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I N   S E N A T E

February 25, 2014

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Introduced by Sen. LITTLE -- read twice and ordered printed, and when printed to be committed to the Committee on Environmental Conservation

AN ACT to amend the environmental conservation law, in relation to guides and outfitters

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1     Section 1. Section 11-0533 of the environmental conservation law, as  
2     added by chapter 398 of the laws of 1985, is amended to read as follows:  
3     S 11-0533. [Licensing of guides] GUIDES AND OUTFITTERS.

4     1. DEFINITIONS. As used in this section[, the term "guide"]:

5     A. "GUIDE" shall mean [a person] AN INDIVIDUAL who offers services for  
6     hire part or all of which includes directing, instructing, or aiding  
7     another in fishing, hunting, camping, hiking, white water canoeing,  
8     KAYAKING AND rafting, or rock and ice climbing.

9     B. "OUTFITTER" SHALL MEAN ANY PERSON SOLICITING TO PROVIDE OR WHO  
10    PROVIDES, FOR COMPENSATION, A GUIDE.

11    2. All guides engaging in the business of guiding on all lands and  
12    waters of the state shall possess a license issued by the department,  
13    except for any [persons] INDIVIDUALS operating or assisting upon a  
14    public vessel for hire (passenger carrying vessels), licensed by the  
15    United States Coast Guard or New York state, upon the Atlantic Ocean and  
16    all other marine and coastal waters, tidal waters including the Hudson  
17    river up to the Troy barrier dam, St. Lawrence river, Great Lakes and  
18    the navigable portion of their tributaries, and other navigable waters,  
19    as determined by the department.

20    3. Except while guiding for the purposes of hunting and/or fishing, no  
21    license as defined in section 11-0701 OF THIS ARTICLE is required for  
22    such acts.

23    4. Employees of children's camps as defined in subdivision one of  
24    section one thousand four hundred of the public health law shall be  
25    exempt from the provisions of subdivisions one and two of this section,  
26    provided such activities are carried out within the scope of said  
27    employment.

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets  
[ ] is old law to be omitted.

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1 5. A license as required under subdivision two of this section shall  
2 be issued for a period of five calendar years and the fee therefor shall  
3 be established by the department, not to exceed two hundred dollars FOR  
4 RESIDENTS AND FIVE HUNDRED DOLLARS FOR NON-RESIDENTS.

5 6. Every licensed guide while engaged in guiding shall wear in plain  
6 sight identification furnished by the department. Licensed guides shall  
7 be at least eighteen years of age. They shall be skilled in the use of  
8 boats and canoes whenever use of these craft is required and shall be  
9 persons competent to guide one or more of the following: camping, hunt-  
10 ing, fishing, hiking, white water canoeing/rafting, rock or ice climbing  
11 or other similar activities. The department shall by regulation estab-  
12 lish standards and procedures for testing and licensing of guides.

13 7. [Any] NO OUTFITTER SHALL PROVIDE FOR GUIDE SERVICES A GUIDE WHO IS  
14 NOT LICENSED PURSUANT TO THIS SECTION.

15 8. EVERY LICENSED GUIDE OR THE OUTFITTER PROVIDING THE SERVICES OF  
16 SUCH A GUIDE SHALL, PRIOR TO ENGAGING IN GUIDING OR PROVIDING A GUIDE  
17 FOR SERVICE, PROVIDE A WRITTEN DISCLOSURE OF THE TERMS OF EMPLOYMENT OF  
18 THE GUIDE BY THE CLIENT, INCLUDING THE DATE, TIME PERIOD, COST AND CHAR-  
19 ACTER OF THE SERVICES TO BE PROVIDED. SUCH WRITTEN DISCLOSURE SHALL BE  
20 SIGNED BY THE CLIENT PRIOR TO THE PROVISION OF GUIDE SERVICES AND BE  
21 MAINTAINED FOR INSPECTION BY THE GUIDE OR THE OUTFITTER FOR A PERIOD OF  
22 TWO YEARS.

23 9. NO INDIVIDUAL SHALL ENGAGE IN GUIDING WHILE IN AN INTOXICATED  
24 CONDITION, AS DEFINED IN SECTION 11-1201 OF THIS ARTICLE. NO INDIVIDUAL  
25 SHALL ENGAGE IN GUIDING WHEN HIS OR HER ABILITY TO GUIDE CREATES AN  
26 UNREASONABLE RISK OF INJURY OR DEATH TO HIMSELF OR HERSELF, OR ANOTHER  
27 HUMAN LIFE. ANY INDIVIDUAL WHO GUIDES WHILE IN AN INTOXICATED CONDITION  
28 OR AN IMPAIRED CONDITION, AS DEFINED IN SECTION 11-1201 OF THIS ARTICLE,  
29 SHALL BE SUBJECT TO THE SAME RULES OF EVIDENCE, STANDARDS, PROCEDURES  
30 AND PENALTIES ESTABLISHED PURSUANT TO SECTIONS 11-1205 AND 11-1209 OF  
31 THIS ARTICLE AS IF HE OR SHE WERE HUNTING WHILE INTOXICATED.

32 10. NO OUTFITTER SHALL KNOWINGLY PROVIDE GUIDES WHO ARE, APPEAR TO BE  
33 OR ARE SUSPECTED TO BE IN AN INTOXICATED OR IMPAIRED CONDITION, AS  
34 DEFINED IN SECTION 11-1201 OF THIS ARTICLE.

