

Chapter 165

1987 REPLACEMENT PART

Offenses Involving Fraud or Deception

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FORGERY AND RELATED OFFENSES

165.002 Definitions for ORS 165.002 to 165.070. As used in ORS 165.002 to 165.022, and 165.032 to 165.070, unless the context requires otherwise:

(1) "Written instrument" means any paper, document, instrument or article containing written or printed matter or the equivalent thereof, whether complete or incomplete, used for the purpose of reciting, embodying, conveying or recording information or constituting a symbol or evidence of value, right, privilege or identification, which is capable of being used to the advantage or disadvantage of some person.

(2) "Complete written instrument" means one which purports to be a genuine written instrument fully drawn with respect to every essential feature thereof.

(3) "Incomplete written instrument" means one which contains some matter by way of content or authentication but which requires additional matter in order to render it a complete written instrument.

(4) To "falsely make" a written instrument means to make or draw a complete written instrument in its entirety, or an incomplete written instrument which purports to be an authentic creation of its ostensible maker, but which is not, either because the ostensible maker is fictitious or because, if real, the ostensible maker did not authorize the making or drawing thereof.

(5) To "falsely complete" a written instrument means to transform, by adding, inserting or changing matter, an incomplete written instrument into a complete one, without the authority of anyone entitled to grant it, so that the complete written instrument falsely appears or purports to be in all respects an authentic creation of its ostensible maker or authorized by the ostensible maker.

(6) To "falsely alter" a written instrument means to change, without authorization by anyone entitled to grant it, a written instrument, whether complete or incomplete, by means of erasure, obliteration, deletion, insertion of new matter, transposition of matter, or in any other manner, so that the instrument so altered falsely appears or purports to be in all respects an authentic creation of its ostensible maker or authorized by the ostensible maker.

(7) To "utter" means to issue, deliver, publish, circulate, disseminate, transfer or tender a written instrument or other object to another.

(8) "Forged instrument" means a written instrument which has been falsely made, completed or altered. [1971 c.743 §151]

165.005 [Amended by 1955 c.435 §1, repealed by 1971 c.743 §432]

165.007 Forgery in the second degree.

(1) A person commits the crime of forgery in the second degree if, with intent to injure or defraud, the person:

(a) Falsely makes, completes or alters a written instrument; or

(b) Utters a written instrument which the person knows to be forged.

(2) Forgery in the second degree is a Class A misdemeanor. [1971 c.743 §152]

165.010 [Repealed by 1971 c.743 §432]

165.012 [1963 c.553 §1; repealed by 1971 c.743 §432]

165.013 Forgery in the first degree.

(1) A person commits the crime of forgery in the first degree if the person violates ORS 165.007 and the written instrument is or purports to be any of the following:

(a) Part of an issue of money, securities, postage or revenue stamps, or other valuable instruments issued by a government or governmental agency; or

(b) Part of an issue of stock, bonds or other instruments representing interests in or claims against any property or person; or

(c) A deed, will, codicil, contract, assignment, commercial instrument or other document which does or may evidence, create, transfer, alter, terminate, or otherwise affect a legal right, interest, obligation or status; or

(d) A public record.

(2) Forgery in the first degree is a Class C felony. [1971 c.743 §153]

165.015 [Repealed by 1971 c.743 §432]

165.017 Criminal possession of a forged instrument in the second degree.

(1) A person commits the crime of criminal possession of a forged instrument in the second degree if, knowing it to be forged and with intent to utter same, the person possesses a forged instrument.

(2) Criminal possession of a forged instrument in the second degree is a Class A misdemeanor. [1971 c.743 §154]

165.020 [Repealed by 1971 c.743 §432]

165.022 Criminal possession of a forged instrument in the first degree. (1) A person commits the crime of criminal possession of a forged instrument in the first degree if,

knowing it to be forged and with intent to utter same, the person possesses a forged instrument of the kind specified in ORS 165.013.

(2) Criminal possession of a forged instrument in the first degree is a Class C felony. [1971 c.743 §155]

165.025 [Repealed by 1971 c.743 §432]

165.027 Evidence admissible to prove forgery or possession of forged instrument.

(1) In any prosecution for forgery of a bank bill or note or for criminal possession of a forged bank bill or note, the testimony of any person acquainted with the signature of the officer or agent authorized to sign the bills or notes of the bank of which such bill or note is alleged to be a forgery, or who has knowledge of the difference in appearance of the true and forged bills or notes thereof, may be admitted to prove that it is a forgery.

(2) In any prosecution for forgery or for criminal possession of any note, certificate, bond, bill of credit, or other security or evidence of debt issued on behalf of the United States or any state or territory, the certificate duly sworn to of the Secretary of the Treasury, or of the Treasurer of the United States, or of the secretary or treasurer of any state or treasury on whose behalf the note, certificate, bond, bill of credit or other security or evidence of debt purports to have been issued, shall be admitted as evidence to prove that it is a forgery. [1971 c.743 §290]

Note: 165.027 was enacted into law by the Legislative Assembly but was not added to or made a part of the Oregon Criminal Code of 1971 by legislative action. See Preface to Oregon Revised Statutes for further explanation.

