

Chapter 404

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Search and Rescue

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MILITARY AFFAIRS; EMERGENCY SERVICES

SEARCH AND RESCUE GENERALLY

404.100 Search and Rescue Coordinator; appointment; duties. The Director of the Office of Emergency Management shall appoint a Search and Rescue Coordinator to:

(1) Coordinate the search and rescue function of the Office of Emergency Management;

(2) Coordinate the activities of state and federal agencies involved in search and rescue;

(3) Establish liaison with the Oregon State Sheriffs' Association and other public and private organizations and agencies involved in search and rescue;

(4) Provide on-scene search and rescue coordination when requested by an authorized person;

(5) Coordinate and process requests for the use of volunteers and equipment;

(6) Assist in developing training and outdoor education programs;

(7) Gather statistics in search and rescue operations; and

(8) Gather and disseminate resource information of personnel, equipment and materials available for search and rescue. [Formerly 401.550]

404.105 Program for air search and rescue. The Office of Emergency Management shall establish and maintain a program for the air search and rescue of lost aircraft and persons and for the air support of other emergency situations. The program established under this section may include, but is not limited to, the following:

(1) The formation of a volunteer air search and rescue organization and provision of appropriate training to this organization.

(2) Directing, coordinating and performing air activities in conjunction with air search and rescue and other emergency situations.

(3) Entering into agreements with private persons, volunteer organizations, and federal, state and local agencies for air search and rescue and other emergency activities.

(4) Such other related activities as may be deemed necessary and appropriate by the Director of the Office of Emergency Management. [Formerly 401.555]

404.110 Search and rescue activities; responsibilities of sheriff; delegation of sheriff's duties. (1) The sheriff of each county has the responsibility for search and rescue activities within the county. The duty of a sheriff under this subsection may be delegated to a deputy or other qualified person.

(2) If the sheriff does not accept the responsibility for search and rescue activities, the chief executive of the county shall direct the county emergency program manager appointed under ORS 401.305 to perform the duties and responsibilities required under ORS 404.100 to 404.270.

(3) A sheriff or other person performing the duties of the sheriff under this section shall notify the Office of Emergency Management of each search and rescue in the county and shall request the assignment of incident numbers for each search and rescue.

(4) When search and rescue activities occur in a multicounty area:

(a) The sheriff of one county, or the other person performing the duties of the sheriff of one of the counties under this section, shall take charge, or the counties shall form a unified command, as outlined in the National Incident Management System Incident Command System established by Homeland Security Presidential Directive 5 of February 28, 2003; or

(b) If the appropriate sheriff or other person does not assume command as described in paragraph (a) of this subsection, the sheriff who received the initial call shall take charge of the multicounty search and rescue. [Formerly 401.560]

404.115 Restriction of access to search and rescue area. The sheriff of each county, the person performing the sheriff's duties under ORS 404.110 or duly assigned military or state police personnel may restrict access to a specific search and rescue area. No unauthorized person shall then enter into a restricted area or interfere with a search and rescue. Provision shall be made for reasonable access by members of the media in the performance of newsgathering and reporting. Access shall be restricted for a reasonable period of time necessary to accomplish the search and rescue. [Formerly 401.570]

404.120 County sheriff to adopt search and rescue plan; contents; annual review.

(1) The sheriff of each county shall adopt a search and rescue plan for the county. The search and rescue plan shall set forth search and rescue policies, including policies for implementation of multicounty search and rescue activities, for the county that comply with the relevant provisions of the National Incident Management System Incident Command System established by Homeland Security Presidential Directive 5 of February 28, 2003, and shall describe procedures for implementing those policies. A county search and rescue plan shall list and describe materials, mutual aid agreements, equipment and personnel available within the county for

search and rescue incidents. The plan shall also include:

(a) A detailed description of activities and circumstances that constitute search and rescue in the county.

(b) Identification of volunteer organizations available to the county for use for search and rescue.

(c) Procedures for contacting and requesting assistance from volunteer organizations during search and rescue activities.

(d) Procedures for contacting and requesting available assistance from other agencies and groups.

(e) Minimum standards for individuals whose technical or professional skills may be required for search and rescue.

(2) A county search and rescue plan adopted under this section shall require a person in charge of a search and rescue to complete a fact sheet for the incident. The fact sheet shall contain the incident number assigned under ORS 404.130 for search and rescue and such other information required under the search and rescue plan of the county.

