

Miscellaneous Laws

The following pages contain a survey of miscellaneous laws from the Oregon Revised Statutes that relate directly or indirectly to motor vehicles or responsibilities of the Driver and Motor Vehicle Services Division (DMV) of the Department of Transportation. These chapters have been abridged to include only those sections with specific application to motor vehicles or their operation. **These are not complete chapters.** For that reason, the complete chapter should be consulted with reference to any specific statutory requirements.

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Chapter 1

CITATION AND PETITION FORMS

1.525 Uniform citation and petition forms for certain offenses. (1) The Supreme Court shall adopt one or more forms for the following purposes:

(a) A form of uniform violation citation for the purposes of ORS 153.045;

(b) A form of uniform criminal citation without complaint for the purposes of ORS 133.068;

(c) A form of uniform criminal citation with complaint for the purposes of ORS 133.069;

(d) Any form of uniform citation for categories of offenses as the court finds necessary or convenient; and

(e) A uniform petition for a driving while under the influence of intoxicants diversion agreement for the purposes of ORS 813.210.

(2) If changes are made to a uniform citation form under this section, the Supreme Court shall make a reasonable effort to minimize the financial impact of the changes on the state agencies and political subdivisions of this state that use the uniform citation form. Where possible, the effort to minimize the financial impact shall include a reasonable time for the state agencies and political subdivisions to exhaust their existing supplies of the citation form before the changes become effective.

(3) Except as provided in subsection (4) of this section, the uniform citation forms adopted by the Supreme Court under this section must be used by all enforcement officers, as defined in ORS 153.005, when issuing a violation citation or criminal citation.

(4) The uniform citation forms adopted by the Supreme Court under this section need not be used for:

(a) Offenses created by ordinance or agency rule governing parking of vehicles; or

(b) Offenses created by the ordinances of political subdivisions. [1979 c.477 §3; 1981 c.692 §5; 1981 c.803 §1; 1983 c.338 §879; 1985 c.725 §9; 1999 c.1051 §73]

Chapter 10

CIRCUIT COURT JURY LIST

10.215 Master jury list; sources; contents. (1) The State Court Administrator shall cause to be prepared at least once each year a master jury list containing names selected at random from the source lists. The

source lists are the most recent list of electors of the county, the records furnished by the Department of Transportation as provided in ORS 802.260 (2) and any other sources approved by the Chief Justice of the Supreme Court that will furnish a fair cross section of the citizens of the county. The State Court Administrator and circuit courts may use source lists obtained from any person or public body, and jury lists containing names selected from a source list, only for purposes consistent with administering the selection and summoning of persons for service as jurors, the drawing of names of jurors, and other tasks necessary to accomplish those functions. Source lists may not contain and the State Court Administrator is not required to obtain information about individuals who are participants in the Address Confidentiality Program under ORS 192.820 to 192.868. Except as specifically provided by law, the State Court Administrator and circuit courts may not disclose source lists obtained from any person or public body, and jury lists containing names selected from a source list, to any other person or public body.

(2) A public body having custody, possession or control of any list that may be used as a source list for preparation of a master jury list, upon written request by the State Court Administrator, shall make its list available at any reasonable time and, except as otherwise provided in ORS 802.260, without charge to the State Court Administrator for inspection or copying. The public body, upon written request by the State Court Administrator, shall provide a copy of its list for the date and in the form requested to the State Court Administrator. Except as otherwise provided in ORS 802.260, the copy shall be provided without charge.

(3) The number of names placed on a master jury list shall be sufficient to meet the projected need for grand jurors and trial jurors in the circuit court in the county, but the total number may not be less than two percent of the population of the county according to the latest federal decennial census.

(4) A master jury list shall contain the first name, the surname, the place of residence and, if assigned, the juror identification number of each person whose name is placed thereon.

(5) A master jury list shall be certified by the trial court administrator and placed on file in the circuit court as soon as possible after it is prepared.

(6) A newly filed master jury list shall be maintained separately from the previously filed master jury list. The presiding judge shall designate when a newly filed master

jury list becomes effective, after which time names of persons may not be selected from the previously filed master jury list for a term jury list. When a newly filed master jury list becomes effective, all orders, records and papers prepared in connection with the selection process based on the previously filed master jury list shall be preserved by the trial court administrator and State Court Administrator for the period prescribed by the State Court Administrator under ORS 8.125.

(7) The State Court Administrator may make adjustments to the master jury list, and may authorize the presiding judge of a judicial district to make adjustments to a term jury list, for the purpose of updating the addresses of persons appearing on the lists and removing the names of persons who are deceased, permanently ineligible for jury service or permanently excused from jury service. The State Court Administrator shall ensure that a record is maintained of all adjustments to jury lists made under this subsection.

