

Chapter 166

1993 EDITION

Offenses Against Public Order; Firearms and Other Weapons; Racketeering

FORFEITURE

(Temporary provisions relating to forfeiture based on prohibited conduct involving controlled substances are compiled as notes preceding ORS 166.005)

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Note: Sections 1 to 10, 11b to 14 and 22, chapter 791, Oregon Laws 1989, are repealed December 31, 1997, and provide:

Sec. 1. (1) The Legislative Assembly finds that:

(a) The prohibited conduct defined in this Act is undertaken in the course of profitable activities which result in, and are facilitated by, the acquisition, possession or transfer of property subject to forfeiture under this Act;

(b) Transactions involving property subject to forfeiture under this Act escape taxation;

(c) Governments attempting to respond to prohibited conduct require additional resources to meet their needs; and

(d) There is a need to provide for the forfeiture of certain property subject to forfeiture under this Act, to provide for the protection of the rights and interests of affected persons, and to provide for uniformity throughout the state with respect to the laws of this state which pertain to the forfeiture of real and personal property based upon prohibited conduct as defined in this Act.

(2) Therefore, the Legislative Assembly adopts the provisions of this Act as the sole and exclusive law of the state pertaining to the forfeiture of real and personal property based upon the prohibited conduct, thereby replacing all charter provisions, ordinances, regulations and other enactments adopted by cities and counties pertaining to such forfeitures. After the effective date of this Act [July 24, 1989], no actions for forfeiture shall be initiated except those in compliance with the provisions of this Act.

(3) This Act is applicable throughout this state and in all cities and counties. The electors or the governing body of a city or county shall not enact and the governing body shall not enforce any charter provision, ordinance, resolution or other regulation that is inconsistent with this section.

(4) This Act does not impair the right of any city or county to enact ordinances providing for the forfeiture of property based upon conduct that is other than prohibited conduct as defined in this Act if:

(a) The property was used to commit the conduct described in the ordinances, or is proceeds of the conduct; and

(b) The forfeiture is subject to procedures and limitations set forth in this Act.

(5) Nothing in this section or in this Act shall be construed to limit or impair any right or remedy that any person or entity may have under ORS 166.715 to 166.735. The application of any remedy under this Act is intended to be remedial and not punitive and shall not preclude or be precluded by the application of any previous or subsequent civil or criminal remedy under any other provision of law. Civil remedies under this Act are supplemental and not mutually exclusive. [1989 c.791 §1]

Sec. 2. As used in sections 2 to 14, chapter 791, Oregon Laws 1989, unless the context requires otherwise:

(1) "All persons known to have an interest" means:

(a) Any person who has, prior to the time the property is seized for forfeiture, filed notice of interest with any public office as may be required or permitted by law to be filed with respect to the property which has been seized for forfeiture;

(b) Any person from whose custody the property was seized; or

(c) Any person who has an interest in the property, including all owners and occupants of the property, whose identity and address is known or is ascertainable

upon diligent inquiry and whose rights and interest in the property may be affected by the action.

(2) "Attorney fees" has the meaning given that term in ORCP 68 A.

(3) "Costs and disbursements" are those expenditures set forth in ORCP 68 A.

(4) "Financial institution" means any person lawfully conducting business as:

(a) An institution, a savings bank, a stock savings bank, a national bank, a foreign institution, an extranational institution, as those terms are defined in ORS 706.005, or a federal savings bank;

(b) A savings association or a federal association as those terms are defined in ORS 722.004;

(c) A bank holding company or savings and loan holding company, or any subsidiary of a bank holding company, a savings and loan holding company or of any entity described in paragraph (a) or (b) of this subsection;

(d) A credit union as defined in ORS 723.006 or a federal credit union;

(e) A consumer finance company subject to the provisions of ORS chapter 725;

(f) A mortgage banker or a mortgage broker as those terms are defined in ORS 59.840, a mortgage servicing company or other mortgage company;

(g) An officer, agency, department or instrumentality of the Federal Government, including but not limited to:

(A) The Secretary of Housing and Urban Development;

(B) The Federal Housing Administration;

(C) The Veterans Administration;

(D) The Farmers Home Administration;

(E) The Federal National Mortgage Association;

(F) The Government National Mortgage Administration;

(G) The Federal Home Loan Mortgage Association;

(H) The Federal Agricultural Mortgage Corporation; and

(I) The Small Business Administration;

(h) An agency, department or instrumentality of the state, including but not limited to:

(A) The Housing Agency;

(B) Any entity established by the Director of Veterans' Affairs to carry out the provisions of ORS chapter 407; and

(C) The Public Employees' Retirement System;

(i) An agency, department or instrumentality of any municipality in the state, including but not limited to such agencies as the Portland Development Commission;

(j) An insurer as defined in ORS 731.106;

(k) A private mortgage insurance company;

(L) A pension plan or fund or other retirement plan; and

(m) A broker-dealer or investment adviser as defined in ORS 59.015.

(5) "Forfeiting agency" means the State of Oregon or a political subdivision thereof that has accepted for forfeiture property seized by a seizing agency or that is processing a forfeiture case.

(6) "Forfeiture counsel" means an attorney designated to represent a forfeiting agency in forfeiture actions or proceedings.

(7) "Law enforcement agency" means any agency which employs police officers or prosecutes criminal cases.

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(8) "Official law enforcement use" or "official law enforcement activity" means uses or activities which may reasonably be expected to result in the identification, apprehension or conviction of criminal offenders.

(9) "Police officer" has the meaning given that term in ORS 133.525.

(10) "Proceeds of prohibited conduct" means property derived directly or indirectly from, maintained by or realized through an act or omission, and includes any benefit, interest or property of any kind without reduction for expenses of acquiring or maintaining it or incurred for any other reason.

(11) "Prohibited conduct" includes violation of, solicitation to violate, attempt to violate or conspiracy to violate any provisions of ORS 475.005 to 475.285 and 475.805 to 475.999 when the conduct constitutes either a felony or misdemeanor as those terms are defined in ORS 161.525 and 161.545.

(12) "Property" means any interest in anything of value, including the whole of any lot or tract of land and tangible and intangible personal property, including currency, instruments or securities or any other kind of privilege, interest, claim or right whether due or to become due.

(13) "Seizing agency" means a law enforcement agency that has seized property for forfeiture.

(14) "Weapon" means any instrument of offensive or defensive combat or anything used, or designed to be used, in destroying, defeating or injuring a person. [1989 c.791 §2; 1991 c.291 §1; 1993 c.508 §44]

Sec. 3. The following will be subject to civil in rem forfeiture:

(1) All controlled substances which have been manufactured, distributed, dispensed, possessed or acquired in the course of prohibited conduct;

(2) All raw materials, products and equipment of any kind which are used, or intended for use, in providing, manufacturing, compounding, processing, delivering, importing or exporting any service or substance in the course of prohibited conduct;

(3) All property which is used, or intended for use, as a container for property described in subsection (1) or (2) of this section;

(4) All conveyances, including aircraft, vehicles or vessels, which are used, or are intended for use, to transport or in any manner facilitate the transportation, sale, receipt, possession or concealment of property described in subsection (1) or (2) of this section, and all conveyances, including aircraft, vehicles or vessels, which are used or intended for use in prohibited conduct or to facilitate prohibited conduct in any manner, except that:

(a) No conveyance used by any person as a common carrier in the transaction of business as a common carrier shall be forfeited under the provisions of this section unless the owner or other person in charge of such conveyance was a consenting party or knew of and acquiesced in the prohibited conduct; and

(b) No conveyance shall be forfeited under the provisions of this section by reason of any act or omission established by the owner thereof to have been committed or omitted by any person other than such owner while such conveyance was unlawfully in the possession of a person other than the owner in violation of the criminal laws of the United States or of any state;

(5) All books, records, computers and research, including formulae, microfilm, tapes and data which are used or intended for use to facilitate prohibited conduct in any manner;

(6) All moneys, negotiable instruments, balances in deposit or other accounts, securities or other things of

value furnished or intended to be furnished by any person in the course of prohibited conduct, all proceeds of or from prohibited conduct, and all moneys, negotiable instruments, balances in deposit and other accounts and securities used or intended to be used to facilitate any prohibited conduct;

(7) All real property, including any right, title and interest in the whole of any lot or tract of land and any appurtenances or improvements, which is used, or intended to be used, in any manner or part, to commit or facilitate in any manner the commission of prohibited conduct; and

(8) All weapons possessed, used or available for use in any manner to facilitate conduct giving rise to forfeiture. [1989 c.791 §3]

Sec. 4. Property may be seized for forfeiture as provided in this section.

(1) Any person who delivers property in obedience to an order or direction to deliver the property under this section shall not be liable:

(a) To any person on account of obedience to the order or direction; or

(b) For any costs incurred on account of any contamination of the delivered property. This includes, but is not limited to, any disposal costs for any property forfeited under section 3, chapter 791, Oregon Laws 1989, any hazardous waste or material, any contraband or any other contamination contained in property seized under this section.

(2) Property may be seized by any police officer without a court order if:

(a) The property has been the subject of an earlier judgment in favor of any forfeiting agency in an earlier civil in rem proceeding under chapter 791, Oregon Laws 1989;

(b) There is probable cause to believe that property is subject to forfeiture, provided that the property may constitutionally be seized without a warrant;

(c) The seizure is in the course of a constitutionally valid criminal investigative stop, arrest or search, and there is probable cause to believe that the property is subject to forfeiture;

(d) The property is directly or indirectly dangerous to the health or safety of any person; or

(e) An owner consents to the seizure.

(3) Except as provided in section 5, chapter 791, Oregon Laws 1989, with regard to cash or other assets which at the time of seizure are held in any form of account in a financial institution, if the property is in whole or in part intangible, the person having control or custody of the property shall deliver the same over to the police officer.

(4)(a) Property may be seized by any police officer pursuant to an order of the court. Forfeiture counsel or a seizing agency may apply for an ex parte order directing seizure of specified property.

(b) Application shall be made to any judge as defined in ORS 133.525. The application shall be supported by one or more affidavits setting forth the facts and circumstances tending to show where the objects of the seizure are to be found. The court shall issue the order upon a finding of probable cause to believe that the described property is subject to forfeiture. The order may be set out on the face of a search warrant.

(c) Except as provided in section 5, chapter 791, Oregon Laws 1989, with regard to cash or other assets which at the time of seizure are held in any form of account in a financial institution, if the property is in whole or in part intangible, the order shall direct any person having control or custody of the property to deliver the same over to the seizing agency or to the court to abide judgment.

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(5) Property may be constructively seized by posting notice of seizure for forfeiture on it or by filing notice of seizure for forfeiture or notice of pending forfeiture in the public records that impart constructive notice of matters relating to such property. A notice which is filed must include a description of the property that is the subject of the seizure. Real property, including interests arising out of land sale contracts, shall be seized only upon recording notice of seizure containing a legal description of the property in the mortgage records of the county in which the real property is located.

(6) Property which has been unconstitutionally seized may be subject to forfeiture if the basis for forfeiture under chapter 791, Oregon Laws 1989, is sustained by evidence which is not the fruit of the unconstitutional seizure.

(7) Promptly upon seizure, the officer who seized the property shall make an inventory of the property seized and shall deliver a receipt embodying the inventory to the person from whose possession they are taken or to the person in apparent control of the property at the time it is seized. The officer may, in addition, provide an estimate of the value of the property seized and information on the right to file a claim under section 6 (2), chapter 791, Oregon Laws 1989, and the deadline for filing that claim. If the property is unoccupied or there is no one present in apparent control, the officer shall leave the receipt suitably affixed to the property. If the property is physically removed from the location of seizure and it is unoccupied or there is no one present in apparent control, then the officer shall promptly file the receipt in the public records of the forfeiting agency. Every receipt prepared under this subsection shall contain, in addition to an inventory of the property seized, the following information:

(a) The identity of the seizing agency; and

(b) The address and telephone number of the office or other place where the person may obtain further information concerning the forfeiture.

(8) In determining probable cause or reasonable suspicion for seizure, evidence that cash, weapons or negotiable instruments were found in close proximity to controlled substances or to instrumentalities of prohibited conduct gives rise to an inference that the cash, weapons or negotiable instruments are subject to forfeiture. This inference is sufficient in itself to carry the forfeiting agency's initial burden under section 13, chapter 791, Oregon Laws 1989.

(9) In the event that property is seized from the possession of a person who asserts a possessory lien over such property pursuant to applicable law, notwithstanding any other provision of law, any lien of the person from whom the property was seized shall remain in effect and shall be enforceable as fully as though the person had retained possession of the property. [1989 c.791 §4; 1991 c.218 §1; 1991 c.237 §1; 1991 c.934 §2]

Sec. 5. (1)(a) Except as otherwise provided in chapter 791, Oregon Laws 1989, property seized for forfeiture is not subject to replevin, conveyance, sequestration or attachment, nor is it subject to a motion or order to return under ORS chapter 133. The seizure of property or the commencement of a forfeiture proceeding pursuant to chapter 791, Oregon Laws 1989, shall not abate, impede or in any way delay the initiation or prosecution of a suit or action by a financial institution for the possession of seized property in which the financial institution has or purports to have a lien or security interest or for the foreclosure of such lien or security interest. A financial institution may proceed with any suit or action involving property in which it has a lien or security interest even though a seizure has occurred and forfeiture proceedings have been or will be commenced. Any such suit or action may be consolidated with the forfeiture proceeding for the purpose of trial. If property which may be subject to

forfeiture is sold prior to the conclusion of the forfeiture proceedings, the sheriff, trustee or other person conducting the sale and who has actual notice of the forfeiture proceedings shall distribute the sale proceeds as follows:

(A) To the expenses of the sale;

(B) To the payment of the obligations owed to the foreclosing financial institution that are secured by the property and to any other person whose lien or security interest in the property has been foreclosed in the suit or action in the order determined by the court; and

(C) The surplus, if any, shall be distributed to the seizing or forfeiting agency, or to the court in which the forfeiture proceedings are pending.

(b) The sheriff, trustee or other person who distributes the sale proceeds as provided shall not be liable to any person who has or asserts an interest in the property.

(2) Within 30 days following seizure of property for forfeiture, the seizing agency shall determine whether it will seek the forfeiture of the property. If the seizing agency elects not to seek forfeiture, it shall pay all costs and expenses relating to towing and storage of the property, and shall cause to be discharged any possessory chattel liens arising under ORS 87.152 to 87.162 that have attached to the property since its seizure and release the property. The property may be released to a person other than the person from whose custody or control the property was taken if the seizing agency, forfeiting agency or forfeiture counsel first mails to the last-known addresses of all persons known to have an interest in the property a notice of intent to release the property. The notice shall specify the person to whom the property is to be released and shall detail the time and place of the release. An agency that complies with the provisions of this subsection by paying costs and expenses of towing and storage, discharging possessory liens, mailing any required notices and releasing the property shall not be liable for its actions under this subsection or for any consequences thereof.

(3) A forfeiting agency shall, pending forfeiture and final disposition and subject to the need to retain it in any criminal proceeding, provide that property in the physical custody of the seizing or forfeiting agency be serviced or maintained as may be reasonably appropriate to preserve the value of the property.

(4) A forfeiting agency may, pending forfeiture and final disposition and subject to the need to retain seized property in any criminal proceeding:

(a) Provide that the seized property be transferred for forfeiture to any city, county, state or federal agency with forfeiture authority, provided that no such transfer shall have the effect of diminishing or reducing the rights of any third party under chapter 791, Oregon Laws 1989.

(b) Apply to the court for an order providing that the seized property may be sold, leased, rented or operated in the manner and on the terms that may be specified in the court's order. The court shall deny any application unless the sale, lease, rental or operation of the property will be conducted in a commercially reasonable manner and shall not result in a material reduction of the property's value. An order shall only be entered:

(A) After notice and opportunity to be heard is provided to all persons known to have or to claim an interest in the property; and

(B) With the consent of all persons holding security interests of record in the property.

(c) Provide that the seized property be removed to a storage area for safekeeping.

(5) Unless otherwise ordered by the court, the proceeds of the sale, leasing, renting or operation under subsection (4) of this section shall be held by the for-

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feiting agency, and the rights of holders of security interests of record in the property shall attach to the proceeds of the sale, leasing, renting or operation in the same order of priority as interests attached to the property.

(6)(a) Except as provided in paragraph (b) of this subsection and except for currency with apparent or known intrinsic collector value, all cash seized for forfeiture, together with all cash received from the sale, leasing, renting or operation of the property, shall be immediately deposited in an insured interest-bearing forfeiture trust account or accounts maintained by the seizing or forfeiting agency exclusively for this purpose. Cash may be retained as evidence in a criminal proceeding but shall be deposited immediately when the need to retain it as evidence is discharged.

(b) Notwithstanding paragraph (a) of this subsection, all cash seized for forfeiture which at the time of seizure is deposited in any form of account in a financial institution may remain in the account in the financial institution. From the time of seizure until the forfeiture proceeding is abandoned, or until a court ultimately enters or fails to enter a judgment of forfeiture, all deposits except the deposit of interest by the financial institution, withdrawals or other transactions involving the account are prohibited, unless approved by the court.

(c) Subject to any court order, interest earned upon cash deposited in a forfeiture trust account or held in an account in a financial institution under this subsection shall be disbursed as follows:

(A) If the forfeiture proceeding is abandoned, or if the court ultimately fails to enter a judgment of forfeiture or foreclosure, any interest earned, together with the cash deposited in the forfeiture trust account in connection with the seizure in question, shall be paid by the seizing or forfeiting agency to the person from whom it was seized and any interest earned, together with the cash deposited in an account in a financial institution shall be released by the seizing or forfeiting agency to the person from whom it was seized.

(B) If a judgment of forfeiture is entered, but parties other than the forfeiting agency establish rights to portions of the amount deposited in the forfeiture trust account or the account held in a financial institution which are in the aggregate larger than or equal to the cash on deposit plus interest earned thereon, the interest, together with the cash on deposit, shall be disbursed by the forfeiting agency to the parties in the order of their priority.

(C) If a judgment of forfeiture is entered, and the total amount arising out of the seizure which is on deposit in the forfeiture trust account or in an account in a financial institution, including interest earned on moneys deposited, is greater than the aggregate amount needed to satisfy the established interests of security interest holders, lienholders and other claimants, then the balance remaining after payment by the forfeiting agency to parties shall be retained by the forfeiting agency.

(7) If the property seized for forfeiture consists of stocks, bonds, promissory notes, or other security or evidence of indebtedness, and the property is held in some form of account in a financial institution, the property may remain in the account pending a final decision in the forfeiture proceedings. Unless otherwise allowed by order of the court, no transactions involving the account shall be permitted other than the deposit or reinvestment of dividends or other normally recurring payments on the property. Any accrual to the value of the property during the pendency of forfeiture proceedings shall be disbursed in the manner provided for the disbursement of interest under subsection (6) of this section.

(8) If property is seized for forfeiture or if a notice of forfeiture is filed without a prior judicial determination of probable cause, a court, on application filed by an owner of or interest holder in the property within 15 days after notice of its seizure for forfeiture, or actual knowledge of it, whichever is earlier, may, after five days' written notice to the forfeiture counsel, issue an order to show cause to the forfeiting agency, for a hearing on the sole issue of whether probable cause for forfeiture of the property then exists. If the court finds that there is no probable cause for forfeiture of the property, the property seized for forfeiture from the applicant or subjected to the notice of forfeiture shall be released from its seizure for forfeiture or lien pending the outcome of a judicial proceeding under section 7, chapter 791, Oregon Laws 1989. [1989 c.791 §5; 1991 c.237 §2; 1991 c.276 §1; 1991 c.800 §1]

Sec. 6. Personal property which is not subject to an interest in favor of any person known to have an interest, other than a person who engaged in prohibited conduct, may be forfeited by the forfeiting agency in the manner provided in this section.

