

MAINE STATE LEGISLATURE

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(EMERGENCY)
SECOND REGULAR SESSION

ONE HUNDRED AND THIRTEENTH LEGISLATURE

Legislative Document

NO. 2420

H.P. 1767 House of Representatives, March 3, 1988

Reported by Representative JACQUES for the Commission to Review the Laws Relating to Registered Maine Guides, pursuant to Resolves 1987, Chapter 17.

Reference to the Committee on Fisheries and Wildlife suggested and printing ordered under Joint Rule 18.

EDWIN H. PERT, Clerk

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND EIGHTY-EIGHT

1 AN ACT to Make Changes in the Laws Concerning
2 Licensed Maine Guides and Related Laws.
3

4 Emergency preamble. Whereas, Acts of the
5 Legislature do not become effective until 90 days
6 after adjournment unless enacted as emergencies; and

7 Whereas, registered Maine guides provide a
8 significant contribution to both tourism and the

1 economy of the State; and

2 Whereas, the laws relating to registered Maine
3 guides have never been comprehensively reviewed and
4 are in need of updating; and

5 Whereas, the Commission to Review the Laws
6 Relating to Registered Maine Guides met throughout
7 1987 to review state policies and laws relating to
8 guides and this legislation embodies their
9 recommendations; and

10 Whereas, a major portion of the guiding season
11 takes place in the spring and summer months and these
12 requirements should be consistent throughout the
13 season; and

14 Whereas, in the judgment of the Legislature, these
15 facts create an emergency within the meaning of the
16 Constitution of Maine and require the following
17 legislation as immediately necessary for the
18 preservation of the public peace, health and safety;
19 now, therefore,

20 Be it enacted by the People of the State of Maine as
21 follows:

22 Sec. 1. 5 MRSA §12004, sub-§10, ¶A, sub-§§23-A
23 and 23-B, are amended to read:

24 (23-A) Environ- Advisory Board Expenses 12 MRSA ~~§7301~~
25 ment: Nat- for the Licens- Only §7320
26 ural Re- ing of Guides \$50 per day
27 sources

28 (23-B) Environ- Junior Maine Expenses 12 MRSA ~~§7302~~
29 ment: Nat- Guides and Only §7322
30 ural Re- Trip Leaders
31 sources Curriculum Ad-
32 visory Board

33 Sec. 2. 12 MRSA §7001, sub-§13, as amended by
34 PL 1981, c. 414, §2, is further amended to read:

35 13. Guide. "Guide" means any person who receives

1 any form of remuneration for his services in
2 accompanying or assisting any person in the fields,
3 forests or on the waters or ice within the
4 jurisdiction of the State while hunting, fishing,
5 trapping, boating, snowmobiling or camping at a
6 primitive camping area.

7 Sec. 3. 12 MRSA §7001, sub-§29-A is enacted to
8 read:

9 29-A. Primitive camping area. "Primitive camping
10 area" means a camping location that does not have
11 access to a water supply that is approved by the
12 Department of Human Services.

13 Sec. 4. 12 MRSA §7076, sub-§1, as amended by PL
14 1987, c. 350, §1, is further amended to read:

15 1. Residents over 70 years of age. A
16 complimentary license to hunt, trap or fish, including
17 an archery license under section 7102, and a
18 muzzle-loading hunting license under section 7107-A,
19 shall be issued to any resident of Maine who is 70
20 years of age or older and applies for it upon
21 application to the commissioner. A guide license may
22 be renewed without charge for any resident of Maine
23 who is 70 years of age or older upon application to
24 the commissioner. The application shall be
25 accompanied by a birth certificate or other certified
26 evidence of the applicant's date of birth and
27 residency. Each license issued under this subsection
28 shall remain valid through December 31st of the 2nd
29 complete calendar year following the year of issuance.

30 Sec. 5. 12 MRSA §7101, sub-§7, as amended by PL
31 1981, c. 644, §6, is further amended to read:

32 7. Restrictions. Any resident or nonresident
33 hunter 10 years of age or older and under 16 may hunt
34 with firearms only if accompanied at all times while
35 hunting by in the presence of his parent or guardian
36 or by an adult of a person, at least 18 years of
37 age, approved by his parent or guardian. That
38 presence must be unaided by visual or audio
39 enhancement devices, including binoculars and citizen

1 band radios.