(8) For the purposes of this section, "public body" has the meaning given that term in ORS 174.109. [1985 c.703 §13; 1987 c.681 §3; 1995 c.273 §6; 1995 c.781 §24a; 1997 c.872 §15; 2001 c.779 §14; 2003 c.803 §18; 2005 c.385 §5; 2007 c.542 §14]

Chapter 25

SUSPENSION OF OCCUPATIONAL AND DRIVER LICENSES

25.750 Suspension of licenses, certificates, permits and registrations; when authorized; rules. (1) All licenses, certificates, permits or registrations that a person is required by state law to possess in order to engage in an occupation or profession or to use a particular occupational or professional title, all annual licenses issued to individuals by the Oregon Liquor Control Commission, all driver licenses or permits issued by the Department of Transportation and recreational hunting and fishing licenses, as defined by rule of the Department of Justice, are subject to suspension by the respective issuing entities upon certification to the issuing entity by the administrator that a child support case record is being maintained by the Department of Justice, that the case is being enforced by the administrator under the provisions of ORS 25.080 and that one or both of the following conditions apply:

(a) That the party holding the license, certificate, permit or registration is under order or judgment to pay monthly child support and is in arrears, with respect to any such judgment or order requiring the pay-

ment of child support, in an amount equal to three months of support or \$2,500, whichever occurs later, and:

(A) Has not entered into an agreement with the administrator with respect to the child support obligation; or

(B) Is not in compliance with an agreement entered into with the administrator; or

(b) That the party holding the license, certificate, permit or registration has failed, after receiving appropriate notice, to comply with a subpoena or other procedural order relating to a paternity or child support proceeding and:

(A) Has not entered into an agreement with the administrator with respect to compliance; or

(B) Is not in compliance with such an agreement.

(2) The Department of Justice by rule shall specify the conditions and terms of agreements, compliance with which precludes the suspension of the license, certificate, permit or registration. [1993 c.365 §2; 1995 c.620 §1; 1995 c.750 §7; 1997 c.704 §37; 1999 c.80 §11; 2001 c.323 §1; 2001 c.455 §14; 2003 c.73 §43]

25.756 Identifying persons holding licenses, certificates, permits and registrations. The Department of Justice shall enter into agreements regarding the identification of persons who are subject to the provisions of ORS 25.750 to 25.783 and who hold licenses, certificates, permits or registrations with:

(1) The Oregon Liquor Control Commission;

(2) All entities that issue licenses, certificates, permits or registrations that a person is required by state law to possess to engage in an occupation, profession or recreational hunting or fishing or to use a particular occupational or professional title; and

(3) The Department of Transportation. [1993 c.365 §4; 1995 c.620 §2; 1995 c.750 §8; 1997 c.704 §38; 1999 c.80 §12]

25.771 Obligor holding more than one license, certificate, permit or registration. In the event that an obligor holds more than one license, certificate, permit or registration described in ORS 25.750, any determination regarding suspension of one license, certificate, permit or registration is sufficient to suspend any other license, certificate, permit or registration described in ORS 25.750. [1993 c.365 §9; 1995 c.620 §6]

25.774 Reinstatement. When, at any time after suspension under ORS 25.750 to 25.783, the conditions resulting in the suspension no longer exist, the administrator shall so notify the issuing entity and shall confirm that the license, certificate, permit

or registration may be reinstated contingent upon the requirements of the issuing entity. Until the issuing entity receives notice under this section, the issuing entity may not reinstate, reissue, renew or otherwise make the license, certificate, permit or registration available to the holder of the suspended license, certificate, permit or registration. [1993 c.365 §10; 1995 c.620 §7; 1999 c.80 §16; 2001 c.323 §6]

25.777 Reimbursing issuing entities for costs incurred. The Department of Justice shall enter into agreements to reimburse issuing entities for their costs of compliance with ORS 25.750 to 25.783 to the extent that those costs are eligible for Federal Financial Participation under Title IV-D of the Social Security Act. [1993 c.365 §11; 1995 c.620 §8; 2001 c.323 §7]

25.780 Other licenses, certificates, permits and registrations subject to suspension. In addition to any other grounds for suspension provided by law:

(1) The Oregon Liquor Control Commission and any entity that issues licenses, certificates, permits or registrations that a person is required by state law to possess to engage in an occupation, profession or recreational hunting or fishing or to use a particular occupational or professional title shall suspend without further hearing the licenses, certificates, permits or registrations of a person upon certification by the administrator that the person is subject to an order suspending the license, certificate, permit or registration. The certification must include the information specified in ORS 25.750 (1).

(2) The Department of Transportation shall suspend without further hearing the driver license or driver permit of a person upon certification by the administrator that the person is subject to an order suspending the license or permit. The certification must include the information specified in ORS 25.750 (1). [1993 c.365 §13; 1995 c.620 §9; 1995 c.750 §5; 1999 c.80 §17; 2001 c.323 §8]

25.783 Confidentiality of information. Any entity described in ORS 25.756 that receives an inquiry as to the status of a person who has had a license, certificate, permit or registration suspended under ORS 25.750 to 25.783 shall respond only that the license, certificate, permit or registration was suspended pursuant to ORS 25.750 to 25.783. The entity shall not release or make other use of information that it receives pursuant to ORS 25.750 to 25.783. [1993 c.365 §14; 1995 c.620 §10]

25.785 Issuing entities to require Social Security number. (1) Any state agency, board or commission that is authorized to issue an occupational, professional, recreational or driver license, certificate, permit or registration subject to suspension under

ORS 25.750 to 25.783 shall require that an individual's Social Security number be recorded on an application for, or form for renewal of, a license, certificate, permit or registration and to the maximum extent feasible shall include the Social Security number in automated databases containing information about the individual.