(1) As soon as practicable after seizure for forfeiture, the seizing agency shall review the inventory prepared by the officer under section 4 (7), chapter 791, Oregon Laws 1989, and estimate the value of the property seized. The forfeiting agency shall amend the inventory to supply an estimate of value of the property seized if no estimate was made by the officer under section 4 (7), chapter 791, Oregon Laws 1989. The forfeiting agency shall, in addition, amend the inventory to supply a correct listing of the property seized or estimate of the value of that property if either the listing or any estimate of value made by the officer is substantially incorrect. Within 15 days after seizure for forfeiture, the forfeiting agency shall prepare a notice of seizure for forfeiture containing a copy of the inventory prepared pursuant to this section and section 4, chapter 791, Oregon Laws 1989, the identity of the person from whom the property was seized, the name, address and telephone number of the seizing agency and the address and telephone number of the office or other place where further information concerning the seizure and forfeiture may be obtained, and shall make reasonable efforts to serve the notice of seizure for forfeiture on all persons known to have an interest in the seized property. A person may be served as provided in ORCP 7 D except that the notice shall also include information regarding the right to file a claim under subsection (3) of this section, if applicable, and the deadline for filing the claim. If the property is cash in the amount of \$1,000 or less, or if the fair market value of the property is \$1,000 or less, the forfeiting agency may publish notice of seizure for forfeiture in a newspaper as provided in ORCP 7 D(6)(b) to (d). In all other cases, the forfeiting agency shall publish notice of seizure for forfeiture in a newspaper as provided in ORCP 7 D(6)(b) to (d). A copy of the notice, inventory and estimate of value shall be provided to the forfeiting agency's forfeiture counsel.

(2)(a) The notice of seizure for forfeiture provided for in this section need not be served on a person who has received the receipt provided for in section 4 (7), chapter 791, Oregon Laws 1989, if:

(A) The receipt contains an estimate of the value of the property seized and the seizing agency has not amended the listing of property or estimate of the value in reviewing the inventory under subsection (1) of this section; and

(B) The receipt contains information regarding the right to file a claim under subsection (3) of this section and the deadline for filing the claim.

(b) Any person who has received the receipt provided for in section 4 (7), chapter 791, Oregon Laws 1989, who must be served with the notice of seizure for forfeiture solely by reason of an amendment to the listing of property or estimate of value under subsection

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(1) of this section, need only be served by mailing a true copy of the notice of seizure for forfeiture by certified mail, return receipt requested.

(3) Any person claiming an interest in the property shall file a claim with the forfeiting agency's forfeiture counsel within 21 days after notice of seizure for forfeiture if notice is given in a manner other than by publication. All other persons claiming an interest in the property shall file a claim with the forfeiting agency's forfeiture counsel within 21 days after the last publication date if notice is published. No extension for the filing of any claim shall be granted. The claim shall be signed by the claimant under penalty of perjury and shall set forth all of the following:

- (a) The true name of the claimant;
- (b) The address at which the claimant will accept future mailings from the court or forfeiture counsel; and
- (c) A statement that the claimant has an interest in the seized property.

(4) If no timely claim is filed, the property shall, upon application and affidavit of the forfeiting agency, be declared forfeited to the forfeiting agency. The affidavit shall set forth proof of service or, if no service was accomplished, facts demonstrating the forfeiting agency's efforts to accomplish service, together with proof of publication of notice. The application and affidavit shall be filed in the circuit or district court designated in section 7, chapter 791, Oregon Laws 1989. The judgment declaring the property forfeited shall be as provided in section 9, chapter 791, Oregon Laws 1989.

(5) If a timely claim is filed, a judicial forfeiture proceeding may be commenced as provided in section 7, chapter 791, Oregon Laws 1989.

(6) Notwithstanding ORS 8.720 or any other provision of law, but subject to the provisions of ORS 180.060, a district attorney may act as forfeiture counsel in any civil forfeiture proceeding.

(7) In any civil forfeiture proceeding where there are or may be related criminal proceedings, a prosecuting attorney or forfeiture counsel may participate in settlement negotiations initiated by the defendant or claimant or by the attorney representing the defendant or claimant.

(8) If a forfeiting agency publishes notice of seizure for forfeiture in a newspaper in the manner provided by subsection (1) of this section, the agency may include in a single publication as many notices of forfeiture as the agency considers convenient. The publication may contain a single statement of matters from the notices of forfeiture that are common to all of the notices and which would otherwise result in needless repetition. The publication must contain for each notice of forfeiture a separate copy of the inventory prepared pursuant to this section and section 4, chapter 791, Oregon Laws 1989, and a separate statement of the identity of the person from whose custody the property was seized. The published inventory need not contain estimates of value for the property seized. [1989 c.791 §6; 1991 c.218 §2; 1991 c.799 §1; 1991 c.934 §1; 1993 c.553 §1; 1993 c.699 §10]

Sec. 7. A civil action in rem may be brought as provided in this section in any case in which forfeiture is sought. A civil action in rem must be brought if the property is real property, the property is in whole or part a manufactured dwelling as defined in ORS 446.003, the property is a floating home as defined in ORS 830.700 or if the property is subject to an interest in favor of any person known to have an interest, other than a person who engaged in prohibited conduct.

(1) If a forfeiting agency has commenced proceedings under section 6, chapter 791, Oregon Laws 1989, then an action shall be commenced by forfeiture counsel, within 15 days of receipt of a claim. If no proceedings have been commenced under section 6, chapter 791, Oregon Laws 1989, then the action shall be com-

menced by forfeiture counsel within 30 days of seizure. The property may be released by forfeiture counsel as provided in section 5 (2), chapter 791, Oregon Laws 1989.

(2) An action is commenced by filing a complaint. Responses to a complaint shall conform to the following procedure:

(a) A person claiming an interest in the property shall respond as provided in the Oregon Rules of Civil Procedure and, if a claim has not previously been filed, by filing a claim in the form set forth in section 6 (3), chapter 791, Oregon Laws 1989, with the court and posting a bond with the court. The bond shall be a cash bond in an amount equal to 10 percent of the value of the interest claimed by the person in the property. Upon good cause shown by motion and affidavit filed with the initial appearance, the court may waive or reduce the bond. Failure to file an appearance, claim and bond shall constitute a default. The bond shall be returned to the claimant upon the entry of a final determination on the claim.

(b) Notwithstanding the provisions of paragraph (a) of this subsection, a financial institution holding an interest in the seized property shall respond to a complaint with an affidavit establishing that the financial institution's interest in the property was acquired:

(A) In the regular course of business as a financial institution;

(B) For valuable consideration;

(C) Without knowledge of the prohibited conduct;

(D) In good faith and without intent to defeat the interest of any potential forfeiting agency; and

(E) With respect to personal property, prior to the seizure of the property, or with respect to real property, recorded prior to the recording of notice of the seizure of the real property in the mortgage records of the county in which the real property is located. Failure to file an affidavit shall constitute a default. The affidavit shall be filed within 30 days from the date of service.

(c) Notwithstanding the provisions of paragraph (a) of this subsection, any person, other than a financial institution, who transfers or conveys an interest in real property pursuant to a contract for transfer or conveyance of an interest in real property as defined in ORS 93.905 and who retains an interest in the real property, or any successor in interest, may respond to a complaint with an affidavit establishing that the person:

(A) Received the interest in return for valuable consideration or by way of devise or intestate succession;

(B) Had no knowledge at the time of transfer or conveyance of the prohibited conduct;

(C) Acted in good faith and without intent to defeat the interest of any potential forfeiting agency;

(D) Recorded the interest in the mortgage records of the county in which the real property is located prior to the recording of any notice of intent to seize or notice of seizure; and

(E) Continued to hold the interest without acquiescing in the prohibited conduct.

(d) For the purposes of paragraph (c) of this subsection, a person shall be considered to have acquiesced in prohibited conduct if the person knew of the prohibited conduct and knowingly failed to take reasonable action under the circumstances to terminate or avoid use of the property in the course of prohibited conduct. For purposes of this section, "reasonable action under the circumstances" includes, but is not limited to:

(A) Reporting the prohibited conduct to a police agency;

(B) Commencing action that will assert the rights of the affiant as to the property interest;

(C) Terminating a rental agreement; or

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(D) Seeking an abatement order under the provisions of ORS 105.505 to 105.520, or under the provisions of ORS 105.555 to 105.565 and 105.575 to 105.600, or under any ordinance or regulation allowing abatement of nuisances.

(e) The affidavit permitted by paragraph (c) of this subsection shall be filed within 30 days from the date of service of the summons and complaint. Failure to file an affidavit or to respond as set forth in paragraph (a) of this subsection shall constitute a default.

(f) In response to an affidavit filed pursuant to paragraph (c) of this subsection, the forfeiting agency may controvert any or all of the assertions made in the affidavit. The affidavit of the forfeiting agency shall be filed within 20 days of the filing of the affidavit filed under paragraph (c) of this subsection. The transferor, conveyor or successor in interest may respond, within five days of the filing of the affidavit of the forfeiting agency, with a supplemental affidavit limited to the matters stated in the affidavit of the forfeiting agency. If the forfeiting agency does not file an affidavit within the time allowed, the transferor, conveyor or successor in interest shall be considered a financial institution for all purposes under chapter 791, Oregon Laws 1989.

(g)(A) If the forfeiting agency files an affidavit under paragraph (f) of this subsection, the court shall determine from the affidavits whether there is a genuine issue of material fact with respect to the assertions of the transferor, conveyor or successor in interest.

(B) If the court determines that there is no genuine issue of material fact as to the truth of the assertions in the affidavit filed under paragraph (f) of this subsection, the transferor, conveyor or successor in interest shall be considered a financial institution for all purposes under chapter 791, Oregon Laws, 1989. The court shall order the forfeiting agency to pay the costs and disbursements, including attorney fees, of the prevailing transferor, conveyor or successor in interest if the forfeiting agency does not prevail.

(C) If the court determines that there is a genuine issue of material fact as to the truth of the assertions in the affidavit filed pursuant to paragraph (f) of this subsection, the transferor, conveyor or successor in interest shall, within 15 days, respond as provided in paragraph (a) of this subsection. The court may order the transferor, conveyor or successor in interest to pay the attorney fees of the forfeiting agency that were incurred in contesting the affidavit of the transferor, conveyor or successor in interest if the court determines that the affidavit of the transferor, conveyor or successor in interest was frivolous.

(3) All persons known to have an interest in the property, including any claimant, shall be served with a true copy of the inventory of the property prepared pursuant to sections 4 and 6, chapter 791, Oregon Laws 1989, the summons and the complaint as provided in ORCP 5 and 7 D. Notice of the action shall be published as provided in ORCP 7 D(6)(b) to (d) unless notice has previously been published in accordance with section 6 (1), chapter 791, Oregon Laws 1989. In the event that a forfeiture involves a vehicle, and the notices required by this statute have been given, and substitute service on the claimant is required because personal service cannot be reasonably accomplished, service as authorized by ORCP 7 D(4) shall be sufficient to establish jurisdiction over a registered owner or operator of a vehicle. If the property is in whole or part a manufactured dwelling as defined in ORS 446.003 or a floating home as defined in ORS 830.700, the forfeiting agency shall, in addition to serving all persons known to have an interest in the property, record a notice of seizure containing a description of the manufactured dwelling or floating home in all public offices maintaining records that impart constructive notice of matters relating to manufactured dwellings or floating homes.

(4) All judicial proceedings under sections 2 to 14, chapter 791, Oregon Laws 1989, shall be governed by the Oregon Rules of Civil Procedure to the extent that they do not conflict with specific provisions of chapter 791, Oregon Laws 1989.

(5)(a) The filing of criminal charges related to any civil proceeding for forfeiture shall, upon motion of forfeiture counsel or upon motion on behalf of defendant in a related criminal proceeding, stay the civil forfeiture proceeding until completion of the related criminal proceeding.

(b) The court may stay the civil forfeiture proceeding upon motion of a party and good cause shown. Good cause may include a reasonable fear on the part of a claimant that the claimant could be prosecuted for conduct arising out of the same factual situation which gave rise to the seizure of the property.

(6) An action pursuant to this section shall be consolidated with any other action pursuant to this section relating to the same property on motion by forfeiture counsel in either action.

(7) The action shall be commenced and tried:

(a) In the case of real property, in the circuit court in a county in which the property is situated; or

(b) In all other cases, in the circuit or district court of the county in which the property was seized or the county in which any part of the prohibited conduct took place. [1989 c.791 §7; 1991 c.218 §3; 1991 c.238 §1; 1991 c.275 §1; 1991 c.799 §2; 1991 c.828 §1; 1993 c.699 §18]

Sec. 8. (1) A claimant may plead as an affirmative defense that the claimant took the property or the interest which the claimant holds therein:

(a)(A) Before it was seized for forfeiture;

(B) In good faith and without intent to defeat the interest of any forfeiting agency; and

(C) Continued to hold the property or interest without acquiescing in the prohibited conduct; or

(b) By coownership or cotenancy taken in good faith, without intent to defeat the interest of any forfeiting agency and continued to hold the property or interest without acquiescing in the prohibited conduct.

(2) A claimant may plead as an affirmative defense that the property was seized in violation of section 20, chapter 699, Oregon Laws 1993.

(3) In any action brought against property subject to forfeiture under section 3 (7), chapter 791, Oregon Laws 1989, a claimant may plead as an affirmative defense that the controlled substance was solely for personal use.

(4) If, by a preponderance of the evidence, the claimant proves a defense under this section, then judgment shall be entered for the claimant as provided in section 9 (6), chapter 791, Oregon Laws 1989.

(5) This defense may not be asserted by a financial institution which holds a security interest in the property.

(6) For the purposes of subsection (1) of this section, a person shall be considered to have acquiesced in prohibited conduct if the person knew of the prohibited conduct and knowingly failed to take reasonable action under the circumstances to terminate or avoid use of the property in the course of prohibited conduct. [1989 c.791 §8; 1991 c.322 §1; 1993 c.699 §21]

Sec. 9. A judgment of forfeiture shall recite the basis for the judgment.

(1) If no financial institutions have filed the affidavit described in section 7 (2)(b), chapter 791, Oregon Laws 1989, and if the court has failed to uphold the claim or affidavit of any other claimant, the effect of the judgment shall be that:

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(a) Title to the property shall pass to the forfeiting agency free of any interest or encumbrance thereon in favor of any person who has been given notice;

(b) The forfeiting agency may transfer good and sufficient title to any subsequent purchaser or transferee, and the title shall be recognized by all courts, by the state, by the departments and agencies of the state, and by any political subdivision. In the case of real property, the forfeiting agency shall warrant the title against constitutional defect. A warranty under this section is limited to the purchase price of the real property; and

(c) Any department, agency or officer of the state or any political subdivision whose official functions include the issuance of certificates or other evidence of title shall be immune from civil or criminal liability when such issuance is pursuant to a judgment of forfeiture.

(2) If any affidavits are filed by financial institutions as provided in section 7 (2)(b), chapter 791, Oregon Laws 1989, or if any claimants file an appearance, claim and bond as provided in section 7 (2)(a), chapter 791, Oregon Laws 1989 or an affidavit as provided in section 7 (2)(c), chapter 791, Oregon Laws 1989:

(a) The court shall foreclose all security interests, liens and vendor's interests of financial institutions and claimants as to which the court determines that there is a legal or equitable basis for foreclosure; and

(b) All other interests applicable to the property, which are not foreclosed or otherwise eliminated through a judgment and decree of foreclosure, shall, if and to the extent that they are valid and subsisting, remain in effect, and the property shall remain subject to them upon completion of the forfeiture proceeding.

(3) Notwithstanding the provisions of chapter 791, Oregon Laws 1989, or other law, if a financial institution or other person has filed an affidavit described in section 7, chapter 791, Oregon Laws 1989, or if the court has upheld the claim of any claimant, then as to each item of property seized:

(a) If the court has determined that the property should not be forfeited and has not foreclosed the security interests, liens or other interests covering the property, the court shall render judgment in favor of the owner of the property, the property shall be returned to the owner and all security interests, liens and other interests applicable to the property shall remain in effect as though the property had never been seized. Upon the return of the property to the owner, the seizing agency shall pay all costs and expenses relating to towing and storage of the property, and shall cause to be discharged any possessory chattel liens on the property arising under ORS 87.152 to 87.162 that have attached to the property since the seizure.

(b) If the court has determined that the property should not be forfeited and has foreclosed one or more interests covering the property, including security interests or liens covering the property or contracts for the transfer or conveyance of the property, the seizing agency shall pay all costs and expenses relating to towing and storage of the property, and shall cause to be discharged any possessory chattel liens on the property arising under ORS 87.152 to 87.162 that have attached to the property since the seizure and the court shall order the property sold pursuant to a sheriff's sale or other sale authorized by the court within such time as may be prescribed by the court following entry of the judgment. If any interests covering the property have not been foreclosed, including any liens or security interests of a claimant whose claim has been upheld, or of a financial institution that has filed the affidavit described in section 7, chapter 791, Oregon Laws 1989, the property shall be sold subject to those interests. The judgment shall also order the proceeds of such sale applied in the following order:

(A) To the payment of the costs of the sale;

(B) To the satisfaction of the foreclosed liens, security interests and contracts in order of their priority; and

(C) The excess, if any, to the owner of the property.

(c) If the court has determined that the property should be forfeited and has foreclosed one or more security interests, liens, contracts or other interests covering the property, the seizing agency shall pay all costs and expenses relating to towing and storage of the property, and shall cause to be discharged any possessory chattel liens on the property arising under ORS 87.152 to 87.162 that have attached to the property since the seizure and the court shall order the property sold pursuant to a sheriff's sale or other sale authorized by the court. If any interest in the property was claimed by a financial institution or other claimant and the interest was upheld but not foreclosed, the property shall be sold subject to the interest. The sale of the property shall be held within such time as may be prescribed by the court following entry of the judgment. The judgment shall also order the proceeds of such sale applied in the following order:

(A) To the payment of the costs of the sale;

(B) To the satisfaction of the foreclosed liens, security interests and contracts in the order of their priority; and

(C) The excess, if any, to the forfeiting agency to be disposed of as provided in section 10, chapter 791, Oregon Laws 1989.

(d) If the court has determined that the property should be forfeited and has not foreclosed the interests of any party in the property, the seizing agency shall pay all costs and expenses relating to towing and storage of the property and shall cause to be discharged any possessory chattel liens on the property arising under ORS 87.152 to 87.162 that have attached to the property since the seizure, and the court shall enter a judgment awarding the property to the forfeiting agency, subject to the interests of any claimants whose claims or affidavits were upheld by the court, and subject to the interests of any financial institutions that filed affidavits under section 7 (2)(b), chapter 791, Oregon Laws 1989, which shall remain in full force and effect.

(4) The forfeiting agency shall not be liable to any person as a consequence of obedience to a judgment directing conveyance to a financial institution.

(5) A copy of the judgment, including any judgment entered under the provisions of section 6 (4), chapter 791, Oregon Laws 1989, shall be sent by forfeiture counsel to the Asset Forfeiture Oversight Advisory Committee.

(6)(a) On entry of judgment for a claimant in any proceeding to forfeit property under chapter 791, Oregon Laws 1989, unless the court has foreclosed one or more security interests, liens or other interests covering the property, such property or interest in property shall be returned or conveyed immediately to the claimant designated by the court. The court, in the manner provided by ORCP 68, shall award costs, disbursements and attorney fees to the prevailing claimants and financial institutions, to be paid by the forfeiting agency.

(b) If it appears that there was reasonable suspicion that the property was subject to forfeiture, the court shall cause a finding to be entered, and no claimant or financial institution shall be entitled to damages, nor is the person who made the seizure, the seizing or forfeiting agency or forfeiture counsel liable to suit or judgment on account of such seizure or action. An order directing seizure issued under section 4 (4), chapter 791, Oregon Laws 1989, shall constitute a finding of reasonable suspicion that the property was subject to forfeiture.

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(7) Nothing contained in this section shall prevent a claimant or financial institution from obtaining any deficiency to which such claimant or financial institution would otherwise be entitled.