165.030 [Amended by 1961 c.715 §1; repealed by 1971 c.743 §432]

165.032 Criminal possession of a forgery device. (1) A person commits the crime of criminal possession of a forgery device if:

(a) The person makes or possesses with knowledge of its character any plate, die or other device, apparatus, equipment or article specifically designed for use in counterfeiting or otherwise forging written instruments; or

(b) With intent to use, or to aid or permit another to use, the same for purposes of forgery, the person makes or possesses any device, apparatus, equipment or article capable of or adaptable to such use.

(2) Criminal possession of a forgery device is a Class C felony. [1971 c.743 §156]

165.035 [Repealed by 1971 c.743 §432]

165.037 Criminal simulation. (1) A person commits the crime of criminal simulation if:

(a) With intent to defraud, the person makes or alters any object in such a manner that it appears to have an antiquity, rarity, source or authorship that it does not in fact possess; or

(b) With knowledge of its true character and with intent to defraud, the person utters or possesses an object so simulated.

(2) Criminal simulation is a Class A misdemeanor. [1971 c.743 §157]

165.040 [Repealed by 1971 c.743 §432]

165.042 Fraudulently obtaining a signature. (1) A person commits the crime of fraudulently obtaining a signature if, with intent to defraud or injure another, the person obtains the signature of a person to a written instrument by knowingly misrepresenting any fact.

(2) Fraudulently obtaining a signature is a Class A misdemeanor. [1971 c.743 §158]

165.045 [Repealed by 1971 c.743 §432]

165.047 Unlawfully using slugs. (1) A person commits the crime of unlawfully using slugs if:

(a) With intent to defraud the supplier of property or a service sold or offered by means of a coin machine, the person inserts, deposits or otherwise uses a slug in such machine; or

(b) The person makes, possesses, offers for sale or disposes of a slug with intent to enable a person to use it fraudulently in a coin machine.

(2) As used in this section:

(a) "Coin machine" means a coin box, turnstile, vending machine, or other mechanical or electronic device or receptacle designed to receive a coin or bill of a certain denomination or a token made for such purpose, and in return for the insertion or deposit thereof, automatically to offer, provide, assist in providing or permit the acquisition or use of some property or service.

(b) "Slug" means an object, article or device which, by virtue of its size, shape or any other quality is capable of being inserted, deposited, or otherwise used in a coin machine as a fraudulent substitute for a genuine coin, bill or token.

(3) Unlawfully using slugs is a Class B misdemeanor. [1971 c.743 §159]

165.055 Fraudulent use of a credit card. (1) A person commits the crime of fraudulent use of a credit card if, with intent to injure or defraud, the person uses a credit card for the purpose of obtaining property or services with knowledge that:

(a) The card is stolen or forged; or

(b) The card has been revoked or canceled; or

(c) For any other reason the use of the card is unauthorized by either the issuer or the person to whom the credit card is issued.

(2) "Credit card" means a card, booklet, credit card number or other identifying symbol or instrument evidencing an undertaking to pay for property or services delivered or rendered to or upon the order of a designated person or bearer.

(3) Fraudulent use of a credit card is:

(a) A Class A misdemeanor if the aggregate total amount of property or services the person obtains or attempts to obtain is under \$500.

(b) A Class C felony if the total amount of property or services the person obtains or attempts to obtain is \$500 or more. [1971 c.743 §160; 1973 c.133 §7; 1987 c.907 §11]

165.065 Negotiating a bad check. (1) A person commits the crime of negotiating a bad check if the person makes, draws or utters a check or similar sight order for the payment of money, knowing that it will not be honored by the drawee.

(2) For purposes of this section, unless the check or order is postdated, 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.

(3) Negotiating a bad check is:

(a) A Class A misdemeanor, except as provided in paragraph (b) of this subsection.

(b) Enhanced from a Class A misdemeanor to a Class C felony if at the time of sentencing it is established beyond a reasonable doubt that the person has been convicted in this state, within the preceding five years, of the crime of negotiating a bad check or of theft by deception by means of a bad check. [1971 c.743 §161, 1979 c.594 §1]

165.070 Possessing fraudulent communications device. (1) A person commits the crime of possessing a fraudulent communications device if the person:

(a) Makes, possesses, sells, gives or otherwise transfers to another, or offers or advertises pictures or diagrams concerning an instrument, apparatus or device with intent that the same be

used or with knowledge or reason to believe the same is intended to or may be used to avoid any lawful telephone or telegraph toll charge or to conceal the existence or place of origin or destination of any telephone or telegraph communication; or

(b) Sells, gives or otherwise transfers to another or offers, or advertises plans or instructions for making or assembling an instrument, apparatus or device described in paragraph (a) of this subsection with knowledge or reason to believe that they may be used to make or assemble such instrument, apparatus or device.

(2) An instrument, apparatus, device, plans, instructions or written publication described in subsection (1) of this section may be seized under warrant or incident to a lawful arrest, and upon the conviction of a person under subsection (1) of this section, such instrument, apparatus, device, plans, instructions or written publication may be destroyed as contraband by the sheriff of the county in which such person was convicted or turned over to the person providing telephone or telegraph service in the territory in which the same was seized.