(2) A state agency, board or commission described in subsection (1) of this section may accept a written statement from an individual who has not been issued a Social Security number by the United States Social Security Administration to fulfill the requirement in subsection (1) of this section.

(3) An individual may not submit to a state agency, board or commission a written statement described in subsection (2) of this section knowing the statement to be false. [1997 c.746 §117; 1999 c.80 §93; 2003 c.610 §1; 2005 c.22 §17]

Note: 25.785 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 25 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

Chapter 30

ACTIONS AND SUITS IN PARTICULAR CASES

Actions by Guest Passengers

30.115 Aircraft and watercraft guest passengers; definitions. No person transported by the owner or operator of an aircraft or a watercraft as a guest without payment for such transportation, shall have a cause of action for damages against the owner or operator for injury, death or loss, in case of accident, unless the accident was intentional on the part of the owner or operator or caused by the gross negligence or intoxication of the owner or operator. As used in this section:

(1) "Payment" means a substantial benefit in a material or business sense conferred upon the owner or operator of the conveyance and which is a substantial motivating factor for the transportation, and it does not include a mere gratuity or social amenity.

(2) "Gross negligence" refers to negligence which is materially greater than the mere absence of reasonable care under the circumstances, and which is characterized by conscious indifference to or reckless disregard of the rights of others. [1961 c.578 §2 (30.115 enacted in lieu of 30.110 and 30.120); 1979 c.866 §7]

30.130 Public carriers by aircraft and prospective aircraft purchasers. ORS 30.115 shall not relieve a public carrier by aircraft, or any owner or operator of aircraft

while the same is being demonstrated to a prospective purchaser, of responsibility for any injuries sustained by a passenger.

Dishonored Check Fees

30.701 Actions against maker of dishonored check; statutory damages and attorney fees; handling fee. (1) In any action against a maker of a dishonored check, a payee may recover from the maker statutory damages in an amount equal to \$100 or triple the amount for which the check is drawn, whichever is greater. Statutory damages awarded under this subsection are in addition to the amount for which the check was drawn and may not exceed by more than \$500 the amount for which the check was drawn. The court shall allow reasonable attorney fees at trial and on appeal to the prevailing party in an action on a dishonored check and in any action on a check that is not paid because payment has been stopped.

(2) Statutory damages and attorney fees under subsection (1) of this section may be awarded only if the payee made written demand of the maker of the check not less than 30 days before commencing the action and the maker failed to tender to the payee before the commencement of the action an amount of money not less than the amount for which the check was drawn, all interest that has accrued on the check under ORS 82.010 as of the date of demand and any charges imposed under subsection (5) of this section.

(3) Statutory damages under subsection (1) of this section shall not be awarded by the court if after the commencement of the action but before trial the defendant tenders to the plaintiff an amount of money equal to the amount for which the check was drawn, all interest that has accrued on the check under ORS 82.010 as of the date of payment, any charges imposed under subsection (5) of this section, costs and disbursements and the plaintiff's reasonable attorney fees incurred as of the date of the tender.

(4) If the court or jury determines that the failure of the defendant to satisfy the dishonored check at the time demand was made under subsection (2) of this section was due to economic hardship, the court or jury has the discretion to waive all or part of the statutory damages provided for in subsection (1) of this section. If all or part of the statutory damages are waived under this subsection, judgment shall be entered in favor of the plaintiff for the amount of the dishonored check, all interest that has accrued on the check under ORS 82.010, any charges imposed under subsection (5) of this section, the plaintiff's reasonable attorney fees and costs and disbursements.

(5) If a check is dishonored, the payee may collect from the maker a reasonable fee representing the cost of handling and collecting on the check. The total fee for any single check may not exceed \$25. Any award of statutory damages under subsection (1) of this section must be reduced by the amount of any charges imposed under this subsection that have been paid by the maker or that are entered as part of the judgment.

(6) The provisions of this section apply only to a check that has been dishonored because of a lack of funds or credit to pay the check, because the maker has no account with the drawee or because the maker has stopped payment on the check without good cause. A plaintiff is entitled to the remedies provided by this section without regard to the reasons given by the drawee for dishonoring the check.

(7) For the purposes of this section:

(a) "Check" means a check, draft or order for the payment of money.

(b) "Drawee" has that meaning given in ORS 73.0103.

(c) "Payee" means a payee, holder or assignee of a check. [1997 c.182 §2 (enacted in lieu of 30.700); 1999 c.707 §1]

Chapter 45

INTERPRETERS

45.272 Definitions for ORS 45.272 to 45.297. As used in ORS 45.272 to 45.297:

(1) "Adjudicatory proceeding" means:

(a) Any contested case hearing conducted under ORS chapter 183; or

(b) Any hearing conducted by an agency in which the individual legal rights, duties or privileges of specific parties are determined if that determination is subject to judicial review by a circuit court or by the Court of Appeals.

(2) "Agency" has that meaning given in ORS 183.310. [1999 c.1041 §3]

45.273 Policy. (1) It is declared to be the policy of this state to secure the constitutional rights and other rights of persons who are unable to readily understand or communicate in the English language because of a non-English-speaking cultural background or a disability, and who as a result cannot be fully protected in administrative and court proceedings unless qualified interpreters are available to provide assistance.