(3) The sheriff of each county shall review and, if necessary or desirable, revise the search and rescue plan annually. After the initial adoption of a search and rescue plan under this section and after each annual review or revision of the plan, the sheriff shall submit the plan to the Search and Rescue Coordinator appointed under ORS 404.100.

(4) The Office of Emergency Management, after consultation with the Oregon State Sheriffs' Association, may establish guidelines for county search and rescue plans.

(5) The Office of Emergency Management shall annually publish and distribute to the sheriff of each county a search and rescue resource inventory, which shall include materials, equipment and personnel available from counties, agencies and the State of Oregon for use in search and rescue incidents. [Formerly 401.573]

404.125 Critique of search and rescue incident; filing amended search and rescue plan with Office of Emergency Management. (1) After a search and rescue, the sheriff of the county in which the search and rescue took place shall conduct a critique of the incident:

(a) If, in the opinion of the sheriff, the critique would be useful; or

(b) Upon request from an individual directly involved in the incident.

(2) As part of the critique, the sheriff shall examine the search and rescue report

and may receive testimony and information from persons involved in the incident.

(3) When a critique of a search and rescue is conducted under this section, the sheriff shall prepare findings of fact concerning the search and rescue, including the investigatory component, and may prepare recommendations for the conduct of future incidents or propose amendments to the search and rescue plan under which the search and rescue was conducted.

(4) If amendments to the search and rescue plan are proposed and adopted, the sheriff shall file the amended search and rescue plan with the Office of Emergency Management.

(5) The office shall, in consultation with the Oregon State Sheriffs' Association, develop a standardized critique form to be used in the search and rescue critiques performed by a sheriff under this section. [Formerly 401.576]

404.130 Search and rescue incident number. (1) An incident number shall be assigned to each search and rescue reported under ORS 404.110.

(2) The incident number assigned shall be referenced for:

(a) The payment of workers' compensation benefits for those persons participating in search and rescue activities; and

(b) The dispatch and request for state, federal and cooperative assistance resources. [Formerly 401.580]

404.135 Investigative subpoena. (1) If a peace officer has probable cause to believe that an individual is missing and in danger, the officer may request that the Attorney General, a district attorney, a city or county attorney or a circuit court judge execute in writing and cause to be served an investigative subpoena upon an individual who is believed, by the Attorney General, the district attorney, the city or county attorney or circuit court judge, to have information, documents or physical evidence that may be useful in locating the missing person.

(2) The investigative subpoena requires the person, under oath or otherwise, to appear and testify, to answer written interrogatories or to produce documents or physical evidence for examination, at a reasonable time and place as may be stated in the subpoena, to further the investigation into the whereabouts of the missing individual.

(3) Information, documents or physical evidence obtained pursuant to this section may not be used for criminal investigation or prosecution.

(4) This section does not alter the status of information, documents or physical evidence disclosed. Notwithstanding disclosure for the purpose of locating a missing individual, confidential information, documents or physical evidence retain their confidential status. [Formerly 401.582]

QUALIFIED SEARCH AND RESCUE VOLUNTEERS

(Definitions)

404.200 Definitions for ORS 404.200 to 404.215. As used in ORS 404.200 to 404.215:

(1) “Qualified search and rescue volunteer” means a person who is:

(a) Registered with the Office of Emergency Management to conduct search and rescue activities;

(b) Registered with a sheriff to conduct search and rescue activities;

(c) A member of a designated search and rescue organization that is registered with a sheriff or the Office of Emergency Management; or

(d) Acknowledged in writing as a qualified search and rescue volunteer by the Office of Emergency Management, or by a sheriff, at the scene of a search or rescue.

