

# Chapter 704

1989 EDITION

## Outfitters and Guides

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## OCCUPATIONS AND PROFESSIONS

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**GENERALLY**

**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, helicopter skiing, 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 §1]

**704.020 Registration required; liability insurance; fees.** (1) Any person who acts, or who offers to act, as an outfitter and guide must first register with the 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 current certificate issued to the employee, agent or party in interest:

(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.

(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 the following amounts:

(A) \$300,000 per occurrence general liability coverage; or

(B) Bodily injury liability coverage of at least \$100,000 per person to a total of \$300,000 per occurrence, and \$10,000 property damage per occurrence.

(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 subsection (3) of 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 violation of ORS 496.992 (2); 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 by another state or by an agency of the government of the United States; and

(C) Have not been denied the right to apply for an outfitting and guiding license, permit or certificate by another state.

(2) Each annual registration shall be accompanied by a fee of \$50.

(3) Upon the submission to the board of the appropriate filing fee in subsection (2) of 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. [1983 c.655 §2; 1985 c.452 §1; 1987 c.400 §1]

**704.030 False statements in registration application prohibited.** No person shall make any false statement of material fact submitted pursuant to ORS 704.020. [1983 c.655 §5]

**704.040 Revocation of registration; restriction on registration application after revocation.** (1) When any person is convicted of any violation of ORS 704.020 or 704.030 or any rule promulgated pursuant to ORS 704.500, forfeits bail in connection with any such offense, or pleads nolo contendere to any such offense, the court having jurisdiction of the offense may order the board to revoke the certificate of registration issued to that person pursuant to ORS 704.020.

(2) 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.

(3) 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.

(4) A person who has been convicted of failure to comply with ORS 704.020 is ineligible to register under ORS 704.020 for a period of 24 months from the date of the conviction. [1983 c.655 §7; 1989 c 586 §1]

**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 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 §8]

### ADMINISTRATION

**704.500 Rules.** In accordance with any applicable provisions of ORS 183.310 to 183.550, the board may promulgate rules to carry out the provisions of this chapter. [1983 c.655 §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 §4; 1989 c.586 §6]

**704.520 Board to submit list of registrants to tourism promotion agency.** The 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:

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

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

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

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

**704.525 Advisory committee; membership; duties.** (1) The 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 seven 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.

(2) In addition to such other duties as the board may prescribe, the advisory committee shall provide advice and recommendations to the board and to the Sixty-sixth Legislative Assembly 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) Liability insurance coverage. [1989 c.586 §4]

### PENALTIES

**704.900 Civil penalties; hearings; orders as judgments; rules.** (1) In addition to any other penalty provided by law, the 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 imposed under this section shall become due and payable when the person incurring the penalty receives a notice in writing from the board. The notice referred to in this section shall be sent by registered or certified mail and shall include:

(a) A reference to the particular sections of the statute involved;

(b) A short and plain statement of the matters asserted or charged;

(c) A statement of the amount of the penalty or penalties imposed; and

(d) A statement of the right of the person to request a hearing.

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

(4) All hearings shall be conducted pursuant to the applicable provisions of ORS 183.310 to 183.550.

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

(6) 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.

(7)(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.

(8) The person to whom the notice is addressed shall have 30 days from the date of service or mailing of the notice in which to make written application for a hearing before the board, after which time the notice becomes final order.

(9) Unless the amount of penalty is paid within 10 days after the order becomes final,

the order shall constitute a judgment and may be recorded with the county clerk in any county of this state. The clerk shall record the name of the person incurring the penalty and the amount of the penalty in the County Clerk Lien Record. The penalty provided in the order so recorded becomes a lien upon any interest in real property situated in the county and owned by the person against whom the order is entered. Execution may be issued upon the order in the same manner as execution upon judgment of a court record.

(10) Judicial review of civil penalties imposed under this section shall be as provided under ORS 183.480.

(11) All penalties recovered under this section shall be paid into the State Treasury and credited to the Outfitters and Guides Account. [1989 c.586 §3]

**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 §6]