(2) It is the intent of the Legislative Assembly in passing ORS 45.272 to 45.297 to provide a procedure for the qualification and use of court interpreters. Nothing in ORS 45.272 to 45.297 abridges the rights or obli-

gations of parties under other laws or court rules. [1993 c.687 §1; 1999 c.1041 §1]

45.275 Appointment of interpreter for non-English-speaking party or witness; substitution; payment of costs. (1) The court shall appoint a qualified interpreter in a civil or criminal proceeding, and a hearing officer or the designee of a hearing officer shall appoint a qualified interpreter in an adjudicatory proceeding, whenever it is necessary:

(a) To interpret the proceedings to a non-English-speaking party;

(b) To interpret the testimony of a non-English-speaking party or witness; or

(c) To assist the court, agency or hearing officer in performing the duties and responsibilities of the court, agency or hearing officer.

(2) No fee shall be charged to any person for the appointment of an interpreter to interpret testimony of a non-English-speaking party or witness, or to assist the court, agency or hearing officer in performing the duties and responsibilities of the court, agency or hearing officer. No fee shall be charged to a non-English-speaking party who is unable to pay for the appointment of an interpreter to interpret the proceedings to the non-English-speaking party. No fee shall be charged to any person for the appointment of an interpreter if appointment is made to determine whether the person is unable to pay or non-English-speaking for the purposes of this section.

(3) A non-English-speaking party shall be considered unable to pay for an interpreter for the purposes of this section if:

(a) The party makes a verified statement and provides other information in writing under oath showing financial inability to pay for a qualified interpreter, and provides any other information required by the court or agency concerning the inability to pay for such an interpreter; and

(b) It appears to the court or agency that the party is in fact unable to pay for a qualified interpreter.

(4) Fair compensation for the services of an interpreter appointed under this section shall be paid:

(a) By the county, subject to the approval of the terms of the contract by the governing body of the county, in a proceeding in a county or justice court.

(b) By the city, subject to the approval of the terms of the contract by the governing body of the city, in a proceeding in a municipal court.

(c) By the state in a proceeding in a circuit court. Amounts payable by the state

shall be from funds available to the court other than the Public Defense Services Account established by ORS 151.225, except that fees of an interpreter necessary for the purpose of communication between appointed counsel and a client or witness in a criminal case shall be payable from that account.

(d) By the agency in an adjudicatory proceeding.

(5) If a party or witness is dissatisfied with the interpreter appointed by the court, the hearing officer or the designee of the hearing officer, the party or witness may request the appointment of a different certified interpreter. A request under this subsection must be made in a manner consistent with the policies and notice requirements of the court or agency relating to the appointment and scheduling of interpreters. If the substitution of another interpreter will delay the proceeding, the person making the request must show good cause for the substitution. Any party may object to use of any interpreter for good cause. Unless the court, hearing officer or the designee of the hearing officer has appointed a different interpreter for cause, the party using any interpreter other than the interpreter originally appointed by the court, hearing officer or the designee of the hearing officer shall bear any additional costs beyond the amount required to pay the original interpreter.

(6) A judge or hearing officer, on the judge's or hearing officer's own motion, may substitute a different interpreter for the interpreter initially appointed in a proceeding. A judge or hearing officer may make a substitution under this subsection at any time and for any reason.

(7) A court may allow as costs reasonable expenses incurred by a party in employing the services of an interpreter in civil proceedings in the manner provided by ORCP 68.

(8) A court, a hearing officer or the designee of a hearing officer shall require any person serving as an interpreter for the court or agency to state the person's name on the record and whether the person is certified under ORS 45.291. If the person is certified under ORS 45.291, the interpreter need not make the oath or affirmation required by ORS 40.325 or submit the interpreter's qualifications on the record. If the person is not certified under ORS 45.291, the interpreter must make the oath or affirmation required by ORS 40.325 and submit the interpreter's qualifications on the record.

(9) For the purposes of this section:

(a) "Hearing officer" includes an administrative law judge.

(b) “Non-English-speaking person” means a person who, by reason of place of birth or culture, speaks a language other than English and does not speak English with adequate ability to communicate effectively in the proceedings.

(c) “Qualified interpreter” means a person who is readily able to communicate with the non-English-speaking person and who can orally transfer the meaning of statements to and from English and the language spoken by the non-English-speaking person. A qualified interpreter must be able to interpret in a manner that conserves the meaning, tone, level, style and register of the original statement, without additions or omissions. “Qualified interpreter” does not include any person who is unable to interpret the dialect, slang or specialized vocabulary used by the party or witness. [1991 c.750 §2; 1993 c.687 §8; 1995 c.273 §16; 1997 c.872 §18; 1999 c.1041 §4; 2001 c.242 §1; 2001 c.962 §§65,66; 2003 c.75 §§77,78; 2005 c.385 §2]

45.285 Appointment of interpreter for party or witness with disability; provision of assistive communication device. (1) For the purposes of this section:

(a) “Assistive communication device” means any equipment designed to facilitate communication by a person with a disability.

(b) “Hearing officer” includes an administrative law judge.

