

CHAPTER 438

AN ACT

HB 3498

Relating to certification for outdoor recreational activities; creating new provisions; amending ORS 704.020 and 704.040; and declaring an emergency.
Be It Enacted by the People of the State of Oregon:

SECTION 1. ORS 704.020 is amended to read:

704.020. (1) Any person who acts or 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 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) Proof that the business under which outfitting and guiding services are provided has registered with the Secretary of State.

(c) If the outfitting and guiding services are to be performed in the business name of an individual, proof that the outfitter and guide is certified to give first aid, as determined by the board by rule.

(d) If the outfitting and guiding services are to be performed in the business name of a person other than an individual, a list of 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 this state, together with the affidavit of the outfitter and guide that each such employee, agent or party in interest is certified to give first aid, as determined by the board by rule.

(e) If the outfitter and guide is carrying passengers for hire on waterways determined to be navigable by the United States Coast Guard, proof that the person or an individual employed by the person has a valid United States Coast Guard operator license.

(f) 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 the equipment, supplies, livestock and materials; and

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

(g) 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. To meet the requirement under this paragraph, insurance must provide combined single limit per occurrence general liability coverage of at least \$500,000.

(h) Certification by the outfitter and guide that the outfitter and guide will maintain the insurance required by paragraph (g) of this subsection continuously and in full force and effect for a period of time to be determined by the board by rule.

(i) 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) A felony or misdemeanor related to the provision of services regulated by this chapter;

(ii) A violation under this chapter or ORS chapter 477, 496, 497, 498, 501, 506, 508, 509 [or], 511 or 830 or any rule adopted pursuant to ORS chapter 477, 496, 497, 498, 501, 506, 508, 509 [or], 511 or 830; [or]

(iii) A violation of the wildlife laws that occurred while acting as an outfitter and guide and that resulted in court-ordered revocation of the hunting or fishing license of the outfitter and guide;

(iv) A crime involving delivery, manufacture or possession of a controlled substance, as defined in ORS 475.005, except marijuana; or

(v) Assault in any degree, criminal homicide as defined in ORS 163.005 or kidnapping in any degree;

(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.

(j) The affidavit of the outfitter and guide stating that the outfitter and guide and each person who provides or assists in directly providing outfitting and guiding services have not been convicted of:

(A) A crime, the result of which prohibits the person from possessing a firearm; or

(B) A crime, the result of which requires the person to be registered as a sex offender under ORS 181.806, 181.807, 181.808 or 181.809.

(2) 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 that are under the direct operation of an outfitter and guide or an employee of an outfitter and guide for the purpose of carrying passengers on the waters of this state must submit proof:

(a) If operating a motorboat on waterways determined to be navigable by the United States Coast Guard, that the outfitter and guide possesses a valid United States Coast Guard operator license; and

(b) Of liability insurance in a form prescribed by the board by rule.

(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 chapter 183.

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

(a) For resident persons, \$150.

(b) For nonresident persons who reside in a state that requires residents of this state to pay a license fee, registration fee or other fee or charge in excess of \$150 to act as an outfitter and guide in that state, the same fee or other charge as is charged the residents of this state 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 this state 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, \$150.

(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 a certificate of registration. The board shall also issue to each registrant proof of compliance with the requirements of this section.

(6) A person who conducts sightseeing flights or other aircraft operations is exempt from the provisions of this section unless the activities conducted by the person are outdoor recreational activities as defined in ORS 704.010.

(7) The board shall issue an identifying decal to outfitters and guides registering under this section that may be displayed on vehicles, pack equipment or other suitable locations where customers can see the registration decal.

(8) A certificate of registration issued to an outfitter and guide under this section expires on December 31 of each calendar year or on such date as may be specified by board rule.

SECTION 2. ORS 704.020, as amended by section 7, chapter 422, Oregon Laws 2013, is amended to read:

704.020. (1) Any person who acts or 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 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) Proof that the business under which outfitting and guiding services are provided has registered with the Secretary of State.

(c) If the outfitting and guiding services are to be performed in the business name of an individual, proof that the outfitter and guide is certified to give first aid, as determined by the board by rule.

(d) If the outfitting and guiding services are to be performed in the business name of a person other than an individual, a list of 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 this state, together with the affidavit of the outfitter and guide that each such employee, agent or party in interest is certified to give first aid, as determined by the board by rule.

(e) If the outfitter and guide is carrying passengers for hire on waterways determined to be navigable by the United States Coast Guard, proof that the person or an individual employed by the person has a valid United States Coast Guard operator license.

(f) 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 the equipment, supplies, livestock and materials; and

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

(g) 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. To meet the requirement under this paragraph, insurance must provide combined single limit per occurrence general liability coverage of at least \$500,000.

(h) Certification by the outfitter and guide that the outfitter and guide will maintain the insurance required by paragraph (g) of this subsection continuously and in full force and effect for a period of time to be determined by the board by rule.

(i) 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) A felony or misdemeanor related to the provision of services regulated by this chapter;

(ii) A violation under this chapter or ORS chapter 477, 496, 497, 498, 501, 506, 508, 509 [or], 511 or **830** or any rule adopted pursuant to ORS chapter 477, 496, 497, 498, 501, 506, 508, 509 [or], 511 or **830**; [or]

(iii) A violation of the wildlife laws that occurred while acting as an outfitter and guide and that resulted in court-ordered revocation of the hunting or fishing license of the outfitter and guide;

(iv) A crime involving delivery, manufacture or possession of a controlled substance, as defined in ORS 475.005, except marijuana; or

(v) Assault in any degree, criminal homicide as defined in ORS 163.005 or kidnapping in any degree;

(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.