(3) Possessing a fraudulent communications device is a Class C felony. [1973 c.133 §5]

BUSINESS AND COMMERCIAL OFFENSES

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

(1) "Benefit" means gain or advantage to the beneficiary or to a third person pursuant to the desire or consent of the beneficiary.

(2) "Business records" means any writing or article kept or maintained by an enterprise for the purpose of evidencing or reflecting its condition or activities.

(3) "Enterprise" means any private entity of one or more persons, corporate or otherwise, engaged in business, commercial, professional, charitable, political, industrial or organized fraternal activity.

(4) "Fiduciary" means a trustee, guardian, executor, administrator, receiver or any other person acting in a fiduciary capacity as agent or employe of an organization which is a fiduciary.

(5) "Financial institution" means a bank, insurance company, credit union, savings and loan association, investment trust or other organization held out to the public as a place of deposit of funds or medium of savings or collective investment.

(6) "Government" means the state, any political subdivision thereof, or any governmental instrumentality within the state.

(7) "Misapplies" means dealing with property contrary to law or governmental regulation governing the custody or disposition of that property; governmental regulation includes administrative and judicial rules and orders as well as statutes and ordinances.

(8) "Sports contest" means any professional or amateur sport or athletic game or contest viewed by the public.

(9) "Sports official" means any person who acts in sports contests as an umpire, referee, judge or sports contest official.

(10) "Sports participant" means any person who directly or indirectly participates in sports contests as a player, contestant, team member, coach, manager, trainer, or any other person directly associated with a player, contestant or team member in connection with a sports activity. [1971 c 743 §162]

Note: The Legislative Counsel has not, pursuant to 173 160, undertaken to substitute specific ORS references for the words "this Act" in 165.075. Chapter 743, Oregon Laws 1971, enacted into law and amended ORS sections which may be found by referring to the 1971 Comparative Section Table located in volume 6A of Oregon Revised Statutes.

165.080 Falsifying business records.

(1) A person commits the crime of falsifying business records if, with intent to defraud, the person:

(a) Makes or causes a false entry in the business records of an enterprise; or

(b) Alters, erases, obliterates, deletes, removes or destroys a true entry in the business records of an enterprise; or

(c) Fails to make a true entry in the business records of an enterprise in violation of a known duty imposed upon the person by law or by the nature of the position of the person; or

(d) Prevents the making of a true entry or causes the omission thereof in the business records of an enterprise.

(2) Falsifying business records is a Class A misdemeanor. [1971 c.743 §163]

165.085 Sports bribery. (1) A person commits the crime of sports bribery if the person:

(a) Offers, confers or agrees to confer any benefit upon a sports participant with intent to influence the sports participant not to give the best effort of the sports participant in a sports contest; or

(b) Offers, confers or agrees to confer any benefit upon a sports official with intent to influence the sports official to improperly perform duties of a sports official.

(2) Sports bribery is a Class C felony. [1971 c 743 §164]

165.090 Sports bribe receiving. (1) A person commits the crime of sports bribe receiving if:

(a) As a sports participant the person solicits, accepts or agrees to accept any benefit from another person with the intent that the person will thereby be influenced not to give the best effort of the person in a sports contest; or

(b) As a sports official the person solicits, accepts or agrees to accept any benefit from another person with the intent that the person will improperly perform duties of a sports official.

(2) Sports bribe receiving is a Class C felony. [1971 c.743 §165]

165.095 Misapplication of entrusted property. (1) A person commits the crime of misapplication of entrusted property if, with knowledge that the misapplication is unlawful and that it involves a substantial risk of loss or detriment to the owner or beneficiary of such property, the person intentionally misapplies or disposes of property that has been entrusted to the person as a fiduciary or that is property of the government or a financial institution.

(2) Misapplication of entrusted property is a Class A misdemeanor. [1971 c.743 §166]

165.100 Issuing a false financial statement. (1) A person commits the crime of issuing a false financial statement if, with intent to defraud, the person:

(a) Knowingly makes or utters a written statement which purports to describe the financial condition or ability to pay of the person or some other person and which is inaccurate in some material respect; or

(b) Represents in writing that a written statement purporting to describe a person's financial condition or ability to pay as of a prior date is accurate with respect to that person's current financial condition or ability to pay, knowing the statement to be materially inaccurate in that respect.

(2) Issuing a false financial statement is a Class A misdemeanor. [1971 c 743 §167]

165.102 Obtaining execution of documents by deception. (1) A person commits the crime of obtaining execution of documents by deception if, with intent to defraud or injure

another or to acquire a substantial benefit, the person obtains by means of fraud, deceit or subterfuge the execution of a written instrument affecting or purporting to affect the pecuniary interest of any person.

