enthusiasts who believe the state is not planning this project in a reasonable manner should write a letter to Governor Steve Cowper, P.O.Box A, Juneau, AK 99811. Send copies to DNR, Commissioner Judy Brady, 3601 C Street, Anchorage, AK 99503 and to your legislators. Demand that the process be stopped until an environmental and economic analysis is completed on a normal review schedule that allows for adequate public input.

Don't expect someone else to write your letter. Only you can do it. They may think you will swallow all this without objection — after all they never even bothered to tell us what was planned. Let's wake them up.

1986 REVENUE SOURCES for State Fish and Wildlife Agencies

Lighter Shading:

A portion of this money comes from

Darker Shading:

HB

183

(FILE 2)

Shocky

Part 1

House Resources Committee Hearings

Guides & Outfitters

October 1987

House Bill 183

Senate Bill 191

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House Resources Committee
Guides & Outfitters
October 1987
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Guides & Outfitters

1

House Bill 183

Senate Bill 191

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: "An Act relating to the provision of goods or services to hunters."

Agency Affected: PUBLIC SAFETY
BRU: Fish & Wildlife Protection

Sponsor: Rep. Herrmann
Requestor: House Resources

Components: Enforcement

RECEIVED FEB - 4 1988

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

No fiscal impact is anticipated.

JWR/KCS
2/2/88

Prepared by: Captain Conrad Seibel, Operations Commander
Division: Fish & Wildlife Protection

Phone: 269-5509
Date: 1-28-88

Approved by Commissioner: Wanda Houtlander
Agency: PUBLIC SAFETY

Date: 2-2-88

Distribution (by preparer):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

STATE OF ALASKA
1988 LEGISLATIVE SESSION

BILL VERSION: CS for SB 191 (300 R)
PUBLISH DATE: (SENATE) 3/14/88

FISCAL NOTE

REQUEST:

Revision Date: 3/11/88
Title: An act relating to the Guide Board and Establishing a Task Force on Guiding
Sponsor: Coghill & Faiks
Requestor: _____

Agency Affected: Fish and Game
BRU: Game
Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL						
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REVENUE						
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FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

This analysis includes personal services costs to prepare for and participate in 3 meeting of the Guide Task Force in Anchorage per year and 3 teleconferences. These costs will be borne by existing personnel; no additional costs anticipated.

Prepared by: Donald E. McKnight Phone: 465-4190
Division: Game Date: 3/11/88

Approved by Commissioner: *Norman Albright* Date: 3/11/88
Agency: Fish and Game

- Distribution (by preparer):
- Legislative Finance
 - Legislative Sponsor
 - Requestor
 - Office of Management and Budget
 - Impacted Agency(ies)

STATE OF ALASKA
1988 LEGISLATIVE SESSION

BILL VERSION: CS SB 141 (3d Res)
PUBLISH DATE: (SENATE) 3/14/88

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: CSSB 141 (3d Res)
An Act relating to the Guide Board...
Sponsor: Senate Resources
Requestor: Senator Coghill

Agency Affected: Legislative Affairs
BRU: Legislative Council
Components: Council and Subcommittees

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0.3	0	0	0	0
CONTRACTUAL	0	2.0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	9.3	0	0	0	0

CAPITAL	0	0	0	0	0	0
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REVENUE	0	0	0	0	0	0
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FUNDING: (Thousands of Dollars)

GENERAL FUND	0	9.3	0	0	0	0
FEDERAL FUNDS						
OTHER						
TOTAL	0	9.3	0	0	0	0

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS : (Attach a separate page if necessary)

The Task Force on Guiding and Game is established under the jurisdiction of the Legislative Council Committee. The Task Force is composed of eleven members, three from the Executive Branch, four legislators from the Legislative Branch, and four public members appointed by the Governor.

