

Second Regular Session
Sixty-ninth General Assembly
STATE OF COLORADO

REVISED

*This Version Includes All Amendments Adopted
on Second Reading in the Second House*

LLS NO. 14-0274.02 Jery Payne x2157

HOUSE BILL 14-1180

HOUSE SPONSORSHIP

Becker,

SENATE SPONSORSHIP

Tochtrop,

House Committees

Agriculture, Livestock, & Natural Resources
Finance
Appropriations

Senate Committees

Agriculture, Natural Resources, & Energy
Finance
Appropriations

A BILL FOR AN ACT

101 CONCERNING THE SUNSET REVIEW OF THE REGULATION OF
102 OUTFITTERS FOR THE TAKING OF WILDLIFE BY THE DIRECTOR
103 OF THE DIVISION OF PROFESSIONS AND OCCUPATIONS, AND, IN
104 CONNECTION THEREWITH, IMPLEMENTING THE
105 RECOMMENDATIONS CONTAINED IN THE SUNSET REPORT
106 PREPARED BY THE DEPARTMENT OF REGULATORY AGENCIES.

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries>.)

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
*Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.*

SENATE
Amended 2nd Reading
April 29, 2014

HOUSE
3rd Reading Unamended
March 19, 2014

HOUSE
Amended 2nd Reading
March 18, 2014

Sunset Process - House Agriculture, Livestock and Natural Resources Committee. The bill continues the regulation of hunting and fishing outfitters by the director of the division of professions and occupations until 2025. The bill also:

- ! Clarifies that an outfitter entity may be disciplined for the acts of its principals;
- ! Sets the period of a registration revocation at two years;
- ! Authorizes the director of the division of professions and occupations to issue confidential letters of concern to outfitters;
- ! Authorizes the director to discipline a registered outfitter for failing to respond to a complaint;
- ! Changes the standard for discipline from being addicted to alcohol to excessively using alcohol; and
- ! Repeals the requirement that the director send a letter of admonition by certified mail.

Sections 9 through 20 of the bill make technical changes.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, 24-34-104, **add** (56);
3 and **repeal** (45) (b) as follows:

4 **24-34-104. General assembly review of regulatory agencies**
5 **and functions for termination, continuation, or reestablishment.**

6 (45) The following agencies, functions, or both, terminate on July 1,
7 2014:

8 (b) ~~The regulation of outfitters by the director of the division of~~
9 ~~professions and occupations pursuant to article 55.5 of title 12, C.R.S.;~~

10 (56) THE FOLLOWING AGENCIES, FUNCTIONS, OR BOTH, TERMINATE
11 ON SEPTEMBER 1, 2025:

12 (a) THE REGULATION OF OUTFITTERS BY THE DIRECTOR OF THE
13 DIVISION OF PROFESSIONS AND OCCUPATIONS UNDER ARTICLE 55.5 OF
14 TITLE 12, C.R.S.

15 **SECTION 2.** In Colorado Revised Statutes, 12-55.5-102, **amend**
16 (5); and **add** (8) as follows:

1 **12-55.5-102. Definitions.** As used in this article, unless the
2 context otherwise requires:

3 (5) "Outfitter" means ~~any individual~~ A PERSON soliciting to
4 provide or providing, for compensation, outfitting services for the
5 purpose of hunting or fishing on land that ~~such individual~~ THE PERSON
6 does not own.

7 (8) "PERSON" MEANS AN INDIVIDUAL OR ENTITY.

8 **SECTION 3.** In Colorado Revised Statutes, **amend**
9 12-55.5-102.5 as follows:

10 **12-55.5-102.5. Applicability.** (1) This article ~~shall~~ DOES not
11 apply to a person who only authorizes a person to hunt, fish, or take
12 wildlife on property the person owns, rents, or leases, including ~~without~~
13 ~~limitation~~, providing ~~such~~ THE authorization for compensation.

14 (2) THIS ARTICLE DOES NOT REQUIRE A PERSON TO REGISTER AS AN
15 OUTFITTER IF THE PERSON ONLY RENTS MOTOR VEHICLES, LIVESTOCK, OR
16 EQUIPMENT.