(2) “Search and rescue activities” means:

(a) Searching for, rescuing or recovering any person who is missing, injured or deceased; and

(b) Training to perform the activities described in paragraph (a) of this subsection that is either conducted or approved by a public body. [2009 c.718 §11]

(Qualification)

404.205 Application. ORS 404.200 to 404.215 apply only to a qualified search and rescue volunteer who is performing search and rescue activities without compensation other than reimbursement for food, lodging, costs of transportation and other expenses. [2009 c.718 §12]

(Indemnification)

404.210 Coverage under Oregon Tort Claims Act. A qualified search and rescue volunteer is an agent of a county under ORS 30.260 to 30.300 for the purpose of acts and omissions of the volunteer that are within the course and scope of the volunteer’s duties and that occur while the volunteer is performing search and rescue activities under the direction of the sheriff of the county or the designee of the sheriff, and the county shall defend, save harmless and indemnify the volunteer for any tort claim arising out of an alleged act or omission occurring in

the performance of those activities as required by ORS 30.285. [2009 c.718 §13]

(Workers’ Compensation Benefits)

404.215 Workers’ compensation coverage. (1) Any county in which a qualified search and rescue volunteer performs search and rescue activities under the direction of the sheriff of the county or the designee of the sheriff is conclusively deemed to have filed an election under ORS 656.031 to provide workers’ compensation coverage for the qualified search and rescue volunteer.

(2) An insurer or self-insured employer may fix assumed wage rates for qualified search and rescue volunteers, which may be used only for purposes of computations under ORS chapter 656, and shall require the regular payment of premiums or assessments based on the hours of service by qualified search and rescue volunteers. A self-insured employer shall submit the assumed wage rates to the Director of the Department of Consumer and Business Services. If the director finds that the rates are unreasonable, the director may fix appropriate rates to be used for purposes of this section.

(3) A county that is a self-insured employer under ORS chapter 656 may apply to an insurer for workers’ compensation coverage for qualified search and rescue volunteers only, while continuing to self-insure the other subject workers of the county. If an insurer decides not to provide workers’ compensation coverage for qualified search and rescue volunteers of the county, coverage shall be provided through the assigned risk pool.

(4) Qualified search and rescue volunteers and their beneficiaries are not eligible for workers’ compensation benefits under this section if the volunteer is performing search and rescue activities during an emergency and is provided with workers’ compensation coverage under ORS 401.368. [2009 c.718 §14]

(Leave of Absence)

404.250 Leave of absence from employment for search and rescue volunteer. (1) As used in this section:

(a) “Employee” means an individual, other than a copartner of the employer or an independent contractor, who renders personal services in this state to an employer that pays or agrees to pay wages or other compensation to the individual for those services.

(b) “Employer” means a person who employs one or more employees in this state. “Employer” includes the State of Oregon or a county, city, district, authority, public cor-

poration or entity and any of their instrumentalities organized and existing under law or charter, but does not include the federal government.

(2) Upon request of an employee who is a search and rescue volunteer accepted to participate in search and rescue activities by the sheriff, an employer may grant a leave of absence to the employee until release from the search and rescue activities permits the employee to resume the duties of employment.

(3) The regular employment position of an employee on leave of absence under this section is considered vacant only for the period of the leave of absence. The employee is not subject to removal or discharge from the position as a consequence of the leave of absence.

(4) Upon the termination of a leave of absence under this section, the employer shall restore the employee to the employee's position or an equivalent position without loss of seniority, vacation credits, sick leave credits, service credits under a pension plan or any other employee benefit or right that had been earned at the time of the leave of absence.

(5) An employer is not required to pay wages or other monetary compensation to an employee during a leave of absence under this section. [Formerly 401.534]

REIMBURSEMENT BY BENEFITED PERSONS

404.270 Reimbursement of public body for search and rescue by benefited persons; amount; exceptions. (1) A public body that has authority to conduct search and rescue activities may collect an amount specified in this section as reimbursement for the cost of search and rescue activities when the public body conducts search and rescue activities for the benefit of hikers, climbers, hunters and other users of wilderness areas or unpopulated forested or mountainous recreational areas in this state.

(2) The public body may collect moneys as authorized by this section from each person for whose benefit search and rescue activities are conducted. The public body may not collect more than \$500 from an individual under this section and may not collect more than the actual cost of the search and rescue activities from all of the individuals for whose benefit the activities are conducted.

(3) A public body may obtain reimbursement under this section only when:

(a) Reasonable care was not exercised by the individuals for whose benefit the search and rescue activities are conducted; or

(b) Applicable laws were violated by such individuals.

(4) Any individual who is charged a fee for reimbursement under this section may appeal the charge or the amount of the fee to the public body that charged the fee.

