

# Chapter 164

## 1971 REPLACEMENT PART

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## DEFINITIONS

**164.005 Definitions.** As used in chapter 743, Oregon Laws 1971, unless the context requires otherwise:

(1) "Appropriate property of another to oneself or a third person" or "appropriate" means to:

(a) Exercise control over property of another, or to aid a third person to exercise control over property of another, permanently or for so extended a period or under such circumstances as to acquire the major portion of the economic value or benefit of such property; or

(b) Dispose of the property of another for the benefit of oneself or a third person.

(2) "Deprive another of property" or "deprive" means to:

(a) Withhold property of another or cause property of another to be withheld from him permanently or for so extended a period or under such circumstances that the major portion of its economic value or benefit is lost to him; or

(b) Dispose of the property in such manner or under such circumstances as to render it unlikely that an owner will recover such property.

(3) "Obtain" includes, but is not limited to, the bringing about of a transfer or purported transfer of property or of a legal interest therein, whether to the obtainer or another.

(4) "Owner of property taken, obtained or withheld" or "owner" means any person who has a right to possession thereof superior to that of the taker, obtainer or withholder.

(5) "Property" means any article, substance or thing of value, including, but not limited to, money, tangible and intangible personal property, real property, choses-in-action, evidence of debt or of contract.  
[1971 c.743 §121]

**164.010** [Amended by 1959 c.236 §1; repealed by 1971 c.743 §432]

## THEFT AND RELATED OFFENSES

**164.015 "Theft" described.** A person commits theft when, with intent to deprive another of property or to appropriate property to himself or to a third person, he:

(1) Takes, appropriates, obtains or withholds such property from an owner thereof; or

(2) Commits theft of property lost, mislaid or delivered by mistake as provided in ORS 164.065; or

(3) Commits theft by extortion as provided in ORS 164.075; or

(4) Commits theft by deception as provided in ORS 164.085; or

(5) Commits theft by receiving as provided in ORS 164.095.  
[1971 c.743 §123]

**164.020** [Amended by 1959 c.236 §2; repealed by 1971 c.743 §432]

**164.025 Consolidation of theft offenses; pleading and proof.** (1) Except for the crime of theft by extortion, conduct denominated theft under ORS 164.015 constitutes a single offense.

(2) If it is an element of the crime charged that property was taken by extortion, an accusation of theft must so specify. In all other cases an accusation of theft is sufficient if it alleges that the defendant committed theft of property of the nature or value required for the commission of the crime charged without designating the particular way or manner in which the theft was committed.

(3) Proof that the defendant engaged in conduct constituting theft as defined in ORS 164.015 is sufficient to support any indictment, information or complaint for theft other than one charging theft by extortion. An accusation of theft by extortion must be supported by proof establishing theft by extortion.  
[1971 c.743 §122]

**164.030** [Amended by 1955 c.37 §1; 1959 c.236 §3; repealed by 1971 c.743 §432]

**164.035 Defenses to theft.** (1) In a prosecution for theft it is a defense that the defendant acted under an honest claim of right, in that:

(a) He was unaware that the property was that of another; or

(b) He reasonably believed that he was entitled to the property involved or had a right to acquire or dispose of it as he did.

(2) In a prosecution for theft by extortion committed by instilling in the victim a fear that he or another person would be charged with a crime, it is a defense that the defendant reasonably believed the threatened charge to be true and that his sole purpose was to compel or induce the victim to take reasonable action to make good the wrong

which was the subject of the threatened charge.

(3) In a prosecution for theft by receiving, it is a defense that the defendant received, retained, concealed or disposed of the property with the intent of restoring it to the owner.

(4) It is a defense that the property involved was that of the defendant's spouse, unless the parties were not living together as man and wife and were living in separate abodes at the time of the alleged theft.

[1971 c.743 §132]

**164.040** [Amended by 1959 c.236 §4; repealed by 1971 c.743 §432]

**164.045 Theft in the second degree.** (1) A person commits the crime of theft in the second degree if, by other than extortion, he:

(a) Commits theft as defined in ORS 164.015; and

(b) The total value of the property in a single or aggregate transaction is under \$200.