(2) Obtaining execution of documents by deception is a Class A misdemeanor. [1971 c 743 §168]

165.105 [Amended by 1959 c.100 §1; repealed by 1971 c.743 §432]

165.107 Failing to maintain a metal purchase record. (1) A person commits the crime of failing to maintain a metal purchase record if the person buys or otherwise obtains new, used or secondhand copper, copper wire, copper cable, brass, electrolytic nickel or zinc, without keeping a record of all such articles purchased or obtained.

(2) The record required by subsection (1) of this section shall be retained by the purchaser for a period of not less than one year and shall be available to any peace officer on demand. The record shall contain:

(a) A general description of all property purchased.

(b) The type and quantity or weight of the property.

(c) The name, address, description and signature of the seller or person making delivery.

(d) A description of any motor vehicle and its license number used in the delivery of such articles.

(3) This section shall not apply to purchases made by or from a manufacturer, remanufacturer or a distributor appointed by a manufacturer of such articles.

(4) Failing to maintain a metal purchase record is a Class B misdemeanor. [1971 c 743 §169]

165.109 Failing to maintain a cedar purchase record. (1) A person commits the offense of failing to maintain a cedar purchase record if the person buys or otherwise obtains cedar products directly from any person who has harvested the cedar without keeping a record of the products purchased or obtained.

(2) The record required by subsection (1) of this section shall be retained by the purchaser for a period of not less than one year and shall be available to any peace officer on demand. The record shall contain:

(a) The name, address, date of sale and signature of the seller or the person making delivery;

(b) The license number of any motor vehicles used in the delivery of the cedar; and

(c) The quantity of cedar obtained and the amount paid for the cedar.

(3) The provisions of this section apply only to the first wholesale transaction involving cedar products and do not apply to retail sales of cedar.

(4) Failing to maintain a cedar purchase record is a Class B misdemeanor. [1977 c.473 §2]

165.110 [Repealed by 1971 c 743 §432]

165.114 Sale of educational assignments prohibited. (1) No person shall sell or offer to sell an assignment to another person knowing, or under the circumstances having reason to know, that the whole or a substantial part of the assignment is intended to be submitted under a student's name in fulfillment of the requirements for a degree, diploma, certificate or course of study at any post-secondary institution.

(2) No person shall sell or offer to sell to another person any assistance in the preparation of an assignment knowing, or under the circumstances having reason to know, that the whole or a substantial part of the assignment is intended to be submitted under a student's name in fulfillment of the requirements for a degree, diploma, certificate or course of study at any post-secondary institution.

(3) Nothing in this section prohibits a person from rendering for a monetary fee:

(a) Tutorial assistance if the assistance is not intended to be submitted in whole or in substantial part as an assignment; or

(b) Service in the form of typing, transcribing, assembling, reproducing or editing an assignment if this service is not intended to make substantive changes in the assignment.

(4) A person who violates any provision of this section shall be subject to a fine of not more than \$1,000 for each violation.

(5) A person against whom a judgment has been entered under subsection (4) of this section shall, upon conviction for any subsequent violation of this section, be subject to a fine of not more than \$10,000.

(6) In addition to any fine imposed under subsections (4) and (5) of this section, a court of competent jurisdiction may grant such further relief as is necessary to enforce the provisions of this section, including the issuance of an injunction. A suit for injunction under subsections (1) to (6) of this section may be brought in the name of the State of Oregon upon the complaint of the Attorney General or any district attorney.

(7) As used in subsections (1) to (6) of this section unless the context requires otherwise:

(a) "Assignment" means any specific written, recorded, pictorial, artistic or other academic task, including but not limited to a term paper, thesis, dissertation, essay or report, intended for submission to any post-secondary institution in fulfillment of the requirements for a degree, diploma, certificate or course of study at any such institution.

(b) "Person" means any individual, partnership, corporation or association.

(c) "Post-secondary institution" means any public or private post-secondary educational institution. [1981 c.673 §§1, 2]

- 165.115 [Repealed by 1971 c.743 §432]
 165.120 [Repealed by 1971 c.743 §432]
 165.125 [Repealed by 1971 c.743 §432]
 165.130 [Repealed by 1971 c.743 §432]
 165.135 [Repealed by 1971 c.743 §432]
 165.140 [Repealed by 1971 c.743 §432]
 165.145 [Repealed by 1971 c.743 §432]
 165.150 [Repealed by 1971 c.743 §432]
 165.155 [Repealed by 1971 c.743 §432]
 165.160 [Repealed by 1971 c.743 §432]
 165.165 [Repealed by 1971 c.743 §432]
 165.170 [Repealed by 1971 c.743 §432]
 165.175 [Repealed by 1971 c.743 §432]
 165.180 [Repealed by 1971 c.743 §432]
 165.185 [Repealed by 1971 c.743 §432]
 165.190 [Repealed by 1971 c.743 §432]
 165.205 [Amended by 1971 c.290 §1; repealed by 1971 c.743 §432]
 165.210 [Repealed by 1971 c.743 §432]
 165.215 [Repealed by 1971 c.743 §432]
 165.220 [Repealed by 1971 c.743 §432]
 165.225 [Amended by 1955 c.436 §1, 1959 c.508 §1; repealed by 1971 c.743 §432]
 165.230 [Repealed by 1971 c.743 §432]
 165.235 [Repealed by 1971 c.743 §432]
 165.240 [Repealed by 1971 c.743 §432]
 165.245 [Repealed by 1971 c.743 §432]
 165.250 [Repealed by 1971 c.743 §432]
 165.255 [Repealed by 1971 c.743 §432]
 165.260 [Repealed by 1971 c.743 §432]
 165.265 [Repealed by 1971 c.743 §432]
 165.270 [1957 c.369 §1; repealed by 1971 c.743 §432]
 165.280 [1961 c.318 §1; repealed by 1971 c.743 §432]
 165.285 [1969 c.290 §3, repealed by 1971 c.743 §432]
 165.290 [1963 c.588 §2; repealed by 1971 c.743 §432]

