

Enrolled
House Bill 2076

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of Governor Kate Brown for State Marine Board)

CHAPTER

AN ACT

Relating to aquatic invasive species; creating new provisions; and amending ORS 830.110, 830.565, 830.570, 830.575, 830.580, 830.585, 830.587, 830.589, 830.990, 830.998 and 830.999.

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

SECTION 1. Section 2 of this 2019 Act is added to and made a part of ORS chapter 830.

SECTION 2. (1) Except as provided in subsection (2) of this section, after leaving the waters of this state with a boat, a person shall remove or open all drain plugs, bailers, valves or other devices used to control the draining of water from ballast tanks, bilges, livewells and motorwells before transporting a boat within this state.

(2) Subsection (1) of this section does not apply to:

- (a) Marine sanitation devices;
- (b) A person who holds a permit issued pursuant to ORS 498.222 to transport live fish;
- (c) A person participating in a fishing tournament authorized by the State Department of Fish and Wildlife, except that after weighing the fish the person shall return to the boat launch site and drain the boat as required under subsection (1) of this section;
- (d) Boats operated by a peace officer; or
- (e) Boats operated by an emergency responder, as defined by the State Marine Board by rule.

SECTION 3. ORS 830.565 is amended to read:

830.565. (1) A person may not operate a [*manually propelled*] **nonmotorized** boat that is **at least** 10 feet [*or more*] in length or a motorboat on the waters of this state without first obtaining an aquatic invasive species prevention permit from the State Marine Board under ORS 830.570.

(2) A person who obtains an aquatic invasive species prevention permit for a [*manually propelled*] **nonmotorized** boat may use the permit on any [*manually propelled*] **nonmotorized** boat the person operates on the waters of this state.

(3) **As used in this section:**

(a) **“Nonmotorized boat” includes a sailboat that is at least 10 feet but less than 12 feet in length.**

(b) **“Motorboat” includes a sailboat that is at least 12 feet in length.**

SECTION 4. ORS 830.570 is amended to read:

830.570. (1) The State Marine Board shall issue [*and renew*] an aquatic invasive species prevention permit to, **or renew the permit of**, a person who pays the fee for the permit described in ORS 830.575.

(2) The board may appoint agents to issue aquatic invasive species prevention permits.

(3) Agents shall issue permits in accordance with procedures prescribed by the board by rule and shall charge and collect the aquatic invasive species prevention permit fees prescribed by law.

(4) The board may authorize an agent other than a board employee to charge a service fee of \$2, in addition to the permit fee, for the issuance service performed by the agent.

(5) The board [*shall*] **may** supply the agents with [*motorboat and manually propelled boat*] aquatic invasive species prevention permits.

SECTION 5. ORS 830.575 is amended to read:

830.575. Notwithstanding ORS 830.790 (3), fees for issuance and renewal of an aquatic invasive species prevention permit are as follows:

(1) The biennial fee for a motorboat issued a certificate of number under ORS 830.795 is \$5.

(2) The annual fee for a [*manually propelled*] **nonmotorized boat at least 10 feet [or more]** in length is \$5.

(3) The annual fee for a motorboat [*operated by a nonresident*] **that is not registered in Oregon** is \$20.

(4) The annual fee for an operator of a boat livery **or an outfitter and guide, as that term is defined in ORS 704.010**, is:

(a) \$30 for [*an operator*] **a person** who owns 6 to 10 [*manually propelled*] **nonmotorized boats at least 10 feet in length**;

(b) \$55 for [*an operator*] **a person** who owns 11 to 20 [*manually propelled*] **nonmotorized boats at least 10 feet in length**; or

(c) \$100 for [*an operator*] **a person** who owns 21 or more [*manually propelled*] **nonmotorized boats at least 10 feet in length**.