Prepared by: Pamela Stoops, Manager
Division: Administrative Services

Phone: 465-3850
Date: 03/11/88

Approved by: Warren Endicott
Agency: Legislative Affairs Agency

Date: 03/11/88

Distribution (by preparer):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

Guides & Outfitters

11

AS 08.54

The Guide Law as Enacted by SB 294 in 1986



LAWS OF ALASKA

1986

Source

HCS CSSB 294(Res) am H

Chapter No.

71

AN ACT

Relating to guiding; and providing for an effective date.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

THE ACT FOLLOWS ON PAGE 1, LINE 9

UNDERLINED MATERIAL INDICATES TEXT THAT IS BEING ADDED TO THE LAW AND BRACKETED MATERIAL IN CAPITAL LETTERS INDICATES DELETIONS FROM THE LAW; COMPLETELY NEW TEXT OR MATERIAL REPEALED AND RE-ENACTED IS IDENTIFIED IN THE INTRODUCTORY LINE OF EACH BILL SECTION.

Approved by the Governor: June 3, 1986
Actual Effective Date: July 1, 1986

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AN ACT

Relating to guiding; and providing for an effective date.

- * Section 1. AS 08.01.010(14) is amended to read:
(14) Guide [LICENSING AND CONTROL] Board (AS 08.54.010);
- * Sec. 2. AS 08.03.010(c)(20) is amended to read:
(20) Guide [LICENSING AND CONTROL] Board (AS 06.54.010 -
June 30, 1988 [1986].
- * Sec. 3. AS 08.54.010 is amended to read:

ARTICLE 1. GUIDE [LICENSING AND CONTROL] BOARD.

Sec. 08.54.010. CREATION AND MEMBERSHIP OF BOARD. For the purposes of licensing and regulating the activities of guides in the interest of the state's wildlife resources there [THERE] is created the Guide [LICENSING AND CONTROL] Board consisting of seven members. No more than three members of the board shall hold or have held a registered, master, or class A assistant guide license. The other members must [SHALL] have a general knowledge of the game resources of the state and may not have a vested interest in the guiding industry. A minimum of 10 years residence in the state is required for all members of the board. For administrative purposes, the board is in the Department of Commerce and Economic Development.

- * Sec. 4. AS 08.54.020 is amended to read:
Sec. 08.54.020. APPOINTMENT AND TERM OF OFFICE. The members of the board shall be appointed by the governor and confirmed by the

legislature for staggered terms of three years or until their successors are appointed. (INITIAL TERMS ARE AS FOLLOWS: THREE MEMBERS FOR ONE YEAR, TWO MEMBERS FOR TWO YEARS, AND TWO MEMBERS FOR THREE YEARS.) A member may be removed at the pleasure of the governor.

* Sec. 5. AS 08.54 is amended by adding a new section to read:

Sec. 08.54.035. QUORUM; VOTING REQUIREMENT. Four members of the board constitute a quorum for the transaction of business, for the performance of a duty, and for the exercise of any power under this chapter. The board may not adopt a regulation, revoke, suspend, or deny renewal of a license, or assign, modify, or revoke a restricted guide area unless the action is approved by a vote of a majority of the full membership of the board.

* Sec. 6. AS 08.54.040(a) is amended to read:

(a) Except as provided in AS 08.54.045, the board shall

(1) prepare, grade and administer examinations, which may include oral examinations of applicants who demonstrate limited ability to read or write the English language;

(2) determine [AND PASS ON] qualifications of applicants for licenses and authorize the issuance of licenses to those who qualify;

(3) establish guide performance standards and regulate activity;

(4) compile, maintain and publish an annual [A GUIDE] register of master and registered guides who have not been convicted of a violation of a [FEDERAL OR] state [SPORT FISH,] game [,] or guiding statute or regulation; a guide listed in the register whose license is revoked or suspended shall be removed from the register while the guide's license is revoked or suspended;

(5) [COMPILE, MAINTAIN AND PUBLISH A RECORD OF REGISTERED

OR MASTER GUIDES WHO HAVE COMPLETED A CONTRACT HUNT IN ANY OF THREE YEARS IMMEDIATELY PRECEDING THE PUBLISHING OF THE RECORD;