- 165.295 [1963 c.588 §3; repealed by 1971 c.743 §432]
 165.300 [1963 c.588 §4; repealed by 1971 c.743 §432]
 165.305 [Repealed by 1971 c.743 §432]
 165.310 [Repealed by 1971 c.743 §432]
 165.315 [Repealed by 1971 c.743 §432]
 165.320 [Repealed by 1971 c.743 §432]
 165.325 [Repealed by 1971 c.743 §432]
 165.330 [Repealed by 1971 c.743 §432]
 165.335 [Repealed by 1971 c.743 §432]
 165.340 [Amended by 1957 c.655 §1; repealed by 1971 c.743 §432]
 165.345 [Repealed by 1971 c.743 §432]
 165.350 [Repealed by 1971 c.743 §432]
 165.352 [1961 c.454 §75(2); repealed by 1971 c.743 §432]
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 165.410 [Repealed by 1971 c.743 §432]
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 165.420 [Amended by 1961 c.261 §1, repealed by 1971 c.743 §432]
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 165.465 [Repealed by 1971 c.743 §432]

CRIMES INVOLVING COMMUNICATIONS

165.475 Sending telegrams in order of receipt. (1) Except as provided in ORS 165.480 and in subsection (2) of this section, any telegraph company doing business in this state who fails to transmit all dispatches in the order in which they are received, is subject to a penalty of \$100, to be recovered with costs of suit by the person whose dispatch is postponed out of its order.

(2) Communications from other telegraphic lines in connection with lines in this state may have precedence over all ordinary private communications and intelligence of general and public interest may be transmitted for publication out of its order. [Formerly 757.606]

165.480 Telegrams having priority in time of war or crisis. Every telegraph com-

pany shall, on application of any officer of this state or the United States, in case of any war, insurrection, riot or other civil commotion, or resistance of public authority, or for the prevention and punishment of crime, or for the arrest of persons suspected or charged therewith, give to the communications of such officers, immediate dispatch, at the price of ordinary communications of the same length. [Formerly 757.611]

165.485 Wrongful alteration of telegraphic message. (1) No officer, agent, operator, clerk or employe of any telegraph company, or any other person, shall wilfully alter any such message by adding thereto or omitting therefrom any words or figures, so as to materially change the sense, purport or meaning of such message, to the injury of the person sending or desiring to send the message, or to whom it was directed.

(2) When numerals or words of number occur in any message, the operator or clerk sending or receiving may express the same in words or figures, or in both words and figures, and such fact shall not be deemed an alteration of the message, nor in any manner affect its genuineness, force or validity.

(3) Any person violating this section, in addition to the penalty prescribed in ORS 165.990 is liable in a civil suit for all damages occasioned thereby. [Formerly 757.616]

165.490 Use by company agent of information contained in message. (1) No agent, operator or employe in any telegraph office, shall in any way use or appropriate any information derived by the agent, operator or employe from any private message passing through the hands of the agent, operator or employe and addressed to any other person, or in any other manner acquired by the agent, operator or employe by reason of trust as such agent, operator or employe, or trade or speculate upon any such information so obtained, or in any manner turn or attempt to turn the same to the account, profit or advantage of the agent, operator or employe.

(2) Any person violating this section, in addition to the penalty prescribed in ORS 165.990, is liable in treble damages to the party aggrieved, for all loss or injury sustained by reason of such wrongful act. [Formerly 757.621]

165.495 Refusing to send or deliver message or sending message out of order. (1) Except as provided in subsection (2) of this section, no agent, operator or employe in any telegraph office, shall unreasonably and wilfully:

(a) Refuse or neglect to send any message received at such office for transmission;

(b) Postpone any message out of its order; or
(c) Refuse or neglect to deliver any message received by telegraph.

(2) This section does not require:

(a) Any message to be received, transmitted or delivered, unless the charges thereon have been paid or tendered;

(b) The sending, receiving or delivery of any message counseling, aiding, abetting or encouraging treason against the Government of the United States or of this state, or other resistance to the lawful authority, or any message calculated to further any fraudulent plan or purpose, or to instigate or encourage the perpetration of any unlawful act, or to facilitate the escape of any criminal or person accused of crime. [Formerly 757.626]

165.505 Opening or procuring telegraphic message addressed to another; civil liability. (1) Any person, not connected with any telegraph office, who, without the authority or consent of the person to whom the envelope is directed, wilfully or unlawfully opens any sealed envelope inclosing a telegraphic message and addressed to any other person, with the intent to learn the contents of the message, or who fraudulently represents any other person, and thereby procures to be delivered to the person any telegraphic message, addressed to such other person, with the intent to use, destroy or detain the message from the person entitled to receive it, shall be punished upon conviction by a fine not to exceed \$1,000, or imprisonment not to exceed one year, or both.

