

LEGISLATURE OF NEBRASKA

ONE HUNDRED SECOND LEGISLATURE

FIRST SESSION

**LEGISLATIVE BILL 442**

Introduced by Avery, 28.

Read first time January 14, 2011

Committee: Natural Resources

A BILL

- 1 FOR AN ACT relating to outdoor outfitters; to adopt the Outdoor
- 2 Outfitters and Guides Licensure Act.
- 3 Be it enacted by the people of the State of Nebraska,

1                   Section 1. This act shall be known and may be cited as  
2 the Outdoor Outfitters and Guides Licensure Act.

3                   Sec. 2. (1) The Legislature finds that: (a) Nebraska has  
4 a tremendous amount of pristine land; (b) that the vast expanses of  
5 prairie, sandhills, and waterways provide unique habitat for numerous  
6 species of birds, fish, and wildlife; and (c) and that the economic  
7 development provided through the outdoor outfitters and guides  
8 industry is of vital importance to the State of Nebraska and  
9 contributes substantially to the economy of the state.

10                  (2) It is the intent of the Legislature to promote and  
11 encourage utilization of the vast natural resources of this state  
12 through travel and tourism activities enhanced by the outdoor  
13 outfitters and guides industry.

14                  Sec. 3. (1) The purposes of the Outdoor Outfitters and  
15 Guides Licensure Act are to (a) regulate and license persons who  
16 undertake for compensation the business of providing equipment,  
17 facilities, or services to individuals for the purpose of taking or  
18 attempting to take fish, birds, or wildlife or navigation of waters  
19 of the state and (b) safeguard the health, safety, welfare, and  
20 freedom from danger of residents and nonresidents of Nebraska.

21                  (2) The Outdoor Outfitters and Guides Licensure Act shall  
22 not be interpreted to (a) interfere with any privately owned  
23 livestock business operations, (b) prevent the general public from  
24 enjoying recreational activities on public and private lands when a  
25 licensed outfitter or guide is not utilized, (c) interfere with any

1     fishing or hunting seasons, permits, stamps, certifications, daily  
2     bag limits, or possession limits or fish and wildlife population  
3     control strategies established by the Game and Parks Commission, (d)  
4     interfere with administration of the state park system, or (e)  
5     interfere with the right of the United States to manage federal lands  
6     and waters under its control.

7                 Sec. 4. For purposes of the Outdoor Outfitters and Guides  
8     Licensure Act, the definitions found in sections 5 to 18 of this act  
9     apply.

10                Sec. 5. Advertise means attempting by any means to induce  
11     individuals to enter into an agreement with a licensed outfitter or  
12     guide for purposes of taking or attempting to take fish, birds, or  
13     wildlife on any public or private lands or navigation of waters on  
14     any public or private lake, reservoir, river, or stream.

15                Sec. 6. Big game means (1) antelope, bighorn sheep, deer,  
16     or elk in Nebraska and (2) other trophy or exotic game recognized as  
17     such by another state or country.

18                Sec. 7. Big game fish means any fish generally recognized  
19     as a trophy fish taken by offshore game fishing or sport fishing.

20                Sec. 8. Booking agent means a person or entity who or  
21     which makes travel arrangements only and is not associated with or  
22     employed by an outdoor outfitter or guide.

23                Sec. 9. Client means an individual who uses the services,  
24     facilities, or equipment of a licensed outdoor outfitter or guide.