17 **SECTION 4.** In Colorado Revised Statutes, 12-55.5-103, **amend**
18 (1) as follows:

19 **12-55.5-103. Registration required - fees.** (1) ~~No individual~~ A
20 PERSON shall NOT engage in activities as an outfitter, ~~or~~ advertise in any
21 publication AS AN OUTFITTER, or represent himself, HERSELF, OR ITSELF
22 as an outfitter unless ~~he~~ THE PERSON first obtains a ~~certificate of~~
23 registration from the division and unless ~~such certificate of~~ THE
24 registration is in full force and effect and in ~~such individual's~~ THE
25 PERSON'S immediate possession. ~~No individual~~ A PERSON shall NOT
26 continue to act as an outfitter if ~~such~~ THE PERSON'S registration has been
27 suspended or revoked or has expired.

1 **SECTION 5.** In Colorado Revised Statutes, **amend**
2 12-55.5-103.5 as follows:

3 **12-55.5-103.5. Guide qualifications.** (1) ~~A person~~ AN
4 INDIVIDUAL who works as a guide ~~shall~~ MUST be eighteen years of age or
5 older and ~~shall~~ hold either a valid first aid or first aid instructor's card
6 issued by the American red cross or evidence of equivalent training
7 ~~credentials~~ as approved by the director. ~~A person~~ AN INDIVIDUAL who
8 violates this subsection (1) is guilty of a misdemeanor and shall be
9 punished by a fine of one hundred dollars.

10 (2) It is a violation of this article for ~~any person~~ AN INDIVIDUAL
11 whose outfitter registration has been revoked or suspended to work as a
12 guide.

13 **SECTION 6.** In Colorado Revised Statutes, 12-55.5-104, **amend**
14 (1) (a) and (1) (b) as follows:

15 **12-55.5-104. Powers and duties of the director.** (1) In addition
16 to all other powers and duties conferred or imposed upon the director by
17 this article or by any other law, the director:

18 (a) May promulgate rules ~~and regulations pursuant to the~~
19 ~~provisions of~~ UNDER section 24-4-103, C.R.S., to govern the registration
20 of outfitters AND to carry out the purposes of this article;

21 (b) (I) May administer oaths, take affirmations of witnesses, and
22 issue subpoenas to compel the attendance of witnesses and the production
23 of all relevant papers, books, records, documentary evidence, and
24 materials in any hearing, investigation, accusation, or other matter coming
25 before the ~~board~~ DIRECTOR. The director may appoint an administrative
26 law judge pursuant to part 10 of article 30 of title 24, C.R.S., to perform
27 the functions of this subparagraph (I) and to take evidence and to make

1 findings and report them to the director.

2 (II) Upon failure of any witness to comply with such subpoena or
3 process, the district court of the county in which the subpoenaed person
4 or ~~licensee~~ REGISTRANT resides or conducts business, upon application by
5 the ~~board~~ or director with notice to the subpoenaed person or ~~licensee~~
6 REGISTRANT, may issue to the person or ~~licensee~~ REGISTRANT an order
7 requiring that person or ~~licensee~~ REGISTRANT to appear before the
8 director; to produce the relevant papers, books, records, documentary
9 evidence, or materials if so ordered; or to give evidence ~~touching~~
10 RELEVANT TO the matter under investigation or in question. Failure to
11 obey the order of the court may be punished by the court as a contempt of
12 court.

13 **SECTION 7.** In Colorado Revised Statutes, 12-55.5-105, **amend**
14 (1) introductory portion, (1) (b), (1) (c), (1) (d), and (5); and **repeal** (1) (e)
15 as follows:

16 **12-55.5-105. Issuance of registration - violations.** (1) Except as
17 otherwise provided in this article, the director shall issue an initial or
18 renewed ~~certificate of~~ registration as an outfitter to ~~any~~ AN individual who
19 pays the required fee and furnishes evidence satisfactory to the director
20 that ~~such~~ THE individual:

21 (b) Holds a valid ~~instructor's card in~~ first aid CARD or a ~~standard~~
22 first aid INSTRUCTOR'S card issued by the American red cross or evidence
23 of equivalent training;