(6) prohibit guiding activities which are unsportsmanlike, unethical, unsafe, against principles of conservation, degrading to the guiding profession, or which adversely affect the natural resources;

(6) [(7)] after a hearing, revoke, suspend or deny renewal of a license in accordance with AS 08.54.200;

(7) [(8)] establish a quota of licensed operating guides who may operate within designated geographical game units or subunits of the state and provide for an equitable, [AND] reasonable, and consistent procedure for limiting the number of guides to that quota; preference may [SHALL] be given to qualified available and willing licensed guides who reside within the designated game unit or subunit;

(8) meet at least twice annually, once in Anchorage and once in another municipality.

* Sec. 7. AS 08.54.045 is repealed and reenacted to read:

Sec. 08.54.045. SPECIAL GUIDE LICENSE. The board may issue a special guide license to a person who applies to conduct a guided hunt for a specific species of marine mammal in a specifically designated area if the applicant

(1) is 21 years of age or older;

(2) has, for at least 10 years, resided and hunted in the area of the state in which the applicant is to guide;

(3) is able to perform the duties of a special guide;

(4) has demonstrated knowledge of the following areas to an extent and degree satisfactory to the board:

(A) fish and game laws and regulations;

(B) relevant characteristics of the specific species

to be hunted;

(C) field preparation of trophies;

(D) care of game meat;

(E) use of guiding gear;

(F) firearm safety;

(G) practical first aid;

(H) booking and contracting hunts;

(5) has not been convicted of a game or guiding law violation during the previous five years;

(6) has not been convicted of a crime involving moral turpitude.

* Sec. 8. AS 08.54.110 is amended to read:

Sec. 08.54.110. QUALIFICATIONS FOR REGISTERED GUIDE LICENSE. A person is entitled to be licensed as a registered guide if the person

(1) is 21 years of age or older [MORE];

(2) [Repealed

(3) has practical field experience in the handling of firearms, hunting, judging trophies, field preparation of trophies, first aid and photography;

(3) [(4)] is familiar with the terrain and transportation problems in the district for which the license is requested;

(4) [(5)] has passed the qualification examination prepared and administered by the board;

(5) [(6)] has demonstrated to the board sufficient standards of competence and ethical conduct and has not been convicted of a crime involving moral turpitude;

(6) [(7)] has legally hunted in the state during any [FOR ALL OR PART OF EACH OF] five years in a manner directly contributing to the person's experience and competency as a guide;

(7) [(8)] has been licensed as and performed the services of an assistant guide in the state for a part of each of three years, or has guided in the state for a part of each of three years under a special guide license issued under AS 08.54.045;

(8) [(9)] submits a written recommendation to the board from a registered guide for whom the applicant has worked or from two registered guides; however, the requirements of this paragraph do not apply to a person who has guided under a special guide license for three years;

(9) [(10)] is capable of performing the essential [PHYSICAL] duties associated with guiding [ACTIVITIES];

(10) [(11)] has been favorably recommended in writing by two hunters that the person has guided or assisted in guiding during each year of the person's three years as an assistant guide, whose recommendations have been solicited by the board from a list provided by the applicant [;

(12) MEETS ADDITIONAL QUALIFICATIONS WHICH THE BOARD MAY REQUIRE].

* Sec. 9. AS 08.54.110 is amended by adding a new subsection to read:

(b) The commissioner of commerce and economic development may order that an applicant for an initial license under this section be allowed to take the license examination or be issued the license if, after reviewing a petition filed by the applicant, the commissioner finds that

(1) the board denied the applicant an opportunity to take the license examination, or refused to approve issuance of the license;

(2) the board's denial or refusal has been upheld by a final administrative order, and the order has not been appealed to the

superior court under AS 44.62.560;

(3) the board's denial or refusal was based on

(A) an error of fact by the board;

(B) the applicant's failure of the license examination due to faulty or unfair examination questions or procedures; or

(C) an erroneous or false statement in a recommendation submitted under (a)(8) of this section;

(4) the applicant is otherwise qualified to take the examination or to be issued the license; and

(5) sustaining the board's denial or refusal would work a substantial injustice on the applicant.