25                Sec. 10. Commission means the Game and Parks Commission.

1               Sec. 11. Guide means a person employed by an outdoor  
2       outfitter or who advertises or holds himself or herself out to the  
3       public for purposes of providing personal services consisting of  
4       accompanying, supervising, instructing, or training clients in  
5       outdoor recreational activities directly related to the advertised  
6       activities for which the outdoor outfitter is licensed. Guide does  
7       not include:

8               (1) A bona fide camp the purpose of which is to provide  
9       outdoor experiences for persons under nineteen years of age and its  
10      employees;

11               (2) A nonprofit organization that is exempt from the  
12      payment of federal income taxes under the provisions of section  
13      501(c)(3) of the Internal Revenue Code;

14               (3) An individual who provides services, equipment, or  
15      facilities for recreational activity to a direct family member;

16               (4) An individual or organization engaged in scheduled  
17      dog trials as defined in section 37-412;

18               (5) An individual or organization engaged in fur  
19      harvesting as defined in section 37-225; and

20               (6) An individual or organization engaged in falconry  
21      pursuant to a license issued under sections 37-497 to 37-4,103.

22               Sec. 12. Hunting club means a formal private association  
23      of hunters who hold membership through the payment of fees to the  
24      club.

25               Sec. 13. License number means a unique number or code on

1    a license issued under the Outdoor Outfitters and Guides Licensure  
2    Act.

3                Sec. 14. License year means the period of time starting  
4    on the date a license is issued under the Outdoor Outfitters and  
5    Guides Licensure Act and ending on the anniversary date of issuance  
6    in the following year.

7                Sec. 15. Navigation of waters means the use of any vessel  
8    as defined in section 37-1203 which is rented or leased for  
9    recreational purposes.

10               Sec. 16. Outdoor outfitter means a person, firm,  
11    partnership, hunting club, or corporation who or which advertises or  
12    holds himself, herself, or itself out to the public for purposes of  
13    providing facilities or services or maintaining, leasing, or  
14    otherwise using equipment or accommodations privately owned by the  
15    outdoor outfitter, for compensation, for taking or attempting to take  
16    fish, birds, or wildlife on any public or private lands or navigation  
17    of waters on any public or private lake, reservoir, river, or stream.  
18    Outdoor outfitter does not include:

19               (1) A bona fide camp the purpose of which is to provide  
20    outdoor experiences for persons under nineteen years of age and its  
21    employees;

22               (2) A nonprofit organization that is exempt from the  
23    payment of federal income taxes under the provisions of section  
24    501(c)(3) of the Internal Revenue Code;

25               (3) An individual who provides services, equipment, or

1     facilities for recreational activity to a direct family member;  
2                 (4) An individual or organization engaged in scheduled  
3     dog trials as defined in section 37-412;  
4                 (5) An individual or organization engaged in fur  
5     harvesting as defined in section 37-225; and  
6                 (6) An individual or organization engaged in falconry  
7     pursuant to a license issued under sections 37-497 to 37-4,103.

8                 Sec. 17. Take has the definition found in section 37-242.

9                 Sec. 18. Third-party accommodations means a hotel, a  
10     motel, a rooming house, a boarding house, or an apartment house, as  
11     such terms are defined in sections 41-202 to 41-206, respectively,  
12     which is not associated with an outdoor outfitter or guide.

13                 Sec. 19. An outdoor outfitter licensed under the Outdoor  
14     Outfitters and Guides Licensure Act and offering professional  
15     services in this state shall:

16                 (1) Provide services, facilities, and equipment as  
17     advertised or contractually agreed upon between the outdoor outfitter  
18     and a client;

19                 (2) Provide services, facilities, and equipment which  
20     conform to state safety and other codes as required by law;

21                 (3) Cooperate fully with private landowners and public  
22     land management agencies and respect their rights and privileges; and

23                 (4) Advise clients of any applicable state game, fish,  
24     wildlife, and conservation laws, rules, and regulations and  
25     applicable federal and international laws, rules, regulations, and

1       standards.

2                  Sec. 20. A guide licensed under the Outdoor Outfitters  
3       and Guides Licensure Act shall:

4                      (1) Conform to the standard of care expected of members  
5       of his or her profession;

6                      (2) Advise clients of any applicable state game, fish,  
7       wildlife, and conservation laws, rules, and regulations and  
8       applicable federal and international laws, rules, regulations, and  
9       standards;

10                     (3) Cooperate fully with private landowners and public  
11       land management agencies and respect their rights and privileges; and

12                     (4) Possess proof of valid hunting or fishing permits  
13       issued under the Game Law or a valid open water rescue certification  
14       issued by the American Red Cross or the equivalent, as applicable.