(8) Nothing in this section or in section 5, chapter 791, Oregon Laws 1989, shall prevent a seizing agency from entering into an agreement with a claimant or other person for the reimbursement of the seizing agency for the costs and expenses relating to towing and storage of property or the cost of discharging any possessory chattel lien on the property arising under ORS 87.152 to 87.162 that attached to the property between seizure of the property and release or forfeiture of the property. [1989 c.791 §9; 1991 c.275 §2; 1991 c.290 §1; 1991 c.322 §2; 1991 c.800 §2; 1993 c.553 §2]

Sec. 10. (1) After the forfeiture counsel distributes property under section 9, chapter 791, Oregon Laws 1989, the forfeiture counsel shall dispose of and distribute property when the forfeiting agency is not the state as follows:

(a) Costs shall first be paid from the property or, if the property is sold, from its proceeds. "Costs" as used in this section includes costs, disbursements and attorney fees as defined in ORCP 68 A and those special expenses, including hourly investigative costs and the provision of lawful currency, incurred by any seizing or forfeiting agency in investigating and prosecuting a specific case. "Costs" as used in this section also includes any expenses of servicing or maintaining the seized property under the provisions of section 5 (3), chapter 791, Oregon Laws 1989. These costs shall not include the expenditures made in connection with the ordinary maintenance and operation of the seizing or forfeiting agency.

(b) The balance of the property shall be credited to the general fund of the political jurisdiction that operates the forfeiting agency.

(c) Forfeiture proceeds received by a political subdivision, including amounts received under an intergovernmental agreement pursuant to the provisions of section 11b (3), chapter 791, Oregon Laws 1989, shall be used for enforcement of laws relating to the unlawful delivery, distribution, manufacture or possession of controlled substances, including but not limited to use of the proceeds for controlled substance crime prevention, drug intervention, drug treatment and drug education programs. Except as specifically provided by this paragraph, forfeiture proceeds under this paragraph may not be used for payment of the wages of peace officers, as defined in ORS 161.015, the purchase, construction, expansion, remodeling or maintenance of buildings, or the funding of all or part of any position that was in existence before the effective date of this 1993 Act [August 23, 1993] and that was previously funded out of revenues other than forfeiture proceeds. Forfeiture proceeds may be used for the following:

(A) Payment of that portion of the wages of personnel other than peace officers who administer the forfeiture laws.

(B) Payment of the wages of peace officers performing supervisory duties for interagency drug enforcement task forces created by intergovernmental agreement.

(C) Payments to counties in the manner specified in paragraph (d) of this subsection.

(D) Payment of overtime wages of peace officers arising out of drug enforcement duties.

(d) If the political subdivision is not a county, the political subdivision shall enter into an agreement with the county pursuant to ORS chapter 190 to provide a portion for prosecution from these funds. Any intergovernmental agreements or ordinances providing for the distribution of forfeiture proceeds in effect on July 24, 1989, shall remain valid unless changed by the parties.

(e) Except as otherwise provided by intergovernmental agreement, the forfeiting agency may:

(A) Sell, lease, lend or transfer the property or proceeds to any federal, state or local law enforcement agency or district attorney.

(B) Sell the forfeited property by public or other commercially reasonable sale and pay from the proceeds the expenses of keeping and selling the property.

(C) Retain the property.

(D) With written authorization from the district attorney for the forfeiting agency's jurisdiction, destroy any firearms or controlled substances.

(f) Notwithstanding paragraphs (c) and (d) of this subsection, before any distribution of funds under paragraph (d) of this subsection or use of funds in the manner specified by paragraph (c) of this subsection, the political subdivision shall deduct an amount equal to five percent of the proceeds credited to the general fund of the political subdivision under paragraph (b) of this subsection and deposit that amount in the Illegal Drug Cleanup Fund established by ORS 475.495 for the purposes specified in ORS 475.495 (5). The political subdivision shall sell as much property as may be needed to meet the requirements of this paragraph. Deposits to the Illegal Drug Cleanup Fund under this paragraph shall be made once every three months and are due within 20 days of the end of each quarter. No interest shall accrue on amounts that are paid within the period specified by this paragraph.

(g) Notwithstanding paragraphs (c) and (d) of this subsection, growing equipment and laboratory equipment seized by a forfeiting agency that was used, or intended for use, in manufacturing of controlled substances, may be donated to a public school, community college or institution of higher education.

(2) The forfeiting agency, and any agency which receives forfeited property or proceeds from the sale of forfeited property, shall maintain written documentation of each sale, decision to retain, transfer or other disposition.

(3) Forfeiture counsel shall report each forfeiture to the Asset Forfeiture Oversight Advisory Committee as soon as reasonably possible after the conclusion of forfeiture proceedings, whether or not the forfeiture results in an entry of judgment under section 9, chapter 791, Oregon Laws 1989. The committee shall develop and make available forms for the purpose of reporting forfeitures.

(4) Law enforcement agencies shall supply to forfeiture counsel all information requested by forfeiture counsel necessary for the preparation of the report required by subsection (3) of this section.

(5) Political subdivisions of the state who receive forfeiture proceeds under this section shall submit a report to the Asset Forfeiture Oversight Advisory Committee for any year in which those proceeds are received. The committee shall develop and make available forms for the purpose of those reports. The forms shall require the political subdivision to report on how proceeds received by the political subdivision have or will be used, and such other information as may be requested by the committee. Reports shall be submitted each December 15 for the last ending fiscal year of the political subdivision.

(6) This section applies only to forfeiture proceeds arising out of prohibited conduct as defined by section 2 (11), chapter 791, Oregon Laws 1989, and does not apply to proceeds from forfeiture based on other conduct. [1989 c.791 §10; 1991 c.276 §2; 1991 c.290 §2; 1991 c.934 §7; 1993 c.552 §1; 1993 c.553 §3; 1993 c.699 §6]

Sec. 11b. After the forfeiture counsel distributes payments under section 9, chapter 791, Oregon Laws 1989, the forfeiture counsel shall disburse and distribute payment as follows when the forfeiting agency is the

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state or when the state is the recipient of property forfeited under chapter 791, Oregon Laws 1989:

(1)(a) Costs shall first be paid from the property or, if the property is sold, from its proceeds. As used in this section, "costs" includes attorney fees, costs and disbursements, and those special expenses, including hourly investigative costs and including the provision of lawful currency, incurred by any seizing agency or other agency of the state in investigating and prosecuting a specific case. "Costs" as used in this section also includes any expenses of servicing or maintaining the seized property under the provisions of section 5 (3), chapter 791, Oregon Laws 1989. These costs shall not otherwise include the expenditures made in connection with the ordinary maintenance and operation of the seizing agency.

(b) Any amount paid to or retained by the Department of Justice under this subsection shall be deposited in the Criminal Justice Revolving Account in the State Treasury.

(c) Any amounts paid to or retained by the Oregon State Police under this subsection shall be deposited in the State Police Account.

(2) The state may:

(a) With written authorization from the district attorney for the jurisdiction in which the property was seized, destroy any firearms or controlled substances.

(b) Sell the forfeited property by public or other commercially reasonable sale and pay from the proceeds the expenses of keeping and selling the property.

(c) Retain any vehicles, firearms or other equipment usable for law enforcement purposes, for official law enforcement use directly by the state.

(d) Lend or transfer any vehicles, firearms or other equipment usable for law enforcement purposes, to any federal, state or local law enforcement agency or district attorney for official law enforcement use directly by the transferee entity.

(3) When the state has entered into an intergovernmental agreement with one or more political subdivisions under section 12a, chapter 791, Oregon Laws 1989, or when a law enforcement agency of the state has entered into an agreement with another law enforcement agency of the state, an equitable portion of the forfeited property shall be distributed to each agency participating in the seizure or forfeiture as provided by the agreement.

(4) The balance of the property, including the balance of any proceeds received by the state under an intergovernmental agreement or under an agreement between state law enforcement agencies, shall be divided as follows:

(a) When no law enforcement agency other than the Department of Justice participated in the seizure or forfeiture, or when the Department of Justice has entered into an agreement under subsection (3) of this section, the property shall be divided between the Criminal Justice Revolving Account and the Special Crime and Forfeiture Account created in section 11c, chapter 791, Oregon Laws 1989, according to the following schedule:

(A) One hundred percent of the first \$200,000 accumulated shall be deposited in the Criminal Justice Revolving Account.

(B) Seventy-five percent of the next \$200,000 shall be deposited in the Criminal Justice Revolving Account and the balance in the Special Crime and Forfeiture Account.

(C) Fifty percent of the next \$200,000 shall be deposited in the Criminal Justice Revolving Account and the balance in the Special Crime and Forfeiture Account.

(D) Twenty-five percent of the next \$200,000 shall be deposited in the Criminal Justice Revolving Account and the balance in the Special Crime and Forfeiture Account.

(E) One hundred percent of all additional sums shall be deposited in the Special Crime and Forfeiture Account.

(b) When no law enforcement agency other than the Department of State Police participated in the seizure or forfeiture, or when the Department of State Police has entered into an agreement under subsection (3) of this section, the property shall be divided between the State Police Account and the Special Crime and Forfeiture Account according to the following schedule:

(A) One hundred percent of the first \$600,000 accumulated shall be deposited in the State Police Account.

(B) Seventy-five percent of the next \$300,000 shall be deposited in the State Police Account and the balance in the Special Crime and Forfeiture Account.

(C) Fifty percent of the next \$200,000 shall be deposited in the State Police Account and the balance in the Special Crime and Forfeiture Account.

(D) Twenty-five percent of the next \$200,000 shall be deposited in the State Police Account and the balance in the Special Crime and Forfeiture Account.

(E) One hundred percent of all additional sums shall be deposited in the Special Crime and Forfeiture Account.

(5) Notwithstanding subsections (3) and (4) of this section, before any distribution under subsection (3) of this section or any division and disbursement of proceeds under subsection (4) of this section, the state shall deduct an amount equal to 10 percent of the proceeds from the property, but not to exceed \$250,000 in any biennium, and deposit that amount in the Illegal Drug Cleanup Fund established by ORS 475.495 for the purposes specified in ORS 475.495 (5). The state shall sell as much property as may be needed to meet the requirements of this section. Deposits to the Illegal Drug Cleanup Fund under this subsection shall be made once every three months and are due within 20 days of the end of each quarter. No interest shall accrue on amounts that are paid within the period specified by this subsection.

(6) Forfeiture proceeds received by the Department of Justice and the Department of State Police shall be used for enforcement of laws relating to the unlawful delivery, distribution, manufacture or possession of controlled substances, including but not limited to use of the proceeds for controlled substance crime prevention, drug intervention, drug treatment and drug education programs. Except as specifically provided by this subsection, forfeiture proceeds under this subsection may not be used for payment of the wages of peace officers, as defined in ORS 161.015, the purchase, construction, expansion, remodeling or maintenance of buildings, or the funding of all or part of any position that was in existence before the effective date of this 1993 Act [August 23, 1993] and that was previously funded out of revenues other than forfeiture proceeds. Forfeiture proceeds may be used for the following:

(a) Payment of that portion of the wages of personnel other than peace officers who administer the forfeiture laws.

(b) Payment of the wages of peace officers performing supervisory duties for interagency drug enforcement task forces created by intergovernmental agreement.

(c) Payment of overtime wages of peace officers arising out of drug enforcement duties.

(7) The forfeiting agency, and any agency that receives forfeited property or proceeds from the sale of forfeited property, shall maintain written documentation

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of each sale, decision to retain, transfer or other disposition of the property or proceeds.

(8) Forfeiture counsel shall report each forfeiture to the Asset Forfeiture Oversight Advisory Committee as soon as reasonably possible after the conclusion of forfeiture proceedings, whether or not the forfeiture results in an entry of judgment under section 9, chapter 791, Oregon Laws 1989. The committee shall develop and make available forms for the purpose of reporting forfeitures.

(9) Law enforcement agencies shall supply to forfeiture counsel all information requested by forfeiture counsel necessary for the preparation of the report required by subsection (8) of this section. [1989 c.791 §11b; 1991 c.276 §3; 1991 c.290 §3; 1993 c.699 §7]

Sec. 11c. The Special Crime and Forfeiture Account is established in the General Fund of the State Treasury. The account shall consist of all forfeiture proceeds received or retained by agencies of the state under chapter 791, Oregon Laws 1989, except as otherwise provided by section 11b, chapter 791, Oregon Laws 1989. All moneys in the account are continuously appropriated and shall be used for enforcement of laws relating to the unlawful delivery, distribution, manufacture or possession of controlled substances, including but not limited to use of the proceeds for controlled substance crime prevention, drug intervention, drug treatment and drug education programs. Except as specifically provided by this section, forfeiture proceeds in the Special Crime and Forfeiture Account may not be used for payment of the wages of peace officers, as defined in ORS 161.015, the purchase, construction, expansion, remodeling or maintenance of buildings, or the funding of all or part of any position that was in existence before the effective date of this 1993 Act [August 23, 1993] and that was previously funded out of revenues other than forfeiture proceeds. Forfeiture proceeds may be used for the following:

(1) Payment of that portion of the wages of personnel other than peace officers who administer the forfeiture laws.

(2) Payment of the wages of peace officers performing supervisory duties for interagency drug enforcement task forces created by intergovernmental agreement.

(3) Payment of overtime wages of peace officers arising out of drug enforcement duties. [1989 c.791 §11c; 1993 c.699 §9]

Sec. 12. Subject to this Act, all right, title and interest in property forfeited under this Act shall vest in the forfeiting agency upon commission of the prohibited conduct. [1989 c.791 §12]

Sec. 12a. Distribution of property or proceeds in accordance with this Act shall be made equitably and may be pursuant to intergovernmental agreement under ORS chapter 190. Intergovernmental agreements providing for such distributions and in effect at the time of the effective date of this Act [July 24, 1989] shall remain valid unless changed by the parties. [1989 c.791 §12a]

Sec. 13. In all actions brought for forfeiture, the burden of persuasion shall lie upon the claimant, provided that probable cause to believe that the property is subject to forfeiture shall first be shown by the forfeiting agency. [1989 c.791 §13]

Sec. 14. (1) The Asset Forfeiture Oversight Advisory Committee is created. The committee consists of 12 members to be appointed as follows:

(a) The President of the Senate and the Speaker of the House of Representatives shall appoint six legislators to the committee. Three shall be Senators appointed by the President. Three shall be Representatives appointed by the Speaker.

(b) The Governor shall appoint three members to the committee.

(c) The Attorney General shall appoint three members to the committee.

(2)(a) The members of the committee shall select from among themselves a chairperson and vice chairperson.

(b) The committee shall meet at such times and places as determined by the chairperson.

(3) Legislative members shall be entitled to payment of compensation and expense reimbursement under ORS 171.072, payable from funds appropriated to the Legislative Assembly.

(4)(a) The committee shall prepare reports detailing the number and nature of forfeitures carried out under chapter 791, Oregon Laws 1989, including the disposition and use of the proceeds from the forfeitures. A report shall be submitted on or before January 31, April 30, July 31 and October 31 of each year to the Speaker of the House of Representatives, President of the Senate and Governor.

(b) The final report of the committee may contain recommendations to increase the effectiveness, fairness and efficiency of forfeiture actions brought under chapter 791, Oregon Laws 1989.

(c) The final report of the committee may contain recommendations for additional legislation governing forfeiture actions. [1989 c.791 §14; 1991 c.290 §4; 1993 c.699 §4]

Sec. 22. Chapter 791, Oregon Laws 1989, is repealed on December 31, 1997. Notwithstanding sections 2 and 3 of this 1993 Act, the terms of all members of the Asset Forfeiture Oversight Advisory Committee end on December 31, 1997. [1989 c.791 §22; 1993 c.699 §11]

Note: Sections 4, 5 and 6, chapter 934, Oregon Laws 1991, which were added to and made a part of sections 2 to 14, chapter 791, Oregon Laws 1989, provide:

Sec. 4. (1) A person claiming an interest in property seized pursuant to sections 2 to 14, chapter 791, Oregon Laws 1989, may file a petition for an expedited hearing within 15 days after notice of seizure for forfeiture or within such further time as the court may allow for good cause shown.

(2) A petition for an expedited hearing shall contain a claim if no claim has previously been filed. The petition shall reflect whether the petitioner seeks one or more of the following:

(a) A determination at the hearing of any of the affirmative defenses provided for in section 8, chapter 791, Oregon Laws 1989.

(b) An order restoring custody of seized property to the petitioner during the pendency of the proceedings if the court finds, by a preponderance of the evidence, that it is probable that the property will remain available for forfeiture at the completion of the proceedings and that there is a reasonable possibility that the petitioner will ultimately prevail in the proceeding.

(c) Appointment of a receiver.

(3) A person filing a petition under this section shall serve a copy of the petition on all persons known to have an interest. Service shall be accomplished as provided in ORCP 7D. Service by publication shall not be required prior to an expedited hearing.

(4) A hearing shall be held within 15 days after service of all persons known to have an interest or at such later time as the court may allow for good cause shown. The hearing shall be limited to:

(a) Deciding whether claimant can prove an affirmative defense provided for in section 8, chapter 791, Oregon Laws 1989, if the petitioner asserts one of those defenses;

PUBLIC ORDER OFFENSES

(b) Determining whether an order should be entered directing the return of the seized property to the claimant during the pendency of the hearing; and

(c) Determining whether an order should be entered directing the appointment of a receiver to manage property seized pursuant to sections 2 to 14, chapter 791, Oregon Laws 1989, pending a final determination as to the disposition of the property, if the petitioner or the forfeiting agency requests that order.

(5) If the petition is denied, and evidence that was not previously available to the petitioner is discovered, the petitioner may file a new petition under this section at any time prior to a trial under section 7, chapter 791, Oregon Laws 1989. The new petition shall be served as provided under subsection (3) of this section. A hearing on the petition shall be conducted as provided in section 5 of this 1991 Act.

(6) The parties to a proceeding under section 7, chapter 791, Oregon Laws 1989, may at any time stipulate to the entry of an order restoring custody of seized property to a petitioner who claims an interest in the property. The order shall comply with the requirements of section 6 (1) of this 1991 Act. [1991 c.934 §4]

Sec. 5. (1) In any expedited hearing under section 4 of this 1991 Act in which petitioner seeks a determination at the hearing of any of the affirmative defenses provided for in section 8, chapter 791, Oregon Laws 1989, the court may consider evidence relating to those affirmative defenses and shall make a determination as to any of those defenses that may be asserted by the petitioner.

(2) If the court finds that petitioner has proven an affirmative defense provided for in section 8, chapter 791, Oregon Laws 1989, the court shall order that custody of the seized property be returned to the petitioner to the extent of the petitioner's interest pending a final determination as to the disposition of the property, unless the forfeiting agency can show that the return of the property will result in prejudice to the agency in seeking forfeiture of other claimants' interest in the property.

(3) If the court finds that the petitioner has failed to prove an affirmative defense provided for in section 8, chapter 791, Oregon Laws 1989, the court shall continue the matter for further proceedings consistent with section 7, chapter 791, Oregon Laws 1989. [1991 c.934 §5]

Sec. 6. (1) An order restoring custody to a petitioner under section 4 or 5 of this 1991 Act shall:

(a) Prohibit the petitioner from using the property in unlawful conduct of any kind, or from allowing the property to be used by any other person in unlawful conduct;

(b) Require the petitioner to service and maintain the property as may be reasonably appropriate to preserve the value of the property; and

(c) Require the petitioner to inform the court of the exact location of the property at the time of any trial under section 7, chapter 791, Oregon Laws 1989, and to deliver the property to the forfeiting agency immediately upon the issuance of a judgment of forfeiture.

(2) An order restoring custody to a petitioner under section 4 or 5 of this 1991 Act may include such other requirements as the court finds appropriate pending a final determination as to the disposition of the property.