(2) Any person violating this section is liable in treble damages to the party injured for all loss and damage sustained by reason of such wrongful act.

165.510 Learning contents of telegraphic message sent to another; civil liability. (1) Any person, not connected with any telegraph company, who, by means of any machine, instrument or contrivance, or in any other manner, wilfully and fraudulently reads or attempts to read any message, or to learn its contents, while it is being sent over any telegraph line, or who wilfully and fraudulently or clandestinely learns or attempts to learn the contents or meaning of any message, while it is in, or being received at, any telegraph office, or is sent therefrom, or who uses or attempts to use, or communicates to others any information so obtained by any person, shall be punished upon conviction by a fine not to exceed \$1,000, or imprisonment not to exceed one year, or both.

(2) Any person violating this section shall be liable in a civil suit for all damages occasioned thereby.

165.515 Bribery of telegraph company agents to disclose contents of message. (1) Any person who, by the payment or promise of any bribe, inducement or reward, procures or attempts to procure any telegraphic agent, operator or employe to disclose any private message, or the contents, purport, substance of meaning thereof, or who offers to any such person any bribe, compensation or reward for the disclosure of any private information received by such person by reason of trust, or who uses or attempts to use information so obtained, shall be punished upon conviction by a fine not to exceed \$1,000, or imprisonment not to exceed one year, or both.

(2) Any person violating this section shall be liable in a civil suit for all damages occasioned thereby.

165.520 Opening, reading or publishing letter; federal jurisdiction. Any person who wilfully opens or reads, or causes to be opened and read, any sealed letter not addressed to the person, without being authorized so to do either by the writer of such letter or by the person to whom it is addressed, or who wilfully, without like authority, publishes any letter or portion thereof knowing it to have been so opened, shall be punished upon conviction by imprisonment in the county jail for not less than one month nor more than one year, or by fine not less than \$50 nor more than \$500. This section does not extend to or include any act made punishable by the laws of the United States.

165.525 [Repealed by 1971 c 743 §432]

165.530 [Repealed by 1971 c.743 §432]

165.532 [1961 c 428 §1; repealed by 1971 c 743 §432]

165.535 Definitions applicable to obtaining contents of communications. As used in ORS 41.910, 133.723, 133.724, 165.540 and 165.545:

(1) "Conversation" means the transmission between two or more persons of an oral communication which is not a telecommunication or a radio communication.

(2) "Person" means any person as defined in ORS 174.100 and includes public officials and law enforcement officers of the state, county, municipal corporation or any other political subdivision of the state.

(3) "Radio communication" means the transmission by radio or other wireless methods of writing, signs, signals, pictures and sounds of all kinds, including all instrumentalities, facilities,

equipment and services (including, among other things, the receipt, forwarding and delivering of communications) incidental to such transmission.

(4) "Telecommunication" means the transmission of writing, signs, signals, pictures and sounds of all kinds by aid of wire, cable or other similar connection between the points of origin and reception of such transmission, including all instrumentalities, facilities, equipment and services (including, among other things, the receipt, forwarding and delivering of communications) incidental to such transmission. [1955 c.675 §1; 1959 c.681 §1, 1983 c.740 §34]

165.540 Obtaining contents of communications. (1) Except as otherwise provided in ORS 133.724 or subsections (2) to (6) of this section, no person shall:

(a) Obtain or attempt to obtain the whole or any part of a telecommunication or a radio communication to which such person is not a participant, by means of any device, contrivance, machine or apparatus, whether electrical, mechanical, manual or otherwise, unless consent is given by at least one participant.

(b) Tamper with the wires, connections, boxes, fuses, circuits, lines or any other equipment or facilities of a telecommunication or radio communication company over which messages are transmitted, with the intent to obtain unlawfully the contents of a telecommunication or radio communication to which such person is not a participant.

(c) Obtain or attempt to obtain the whole or any part of a conversation by means of any device, contrivance, machine or apparatus, whether electrical, mechanical, manual or otherwise, if all participants in the conversation are not specifically informed that their conversation is being obtained.

(d) Obtain the whole or any part of a conversation, telecommunication or radio communication from any person, while knowing or having good reason to believe that such conversation, telecommunication or radio communication was initially obtained in a manner prohibited by this section.

(e) Use or attempt to use, or divulge to others any conversation, telecommunication or radio communication obtained by any means prohibited by this section.

(2)(a) The prohibitions in paragraphs (a), (b) and (c) of subsection (1) of this section shall not apply to officers, employes or agents of a telecommunication or radio communication company

who perform the acts prohibited by paragraphs (a), (b) and (c) of subsection (1) of this section for the purpose of construction, maintenance or conducting of their telecommunication or radio communication service, facilities or equipment; nor shall such prohibitions apply to public officials in charge of and at jails, police premises, sheriffs' offices, Department of Corrections institutions and other penal or correctional institutions, except as to communications or conversations between an attorney and the client of the attorney.