(j) The affidavit of the outfitter and guide stating that the outfitter and guide and each person who provides or assists in directly providing outfitting and guiding services have not been convicted of:

(A) A crime, the result of which prohibits the person from possessing a firearm; or

(B) A crime, the result of which requires the person to be registered as a sex offender under ORS 181.806, 181.807, 181.808 or 181.809.

(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 that are under the direct operation of an outfitter and guide or an employee of an outfitter and guide for the purpose of carrying passengers on the waters of this state must submit proof:

(A) If operating a motorboat on the waters of this state, that the outfitter and guide:

(i) Has passed a written test adopted by the board by rule;

(ii) Has participated in a drug and alcohol program as defined by the board by rule; and

(iii) Has completed a physical examination every five years as required by the board by rule.

(B) Of liability insurance in a form prescribed by the board by rule.

(b) A person is exempt from paragraph (a)(A) of this subsection if the person is operating a motorboat on waters of this state determined to be navigable by the United States Coast Guard and the person possesses a valid United States Coast Guard operator license.

(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 chapter 183.

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

(a) For resident persons, \$150.

(b) For nonresident persons who reside in a state that requires residents of this state to pay a license fee, registration fee or other fee or charge in excess of \$150 to act as an outfitter and guide in that state, the same fee or other charge as is charged the residents of this state 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 this state 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, \$150.

(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 a certificate of registration. The board shall also issue to each registrant proof of compliance with the requirements of this section.

(6) A person who conducts sightseeing flights or other aircraft operations is exempt from the provisions of this section unless the activities conducted by the person are outdoor recreational activities as defined in ORS 704.010.

(7) The board shall issue an identifying decal to outfitters and guides registering under this section that may be displayed on vehicles, pack equipment or other suitable locations where customers can see the registration decal.

(8) A certificate of registration issued to an outfitter and guide under this section expires on December 31 of each calendar year or on such date as may be specified by board rule.

SECTION 3. ORS 704.040 is amended to read:

704.040. (1) The Legislative Assembly finds that violation of fire prevention, wildlife, hunting, angling, trapping, [or] commercial fishing, **recreational boating or public safety** laws is directly related to the fitness required for registration as an outfitter and guide.

(2) When a person is convicted of a felony or misdemeanor related to the provision of services regulated by this chapter, a violation of ORS 704.020 or 704.030 or ORS chapter 477, 496, 497, 498, 501, 506, 508, 509, [or] 511 or 830, or any rule promulgated pursuant to ORS 704.500 or ORS chapter 477, 496, 497, 498, 501, 506, 508, 509, [or] 511 or 830, 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 a court order under 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, **in its discretion**, may reprimand an outfitter and guide or suspend **for up to 24 months**, revoke or deny [for a period of up to 24 months] the registration of an outfitter and guide for any of the following:

(a) Conviction of a felony or misdemeanor related to the provision of services regulated by this chapter.

(b) Any serious or repeated violation of this chapter or ORS chapter 477, 496, 497, 498, 501, 506, 508, 509, [or] 511 or 830 or any rule adopted pursuant to ORS chapter 477, 496, 497, 498, 501, 506, 508, 509, [or] 511 or 830.

(c) 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 that, 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 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 that, 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.

(e) 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.

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

(g) **Conviction of a crime involving delivery, manufacture or possession of a controlled substance, as defined in ORS 475.005, except marijuana.**

(h) **Conviction of assault in any degree, criminal homicide as defined in ORS 163.005 or kidnapping in any degree.**

(6) **The board shall revoke the registration of an outfitter and guide for:**

(a) **Conviction of a crime, the result of which prohibits the person from possessing a firearm; or**

(b) **Conviction of a crime, the result of which requires the person to be registered as a sex offender under ORS 181.806, 181.807, 181.808 or 181.809.**

[6] (7) The board shall adopt rules to implement [subsection (5)] **subsections (5) and (6)** of this section, including rules that describe conduct that is a serious or repeated violation of a law, rule or regulation.

SECTION 4. (1) The amendments to ORS 704.020 and 704.040 by sections 1 to 3 of this 2015 Act become operative on January 1, 2016.

(2) **The State Marine Board may take any action before the operative date specified in subsection (1) of this section that is necessary to enable the board to exercise, on and after the operative date specified in subsection (1) of this section, all of the duties, functions and powers conferred on the board by the amendments to ORS 704.020 and 704.040 by sections 1 to 3 of this 2015 Act.**

SECTION 5. (1) The amendments to ORS 704.020 by sections 1 and 2 of this 2015 Act apply to applications for initial or renewed registration received by the State Marine Board on or after the operative date specified in section 4 of this 2015 Act.

(2) **The amendments to ORS 704.040 by section 3 of this 2015 Act apply to convictions for acts committed on or after the operative date specified in section 4 of this 2015 Act.**

SECTION 6. This 2015 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2015 Act takes effect on its passage.

Approved by the Governor June 16, 2015
Filed in the office of Secretary of State June 22, 2015
Effective date June 16, 2015