(2) Theft in the second degree is a Class A misdemeanor.

[1971 c.743 §124]

**164.050** [Repealed by 1965 c.253 §153]

**164.055 Theft in the first degree.** (1) A person commits the crime of theft in the first degree if, by other than extortion, he commits theft as defined in ORS 164.015; and

(a) The total value of the property in a single or aggregate transaction is \$200 or more; or

(b) The theft is committed during a riot, fire, explosion, catastrophe or other emergency in an area affected thereby; or

(c) The theft is theft by receiving committed by buying, selling or lending on the security of the property; or

(d) The subject of the theft is a firearm or explosive.

(2) As used in this section:

(a) "Explosive" means a chemical compound, mixture or device that is commonly used or intended for the purpose of producing a chemical reaction resulting in a substantially instantaneous release of gas and heat, including but not limited to dynamite, blasting powder, nitroglycerin, blasting caps and nitro-jelly, but excluding fireworks as defined in subsection (1) of ORS 480.110, black powder, smokeless powder, small arms ammunition and small arms ammunition primers.

(b) "Firearm" means a weapon, by whatever name known, which is designed to expel a projectile by the action of black powder or

smokeless powder and which is readily capable of use as a weapon.

(3) Theft in the first degree is a Class C felony.

[1971 c.743 §125]

**164.060** [Repealed by 1965 c.253 §153]

**164.065 Theft of lost, mislaid property.** A person who comes into control of property of another that he knows or has good reason to know to have been lost, mislaid or delivered under a mistake as to the nature or amount of the property or the identity of the recipient, commits theft if, with intent to deprive the owner thereof, he fails to take reasonable measures to restore the property to the owner.

[1971 c.743 §126]

**164.070** [Amended by 1965 c.253 §131; repealed by 1971 c.743 §432]

**164.075 Theft by extortion.** (1) A person commits theft by extortion when he compels or induces another person to deliver property to himself or to a third person by means of instilling in him a fear that, if the property is not so delivered, the actor or another will in the future:

(a) Cause physical injury to some person; or

(b) Cause damage to property; or

(c) Engage in other conduct constituting a crime; or

(d) Accuse some person of a crime or cause criminal charges to be instituted against him; or

(e) Expose a secret or publicize an asserted fact, whether true or false, tending to subject some person to hatred, contempt or ridicule; or

(f) Cause or continue a strike, boycott or other collective action injurious to some person's business; except that such conduct shall not be considered extortion when the property is demanded or received for the benefit of the group in whose interest the actor purports to act; or

(g) Testify or provide information or withhold testimony or information with respect to another's legal claim or defense; or

(h) Use or abuse his position as a public servant by performing some act within or related to his official duties, or by failing or refusing to perform an official duty, in such manner as to affect some person adversely; or

(i) Inflict any other harm that would not benefit the actor.

(2) Theft by extortion is a Class B felony.

[1971 c.743 §127]

**164.080** [Repealed by 1971 c.743 §432]

**164.085 Theft by deception.** (1) A person, who obtains property of another thereby, commits theft by deception when, with intent to defraud, he:

(a) Creates or confirms another's false impression of law, value, intention or other state of mind which the actor does not believe to be true; or

(b) Fails to correct a false impression which he previously created or confirmed; or

(c) Prevents another from acquiring information pertinent to the disposition of the property involved; or

(d) Sells or otherwise transfers or encumbers property, failing to disclose a lien, adverse claim or other legal impediment to the enjoyment of the property, whether such impediment is or is not valid, or is or is not a matter of official record; or

(e) Promises performance which he does not intend to perform or knows will not be performed.

(2) "Deception" does not include falsity as to matters having no pecuniary significance, or representations unlikely to deceive ordinary persons in the group addressed.

(3) In a prosecution for theft by deception the defendant's intention or belief that a promise would not be performed shall not be established by or inferred from the fact alone that such promise was not performed.