(b) Officers, employes or agents of a telecommunication or radio communication company who obtain information under paragraph (a) of this subsection shall not use or attempt to use, or divulge to others such information except for the purpose of construction, maintenance, or conducting of their telecommunication or radio communication service, facilities or equipment.

(3) The prohibitions in paragraph (a), (b) or (c) of subsection (1) of this section shall not apply to subscribers or members of their family who perform the acts prohibited in subsection (1) of this section in their homes.

(4) The prohibitions in paragraph (a) of subsection (1) of this section do not apply to the receiving or obtaining of the contents of any radio or television broadcast transmitted for the use of the general public.

(5)(a) The prohibitions in paragraph (c) of subsection (1) of this section do not apply to a law enforcement officer who uses a listening or recording device, machine or apparatus pursuant to a court order issued under ORS 133.726 to obtain a conversation between the officer or someone under direct supervision of the officer and a person whom the officer has reasonable cause to believe has committed, or is engaged in committing, a felony, so long as any officer who records a conversation does not intentionally fail to record and preserve the conversation in its entirety. However, the court order shall not be necessary under this paragraph if exigent circumstances make it unreasonable to obtain the order.

(b) Except to a superior officer or other official with whom the officer is cooperating in the enforcement of felony laws, or in a presentation to a federal or state grand jury, the conversation obtained under paragraph (a) of this subsection shall not, without a court order, be divulged to others before the preliminary hearing or trial in which the conversation is introduced as evidence against the suspected person.

(c) As used in this subsection, "law enforcement officer" means an officer employed by the

United States, this state or a municipal government, or a political subdivision, agency, department or bureau of those governments, to enforce criminal laws. A law enforcement officer may obtain a conversation under paragraph (a) of this subsection only when acting within the scope of this employment and as a part of assigned duties.

(6) The prohibition in paragraph (c) of subsection (1) of this section shall not apply to persons who intercept or attempt to intercept with an unconcealed recording device the oral communications that are part of any of the following proceedings:

(a) Public or semipublic meetings such as hearings before governmental or quasi-governmental bodies, trials, press conferences, public speeches, rallies and sporting or other events;

(b) Regularly scheduled classes or similar educational activities in public or private institutions; or

(c) Private meetings or conferences if all others involved knew or reasonably should have known that the recording was being made.

(7) Violation of subsection (1) of this section, paragraph (b) of subsection (2) or paragraph (b) or (c) of subsection (5) of this section is a Class A misdemeanor. [1955 c.675 §§2, 7; 1959 c.681 §2; 1961 c.460 §1; 1979 c.744 §9; 1983 c.693 §1, 1983 c.740 §35; 1983 c.824 §1; 1987 c.320 §87]

165.543 Interception of communications. (1) Except as provided in ORS 133.724 or as provided in ORS 165.540 (2)(a), any person who wilfully intercepts, attempts to intercept or procures any other person to intercept or attempt to intercept any wire or oral communication where such person is not a party to the communication and where none of the parties to the communication has given prior consent to the interception, is guilty of a Class A misdemeanor.

(2) As used in this section, the terms "intercept" and "wire or oral communication" have the meanings provided under ORS 133.721. [1983 c.824 §3]

Note: 165.543 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 165 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation

165.545 Prohibitions not applicable to fire or police activities. Nothing in ORS 165.535, 165.540 and this section, shall be construed as preventing fire or police governmental entities from recording, replaying or broadcasting telecommunication or radio communication that directly concern police or fire operation at the telephone or radio operation center or centers of

such governmental entity. [1959 c.681 §6; 1981 c.806 §2; 1983 c.740 §36]

165.549 Prevention of telephone communications when hostage taken; duties of telephone company; defense against liability. (1) A supervising law enforcement official having jurisdiction in a geographical area in which the official has probable cause to believe that a hostage is being held may order a telephone company security employe or alternate described in subsection (2) of this section to cut, reroute or divert telephone lines to prevent telephone communications between the individual holding the hostage and any individual other than a peace officer or an individual designated by the peace officer.

(2) The telephone company providing service within a geographical area shall notify, in writing, all law enforcement agencies having jurisdiction in that area of the address and telephone number of its security office or other office designated to provide the assistance to law enforcement officials required under this section. The telephone company shall also provide, in writing, the telephone number where the security representative or other telephone company official authorized to provide assistance under this section can be reached at any time. The telephone company shall notify the law enforcement agencies of any change in the information required under this subsection.

