Chapter 704

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Outfitters and Guides

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GENERAL PROVISIONS

704.010 Definitions. As used in this chapter:

(1) “Board” means the State Marine Board.

(2) “Employee” means an individual who, in exchange for compensation or other pecuniary gain, provides outfitting and guiding services exclusively under the direction, supervision and control of an outfitter and guide or an

ocean guide.

(3) “Ocean guide” means any individual who carries passengers for hire for outdoor recreational activities only on the waters of the Pacific Ocean over which the State of Oregon has jurisdiction and who possesses therefor a valid United States Coast Guard vessel operator license.

(4) “Outdoor recreational activities” include, but are not limited to, boating, angling, hunting, jeep touring, backpacking, alpine mountain climbing, camping, trips utilizing pack animals, dog sled trips, whitewater float trips, rafting trips, drift boat trips, kayak trips, inflatable canoe trips and canoe trips. The duration of any outdoor recreational activities may be for a few hours or for several days or weeks.

(5)(a) “Outfitter and guide” means any person:

(A) Who provides, or who offers to provide, for compensation or other pecuniary gain:

(i) Outfitting and guiding services in Oregon; or

(ii) Outfitting and guiding services and either equipment, supplies, livestock or materials for use in Oregon; or

(B) Who holds one or more federal permits for commercial outfitting and guiding services for use in any forest or wilderness or on any river in Oregon.

(b) “Outfitter and guide” does not include:

(A) An ocean guide or an employee of an outfitter and guide or ocean guide; or

(B) An individual who, for compensation or other pecuniary gain, provides outfitting and guiding services for the conduct of outdoor recreational activities exclusively upon property owned or controlled by the individual.

(6) “Outfitting and guiding services” include, but are not limited to, leading, protecting, instructing, training, cooking, packing, guiding, transporting, supervising, interpreting or otherwise assisting any person in the conduct of outdoor recreational activities. The rental of equipment alone does not constitute outfitting and guiding services.

(7) Outfitting and guiding services are not offered or provided for compensation or pecuniary gain if:

(a) No individual receives any dues, fee, salary, commission, bonus, tip, compensation, equipment, materials, livestock, supplies, rental payment, amortization payment, depreciation payment or other financial gain; and

(b) No money or other remuneration is in any manner paid or collected except as a sharing by trip participants of the costs or expenses for the trip. [1983 c.655 s.1; 1995 c.736 s.7]

704.020 Registration required; liability insurance; bond or financial security; fees; decal. (1) Any person who acts, or who offers to act, as an outfitter and guide must first register with the State Marine Board. Each registration shall be submitted annually on a form provided by the board and shall include the following information:

(a) The name, residence address, and residence telephone number of the person providing outfitting and guiding services, and all business names, addresses and telephone numbers under which outfitting and guiding services are provided.

(b) If the outfitting and guiding services are to be performed in the business name of an individual, proof of possession of a current certificate issued to the individual:

(A) By the American Red Cross upon completion of its multimedia course; or

(B) Upon completion of any equivalent medical or American Red Cross training course approved by the board.

(c) If the outfitting and guiding services are to be performed in the business name of a person other than an individual, the outfitter and guide must provide the names of all employees, agents and parties in interest who physically provide, or who directly assist in physically providing, outfitting and guiding services in Oregon, together with the affidavit of the outfitter and guide that each such employee, agent or party in interest possesses:

(A) A current certificate issued to the employee, agent or party in interest:

(i) By the American Red Cross upon completion of its multimedia course; or

(ii) Upon completion of any equivalent medical or American Red Cross training course approved by the board.

(B) A valid United States Coast Guard vessel operator license if operating a motorboat on navigable waters of the United States.

(d) A description of:

(A) The outfitting and guiding services, and any equipment, supplies, livestock and materials provided by the outfitter and guide;

(B) The geographic area in which the outfitter and guide provides the outfitting and guiding services, and any equipment, supplies, livestock and materials; and

(C) The experience of the outfitter and guide in providing the outfitting and guiding services, and equipment, supplies, livestock and materials.