* Sec. 10. AS 08.54 is amended by adding a new section to read:

Sec. 08.54.141. PRIVILEGES AND LIMITATIONS OF ASSISTANT GUIDE LICENSE. An assistant guide

(1) may not contract to conduct a guided hunt; and

(2) shall be employed and supervised by a registered or master guide at all times while the assistant guide is in the field on guided hunts.

* Sec. 11. AS 08.54.170 is amended to read:

Sec. 08.54.170. LICENSE FEES. (a) The Department of Commerce and Economic Development shall set license fees under AS 08.01.065 for each of the following:

(1) master guide;

(2) registered guide;

(3) class A assistant guide;

(4) assistant guide;

(5) special guide [TRANSPORTER].

(b) The license fee for a master guide, registered guide, special guide, class-A assistant guide, or assistant guide license is in

addition to the fee required for a hunting license.

* Sec. 12. AS 08.54 is amended by adding a new section to read:

Sec. 08.54.186. REGISTERED GUIDE EXAMINATION. The board shall administer the qualification examination required under AS 08.54.110 at least twice a year. An examination may not be given within 90 days after the previous exam. At least once every other year the board shall give the examination at a location other than Anchorage.

* Sec. 13. AS 08.54.190 is amended by adding a new subsection to read:

(d) A master guide, registered guide, special guide, class-A assistant guide, or assistant guide license expires biennially, on a date set by the Department of Commerce and Economic Development.

* Sec. 14. AS 08.54 is amended by adding a new section to read:

Sec. 08.54.195. RESTRICTED GUIDE AREAS. (a) Under AS 08.54.-040(a)(7), the board may establish and assign restricted guide areas for master guides or registered guides. The board shall adopt regulations that establish uniform and consistent criteria, including a point system, to be used by the board when it establishes and assigns a restricted guide area.

(b) The board shall consider the following factors before it assigns a restricted guide area:

(1) the extent to which the guide who has applied for the area has guided in the game management unit in which the area is located;

(2) the extent to which the guide occupied and invested in the area;

(3) the effects, including the economic effect, on other guides that would result from creation of the area;

(4) big game populations in the area;

(5) the land ownership status of the area; and

(6) other relevant facts or circumstances.

(c) The board may adopt regulations limiting the number of clients with which a guide may contract for hunts in a restricted guide area used by more than one guide.

(d) Unless the board determines after a public hearing that it is not in the public interest to do so, the board may transfer a restricted guide area to a person qualified for assignment who has been recommended by the guide to whom the area is assigned, or by a person authorized to represent the guide, if the recommendation is made

(1) after five years have elapsed from the date of the assignment of the guide area; or

(2) during the first five years after the date of assignment and the guide has died or suffered a major disability, as defined by the board.

(e) A guide may not sell or lease a restricted guide area. A guide may sell or otherwise transfer a lodge, camp, or other lawful improvement to property located in a restricted guide area. Sales price may not exceed fair market value.

* Sec. 15. AS 08.54.200(a) is repealed and reenacted to read:

(a) The board shall hold a hearing to determine whether a licensee should be disciplined within a reasonable time after (1) complaints concerning a licensee's guiding activities are filed with the board by three or more of the licensee's clients from separate parties; (2) a complaint concerning a guide's conduct during a life-threatening situation is filed with the board; or (3) a licensee has been convicted of a violation of a federal or state hunting or guiding statute or regulation. The board may hold a hearing to determine whether disciplinary action is necessary if a complaint concerning a

licensee's guiding activities is filed with the board by a client of the licensee.