(3) An order restoring custody to a petitioner under section 4 or 5 of this 1991 Act is enforceable by a contempt proceeding brought on the relation of forfeiture counsel, by a further order directing the petitioner to deliver the property to the custody of the forfeiting agency, by an order awarding to the forfeiting agency its reasonably incurred attorney fees, costs and investigative expenses, and by such other remedies or relief as the court may find appropriate. [1991 c.934 §6]

Note: Section 5, chapter 218, Oregon Laws 1991, which was added to and made a part of chapter 791, Oregon Laws 1989, provides:

Sec. 5. If, prior to the commencement of forfeiture proceedings under section 7, chapter 791, Oregon Laws 1989, it is determined that the inventory prepared pursuant to sections 4 and 6, chapter 791, Oregon Laws 1989, is substantially incorrect, the seizing agency shall cause the inventory to be amended. The substance of the amendment shall be clearly noted on the face of the inventory. The amended inventory shall be served with any summons and complaint served under section 7, chapter 791, Oregon Laws 1989. If the amendment occurs after the commencement of forfeiture proceedings, the amended inventory shall be served on all persons previously served with summons and complaint under section 7, chapter 791, Oregon Laws 1989. [1991 c.218 §5]

Note: Section 5, chapter 553, Oregon Laws 1993, which was added to and made a part of sections 2 to 14, chapter 791, Oregon Laws 1989, provides:

Sec. 5. A political subdivision is not required to file a report with the Asset Forfeiture Oversight Advisory Committee on April 15, 1993, July 15, 1993, or October 15, 1993. All political subdivisions who receive forfeiture proceeds shall report on December 15 of 1993, and each year thereafter, in the manner provided by section 10 (5), chapter 791, Oregon Laws 1989, as amended by section 3 of this 1993 Act. [1993 c.553 §5]

Note: Sections 2, 3, 13 to 17, 20 and 22, chapter 699, Oregon Laws 1993, which were added to and made a part of sections 2 to 14, chapter 791, Oregon Laws 1989, provide:

Sec. 2. (1) The terms of all members of the Asset Forfeiture Oversight Advisory Committee expire on December 31, 1993. The President of the Senate, the Speaker of the House of Representatives, the Governor and the Attorney General shall appoint new members to the committee for terms to commence on January 1, 1994. Appointments shall be made in the manner described by section 14 (1), chapter 791, Oregon Laws 1989.

(2) Notwithstanding section 3 of this 1993 Act, the terms for the three members appointed by the Governor that commence on January 1, 1994, shall be:

- (a) For one member, two years.
- (b) For one member, three years.
- (c) For one member, four years.

(3) Notwithstanding section 3 of this 1993 Act, the terms for the three members appointed by the Attorney General that commence on January 1, 1994, shall be:

- (a) For one member, two years.
- (b) For one member, three years.
- (c) For one member, four years. [1993 c.699 §2]

Sec. 3. The term of a legislator appointed to the Asset Forfeiture Oversight Advisory Committee shall be two years. The term of all other members shall be four years. Members of the committee serving on the effective date of this 1993 Act [August 23, 1993] may be re-appointed. If a vacancy occurs on the committee for any reason during the term of membership, the officer who appointed the member to the vacant position shall appoint a new member to serve the remainder of the term. A member of the committee may be removed from the committee at any time by the official who appointed the member. [1993 c.699 §3]

Sec. 13. (1) If it has been determined in an action brought under the provisions of section 7, chapter 791, Oregon Laws 1989, that the plaintiff has prevailed as to some or all of the defendant property, the plaintiff shall serve on the claimant a proposed judgment of forfeiture and a statement of costs as defined in sections 10 (1)(a) and 11b (1)(a), chapter 791, Oregon Laws 1989.

CRIMES AND PUNISHMENTS

(2) A claimant who has filed a claim to seized property, appeared in the action, and part or all of whose interest in the claimed property is forfeited under the terms of the proposed judgment may file a motion for a mitigation hearing:

(a) A motion under this section must list all evidence not previously received that is relevant to the determination to be made by the court under section 15 of this 1993 Act. Every argument that the claimant wishes to raise in mitigation must be set out in specific detail in the motion.

(b) Before filing a motion for mitigation, the claimant and the plaintiff must make a good faith effort to confer with one another concerning any issues in dispute. The claimant must file a certificate of compliance with the requirements of this paragraph before the time set for hearing on the motion. The certificate is sufficient if the certificate states that the parties conferred or the certificate contains facts showing good cause for not conferring.

(c) A motion under this section may only be filed after the service of a proposed judgment on the claimants. If a motion for a mitigation hearing is not filed with the court within 14 days after the date the plaintiff serves the proposed judgment on the claimant, the court shall enter judgment.

(3) If a motion for a mitigation hearing is filed, the court shall determine whether any portion of the proposed judgment is excessive in the manner provided by section 15 of this 1993 Act.

(4) A hearing under the provisions of this section is subject to the Oregon Rules of Evidence.

(5) The court may make such orders, as may be necessary to insure that the forfeiture is not excessive, including but not limited to the following orders:

(a) An order directing that the defendant property, or part of it, be sold and the proceeds of sale distributed between the litigants.

(b) An order directing that the claimant make available to the court other assets, not named as defendants in the forfeiture action, for the purpose of fashioning a final judgment that is not excessive.

(6) The court shall make written findings of fact and shall enter written conclusions of law in proceedings under the provisions of this section. [1993 c.699 §13]

Sec. 14. (1) Subject to subsection (2) of this section, the court shall forfeit to the forfeiting agency at least so much of the defendant property as may be required to pay the forfeiting agency's costs as defined in sections 10 (1)(a) and 11b (1)(a), chapter 791, Oregon Laws 1989.

(2) At least 10 days before a trial under section 7, chapter 791, Oregon Laws 1989, a claimant may serve upon the forfeiting agency an offer to allow judgment to be given against all or part of the defendant property for a specified sum, specified property, or to a specified effect. If the forfeiting agency accepts the offer, the forfeiting agency must file a written acceptance with the clerk of the court within three days after the date on which the offer was served upon the forfeiting agency. If an acceptance is filed with the court, judgment shall be entered based on the acceptance as a stipulated judgment. Unless otherwise agreed by the parties, costs and disbursements as defined in ORCP 68 shall be entered as part of the judgment pursuant to the procedure provided by Rule 68. If an acceptance is not filed with the court within three days after the time the offer was served upon the forfeiting agency, the offer shall be considered withdrawn, and shall not be given in evidence on the trial. If the forfeiting agency fails to obtain a judgment after trial that is more favorable than the offer made by the claimant, the court shall award to the claimant costs and disbursements as defined in

ORCP 68, and the court may enter a judgment that forfeits to the forfeiting agency less of the defendant property than may be required to pay the forfeiting agency's costs as defined in sections 10 (1)(a) and 11b (1)(a), chapter 791, Oregon Laws 1989. [1993 c.699 §14]

Sec. 15. The court shall consider the following factors in determining whether any portion of the proposed judgment of forfeiture is excessive:

(1) The court shall enter judgment to the extent that the defendant property is derived directly or indirectly from past prohibited conduct.

(2) With respect to defendant property that is not derived directly or indirectly from past prohibited conduct, the court shall consider:

(a) Whether the defendant property constitutes the claimant's lawful livelihood or means of earning a living.

(b) Whether the defendant property is the claimant's residence.

(c) The degree of relationship between the defendant property and the prohibited conduct, including the extent to which the defendant property facilitated the prohibited conduct or could facilitate future prohibited conduct.

(d) The monetary value of the defendant property in relation to the risk of injury to the public from the prohibited conduct.

(e) The monetary value of the defendant property in relation to the actual injury to the public from the prohibited conduct.

(f) The monetary value of the defendant property in relation to objective measures of the potential or actual criminal culpability of the person or persons engaging in the prohibited conduct, including:

(A) The inherent gravity of the prohibited conduct;

(B) The potential sentence for similar prohibited conduct under Oregon law;

(C) The claimant's prior criminal history; and

(D) The sentence actually imposed on the claimant.

(g) Any additional relevant evidence. [1993 c.699 §15]

Sec. 16. (1) In any appeal from a judgment of forfeiture, review of any mitigation ordered by the trial court shall be limited to the following:

(a) Whether the findings of fact are supported by the evidence in the record.

(b) Whether the ultimate conclusion modifying or declining to modify the judgment submitted by the plaintiff was an abuse of discretion by the trial court.

(c) Whether the final judgment complies with applicable constitutional limitations.

(2) An appellate court may reverse, affirm, modify or remand the provisions of a judgment of forfeiture relating to mitigation. But the appellate court may not consider arguments for mitigation of a judgment of forfeiture unless those arguments were timely raised by the motion provided for in section 13 of this 1993 Act. [1993 c.699 §16]

Sec. 17. Sections 13, 14, 15 and 16 of this 1993 Act apply only to actions brought under the provisions of section 7, chapter 791, Oregon Laws 1989, on or after the effective date of this 1993 Act [August 23, 1993] and to any action brought under the provisions of section 7, chapter 791, Oregon Laws 1989, before the effective date of this 1993 Act in which no judgment of forfeiture has been entered by a trial court on the effective date of this 1993 Act. [1993 c.699 §17]

Sec. 20. (1) Notwithstanding any other provisions of sections 2 to 14, chapter 791, Oregon Laws 1989, property that is seized solely on the basis of a consensual search of a motor vehicle is not subject to

civil in rem forfeiture unless, before obtaining the consent of a person for the search, the person is provided with written, multilingual notice of the right of the person to refuse to consent to the search. The notice shall include at least the following information:

(a) Notice that the person has a right to refuse to consent to a search.

(b) Notice that a refusal to consent to a search cannot be used against the person for any purpose.

(c) Notice that anything found in the search can be seized as evidence of a crime or can be seized for civil forfeiture.

(2) A notice or consent form under this section shall be considered multilingual if the notice or form provides information in at least English and Spanish. [1993 c.699 §20]

Sec. 22. Notwithstanding any other provision of sections 2 to 14, chapter 791, Oregon Laws 1989, United States currency in an amount less than \$15,000 is not subject to seizure or forfeiture solely on the basis that the money is in the form of cash rather than some other form. [1993 c.699 §22]

Note: Section 8, chapter 699, Oregon Laws 1993, provides:

Sec. 8. (1) The amendments to sections 10 and 11b, chapter 791, Oregon Laws 1989, by sections 6 and 7 of this Act apply only to forfeiture proceeds arising out of seizures occurring on or after the effective date of this Act.

(2) The amendments to sections 10, 11b and 11c, chapter 791, Oregon Laws 1989, by sections 6, 7 and 9 of this Act, relating to use of forfeiture proceeds for the purchase, construction, expansion or remodeling of buildings, do not apply to the purchase of any building before April 1, 1993, or to the construction, expansion or remodeling of a building that commenced before April 1, 1993. [1993 c.699 §8]

TREASON, RIOT, DISORDERLY CONDUCT AND RELATED OFFENSES

166.005 Treason. (1) A person commits the crime of treason if the person levies war against the State of Oregon or adheres to its enemies, giving them aid and comfort.

(2) No person shall be convicted of treason unless upon the testimony of two witnesses to the same overt act or upon confession in open court.

(3) A person convicted of treason shall be punished by imprisonment for life. [1971 c.743 §217]

166.010 [Repealed by 1971 c.743 §432]

166.015 Riot. (1) A person commits the crime of riot if while participating with five or more other persons the person engages in tumultuous and violent conduct and thereby intentionally or recklessly creates a grave risk of causing public alarm.

(2) Riot is a Class C felony. [1971 c.743 §218]

166.020 [Repealed by 1971 c.743 §432]

166.025 Disorderly conduct. (1) A person commits the crime of disorderly conduct if, with intent to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof, the person:

(a) Engages in fighting or in violent, tumultuous or threatening behavior; or

(b) Makes unreasonable noise; or

(c) Disturbs any lawful assembly of persons without lawful authority; or

(d) Obstructs vehicular or pedestrian traffic on a public way; or

(e) Congregates with other persons in a public place and refuses to comply with a lawful order of the police to disperse; or

(f) Initiates or circulates a report, knowing it to be false, concerning an alleged or impending fire, explosion, crime, catastrophe or other emergency; or

(g) Created a hazardous or physically offensive condition by any act which the person is not licensed or privileged to do.

(2) Disorderly conduct is a Class B misdemeanor. [1971 c.743 §220; 1983 c.546 §5]

166.030 [Repealed by 1971 c.743 §432]

166.035 [1971 c.743 §221; repealed by 1975 c.715 §2]

166.040 [Repealed by 1971 c.743 §432]

166.045 [1971 c.743 §222; repealed by 1983 c.546 §3]

166.050 [Repealed by 1971 c.743 §432]

166.060 [Amended by 1959 c.436 §1; 1961 c.503 §1; repealed by 1971 c.743 §432]

166.065 Harassment. (1) A person commits the crime of harassment if the person intentionally:

(a) Harasses or annoys another person by:

(A) Subjecting such other person to offensive physical contact; or

(B) Publicly insulting such other person by abusive words or gestures in a manner intended and likely to provoke a violent response;

(b) Subjects another to alarm by conveying a false report, known by the conveyor to be false, concerning death or serious physical injury to a person, which report reasonably would be expected to cause alarm; or

(c) Subjects another to alarm by conveying a telephonic or written threat to inflict serious physical injury on that person or to commit a felony involving the person or property of that person or any member of that person's family, which threat reasonably would be expected to cause alarm.

(2) A person is criminally liable for harassment if the person knowingly permits any telephone under the person's control to be used in violation of subsection (1) of this section.

(3) Harassment is a Class B misdemeanor. [1971 c.743 §223; 1981 c.468 §1; 1985 c.498 §1; 1987 c.806 §3]

166.075 Abuse of venerated objects. (1) A person commits the crime of abuse of

venerated objects if the person intentionally abuses a public monument or structure, a place of worship or burial, or the national or state flag.

(2) As used in this section and ORS 166.085, "abuse" means to deface, damage, defile or otherwise physically mistreat in a manner likely to outrage public sensibilities.

(3) Abuse of venerated objects is a Class C misdemeanor. [1971 c.743 §224]

166.085 Abuse of corpse in second degree. (1) A person commits the crime of abuse of corpse in the second degree if, except as otherwise authorized by law, the person intentionally:

(a) Abuses a corpse; or

(b) Disinters, removes or carries away a corpse.

(2) Abuse of corpse in the second degree is a Class C felony.

(3) As used in this section and ORS 166.087, "abuse of corpse" includes treatment of a corpse by any person in a manner not recognized by generally accepted standards of the community or treatment by a professional person in a manner not generally accepted as suitable practice by other members of the profession, as may be defined by rules applicable to the profession. [1971 c.743 §225; 1985 c.207 §2; 1993 c.294 §1]

166.087 Abuse of corpse in first degree. (1) A person commits the crime of abuse of corpse in the first degree if the person:

(a) Engages in sexual activity with a corpse or involving a corpse; or

(b) Dismembers, mutilates, cuts or strikes a corpse.

(2) Abuse of corpse in the first degree is a Class B felony. [1993 c.294 §2]

Note: 166.087 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 166 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

166.090 Telephonic harassment. (1) A telephone caller commits the crime of telephonic harassment if the caller intentionally harasses or annoys another person:

(a) By causing the telephone of the other person to ring, such caller having no communicative purpose; or

(b) By causing such other person's telephone to ring and causing such other person to answer it, knowing that the caller has been forbidden from so doing by a person exercising lawful authority over the receiving telephone.

(2) Telephonic harassment is a Class B misdemeanor. [1987 c.806 §2]

166.095 Misconduct with emergency telephone calls. (1) A person commits the crime of misconduct with emergency telephone calls if the person:

(a) Intentionally refuses to relinquish immediately a party line or public pay telephone after being informed that it is needed for an emergency call; or

(b) Requests another to relinquish a party line or public pay telephone to place an emergency call with knowledge that no such emergency exists.

(2) As used in this section:

(a) "Party line" means a subscriber's line telephone circuit, consisting of two or more main telephone stations connected therewith, each station with a distinctive ring or telephone number.

(b) "Emergency call" means a telephone call to a police or fire department, or for medical aid or ambulance service, necessitated by a situation in which human life or property is in jeopardy and prompt summoning of aid is essential.

(3) Every telephone directory published after January 1, 1972, which is distributed to members of the general public in this state shall contain in a prominent place a notice of the offense punishable by this section.

(4) Misconduct with emergency telephone calls is a Class B misdemeanor. [1971 c.743 §288]

166.110 [Amended by 1961 c.503 §2; repealed by 1971 c.743 §432]

166.115 Interfering with public transportation. (1) A person commits the crime of interfering with public transportation if, with intent to harass, annoy or alarm, the person subjects the operator of any bus to offensive physical contact when the bus is operated by or under contract to any public body in order to provide public transportation.

(2) As used in this section, "public body" means the state, any city, county or special district, or any other political subdivision or municipal or public corporation.

(3) Interfering with public transportation is a Class A misdemeanor. [1981 c.783 §3]

166.120 [Repealed by 1971 c.743 §432]

166.130 [Repealed by 1971 c.743 §432]

166.140 [Repealed by 1971 c.743 §432]

166.150 [Repealed by 1971 c.743 §432]

INTIMIDATION

166.155 Intimidation in the second degree. (1) A person commits the crime of intimidation in the second degree if the person:

(a) Tampers or interferes with property, having no right to do so nor reasonable ground to believe that the person has such

right, with the intent to cause substantial inconvenience to another because of the person's perception of the other's race, color, religion, national origin or sexual orientation;

(b) Intentionally subjects another to offensive physical contact because of the person's perception of the other's race, color, religion, national origin or sexual orientation; or

(c) Intentionally, because of the person's perception of race, color, religion, national origin or sexual orientation of another or of a member of the other's family, subjects such other person to alarm by threatening:

(A) To inflict serious physical injury upon or to commit a felony affecting such other person, or a member of the person's family; or

(B) To cause substantial damage to the property of the other person or of a member of the other person's family.

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

(3) For purposes of this section:

(a) "Property" means any tangible personal property or real property.

(b) "Sexual orientation" means heterosexuality, homosexuality or bisexuality. [1981 c.785 §1; 1983 c.521 §1; 1989 c.1029 §1]

166.160 [Repealed by 1971 c.743 §432]

166.165 Intimidation in the first degree. (1) Two or more persons acting together commit the crime of intimidation in the first degree, if the persons:

(a)(A) Intentionally, knowingly, or recklessly cause physical injury to another because of the actors' perception of that person's race, color, religion, national origin or sexual orientation; or

(B) With criminal negligence cause physical injury to another by means of a deadly weapon because of the actors' perception of that person's race, color, religion, national origin or sexual orientation;

(b) Intentionally, because of the actors' perception of that person's race, color, religion, national origin or sexual orientation, place that person in fear of imminent serious physical injury; or

(c) Commit such acts as would constitute the crime of intimidation in the second degree, if undertaken by one person acting alone.

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

(3) "Sexual orientation" has the meaning given that term in ORS 166.155. [1981 c.785 §2; 1983 c.521 §2; 1989 c.1029 §2; 1993 c.332 §1]

POSSESSION AND USE OF WEAPONS

166.180 Negligently wounding another. Any person who, as a result of failure to use ordinary care under the circumstances, wounds any other person with a bullet or shot from any firearm, or with an arrow from any bow, shall be punished by imprisonment in the county jail for a period not to exceed six months, or by a fine not to exceed \$500, or both. In addition, any person so convicted shall forfeit any license to hunt, obtained under the laws of this state, and shall be ineligible to obtain a license to hunt for a period of 10 years following the date of conviction. [Formerly 163.310]

Note: 166.180 to 166.350 were enacted into law by the Legislative Assembly but were 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.

166.190 Pointing firearm at another; courts having jurisdiction over offense.

Any person over the age of 12 years who, with or without malice, purposely points or aims any loaded or empty pistol, gun, revolver or other firearm, at or toward any other person within range of the firearm, except in self-defense, shall be fined upon conviction in any sum not less than \$10 nor more than \$500, or be imprisoned in the county jail not less than 10 days nor more than six months, or both. Justices of the peace and district courts have jurisdiction concurrent with the circuit court of the trial of violations of this section. When any person is charged before a justice of the peace with violation of this section, the court shall, upon motion of the district attorney, at any time before trial, act as a committing magistrate, and if probable cause be established, hold such person to the grand jury. [Formerly 163.320]

Note: See note under 166.180.

166.210 Definitions. As used in ORS 166.250 to 166.270, 166.280, 166.291 to 166.295 and 166.410 to 166.470:

(1) "Antique firearm" means:

(a) Any firearm, including any firearm with a matchlock, flintlock, percussion cap or similar type of ignition system, manufactured in or before 1898; and

(b) Any replica of any firearm described in paragraph (a) of this subsection if the replica:

(A) Is not designed or redesigned for using rimfire or conventional centerfire fixed ammunition; or

(B) Uses rimfire or conventional centerfire fixed ammunition that is no longer manufactured in the United States and that

is not readily available in the ordinary channels of commercial trade.