(5) **All fees collected under this section shall be deposited into the Aquatic Invasive Species Prevention Fund established under ORS 830.585.**

(6) **As used in this section:**

(a) **“Nonmotorized boat” includes a sailboat that is at least 10 feet but less than 12 feet in length.**

(b) **“Motorboat” includes a sailboat that is at least 12 feet in length.**

SECTION 6. ORS 830.580 is amended to read:

830.580. [(1)] The State Marine Board shall adopt rules for the implementation and administration of ORS 830.565 to 830.575, including but not limited to the exemption of certain boats from the requirements of ORS 830.565 **and the method for displaying an aquatic invasive species prevention permit.**

[(2) *Nothing in ORS 830.565 to 830.575 prevents the board from contracting any service provided under ORS 830.565 to 830.575 to any private person or entity or other unit of government.*]

SECTION 7. ORS 830.110 is amended to read:

830.110. In addition to the powers and duties otherwise provided in this chapter, the State Marine Board shall have the power and duty to:

(1) Make all rules necessary to carry out the provisions of this chapter. The rules shall be made in accordance with ORS chapter 183.

(2) Devise a system of identifying numbers for boats, floating homes and boathouses. If an agency of the federal government has an overall system of identification numbering for boats within the United States, the system devised by the board shall conform with the federal system.

(3) Cooperate with state and federal agencies to promote uniformity of the laws relating to boating and their enforcement.

(4) Make contracts necessary to carry out the provisions of ORS 830.060 to 830.140, **830.565 to 830.575**, 830.700 to 830.715, 830.725, 830.730, 830.770, 830.780, 830.785, 830.795 to 830.820 and 830.830 to 830.870.

(5) Advise and assist county sheriffs and other peace officers in the enforcement of laws relating to boating.

(6) Study, plan and recommend the development of boating facilities throughout the state which will promote the safety and pleasure of the public through boating.

- (7) Publicize the advantage of safe boating.
- (8) Accept gifts and grants of property and money to be used to further the purposes of this chapter.
- (9) Exempt from any provisions of this chapter any class of boats if it determines that the safety of persons and property will not be materially promoted by the applicability of those provisions to the class of boats. The board may not exempt from numbering any class of boats unless:
- (a) The board determines that the numbering will not materially aid in their identification; and
- (b) The secretary of the department of the federal government under which the United States Coast Guard is operating has exempted from numbering the same boats or classes of boats.
- (10) Appoint and require the bonding of agents to issue a temporary permit to operate a boat. In addition to the prescribed fees, the agents may charge [*the following*] **a fee prescribed by the board** for their services in issuing the temporary permit[.].
- [*(a) \$2.50 per transaction for calendar years 2008, 2009 and 2010;*]
- [*(b) \$3.75 per transaction for calendar years 2011, 2012 and 2013; and*]
- [*(c) Beginning in 2014, and*] Every three years [*thereafter,*] the board shall issue an order revising the fee [*specified in paragraph (b) of*] **imposed under** this subsection on January 1, based on changes in the [*Portland-Salem, OR-WA,*] **U.S. City Average** Consumer Price Index for All Urban Consumers for All Items, as published by the Bureau of Labor Statistics of the United States Department of Labor. The board shall round the amount of the fee to the nearest half-dollar. The revised fee takes effect on January 1 and applies for the following three years.
- (11) Publish and distribute to the interested public the boating laws of this state and resumes or explanations of those laws.
- (12) Publish and distribute forms for any application required under this chapter and require the use of such forms.
- (13) Make rules for the uniform navigational marking of the waters of this state. Such rules shall not conflict with markings prescribed by the United States Coast Guard. No political subdivision or person shall mark the waters of this state in any manner in conflict with the markings prescribed by the board.
- (14) Make rules regarding marine toilets and their use consistent with the prevention and control of pollution of the waters of this state and not in conflict with the rules of the Oregon Health Authority or the Environmental Quality Commission.
- (15) Institute proceedings to enjoin unlawful obstructions injuring free navigation on the waters of this state.
- (16) Make rules regulating water ski course markers, ski jumps and other special use devices placed in the waters of this state. Such rules may regulate the installation and use of the devices and may require a permit.
- (17) Adopt rules necessary to carry out and enforce the provisions of ORS 830.950 and 830.955. The rules shall include but need not be limited to:
- (a) The kinds of protective covering or physical barriers that are acceptable to be used between a submersible polystyrene device and the water.
- (b) Guidelines for the use of submersible polystyrene devices for the repair or maintenance of existing docks or floats.
- (18) Adopt rules providing for establishment of a Safe Boating Education Course to be made available to courts and law enforcement agencies within this state for use as a sentencing option for those individuals convicted of boating offenses. The board shall specify the content of the Safe Boating Education Course and shall prescribe procedures for making the course available to local courts and law enforcement agencies, including procedures for promptly notifying such courts whether individuals required to enroll in the course have taken and successfully passed the course. Such rules may provide for administration of the course through nonprofit organizations, such as the United States Coast Guard Auxiliary, United States Power Squadrons or similar groups.
- (19) For purposes of ORS 830.175, 830.180, 830.185, 830.187 and 830.195, in cooperation with the State Aviation Board, regulate boats that are seaplanes as provided in ORS 830.605 and 835.200.