* Sec. 16. AS 08.54.200(b) is amended to read:

(b) After a hearing, the board may revoke, suspend, or deny renewal of a license, and may withdraw a licensee's restricted guide area assignment, if the board finds that the licensee

(1) engaged in unethical activity, unsafe activity, or activity that [WHICH] adversely affects the natural resources of the state when the [SUCH] activity is related [UNRELATED] to the [LEGAL AND LEGITIMATE] purposes of the contract hunt; or

(2) violated a provision of a federal or state [SPORT FISH,] game or guide statute or regulation.

* Sec. 17. AS 08.54.200(c) is amended to read:

(c) After a hearing, the board shall revoke a license and shall withdraw a licensee's restricted guide area assignment if the board finds that the licensee

(1) does not meet the qualifications specified by statute or regulation for the class of license held;

(2) is incompetent as a master guide, registered guide, special guide, class-A assistant guide, or assistant guide;

(3) during the five years immediately preceding the hearing has been convicted of a violation [TWO VIOLATIONS] of a federal or state statute or regulation prohibiting

(A) waste of a wild food animal;

(B) hunting on the same day airborne;

(C) hunting during a closed hunting season; or

(D) hunting in an area closed by federal regulation;

or

(4) during the five years immediately preceding the

Chapter 71

1 hearing, has been convicted of two violations of a state statute or
2 regulation prohibiting hunting in a restricted area not assigned to
3 the licensee and without proper written permission (SPORT FISH, GAME
4 OR GUIDE STATUTES OR REGULATIONS).

5 * Sec. 18. AS 08.54.200(d) is repealed and reenacted to read:

6 (d) A person who is disciplined under this section may not
7 engage in a guiding activity during the period of license revocation
8 or disciplinary action. A person licensed under this chapter may not
9 hire as a guide a person whose guide license is suspended or revoked
10 under this section. A guide whose license is suspended or revoked may
11 not guide in the employ of a person licensed under this chapter.

12 * Sec. 19. AS 08.54.200 is amended by adding new subsections to read:

13 (f) If a certified copy of a judgment of conviction of a guide
14 for an offense described under (c)(3) of this section, or for each of
15 two offenses under (c)(4) of this section, is filed with the board,
16 the board shall immediately suspend the guide's license. The suspen-
17 sion may be ordered even if the conviction resulted from a plea of
18 nolo contendere or if the conviction is under appeal. The order
19 remains in effect until after the final disposition of the disciplin-
20 ary proceeding under this section.

21 (g) A certified copy of a judgment of conviction of a guide for
22 an offense is conclusive evidence of the commission of that offense in
23 a disciplinary proceeding instituted against the guide under this
24 section based on that conviction.

25 (h) Within 30 days after a hearing under this section, the board
26 shall notify the complainant of the results of the hearing, including
27 written reasons justifying a decision not to take disciplinary action.
28 If the board decides not to hold a discretionary hearing, the board
29 shall give the complainant written notice of its reasons within 30

1 days after making the decision.

2 (1) In this section "two violations of a state statute or regu-
3 lation" means two violations of a single statute or a single regu-
4 lation, or violations of two statutes or two regulations, or one
5 violation of a statute and one violation of a regulation.

6 * Sec. 20. AS 08.54.210(a) is repealed and reenacted to read:

7 (a) It is unlawful for

8 (1) a master guide, registered guide, special guide, class
9 A assistant guide, or assistant guide to fail to timely report to the
10 Department of Public Safety, division of fish and wildlife protection,
11 and in no event later than 30 days, a violation of a state fish, game,
12 or guiding statute or regulation that the guide reasonably believes
13 was committed by a client or an employee of the guide;

14 (2) a guide to commit or aid the commission of a violation
15 of this chapter or of a state game or guiding statute or regulation or
16 to permit the commission of a violation that the guide knows or rea-
17 sonably believes is being or will be committed without attempting to
18 prevent it, short of using force, and without reporting it;