(2) "Firearm" means a weapon, by whatever name known, which is designed to expel a projectile by the action of powder and which is readily capable of use as a weapon.

(3) "Firearms silencer" means any device for silencing, muffling or diminishing the report of a firearm.

(4) "Handgun" means any conventional pistol or revolver using a fixed cartridge containing a propellant charge, primer and projectile, and designed to be aimed or fired otherwise than from the shoulder and which fires a single shot for each pressure on the trigger device.

(5) "Machine gun" means a weapon of any description by whatever name known, loaded or unloaded, which is designed or modified to allow two or more shots to be fired by a single pressure on the trigger device.

(6) "Minor" means a person under 18 years of age.

(7) "Short-barreled rifle" means a rifle having one or more barrels less than 16 inches in length and any weapon made from a rifle if the weapon has an overall length of less than 26 inches.

(8) "Short-barreled shotgun" means a shotgun having one or more barrels less than 18 inches in length and any weapon made from a shotgun if the weapon has an overall length of less than 26 inches. [Amended by 1977 c.769 §1; 1979 c.779 §3; 1989 c.839 §1; 1993 c.735 §14]

Note: See note under 166.180.

166.220 Unlawful use of weapon. (1) A person commits the crime of unlawful use of a weapon if the person:

(a) Attempts to use unlawfully against another, or carries or possesses with intent to use unlawfully against another, any dangerous or deadly weapon as defined in ORS 161.015; or

(b) Intentionally discharges a firearm, blowgun, bow and arrow, crossbow or explosive device within the city limits of any city or within residential areas within urban growth boundaries at or in the direction of any person, building, structure or vehicle within the range of the weapon without having legal authority for such discharge.

(2) This section does not apply to:

(a) Police officers or military personnel in the lawful performance of their official duties;

(b) Persons lawfully defending life or property as provided in ORS 161.219;

(c) Persons discharging firearms, blowguns, bows and arrows, crossbows or ex-

plosive devices upon public or private shooting ranges, shooting galleries or other areas designated and built for the purpose of target shooting; or

(d) Persons lawfully engaged in hunting in compliance with rules and regulations adopted by the State Department of Fish and Wildlife.

(3) Unlawful use of a weapon is a Class C felony. [Amended by 1975 c.700 §1; 1985 c.543 §1; 1991 c.797 §1]

Note: See note under 166.180.

166.230 [Repealed by 1979 c.779 §7]

166.240 Carrying of concealed weapons. (1) Except as provided in subsection (2) of this section, any person who carries concealed upon the person any knife having a blade that projects or swings into position by force of a spring or by centrifugal force and commonly known as a switchblade knife, any dirk, dagger, ice pick, slung shot, metal knuckles, or any similar instrument by the use of which injury could be inflicted upon the person or property of any other person, commits a Class B misdemeanor.

(2) Nothing in subsection (1) of this section applies to any peace officer as defined in ORS 133.005, whose duty it is to serve process or make arrests. Justices of the peace have concurrent jurisdiction to try any person charged with violating any of the provisions of subsection (1) of this section. [Amended by 1977 c.454 §1; 1985 c.543 §2; 1989 c.839 §21]

Note: See note under 166.180.

166.245 Authority of cities and counties to regulate possession. Except as otherwise provided by law, cities, counties and other political subdivisions of this state may regulate only the possession of firearms and ammunition in a public place, as defined in ORS 161.015. [1989 c.839 §38]

166.250 Unlawful possession of firearms. (1) Except as otherwise provided in this section, ORS 166.260, 166.270, 166.274, 166.280, 166.291, 166.292 or 166.410 to 166.470, a person commits the crime of unlawful possession of a firearm if the person knowingly:

(a) Carries any firearm concealed upon the person, without having a license to carry the firearm as provided in ORS 166.291 and 166.292;

(b) Carries concealed and readily accessible to the person within any vehicle which is under the person's control or direction any handgun, without having a license to carry such firearm as provided in ORS 166.291 and 166.292; or

(c) Possesses a firearm and:

(A) Is under 18 years of age;

(B)(i) While a minor, was found to be within the jurisdiction of the juvenile court for having committed an act which, if committed by an adult, would constitute a felony or a misdemeanor involving violence, as defined in ORS 166.470; and

(ii) Was discharged from the jurisdiction of the juvenile court within four years prior to being charged under this section;

(C) Has been convicted of a felony or found guilty, except for insanity under ORS 161.295, of a felony;

(D) Was committed to the Mental Health and Developmental Disability Services Division under ORS 426.130; or

(E) Was found to be mentally ill and subject to an order under ORS 426.130 that the person be prohibited from purchasing or possessing a firearm as a result of that mental illness.

(2) This section does not prohibit:

(a) A minor, who is not otherwise prohibited under subsection (1)(c) of this section, from possessing a firearm:

(A) Other than a handgun, if the firearm was transferred to the minor by the minor's parent or guardian or by another person with the consent of the minor's parent or guardian; or

(B) Temporarily for hunting, target practice or any other lawful purpose; or

(b) Any citizen of the United States over the age of 18 years who resides in or is temporarily sojourning within this state, and who is not within the excepted classes prescribed by ORS 166.270 and subsection (1) of this section, from owning, possessing or keeping within the person's place of residence or place of business any handgun, and no permit or license to purchase, own, possess or keep any such firearm at the person's place of residence or place of business is required of any such citizen. As used in this subsection, "residence" includes a recreational vessel or recreational vehicle while used, for whatever period of time, as residential quarters.

(3) Firearms carried openly in belt holsters are not concealed within the meaning of this section.

(4) Unlawful possession of a firearm is a Class A misdemeanor. [Amended by 1979 c.779 §4; 1985 c.543 §3; 1989 c.839 §13; 1993 c.732 §1; 1993 c.735 §12]

Note: See note under 166.180.

166.260 Persons not affected by ORS 166.250. (1) ORS 166.250 does not apply to or affect:

(a) Sheriffs, constables, marshals, police officers, whether active or honorably retired, or other duly appointed peace officers.

(b) Any person summoned by any such officer to assist in making arrests or preserving the peace, while said person so summoned is actually engaged in assisting the officer.

(c) The possession or transportation by any merchant of unloaded firearms as merchandise.

(d) Members of the Army, Navy, Air Force, Coast Guard or Marine Corps of the United States, or of the National Guard, when on duty.

(e) Organizations which are by law authorized to purchase or receive weapons described in ORS 166.250 from the United States, or from this state.

(f) Duly authorized military or civil organizations while parading, or the members thereof when going to and from the places of meeting of their organization.

(g) A corrections officer while transporting or accompanying an individual convicted of or arrested for an offense and confined in a place of incarceration or detention while outside the confines of the place of incarceration or detention.

(2) Except for persons who are otherwise prohibited from possessing a firearm under ORS 166.250 (1)(c) or 166.270, ORS 166.250 does not apply to or affect:

(a) Members of any club or organization, for the purpose of practicing shooting at targets upon the established target ranges, whether public or private, while such members are using any of the firearms referred to in ORS 166.250 upon such target ranges, or while going to and from such ranges.

(b) Licensed hunters or fishermen while engaged in hunting or fishing, or while going to or returning from a hunting or fishing expedition. [Amended by 1977 c.207 §1; 1991 c.67 §36; 1993 c.735 §1]

Note: See note under 166.180.

166.270 Certain felons forbidden to possess firearms. (1) Any person who has been convicted of a felony under the law of this state or any other state, or who has been convicted of a felony under the laws of the Government of the United States, who owns or has in the person's possession or under the person's custody or control any firearm, commits the crime of felon in possession of a firearm.

(2) Any person who has been convicted of a felony under the law of this state or any other state, or who has been convicted of a felony under the laws of the Government of the United States, who owns or has in the person's possession or under the person's custody or control any instrument or weapon having a blade that projects or swings into

position by force of a spring or by centrifugal force and commonly known as a switchblade knife, or any instrument or weapon commonly known as a blackjack, slung shot, sandclub, sandbag, sap glove or metal knuckles, or who carries a dirk, dagger or stiletto, commits the crime of felon in possession of a restricted weapon.

(3) For the purposes of this section, a person "has been convicted of a felony" if, at the time of conviction for an offense, that offense was a felony under the law of the jurisdiction in which it was committed. Provided, however, that such conviction shall not be deemed a conviction of a felony if:

(a) The court declared the conviction to be a misdemeanor at the time of judgment; or

(b) The offense was for possession of marijuana and the conviction was prior to January 1, 1972.

(4) Subsection (1) of this section shall not apply to any person who has been:

(a) Convicted of only one felony under the law of this state or any other state, or who has been convicted of only one felony under the laws of the United States, which felony did not involve criminal homicide, as defined in ORS 163.005, or the possession or use of a firearm or switchblade knife, and who has been discharged from imprisonment, parole or probation for said offense for a period of 15 years prior to the date of alleged violation of subsection (1) of this section; or

(b) Granted relief from the disability under ORS 166.274 or 18 U.S.C. §925(c) or has had the person's record expunged under the laws of this state or equivalent laws of another jurisdiction.

(5) Felon in possession of a firearm is a Class C felony. Felon in possession of a restricted weapon is a Class A misdemeanor. [Amended by 1975 c.702 §1; 1985 c.543 §4; 1985 c.709 §2; 1987 c.853 §1; 1989 c.839 §4; 1993 c.735 §2]

Note: See note under 166.180.

166.272 Unlawful possession of machine guns, certain short-barreled firearms and firearms silencers. (1) A person commits the crime of unlawful possession of a machine gun, short-barreled rifle, short-barreled shotgun or firearms silencer if the person knowingly possesses any machine gun, short-barreled rifle, short-barreled shotgun or firearms silencer not registered as required under federal law.

(2) Unlawful possession of a machine gun, short-barreled rifle, short-barreled shotgun or firearms silencer is a Class B felony. [1989 c.839 §13a]

166.274 Relief from prohibition against possessing or purchasing firearm. (1) A

person barred from possessing a firearm under ORS 166.250 (1)(c) or 166.270 or barred from purchasing a firearm under ORS 166.470 may file a petition for relief from the bar in:

(a) A justice court in the petitioner's county of residence that is reasonably accessible to the petitioner; or

(b) If no justice court is reasonably accessible, the district court in the petitioner's county of residence or, if there is no district court for the county, the circuit court.

(2) A person may apply once per calendar year for relief under the provisions of this section.

(3)(a) A person petitioning for relief under this section shall serve a copy of the petition on:

(A) The city chief of police if the court in which the petition is filed is located in a city; or

(B) The sheriff of the county in which the court is located.

(b) The copy of the petition shall be served on the chief of police or sheriff at the same time the petition is filed at the court.

(4)(a) When a petition is denied, the judge shall cause that information to be entered into the Department of State Police computerized criminal history files.

(b) When a petition is granted, the judge shall cause that information and a fingerprint card of the petitioner to be entered into the Department of State Police computerized criminal history files. If, after a petition is granted, the petitioner is arrested and convicted of a crime that would disqualify the petitioner from purchasing or possessing a firearm, the Department of State Police shall notify the court that granted relief under this section. The court shall review the order granting relief and determine whether to rescind the order. The Department of State Police may charge a reasonable fee, under ORS 192.440, for the entry and maintenance of information under this section.

(5) Notwithstanding the provisions of ORS 9.320, a corporation, the state or any city, county, district or other political subdivision or public corporation in this state, without appearance by attorney, may appear as a party to an action under this section.

(6) If the petitioner seeks relief from the bar on possessing or purchasing a firearm, relief shall be granted when the petitioner demonstrates, by clear and convincing evidence, that the petitioner does not pose a threat to the safety of the public or the petitioner.

(7) A person barred from possessing or purchasing a firearm because the person,

while a minor, was found to be within the jurisdiction of the juvenile court for committing an act which, if committed by an adult, would have constituted a felony or a misdemeanor involving violence, is not eligible to petition for relief under this section until more than four years have passed since the person was discharged from the jurisdiction of the juvenile court.

(8) Petitions filed under this section shall be heard and disposed of within 15 judicial days of filing or as soon as is practicable thereafter, but not more than 30 days thereafter. The judge shall then make findings and conclusions and issue a judgment based on the findings and conclusions in accordance with the requirements of law.

(9) Filing fees shall be as for any civil action filed in the court. If the petitioner prevails, the amount of the filing fee shall be paid by the respondent to the petitioner and may be incorporated into the court order.

(10)(a) Initial appeals of petitions shall be heard de novo. Appeals from district court shall go to the circuit court.

(b) Any party to a judgment under this subsection may appeal to the Court of Appeals in the same manner as for any other civil action.

(c) If the governmental entity files an appeal under this subsection and does not prevail, it shall be ordered to pay the attorney fees for the prevailing party. [1989 c.839 §11; 1991 c.67 §37; 1993 c.732 §§3,4]

166.275 Possession of weapons by inmates of institutions. Any person committed to any institution who, while under the jurisdiction of any institution or while being conveyed to or from any institution, possesses or carries upon the person, or has under the custody or control of the person any dangerous instrument, or any weapon including but not limited to any blackjack, slingshot, billy, sand club, metal knuckles, explosive substance, dirk, dagger, sharp instrument, pistol, revolver or other firearm without lawful authority, is guilty of a felony and upon conviction thereof shall be punished by imprisonment in the custody of the Department of Corrections for a term not more than 20 years. [1953 c.533 §1; 1987 c.320 §88]

Note: See note under 166.180.

166.280 Seizure of firearms, dangerous weapons and concealed weapons; destruction; exception; sale by auction. (1) The unlawful concealed carrying upon the person or within the vehicle of the carrier of any machine gun, pistol, revolver, other firearm capable of being concealed upon the person, or any firearm or any dangerous weapon described in ORS 161.015, used dur-

ing the commission of any felony or misdemeanor is a nuisance. Any such weapons taken from the person or vehicle of any person unlawfully carrying the same are nuisances, and shall be surrendered to the magistrate before whom the person is taken, except that in any city, county, town or other municipal corporation the weapons shall be surrendered to the head of the police force or police department.

(2) The officers to whom the weapons are surrendered, except as provided under subsection (4) of this section or upon the certificate of a judge of a court of record or of the district attorney of the county that their preservation is necessary or proper to the ends of justice, shall have authority and be responsible, subject to applicable laws, for selling such weapons or shall destroy the weapons to such extent that they are wholly and entirely ineffective and useless for the purpose for which they were manufactured.

(3) Upon the certificate of a judge or of the district attorney that the ends of justice will be subserved thereby, such weapon shall be preserved until the necessity for its use ceases, at which time, except as provided under subsection (4) of this section, the court shall order that the weapons be delivered to the officials having responsibility under applicable laws and subsection (2) of this section for selling such weapons, or destroying the weapons to such extent that they are wholly and entirely ineffective and useless for the purpose for which they were manufactured.

(4) In the event any such weapon has been stolen and is thereafter recovered from the thief or the thief's transferee, it shall not be destroyed but shall be restored to its lawful owner as soon as its use as evidence has been served, upon identification of the weapon and proof of ownership.

(5) The sale of any weapons under this section shall be by public auction. The agency holding the weapons shall conduct the auction annually. The agency shall publish notice of the time and place of the auction in the principal local newspaper no less than 20 nor more than 30 days before the date of the auction. Written or printed notice of the auction shall also be posted in three public places of the county where the sale is to take place, not less than 10 days successively. The agency shall permit public inspection of the weapons to be auctioned. Items shall be sold individually unless there is no interested bidder, in which case they may be sold in lots. [Amended by 1981 c.767 §1; 1993 c.625 §2]

Note: See note under 166.180.

166.290 [Amended by 1973 c.391 §1; repealed by 1989 c.839 §7 (166.291 to 166.293 enacted in lieu of 166.290)]

166.291 Issuance of concealed handgun license; application; fees; liability. (1) The sheriff of a county, upon a person's application for an Oregon concealed handgun license, upon receipt of the appropriate fees and after compliance with the procedures set out in this section, shall issue the person a concealed handgun license if the person:

(a)(A) Is a citizen of the United States; or

(B) Is a legal resident alien who can document continuous residency in the county for at least six months and has declared in writing to the Immigration and Naturalization Service the intent to acquire citizenship status and can present proof of the written declaration to the sheriff at the time of application for the license;

(b) Is at least 21 years of age;

(c) Has a principal residence in the county in which the application is made;

(d) Has no outstanding warrants for arrest;

(e) Is not free on any form of pretrial release;

(f) Demonstrates competence with a handgun by any one of the following:

(A) Completion of any hunter education or hunter safety course approved by the State Department of Fish and Wildlife or a similar agency of another state if handgun safety was a component of the course;

(B) Completion of any National Rifle Association firearms safety or training course if handgun safety was a component of the course;

(C) Completion of any firearms safety or training course or class available to the general public offered by law enforcement, community college, or private or public institution or organization or firearms training school utilizing instructors certified by the National Rifle Association or a law enforcement agency if handgun safety was a component of the course;

(D) Completion of any law enforcement firearms safety or training course or class offered for security guards, investigators, reserve law enforcement officers or any other law enforcement officers if handgun safety was a component of the course;

(E) Presents evidence of equivalent experience with a handgun through participation in organized shooting competition or military service;

(F) Is licensed or has been licensed to carry a firearm in this state, unless the license has been revoked; or

(G) Completion of any firearms training or safety course or class conducted by a firearms instructor certified by a law enforcement agency or the National Rifle Association if handgun safety was a component of the course;

(g) Has never been convicted of a felony or found guilty, except for insanity under ORS 161.295, of a felony;

(h) Has not been convicted of a misdemeanor or found guilty, except for insanity under ORS 161.295, of a misdemeanor within the four years prior to the application;

(i) Has not been committed to the Mental Health and Developmental Disability Services Division under ORS 426.130;

(j) Has not been found to be mentally ill and is not subject to an order under ORS 426.130 that the person be prohibited from purchasing or possessing a firearm as a result of that mental illness; and

(k) Has been discharged from the jurisdiction of the juvenile court for more than four years if, while a minor, the person was found to be within the jurisdiction of the juvenile court for having committed an act which, if committed by an adult, would constitute a felony or a misdemeanor involving violence, as defined in ORS 166.470.

(2) A person who has been granted relief under ORS 166.274 or 166.293 or 18 U.S.C. §925(c) or has had the person's record expunged under the laws of this state or equivalent laws of other jurisdictions is not subject to the disabilities in subsection (1)(g) to (k) of this section.

(3) Before the sheriff may issue a license:

(a) The application must state the applicant's legal name, current address and telephone number, date and place of birth, hair and eye color and height and weight. The application must also list the applicant's residence address or addresses for the previous three years. The application must contain a statement by the applicant that the applicant meets the requirements of subsection (1)(a) to (k) of this section. The application must be signed by the applicant.

(b) The applicant must submit to fingerprinting and photographing by the sheriff. The sheriff shall fingerprint and photograph the applicant and shall conduct any investigation necessary to corroborate the requirements listed under subsection (1) of this section.

(4) Application forms for concealed handgun licenses shall be supplied by the sheriff upon request. The forms shall be uniform throughout the state in substantially the following form:

APPLICATION FOR LICENSE TO CARRY CONCEALED HANDGUN

Date _____

I hereby declare as follows:

I am a citizen of the United States or a legal resident alien who can document continuous residency in the county for at least six months and have declared in writing to the Immigration and Naturalization Service my intention to become a citizen and can present proof of the written declaration to the sheriff at the time of this application. I am at least 21 years of age. I have been discharged from the jurisdiction of the juvenile court for more than four years if, while a minor, I was found to be within the jurisdiction of the juvenile court for having committed an act which, if committed by an adult, would constitute a felony or a misdemeanor involving violence, as defined in ORS 166.470. I have never been convicted of a felony or found guilty, except for insanity under ORS 161.295, of a felony in the State of Oregon or elsewhere. I have not, within the last four years, been convicted of a misdemeanor or found guilty, except for insanity under ORS 161.295, of a misdemeanor. There are no outstanding warrants for my arrest and I am not free on any form of pretrial release. I have not been committed to the Mental Health and Developmental Disability Services Division under ORS 426.130, nor have I been found mentally ill and presently subject to an order prohibiting me from purchasing or possessing a firearm because of mental illness. If any of the previous conditions do apply to me, I have been granted relief or wish to petition for relief from the disability under ORS 166.274 or 166.293 or 18 U.S.C. §925(c) or have had the records expunged. I understand I will be fingerprinted and photographed.