2 Sec. 6. 12 MRSA c. 707, sub-c. VIII, as
3 amended, is repealed.

4 Sec. 7. 12 MRSA c. 707, sub-c. VIII-A is
5 enacted to read:

6 SUBCHAPTER VIII-A

7 GUIDES AND CAMP TRIP LEADERS

8 §7311. License required

9 1. Requirement. No person may act as a guide
10 without a valid license under this subchapter. A
11 license entitles a person to act as a guide for 3
12 years from the date of issue.

13 2. Qualifications. In order to qualify for a
14 guide license, a person must:

15 A. Be at least 18;

16 B. Pass the guide exam;

17 C. If a first-time applicant and beginning
18 January 1, 1990, for applicants for license
19 renewal, be certified by the Red Cross in standard
20 first aid; and

21 D. Meet all requirements established by rules of
22 the commissioner.

23 3. Fee. The fee for a 3-year guide license is as
24 follows:

25 A. Resident.....\$ 75

26 B. Nonresident.....\$300

27 C. Alien.....\$600

28 3-A. Transitional fees. In 1988, fees shall be
29 \$40 for residents, \$142 for nonresidents and \$167 for

1 aliens. The licenses shall carry hunting and fishing
2 privileges. After December 31, 1988, and before
3 January 1, 1990, guide licenses shall not carry
4 hunting and fishing privileges and may be purchased to
5 cover a one-year, 2-year or 3-year period at the
6 following rates:

7 A. Resident.....\$25 per year

8 B. Nonresident.....\$100 per year

9 C. Alien.....\$200 per year

10 4. Exception. A person holding a camp trip
11 leader permit under section 7322 may conduct trips
12 containing adults under the auspices of the boys and
13 girls camp where they are employed without being
14 required to obtain a guide license. Those trips shall
15 be subject to all the requirements of section 7322.

16 §7312. Application.

17 1. New applications. A person wishing to be
18 licensed as a guide shall submit an application to the
19 commissioner.

20 A. The commissioner shall provide application
21 forms which request all relevant information the
22 commissioner considers necessary.

23 B. Failure or refusal to satisfactorily answer
24 any question in the application is a basis for the
25 commissioner to not accept the application.

26 C. The commissioner shall decide whether the
27 application is acceptable within 5 working days of
28 receipt.

29 D. The commissioner shall notify each applicant
30 at least 2 weeks prior to the examination.

31 §7313. Examination

32 1. Requirement. A person who has not previously
33 held a guide license must pass an examination. A

1 guide carrying passengers for hire must also be
2 certified in the area of watercraft safety.

3 2. Form. The commissioner shall determine the
4 form and content of the examination.

5 3. Location. The commissioner shall designate
6 locations where the examination will be held.

7 4. Reexamination. The commissioner may require a
8 guide to be examined or reexamined if the commissioner
9 receives a written complaint and, upon investigation,
10 believes that the guide no longer meets the guide
11 qualifications.

12 5. Fee. The examination fee is \$10. An
13 applicant may retake the examination once without
14 paying an additional fee. The fee is nonrefundable
15 and shall be credited toward the license fee of a
16 successful applicant.

17 §7314. Rules

18 The commissioner shall, pursuant to the Maine
19 Administrative Procedure Act, Title 5, chapter 375,
20 with the advice and consent of the advisory board,
21 adopt rules necessary to administer this chapter. The
22 commissioner shall establish safety standards to
23 provide the clients of guides reasonable protection
24 from hazards. The commissioner may adopt rules in the
25 following areas.

26 1. Alcohol; drugs. The commissioner may require
27 applicants to state whether they use alcohol or other
28 drugs in a way which would interfere with their
29 competence as a guide.

30 2. Failure to meet party. The commissioner may
31 require applicants who have previously held a guide
32 license to state that they have not received and
33 retained a guiding fee from a party and then failed to
34 meet that party as agreed or failed to provide the
35 services as agreed.

36 3. Competency. The commissioner may establish

1 standards of competency which shall be provided to
2 each applicant.

3 4. Watercraft. The commissioner may establish
4 standards for the use of watercraft by a guide, to
5 ensure that the watercraft is safe for the use
6 intended, that sufficient safety equipment is provided
7 to each passenger and that the operator is competent
8 to use watercraft.

9 5. Classification. The commissioner may
10 establish classifications of guide licenses, including
11 general guides and specialized categories.

12 6. Other. The commissioner may establish rules
13 in any other area which the commissioner considers
14 necessary to administer this subchapter, except that
15 the commissioner may not require an applicant to
16 demonstrate certification in cardiopulmonary
17 resuscitation.