SECTION 7a. If House Bill 2118 becomes law, section 7 of this 2019 Act (amending ORS 830.110) is repealed and ORS 830.110, as amended by section 38, chapter 57, Oregon Laws 2019 (Enrolled House Bill 2118), is amended to read:

830.110. In addition to the powers and duties otherwise provided in this chapter, the State Marine Board shall have the power and duty to:

(1) Make all rules necessary to carry out the provisions of this chapter. The rules shall be made in accordance with ORS chapter 183.

(2) Devise a system of identifying numbers for boats, floating homes and boathouses. If an agency of the federal government has an overall system of identification numbering for boats within the United States, the system devised by the board shall conform with the federal system.

(3) Cooperate with state and federal agencies to promote uniformity of the laws relating to boating and their enforcement.

(4) Make contracts necessary to carry out the provisions of ORS 830.060 to 830.140, **830.565 to 830.575**, 830.700 to 830.715, 830.725, 830.730, 830.770, 830.780, 830.785, 830.795 to 830.820 and 830.830 to 830.870.

(5) Advise and assist county sheriffs and other peace officers in the enforcement of laws relating to boating.

(6) Study, plan and recommend the development of boating facilities throughout the state which will promote the safety and pleasure of the public through boating.

(7) Publicize the advantage of safe boating.

(8) Accept gifts and grants of property and money to be used to further the purposes of this chapter.

(9) Exempt from any provisions of this chapter any class of boats if it determines that the safety of persons and property will not be materially promoted by the applicability of those provisions to the class of boats. The board may not exempt from numbering any class of boats unless:

(a) The board determines that the numbering will not materially aid in their identification; and

(b) The secretary of the department of the federal government under which the United States Coast Guard is operating has exempted from numbering the same boats or classes of boats.

(10) Appoint and require the bonding of agents to issue a temporary permit to operate a boat. In addition to the prescribed fees, the agents may charge [*the following*] **a fee prescribed by the board** for their services in issuing the temporary permit[.].

[*(a) \$2.50 per transaction for calendar years 2008, 2009 and 2010;*]

[*(b) \$3.75 per transaction for calendar years 2011, 2012 and 2013; and*]

[*(c) Beginning in 2014, and*] Every three years [*thereafter,*] the board shall issue an order revising the fee [*specified in paragraph (b) of*] **imposed under** this subsection on January 1, based on changes in the Consumer Price Index for All Urban Consumers, West Region (All Items), as published by the Bureau of Labor Statistics of the United States Department of Labor. The board shall round the amount of the fee to the nearest half-dollar. The revised fee takes effect on January 1 and applies for the following three years.