35 11. FOR ANY licensed guide who violates any provision of this chapter  
36 or who makes any false statement OR SUBMITS FALSE DOCUMENTATION in his  
37 OR HER application for a license [shall], OR VIOLATES ANY PROVISION OF  
38 THE PENAL LAW WHILE GUIDING, in addition to any other penalties, [imme-  
39 diately surrender his license to] the department[, which] may [be  
40 revoked by the department] SUSPEND SUCH GUIDE'S LICENSE for up to [one  
41 year following the date of such surrender] TWO YEARS, OR REVOKE SUCH  
42 LICENSE; PROVIDED THAT SUCH SUSPENSION OR REVOCATION SHALL BECOME EFFEC-  
43 TIVE AFTER A HEARING OR OPPORTUNITY TO BE HEARD PURSUANT TO THE  
44 PROVISIONS OF DEPARTMENT REGULATIONS, UNLESS A HEARING IS WAIVED BY SUCH  
45 GUIDE. IF THE ALLEGED VIOLATION IS FOR GUIDING WHILE IN AN INTOXICATED  
46 OR IMPAIRED CONDITION, OR THE GUIDE REFUSES TO TAKE A BREATH TEST OR  
47 CHEMICAL TEST, AND THERE WAS A THREAT OF HARM OR LOSS OF LIFE TO THE  
48 GUIDE'S CLIENT, THE DEPARTMENT MAY IMMEDIATELY SUSPEND THE GUIDE'S  
49 LICENSE PENDING ANY PROSECUTION, PROVIDED THAT THE DEPARTMENT SHALL  
50 OFFER THE GUIDE AN OPPORTUNITY TO HAVE A HEARING WITHIN FIFTEEN DAYS.  
51 FOR PURPOSES OF THIS SUBDIVISION, "THREAT OF HARM OR LOSS OF LIFE" SHALL  
52 INCLUDE TAKING A CLIENT BOATING, KAYAKING, CANOEING, RAFTING, HUNTING  
53 WITH A FIREARM OR BOW, ROCK CLIMBING OR ICE CLIMBING WHILE IN AN INTOXI-  
54 CATED OR IMPAIRED CONDITION.

55 [8.] 12. The department shall [publish] MAINTAIN a CURRENT list of  
56 LICENSED guides [annually] ON THE DEPARTMENT'S WEBSITE.

1 S 2. Section 71-0921 of the environmental conservation law is amended  
2 by adding three new subdivisions 14, 15 and 16 to read as follows:

3 14. VIOLATION OF SUBDIVISION TWO, SEVEN OR TEN OF SECTION 11-0533 OF  
4 THIS CHAPTER SHALL, IN THE CASE OF A FIRST VIOLATION, BE GUILTY OF A  
5 MISDEMEANOR AND, UPON CONVICTION THEREOF, BE PUNISHED BY A FINE NOT TO  
6 EXCEED FIVE THOUSAND DOLLARS OR BY IMPRISONMENT FOR NOT MORE THAN NINETY  
7 DAYS, OR BY BOTH SUCH FINE AND IMPRISONMENT; IN THE CASE OF A SECOND OR  
8 SUBSEQUENT VIOLATION, SUCH PERSON SHALL BE GUILTY OF A MISDEMEANOR AND,  
9 UPON CONVICTION THEREOF, SHALL BE PUNISHED BY A FINE NOT TO EXCEED TEN  
10 THOUSAND DOLLARS OR BY IMPRISONMENT FOR NOT MORE THAN ONE YEAR, OR BY  
11 BOTH SUCH FINE AND IMPRISONMENT.

12 15. THE DEPARTMENT OR A COURT MAY, FOR CAUSE AND AFTER TWO OR MORE  
13 VIOLATIONS OF SUBDIVISION SEVEN OR TEN OF SECTION 11-0533 OF THIS CHAP-  
14 TER, SUSPEND AN OUTFITTER'S PRIVILEGE TO PROVIDE GUIDES FOR AT LEAST ONE  
15 YEAR AND NO MORE THAN TEN YEARS. IN DETERMINING THE LENGTH OF SUCH  
16 SUSPENSION, THE DEPARTMENT OR A COURT SHALL TAKE INTO CONSIDERATION THE  
17 SERIOUSNESS OF THE OFFENSE.

18 16. THE DEPARTMENT OR A COURT MAY REVOKE THE LICENSE OF A GUIDE, OR  
19 THE PRIVILEGE OF AN OUTFITTER TO PROVIDE GUIDES, FOR NOT LESS THAN FIVE  
20 YEARS UPON A CONVICTION OF MANSLAUGHTER OR RECKLESS ENDANGERMENT WHILE  
21 GUIDING BY A GUIDE OR BY A PERSON ACTING AS A GUIDE WHILE WORKING FOR  
22 THE OUTFITTER.

23 S 3. Section 71-0925 of the environmental conservation law is amended  
24 by adding a new subdivision 16 to read as follows:

25 16. IF THE VIOLATION WAS A VIOLATION OF SUBDIVISION SIX, SEVEN OR  
26 EIGHT OF SECTION 11-0533 OF THIS CHAPTER, NOT LESS THAN FIVE HUNDRED  
27 DOLLARS.

28 S 4. This act shall take effect immediately.