(4) In a prosecution for theft by deception committed by means of a bad check, it is prima facie evidence of knowledge that the check or order would not be honored if:

(a) The drawer has no account with the drawee at the time the check or order is drawn or uttered; or

(b) Payment is refused by the drawee for lack of funds, upon presentation within 30 days after the date of utterance, and the drawer fails to make good within 10 days after receiving notice of refusal.

[1971 c.743 §128]

**164.090** [Repealed by 1971 c.743 §432]

**164.095 Theft by receiving.** (1) A person commits theft by receiving if he receives, retains, conceals or disposes of property of another knowing or having good reason to know that the property was the subject of theft.

(2) "Receiving" means acquiring possession, control or title, or lending on the security of the property.

[1971 c.743 §129]

**164.100** [Repealed by 1971 c.743 §432]

**164.105 Right of possession.** Right of possession of property is as follows:

(1) A person who has obtained possession of property by theft or other illegal means shall be deemed to have a right of possession superior to that of a person who takes, obtains or withholds the property from him by means of theft.

(2) A joint or common owner of property shall not be deemed to have a right of possession of the property superior to that of any other joint or common owner of the property.

(3) In the absence of a specific agreement to the contrary, a person in lawful possession of property shall be deemed to have a right of possession superior to that of a person having only a security interest in the property, even if legal title to the property lies with the holder of the security interest pursuant to a conditional sale contract or other security agreement.

[1971 c.743 §130]

**164.110** [Repealed by 1971 c.743 §432]

**164.115 Value of stolen property.** For the purposes of chapter 743, Oregon Laws 1971, the value of property shall be ascertained as follows:

(1) Except as otherwise specified in this section, value means the market value of the property at the time and place of the crime, or if such cannot reasonably be ascertained, the cost of replacement of the property within a reasonable time after the crime.

(2) Whether or not they have been issued or delivered, certain written instruments, not including those having a readily ascertainable market value, shall be evaluated as follows:

(a) The value of an instrument constituting an evidence of debt, including, but not limited to, a check, draft or promissory note, shall be considered the amount due or collectible thereon or thereby.

(b) The value of any other instrument which creates, releases, discharges or otherwise affects any valuable legal right, privilege or obligation shall be considered the greatest amount of economic loss which the owner might reasonably suffer because of the loss of the instrument.

(3) When the value of property cannot reasonably be ascertained, it shall be presumed to be an amount less than \$200. [1971 c.743 §131]

**164.125 Theft of services.** (1) A person commits the crime of theft of services if:

(a) With intent to avoid payment therefor, he obtains services that are available only for compensation, by force, threat, deception or other means to avoid payment for the services; or

(b) Having control over the disposition of labor or of business, commercial or industrial equipment or facilities of another, he uses or diverts to the use of himself or a third person such labor, equipment or facilities with intent to derive a commercial benefit for himself or a third person not entitled thereto.

(2) As used in this section, "services" includes, but is not limited to, labor, professional services, toll facilities, transportation, telephone or other communications service, entertainment, the supplying of food, lodging or other accommodations in hotels, restaurants or elsewhere, the supplying of equipment for use, and the supplying of commodities of a public utility nature such as gas, electricity, steam and water.

(3) Absconding without payment or offer to pay for hotel, restaurant or other services for which compensation is customarily paid immediately upon the receiving of them is prima facie evidence that the services were obtained by deception.

(4) Theft of services is a Class A misdemeanor.

[1971 c.743 §133]

**164.135 Unauthorized use of a vehicle.**

(1) A person commits the crime of unauthorized use of a vehicle when:

(a) He takes, operates, exercises control over, rides in or otherwise uses another's vehicle, boat or aircraft without consent of the owner; or

(b) Having custody of a vehicle, boat or aircraft pursuant to an agreement between himself or another and the owner thereof whereby he or another is to perform for compensation a specific service for the owner involving the maintenance, repair or use of such vehicle, boat or aircraft, he intentionally uses or operates it, without consent of the owner, for his own purpose in a manner constituting a gross deviation from the agreed purpose; or

(c) Having custody of a vehicle, boat or aircraft pursuant to an agreement with the owner thereof whereby such vehicle, boat or

aircraft is to be returned to the owner at a specified time, he knowingly retains or withholds possession thereof without consent of the owner for so lengthy a period beyond the specified time as to render such retention or possession a gross deviation from the agreement.

