

STATE OF NEW YORK

5917

2017-2018 Regular Sessions

IN SENATE

May 5, 2017

Introduced by Sen. O'MARA -- (at request of the Department of Environmental Conservation) -- read twice and ordered printed, and when printed to be committed to the Committee on Environmental Conservation

AN ACT to amend the environmental conversation 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 § 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~~] snowshoeing,
8 cross country skiing, canoeing, kayaking, rafting or rock and ice climb-
9 ing.

10 b. "Outfitter" shall mean any person who receives consideration for
11 arranging guide services.

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

22 3. Except while guiding for the purposes of hunting and/or fishing, no
23 license as defined in section 11-0701 of this article is required for
24 such acts.

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

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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.

5. A license as required under subdivision two of this section shall be issued for a period of up to five calendar years and the fee therefor shall be established by the department, not to exceed two hundred dollars for residents or five hundred dollars for non-residents.

6. Every licensed guide while engaged in guiding shall wear in plain sight identification furnished or authorized by the department. Licensed guides shall be at least eighteen years of age. They shall be skilled in the use of boats and ~~[canoes]~~ other watercraft 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]~~ snowshoeing, cross country skiing, canoeing, rafting, kayaking, 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 guide services and be maintained by the guide or the outfitter for a period of two years. All written disclosures of the outfitter and licensed guide shall be made available for inspection by the department when requested.

9. No individual shall engage in guiding while in an intoxicated or impaired 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 or an impaired condition shall be subject to the same rules of evidence, standards, procedures and penalties established pursuant to title twelve of this article as if he or she were hunting while intoxicated.

10. No outfitter shall provide a guide who they know or through the exercise of reasonable diligence should have known is intoxicated or in an 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 is convicted of violating 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 be made in accordance with section seven hundred fifty-two of the correction law and become effective after an opportunity for a hearing pursuant to the department's regulations. 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

1 that the department shall offer the guide an opportunity to have a hear-
2 ing within fifteen days. For purposes of this subdivision, "threat of
3 harm or loss of life" shall include taking a client boating, kayaking,
4 canoeing, rafting, hunting with a firearm or bow, rock climbing or ice
5 climbing while in an intoxicated or impaired condition.

6 ~~[8-]~~ 12. The department shall ~~[publish]~~ maintain a current list of
7 licensed guides ~~[annually]~~ on the department's website.

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

10 14. Violation of subdivision two, seven or ten of section 11-0533 of
11 this chapter shall, in the case of a first violation, be guilty of a
12 misdemeanor and, upon conviction thereof, be punished by a fine not to
13 exceed one thousand dollars or by imprisonment for not more than thirty
14 days, or by both such fine and imprisonment; in the case of a second or
15 subsequent violation, such person shall be guilty of a misdemeanor and,
16 upon conviction thereof, shall be punished by a fine not to exceed two
17 thousand dollars or by imprisonment for not more than one year, or by
18 both such fine and imprisonment.

19 15. Upon the second or subsequent conviction of an outfitter of
20 subdivisions seven or ten of section 11-0533 of this chapter, the
21 department or the attorney general may seek from a court of competent
22 jurisdiction injunctive relief to restrain such outfitter from continu-
23 ing to operate for a period of up to ten years. Upon such application,
24 the court shall have jurisdiction to grant the department without bond
25 or other undertaking, such prohibitory or mandatory injunctions as the
26 facts may warrant, including temporary restraining orders or preliminary
27 injunctions. In determining the length of such injunction, a court shall
28 take into consideration the seriousness of the offense.

29 16. The department or a court may revoke or prohibit the issuance of a
30 license to a guide for not less than five years following a conviction
31 of manslaughter or reckless endangerment while guiding.

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

34 17. If the violation was a violation of subdivision seven or ten of
35 section 11-0533 of this chapter, not less than five hundred dollars.

36 § 4. This act shall take effect January 1, 2018; provided however the
37 amendments to section 11-0533 of the environmental conservation law made
38 by section one of this act shall take effect on January 1, 2019.