(11) Publish and distribute to the interested public the boating laws of this state and resumes or explanations of those laws.

(12) Publish and distribute forms for any application required under this chapter and require the use of such forms.

(13) Make rules for the uniform navigational marking of the waters of this state. Such rules shall not conflict with markings prescribed by the United States Coast Guard. No political subdivision or person shall mark the waters of this state in any manner in conflict with the markings prescribed by the board.

(14) Make rules regarding marine toilets and their use consistent with the prevention and control of pollution of the waters of this state and not in conflict with the rules of the Oregon Health Authority or the Environmental Quality Commission.

(15) Institute proceedings to enjoin unlawful obstructions injuring free navigation on the waters of this state.

(16) Make rules regulating water ski course markers, ski jumps and other special use devices placed in the waters of this state. Such rules may regulate the installation and use of the devices and may require a permit.

(17) Adopt rules necessary to carry out and enforce the provisions of ORS 830.950 and 830.955. The rules shall include but need not be limited to:

(a) The kinds of protective covering or physical barriers that are acceptable to be used between a submersible polystyrene device and the water.

(b) Guidelines for the use of submersible polystyrene devices for the repair or maintenance of existing docks or floats.

(18) Adopt rules providing for establishment of a Safe Boating Education Course to be made available to courts and law enforcement agencies within this state for use as a sentencing option for those individuals convicted of boating offenses. The board shall specify the content of the Safe Boating Education Course and shall prescribe procedures for making the course available to local courts and law enforcement agencies, including procedures for promptly notifying such courts whether individuals required to enroll in the course have taken and successfully passed the course. Such rules may provide for administration of the course through nonprofit organizations, such as the United States Coast Guard Auxiliary, United States Power Squadrons or similar groups.

(19) For purposes of ORS 830.175, 830.180, 830.185, 830.187 and 830.195, in cooperation with the State Aviation Board, regulate boats that are seaplanes as provided in ORS 830.605 and 835.200.

SECTION 8. ORS 830.585 is amended to read:

830.585. (1) The Aquatic Invasive Species Prevention Fund is established in the State Treasury, separate and distinct from the General Fund. Interest earned by the Aquatic Invasive Species Prevention Fund shall be credited to the fund. Moneys in the fund are continuously appropriated to the State Marine Board [*for the purpose of administering the aquatic invasive species prevention permit program under ORS 830.565 to 830.575 and preventing and controlling aquatic invasive species*].

(2)(a) The fund consists of:

(A) Moneys deposited into the fund under ORS 830.575;

(B) Moneys transferred to the fund from the federal government, other state agencies or local governments;

(C) Any other moneys appropriated to the fund by the Legislative Assembly; and

(D) Moneys deposited into the fund under paragraph (b) of this subsection.

(b) The board may receive gifts, grants or contributions from any source, whether public or private. Moneys received under this paragraph shall be deposited into the fund.

(3) The board may use the moneys in the fund:

(a) To pay the administrative costs of the aquatic invasive species prevention permit program;

(b) To award grants and enter into grant agreements to prevent and control aquatic invasive species; and

(c) For any other purpose of the board as described in ORS 830.565 to 830.575, 830.589 and 830.594.

SECTION 9. ORS 830.587 is amended to read:

830.587. As used in ORS 830.589, 830.594, **830.998** and 830.999 **and section 12 of this 2019 Act:**

(1) "Aquatic invasive species" means any aquatic species of wildlife or any freshwater or marine invertebrate[, *as specified by*] the State Fish and Wildlife Commission **identifies as a prohibited species** by rule, or any aquatic noxious weeds as specified by the State Department of Agriculture by rule.

(2) "Recreational or commercial watercraft" means any boat, any equipment used to transport a boat and any auxiliary equipment for a boat, including but not limited to attached or detached outboard motors.