(c) “Person with a disability” means a person who cannot readily understand the proceedings because of deafness or a physical hearing impairment, or cannot communicate in the proceedings because of a physical speaking impairment.

(d) “Qualified interpreter” means a person who is readily able to communicate with the person with a disability, interpret the proceedings and accurately repeat and interpret the statements of the person with a disability to the court.

(2) In any civil action, adjudicatory proceeding or criminal proceeding, including a court-ordered deposition if no other person is responsible for providing an interpreter, in which a person with a disability is a party or witness, the court, hearing officer or the designee of the hearing officer shall appoint a qualified interpreter and make available appropriate assistive communication devices whenever it is necessary to interpret the proceedings to the person with a disability, or to interpret the testimony of the person with a disability.

(3) No fee shall be charged to the person with a disability for the appointment of an interpreter or use of an assistive communication device under this section. No fee shall be charged to any person for the appointment of an interpreter or the use of an

assistive communication device if appointment or use is made to determine whether the person has a disability for the purposes of this section.

(4) Fair compensation for the services of an interpreter or the cost of an assistive communication device under this section shall be paid:

(a) By the county, subject to the approval of the terms of the contract by the governing body of the county, in a proceeding in a county or justice court.

(b) By the city, subject to the approval of the terms of the contract by the governing body of the city, in a proceeding in a municipal court.

(c) By the state in a proceeding in a circuit court. Amounts payable by the state shall be from funds available to the court other than the Public Defense Services Account established by ORS 151.225, except that fees of an interpreter necessary for the purpose of communication between appointed counsel and a client or witness in a criminal case shall be payable from that account.

(d) By the agency in an adjudicatory proceeding. [1991 c.750 §1; 1993 c.687 §6; 1999 c.1041 §5; 2001 c.962 §§67,68; 2003 c.75 §§79,80; 2007 c.70 §13]

45.288 Appointment of certified interpreter required; exceptions; disqualifications; code of professional responsibility.

(1) For the purposes of this section:

(a) “Hearing officer” includes an administrative law judge.

(b) “Non-English-speaking person” has the meaning given that term in ORS 45.275.

(c) “Person with a disability” has the meaning given that term in ORS 45.285.

(d) “Qualified interpreter” means a person who meets the requirements of ORS 45.285 for an interpreter for a person with a disability, or a person who meets the requirements of ORS 45.275 for an interpreter for a non-English-speaking person.

(2) Except as provided by this section, whenever a court is required to appoint an interpreter for any person in a proceeding before the court, or whenever a hearing officer is required to appoint an interpreter in an adjudicatory proceeding, the court, hearing officer or the designee of the hearing officer shall appoint a qualified interpreter who has been certified under ORS 45.291. If no certified interpreter is available, able or willing to serve, the court, hearing officer or the designee of the hearing officer shall appoint a qualified interpreter. Upon request of a party or witness, the court, hearing officer or designee of the hearing officer, in the discretion of the court, hearing officer or the designee of the hearing officer, may ap-

point a qualified interpreter to act as an interpreter in lieu of a certified interpreter in any case or adjudicatory proceeding.

(3) The requirements of this section apply to appointments of interpreters for persons with disabilities and for non-English-speaking persons.

(4) The court, hearing officer or the designee of the hearing officer may not appoint any person under ORS 45.272 to 45.297 or 132.090 if:

(a) The person has a conflict of interest with any of the parties or witnesses in the proceeding;

(b) The person is unable to understand the judge, hearing officer, party or witness, or cannot be understood by the judge, hearing officer, party or witness; or

(c) The person is unable to work cooperatively with the judge of the court, the hearing officer, the person in need of an interpreter or the counsel for that person.

(5) The Supreme Court shall adopt a code of professional responsibility for interpreters. The code is binding on all interpreters who provide interpreter services in the courts or in adjudicatory proceedings before agencies. [1993 c.687 §2; 1999 c.1041 §6; 2001 c.242 §2; 2001 c.243 §2; 2003 c.75 §81; 2007 c.70 §14]

45.291 Certification program; establishment by State Court Administrator; rules. (1) Subject to the availability of funding, the State Court Administrator shall establish a program for the certification of court interpreters. The program shall be established by rules adopted pursuant to ORS 1.002 and shall include, but not be limited to, provisions for:

(a) Prescribing the form and content of applications for certification;

(b) Prescribing and collecting reasonable fees for the application, examination, certification and renewal of certification for court interpreters;

(c) Establishing categories of certificates based on the nature of the interpreter services to be provided, including categories for interpreters for persons with disabilities, as defined in ORS 45.285, and for interpreters for non-English-speaking persons, as defined in ORS 45.275;

(d) Establishing minimum competency requirements for court interpreters in the various categories of certification;

(e) Establishing teaching programs designed to educate court interpreters in ethical, substantive and procedural legal issues;

(f) Prescribing the form of and administering examinations for the purpose of testing court interpreters for competency and ethics;

(g) Establishing grounds for renewal, suspension or cancellation of certificates;

(h) Establishing a process for receiving comments and input into the policy and procedures of the certification program;

(i) Establishing a process for receiving comments and input on compliance with ORS 45.272 to 45.297;

(j) Establishing a process for receiving comments and input on compliance with the code of professional responsibility adopted under ORS 45.288; and

(k) Establishing a process by which an adversely affected interpreter may seek review of any decision made by the State Court Administrator on renewal, suspension or cancellation of a certificate.

