S T A T E O F N E W Y O R K

6663

I N S E N A T E

February 25, 2014

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:

Section 1. Section 11-0533 of the environmental conservation law, as added by chapter 398 of the laws of 1985, is amended to read as follows:

S 11-0533. [Licensing of guides] GUIDES AND OUTFITTERS.

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

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

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

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

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

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

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

LBD11378-02-4

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

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

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

8. EVERY LICENSED GUIDE OR THE OUTFITTER PROVIDING THE SERVICES OF SUCH A GUIDE SHALL, PRIOR TO ENGAGING IN GUIDING OR PROVIDING A GUIDE FOR SERVICE, PROVIDE A WRITTEN DISCLOSURE OF THE TERMS OF EMPLOYMENT OF THE GUIDE BY THE CLIENT, INCLUDING THE DATE, TIME PERIOD, COST AND CHARACTER OF THE SERVICES TO BE PROVIDED. SUCH WRITTEN DISCLOSURE SHALL BE SIGNED BY THE CLIENT PRIOR TO THE PROVISION OF GUIDE SERVICES AND BE MAINTAINED FOR INSPECTION BY THE GUIDE OR THE OUTFITTER FOR A PERIOD OF TWO YEARS.

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

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

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

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

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

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

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

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

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

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

S 4. This act shall take effect immediately.