SECTION 10. ORS 830.589 is amended to read:

830.589. (1) The State Department of Fish and Wildlife, the State Marine Board or the State Department of Agriculture may require a person transporting a recreational or commercial watercraft to stop at a check station to inspect the watercraft for the presence of aquatic invasive species. The purpose of the administrative search authorized under this section is to prevent and limit the spread of aquatic invasive species within Oregon.

(2)(a) The State Department of Fish and Wildlife, the State Marine Board or the State Department of Agriculture may decontaminate, or [*recommend*] **order the** decontamination of, any recreational or commercial watercraft that the agency inspects at a check station operated under authority of this section. **If the State Department of Fish and Wildlife, the State Marine Board or the State Department of Agriculture orders decontamination, the person transporting the watercraft shall cooperate with the agency to complete the decontamination.**

(b) Failure to cooperate with the ordered decontamination process is subject to penalties under ORS 830.998.

(3) All check stations operated under authority of this section must be plainly marked by signs that comply with all state and federal laws and must be staffed by at least one uniformed employee of the State Department of Fish and Wildlife, the State Marine Board or the State Department of Agriculture trained in inspection and decontamination of recreational or commercial watercraft.

(4) An agency that operates a check station under this section shall require all persons transporting recreational or commercial watercraft to stop at the check station, and the agency shall inspect every recreational or commercial watercraft that goes through the check station.

(5) Notwithstanding ORS 496.992, a person transporting a recreational or commercial watercraft who stops at a check station for inspection and who cooperates in the decontamination process is not subject to criminal sanctions for possessing or transporting aquatic invasive species.

(6) The State Department of Fish and Wildlife, the State Marine Board and the State Department of Agriculture may adopt rules to carry out the provisions of this section.

SECTION 11. Section 12 of this 2019 Act is added to and made a part of ORS chapter 830.

SECTION 12. (1) When a peace officer stops a person transporting a recreational or commercial watercraft for failing to stop at an aquatic invasive species check station as required under ORS 830.589, the peace officer may request that the person immediately drive to the nearest aquatic invasive species check station and have the watercraft inspected and, if needed, decontaminated, provided that:

(a) The peace officer has probable cause that the person violated ORS 830.589 by failing to stop at an aquatic invasive species check station; and

(b) An aquatic invasive species check station is open within five miles of the location of the stop.

(2) When it is necessary for the person to reverse direction in order to proceed to the nearest aquatic invasive species check station, the peace officer may assist the driver of the vehicle so that the turning movement can be made safely.

(3) Failure to comply with a peace officer's request to proceed to the nearest aquatic invasive species check station under subsection (1) of this section is subject to criminal penalties under ORS 830.990.

SECTION 13. ORS 830.990 is amended to read:

830.990. (1)(a) Violation of ORS 830.565 **or section 2 of this 2019 Act** by a person operating a [*manually propelled*] **nonmotorized** boat is a Class D violation. Notwithstanding ORS 153.019, the presumptive fine for a violation of ORS 830.565 by a person operating a [*manually propelled*] **nonmotorized** boat is \$30.

(b) Violation of ORS 830.565 **or section 2 of this 2019 Act** by a person operating a motorboat is a Class D violation. Notwithstanding ORS 153.019, the presumptive fine for a violation of ORS 830.565 by a person operating a motorboat is \$50.

(2) A person who violates ORS 830.050, 830.088, 830.090, 830.092, 830.094, 830.230, 830.415, 830.710, 830.720, 830.770, 830.780, 830.810, 830.850 or 830.855, or rules adopted to carry out the purposes of those statutes, commits a Class D violation.

(3) A person who violates ORS 830.220, 830.240, 830.245, 830.250, 830.375, 830.475 (4), 830.480, 830.785, 830.805 or 830.825, or rules adopted to carry out the purposes of those statutes, commits a Class C violation.