(e) Proof that the outfitter and guide has liability insurance covering occurrences by the outfitter and guide, and the

employees of the outfitter and guide, which result in bodily injury or property damage. Such insurance shall be not less than $300,000 combined single limit per occurrence general liability coverage.

(f) Certification by the outfitter and guide that the outfitter and guide will maintain the insurance required by paragraph (e) of this subsection continuously in full force and effect for a period of not less than one year from the date the certificate of registration described in this section is issued by the board.

(g) The affidavit of the outfitter and guide stating that for a period of not less than 24 months immediately prior to making the registration application the outfitter and guide and each person who provides or assists in directly providing outfitting and guiding services:

(A) Have not been convicted of:

(i) Any criminal offense or violation under this chapter or ORS chapter 477, 496, 497, 498, 501, 506, 508, 509 or 511 or any rule adopted pursuant thereto; or

(ii) Any violation of the wildlife laws which occurred while acting as an outfitter and guide and which resulted in court ordered revocation of the hunting or fishing license of the outfitter and guide;

(B) Have not had an outfitting and guiding license, permit or certificate revoked, suspended or canceled by another state or by an agency of the government of the United States;

(C) Have not been denied the right to apply for an outfitting and guiding license, permit or certificate by another state or by an agency of the government of the United States; and

(D) Have not been convicted of guiding without registration as required by this subsection.

(2)(a) In addition to the requirements of subsection (1) of this section, a person who acts or offers to act as an outfitter and guide using boats to carry passengers on the waters of this state:

(A) Shall submit proof that the outfitter and guide possesses a valid United States Coast Guard vessel operator license if operating a motorboat on navigable waters of the United States;

(B) Shall submit proof of liability insurance; and

(C) Shall affix to each boat used in providing outfitter and guide services an identifying decal issued by the board or other governmental agency, subject to rules of the board, showing the year, the passenger carrying capacity and such other information as the board may prescribe.

(b) The registration and boat decals for each outfitter and guide who uses a boat to carry passengers on the waters of this state expire on December 31 of each calendar year.

(c) The requirements of this subsection apply only to boats under direct operation by an outfitter and guide or an employee of an outfitter and guide.

(3)(a) A person who registers as an outfitter and guide and who accepts deposits from clients in excess of $100 per person shall submit a bond or other financial security in the amount of $5,000 to the board at the time of registration. The bond or other financial security shall be held by the board for the benefit of clients of the outfitter and guide who pay a money deposit to the outfitter and guide in anticipation of services to be received. The bond or other financial security amount shall be released to such client or clients conditioned upon a failure of the outfitter and guide to return the deposit following cancellation of services or other failure to provide agreed upon services.

(b) The board shall release or retain all or any portion of a bond or other financial security as described in paragraph (a) of this subsection according to the provisions of ORS 183.310 to 183.550.

(4) Each annual registration shall be accompanied by a fee as follows:

(a) For resident persons, $50.

(b) For nonresident persons who reside in a state that requires residents of the State of Oregon to pay a license fee, registration fee or other fee or charge in excess of $50 to act as an outfitter and guide in that state, the same fee or other charge as is charged the residents of the State of Oregon to act as an outfitter and guide in the state where the nonresident applicant resides. If the state in which such a nonresident applicant resides makes distinctions in fees or charges based on the type of outfitter and guide service performed and requires residents of the State of Oregon to pay fees or charges accordingly, the board shall make and apply those same distinctions and require the nonresident applicants to pay the corresponding fees or charges.

(c) For nonresident persons other than those referred to in paragraph (b) of this subsection, $50.

(5) Upon the submission to the board of the appropriate fees prescribed in this section and the registration information required by this section, the board shall issue to the applicant an Oregon Outfitter and Guide certificate of registration. The board shall also issue to each registrant proof of compliance with the requirements of this section, which the registrant must have in possession and submit for examination by any person authorized to enforce this chapter while the registrant is engaged in providing outfitting and guiding services.