15                  Sec. 21. A client shall act as a reasonably prudent  
16       person when engaging in recreational activities provided by a  
17       licensed outdoor outfitter or licensed guide. A client shall not:

18                     (1) Interfere with a licensee's activities when such  
19       activities conform to the Outdoor Outfitters and Guides Licensure  
20       Act;

21                     (2) Willfully or negligently engage in harmful conduct,  
22       including the intentional misuse of a licensee's equipment; or

23                     (3) Initiate an activity not agreed upon in the contract  
24       between the client and the licensee except with the express  
25       permission of the licensee.

1                   Sec. 22. The commission shall:

2                   (1) Develop application requirements and review  
3                   procedures pursuant to the Outdoor Outfitters and Guides Licensure  
4                   Act;

5                   (2) Accept applications and conduct licensure  
6                   examinations pursuant to rules and regulations;

7                   (3) Conduct hearings, meetings, or teleconferences to  
8                   review applications filed under the act;

9                   (4) Issue or deny licenses to outdoor outfitters and  
10                  guides;

11                  (5) Provide license numbers to licensees;

12                  (6) Cooperate with federal and other state agencies in  
13                  matters of mutual concern regarding outdoor outfitters and guides;  
14                  and

15                  (7) Authorize conservation officers or other commission  
16                  staff to investigate or otherwise enforce the Outdoor Outfitters and  
17                  Guides Licensure Act.

18                  Sec. 23. (1) An applicant for an outdoor outfitters  
19                  license shall apply on a form prescribed by the commission. The  
20                  application shall include, but need not be limited to:

21                  (a) The name and address of the applicant or the  
22                  corporate business or trade name authorized under the Nebraska  
23                  Business Corporation Act of the applicant and the name and address of  
24                  each corporate officer;

25                  (b) A description of the physical boundaries of the land

1     on or the location of the water on or in which recreational  
2     activities will be conducted by the applicant;

3                 (c) The applicant's safety records when available and an  
4     emergency management plan which includes vehicle accessibility to the  
5     area and the location of the nearest emergency or trauma center; and

6                 (d) Proof of liability insurance coverage of not less  
7     than fifty thousand dollars per one person in a single accident,  
8     unless the applicant will offer big game services, in which case he  
9     or she shall provide proof of liability insurance coverage of not  
10    less than seventy-five thousand dollars per one person in a single  
11    accident.

12                 (2) The application shall be signed by the applicant  
13     under oath or affirmation and shall be duly notarized and accompanied  
14     by the applicable license fee established in section 29 or 30 of this  
15    act.

16                 (3) The commission may make additional inquiries and  
17     investigations with respect to an applicant as it deems necessary and  
18     advisable for purposes of making a determination to issue or deny a  
19    license pursuant to the application.

20                 Sec. 24. (1) An applicant for a license as a guide shall  
21     apply on a form prescribed by the commission. The application shall  
22    include, but need not be limited to:

23                 (a) The name and address of the applicant;  
24                 (b) A description of the physical boundaries of the land  
25    on or the location of the water on or in which recreational

1       activities will be conducted by the applicant;

2               (c) The applicant's safety records when available and an  
3       emergency management plan which includes vehicle accessibility to the  
4       area and the location of the nearest emergency or trauma center;

5               (d) A valid first-aid card issued and signed by a  
6       representative of the American Red Cross, signifying successful  
7       completion of a first-aid class or its equivalent as approved by the  
8       commission;

9               (e) Proof of valid hunting or fishing permits issued  
10       under the Game Law or a valid open water rescue certification issued  
11       by the American Red Cross or the equivalent, as applicable;

12               (f) Proof of liability insurance coverage of not less  
13       than fifty thousand dollars per one person in a single accident,  
14       unless the applicant will offer big game services, in which case he  
15       or she shall provide proof of liability insurance coverage of not  
16       less than seventy-five thousand dollars per one person in a single  
17       accident; and

18               (g) Any other information deemed necessary by the  
19       commission.

