

The Economic Affairs Committee asks that Board Representatives answer the following questions during the Board Review under House Bill No. 525:

- 1. What is the public health, safety or welfare rationale for licensing and regulating your profession/occupation?**

Some activities conducted by outfitters, guides, and professional guides within the scope of their authorized services can be inherently hazardous to participants. It is the policy, intent, and purpose of the board to provide quality regulatory functions and services to the profession it regulates and to the public in order to promote, maintain, and preserve the health, safety, and welfare of the public.

The outfitting industry provides a service that represents a definition and impression of the state of Montana itself and, to a large degree, serves as the interface between hunters and anglers and Montana's landowners. Outfitters accompany Montana's residents as well as Montana's out-of-state visitors in the pursuit of Montana's fish and wildlife, and outfitters have a significant amount of interactions with Montana's landowners and the agencies that regulate Montana's public lands.

2. If your profession/occupation were not licensed, what public protection would be lost?

The licensure process is designed to ensure outfitters first gain sufficient knowledge and experience so that they have the ability to perform outfitting services with high regard to the safety, health, and welfare of participants. The experience and knowledge requirements include a minimum number years of experience in the geographical area of the outfitter's proposed operation, including the ability to cope with weather conditions and terrain. Licensees must demonstrate a respect for and compliance with federal and state laws related to fish and game, conservation of natural resources, and preservation of the natural ecosystem. The board currently performs inspections to determine whether an outfitter's equipment is serviceable and safe for the services advertised identified in the outfitter's operations plan. Outfitters must report to the Board the functions and operations of the outfitter's business. These operations plans are evaluated to determine whether the business will be performed by the outfitter in a manner that will protect the health, safety, and welfare of the public, and in accordance with laws and rules of state and federal agencies. If outfitting was not regulated via licensure, then there would be no safeguard against the inexperienced, but ambitious people who would see an opportunity to make a profit without a

proper degree of accountability. Without licensing those who participate in this industry, Montana would be inviting the blind to lead the blind out into Montana's beautiful but unpredictable and potentially dangerous terrain and weather.

3. If a license is necessary (for health, safety, or welfare), does the profession/occupation need a board for oversight? If yes, please explain why and describe the purpose of creating a board.

Yes. A board is necessary to provide an entity with expertise [in their field] to evaluate initial licensure applicants (by determining the appropriate standards, qualifications, experience, examination, etc.) and continued monitoring of existing licensees through the complaint process. The Board of Outfitters is comprised of licensees from two areas of outfitting functions (hunting and fishing), and the public member and sportspersons represent the perspective of the consumer. The mix of experience and perspectives on the board is the most appropriate method to deal with oversight issues for this industry. It is necessary for potential clients to have the ability to check the status of an outfitter with whom the clients are booking, as well as to have a regulatory body that will address any complaints the clients or other public members may have regarding the conduct of the outfitter.

4. Does your board deal with unlicensed practice issues? If yes, what types of issues?

Yes. Although the board is not solely responsible for prohibiting unlicensed outfitting in Montana, the board may file an action to enjoin a person from practicing without a license. A person violating an injunction may be held in contempt of court, but there are currently no other laws that empower the board to take any other action or levy any other sanction against an unlicensed outfitter.

The board has administered discipline against a few licensees who were involved with operations that used people without the proper guide licenses, and it frequently deals with noncompliant advertisements that usually result in the issuance of an instructional letter. Unlicensed outfitting, as a crime, is enforced by the Department of Fish, Wildlife and Parks in accordance with Section 87-6-702, MCA.

5. People who are not licensed but are qualified in an occupation or profession may feel that a licensing board is preventing them from earning a living -- what is your response?

If someone is qualified in this profession or occupation, then that person is not prevented from acquiring a license and earning a living. Should outfitting not be subject to licensure laws, the minimum standards would no longer be required, and the quality of service and public protection may suffer.

Licensure laws are in place to establish ethical standards to an industry that respects the profession and the policies of the State in order to protect the health, safety, and welfare of the participants and the general public, too.

Licensing and qualifications have maintained outfitting as a respected profession so that those who participate are able to make a living while those who seek such services may have confidence that the person providing the services is qualified and accountable.

6. How does your board monitor bias among board members toward a particular licensee, an applicant, or a respondent (to unlicensed practice)?

Each board member is duty-bound to announce an association with a particular applicant or licensee, etc., that they believe could amount to a bias (in favor of or against an individual) that could prevent that member from fairly passing on a particular matter. Whether in a licensing proceeding or in a disciplinary proceeding, a member that is biased takes no part in the discussion or vote on the matter.