(6) Sightseeing flights and other aircraft operations are exempt from the provisions of this section unless the

activities are outdoor recreational activities as defined in ORS 704.010.

(7) The board shall issue an identifying decal that may be displayed on vehicles, pack equipment or other suitable locations where customers can see the registration decal to outfitters and guides that do not use boats in their activities regulated under this chapter. [1983 c.655 s.2; 1985 c.452 s.1; 1987 c.400 s.1; 1993 c.123 s.1; 1993 c.256 s.1; 1995 c.736 s.1; 1995 c.759 s.2; 1997 c.274 s.44]

704.025 Reciprocity for certain licensees of other states. (1) The fees required under ORS 704.020 do not apply to outfitters and guides who provide outfitting and guiding services on the Columbia River and who possess a valid license from the State of Washington as required under this section. Reciprocity is provided for outfitting and guiding services on the Columbia River. The right of outfitters and guides to conduct outfitting and guiding services on the waters of the Columbia River where that river forms the boundary line between the State of Oregon and the State of Washington by the holder of a valid Oregon outfitter and guide registration or a valid Washington guide license in accordance with the outfitting and guiding laws of each respective state is hereby recognized and made lawful.

(2) The purpose of subsection (1) of this section is to avoid the conflict, confusion and difficulty of an attempt to find the exact locations of the state boundary in or on the waters of the Columbia River while providing outfitting and guiding services. Reciprocity under subsection (1) of this section is contingent upon passage of comparable legislation by the legislature of the State of Washington addressing the establishment of minimum guide registration or licensing requirements in the areas of first aid training and liability insurance coverage.

(3) The fees required under ORS 704.020 do not apply to outfitters and guides who provide outfitting and guiding services on the Snake River and who possess a valid license from the State of Idaho as required under this section. Reciprocity is provided for outfitting and guiding services on the Snake River. The right of outfitters and guides to conduct outfitting and guiding services on the waters of the Snake River where that river forms the boundary line between the State of Oregon and the State of Idaho by the holder of a valid Oregon outfitter and guide registration or a valid Idaho guide license in accordance with the outfitting and guiding laws of each respective state is hereby recognized and made lawful.

(4) The purpose of subsection (3) of this section is to avoid the conflict, confusion and difficulty of an attempt to find the exact locations of the state boundary in or on the waters of the Snake River while providing outfitting and guiding services. Reciprocity under subsection (3) of this section is contingent upon passage of comparable legislation by the legislature of the State of Idaho addressing the establishment of minimum guide registration or licensing requirements in the areas of first aid training and liability insurance coverage. [1993 c.123 ss.3,4; 1995 c.736 s.2]

704.030 False statements in registration application prohibited; special requirements for use of boat. (1) No person shall make any false statement of material fact submitted pursuant to ORS 704.020.

(2) No outfitter and guide who uses a boat to carry passengers on the waters of this state shall carry passengers in excess of the passenger capacity for which insurance is obtained pursuant to ORS 704.020.

(3) No outfitter or guide shall use a boat to carry passengers on navigable waters of the United States without the license and decal required by ORS 704.020 (2). [1983 c.655 s.5; 1993 c.256 s.2; 1995 c.736 s.3]

704.035 Opportunity for hearing required; judicial review of decision. (1) The State Marine Board shall accord opportunity for hearing as provided in ORS 183.310 to 183.550 when the board proposes to:

(a) Refuse to issue or renew an outfitter and guide registration;

(b) Revoke or suspend a registration; or

(c) Reprimand an outfitter and guide.

(2) Any person aggrieved by a decision of the board under this chapter is entitled to judicial review of the decision in accordance with the procedure for contested cases provided by ORS 183.310 to 183.550. [1995 c.736 s.6]

704.040 Revocation of registration; restriction on registration application after revocation; reprimands. (1) The Legislative Assembly finds that violation of fire prevention, wildlife, hunting, angling, trapping or commercial fishing laws is directly related to the fitness required for registration as an outfitter and guide.