(3) Good faith reliance upon an order by a supervising law enforcement official is a complete defense to any civil or criminal action arising out of the cutting, rerouting or diverting of a telephone line pursuant to this section. [1979 c.605 §1]

165.550 [1967 c.109 §§1, 2, repealed by 1971 c.743 §432]

165.555 Unlawful telephone solicitation of contributions for charitable purposes. (1) No person shall solicit by telephone contributions of money or any other thing of value, whether or not in exchange for a ticket or any other thing of value, for a charitable or eleemosynary purpose, whether bona fide or purported, unless the person:

(a) Has been a member in full standing for at least six months of the charitable organization conducting the solicitation and is participating in the solicitation on an uncompensated basis;

(b) Has been employed directly by the charitable organization conducting the solicitation for at least six months prior to the solicitation and is receiving a substantial salary; or

(c) And the person solicited are personally known to each other.

(2) Any violation of subsection (1) of this section is a Class C misdemeanor. [1973 c.473 §§1, 4]

165.560 Application of ORS 165.555. ORS 165.555 does not apply to solicitations on behalf of hospitals or of nonprofit organizations organized and operated exclusively for religious, scientific, literary or educational purposes, or for the prevention of cruelty to children or animals. [1973 c.473 §2]

165.565 Optional local ordinances; certain existing local ordinances preserved. A city or county may enact ordinances which are more strict than ORS 165.555 to 165.565. ORS 165.555 to 165.565 do not affect any ordinances which are more strict than ORS 165.555 to 165.565 and are in effect on October 5, 1973. [1973 c.473 §3]

165.605 [Repealed by 1971 c.743 §432]

165.610 [Repealed by 1971 c.743 §432]

165.615 [Amended by 1965 c.454 §1; repealed by 1971 c.743 §432]

165.620 [Repealed by 1971 c.743 §432]

165.625 [Repealed by 1971 c.743 §432]

165.655 [Formerly 74.500; repealed by 1971 c.743 §432]

165.660 [Formerly 74.510; repealed by 1971 c.743 §432]

165.665 [Formerly 74.520; repealed by 1971 c.743 §432]

165.670 [Formerly 74.530; repealed by 1971 c.743 §432]

165.675 [Formerly 74.540; repealed by 1971 c.743 §432]

165.680 [Formerly 74.550; repealed by 1971 c.743 §432]

MISCELLANEOUS

165.805 Misrepresentation of age by a minor. (1) A person commits the crime of misrepresentation of age by a minor if:

(a) Being less than a certain, specified age, the person knowingly purports to be of any age other than the true age of the person with the intent of securing a right, benefit or privilege which by law is denied to persons under that certain, specified age; or

(b) Being unmarried, the person knowingly represents that the person is married with the intent of securing a right, benefit or privilege which by law is denied to unmarried persons.

(2) Misrepresentation of age by a minor is a Class C misdemeanor. [1971 c.743 §285]

165.825 Sale of drugged horse. (1) No person shall sell or offer for sale any horse that is drugged, tranquilized or otherwise sedated without the consent of the buyer.

(2) Violation of subsection (1) of this section is a misdemeanor. [1971 c.175 §§1, 2]

165.840 Meaning of "telegraphic copy" in ORS 165.845 and 165.850. As used in ORS 165.845 and 165.850, "telegraphic copy" means any copy of a message made or prepared for delivery at the office to which the message may have been sent by telegraph. [Formerly 757.631]

165.845 Making and drawing of checks and notes by wire. (1) Checks, due bills, promissory notes, bills of exchange and all orders or agreements for the payment or delivery of money or other thing of value may be made or drawn by telegraph, and when so made or drawn:

(a) Have the same force and effect to charge the maker, drawer, indorser or acceptor thereof;

(b) Create the same rights and equities in favor of the payee, drawee, indorsee, acceptor, holder or bearer thereof; and

(c) Are entitled to the same days of grace, as if duly made or drawn and delivered in writing.

(2) No person other than the maker or drawer thereof shall cause any such instrument to be sent by telegraph so as to charge any person thereby.

(3) Whenever the genuineness or execution of any such instrument received by telegraph is denied on oath by the person sought to be charged thereby, it is incumbent upon the party claiming

under or alleging the same to prove the existence and execution of the original writing from which the telegraphic copy was transmitted.

(4) The original message shall in all cases be preserved in the telegraph office from which it is sent. [Formerly 757.636, 1981 c.892 §91]

165.850 Manner of expressing private and official seals in telegrams. Whenever any document to be sent by telegraph bears a seal, either private or official, it is not necessary for the operator to telegraph a description of the seal, or any word or device thereon, but the seal may be expressed in the telegraphic copy by the letters "L. S.," or by the word "seal." [Formerly 757.641]

PENALTIES

165.990 Penalties for violation of ORS

165.480 to 165.495. (1) Any officer, agent, operator or employe of any telegraph company who refuses or wilfully omits to transmit communications in accordance with ORS 165.480, or designedly alters or falsifies such communications, is liable to indictment and, upon conviction, may be punished by fine or imprisonment, at the discretion of the court.

(2) Violation of ORS 165.485 or 165.490 is punishable, upon conviction, by a fine of not exceeding \$1,000 or imprisonment in the county jail for not exceeding one year, or both.

(3) Violation of ORS 165.495 is punishable, upon conviction, by a fine of not exceeding \$500 or imprisonment in the county jail for not exceeding six months, or both. [Formerly 757.992]