(2) An interpreter may be certified in Oregon by the State Court Administrator upon satisfactory proof that the interpreter is certified in good standing by the federal courts or by a state having a certification program that is equivalent to the program established under this section. [1993 c.687 §3; 2001 c.242 §3; 2007 c.70 §15]

Chapter 54

JUSTICE COURT JURY LIST

54.060 Making of jury lists. (1) The justice of the peace in each district shall, in January of each year, or in case of an omission or neglect so to do then as soon as possible thereafter, make a jury list for the district.

(2) A preliminary jury list shall be made by selecting names of inhabitants of the district by lot from the latest jury list sources. The jury list sources are the elector registration list for the district, copies of the Department of Transportation records for the county referred to in ORS 802.260 (2) furnished to the justice at county expense by the clerk of court, as defined in ORS 10.010, for the county and any other source that the justice determines will furnish a fair cross section of the inhabitants of the district.

(3) Jury list sources may not contain and the justice of the peace is not required to obtain information about individuals who are participants in the Address Confidentiality Program under ORS 192.820 to 192.868.

(4) From the preliminary jury list the names of those persons known not to be qualified by law to serve as jurors shall be deleted. The remaining names shall constitute the jury list. The preliminary jury list and jury list may be made by means of electronic equipment. [Amended by 1983 c.673 §14; 1987 c.681 §4; 2007 c.542 §15]

Chapter 79

SECURED TRANSACTIONS

Perfection and Priority

79.0303 UCC 9-303. Law governing perfection and priority of security interests in goods covered by a certificate of title. (1) This section applies to goods covered by a certificate of title, even if there is no other relationship between the jurisdiction under whose certificate of title the goods are covered and the goods or the debtor.

(2) Goods become covered by a certificate of title when a valid application for the certificate of title and the applicable fee are delivered to the appropriate authority. Goods cease to be covered by a certificate of title at the earlier of the time the certificate of title ceases to be effective under the law of the issuing jurisdiction or the time the goods become covered subsequently by a certificate of title issued by another jurisdiction.

(3) The local law of the jurisdiction under whose certificate of title the goods are covered governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in goods covered by a certificate of title from the time the goods become covered by the certificate of title until the goods cease to be covered by the certificate of title. [2001 c.445 §23]

Default

(Default and Enforcement of Security Interest)

79.0604 UCC 9-604. Procedure if security agreement covers real property or fixtures. (1) If a security agreement covers both personal and real property, a secured party may proceed:

(a) Under ORS 79.0601 to 79.0628 as to the personal property without prejudicing any rights with respect to the real property; or

(b) As to both the personal property and the real property in accordance with the rights with respect to the real property, in which case the other provisions of ORS 79.0601 to 79.0628 do not apply.

(2) Subject to subsection (3) of this section, if a security agreement covers goods that are or become fixtures, a secured party may proceed:

(a) Under ORS 79.0601 to 79.0628; or

(b) In accordance with the rights with respect to real property, in which case the other provisions of ORS 79.0601 to 79.0628 do not apply.

(3) Subject to the other provisions of ORS 79.0601 to 79.0628, if a secured party holding a security interest in fixtures has priority over all owners and encumbrancers of the real property, the secured party, after default, may remove the collateral from the real property.

(4) A secured party that removes collateral shall promptly reimburse any encumbrancer or owner of the real property, other than the debtor, for the cost of repair of any physical injury caused by the removal. The secured party need not reimburse the encumbrancer or owner for any diminution in value of the real property caused by the absence of the goods removed or by any necessity of replacing them. A person entitled to reimbursement may refuse permission to remove until the secured party gives adequate assurance for the performance of the obligation to reimburse. [2001 c.445 §102]

79.0607 UCC 9-607. Collection and enforcement by secured party. (1) If so agreed, and in any event after default, a secured party:

(a) May notify an account debtor or other person obligated on collateral to make payment or otherwise render performance to or for the benefit of the secured party;

(b) May take any proceeds to which the secured party is entitled under ORS 79.0315;

(c) May enforce the obligations of an account debtor or other person obligated on collateral and exercise the rights of the debtor with respect to the obligation of the account debtor or other person obligated on collateral to make payment or otherwise render performance to the debtor, and with respect to any property that secures the obligations of the account debtor or other person obligated on the collateral;

(d) If it holds a security interest in a deposit account perfected by control under ORS 79.0104 (1)(a), may apply the balance of the deposit account to the obligation secured by the deposit account; and

(e) If it holds a security interest in a deposit account perfected by control under ORS 79.0104 (1)(b) or (c), may instruct the bank to pay the balance of the deposit account to or for the benefit of the secured party.

(2) If necessary to enable a secured party to exercise under subsection (1)(c) of this section the right of a debtor to enforce a mortgage nonjudicially, the secured party may record in the office in which a record of the mortgage is recorded the secured party's sworn affidavit, with a copy of the security agreement attached thereto. The affidavit shall be in recordable form and state that:

- (a) A default has occurred; and
- (b) The secured party is entitled to enforce the mortgage nonjudicially.