Age _____ Date of birth _____

Place of birth _____

Social Security Number _____

(Disclosure of your social security account number is voluntary. Solicitation of the number is authorized under ORS 166.420. It will be used only as a means of identification.)

Proof of identification (Two pieces of current identification are required, one of which must bear a photograph of the applicant. Type of identification and number on identification to be filled in by sheriff):

1. _____

2. _____

Height _____ Weight _____

Current address _____

(List residence addresses for the past three years on back)

City _____ County _____ Zip _____

Phone _____

I have read the entire text of this application, and the statements therein are correct and true. (Making false statements on this application is a misdemeanor.)

(Signature of Applicant)

Character references.

Name Address

Name Address

Approved _____ Disapproved _____ by _____

Competence with handgun demonstrated by _____ (to be filled in by sheriff)

Date _____ Fee Paid _____

License No. _____

(5)(a) Fees for concealed handgun licenses are:

(A) \$15 to the Department of State Police for conducting the fingerprint check of the applicant.

(B) \$50 to the sheriff for the issuance or renewal of a concealed handgun license.

(C) \$15 to the sheriff for the duplication of a license because of loss or change of address.

(b) The sheriff may enter into an agreement with the Department of Transportation to produce the concealed handgun license.

(6) No civil or criminal liability shall attach to the sheriff or any authorized representative engaged in the receipt and review of, or an investigation connected with, any application for, or in the issuance, denial or revocation of, any license under ORS 166.291 to 166.295 as a result of the lawful performance of duties under those sections.

(7) Immediately upon acceptance of an application for a concealed handgun license, the sheriff shall enter the applicant's name into the Law Enforcement Data System indicating that the person is an applicant for a concealed handgun license or is a license holder.

(8) The county sheriff may waive the residency requirement in subsection (1)(c) of this section for a resident of a contiguous state who has a compelling business interest or other legitimate demonstrated need. [1989 c.839 §8 (166.291 to 166.293 enacted in lieu of 166.290); 1991 c.67 §38; 1993 c.732 §2; 1993 c.735 §4]

166.292 Procedure for issuing; form of license; duration. (1) If the application for

the license is approved, the sheriff shall issue and mail or otherwise deliver to the applicant at the address shown on the application, within 45 days of the application, a wallet sized license bearing the photograph of the licensee. The license must be signed by the licensee and carried whenever the licensee carries a concealed handgun.

(2) Failure of a person who carries a concealed handgun also to carry a concealed handgun license is prima facie evidence that the person does not have such a license.

(3) Licenses for concealed handguns shall be uniform throughout the state in substantially the following form:

**OREGON CONCEALED HANDGUN
LICENSE**

County _____ License Number _____
 Expires _____ Date of birth _____
 Height _____ Weight _____
 Name _____ Address _____
 Licensee's City _____ Zip _____ Photograph
 Signature _____
 Issued by _____
 Date of issue _____

(4) An Oregon concealed handgun license issued under ORS 166.291 and this section, unless revoked under ORS 166.293, is valid for a period of four years from the date on which it is issued.

(5) The sheriff shall keep a record of each license issued under ORS 166.291 and this section, or renewed pursuant to ORS 166.295.

(6) When a sheriff issues a concealed handgun license under this section, the sheriff shall provide the licensee with a list of those places where carrying concealed handguns is prohibited or restricted by state or federal law. [1989 c.839 §9 (166.291 to 166.293 enacted in lieu of 166.290); 1993 c.625 §5; 1993 c.693 §2; 1993 c.735 §5]

166.293 Denial or revocation of license; review. (1) If the application for the concealed handgun license is denied, the sheriff shall set forth in writing the reasons for the denial. The denial shall be sent to the applicant by certified mail, restricted delivery, within 45 days after the application was made. If no decision is issued within 45 days, the person may seek review under the procedures in subsection (5) of this section.

(2) Notwithstanding ORS 166.291 (1), and subject to review as provided in subsection (5) of this section, a sheriff may deny a concealed handgun license if the sheriff has reasonable grounds to believe that the applicant has been or is reasonably likely to be a danger to self or others, or to the community at large, as a result of the applicant's mental

or psychological state, as demonstrated by past pattern of behavior or participation in incidents involving unlawful violence or threats of unlawful violence.

(3) Any act or condition that would prevent the issuance of a license under ORS 166.291 to 166.293 shall be cause for revoking a concealed handgun license. A sheriff may revoke a license by serving upon the licensee a notice of revocation. The notice must contain the grounds for the revocation and must be served either personally or by certified mail, restricted delivery. The notice and return of service shall be included in the file of the licensee. The revocation is effective upon the licensee's receipt of the notice.

(4) Any peace officer or corrections officer may seize a concealed handgun license and return it to the issuing sheriff when the license is held by a person who has been arrested or cited for a crime that can or would otherwise disqualify the person from being issued a concealed handgun license. The issuing sheriff shall hold the license for 30 days. If the person is not charged with a crime within the 30 days, the sheriff shall return the license unless the sheriff revokes the license as provided in subsection (3) of this section.

(5) A person denied a concealed handgun license or whose license is revoked or not renewed under ORS 166.291 to 166.295 may petition the district court in the petitioner's county of residence or, if there is no district court, the circuit court to review the denial, nonrenewal or revocation. The petition must be filed within 30 days after the receipt of the notice of denial or revocation.

(6) The judgment affirming or overturning the sheriff's decision shall be based solely on whether the petitioner meets the criteria that are used for issuance of the license under ORS 166.291 to 166.293. Whenever the petitioner has been previously sentenced for a crime under ORS 161.610 or for a crime of violence for which the person could have received a sentence of more than 10 years, the court shall only grant relief if the court finds that relief should be granted in the interest of justice.

(7) Notwithstanding the provisions of ORS 9.320, a corporation, the state or any city, county, district or other political subdivision or public corporation in this state, without appearance by attorney, may appear as a party to an action under this section.

(8) Petitions filed under this section shall be heard and disposed of within 15 judicial days of filing or as soon as practicable thereafter.

(9) Filing fees for actions shall be as for any civil action filed in the court. If the pe-

itioner prevails, the amount of the filing fee shall be paid by the respondent to the petitioner and may be incorporated into the court order.

(10) Initial appeals of petitions shall be heard de novo. Appeals from district court shall go to circuit court.

(11) Any party to a judgment under this section may appeal to the Court of Appeals in the same manner as for any other civil action.

(12) If the governmental entity files an appeal under this section and does not prevail, it shall be ordered to pay the attorney fees for the prevailing party. [1989 c.839 §9a (166.291 to 166.293 enacted in lieu of 166.290); 1993 c.735 §6]

166.295 Renewal of license. (1)(a) A concealed handgun license is renewable by repeating the procedures set out in ORS 166.291 and 166.292, except for the requirement to submit fingerprints and provide character references.

(b) An otherwise expired concealed handgun license continues to be valid for up to 45 days after the licensee applies for renewal if:

(A) The licensee applies for renewal before the original license expires;

(B) The licensee has proof of the application for renewal; and

(C) The application for renewal has not been denied.

(2) If a licensee changes residence, the licensee shall report the change of address and the sheriff shall issue a new license as a duplication for a change of address. The license shall expire upon the same date as would the original. [1989 c.839 §10; 1993 c.735 §7]

166.297 Annual report regarding revocation of licenses. (1) The sheriff of a county shall submit annually to the Department of State Police a report containing the number of concealed handgun licenses revoked during the reporting period and the reasons for the revocations.

(2) The Department of State Police shall compile the reports submitted under subsection (1) of this section and shall submit the compilation to the Legislative Assembly biennially. [1993 c.735 §13]

166.300 Killing another as cause for loss of right to bear arms. (1) Any person who has committed, with firearms of any kind or description, murder in any degree, or manslaughter, either voluntary or involuntary, or who in a careless or reckless manner, kills or injures another with firearms, and who, at any time after committing murder or manslaughter or after said careless or

reckless killing or injury of another, carries or bears firearms of any kind or description within this state, shall be punished upon conviction by a fine of not more than \$500, or by imprisonment in the county jail not to exceed one year, or both.

(2) Subsection (1) of this section does not deprive the people of this state of the right to bear arms for the defense of themselves and the state, and does not apply to any peace officer in the discharge of official duties or to a member of any regularly constituted military organization while on duty with such military organization.

(3) Justices of the peace, district courts, county courts and all other courts having jurisdiction as justices of the peace, shall have concurrent jurisdiction with the circuit courts of all prosecutions under subsection (1) of this section.

Note: See note under 166.180.

~~166.310~~ [Repealed by 1985 c.709 §4]

166.320 Setting springgun or setgun.

(1) Any person who places or sets any loaded springgun, setgun, or any gun, firearm or other device of any kind designed for containing or firing explosives, in any place where it may be fired, exploded or discharged by the contact of any person or animal with any string, wire, rod, stick, spring or other contrivance affixed to or connected with it, or with its trigger, shall be punished upon conviction by a fine of not less than \$100 nor more than \$500, or by imprisonment in the county jail for not less than 30 days nor more than six months, or both.

(2) Subsection (1) of this section does not apply to any loaded springgun, setgun, firearm or other device placed for the purpose of destroying gophers, moles or other burrowing rodents, and does not prevent the use of a coyote getter by employees of county, state or federal governments engaged in cooperative predatory animal control work.

Note: See note under 166.180.

166.330 Use of firearms with other than incombustible gun wadding. Any person who uses in any firearms discharged on lands within this state, not owned by the person, anything other than incombustible gun wadding, shall be punished upon conviction by a fine of not less than \$5 nor more than \$100, or by imprisonment in the county jail for not less than two days nor more than 60 days.

Note: See note under 166.180.

~~166.340~~ [1965 c.20 §§2,3; 1969 c.351 §1; repealed by 1981 c.41 §3]

166.350 Unlawful possession of armor piercing ammunition. (1) A person commits

the crime of unlawful possession of armor piercing ammunition if the person:

(a) Makes, sells, buys or possesses any handgun ammunition the bullet or projectile of which is coated with Teflon or any chemical compound with properties similar to Teflon and which is intended to penetrate soft body armor, such person having the intent that the ammunition be used in the commission of a felony; or

(b) Carries any ammunition described in paragraph (a) of this subsection while committing any felony during which the person or any accomplice of the person is armed with a firearm.

(2) As used in this section, "handgun ammunition" means ammunition principally for use in pistols or revolvers notwithstanding that the ammunition can be used in some rifles.

(3) Unlawful possession of armor piercing ammunition is a Class A misdemeanor. [1985 c.755 §2; 1987 c.158 §29]

Note: See note under 166.180.

POSSESSION OF FIREARM IN PUBLIC BUILDING OR OF DESTRUCTIVE DEVICE

166.360 Definitions for ORS 166.360 to 166.380. As used in ORS 166.360 to 166.380, unless the context requires otherwise:

(1) "Capitol building" means the Capitol, the Supreme Court Building, the State Office Building, the State Library Building, the Labor and Industries Building, the State Transportation Building, the Agriculture Building or the Public Service Building and includes any new buildings which may be constructed on the same grounds as an addition to the group of buildings listed in this subsection.

(2) "Loaded firearm" means:

(a) A breech-loading firearm in which there is an unexpended cartridge or shell in or attached to the firearm including but not limited to, in a chamber, magazine or clip which is attached to the firearm.

(b) A muzzle-loading firearm which is capped or primed and has a powder charge and ball, shot or projectile in the barrel or cylinder.

(3) "Public building" means a hospital, capitol building, a public or private school, college or university, a county courthouse, a city hall or the residence of any state official elected by the state at large, and the grounds adjacent to each such building. The term also includes that portion of any other building occupied by an agency of the state or a municipal corporation, as defined in ORS 297.405. [1969 c.705 §1; 1977 c.769 §2; 1979 c.398 §1; 1989 c.982 §4; 1993 c.741 §2]

Note: 166.360 to 166.380 were enacted into law by the Legislative Assembly but were 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.

166.370 Possession of firearm or dangerous weapon in public building; exceptions; discharging firearm at school. (1) Any person who intentionally possesses a loaded or unloaded firearm or any other instrument used as a dangerous weapon, while in or on a public building, shall upon conviction be guilty of a Class C felony.

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

(a) A sheriff, police officer, other duly appointed peace officers or a corrections officer while acting within the scope of employment.

(b) A person summoned by a peace officer to assist in making an arrest or preserving the peace, while the summoned person is engaged in assisting the officer.

(c) A member of the military forces of this state or the United States, when engaged in the performance of duty.

(d) A person who is licensed under ORS 166.291 and 166.292 to carry a concealed handgun.

(e) A person who is authorized by the officer or agency that controls the public building to possess a firearm in that public building.

(f) Possession of a firearm on school property if the firearm:

(A) Is possessed by a person who is not otherwise prohibited from possessing the firearm; and

(B) Is unloaded and locked in a motor vehicle.

(3)(a) Any person who knowingly, or with reckless disregard for the safety of another, discharges or attempts to discharge a firearm at a place that the person knows is a school shall upon conviction be guilty of a Class C felony.

(b) Paragraph (a) of this subsection does not apply to the discharge of a firearm:

(A) As part of a program approved by a school in the school by an individual who is participating in the program; or

(B) By a law enforcement officer acting in the officer's official capacity.

(4) Notwithstanding the provisions of subsection (2)(d) of this section, a person who is licensed under ORS 166.291 and 166.292 to carry a concealed handgun may not possess a firearm in a courtroom, jury room, judge's chambers or the areas adjacent thereto that the presiding judge determines should be free

of firearms to insure the safety of the litigants, court personnel, witnesses and others.

(5) Any firearm or other dangerous weapon carried in violation of this section is subject to the forfeiture provisions of ORS 166.280.

(6) Notwithstanding the fact that a person's conduct in a single criminal episode constitutes a violation of both subsections (1) and (3) of this section, the district attorney may charge the person with only one of the offenses.

(7) As used in this section, "dangerous weapon" means a dangerous weapon as that term is defined in ORS 161.015. [1969 c.705 §§2,4; 1977 c.207 §2; 1979 c.398 §2; 1989 c.839 §22; 1989 c.982 §5; 1991 c.67 §39; 1993 c.625 §1]

Note: See note under 166.360.

166.372 Violations of federal Gun Free School Zones Act. The district attorney shall notify the United States Attorney General concerning any alleged violation of the Gun Free School Zones Act of 1990, 18 U.S.C. §922. [1993 c.625 §3]

Note: 166.372 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 166 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

166.380 Examination of device or firearm by peace officer; arrest for failure to allow examination. (1) A peace officer may examine a firearm possessed by anyone on the person while in or on a public building to determine whether the firearm is a loaded firearm.

(2) Refusal by a person to allow the examination authorized by subsection (1) of this section constitutes reason to believe that the person has committed a crime and the peace officer may make an arrest pursuant to ORS 133.310. [1969 c.705 §3]

Note: See note under 166.360.

166.382 Possession of destructive device prohibited; exceptions. (1) A person commits the crime of unlawful possession of a destructive device if the person possesses:

(a) Any of the following devices with an explosive, incendiary or poison gas component:

(A) Bomb;

(B) Grenade;

(C) Rocket having a propellant charge of more than four ounces;

(D) Missile having an explosive or incendiary charge of more than one-quarter ounce; or

(E) Mine; or

(b) Any combination of parts either designed or intended for use in converting any device into any destructive device described in paragraph (a) of this subsection and from which a destructive device may be readily assembled.

(2) As used in this section:

(a) "Destructive device" does not include any device which is designed primarily or redesigned primarily for use as a signaling, pyrotechnic, line throwing, safety or similar device.

(b) "Possess" has the meaning given that term in ORS 161.015.

(3) This section does not apply to:

(a) Persons who possess explosives as provided in ORS 480.200 to 480.280.

(b) The possession of an explosive by a member of the Armed Forces of the United States while on active duty and engaged in the performance of official duties or by a member of a regularly organized fire or police department of a public agency while engaged in the performance of official duties.

(c) The possession of an explosive in the course of transportation by way of railroad, water, highway or air while under the jurisdiction of, or in conformity with, regulations adopted by the United States Department of Transportation.

(d) The possession, sale, transfer or manufacture of an explosive by a person acting in accordance with the provisions of any applicable federal law or regulation that provides substantially the same requirements as the comparable provisions of ORS 480.200 to 480.275 and 480.280 (2).

(4) Possession of a destructive device is a Class C felony. [1989 c.982 §1]

166.384 Unlawful manufacture of destructive device. (1) A person commits the crime of unlawful manufacture of a destructive device if the person assembles, produces or otherwise manufactures:

(a) A destructive device, as defined in ORS 166.382; or

(b) A pyrotechnic device containing two or more grains of pyrotechnic charge in violation of chapter 10, Title 18 of the United States Code.

(2) Unlawful manufacture of a destructive device is a Class C felony. [1989 c.982 §2]

SALE OR TRANSFER OF FIREARMS

166.410 Manufacture, importation or sale of firearms. Any person who manufactures or causes to be manufactured within this state, or who imports into this state, or offers, exposes for sale, or sells or transfers

a handgun, short-barreled rifle, short-barreled shotgun, firearms silencer or machine gun, otherwise than in accordance with ORS 166.250 to 166.270, 166.280, 166.291, 166.292 and 166.420 to 166.470, shall be guilty of a Class B felony. [Amended by 1979 c.779 §5; 1987 c.320 §89; 1989 c.839 §23]

Note: 166.410 to 166.490 were enacted into law by the Legislative Assembly but were 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.

166.420 Register of transfers of handguns; form and content of register and by whom to be maintained. (1) Except as provided in subsection (10) of this section, every person engaged in the business, as defined in 18 U.S.C. §921, of selling, leasing or otherwise transferring a handgun, whether the person is a retail dealer, pawnbroker or otherwise, shall keep a register in which shall be entered the time, date and place of sale, the name of the salesperson making the sale, the make, model, manufacturer's number, caliber or other marks of identification on the handgun. The register shall be printed by the State Printer in the form provided in subsection (11) of this section, and shall be obtained from and furnished by the Department of State Police to the dealer on application at cost.

(2) The purchaser of any handgun shall sign, and the dealer shall require the person to sign, the name of the person and affix the address of the person to the register in triplicate and the salesperson shall affix the signature of the salesperson in triplicate as a witness to the signature of the purchaser. Any person signing a fictitious name or address is guilty of a misdemeanor.

(3)(a) The duplicate sheet of the register shall, on the day of sale, be hand delivered or mailed to the local law enforcement authority. If the sale is made in a district where there is no municipal police department, the duplicate sheet shall be hand delivered or mailed first class to the sheriff of the county wherein the sale is made. The duplicate sheets are exempt from disclosure under any public records law. The agency receiving the duplicate sheet shall:

(A)(i) Determine, from criminal records and other information available to it, whether the purchaser is disqualified under ORS 166.470 from completing the purchase; and

(ii) Notify the dealer when a purchaser is disqualified from completing the purchase. The notification shall be in writing, mailed by certified mail and made within 15 calendar days of the date the duplicate was mailed by the dealer.

(B) Retain the duplicate sheets for no more than five years at which time the sheets shall be destroyed.

(b) The triplicate sheet of the register shall be mailed on the day of sale to the Department of State Police. The Department of State Police shall conduct a criminal records check of the purchaser using the thumbprints on the triplicate and shall send, within 10 calendar days of the date the triplicate was mailed by the dealer, the triplicate with the results of the records check to the agency that received the duplicate. If the thumbprints are illegible, the Department of State Police, by mail, shall immediately notify the dealer of that fact.

(c) Notwithstanding any public records law to the contrary, it is unlawful for any division of state government to compile or maintain any information on lawful purchases of firearms. The firearm identification information shall be used only to determine if the firearm is stolen or has been used in the commission of a crime. Any public employee who intentionally violates this paragraph is guilty of a Class A misdemeanor.

(4) No public employee, official or agency shall be held criminally or civilly liable for performing the investigations required by this section provided this employee, official or agency acts in good faith and without malice.