All Board Members attend a New Board Member Training session administered by the Department. Members are instructed as a quasi-judicial board to disclose the interest

creating any conflict to their Board Counsel prior to participating in any official action.

7. How does your board monitor bias toward a particular profession/occupation, if more than one profession or occupation is licensed by the board?

The board licenses (1) hunting outfitters, (2) fishing outfitters, (3) guides, and (4) professional guides. Guides and professional guides are able to serve clients on behalf of hunting outfitters and fishing outfitters.

As to the differences between hunting outfitters and fishing outfitters, and the guides and professional guides who assist them, the board is balanced in its composition of members, having one representative each who is a hunting or fishing outfitter, two members who are licensed as both (hunting and fishing), one member of the public, and two sportspersons.

As among the license types of outfitter, guide, and professional guide (with no respect to whether the service being provided is hunting or fishing), there have been no concerns raised to the board, that the board is aware of, that would cause concern that there may be any bias toward outfitters, guides, or professional guides. Each board member is honor-bound to announce an association that they believe could amount to a bias (in favor of or against an individual)

that could prevent that member from fairly passing judgment on a particular matter. Whether in a licensing proceeding or in a disciplinary proceeding, if a member feels biased he or she takes no part in the discussion or vote on the matter. The board faces such bias issues infrequently. The board cannot recall internal conflicts or biases between licensed Outfitters, professional guides or guides. To our knowledge such conflicts have not occurred.

8. Does the profession or occupation have one or more associations that could provide oversight without the need for a licensing board? Why not use the association as the oversight body?

There are professional associations consisting of members/licensees who elect to join the associations. The mission of associations is to promote the industry, recommend licensing qualifications, monitor statutes and rules to balance qualification standards with industry viability; the Board's mission is to license, investigate alleged violations of the laws/rules of the practice and impose fair sanctions on licensees that are not in compliance in order to regulate the occupation as well as protect the public. These are two separate functions that are not well-suited to be performed by the same entity, especially in an industry that deals so intimately with landowner rights and the issues relevant to public access and public wildlife

9. Is a licensing board needed in order for the practitioner to bill to receive insurance (for example, health insurance)? If so, is there an alternate method for billing that may be recognized rather than having a license or being regulated by a licensing board?

This does not affect the licensees administered by Board of Outfitters.

10. What are the benefits of a board being part of the licensing and discipline process instead of the department handling one or both?

The board is better adapted to deal with experiences in their field. The board composition offers the expertise and insight of the occupation being regulated and the sportspersons and public who all have a stake in how this industry is regulated. That expertise and insight allows the board to better evaluate and judge an applicant's qualifications and the need for discipline in the case of a licensee's misconduct. Each appointed member of the board brings a particular viewpoint for ideas and approaches that can be applied to the relevant issues. A board of peers provides confidence for the profession by entrusting participation in self-governance in colleagues and fellow members of the public, rather than placing the authority to regulate in an uninvolved agency.

limited. One particularly relevant sanction the board may order is the refund of costs and fees billed to and collected from a consumer.

13. If boards have overlapping scopes of practice, should there be a third-party to determine whether there is intrusion into the other's practices? If so, who should be the judge? If not, why not? Should each be allowed to operate on the other's turf without repercussions?

The licensed practices regulated by this board do not overlap with any other profession or occupation.

14. Should any board have the ability to limit use of certain terminology to only a licensee? (see for example under the Board of Psychologists,, the exemption from definitions: 37-17-104. Exemptions. (1) Except as provided in subsection (2), this chapter does not prevent:

(a) qualified members of other professions, such as physicians, social workers, lawyers, pastoral counselors, professional counselors licensed under Title 37, chapter 23, or educators, from doing work of a psychological nature consistent with their training if they do not hold themselves out to the public by a title or description incorporating the words "psychology", "psychologist", "psychological", or "psychologic"....

(2) Those qualified members of other professions described in subsection (1)(a) may indicate and hold themselves out as performing psychological testing, evaluation, and assessment, as described in 37-17-102(4)(b), provided that they are qualified to administer the test and make the evaluation or assessment.

Yes. The terms fishing or hunting "outfitter", "guide", and "professional guide" are terms that indicate to the public that the person is licensed, tested, qualified and competent to perform the services of their profession necessary for safeguarding the public health, safety, and welfare. Allowing others to use these terms would invite and facilitate confusion among the public without serving any meaningful purpose.