24 (c) Possesses minimum liability insurance coverage in the amount
25 of fifty thousand dollars for bodily injury to one ~~person~~ INDIVIDUAL in
26 ~~any~~ A single accident and one hundred thousand dollars for bodily injury
27 to all ~~persons~~ INDIVIDUALS in ~~any~~ A single accident;

1 (d) Has submitted to the director a surety bond in the minimum
2 sum of ten thousand dollars, executed by the applicant as principal and by
3 a surety company qualified and authorized to do business in this state as
4 surety. ~~Such~~ THE bond ~~shall~~ MUST be conditioned upon compliance with
5 ~~the provisions of this article and with the rules and regulations~~
6 promulgated under this article.

7 (e) ~~Holds a valid first aid or first aid instructor's card issued by the~~
8 ~~American red cross or evidence of equivalent training credentials as~~
9 ~~approved by the director; and~~

10 (5) (a) Renewals and reinstatement of ~~certificates shall be~~
11 ~~pursuant to~~ A REGISTRATION ARE MADE UNDER a schedule established by
12 the director, ~~of the division of professions and occupations within the~~
13 ~~department of regulatory agencies and shall~~ REGISTRATIONS MUST be
14 renewed or reinstated ~~pursuant to~~ IN ACCORDANCE WITH section
15 24-34-102 (8), C.R.S.

16 (b) The director ~~of the division of professions and occupations~~
17 ~~within the department of regulatory agencies~~ may establish renewal fees
18 and delinquency fees for reinstatement ~~pursuant to~~ IN ACCORDANCE WITH
19 section 24-34-105, C.R.S.

20 (c) If a person fails to renew ~~his or her certification pursuant to~~ A
21 REGISTRATION IN ACCORDANCE WITH the schedule established by the
22 director, ~~of the division of professions and occupations, such certificate~~
23 ~~shall expire~~ THE REGISTRATION EXPIRES.

24 (d) ~~Any~~ A person whose ~~certificate~~ REGISTRATION has expired
25 ~~shall be~~ AND WHO OFFERS OR PROVIDES OUTFITTER SERVICES IS subject to
26 the penalties provided in this article or section 24-34-102 (8), C.R.S.

27 **SECTION 8.** In Colorado Revised Statutes, 12-55.5-106, **amend**

1 (1) (a), (1) (c), (1) (g), (1) (j), (1) (k), (1) (l), (2), (3) (a), (3) (b), and (4)
2 introductory portion; and **add** (1) (m), (3.5), (4.5), and (6) as follows:

3 **12-55.5-106. Disciplinary actions - grounds for discipline.**

4 (1) The director may deny, suspend, revoke, or place on probation an
5 outfitter's registration ~~OR ISSUE A LETTER OF ADMONITION TO AN~~
6 ~~APPLICANT FOR OR HOLDER OF AN OUTFITTER'S REGISTRATION~~ if the
7 applicant or holder:

8 (a) Violates any order of the division or the director or any
9 provision of this article or the rules ~~and regulations~~ established under this
10 article;

11 (c) Violates any local, state, or federal law ~~related to~~ OR
12 REGULATION CONCERNING public land management, wildlife, health, or
13 cruelty to animals, including, but not limited to, section 33-6-113, C.R.S.;

14 ~~(g) Is addicted to or dependent upon~~ EXCESSIVELY OR
15 HABITUALLY USES alcohol, A HABIT FORMING DRUG, or any controlled
16 substance or is a habitual user of a controlled substance as defined in
17 section 18-18-102 (5), C.R.S., IF THE USE POSES A RISK TO CLIENTS,
18 PROSPECTIVE CLIENTS, OR A PERSON IN PROXIMITY TO ACTIVITIES
19 REGULATED UNDER THIS ARTICLE;

20 (j) Hires ~~any person~~ AN INDIVIDUAL as a guide who fails to meet
21 the requirements of section 12-55.5-103.5, unless such hiring is a result
22 of an emergency situation, as defined by rules promulgated by the
23 director, in which case the outfitter may hire a guide who does not
24 possess a valid first aid card or first aid instructor's card;

25 (k) Serves or consumes alcohol while engaged in the activities of
26 an outfitter, if the applicant or holder is under twenty-one years of age; ~~or~~

27 (l) Violates section 18-4-503 or 18-4-504, C.R.S., resulting in two

1 or more second or third degree criminal trespass convictions within any
2 three- to five-year period while acting as an outfitter or guide; OR

3 (m) FAILS TO RESPOND TO A COMPLAINT AGAINST THE REGISTERED
4 OUTFITTER.