(3) A secured party shall proceed in a commercially reasonable manner if the secured party:

(a) Undertakes to collect from or enforce an obligation of an account debtor or other person obligated on collateral; and

(b) Is entitled to charge back uncollected collateral or otherwise to full or limited recourse against the debtor or a secondary obligor.

(4) A secured party may deduct from the collections made pursuant to subsection (3) of this section reasonable expenses of collection and enforcement, including reasonable attorney fees and legal expenses incurred by the secured party.

(5) This section does not determine whether an account debtor, bank or other person obligated on collateral owes a duty to a secured party. [2001 c.445 §105]

79.0609 UCC 9-609. Secured party's right to take possession after default. (1) After default, a secured party:

(a) May take possession of the collateral; and

(b) Without removal, may render equipment unusable and dispose of collateral on a debtor's premises under ORS 79.0610.

(2) A secured party may proceed under subsection (1) of this section:

(a) Pursuant to judicial process; or

(b) Without judicial process, if it proceeds without breach of the peace.

(3) If so agreed, and in any event after default, a secured party may require the debtor to assemble the collateral and make it available to the secured party at a place to be designated by the secured party which is reasonably convenient to both parties. [2001 c.445 §107]

79.0610 UCC 9-610. Disposition of collateral after default. (1) After default, a secured party may sell, lease, license or otherwise dispose of any or all of the collateral in its present condition or following any commercially reasonable preparation or processing.

(2) Every aspect of a disposition of collateral, including the method, manner, time, place and other terms, must be commercially reasonable. If commercially reasonable, a secured party may dispose of collateral by public or private proceedings, by one or more contracts, as a unit or in parcels, and at any time and place and on any terms.

(3) A secured party may purchase collateral:

(a) At a public disposition; or

(b) At a private disposition only if the collateral is of a kind that is customarily sold on a recognized market or the subject of widely distributed standard price quotations.

(4) A contract for sale, lease, license or other disposition includes the warranties relating to title, possession, quiet enjoyment and the like which by operation of law accompany a voluntary disposition of property of the kind subject to the contract.

(5) A secured party may disclaim or modify warranties under subsection (4) of this section:

(a) In a manner that would be effective to disclaim or modify the warranties in a voluntary disposition of property of the kind subject to the contract of disposition; or

(b) By communicating to the purchaser a record evidencing the contract for disposition and including an express disclaimer or modification of the warranties.

(6) A record is sufficient to disclaim warranties under subsection (5) of this section if it indicates "There is no warranty relating to title, possession, quiet enjoyment or the like in this disposition" or uses words of similar import. [2001 c.445 §108]

79.0611 UCC 9-611. Notification before disposition of collateral. (1) As used in this section, "notification date" means the earlier of the date on which:

(a) A secured party sends to the debtor and any secondary obligor an authenticated notification of disposition; or

(b) The debtor and any secondary obligor waive the right to notification.

(2) Except as otherwise provided in subsection (4) of this section, a secured party that disposes of collateral under ORS 79.0610 shall send to the persons specified in subsection (3) of this section a reasonable authenticated notification of disposition.

(3) To comply with subsection (2) of this section, the secured party shall send an authenticated notification of disposition to:

(a) The debtor;

(b) Any secondary obligor; and

(c) If the collateral is other than consumer goods:

(A) Any other person from which the secured party has received, before the notification date, an authenticated notification of a claim of an interest in the collateral;

(B) Any other secured party or lienholder that, 10 days before the notification date,

held a security interest in or other lien on the collateral perfected by the filing of a financing statement that:

- (i) Identified the collateral;
- (ii) Was indexed under the debtor's name as of that date; and
- (iii) Was filed in the office in which to file a financing statement against the debtor covering the collateral as of that date; and

(C) Any other secured party that, 10 days before the notification date, held a security interest in the collateral perfected by compliance with a statute, regulation or treaty described in ORS 79.0311 (1).

(4) Subsection (2) of this section does not apply if the collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market.

(5) A secured party complies with the requirement for notification prescribed by subsection (3)(c)(B) of this section if:

(a) Not later than 20 days or earlier than 30 days before the notification date, the secured party requests, in a commercially reasonable manner, information concerning financing statements indexed under the debtor's name in the office indicated in subsection (3)(c)(B) of this section; and

(b) Before the notification date, the secured party:

(A) Did not receive a response to the request for information; or

(B) Received a response to the request for information and sent an authenticated notification of disposition to each secured party or other lienholder named in that response whose financing statement covered the collateral. [2001 c.445 §109]

79.0612 UCC 9-612. Timeliness of notification before disposition of collateral.

(1) Except as otherwise provided in subsection (2) of this section, a notification of disposition sent after default and 15 days or more before the earliest time of disposition, as set forth in the notification, is sent within a reasonable time before the disposition.

