

House Bill 3498

Sponsored by Representative ESQUIVEL

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Provides that applicant for registration by State Marine Board as outfitter and guide may not have been convicted of certain offenses preceding application. Expands list of offenses for which court may order revocation of registration. Directs board to revoke registration if outfitter and guide is convicted of certain crimes.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to certification for outdoor recreational activities; creating new provisions; amending ORS
3 704.020 and 704.040; and declaring an emergency.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1.** ORS 704.020 is amended to read:

6 704.020. (1) Any person who acts or offers to act as an outfitter and guide must first register
7 with the State Marine Board. Each registration shall be submitted annually on a form provided by
8 the board and shall include the following information:

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

12 (b) Proof that the business under which outfitting and guiding services are provided has regis-
13 tered with the Secretary of State.

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

17 (d) If the outfitting and guiding services are to be performed in the business name of a person
18 other than an individual, a list of the names of all employees, agents and parties in interest who
19 physically provide, or who directly assist in physically providing, outfitting and guiding services in
20 this state, together with the affidavit of the outfitter and guide that each such employee, agent or
21 party in interest is certified to give first aid, as determined by the board by rule.

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

25 (f) A description of:

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

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

30 (C) The experience of the outfitter and guide in providing the outfitting and guiding services and

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted.
New sections are in **boldfaced** type.

1 the equipment, supplies, livestock and materials.

2 (g) Proof that the outfitter and guide has liability insurance covering occurrences by the out-
 3 fitter and guide, and the employees of the outfitter and guide, which result in bodily injury or
 4 property damage. To meet the requirement under this paragraph, insurance must provide combined
 5 single limit per occurrence general liability coverage of at least \$500,000.

6 (h) Certification by the outfitter and guide that the outfitter and guide will maintain the insur-
 7 ance required by paragraph (g) of this subsection continuously and in full force and effect for a pe-
 8 riod of time to be determined by the board by rule.

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

12 (A) Have not been convicted of:

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

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

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

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

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

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

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

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

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

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

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

34 (2) In addition to the requirements of subsection (1) of this section, a person who acts or offers
 35 to act as an outfitter and guide using boats that are under the direct operation of an outfitter and
 36 guide or an employee of an outfitter and guide for the purpose of carrying passengers on the waters
 37 of this state must submit proof:

38 (a) If operating a motorboat on waterways determined to be navigable by the United States
 39 Coast Guard, that the outfitter and guide possesses a valid United States Coast Guard operator li-
 40 cense; and

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

42 (3)(a) A person who registers as an outfitter and guide and who accepts deposits from clients in
 43 excess of \$100 per person shall submit a bond or other financial security in the amount of \$5,000 to
 44 the board at the time of registration. The bond or other financial security shall be held by the board
 45 for the benefit of clients of the outfitter and guide who pay a money deposit to the outfitter and

1 guide in anticipation of services to be received. The bond or other financial security amount shall
 2 be released to such client or clients conditioned upon a failure of the outfitter and guide to return
 3 the deposit following cancellation of services or other failure to provide agreed upon services.

4 (b) The board shall release or retain all or any portion of a bond or other financial security as
 5 described in paragraph (a) of this subsection according to the provisions of ORS chapter 183.

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

7 (a) For resident persons, \$150.

8 (b) For nonresident persons who reside in a state that requires residents of this state to pay a
 9 license fee, registration fee or other fee or charge in excess of \$150 to act as an outfitter and guide
 10 in that state, the same fee or other charge as is charged the residents of this state to act as an
 11 outfitter and guide in the state where the nonresident applicant resides. If the state in which such
 12 a nonresident applicant resides makes distinctions in fees or charges based on the type of outfitter
 13 and guide service performed and requires residents of this state to pay fees or charges accordingly,
 14 the board shall make and apply those same distinctions and require the nonresident applicants to
 15 pay the corresponding fees or charges.

16 (c) For nonresident persons other than those referred to in paragraph (b) of this subsection,
 17 \$150.

18 (5) Upon the submission to the board of the appropriate fees prescribed in this section and the
 19 registration information required by this section, the board shall issue to the applicant a certificate
 20 of registration. The board shall also issue to each registrant proof of compliance with the require-
 21 ments of this section.