(2) Unauthorized use of a vehicle, boat or aircraft is a Class C felony.

[1971 c.743 §134]

**BURGLARY AND CRIMINAL TRESPASS**

**164.205 Definitions for ORS 164.205 to 164.255.** As used in ORS 164.205 to 164.255, except as the context requires otherwise:

(1) "Building," in addition to its ordinary meaning, includes any booth, vehicle, boat, aircraft or other structure adapted for overnight accommodation of persons or for carrying on business therein. Where a building consists of separate units, including, but not limited to, separate apartments, offices or rented rooms, each unit is, in addition to being a part of such building, a separate building.

(2) "Dwelling" means a building which regularly or intermittently is occupied by a person lodging therein at night, whether or not a person is actually present.

(3) "Enter or remain unlawfully" means:

(a) To enter or remain in or upon premises when the premises, at the time of such entry or remaining, are not open to the public or when the entrant is not otherwise licensed or privileged to do so; or

(b) To fail to leave premises that are open to the public after being lawfully directed to do so by the person in charge.

(4) "Open to the public" means premises which by their physical nature, function, custom, usage, notice or lack thereof or other circumstances at the time would cause a reasonable person to believe that no permission to enter or remain is required.

(5) "Person in charge" means a person, his representative or his employe who has lawful control of premises by ownership, tenancy, official position or other legal relationship. It includes, but is not limited to the person, or holder of a position, designated as the person or position-holder in charge by the Governor, board, commission or governing body of any political subdivision of this state.

(6) "Premises" includes any building and any real property, whether privately or publicly owned.

[1971 c.743 §135]

164.210 [Repealed by 1971 c.743 §432]

**164.215 Burglary in the second degree.**

(1) A person commits the crime of burglary in the second degree if he enters or remains unlawfully in a building with intent to commit a crime therein.

(2) Burglary in the second degree is a Class C felony.  
[1971 c.743 §136]

164.220 [Repealed by 1971 c.743 §432]

**164.225 Burglary in the first degree.** (1) A person commits the crime of burglary in the first degree if he violates ORS 164.215 and the building is a dwelling, or if in effecting entry or while in a building or in immediate flight therefrom he:

(a) Is armed with a burglar's tool as defined in ORS 164.235 or a deadly weapon; or

(b) Causes or attempts to cause physical injury to any person; or

(c) Uses or threatens to use a dangerous weapon.

(2) Burglary in the first degree is a Class A felony.  
[1971 c.743 §137]

164.230 [Repealed by 1971 c.743 §432]

**164.235 Possession of burglar's tools.**

(1) A person commits the crime of possession of burglar's tools if he possesses any burglar tool with the intent to use the tool or knowing that some person intends to use the tool to commit or facilitate a forcible entry into premises or theft by a physical taking.

(2) "Burglar tool" means an acetylene torch, electric arc, burning bar, thermal lance, oxygen lance or other similar device capable of burning through steel, concrete or other solid material, or nitroglycerine, dynamite, gunpowder or any other explosive, tool, instrument or other article adapted, designed or commonly used for committing or facilitating a forcible entry into premises or theft by a physical taking.

(3) Possession of burglar's tools is a Class A misdemeanor.  
[1971 c.743 §138]

164.240 [Amended by 1959 c.99 §1; repealed by 1971 c.743 §432]

**164.245 Criminal trespass in the second degree.** (1) A person commits the crime of criminal trespass in the second degree if he enters or remains unlawfully in or upon premises.

(2) Criminal trespass in the second degree is a Class C misdemeanor.  
[1971 c.743 §139]

164.250 [Repealed by 1971 c.743 §432]

**164.255 Criminal trespass in the first degree.** (1) A person commits the crime of criminal trespass in the first degree if he enters or remains unlawfully in a dwelling.