19 (3) a person to guide without having a current valid guide
20 license and resident hunting license in actual possession;

21 (4) a person to advertise as or represent to be a guide
22 without holding a current valid guide license;

23 (5) a guide to intentionally obstruct or hinder or attempt
24 to obstruct or hinder lawful hunting engaged in by a person who is not
25 a client of the guide;

26 (6) a person to guide without being validly licensed as a
27 guide under this chapter and as a resident hunter under AS 16;

28 (7) an assistant guide to contract to conduct a guided
29 hunt;

(8) an assistant guide to be in the field on a guided hunt except while employed and supervised by a registered or master guide.

* Sec. 21. AS 08.54.210(b) is amended to read:

(b) A person who violates (a)(1) - (5) [(6)] of this section is guilty of a misdemeanor and upon conviction is punishable by a fine of not more than \$1,000 or by imprisonment for not more than one year, or by both, and the person's license may be revoked for a period up to five years. However, a person who engages in guiding [OR TRANSPORTING] activity during the period for which the person's license is suspended or revoked under this chapter, or who violates (a)(6) - (8) of this section, is guilty of a felony punishable, upon conviction, by a fine of not more than \$5,000 and by imprisonment for not less than one year nor more than three years. In addition to punishment for a felony, all guns, fishing tackle, boats, aircraft, automobiles or other vehicles, camping gear and other equipment and paraphernalia used in, or in aid of, guiding [OR TRANSPORTING] activity engaged in during the period of suspension or revocation may [SHALL] be seized [CONFISCATED] by persons authorized to enforce this chapter and be forfeited to the state as provided under AS 16.05.125. WHO VIOLATES (a)(7) OF THIS SECTION, UPON CONVICTION, IS PUNISHABLE BY THE SAME LICENSE REVOCATION PROVISION AS FOR A VIOLATION OF (a)(1) - (6) OF THIS SECTION AND, IN ADDITION, IS PUNISHABLE BY A FINE OF NOT MORE THAN \$5,000, OR BY IMPRISONMENT FOR NOT MORE THAN ONE YEAR, OR BY BOTH.]

* Sec. 22. AS 08.54 is amended by adding a new section to art. 3 to read:

Sec. 08.54.230. RECORDS OF GUIDED HUNTS. The Department of Commerce and Economic Development shall collect and maintain records of hunts conducted by guides. The department shall make the records

available to state and federal agencies charged with the enforcement of statutes and regulations relating to guiding or game if requested for enforcement purposes. For all other purposes, the records are confidential and are not subject to inspection or copying under AS 09.25.110 - 09.25.121.

* Sec. 23. AS 08.54.240 is amended to read:

Sec. 08.54.240. DEFINITIONS. In this chapter

(1) "big game" means brown bear, grizzly bear, polar bear, caribou, moose, black bear, bison, Sitka blacktail deer, elk, mountain goat, musk-ox, wolf, wolverine, mountain or Dall sheep, and walrus;

(2) "board" means the Guide [LICENSING AND CONTROL] Board;

(3) [(2)] "guide" [, "GUIDES"] or "guiding" means accompanying or directing a hunter in the field, personally or through an assistant, for compensation or with the intent or an agreement to receive compensation, while the hunter or the person accompanying or directing the hunter spots, stalks, pursues, tracks, kills, or attempts to kill big game; in this paragraph, "in the field" does not include being present in a boat with living quarters or at a lodge or base camp [ASSISTING ANOTHER PERSON TO TAKE GAME WITH THE INTENT OF RECEIVING MONETARY OR MATERIAL REMUNERATION FOR THE SERVICES, BY ACCOMPANYING AND DIRECTING THAT PERSON PERSONALLY OR THROUGH A LICENSED ASSISTANT GUIDE FOR THE DURATION OF A HUNT, AND NOT SOLELY FOR THE PURPOSE OF PROVIDING TRANSPORTATION SERVICES];