20               (2) The application shall be signed by the applicant  
21       under oath or affirmation and shall be duly notarized and accompanied  
22       by the applicable license fee established under section 29 or 30 of  
23       this act.

24               (3) The commission may make additional inquiries and  
25       investigations with respect to an applicant as it deems necessary and

1       advisable for purposes of making a determination to issue or deny a  
2       license pursuant to the application.

3           Sec. 25. If the commission finds that substantial  
4       material information was misrepresented in an application, the  
5       commission may immediately revoke the license of the licensee for no  
6       fewer than three years.

7           Sec. 26. Licenses issued under the Outdoor Outfitters and  
8       Guides Licensure Act shall be valid for one license year following  
9       issuance and may be renewed. Application for renewal shall be made on  
10      a form prescribed by the commission and shall be accompanied by the  
11      renewal fee required under the act. Failure to timely renew a license  
12      shall result in the penalties described in sections 29 and 30 of this  
13      act.

14           Sec. 27. (1) The commission shall notify an applicant in  
15      writing by certified mail of denial of an application under the  
16      Outdoor Outfitters and Guides Licensure Act and the reasons for the  
17      denial within twenty-one days after submission of the application.  
18      Fees submitted with the application are nonrefundable.

19           (2) An applicant whose application is denied may petition  
20      the commission to review the denial within twenty-one days after  
21      receipt of the denial. A decision by the commission after such review  
22      shall be final.

23           Sec. 28. The following actions are grounds for immediate  
24      revocation of an outdoor outfitter's license issued under the Outdoor  
25      Outfitters and Guides Licensure Act, and the person whose license is

1       revoked shall not be eligible to reapply for licensure for three  
2       years from the date of revocation:

3           (1) Selling, assigning, or otherwise transferring a  
4       license, except as prescribed by the commission;

5           (2) Supplying fraudulent, untruthful, or misleading  
6       information to the commission or to clients;

7           (3) Conviction of a felony;

8           (4) Engaging in false advertising;

9           (5) Expiration or termination of the required minimum  
10      liability insurance coverage;

11          (6) Willful violation of any state fish, bird, wildlife,  
12       or conservation laws, rules, and regulations or federal laws, rules,  
13       regulations, or standards enforced by the federal Bureau of Land  
14      Management or the United States Fish and Wildlife Service;

15          (7) Material breach of a contract with a client;

16          (8) Employment of an unlicensed guide;

17          (9) Willfully operating in an area or engaging in any  
18      activity not described in the license application;

19          (10) Inhumane treatment of any animal used in the course  
20       of an outdoor event, including failure to provide shelter, water, or  
21       food; and

22          (11) Unauthorized hunting, trapping, or fishing of  
23       protected species, as identified by state or federal law.

24          A licensee whose license is revoked may petition the  
25      commission to review the revocation within twenty-one days after the

1    date of revocation. A decision by the commission after such review  
2    shall be final.

3 Sec. 29. (1) License fees for an outdoor outfitter whose  
4 recreational activities involve fishing, taking of game other than  
5 big game, or navigation of waters:

6 For a license year ending in 2012: \$550.00;

For a license year ending in 2013: \$650.00;

8 For a license year ending in 2014: \$800.00; and

9 For a license year ending in 2015 and each

10 license year thereafter: \$1,000.00.

14 For a license year ending in 2012: \$450.00;

15 For a license year ending in 2013: \$600.00;

16 For a license year ending in 2014: \$750.00; and

17 For a license year ending in 2015 and each

18 license year thereafter: \$800.00.