(2) Criminal trespass in the first degree is a Class A misdemeanor.  
[1971 c.743 §140]

164.260 [Repealed by 1971 c.743 §432]

**ARSON, CRIMINAL MISCHIEF AND RELATED OFFENSES**

**164.305 Definitions for ORS 164.305 to 164.365.** As used in ORS 164.305 to 164.365, except as the context requires otherwise:

(1) "Protected property" means any structure, place or thing customarily occupied by people, including "public buildings" as defined by ORS 479.010 and "forest land" as defined by ORS 477.001.

(2) "Property of another" means property in which anyone other than the actor has a possessory or proprietary interest.  
[1971 c.743 §141]

164.310 [Amended by 1957 c.653 §1; 1959 c.302 §2; repealed by 1971 c.743 §432]

**164.315 Arson in the second degree.** (1) A person commits the crime of arson in the second degree if, by starting a fire or causing an explosion, he intentionally damages any building of another that is not protected property.

(2) Arson in the second degree is a Class C felony.

[1971 c.743 §143]

164.320 [Amended by 1959 c.77 §1; repealed by 1971 c.743 §432]

**164.325 Arson in the first degree.** (1) A person commits the crime of arson in the first degree if, by starting a fire or causing an explosion, he intentionally damages:

(a) Protected property of another; or

(b) Any property, whether his own or another's, and such act recklessly places another person in danger of physical injury or protected property of another in danger of damage.

(2) Arson in the first degree is a Class A felony.

[1971 c.743 §144]

164.330 [Repealed by 1971 c.743 §432]

**164.335 Reckless burning.** (1) A person commits the crime of reckless burning if he recklessly damages property of another by fire or explosion.

(2) Reckless burning is a Class A misdemeanor.

[1971 c.743 §142]

**164.340** [Repealed by 1971 c.743 §432]

**164.345 Criminal mischief in the third degree.** (1) A person commits the crime of criminal mischief in the third degree if, with intent to cause substantial inconvenience to the owner or to another person, and having no right to do so nor reasonable ground to believe that he has such right, he tampers or interferes with property of another.

(2) Criminal mischief in the third degree is a Class C misdemeanor.

[1971 c.743 §145]

**164.350** [Repealed by 1971 c.743 §432]

**164.354 Criminal mischief in the second degree.** (1) A person commits the crime of criminal mischief in the second degree if:

(a) He violates ORS 164.345, and as a result thereof, damages property in an amount exceeding \$100; or

(b) Having no right to do so nor reasonable ground to believe that he has such right, he intentionally damages property of another, or, he recklessly damages property of another in an amount exceeding \$100.

(2) Criminal mischief in the second degree is a Class A misdemeanor.

[1971 c.743 §146]

**164.355** [1967 c.378 §§1, 2, 3, 4; 1969 c.287 §1; repealed by 1971 c.743 §432]

**164.360** [Repealed by 1971 c.743 §432]

**164.362** [1957 c.714 §§1, 6(1); repealed by 1971 c.743 §432]

**164.364** [1957 c.714 §§4, 5; repealed by 1971 c.743 §432]

**164.365 Criminal mischief in the first degree.** (1) A person commits the crime of criminal mischief in the first degree if, with intent to damage property, and having no right to do so nor reasonable ground to believe that he has such right, he damages property of another:

(a) In an amount exceeding \$1,000; or

(b) By means of an explosive.

(2) Criminal mischief in the first degree is a Class C felony.

[1971 c.743 §147]

**164.366** [1957 c.714 §§2, 6(2); repealed by 1971 c.743 §432]

**164.368** [1957 c.714 §3; repealed by 1971 c.743 §432]

**164.370** [Repealed by 1971 c.743 §432]

**164.380** [Repealed by 1971 c.743 §432]

**164.385** [1967 c.243 §1; repealed by 1971 c.743 §432]

**164.390** [1959 c.626 §§1, 4; repealed by 1971 c.743 §432]

**164.392** [1959 c.626 §§2, 3; repealed by 1971 c.743 §432]

## ROBBERY

**164.395 Robbery in the third degree.** (1) A person commits the crime of robbery in the third degree if in the course of committing or attempting to commit theft he uses or threatens the immediate use of physical force upon another person with the intent of:

(a) Preventing or overcoming resistance to his taking of the property or to his retention thereof immediately after the taking; or

(b) Compelling the owner of such property or another person to deliver the property or to engage in other conduct which might aid in the commission of the theft.