(4) [(3)] "resident" has the meaning given in AS 16.05.940 [MEANS A PERSON WHO

(A) MAINTAINS A PLACE OF RESIDENCE WITHIN THE STATE;

(B) REPEALED

(C) SHOWS BY ALL ATTENDING CIRCUMSTANCES THE INTENTION TO PERMANENTLY RESIDE IN THIS STATE);

(5) [(4)] "restricted guide area" is a geographical area of the state the boundaries of which are determined by the board, and in which guided hunts may be conducted only by the guides to whom the area is assigned under AS 08.54.195 ["TRANSPORTING" OR THE "ACTIVITY OF TRANSPORTING" MEANS CONVEYING A PERSON BY ANY LAWFUL MEANS TO AN AREA FOR REMUNERATION OR MATERIAL BENEFIT IN EXCESS OF NORMAL OPERATING COSTS, WHEN THE PRIMARY PURPOSE OF THE PERSON BEING CONVEYED IS THE TAKING OF BIG GAME AND THE ASSOCIATED REMOVING OF BIG GAME MEAT AND PARTS OF BIG GAME AFTER BIG GAME HAS BEEN TAKEN; BIG GAME AS USED IN THIS PARAGRAPH MEANS GAME WHICH, IF TAKEN BY A NONRESIDENT, WOULD REQUIRE A BIG GAME TAG];

(6) [(5)] "unethical activity" means

(A) deception or misrepresentation [IN ANY DEGREE] involving prospective or actual clients either before, during, or following a contract hunt, including misrepresentation through private or public advertising of the type, duration, cost or conditions of the contract hunt [HUNTS];

(B) [MISREPRESENTATION EITHER THROUGH PRIVATE COMMUNICATION OR PUBLIC ADVERTISING OF THE NATURE, TYPE, DURATION, COST, OR OTHER CONDITIONS OF CONTRACT HUNTS;

(C) making a guaranty that a species or certain number of species of game will be taken on a contract hunt;

(C) engaging in unsafe or unsportsmanlike activities that are detrimental to the game resources of the state, as defined by regulations of the board, including violations of state hunting or guiding statutes or regulations; or

(D) accepting a deposit for guiding services without providing before the hunt a signed contract to provide the services.

* Sec. 24. AS 16.05.407(a) is amended to read:

(a) It is unlawful for a nonresident to hunt, pursue or take brown bear, grizzly bear, polar bear, or sheep in this state, unless personally accompanied by

(1) a person who is licensed as a master guide, registered guide, class-A assistant guide or assistant guide by the Guide [LICENSING AND CONTROL] Board; or

(2) a resident over 19 years of age who is

(A) the spouse of the nonresident; or

(B) is related to the nonresident, within and including the second degree of kindred, by marriage or blood.

* Sec. 25. AS 16.05.407(d) is amended to read:

(d) A nonresident who violates (a) [OR (c)] of this section, or who fails to furnish an affidavit under (b) of this section, is guilty of a misdemeanor and upon conviction is punishable by imprisonment for not more than one year, or by a fine of not more than \$5,000, or by both.

* Sec. 26. AS 39.50.200(b) is amended by adding a new paragraph to read:

(4) the Guide Board.

* Sec. 27. AS 08.54.040(b), 08.54.142 - 08.54.146, 08.54.185; AS 16.05.340(e) and 16.05.407(c) are repealed.

* Sec. 28. This Act takes effect July 1, 1986.

Guides & Outfitters

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Performance Report on the Guide Licensing And Control Board - Nov. 1985

A PERFORMANCE REPORT ON THE
DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT
GUIDE LICENSING AND CONTROL BOARD

November 21, 1985

Audit Control Number

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Commissioner, Department of
Commerce and Economic Development

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Terry Elder
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Guide Licensing and Control Board

Chairman
Member
Member
Member
Member
Member
Member

Ray McWutt
Edward J. Shavings, Sr.
Douglas Pope
Charles Weir
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