18 §7315. Mandatory revocation

19 1. Conditions for revocation. The commissioner
20 shall revoke a guide license in the following
21 circumstances:

22 A. If a guide is an habitual violator, as defined
23 in section 7001, subsection 13-A;

24 B. If the guide is convicted of knowingly
25 assisting a client in violating chapters 701 to
26 721; or

27 C. If the guide is convicted of a violation of
28 section 7318.

29 2. Hearing provisions. Hearings shall be
30 according to this subsection.

31 A. Any person whose license has been revoked
32 under this section may, within 30 days of the
33 effective date of the revocation, petition for a
34 hearing before the commissioner to show cause why
35 that person's license should not have been revoked.

1 B. If, after the hearing, the commissioner finds
2 that the person's record does not bring that
3 person within the provisions outlined in
4 subsection 1, the revocation shall be rescinded.
5 If the commissioner finds that the person's record
6 does bring that person within the provisions
7 outlined in subsection 1, the revocation shall
8 remain in effect. If the petitioner denies any
9 facts contained in the record, the petitioner
10 shall have the burden of proof.

11 3. Term of revocation or suspension. A guide
12 whose license has been suspended or revoked under this
13 section may not apply for a new license for a minimum
14 of 3 years. The commissioner may revoke a license for
15 life.

16 §7316. Other revocation or suspension

17 The commissioner may initiate proceedings in the
18 Administrative Court to revoke or suspend a license
19 when it is found upon investigation that the guide has
20 made false statements in the application, failed to
21 meet the standards for competency and safety, operated
22 a watercraft for passengers that does not meet the
23 safety standards established by rule or failed a guide
24 examination or reexamination.

25 §7317. Hiring a guide without a license

26 No person may knowingly hire a person as a guide
27 if the employer has knowledge that that person does
28 not hold a valid guide license.

29 §7318. Violations by clients

30 A guide who has knowledge of a violation by a
31 client of any of the provisions of chapters 701 to 721
32 shall, within 24 hours, or as soon as safely possible,
33 inform a person authorized to enforce those chapters.

34 §7319. Guided parties.

35 A registered guide shall not take a party of more

1 than 12 people out on any lake, stream or waterway in
2 the State.

3 §7320. Advisory board

4 1. Members. The Advisory Board for the Licensing
5 of Guides, established by Title 5, section 12004,
6 subsection 10, shall consist of the following 7
7 members:

8 A. One subordinate officer of the department
9 designated by the commissioner;

10 B. Two wardens of the department; and

11 C. Four representatives of the public, with no
12 more than 3 holding a license under this
13 subchapter, to be appointed by the Governor for a
14 term of 3 years to reflect a wide diversity of
15 guiding experience. At least 2 members shall be
16 chosen for their expertise in outdoor recreation.
17 The public members shall be compensated as
18 provided in Title 5, chapter 379.

19 2. Duties. The board has the following duties:

20 A. To provide advice and consent regarding rules
21 proposed by the commissioner;

22 B. At the request of the commissioner, to conduct
23 oral examinations of applicants for guide
24 licenses; and

25 C. To advise the commissioner on granting and
26 revoking guide licenses.

27 3. Quorum. Five members of the board constitute
28 a quorum, except that oral exams shall be conducted by
29 3 members.

30 §7321. Junior Maine guides

31 1. Eligibility. To qualify as a junior guide, a
32 person must be at least 14 years of age and under 18
33 years of age, meet the requirements established by the

1 commissioner and pass the required examinations.

2 2. Restrictions. No junior guide may provide
3 guiding services.

4 §7322. Trip leader permit

5 1. When permit required. Boys and girls camps
6 licensed by the Department of Human Services, or
7 located in another state and licensed in a similar
8 manner, if the laws of the other state so require,
9 conducting trip camping shall:

10 A. Provide at least one staff member over 18
11 years of age for each 6 campers; and

12 B. Ensure that the staff member in charge of the
13 trip holds a valid trip leaders permit.

14 2. Application. Any person wishing a permit
15 shall submit an application on forms provided by the
16 commissioner and shall pay the application fee.

17 3. Qualifications. To qualify initially for a
18 permit, an applicant must:

19 A. Show successful completion of an approved trip
20 leader safety course or complete an application
21 provided by the commissioner outlining in detail
22 the applicant's experience and training as a trip
23 leader; and

24 B. Meet any other requirements adopted by rule of
25 the commissioner.

26 4. Special waiver. Waiver of the course
27 requirement by the commissioner on the basis of the
28 applicant's experience and payment of the application
29 fee shall qualify the applicant for a trip leader
30 permit.