(2) Robbery in the third degree is a Class C felony.

[1971 c.743 §148]

**164.405 Robbery in the second degree.** (1) A person commits the crime of robbery in the second degree if he violates ORS 164.395 and he:

(a) Represents by word or conduct that he is armed with what purports to be a dangerous or deadly weapon; or

(b) Is aided by another person actually present.

(2) Robbery in the second degree is a Class B felony.

[1971 c.743 §149]

**164.410** [Repealed by 1971 c.743 §432]

**164.415 Robbery in the first degree.** (1) A person commits the crime of robbery in the first degree if he violates ORS 164.395 and he:

(a) Is armed with a deadly weapon; or

(b) Uses or attempts to use a dangerous weapon; or

(c) Causes or attempts to cause serious physical injury to any person.

(2) Robbery in the first degree is a Class A felony.

[1971 c.743 §150]

- 164.420 [Repealed by 1971 c.743 §432]
- 164.430 [Repealed by 1971 c.743 §432]
- 164.440 [Amended by 1969 c.511 §1; repealed by 1971 c.404 §8 and by 1971 c.743 §432]
- 164.450 [Repealed by 1971 c.743 §432]
- 164.452 [1965 c.100 §300; repealed by 1971 c.743 §432]
- 164.455 [1953 c.535 §1; 1959 c.687 §2; 1965 c.453 §1; repealed by 1971 c.743 §432]
- 164.460 [Amended by 1957 c.470 §1; 1959 c.530 §2; 1969 c.501 §3; repealed by 1971 c.743 §432]
- 164.462 [1963 c.552 §§1, 2; 1965 c.450 §1; repealed by 1971 c.743 §432]
- 164.465 [1953 c.430 §1; 1959 c.687 §3; repealed by 1971 c.743 §432]
- 164.470 [Amended by 1969 c.594 §1; repealed by 1971 c.743 §432]
- 164.480 [Repealed by 1971 c.743 §432]
- 164.485 [1969 c.652 §1; repealed by 1971 c.743 §432]
- 164.490 [1969 c.652 §2; repealed by 1971 c.743 §432]
- 164.500 [1969 c.652 §§3, 4, 6; repealed by 1971 c.743 §432]
- 164.505 [1969 c.652 §5; repealed by 1971 c.743 §432]
- 164.510 [Repealed by 1971 c.743 §432]
- 164.520 [Repealed by 1971 c.743 §432]
- 164.530 [Repealed by 1971 c.743 §432]
- 164.540 [Repealed by 1971 c.743 §432]
- 164.550 [Repealed by 1971 c.743 §432]
- 164.555 [1963 c.552 §3; repealed by 1971 c.743 §432]
- 164.560 [Repealed by 1971 c.743 §432]
- 164.570 [Repealed by 1971 c.743 §432]
- 164.580 [Amended by 1959 c.580 §103; repealed by 1971 c.743 §432]
- 164.590 [Repealed by 1971 c.743 §432]
- 164.610 [Repealed by 1971 c.743 §432]
- 164.620 [Repealed by 1971 c.743 §432]
- 164.630 [Repealed by 1971 c.743 §432]
- 164.635 [1961 c.310 §2; 1967 c.332 §1; repealed by 1971 c.743 §432]
- 164.640 [Repealed by 1971 c.743 §432]
- 164.650 [Repealed by 1971 c.743 §432]
- 164.660 [Amended by 1967 c.390 §1; repealed by 1971 c.743 §432]
- 164.670 [Amended by 1965 c.552 §1; repealed by 1971 c.743 §432]
- 164.680 [Repealed by 1971 c.743 §432]
- 164.690 [Repealed by 1971 c.743 §432]