(2) When any person is convicted of any violation of ORS 704.020 or 704.030 or any rule promulgated pursuant to ORS 704.500, or pleads nolo contendere to any such offense, the court having jurisdiction of the offense may order the State Marine Board to revoke the certificate of registration issued to that person pursuant to ORS 704.020.

(3) When a court orders revocation of a certificate of registration pursuant to this section, the court shall take up the certificate of registration and forward it with a copy of the revocation order to the board. Upon receipt thereof, the

board shall cause revocation of the certificate of registration in accordance with the court order.

(4) A person who has had a certificate of registration revoked pursuant to this section is ineligible to register under ORS 704.020 for a period of 24 months from the date the court ordered the revocation.

(5) The board may reprimand an outfitter and guide or suspend, revoke or deny for a period of up to 24 months the registration of an outfitter and guide for:

(a) Any serious or repeated violation of this chapter or ORS chapter 477, 496, 497, 498, 501, 506, 508, 509 or 511 or any rule adopted pursuant thereto;

(b) Any serious or repeated violation of the fish and wildlife laws or regulations of the federal government or of another state for committing or omitting acts which, if committed or omitted in this state, would be a violation of ethical or professional standards established pursuant to this chapter. A certified copy of the record of suspension or revocation of the state making such suspension or revocation is conclusive evidence thereof;

(c) Having an outfitter and guide registration, license, permit or certificate suspended, revoked, canceled or denied by another state or by an agency of the United States for committing or omitting acts which, if committed or omitted in this state, would be a violation of ethical or professional standards established pursuant to this chapter. A certified copy of the record of suspension or revocation of the state making such suspension or revocation is conclusive evidence thereof;

(d) Having a United States Coast Guard vessel operator license revoked, suspended or canceled by the United States Coast Guard for committing or omitting acts that if committed or omitted in this state would be a violation of standards established pursuant to this chapter. A certified copy of the record of revocation, suspension or cancellation from the United States Coast Guard is conclusive evidence thereof; or

(e) Engaging in fraudulent, untruthful or seriously misleading advertising in the conduct of the outfitting and guiding services.

(6) The board shall adopt rules to implement subsection (5) of this section, including rules that describe conduct that is a serious or repeated violation of a law, rule or regulation. [1983 c.655 s.7; 1989 c.586 s.1; 1995 c.736 s.4; 1997 c.274 s.45; 1999 c.1051 s.277]

704.050 Cancellation of liability insurance; notice to board; suspension of registration. (1) If an insurance company cancels or refuses to renew insurance for an outfitter and guide required by ORS 704.020, the insurance company, not less than 30 days prior to the effective date of termination of the coverage, shall notify the State Marine Board in writing of the termination and its effective date.

(2) Upon receipt of an insurance coverage termination notice, the board shall send written notice to the outfitter and guide that on the effective date of the insurance coverage termination, the board will suspend the certificate of registration of the outfitter and guide unless proof of insurance required by ORS 704.020 is filed with the board prior to the effective date of the proposed insurance coverage termination.

(3) The board may suspend the certificate of registration issued to an outfitter and guide if the outfitter and guide fails to maintain in full force and effect the insurance required by ORS 704.020. A certificate of registration that has been suspended pursuant to this section may not be reinstated until proof of insurance required by ORS 704.020 has been filed with the board. [1983 c.655 s.8]

704.060 Certification process for participation in allocation of certain deer and elk permits. (1) The State Marine Board shall establish a certification process for outfitters and guides who engage in providing outfitting and guiding services for the hunting of deer and elk to qualify for participation in the allocation of permits required by ORS 496.151. Certification shall include evaluation of education, training, experience and other matters regarding the qualification of individuals to provide the required services.

(2) The board may charge a fee for certification that is in addition to the fee required by this chapter for registration.