31 5. Curriculum. With the advice of the board,
32 the Commissioner shall review and adopt a trip leader
33 safety course curriculum which shall include, but not
34 be limited to:

- 1 A. Training in first aid;
2 B. Training in water safety, including lifesaving
3 techniques as appropriate; and
4 C. Trip leader qualifications and required
5 experience for the special waiver procedure in
6 subsection 4.

7 The commissioner shall publish the curriculum adopted
8 or approved by the board and a current list of courses
9 with the approved curriculum by name and address.

10 6. Enforcement. Wardens of the department and
11 the rangers of the Bureau of Forestry may enforce this
12 section. They may terminate any trip which is
13 considered unsafe or in violation of this section. By
14 April 1, 1988, the commissioner shall adopt standards
15 for what is considered an unsafe trip. The
16 commissioner shall consider previous violations of
17 this section when issuing or reissuing trip leader
18 permits.

19 7. Fee. The initial qualifying fee for a trip
20 leader permit is \$14. The permit may be renewed upon
21 payment of \$9 if requirements of the department are
22 met.

23 §7323. Junior Maine Guides and Trip Leaders Curriculum
24 Advisory Board

25 1. Board established. The commissioner shall
26 appoint a board of 5 members, to be known as the
27 "Junior Maine Guides and Trip Leaders Curriculum
28 Advisory Board" as authorized by Title 5, section
29 12004, subsection 10.

30 2. Membership. The board shall consist of one
31 member from the Department of Inland Fisheries and
32 Wildlife, one member from the Department of Human
33 Services and 3 members of the public, one of whom
34 shall be a Maine camp director. Appointments to the
35 board shall be for 3 years or until successors are
36 appointed.

1 3. Duties. The board has the duty to advise the
2 commissioner on the adoption of a trip leaders safety
3 course curriculum and on the adoption of rules for the
4 administration of this section and sections 7321 and
5 7322;

6 4. Compensation. The public members shall be
7 compensated as provided in Title 5, chapter 379.

8 Sec. 8. 12 MRSA §7452, sub-§1-A, ¶B, as enacted
9 by PL 1985, c. 369, §17, is amended to read:

10 B. Does not employ and hunt in conjunction
11 with the presence of a resident Maine guide.
12 That presence must be unaided by visual or audio
13 enhancement devices, including binoculars and
14 citizen band radios.

15 Sec. 9. 12 MRSA §7463-A, sub-§4, as enacted by
16 PL 1981, c. 118, §2, is amended to read:

17 4. Hunting permits. The commissioner may issue
18 up to 1,000 moose hunting permits annually and may
19 establish the number of moose hunting permits to be
20 issued for each moose hunting zone. No more than 10%
21 of the moose hunting permits may be issued to
22 nonresident and alien hunters. A person whose
23 application is selected may purchase a moose hunting
24 permit upon presentation of proof that he possesses:

25 A. A valid Maine hunting license, if he is a
26 resident of the State; or

27 B. A valid Maine big game hunting license, if he
28 is a nonresident or alien.

29 The fee for a moose hunting permit is \$25 for
30 residents and \$200 for nonresidents and aliens. At
31 the time the permit is obtained the permittee may
32 designate a subpermittee to hunt with him. The
33 permittee may choose not to designate a subpermittee
34 and hunt alone, but a subpermittee must always be
35 accompanied by in the presence of the permittee while
36 hunting moose. That presence must be unaided by

1 visual or audio enhancement devices, including
2 binoculars and citizen band radios. While hunting
3 moose each nonresident or alien hunter shall be in
4 possession of a valid Maine nonresident or alien big
5 game hunting license, whichever is applicable.

6 Sec. 10. 12 MRSA §7799, sub-§1, as enacted by
7 PL 1979, c. 420, §1, is amended to read:

8 1. Application. Every operator of a motorboat,
9 other than a licensed Maine guide certified in
10 watercraft safety, carrying passengers for hire,
11 except those operators who have been issued and have
12 or are required to have in their possession a current
13 valid federal operator's license, shall obtain an
14 operator's license from the commissioner as provided
15 in this section before operating a motorboat carrying
16 passengers for hire.