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

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

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

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

32 704.020. (1) Any person who acts or offers to act as an outfitter and guide must first register
 33 with the State Marine Board. Each registration shall be submitted annually on a form provided by
 34 the board and shall include the following information:

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

38 (b) Proof that the business under which outfitting and guiding services are provided has regis-
 39 tered with the Secretary of State.

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

43 (d) If the outfitting and guiding services are to be performed in the business name of a person
 44 other than an individual, a list of the names of all employees, agents and parties in interest who
 45 physically provide, or who directly assist in physically providing, outfitting and guiding services in

1 this state, together with the affidavit of the outfitter and guide that each such employee, agent or
 2 party in interest is certified to give first aid, as determined by the board by rule.

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

6 (f) A description of:

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

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

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

13 (g) Proof that the outfitter and guide has liability insurance covering occurrences by the out-
 14 fitter and guide, and the employees of the outfitter and guide, which result in bodily injury or
 15 property damage. To meet the requirement under this paragraph, insurance must provide combined
 16 single limit per occurrence general liability coverage of at least \$500,000.

17 (h) Certification by the outfitter and guide that the outfitter and guide will maintain the insur-
 18 ance required by paragraph (g) of this subsection continuously and in full force and effect for a pe-
 19 riod of time to be determined by the board by rule.

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

23 (A) Have not been convicted of:

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

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

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

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

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

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

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

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

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

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

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

45 (2)(a) In addition to the requirements of subsection (1) of this section, a person who acts or of-

1 fers to act as an outfitter and guide using boats that are under the direct operation of an outfitter
 2 and guide or an employee of an outfitter and guide for the purpose of carrying passengers on the
 3 waters of this state must submit proof:

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

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

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

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

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

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

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

19 (b) The board shall release or retain all or any portion of a bond or other financial security as
 20 described in paragraph (a) of this subsection according to the provisions of ORS chapter 183.

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

22 (a) For resident persons, \$150.

23 (b) For nonresident persons who reside in a state that requires residents of this state to pay a
 24 license fee, registration fee or other fee or charge in excess of \$150 to act as an outfitter and guide
 25 in that state, the same fee or other charge as is charged the residents of this state to act as an
 26 outfitter and guide in the state where the nonresident applicant resides. If the state in which such
 27 a nonresident applicant resides makes distinctions in fees or charges based on the type of outfitter
 28 and guide service performed and requires residents of this state to pay fees or charges accordingly,
 29 the board shall make and apply those same distinctions and require the nonresident applicants to
 30 pay the corresponding fees or charges.

31 (c) For nonresident persons other than those referred to in paragraph (b) of this subsection,
 32 \$150.

33 (5) Upon the submission to the board of the appropriate fees prescribed in this section and the
 34 registration information required by this section, the board shall issue to the applicant a certificate
 35 of registration. The board shall also issue to each registrant proof of compliance with the require-
 36 ments of this section.

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

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

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

45 **SECTION 3.** ORS 704.040 is amended to read:

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

4 (2) When a person is convicted of a felony or misdemeanor related to the provision of services
5 regulated by this chapter, a violation of ORS 704.020 or 704.030 or ORS chapter 477, 496, 497, 498,
6 501, 506, 508, 509, [or] 511 **or 830**, or any rule promulgated pursuant to ORS 704.500 or ORS chapter
7 477, 496, 497, 498, 501, 506, 508, 509, [or] 511 **or 830**, the court having jurisdiction of the offense may
8 order the State Marine Board to revoke the certificate of registration issued to that person pursuant
9 to ORS 704.020.

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

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

17 (5) The board, **in its discretion**, may reprimand an outfitter and guide or suspend **for up to**
18 **24 months**, revoke or deny [*for a period of up to 24 months*] the registration of an outfitter and guide
19 for any of the following:

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

22 (b) Any serious or repeated violation of this chapter or ORS chapter 477, 496, 497, 498, 501, 506,
23 508, 509, [or] 511 **or 830** or any rule adopted pursuant to ORS chapter 477, 496, 497, 498, 501, 506,
24 508, 509, [or] 511 **or 830**.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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