5 (2) ~~Any~~ TO BE VALID, A proceeding to deny, suspend, revoke, or
6 place on probation a registration ~~shall~~ MUST be conducted ~~pursuant to~~ IN
7 ACCORDANCE WITH sections 24-4-104 and 24-4-105, C.R.S. The director
8 may use an administrative law judge employed by the office of
9 administrative courts in the department of personnel to conduct hearings.
10 ~~Any person whose registration is denied, suspended, placed on probation,~~
11 ~~or revoked shall pay for the costs incurred in bringing and conducting~~
12 ~~such proceeding.~~

13 (3) (a) When a complaint or investigation discloses an instance of
14 misconduct that, in the opinion of the director, does not warrant formal
15 action by the director but that should not be dismissed as being without
16 merit, THE DIRECTOR MAY ISSUE AND SEND a letter of admonition ~~may be~~
17 ~~issued and sent, by certified mail,~~ to the registrant.

18 (b) When a letter of admonition is sent by the director ~~by certified~~
19 ~~mail,~~ to a registrant, ~~such registrant shall be advised~~ THE LETTER MUST
20 ADVISE THE REGISTRANT that ~~he or she~~ THE REGISTRANT has the right to
21 request in writing, within twenty days after receipt of the letter, that
22 formal disciplinary proceedings be initiated to adjudicate the propriety of
23 the conduct upon which the letter of admonition is based.

24 (3.5) WHEN A COMPLAINT OR INVESTIGATION DISCLOSES AN
25 INSTANCE OF CONDUCT THAT DOES NOT WARRANT FORMAL ACTION BY THE
26 DIRECTOR AND, IN THE OPINION OF THE DIRECTOR, SHOULD BE DISMISSED,
27 BUT THE DIRECTOR HAS NOTICED POSSIBLE ERRANT CONDUCT BY THE

1 REGISTRANT THAT COULD LEAD TO SERIOUS CONSEQUENCES IF NOT
2 CORRECTED, THE DIRECTOR MAY SEND THE REGISTRANT A CONFIDENTIAL
3 LETTER OF CONCERN.

4 (4) Notwithstanding any other provision of this article, the
5 director may deny an initial ~~or renewal~~ application for registration if:

6 (4.5) THE DIRECTOR MAY DISCIPLINE AN APPLICANT OR
7 REGISTRANT UNDER THIS SECTION FOR THE ACTS OF A PERSON WHO:

8 (a) IS ACTING ON BEHALF OF THE APPLICANT OR REGISTRANT; AND

9 (b) (I) IS AN OFFICER, DIRECTOR, MEMBER, OR PARTNER OF, OR
10 OWNER OF AT LEAST A TEN-PERCENT INTEREST IN, THE APPLICANT OR
11 REGISTRANT;

12 (II) HAS MANAGING OR CONTROLLING AUTHORITY OF THE
13 APPLICANT OR REGISTRANT; OR

14 (III) IS AN EMPLOYEE, CONTRACTOR, OR AUTHORIZED BOOKING
15 AGENT OF THE APPLICANT OR REGISTRANT.

16 (6) IF A PERSON'S REGISTRATION IS REVOKED UNDER THIS SECTION
17 OR SURRENDERED IN LIEU OF DISCIPLINE, THE PERSON IS INELIGIBLE TO
18 SUBMIT A NEW APPLICATION FOR REGISTRATION OR REGISTER FOR TWO
19 YEARS AFTER THE DATE THE REGISTRATION IS REVOKED.

