

516

2015-2016 Regular Sessions

I N   S E N A T E

(PREFILED)

January 7, 2015

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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

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

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1 exempt from the provisions of subdivisions one and two of this section,  
2 provided such activities are carried out within the scope of said  
3 employment.

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

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

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

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

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

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

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

1 WITH A FIREARM OR BOW, ROCK CLIMBING OR ICE CLIMBING WHILE IN AN INTOXI-  
2 CATED OR IMPAIRED CONDITION.

3 [8.] 12. The department shall [publish] MAINTAIN a CURRENT list of  
4 LICENSED guides [annually] ON THE DEPARTMENT'S WEBSITE.

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

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

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

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

27 S 3. Section 71-0925 of the environmental conservation law is amended  
28 by adding a new subdivision 17 to read as follows:

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

32 S 4. This act shall take effect immediately.