(5) For the purposes of subsection (3) of this section, evidence of reasonable care includes:

(a) The individuals possessed experience and used equipment that was appropriate for the known conditions of weather and terrain.

(b) The individuals used or attempted to use locating devices or cellular telephones when appropriate.

(c) The individuals notified responsible persons or organizations of the expected time of departure and the expected time of return and the planned location or route of activity.

(d) The individuals had maps and orienteering equipment and used trails or other routes that were appropriate for the conditions.

(6) As used in this section, "public body" has the meaning given that term in ORS 174.109. [Formerly 401.590]

EQUIPMENT AND SIGNALING DEVICES

404.300 Definitions for ORS 404.300 to 404.315. As used in ORS 404.300 to 404.315:

(1) "Electronic signaling device" includes, but is not limited to, a system consisting of an instrument which emits a radio signal, designed to be carried on the person, an instrument for locating the source of such signal, designed to be utilized by searchers and such instruments as may be employed for testing and maintaining the same.

(2) "Inherent risks of wilderness travel and mountain climbing" includes, but is not limited to, those dangers or conditions, the risk of which is an integral part of these activities, such as becoming lost, incapacitated or for some other reason being unable to return safely without outside assistance. "Inherent risks" include the activities associated with search and rescue, due to the unpredictable circumstances under which search and rescue operations are conducted.

(3) "Wilderness travel" includes, but is not limited to, travel in areas not served by roads suitable for ordinary motor vehicles, whether or not such areas have been officially designated as wilderness areas. [Formerly 401.605]

404.305 Assumption of risk of wilderness travel or mountain climbing; use and effect of electronic signaling devices. (1) In accordance with ORS 31.600 and

notwithstanding ORS 31.620 (2), an individual who engages in wilderness travel or mountain climbing accepts and assumes the inherent risks of wilderness travel or mountain climbing.

(2) The Legislative Assembly recognizes that the use of electronic signaling devices can aid in locating wilderness travelers or mountain climbers who require search and rescue, but that the use of such devices may be required in unpredictable circumstances which may not result in successful function of such devices. [Formerly 401.615]

404.310 Required equipment when guiding children above timberline. A person who guides for compensation an organized group that includes children under 18 years of age on any mountain above the timberline must carry an altimeter, a contour map of the area and a compass. [Formerly 401.625]

404.315 Exemption from liability for electronic signaling device; exceptions. A person may not maintain an action against the manufacturer, distributor or supplier of an electronic signaling device for any loss or damage incurred during wilderness travel or mountain climbing, based on a claim that the device failed to function successfully unless the person shows that the failure resulted from:

(1) Willful or wanton misconduct of the defendant; or

(2) The defendant's distributing or supplying the device having actual knowledge that the device is unsuitable for the purpose. [Formerly 401.627]

404.325 Posting of emergency contact telephone number. (1) As used in this section:

(a) "Electronic signaling device" includes, but is not limited to:

(A) Electronic signaling devices, as defined in ORS 404.300;

(B) Emergency locator transmitters;

(C) Emergency Position Indicator Radio Beacon devices; and

(D) Wilderness personal locator beacons.

(b)(A) "Facility" includes:

(i) Commercial and industrial facilities;

(ii) Aircraft hangars, whether used for private, commercial or industrial purposes; and

(iii) Other facilities in which electronic signaling devices or equipment containing electronic signaling devices are sold, rented, serviced or repaired.

(B) "Facility" does not include a dwelling used only as a private residence.

(c) "Public safety answering point" has the meaning given that term in ORS 403.105.

(d) "9-1-1 service area" has the meaning given that term in ORS 403.105.

(2) The owner or operator of a facility in which an electronic signaling device is located shall conspicuously post an emergency contact telephone number of an individual who is able to assist emergency response personnel with locating and silencing the device.

(3) Subsection (2) of this section does not apply to the owner or operator of a facility for which the owner or operator has provided a contact number to the public safety answering point that is responsible for the 9-1-1 service area in which the facility is located. [2009 c.102 §1]

COMPANION ANIMALS

404.350 Rescue of companion animal.

(1) A person engaged in search and rescue operations may make every practicable attempt under the circumstances to rescue a companion animal.

(2) This section does not impose liability on or expand liability of a person engaged in search and rescue operations. [Formerly 401.273]

CHAPTER 405

[Reserved for expansion]