(4) A person who violates ORS 830.110, 830.175, 830.180, 830.185, 830.187, 830.195, 830.210, 830.215, 830.225, 830.235, 830.260, 830.300, 830.315 (2) and (3), 830.335, 830.340, 830.345, 830.350, 830.355, 830.360, 830.362, 830.365, 830.370, 830.410, 830.420, 830.495, 830.560, 830.775, 830.795 or 830.830, or rules adopted to carry out the purposes of those statutes, commits a Class B violation.

(5) A person who violates ORS 830.305 or 830.390, or rules adopted to carry out the purposes of those statutes, commits a Class A violation.

(6) A person who violates section 12 of this 2019 Act commits a Class C misdemeanor.

[6] (7) A person who violates ORS 830.383 commits a Class B misdemeanor.

[7] (8) A person who violates ORS 830.035 (2), 830.053, 830.315 (1), 830.325, 830.475 (1), 830.730 or 830.955 (1) commits a Class A misdemeanor.

[8] (9) A person who violates ORS 830.475 (2) commits a Class C felony.

[9] (10) A person who violates ORS 830.944 commits a Class A violation.

SECTION 14. ORS 830.998 is amended to read:

830.998. (1) A person who is transporting a recreational or commercial watercraft and fails to stop and submit to an inspection **or complete the ordered decontamination** at an aquatic invasive species check station operated by the State Department of Fish and Wildlife, the State Marine Board or the State Department of Agriculture as provided under ORS 830.589 commits a Class D violation.

(2) Notwithstanding ORS 153.042, *[an enforcement]* a **peace** officer may issue a citation under subsection (1) of this section when the conduct alleged to constitute a violation has not taken place in the presence of the *[enforcement]* **peace** officer, if the *[enforcement]* **peace** officer has reasonable grounds to believe that the conduct constitutes a violation on the basis of information received from an employee of an agency authorized to operate an aquatic invasive species check station who observed the violation.

SECTION 15. ORS 830.999 is amended to read:

830.999. (1) A person is subject to a civil penalty in an amount to be determined by the State Fish and Wildlife Director of not more than \$6,250 if the person knowingly transports aquatic invasive species on or in a recreational or commercial watercraft. A second or subsequent violation of this subsection within a five-year period shall result in a civil penalty in an amount not less than \$5,000 and not more than \$15,000.

(2) Subsection (1) of this section does not apply to:

(a) A person who transports aquatic invasive species in ballast water, **as defined in ORS 783.625.**

(b) A person who complies with all instructions for the proper decontamination of the recreational or commercial watercraft given by an employee authorized under ORS 830.589 (1) to inspect recreational or commercial watercraft.

(c) A person who transports aquatic invasive species to the State Department of Fish and Wildlife or the State Department of Agriculture, or to another destination designated by the State Fish and Wildlife Commission by rule, in a manner designated by the commission for purposes of identifying or reporting an aquatic invasive species.

(3) The civil penalties authorized in this section shall be imposed as provided in ORS 183.745. Any civil penalty recovered under this section shall be deposited in the State Wildlife Fund. The commission by rule shall adopt the formula the State Fish and Wildlife Director shall use in determining the amount of civil penalties under this section.

SECTION 16. The amendments to ORS 830.110 by section 7 of this 2019 Act apply to fees imposed on or after January 1, 2020.

SECTION 16a. If House Bill 2118 becomes law, section 16 of this 2019 Act is amended to read:

Sec. 16. The amendments to ORS 830.110 by section [7] **7a** of this 2019 Act apply to fees imposed on or after January 1, 2020.

Passed by House February 6, 2019

Repassed by House May 17, 2019

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Timothy G. Sekerak, Chief Clerk of House

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Tina Kotek, Speaker of House

Passed by Senate May 15, 2019

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Peter Courtney, President of Senate

Received by Governor:

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Approved:

.....M,....., 2019

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Kate Brown, Governor

Filed in Office of Secretary of State:

.....M,....., 2019

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Bev Clarno, Secretary of State