- 164.700 [1965 c.594 §1; repealed by 1971 c.743 §432]
- 164.710 [Amended by 1969 c.517 §1; repealed by 1971 c.743 §432]
- 164.720 [Repealed by 1971 c.743 §432]
- 164.730 [Amended by 1967 c.351 §1; repealed by 1971 c.743 §432]
- 164.740 [Repealed by 1971 c.743 §432]
- 164.750 [1969 c.584 §1; repealed by 1971 c.743 §432]
- 164.760 [1969 c.584 §§2, 3; repealed by 1971 c.743 §432]
- 164.770 [1969 c.584 §4; repealed by 1971 c.743 §432]
- 164.780 [1969 c.584 §5; repealed by 1971 c.743 §432]

**MISCELLANEOUS**

**164.805 Offensive littering.** (1) A person commits the crime of offensive littering if he creates an objectionable stench or degrades the beauty or appearance of property or detracts from the natural cleanliness or safety of property by intentionally:

(a) Discarding or depositing any rubbish, trash, garbage, debris or other refuse upon the land of another without permission of the owner, or upon any public way; or

(b) Draining, or causing or permitting to be drained, sewage or the drainage from a cesspool, septic tank, recreational or camping vehicle waste holding tank or other contaminated source, upon the land of another without permission of the owner, or upon any public way; or

(c) Permitting any rubbish, trash, garbage, debris or other refuse to be thrown from a vehicle which he is operating; except that this subsection shall not apply to a person operating a vehicle transporting passengers for hire subject to regulation by the Interstate Commerce Commission or the Public Utility Commissioner of Oregon or a person operating a school bus subject to ORS 485.010 to 485.060.

(2) As used in this section, "public way" includes, but is not limited to, roads, streets, alleys, lanes, trails, beaches, parks and all recreational facilities operated by the state, a county or a local municipality for use by the general public.

(3) Offensive littering is a Class C misdemeanor. [1971 c.743 §283]

- 164.810 [Repealed by 1971 c.743 §432]

**164.815 Unlawful transporting of hay.**

(1) A person commits the crime of unlawfully transporting hay if he knowingly transports any quantity of hay on a public highway without having in his possession a transportation certificate signed by the producer or his agent showing:

(a) The amount of hay in his possession and the date of acquisition of it;

(b) The price paid or agreed to be paid for the hay or other terms of the transportation or sale contract;

(c) The location where the hay was loaded and its destination;

(d) The total number of bales or other units and the method of bailing or packaging; and

(e) The type of hay.

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

(a) By the producer thereof or his agent who has in his possession written evidence of his authority to transport the hay for the producer; or

(b) By a person or his agent under contract to transport the hay for the producer.

(3) As used in this section:

(a) "Hay" means grasses, legumes or other forage plants grown in Oregon and intended for use as a feed.

(b) "Producer" means a person who raises and harvests hay on land he owns or leases and who is delivering that hay from the field to a place of storage or sale or to a feedlot for livestock.

(4) Unlawfully transporting hay is a Class C misdemeanor.

[1971 c.743 §288a]

Note: ORS 164.815, 164.825, 164.835, 164.845 and 164.855 were not added to and made a part of the Oregon Criminal Code of 1971 by legislative action.

164.820 [Amended by 1971 c.647 §1; repealed by 1971 c.743 §432]

**164.825 Transportation of coniferous trees without bill of sale prohibited.** (1) Except as provided in subsection (2) of this section, it shall be unlawful for any person to transport over the highways of this state more than five coniferous trees without having in his possession a bill of sale showing his title thereto. The bill of sale shall specify:

(a) The date of its execution;

(b) The name and address of the vendor or donor of the trees;

(c) The name and address of the vendee or donee of the trees;

(d) The number of trees, by species, sold

or transferred by the bill of sale; and

(e) The property from which the trees were taken.

(2) The provisions of subsection (1) of this section do not apply to:

(a) The transportation of trees in the course of transplantation, with their roots intact.

(b) The transportation of logs, poles, pilings or other forest products from which substantially all the limbs and branches have been removed.