19                         (3) Failure to timely renew an outdoor outfitter's  
20 license whose recreational activities involve fishing, taking of game  
21 other than big game, and navigation of waters shall result in a  
22 penalty of fifty dollars per day.

1 big game, and navigation of waters shall result in a penalty of  
2 twenty-five dollars per day.

3 Sec. 30. License fees for an outdoor outfitter or a guide  
4 whose recreational activities involve taking of big game or big game  
5 fishing shall be:

6 For a license year ending in 2012: \$800.00;

7 For a license year ending in 2013: \$950.00;

8 For a license year ending in 2014: \$1,200.00; and

9 For a license year ending in 2015 and each

10 license year thereafter:

Failure to timely renew an outdoor outfitter's or a  
guide's license whose recreational activities involve the taking of  
big game and big game fishing shall result in a penalty of one  
hundred dollars per day.

15 Sec. 31. The Outdoor Outfitters and Guides Cash Fund is  
16 created. All license fees collected under the Outdoor Outfitters and  
17 Guides Licensure Act shall be remitted to the State Treasurer for  
18 credit to the fund. Money in the fund shall be used by the commission  
19 to carry out the Outdoor Outfitters and Guides Licensure Act.

20                   Penalties collected under the act shall be remitted to  
21                   the State Treasurer for distribution in accordance with Article VII,  
22                   section 5, of the Constitution of Nebraska.

23 Sec. 32. Any Nebraska-based outdoor outfitter or guide  
24 incorporated under the Business Corporation Act and doing business in

1       another state or country shall be licensed under the Outdoor  
2       Outfitters and Guides Licensure Act.

3               Any nonresident individual or foreign firm, partnership,  
4       hunting club, or corporation who or which advertises or holds  
5       himself, herself, or itself out to the public for purposes of  
6       providing in Nebraska facilities or services or maintaining, leasing,  
7       or otherwise using equipment or accommodations, for compensation, for  
8       taking or attempting to take wildlife, birds, or fish on any public  
9       or private lands in Nebraska or navigation of waters on or in any  
10      public or private lake, reservoir, river, or stream in Nebraska or  
11      who is employed by an outdoor outfitter and furnishes in Nebraska  
12      personal services consisting of accompanying, supervising,  
13      instructing, or training clients in outdoor recreational activities  
14      directly related to the advertised activities for such nonresident  
15      individual or foreign firm, partnership, hunting club, or corporation  
16      shall be licensed under the act or shall show proof of licensure by  
17      or incorporation in its home state or country.

18               Sec. 33. A licensed outdoor outfitter may use or allow  
19      clients to use a booking agent for travel arrangements or third-party  
20      accommodations. A licensed outdoor outfitter is not liable for  
21      breaches of a contract between a booking agent or a third-party  
22      accommodations agent and a client.

23               Sec. 34. (1) A licensed outdoor outfitter or guide shall  
24      provide a waiver form to each client, describing any potential  
25      environmental hazards, weather, or terrain conditions and any

1       applicable state, federal, or international laws, rules, regulations,  
2       and standards that apply to an outdoor event for which the client is  
3       engaging the licensee. The client or the client's guardian shall sign  
4       the waiver, acknowledging receipt of information. Any misleading or  
5       falsification of information in the waiver by the licensee is a Class  
6       IV misdemeanor and shall result in immediate revocation of the  
7       license for no fewer than three years.

8               (2) The client or the client's guardian, upon signing  
9       such waiver, assumes all reasonable risks and dangers posed during  
10      the customary use of facilities, equipment, or services used. The  
11      licensee shall not be liable for reasonable or unforeseeable risk  
12      associated with weather, conditions, and terrain.

13               Sec. 35. Any person convicted of violating section 28 of  
14       this act is guilty of a Class IV misdemeanor and in addition shall  
15       have his, her, or its license revoked as provided in such section.

16               Sec. 36. The commission may adopt and promulgate rules  
17       and regulations to carry out the Outdoor Outfitters and Guides  
18       Licensure Act.