(5) Before any handgun shall be delivered:

(a) Fifteen calendar days shall have elapsed after application for the purchase and the register entries required by this section have been completed, except that if the seller is notified by the Department of State Police that the thumbprints on the triplicate are illegible, a new set of thumbprints shall be taken and sent to the Department of State Police and a new 15-day period shall begin; and

(b) The purchaser must present to the dealer two pieces of current identification, one of which must bear a photograph of the purchaser.

(6) Notwithstanding the provisions of subsection (5)(a) of this section, the seller may deliver a handgun at the time of the sale to a person holding a valid concealed handgun license issued by this state or to a person presenting identification that shows the person is a police officer. As used in this subsection, "police officer" includes an officer or member of a law enforcement unit who is employed full- or part-time as a peace officer commissioned by a city, port, school district, mass transit district, county, Indian reservation, the Criminal Justice Division of the Department of Justice, the Oregon State

Lottery Commission or the Governor or who is a member of the Department of State Police and who is responsible for enforcing the criminal laws of this state or laws or ordinances relating to airport security. "Police officer" also includes:

(a) A corrections officer, a parole and probation officer, a United States Marshal or an officer of the Federal Bureau of Investigation; and

(b) A city or county reserve police officer if the person presents a letter signed by a chief of police or a county sheriff certifying that the person is a reserve police officer of the city or county, that the person has satisfied the city or county that the person is not prohibited from possessing a firearm and that the agency's police applicant fingerprint card is currently on file with the state bureau of criminal identification.

(7) When a handgun is delivered, it shall be unloaded.

(8) Notwithstanding the provisions of subsections (2) and (3) of this section, when the purchaser of the handgun holds a valid concealed handgun license issued by this state and the handgun will be delivered to the purchaser less than one year after the date that the concealed handgun license was issued, the dealer:

(a) Shall require the purchaser to sign only the original and the duplicate sheets of the register; and

(b) Shall not deliver the triplicate sheet as provided in subsection (3) of this section, but shall destroy the triplicate sheets.

(9) Any person engaged in the business, as defined in 18 U.S.C. §921, of selling, leasing or otherwise transferring a firearm, who intentionally violates this section, is guilty of a Class C felony.

(10) This section does not apply to transactions between persons licensed as dealers under 18 U.S.C. §923.

(11) The register provided for in this section shall be designed by the Attorney General in substantially the following form, except that the triplicate sheet shall contain a place for the thumbprints of the purchaser:

Series No. _____
Sheet No. _____

ORIGINAL

(DEALERS' RECORD OF SALE OF HANDGUN)

State of Oregon

Notice to Dealers: This original is for your files. If spoiled in making out, do not destroy. Keep in books. Fill out in triplicate.

Place the purchaser's thumbprints in the place provided on the triplicate of this form.

Carbon duplicate must be hand delivered or mailed on the day of sale, to the local law enforcement authority. Carbon triplicate must be mailed to the Department of State Police. Violation of this law is a Class C felony. Use carbon paper for duplicate and triplicate. Use indelible pencil.

Sold by _____ Salesperson _____
Business Name _____
Business Address _____
Business Telephone _____
City, town or township _____
Description of handgun (state whether revolver or pistol) _____
Maker _____ Model _____ Serial Number _____
Caliber _____
Name of purchaser _____ Age _____ years

Other names used by purchaser _____
Date of Birth _____ Place of Birth _____
Permanent address (state name of city, town or township, street and number of dwelling) _____

Social Security Number _____
(Disclosure of your social security account number is voluntary. Solicitation of the number is authorized under ORS 166.420. It will be used only as a means of identification.)

Proof of identification (type of identification and number on identification to be filled out by salesperson):

- 1. _____
- 2. _____

Concealed Handgun License Number _____

Height _____ feet _____ inches. Weight _____

Occupation _____
Eyes _____ Hair _____

Race _____ Sex _____

If traveling, or in locality temporarily, give local address _____

I hereby declare that I:

1. Am not prohibited from purchasing or possessing a handgun under ORS 166.470 or 166.250; or

2. Have been granted relief from that disability under ORS 166.274 or 18 U.S.C. §925(c) or have had my record expunged under the law of this state or an equivalent law of another jurisdiction.

Signature of purchaser _____

(Providing materially false information is a Class A misdemeanor and disqualifies applicant from completing purchase. To be signed in triplicate.)

Witness _____ Salesperson.

(To be signed in triplicate.)

Name and address of agency to which duplicate was sent _____

[Amended by 1989 c.839 §2; 1993 c.4 §1; 1993 c.594 §4; 1993 c.693 §1]

Note: See note under 166.410.

Note: Section 2b, chapter 839, Oregon Laws 1989, provides:

Sec. 2b. Unless the Legislative Assembly provides otherwise, on September 1 following the close of the Legislative Assembly during which the notification required by section 2a of this Act [see note under 180.060] occurs, ORS 166.420, as amended by section 2 of this Act, is further amended to read:

166.420. (1) Except as provided in subsection (9) of this section, every person engaged in the business, as defined in 18 U.S.C. §921, of selling, leasing or otherwise transferring a handgun, whether the person is a retail dealer, pawnbroker or otherwise, shall keep a register in which shall be entered the time, date and place of sale, the name of the salesperson making the sale, the make, model, manufacturer's number, caliber or other marks of identification on the handgun. The register shall be printed by the State Printer in the form provided in subsection (10) of this section, and shall be obtained from and furnished by the Department of State Police to the dealer on application at cost.

(2) The purchaser of any handgun shall sign, and the dealer shall require the person to sign, the name of the person and affix the address of the person to the register in duplicate and the salesperson shall affix the signature of the salesperson in duplicate as a witness to the signature of the purchaser. Any person signing a fictitious name or address is guilty of a misdemeanor.

(3)(a) The duplicate sheet of the register shall, on the day of sale, be hand delivered or mailed to the local law enforcement authority. If the sale is made in a district where there is no municipal police department, the duplicate sheet shall be hand delivered or mailed to the sheriff of the county wherein the sale is made. The duplicate sheets are exempt from disclosure under any public records law. The agency receiving the duplicate sheet shall retain the duplicate sheets for no more than five years at which time the sheets shall be destroyed.

(b) Notwithstanding any public records law to the contrary, it is unlawful for any division of state government to compile or maintain any information on lawful purchases of firearms. The firearm identification information shall be used only to determine if the firearm is stolen or has been used in the commission of a crime. Any public employee who intentionally violates this paragraph is guilty of a Class A misdemeanor.

(4) No public employee, official or agency shall be held criminally or civilly liable for performing the investigations required by this section provided this employee, official or agency acts in good faith and without malice.

(5) Before any handgun shall be delivered, the purchaser must present to the dealer two pieces of current identification, one of which must bear a photograph of the purchaser.

(6) The seller may deliver a handgun at the time of the sale to a person holding a valid concealed handgun license issued by this state or to a person presenting identification that shows the person is a police officer as defined in ORS 181.610.

(7) When a handgun is delivered, it shall be unloaded.

(8) Any person engaged in the business, as defined in 18 U.S.C. §921, of selling, leasing or otherwise transferring a firearm, who intentionally violates this section, is guilty of a Class C felony.

(9) This section does not apply to transactions between persons licensed as dealers under 18 U.S.C. §923.

(10) The register provided for in this section shall be designed by the Attorney General in substantially the following form:

Series No. _____
Sheet No. _____

ORIGINAL
(DEALERS' RECORD OF SALE OF HANDGUN)
State of Oregon

Notice to Dealers: This original is for your files. If spoiled in making out, do not destroy. Keep in books. Fill out in duplicate.

Carbon duplicate must be hand delivered or mailed on the day of sale, to the local law enforcement authority. Violation of this law is a Class C felony. Use carbon paper for duplicate. Use indelible pencil.

Sold by _____ Salesperson _____
Business Name _____
Business Address _____
Business Telephone _____
City, town or township _____
Description of handgun (state whether revolver or pistol) _____
Maker _____ Model _____ Serial Number _____
Caliber _____
Name of purchaser _____ Age _____ years
Other names used by purchaser _____
Date of Birth _____ Place of Birth _____
Permanent address (state name of city, town or township, street and number of dwelling) _____

Social Security Number _____ (Disclosure of your social security account number is voluntary. Solicitation of the number is authorized under ORS 166.420. It will be used only as a means of identification.)

Proof of identification (type of identification and number on identification to be filled out by salesperson):

- 1 _____
- 2 _____

Concealed Handgun License Number _____
Height _____ feet _____ inches. Weight _____

Occupation _____
Eyes _____ Hair _____

Race _____ Sex _____

If traveling, or in locality temporarily, give local address _____

I hereby declare that I:

- 1. Am not prohibited from purchasing or possessing a handgun under ORS 166.470 or 166.250; or
- 2. Have been granted relief from that disability under ORS 166.274 or 18 U.S.C. §925(c) or have had my

record expunged under the law of this state or an equivalent law of another jurisdiction.

Signature of purchaser _____

(Providing materially false information is a Class A misdemeanor and disqualifies applicant from completing purchase. To be signed in duplicate.)

Witness _____ Salesperson.

(To be signed in duplicate.)

[1989 c.839 §2b; 1993 c.4 §2]

166.422 Enforcement of ORS 166.420.

Where appropriate, a person may enforce the legal duties imposed by ORS 166.420 and section 31, chapter 839, Oregon Laws 1989, by the provisions of ORS 30.260 to 30.300 and 183.310 to 183.550. [1989 c.839 §12]

Note: 166.422 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 166 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

166.425 Unlawful purchase of firearm.

(1) A person commits the crime of unlawfully purchasing a firearm if the person, knowing that the person is prohibited by state or federal law from owning or possessing the firearm or having the firearm under the person's custody or control, purchases or attempts to purchase the firearm.

(2) Unlawfully purchasing a firearm is a Class A misdemeanor. [1989 c.839 §15]

Note: 166.425 to 166.429 were added to and made a part of 166.410 to 166.470 by legislative action but were not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

166.427 Register of transfers of used firearms. (1) Whenever a person engaged in the business, as defined in 18 U.S.C. §921, of selling, leasing or otherwise transferring a firearm, whether the person is a retail dealer, pawnbroker or otherwise, buys or accepts in trade, a used firearm, the person shall enter in a register the time, date and place of purchase or trade, the name of the person selling or trading the firearm, the number of the identification documentation presented by the person and the make, model and manufacturer's number of the firearm. The register shall be printed by the State Printer and shall be obtained from and furnished by the Department of State Police to the dealer on application at cost.

(2) The duplicate sheet of the register shall, on the day of purchase or trade, be hand delivered or mailed to the local law enforcement authority.

(3) Violation of this section by any person engaged in the business of selling, leasing or otherwise transferring a firearm is a Class C misdemeanor. [1989 c.839 §16; 1993 c.4 §3]

Note: See note under 166.425.

166.429 Firearms used in felony. Any person who, with intent to commit a felony or who knows or reasonably should know that a felony will be committed with the firearm, ships, transports, receives, sells or otherwise furnishes any firearm in the furtherance of the felony is guilty of a Class B felony. [1989 c.839 §17]

Note: See note under 166.425.

166.430 [Amended by 1971 c.464 §1; repealed by 1989 c.839 §39]

166.440 [Repealed by 1989 c.839 §39]

166.450 Obliteration or change of identification number on firearms. Any person who intentionally alters, removes or obliterates the identification number of any firearm for an unlawful purpose, shall be punished upon conviction by imprisonment in the custody of the Department of Corrections for not more than five years. Possession of any such firearm is presumptive evidence that the possessor has altered, removed or obliterated the identification number. [Amended by 1987 c.320 §90; 1989 c.839 §24]

Note: See note under 166.410.

166.460 Antique firearms excepted. (1) ORS 166.250, 166.260, 166.280, 166.291 to 166.295, 166.410, 166.420, 166.425 and 166.450 do not apply to antique firearms.

(2) Notwithstanding the provisions of subsection (1) of this section, possession of an antique firearm by a person described in ORS 166.250 (1)(c)(B), (C) or (D) constitutes a violation of ORS 166.250. [Amended by 1979 c.779 §6; 1989 c.839 §25; 1993 c.735 §8]

Note: See note under 166.410.

166.470 Limitations and conditions for sales of firearms. (1) Unless relief has been granted under ORS 166.274, 18 U.S.C. §925(c) or the expunction laws of this state or an equivalent law of another jurisdiction, no person shall intentionally sell, deliver or otherwise transfer any firearm when the transferor knows or reasonably should know that the recipient:

- (a) Is under 18 years of age;
- (b) Has been convicted of a felony or found guilty, except for insanity under ORS 161.295, of a felony;
- (c) Has any outstanding felony warrants for arrest;
- (d) Is free on any form of pretrial release for a felony;
- (e) Was committed to the Mental Health and Developmental Disability Services Division under ORS 426.130;
- (f) After January 1, 1990, was found to be mentally ill and subject to an order under ORS 426.130 that the person be prohibited from purchasing or possessing a firearm as a result of that mental illness; or

(g) Has been convicted of a misdemeanor involving violence or found guilty, except for insanity under ORS 161.295, of a misdemeanor involving violence within the previous four years. As used in this paragraph, "misdemeanor involving violence" means a misdemeanor described in ORS 163.160, 163.190, 163.195, 163.208 or 166.155 (1)(b).

(2) No person shall sell, deliver or otherwise transfer any firearm that the person knows or reasonably should know is stolen.

(3) Subsection (1)(a) of this section does not prohibit:

(a) The parent or guardian, or another person with the consent of the parent or guardian, of a minor from transferring to the minor a firearm, other than a handgun; or

(b) The temporary transfer of any firearm to a minor for hunting, target practice or any other lawful purpose.

(4) Violation of this section is a Class A misdemeanor. [Amended by 1989 c.839 §3; 1991 c.67 §40; 1993 c.735 §11]

Note: See note under 166.410.

166.480 Sale or gift of explosives to children. Any person who sells, exchanges, barter or gives to any child, under the age of 14 years, any explosive article or substance, other than an ordinary firecracker containing not more than 10 grains of gunpowder or who sells, exchanges, barter or gives to any such child, any instrument or apparatus, the chief utility of which is the fact that it is used, or is ordinarily capable of being used, as an article or device to increase the force or intensity of any explosive, or to direct or control the discharge of any such explosive, is guilty of a misdemeanor. [Amended by 1989 c.839 §26]

Note: See note under 166.410.

166.490 Purchase of firearms in certain other states. (1) As used in this section, unless the context requires otherwise:

(a) "Contiguous state" means California, Idaho, Nevada or Washington.

(b) "Resident" includes an individual or a corporation or other business entity that maintains a place of business in this state.

(2) A resident of this state may purchase or otherwise obtain a rifle or shotgun in a contiguous state and receive in this state or transport into this state such rifle or shotgun, unless the purchase or transfer violates the law of this state, the state in which the purchase or transfer is made or the United States.

(3) This section does not apply to the purchase, receipt or transportation of rifles and shotguns by federally licensed firearms manufacturers, importers, dealers or collectors.

(4) This section expires and stands repealed upon the date that section 922(b) (3) of the Gun Control Act of 1968 (18 U.S.C. §922(b) (3)) and regulations pursuant thereto are repealed or rescinded. [1969 c.289 §§1,2,3,4]

Note: See note under 166.410.

166.510 [Amended by 1957 c.290 §1; 1973 c.746 §1; 1983 c.546 §2; repealed by 1985 c.709 §4]

166.515 [1973 c.746 §2; repealed by 1985 c.709 §4]

166.520 [Amended by 1973 c.746 §3; repealed by 1985 c.709 §4]

166.560 [1965 c.118 §1; repealed by 1971 c.743 §432]

166.610 [Repealed by 1971 c.743 §432]

166.620 [Repealed by 1963 c.94 §2]

DISCHARGING WEAPONS

166.630 Discharging weapon on or across highway, ocean shore recreation area or public utility facility. (1) Except as provided in ORS 166.220, any person is guilty of a violation who discharges or attempts to discharge any blowgun, bow and arrow, crossbow, air rifle or firearm:

(a) Upon or across any highway, railroad right of way or other public road in this state, or upon or across the ocean shore within the state recreation area as defined in ORS 390.605.

(b) At any public or railroad sign or signal or an electric power, communication, petroleum or natural gas transmission or distribution facility of a public utility, telecommunications utility or railroad within range of the weapon.

(2) Any blowgun, bow and arrow, crossbow, air rifle or firearm in the possession of the person that was used in committing a violation of this section may be confiscated and forfeited to the State of Oregon. This section does not prevent the discharge of firearms by peace officers in the performance of their duty or by military personnel within the confines of a military reservation.

(3) The hunting license revocation provided in ORS 497.415 is in addition to and not in lieu of the penalty and forfeiture provided in subsections (1) and (2) of this section.

(4) As used in this section:

(a) "Public sign" includes all signs, signals and markings placed or erected by authority of a public body.

(b) "Public utility" has the meaning given that term in ORS 164.365 (2).

(c) "Railroad" has the meaning given that term in ORS 760.005. [Amended by 1963 c.94 §1; 1969 c.501 §2; 1969 c.511 §4; 1973 c.196 §1; 1973 c.723 §118; 1981 c.900 §1; 1987 c.447 §113; 1991 c.797 §2]

166.635 Discharging weapon or throwing objects at trains. (1) A person shall not

knowingly throw an object at, drop an object on, or discharge a bow and arrow, air rifle, rifle, gun, revolver or other firearm at a railroad train, a person on a railroad train or a commodity being transported on a railroad train. This subsection does not prevent a peace officer or a railroad employee from performing the duty of a peace officer or railroad employee.

(2) Violation of subsection (1) of this section is a misdemeanor. [1973 c.139 §4]

Note: 166.635, 166.638 and 166.645 were enacted into law by the Legislative Assembly but were 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.

166.638 Discharging weapon across airport operational surfaces. (1) Any person who knowingly or recklessly discharges any bow and arrow, gun, air gun or other firearm upon or across any airport operational surface commits a Class A misdemeanor. Any bow and arrow, gun, air gun or other firearm in the possession of the person that was used in committing a violation of this subsection may be confiscated and forfeited to the State of Oregon, and the clear proceeds shall be deposited with the State Treasury in the Common School Fund.

(2) As used in subsection (1) of this section, "airport operational surface" means any surface of land or water developed, posted or marked so as to give an observer reasonable notice that the surface is developed for the purpose of storing, parking, taxiing or operating aircraft, or any surface of land or water when actually being used for such purpose.

(3) Subsection (1) of this section does not prohibit the discharge of firearms by peace officers in the performance of their duty or by military personnel within the confines of a military reservation, or otherwise lawful hunting, wildlife control or other discharging of firearms done with the consent of the proprietor, manager or custodian of the airport operational surface.

(4) The hunting license revocation provided in ORS 497.415 is in addition to and not in lieu of the penalty provided in subsection (1) of this section. [1981 c.901 §2; 1987 c.858 §2]

Note: See note under 166.635.

166.640 [Repealed by 1971 c.743 §432]

MISCELLANEOUS

166.645 Hunting in cemeteries prohibited. (1) Hunting in cemeteries is prohibited.

(2) As used in subsection (1) of this section "hunting" has the meaning for that term provided in ORS 496.004.

(3) Violation of subsection (1) of this section is a misdemeanor. [1973 c.468 §2; 1987 c.158 §30]

Note: See note under 166.635.

166.649 Throwing object off overpass in second degree. (1) A person commits the crime of throwing an object off an overpass in the second degree if the person:

(a) With criminal negligence throws an object off an overpass; and

(b) Knows, or reasonably should have known, that the object was of a type or size to cause damage to any person or vehicle that the object might hit.

(2) Throwing an object off an overpass in the second degree is a Class A misdemeanor.

(3) As used in this section and ORS 166.651, "overpass" means a structure carrying a roadway or pedestrian pathway over a roadway. [1993 c.731 §1]

166.650 [Repealed by 1971 c.743 §432]

166.651 Throwing object off overpass in first degree. (1) A person commits the crime of throwing an object off an overpass in the first degree if the person:

(a) Recklessly throws an object off an overpass; and

(b) Knows, or reasonably should have known, that the object was of a type or size to cause damage to any person or vehicle that the object might hit.