(c) The transportation of coniferous trees by the owner of the land from which they were taken or his agent.

(d) The transportation of coniferous trees by a common carrier or contract carrier.

(3) Violation of the provisions of subsection (1) of this section is a Class B misdemeanor.

[1971 c.743 §295]

Note: See note under ORS 164.815.

164.830 [Repealed by 1971 c.743 §432]

**164.835 Investigation to prevent violations of ORS 164.825.** (1) All peace officers shall note and investigate the transportation of coniferous trees for the purpose of preventing violations of ORS 164.825.

(2) Justice courts, district courts and circuit courts have concurrent jurisdiction of violations of ORS 164.825.

[1971 c.743 §296]

Note: See note under ORS 164.815.

164.840 [Repealed by 1971 c.743 §432]

**164.845 Arrest, summons for transporting trees; effect of failure to appear.** (1) Whenever any peace officer has reasonable cause for believing that a person is transporting trees in violation of ORS 164.825, he may arrest the person without a warrant and take him before any court having jurisdiction of the offense. The court shall proceed without delay to hear, try and determine the matter and enter judgment according to the allegations and proofs.

(2) The peace officer making the arrest, if he does not immediately take the person arrested into custody, may issue a summons to him. The summons shall direct him to appear at the court named in the summons to answer a complaint to be filed therewith. The violation shall be noted on the summons, which shall be dated and signed by the peace officer.

(3) Any person to whom a summons is issued under this section who fails to appear

at the time and place specified therein commits a Class B misdemeanor.

[1971 c.743 §297]

Note: See note under ORS 164.815.

**164.850** [Repealed by 1971 c.743 §432]

**164.855 Seizure of trees transported in violation of ORS 164.825.** (1) Whenever any peace officer has reasonable cause for believing that a person is transporting trees in violation of ORS 164.825, he may, at the time of making the arrest under ORS 164.845, seize and take possession of the trees. The peace officer shall hold the trees subject to the order of the court before which the arrested person is ordered to appear. If the owner of the trees appears before the court within 48 hours after the seizure thereof and presents satisfactory evidence of his ownership, the court shall order the peace officer to deliver the trees to the owner. If the owner does not appear within the 48-hour period and prove his ownership of the trees, the court shall direct the peace officer to sell the trees in any manner and for any price that appears to the court to be warranted. If the trees have no value, the court may direct the officer to destroy them in any manner practicable. The

proceeds of the sale, less the reasonable expenses thereof, shall be paid to the treasurer of the county in which the trees are sold. At any time within one year after the seizure of the trees the owner thereof may appear before the court, and if he presents satisfactory evidence of his ownership, the court shall direct the treasurer of the county to pay the proceeds to the owner. If the owner does not appear within one year from the seizure of the trees and prove his right to the proceeds, the proceeds shall thereafter belong to the county, and may be disposed of as the county court may direct.

(2) The return of the trees or the payment of the proceeds shall not preclude the court from imposing any fine or penalty for any violation of ORS 164.825 to 164.855.

[1971 c.743 §298]

Note: See note under ORS 164.815.

**164.860** [Repealed by 1971 c.743 §432]

**164.870** [Repealed by 1957 c.269 §1 (ORS 164.871 enacted in lieu of ORS 164.870)]

**164.871** [1957 c.269 §2 (enacted in lieu of ORS 164.870); repealed by 1971 c.743 §432]

**164.880** [Repealed by 1971 c.743 §432]

**164.890** [Repealed by 1971 c.743 §432]

**164.900** [Repealed by 1971 c.743 §432]

#### CERTIFICATE OF LEGISLATIVE COUNSEL

Pursuant to ORS 173.170, I, Robert W. Lundy, Legislative Counsel, do hereby certify that I have compared each section printed in this chapter with the original section in the enrolled bill, and that the sections in this chapter are correct copies of the enrolled sections, with the exception of the changes in form permitted by ORS 173.160 and other changes specifically authorized by law.

Done at Salem, Oregon,  
on December 1, 1971.

Robert W. Lundy  
Legislative Counsel