17 A. The operator shall make written application
18 for the license on forms provided by the
19 commissioner.

20 B. The commissioner shall cause operators
21 applying for a license for the first time to be
22 examined as to their qualifications.

23 Sec. 11. 12 MRSA §7901, sub-§12 is enacted to
24 read:

25 12. Guiding without a license. A violation of
26 section 7311, subsection 1, is a Class D crime for
27 which a fine of \$1,000 and imprisonment of 3 days
28 shall be imposed. Neither the fine nor the
29 imprisonment may be suspended.

30 Sec. 12. Training evaluation. The Department
31 of Inland Fisheries and Wildlife in cooperation with
32 the Board of Trustees of the Maine
33 Vocational-Technical Institutes System, shall study
34 the feasibility of developing and offering a program
35 for training persons to be guides.

36 The department shall also review the curriculum of
37 the standard first aid course provided by the American

1 Red Cross and the first aid training needs of guides.
2 The department shall report to the joint standing
3 committee of the Legislature having jurisdiction over
4 fisheries and wildlife, including its recommendations
5 regarding appropriate first aid curriculum for guides
6 and the methods of assuring adequate availability of
7 training courses.

8 **Sec. 13. Rules.** The Commissioner of Inland
9 Fisheries and Wildlife shall adopt rules necessary to
10 implement the provisions of this Act by April 1,
11 1988. Proposed rules shall be submitted to the joint
12 standing committee of the Legislature having
13 jurisdiction over fisheries and wildlife.

14 **Emergency clause.** In view of the emergency
15 cited in the preamble, this Act shall take effect when
16 approved.

17 STATEMENT OF FACT

18 This bill embodies the recommendations of the
19 Commission to Review the Laws Relating to Registered
20 Maine Guides to amend the guiding laws.

21 Section 1 of the bill amends current law to
22 compensate the public members of the Advisory Board
23 for the Licensing of Guides.

24 Section 2 limits camping trips requiring a guide
25 to those in primitive camping areas and section 3
26 defines those areas as those not having access to a
27 water supply approved by the Department of Human
28 Services.

29 Section 4 of the bill provides for guides over 70
30 years of age to receive a complimentary license
31 renewal, completing the suite of licenses senior
32 citizens are entitled to receive free of charge.

33 Sections 5, 8 and 9 clarify the requirement for
34 accompaniment while hunting and stipulate that radios

1 and binoculars may not be used to meet the
2 accompaniment requirement.

3 Section 6 repeals the Maine Revised Statutes,
4 Title 12, chapter 707, subchapter VIII.

5 Section 7 enacts Title 12, chapter 707, subchapter
6 VIII-A. Substantive changes in this section relating
7 to guides include:

8 1. Changing the license period to 3 years;

9 2. Phasing in a requirement for first aid
10 training;

11 3. Dropping hunting and fishing privileges from
12 the license;

13 4. Reducing the license fee in light of the
14 reduced privileges;

15 5. Exempting camp trip leaders from having to
16 obtain a guide license to lead a camping trip with
17 adults;

18 6. Requiring certification in watercraft safety
19 for guides carrying clients in boats;

20 7. Establishing a process for mandatory
21 revocation of guiding licenses for habitual offenders,
22 guides assisting clients in violating fish and
23 wildlife laws, and not reporting a violation by a
24 client within a reasonable time;

25 8. Making it illegal to knowingly hire an
26 unlicensed guide; and

27 9. Requiring guides to report violations by their
28 clients as soon as possible.

29 Section 7 also increases the size of the Advisory
30 Board for the Licensing of Guides to ensure that
31 several members are recreation-oriented.

32 The laws covering camp trip leaders in section 7
33 are reorganized and amended to require the department

1 to develop standards to define when a trip is
2 considered unsafe.

3 Section 10 exempts licensed guides certified in
4 watercraft safety from the requirement for a motorboat
5 operator's permit. Under this bill, guides will have
6 to be certified for watercraft safety if they are
7 carrying passengers for hire. This provision
8 eliminates duplication of permits.

9 Section 11 increases the penalties for providing
10 guiding services without a license.

11 Section 12 requires the Department of Inland
12 Fisheries and Wildlife to explore developing a
13 curriculum for training guides within the
14 Vocational-Technical Institute System. It also
15 requires the department to review the Red Cross First
16 Aid Course to determine if it is relevant for licensed
17 guides.

18 Section 13 stipulates that all rules required by
19 this bill be in effect by April 1, 1988.

20

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