20 **SECTION 9.** In Colorado Revised Statutes, 12-55.5-107, **amend**
21 (3) as follows:

22 **12-55.5-107. Penalties - distribution of fines.** (3) ~~Any~~ A person
23 who engages in activities as an outfitter shall maintain all applicable
24 documents, records, and other items, for the current year and the
25 preceding four years at the address listed on the registration, required to
26 be maintained by this article or by the rules ~~or regulations~~ of the director
27 when requested to do so by ~~any~~ THE DIRECTOR OR a peace officer. ~~Any~~

1 ~~such person~~ A REGISTRANT who refuses to permit the inspection of ~~such~~
2 documents, records, or items is guilty of a misdemeanor and shall be
3 punished by a fine of one hundred dollars.

4 **SECTION 10.** In Colorado Revised Statutes, 12-55.5-109,
5 **amend** (3) as follows:

6 **12-55.5-109. Contracts for outfitting services - writing**
7 **required.** (3) Any written contract provided ~~pursuant to~~ IN ACCORDANCE
8 WITH this section ~~shall~~ MUST also contain a written statement that
9 pursuant to section 12-55.5-105 (1) (c) and (1) (d) outfitters are bonded
10 and required to possess the minimum level of liability insurance and that
11 the activities of outfitters are regulated by the director. ~~of the division of~~
12 ~~professions and occupations in the department of regulatory agencies.~~

13 **SECTION 11.** In Colorado Revised Statutes, 12-55.5-110,
14 **amend** (3) (b) as follows:

15 **12-55.5-110. Other remedies - contracts void - public nuisance**
16 **- seizure of equipment.** (3) (b) The court may order ~~any such~~ THE
17 property sold ~~by the director~~ in the manner provided for sales on
18 execution.

19 **SECTION 12.** In Colorado Revised Statutes, **amend** 12-55.5-112
20 as follows:

21 **12-55.5-112. Immunity.** The director, the director's staff, any
22 person acting as a witness or consultant to the director, any witness
23 testifying in a proceeding authorized under this article, and any person
24 who ~~lodges~~ FILES a complaint ~~pursuant to~~ UNDER this article ~~shall be~~ IS
25 immune from liability in ~~any~~ A civil action brought against him or her for
26 acts occurring while acting in his or her capacity as director, staff,
27 consultant, or witness, respectively, if ~~such individual~~ THE PERSON was

1 acting in good faith within the scope of his or her respective capacity,
2 made a reasonable effort to obtain the facts of the matter as to which he
3 or she acted, and acted in the reasonable belief that the action taken by
4 him or her was warranted by the facts. Any person participating in good
5 faith in ~~lodging~~ ~~FILING~~ a complaint or participating in any investigative
6 or administrative proceeding ~~pursuant to~~ UNDER this article ~~shall be~~ IS
7 immune from ~~any~~ civil or criminal liability ~~that may result~~ RESULTING
8 from ~~such~~ THE participation.

9 **SECTION 13.** In Colorado Revised Statutes, **amend** 12-55.5-117
10 as follows:

11 **12-55.5-117. Repeal of article - review of functions.** Unless
12 continued by the general assembly, this article is repealed, effective ~~July~~
13 ~~SEPTEMBER 1, 2014~~ 2025, and those powers, duties, and functions of the
14 division specified in this article are abolished. The provisions of section
15 24-34-104 (5) to (12), C.R.S., concerning a wind-up period, an analysis
16 and evaluation, public hearings, and claims by or against an agency ~~shall~~
17 apply to the powers, duties, and functions of the division specified in this
18 article.

19 **SECTION 14.** In Colorado Revised Statutes, **repeal** 12-55.5-118
20 as follows:

21 **12-55.5-118. Applicability.** ~~This article shall not require a person~~
22 ~~or entity to register as an outfitter if such person or entity only rents motor~~
23 ~~vehicles, livestock, or equipment.~~

24 **SECTION 15. Effective date.** This act takes effect July 1, 2014.

25 **SECTION 16. Safety clause.** The general assembly hereby finds,
26 determines, and declares that this act is necessary for the immediate
27 preservation of the public peace, health, and safety.