(3) Outfitters and guides must meet the certification requirements of this section in the calendar year prior to each deer and elk season in order to participate in the permit allocation referred to in ORS 496.151. [1997 c.342 s.5; 1999 c.281 s.1]

ADMINISTRATION

704.500 Rules. In accordance with any applicable provisions of ORS 183.310 to 183.550, the State Marine Board may promulgate rules to carry out the provisions of this chapter. [1983 c.655 s.3]

704.510 Outfitters and Guides Account. The Outfitters and Guides Account is established in the General Fund of the State Treasury. Except as otherwise provided by law, all moneys received by the State Marine Board pursuant to ORS 704.020 shall be paid into the State Treasury and credited to the account. All moneys in the account are appropriated continuously to the board to carry out the provisions of this chapter. [1983 c.655 s.4; 1989 c.586 s.6]

704.520 Board to submit list of registrants to tourism promotion agency. The State Marine Board will submit annually to the state agency given the responsibility of state tourism promotion a registration list of outfitters and guides and the following information:

(1) The name, business names, addresses and telephone numbers under which outfitting and guiding services are provided;

(2) A description of the outfitting and guiding service;

(3) The geographic area in which the outfitting and guiding service is provided; and

(4) The experience of the outfitter and guide in providing the outfitting and guiding service. [1983 c.655 s.9]

704.525 Advisory committee; membership; duties. (1) The State Marine Board shall appoint an advisory committee to provide advice to the board on various matters regarding the implementation of this chapter. The committee shall be composed of members appointed as follows:

(a) Two members from among those individuals recommended by the Oregon Guides and Packers.

(b) One member from among those individuals recommended by the McKenzie River Guides.

(c) One member from among those individuals recommended by the Eastern Oregon Guides.

(d) One member from among those individuals recommended by the Rogue River Outfitters.

(e) One member from among those individuals recommended by the Deschutes River Public Outfitters.

(f) One member from among those individuals recommended by the Rogue River Guides Association, Inc.

(g) One member from among those individuals recommended by the Tillamook Guides Association.

(h) Three public members selected by the board.

(2) In addition to such other duties as the board may prescribe, the advisory committee shall provide advice and recommendations to the board regarding:

(a) Methods of improving communication between the board and the guiding and outfitting industry.

(b) The need for competency testing of guides and outfitters.

(c) Refinements of the definitions of guides and outfitters.

(d) Adequacy of liability insurance coverage.

(e) Identifying decals for motorboats used by guides in providing outfitter and guide services.

(f) Registration reciprocity for guides conducting outfitting and guiding services on the Snake and Columbia Rivers. [1989 c.586 s.4; 1993 c.256 s.5]

PENALTIES

704.900 Civil penalties; procedure. (1) In addition to any other penalty provided by law, the State Marine Board may impose a civil penalty for failure to comply with ORS 704.020 or for violation of ORS 704.030.

(2) Any civil penalty under this section shall be imposed in the manner provided by ORS 183.090.

(3) Notwithstanding ORS 183.090, the person to whom the notice is addressed shall have 30 days from the date of service of the notice in which to make written application for a hearing before the board.

(4) The board shall adopt rules implementing these provisions, including a schedule of civil penalties. The civil penalty for each violation shall not exceed $500.

(5) A civil penalty imposed under this section may be remitted or reduced upon such terms and conditions as the board considers proper and consistent with the public health and safety.

(6)(a) In imposing a penalty pursuant to the schedule adopted pursuant to this section, the board shall consider the following factors:

(A) Any prior violations of ORS 704.020 or 704.030.

(B) The immediacy and extent to which the violation threatens the public health or safety.

(b) The penalty imposed under this section may be remitted or mitigated upon such terms and conditions as the board determines to be proper and consistent with the public benefit. Upon the request of the person incurring the penalty, the board shall consider evidence of the economic and financial conditions of the person in determining

whether a penalty shall be remitted or mitigated.

(7) All penalties recovered under this section shall be paid into the State Treasury and credited to the Outfitters and Guides Account. [1989 c.586 s.3; 1991 c.734 s.93]

704.990 Criminal penalties. (1) Failure to comply with ORS 704.020 is a Class B misdemeanor.

(2) Violation of ORS 704.030 is a Class B misdemeanor. [1983 c.655 s.6]