(2) Throwing an object off an overpass in the first degree is a Class C felony. [1993 c.731 §2]

166.660 Unlawful paramilitary activity.

(1) A person commits the crime of unlawful paramilitary activity if the person:

(a) Exhibits, displays or demonstrates to another person the use, application or making of any firearm, explosive or incendiary device or any technique capable of causing injury or death to persons and intends or knows that such firearm, explosive or incendiary device or technique will be unlawfully employed for use in a civil disorder; or

(b) Assembles with one or more other persons for the purpose of training with, practicing with or being instructed in the use of any firearm, explosive or incendiary device or technique capable of causing injury or death to persons with the intent to unlawfully employ such firearm, explosive or incendiary device or technique in a civil disorder.

(2)(a) Nothing in this section makes unlawful any act of any law enforcement officer performed in the otherwise lawful performance of the officer's official duties.

(b) Nothing in this section makes unlawful any activity of the State Department of Fish and Wildlife, or any activity intended to teach or practice self-defense or self-defense techniques, such as karate clubs or self-defense clinics, and similar lawful activity, or any facility, program or lawful activity related to firearms instruction and training intended to teach the safe handling and use of firearms, or any other lawful sports or activities related to the individual recreational use or possession of firearms, including but not limited to hunting activities, target shooting, self-defense, firearms collection or any organized activity including, but not limited to any hunting club, rifle club, rifle range or shooting range which does not include a conspiracy as defined in ORS 161.450 or the knowledge of or the intent to cause or further a civil disorder.

(3) Unlawful paramilitary activity is a Class C felony. In addition to any other penalty imposed pursuant to this section, the court may order forfeited to the State of Oregon for the benefit of the Common School Fund any firearm or explosive or incendiary device used in any activity in violation of this section.

(4) As used in this section:

(a) "Civil disorder" means acts of physical violence by assemblages of three or more persons which cause damage or injury, or immediate danger thereof, to the person or property of any other individual.

(b) "Firearm" means a weapon, by whatever name known, which is designed to expel a projectile by the action of black powder or smokeless black powder and which is readily capable of use as a weapon.

(c) "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 nitrojelly, but excluding fireworks as defined in ORS 480.110 (1), black powder, smokeless powder, small arms ammunition and small arms ammunition primers.

(d) "Law enforcement officer" means any duly constituted police officer of the United States, any state, any political subdivision of a state or the District of Columbia, and also includes members of the military reserve forces or National Guard as defined in 10 U.S.C. §101 (9), members of the organized militia of any state or territory of the United States, the Commonwealth of Puerto Rico or the District of Columbia not included within the definition of National Guard as defined by 10 U.S.C. §101 (9), members of the Armed

Forces of the United States and such persons as are defined in ORS 161.015 (4) when in the performance of official duties. [1983 c.792 §2; 1987 c.858 §3]

Note: 166.660 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 166 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

166.663 Casting artificial light from vehicle while possessing certain weapons prohibited. (1) No person shall cast from a motor vehicle an artificial light while there is in the possession or in the immediate physical presence of the person a bow and arrow or a rifle, gun, revolver or other firearm.

(2) Subsection (1) of this section does not apply to a person casting an artificial light:

(a) From the headlights of a motor vehicle that is being operated on a road in the usual manner.

(b) When the bow and arrow, rifle, gun, revolver or other firearm that the person has in the possession or immediate physical presence of the person is disassembled or stored, or in the trunk or storage compartment of the motor vehicle.

(c) When the ammunition or arrows are stored separate from the weapon.

(d) On land owned or lawfully occupied by that person.

(e) On publicly owned land when that person has an agreement with the public body to use that property.

(f) When the person is a peace officer or government employee engaged in the performance of official duties.

(g) When the person has been issued a license under ORS 166.290 to carry a concealed weapon.

(3) Violation of subsection (1) of this section is punishable as a violation. [1989 c.848 §2]

166.710 [1957 c.601 §1; repealed by 1971 c.743 §432]

RACKETEERING

166.715 Definitions for ORS 166.715 to 166.735. As used in ORS 166.715 to 166.735, unless the context requires otherwise:

(1) "Documentary material" means any book, paper, document, writing, drawing, graph, chart, photograph, phonograph record, magnetic tape, computer printout, other data compilation from which information can be obtained or from which information can be translated into usable form, or other tangible item.

(2) "Enterprise" includes any individual, sole proprietorship, partnership, corporation, business trust or other profit or nonprofit

legal entity, and includes any union, association or group of individuals associated in fact although not a legal entity, and both illicit and licit enterprises and governmental and nongovernmental entities.

(3) "Investigative agency" means the Department of Justice or any district attorney.

(4) "Pattern of racketeering activity" means engaging in at least two incidents of racketeering activity that have the same or similar intents, results, accomplices, victims or methods of commission or otherwise are interrelated by distinguishing characteristics, including a nexus to the same enterprise, and are not isolated incidents, provided at least one of such incidents occurred after November 1, 1981, and that the last of such incidents occurred within five years after a prior incident of racketeering activity.

(5) "Person" means any individual or entity capable of holding a legal or beneficial interest in real or personal property.

(6) "Racketeering activity" means to commit, to attempt to commit, to conspire to commit, or to solicit, coerce or intimidate another person to commit:

(a) Any conduct that constitutes a crime, as defined in ORS 161.515, under any of the following provisions of the Oregon Revised Statutes:

(A) ORS chapter 59, relating to securities;

(B) ORS 162.015, 162.025 and 162.065 to 162.085, relating to bribery and perjury;

(C) ORS 162.235, 162.265 to 162.305, 162.325, 162.335, 162.355 and 162.365, relating to obstructing governmental administration;

(D) ORS 162.405 to 162.425, relating to abuse of public office;

(E) ORS 162.465, relating to interference with legislative operation;

(F) ORS 163.095 to 163.115, 163.118, 163.125 and 163.145, relating to criminal homicide;

(G) ORS 163.160 to 163.205, relating to assault and related offenses;

(H) ORS 163.225 and 163.235, relating to kidnapping;

(I) ORS 163.275, relating to coercion;

(J) ORS 163.670 to 163.680, relating to sexual conduct of children;

(K) ORS 164.015, 164.043, 164.045, 164.055, 164.057, 164.075 to 164.095, 164.125, 164.135, 164.140, 164.215, 164.225 and 164.245 to 164.270, relating to theft, burglary, criminal trespass and related offenses;

(L) ORS 164.315 to 164.335, relating to arson and related offenses;

(M) ORS 164.345 to 164.365, relating to criminal mischief;

(N) ORS 164.395 to 164.415, relating to robbery;

(O) ORS 164.865, 164.875 and 164.868 to 164.872, relating to unlawful recording or labeling of a recording;

(P) ORS 165.007 to 165.022, 165.032 to 165.042 and 165.055 to 165.070, relating to forgery and related offenses;

(Q) ORS 165.080 to 165.109, relating to business and commercial offenses;

(R) ORS 165.485 to 165.515, 165.540 and 165.555, relating to communication crimes;

(S) ORS 166.180, 166.190, 166.220, 166.250, 166.270, 166.275, 166.410, 166.450 and 166.470, relating to firearms and other weapons;

(T) ORS 164.377 (2) to (4), as punishable under ORS 164.377 (5)(b), 167.007 to 167.017, 167.062 to 167.080, 167.087, 167.090, 167.122 to 167.137, 167.147, 167.164, 167.212, 167.355, 167.365 and 167.370, relating to prostitution, obscenity, gambling, computer crimes involving the Oregon State Lottery, animal fighting and related offenses;

(U) ORS 171.990, relating to legislative witnesses;

(V) ORS 260.575 and 260.665, relating to election offenses;

(W) ORS 314.075, relating to income tax;

(X) ORS chapter 323, relating to cigarette taxes;

(Y) ORS 411.630, 411.675, 411.690 and 411.840, relating to public assistance payments, and ORS 411.990 (2) and (3);

(Z) ORS 462.140, 462.415 and 462.420 to 462.520, relating to racing;

(AA) ORS 463.995, relating to boxing and wrestling, as defined in ORS 463.015;

(BB) ORS 471.205, 471.215 to 471.289, 471.305, 471.335 to 471.345, 471.360, 471.405, 471.415, 471.425, 471.445 to 471.455, 471.460, 471.465, 471.470, 471.485, 471.490, 471.675 and 472.310, relating to alcoholic liquor;

(CC) ORS 430.400, 475.005 to 475.285 and 475.940 to 475.995, relating to controlled substances;

(DD) ORS 480.070, 480.210, 480.215 and 480.235 to 480.265, relating to explosives;

(EE) ORS 819.010, 819.020, 819.040, 822.100, 822.135 and 822.150, relating to motor vehicles;

(FF) ORS 658.452 or 658.991 (2) to (4), relating to farm labor contractors;

(GG) ORS chapter 706, relating to banking law administration;

(HH) ORS chapter 708, relating to banks and trusts;

(II) ORS chapter 714, relating to branch banking;

(JJ) ORS chapter 716, relating to mutual savings banks;

(KK) ORS chapter 723, relating to credit unions;

(LL) ORS chapter 726, relating to pawnbrokers;

(MM) ORS 166.382 and 166.384, relating to destructive devices;

(NN) ORS 165.074;

(OO) ORS 59.840 to 59.960, relating to mortgage bankers and mortgage brokers; or

(PP) ORS chapter 496, 497 or 498, relating to wildlife.

(b) Any conduct defined as "racketeering activity" under 18 U.S.C. §1961 (1)(B), (C) and (D).

(7) "Unlawful debt" means any money or other thing of value constituting principal or interest of a debt that is legally unenforceable in the state in whole or in part because the debt was incurred or contracted:

(a) In violation of any one of the following:

(A) ORS chapter 462, relating to racing;

(B) ORS 167.117 to 167.164, relating to gambling; or

(C) ORS 82.010 to 82.170, relating to interest and usury.

(b) In gambling activity in violation of federal law or in the business of lending money at a rate usurious under federal or state law. [1981 c.769 §2; 1983 c.338 §898; 1983 c.715 §1; 1985 c.176 §5; 1985 c.557 §8; 1987 c.158 §31; 1987 c.249 §7; 1987 c.789 §20; 1987 c.907 §12; 1989 c.384 §2; 1989 c.839 §27; 1989 c.846 §13; 1989 c.982 §6; 1991 c.398 §3; 1991 c.962 §6; 1993 c.95 §13; 1993 c.215 §1; 1993 c.508 §45; 1993 c.680 §29]

166.720 Racketeering activity unlawful; penalties. (1) It is unlawful for any person who has knowingly received any proceeds derived, directly or indirectly, from a pattern of racketeering activity or through the collection of an unlawful debt to use or invest, whether directly or indirectly, any part of such proceeds, or the proceeds derived from the investment or use thereof, in the acquisition of any title to, or any right, interest or equity in, real property or in the establishment or operation of any enterprise.

(2) It is unlawful for any person, through a pattern of racketeering activity or through the collection of an unlawful debt, to acquire or maintain, directly or indirectly, any interest in or control of any real property or enterprise.

(3) It is unlawful for any person employed by, or associated with, any enterprise to

conduct or participate, directly or indirectly, in such enterprise through a pattern of racketeering activity or the collection of an unlawful debt.

(4) It is unlawful for any person to conspire or endeavor to violate any of the provisions of subsections (1), (2) or (3) of this section.

(5)(a) Any person convicted of engaging in activity in violation of the provisions of subsections (1) to (4) of this section is guilty of a Class A felony.

(b) In lieu of a fine otherwise authorized by law, any person convicted of engaging in conduct in violation of the provisions of subsections (1) to (4) of this section, through which the person derived a pecuniary value, or by which the person caused personal injury or property damage or other loss, may be sentenced to pay a fine that does not exceed three times the gross value gained or three times the gross loss caused, whichever is greater, plus court costs and the costs of investigation and prosecution, reasonably incurred.

(c) The court shall hold a hearing to determine the amount of the fine authorized by paragraph (b) of this subsection.

(d) For the purposes of paragraph (b) of this subsection, "pecuniary value" means:

(A) Anything of value in the form of money, a negotiable instrument, a commercial interest or anything else the primary significance of which is economic advantage; or

(B) Any other property or service that has a value in excess of \$100. [1981 c.769 §§3,4]

166.725 Remedies for violation of ORS 166.720; time limitation. (1) Any circuit court may, after making due provision for the rights of innocent persons, enjoin violations of the provisions of ORS 166.720 (1) to (4) by issuing appropriate orders and judgments, including, but not limited to:

(a) Ordering a divestiture by the defendant of any interest in any enterprise, including real property.

(b) Imposing reasonable restrictions upon the future activities or investments of any defendant, including, but not limited to, prohibiting any defendant from engaging in the same type of endeavor as the enterprise in which the defendant was engaged in violation of the provisions of ORS 166.720 (1) to (4).

(c) Ordering the dissolution or reorganization of any enterprise.

(d) Ordering the suspension or revocation of a license, permit or prior approval granted to any enterprise by any agency of the state.

(e) Ordering the forfeiture of the charter of a corporation organized under the laws of this state, or the revocation of a certificate of authority authorizing a foreign corporation to conduct business within this state, upon finding that the board of directors or a managerial agent acting on behalf of the corporation, in conducting the affairs of the corporation, has authorized or engaged in conduct in violation of ORS 166.720 (1) to (4) and that, for the prevention of future criminal activity, the public interest requires the charter of the corporation forfeited and the corporation dissolved or the certificate of authority revoked.

(2) All property, real or personal, including money, used in the course of, derived from or realized through conduct in violation of a provision of ORS 166.715 to 166.735 is subject to civil forfeiture to the state. The state shall dispose of all forfeited property as soon as commercially feasible. If property is not exercisable or transferable for value by the state, it shall expire. All forfeitures or dispositions under this section shall be made with due provision for the rights of innocent persons. Forfeited property shall be distributed as follows:

(a)(A) All moneys and the clear proceeds of all other property forfeited shall be deposited with the State Treasurer to the credit of the Common School Fund.

(B) For purposes of subparagraph (A) of this paragraph, "clear proceeds" means proceeds of forfeited property less costs of maintaining and preserving property pending its sale or other disposition, less costs of sale or disposition and, if the Department of Justice has not otherwise recovered its costs and expenses of the investigation and prosecution leading to the forfeiture, less 30 percent of the remaining proceeds of the property which is awarded to the department as reasonable reimbursement for costs of such investigation and prosecution.

(b) Any amounts awarded to the Department of Justice pursuant to paragraph (a) of this subsection shall be deposited in the Criminal Justice Revolving Account in the State Treasury.

(3) Property subject to forfeiture under this section may be seized by a police officer, as defined in ORS 133.525 (2), upon court process. Seizure without process may be made if:

(a) The seizure is incident to a lawful arrest or search or an inspection under an administrative inspection warrant; or

(b) The property subject to seizure has been the subject of a prior judgment in favor of the state in a forfeiture proceeding based upon this section.

(4) In the event of a seizure under subsection (3) of this section, a forfeiture proceeding shall be instituted promptly. Property taken or detained under this section shall not be subject to replevin, but is deemed to be in the custody of the police officer making the seizure, subject only to the order of the court. When property is seized under this section, pending forfeiture and final disposition, the police officer may:

(a) Place the property under seal;

(b) Remove the property to a place designated by the court; or

(c) Require another agency authorized by law to take custody of the property and remove it to an appropriate location.

(5) The Attorney General, any district attorney or any state agency having jurisdiction over conduct in violation of a provision of ORS 166.715 to 166.735 may institute civil proceedings under this section. In any action brought under this section, the circuit court shall give priority to the hearing and determination. Pending final determination, the circuit court may at any time enter such injunctions, prohibitions or restraining orders, or take such actions, including the acceptance of satisfactory performance bonds, as the court may deem proper. The Attorney General, district attorney or state agency bringing an action under this section shall be entitled to recover, upon entry of a final judgment or decree in favor of the state, attorney fees and costs of investigation and litigation, reasonably incurred. Amounts recovered may include costs and expenses of state and local governmental departments and agencies incurred in connection with the investigation or litigation.

(6) Any aggrieved person may institute a proceeding under subsection (1) of this section. In such proceeding, relief shall be granted in conformity with the principles that govern the granting of injunctive relief from threatened loss or damage in other civil cases, except that no showing of special or irreparable damage to the person shall have to be made. Upon the execution of proper bond against damages for an injunction improvidently granted and a showing of immediate danger of significant loss or damage, a temporary restraining order and a preliminary injunction may be issued in any such action before a final determination on the merits.

(7)(a) Any person who is injured by reason of any violation of the provisions of ORS 166.720 (1) to (4) shall have a cause of action for three-fold the actual damages sustained and, when appropriate, punitive damages. Such person shall also recover attorney fees

in the trial and appellate courts and costs of investigation and litigation, reasonably incurred.

(b) The defendant or any injured person may demand a trial by jury in any civil action brought pursuant to this section.

(c) Any injured person shall have a right or claim to forfeited property or to the proceeds derived therefrom superior to any right or claim the state has in the same property or proceeds.

(8) An investigative agency may bring an action for civil penalties for any violation of ORS 166.720 (1) to (4). Upon proof of any such violation, the court shall impose a civil penalty of not more than \$250,000.

(9) A final judgment or decree rendered in favor of the state in any criminal proceeding under ORS 166.715 to 166.735 shall estop the defendant in any subsequent civil action or proceeding brought by the state or any other person as to all matters as to which such judgment or decree would be an estoppel as between the state and the defendant.

(10) The Attorney General may, upon timely application, intervene in any civil action or proceeding brought under subsection (6) or subsection (7) of this section if the Attorney General certifies that, in the opinion of the Attorney General, the action or proceeding is of general public importance. In such action or proceeding, the state shall be entitled to the same relief as if the Attorney General instituted the action or proceeding.

(11) Notwithstanding any other provision of law, a criminal or civil action or proceeding under ORS 166.715 to 166.735 may be commenced at any time within five years after the conduct in violation of a provision of ORS 166.715 to 166.735 terminates or the cause of action accrues. If a criminal prosecution or civil action or other proceeding is brought, or intervened in, to punish, prevent or restrain any violation of the provisions of ORS 166.715 to 166.735, the running of the period of limitations prescribed by this section with respect to any cause of action arising under subsection (6) or subsection (7) of this section which is based in whole or in part upon any matter complained of in any such prosecution, action or proceeding shall be suspended during the pendency of such

prosecution, action or proceeding and for two years following its termination.

(12) The application of one civil remedy under any provision of ORS 166.715 to 166.735 shall not preclude the application of any other remedy, civil or criminal, under ORS 166.715 to 166.735 or any other provision of law. Civil remedies under ORS 166.715 to 166.735 are supplemental and not mutually exclusive. [1981 c.769 §5; 1983 c.715 §2]

166.730 Authority of investigative agency; compelling compliance with subpoena. (1) If, pursuant to the civil enforcement provisions of ORS 166.725, an investigative agency has reason to believe that a person or other enterprise has engaged in, or is engaging in, activity in violation of ORS 166.715 to 166.735, the investigative agency may administer oaths or affirmations, subpoena witnesses or documents or other material, and collect evidence pursuant to the Oregon Rules of Civil Procedure.

(2) If matter that the investigative agency seeks to obtain by the subpoena is located outside the state, the person or enterprise subpoenaed may make such matter available to the investigative agency or its representative for examination at the place where such matter is located. The investigative agency may designate representatives, including officials of the jurisdiction in which the matter is located, to inspect the matter on its behalf and may respond to similar requests from officials of other jurisdictions.

(3) Upon failure of a person or enterprise, without lawful excuse, to obey a subpoena, and after reasonable notice to such person or enterprise, the investigative agency may apply to the circuit court for the judicial district in which such person or enterprise resides, is found or transacts business for an order compelling compliance. [1981 c.769 §6; 1983 c.715 §3]

166.735 Short title; construction. (1) ORS 166.715 to 166.735 may be cited as the Oregon Racketeer Influenced and Corrupt Organization Act.

(2) The provisions of ORS 166.715 to 166.735 shall be liberally construed to effectuate its remedial purposes. [1981 c.769 §§1,7; 1983 c.715 §4]