(2) In a transaction other than a consumer transaction, a notification of disposition sent after default and 10 days or more before the earliest time of disposition set forth in the notification is sent within a reasonable time before the disposition. [2001 c.445 §110]

79.0620 UCC 9-620. Acceptance of collateral in full or partial satisfaction of obligation; compulsory disposition of collateral. (1) Except as otherwise provided in subsection (7) of this section, a secured party may accept collateral in full or partial

satisfaction of the obligation it secures only if:

(a) The debtor consents to the acceptance under subsection (3) of this section;

(b) The secured party does not receive, within the time set forth in subsection (4) of this section, a notification of objection to the proposal authenticated by:

(A) A person to which the secured party was required to send a proposal under ORS 79.0621; or

(B) Any other person, other than the debtor, holding an interest in the collateral subordinate to the security interest that is the subject of the proposal;

(c) If the collateral is consumer goods, the collateral is not in the possession of the debtor when the debtor consents to the acceptance; and

(d) Subsection (5) of this section does not require the secured party to dispose of the collateral or the debtor waives the requirement pursuant to ORS 79.0624.

(2) A purported or apparent acceptance of collateral under this section is ineffective unless:

(a) The secured party consents to the acceptance in an authenticated record or sends a proposal to the debtor; and

(b) The conditions of subsection (1) of this section are met.

(3) For purposes of this section:

(a) A debtor consents to an acceptance of collateral in partial satisfaction of the obligation it secures only if the debtor agrees to the terms of the acceptance in a record authenticated after default; and

(b) A debtor consents to an acceptance of collateral in full satisfaction of the obligation it secures only if the debtor agrees to the terms of the acceptance in a record authenticated after default or the secured party:

(A) Sends to the debtor after default a proposal that is unconditional or subject only to a condition that collateral not in the possession of the secured party be preserved or maintained;

(B) In the proposal, proposes to accept collateral in full satisfaction of the obligation it secures; and

(C) Does not receive a notification of objection authenticated by the debtor within 20 days after the proposal is sent.

(4) To be effective under subsection (1)(b) of this section, a notification of objection must be received by the secured party:

(a) In the case of a person to which the proposal was sent pursuant to ORS 79.0621,

within 20 days after notification was sent to that person; and

(b) In other cases:

(A) Within 20 days after the last notification was sent pursuant to ORS 79.0621; or

(B) If a notification was not sent, before the debtor consents to the acceptance under subsection (3) of this section.

(5) A secured party that has taken possession of collateral shall dispose of the collateral pursuant to ORS 79.0610 within the time specified in subsection (6) of this section if:

(a) Sixty percent of the cash price has been paid in the case of a purchase-money security interest in consumer goods; or

(b) Sixty percent of the principal amount of the obligation secured has been paid in the case of a non-purchase-money security interest in consumer goods.

(6) To comply with subsection (5) of this section, the secured party shall dispose of the collateral:

(a) Within 180 days after taking possession; or

(b) Within any longer period to which the debtor and all secondary obligors have agreed in an agreement to that effect entered into and authenticated after default.

(7) In a consumer transaction, a secured party may not accept collateral in partial satisfaction of the obligation it secures. [2001 c.445 §118]

79.0621 UCC 9-621. Notification of proposal to accept collateral. (1) A secured party that desires to accept collateral in full or partial satisfaction of the obligation it secures shall send its proposal to:

(a) Any person from which the secured party has received, before the debtor consented to the acceptance, an authenticated notification of a claim of an interest in the collateral;

(b) Any other secured party or lienholder that, 10 days before the debtor consented to the acceptance, held a security interest in or other lien on the collateral perfected by the filing of a financing statement that:

(A) Identified the collateral;

(B) Was indexed under the debtor's name as of that date; and

(C) Was filed in the office or offices in which to file a financing statement against the debtor covering the collateral as of that date; and

(c) Any other secured party that, 10 days before the debtor consented to the acceptance, held a security interest in the collateral perfected by compliance with a statute,

regulation or treaty described in ORS 79.0311 (1).

(2) A secured party that desires to accept collateral in partial satisfaction of the obligation it secures shall send its proposal to any secondary obligor in addition to the persons described in subsection (1) of this section. [2001 c.445 §119]

79.0622 UCC 9-622. Effect of acceptance of collateral. (1) A secured party's acceptance of collateral in full or partial satisfaction of the obligation it secures:

(a) Discharges the obligation to the extent consented to by the debtor;

(b) Transfers to the secured party all of a debtor's rights in the collateral;

(c) Discharges the security interest or agricultural lien that is the subject of the debtor's consent and any subordinate security interest or other subordinate lien; and

(d) Terminates any other subordinate interest.

(2) A subordinate interest is discharged or terminated under subsection (1) of this section, even if the secured party fails to comply with this chapter. [2001 c.445 §120]

79.0623 UCC 9-623. Right to redeem collateral. (1) A debtor, any secondary obligor or any other secured party or lienholder may redeem collateral.

(2) To redeem collateral, a person shall tender:

(a) Fulfillment of all obligations secured by the collateral; and

(b) The reasonable expenses and attorney fees described in ORS 79.0615 (1)(a).

(3) A redemption may occur at any time before a secured party:

(a) Has collected collateral under ORS 79.0607;

(b) Has disposed of collateral or entered into a contract for its disposition under ORS 79.0610; or

(c) Has accepted collateral in full or partial satisfaction of the obligation it secures under ORS 79.0622. [2001 c.445 §121]

79.0624 UCC 9-624. Waiver. (1) A debtor or secondary obligor may waive the right to notification of disposition of collateral under ORS 79.0611 only by an agreement to that effect entered into and authenticated after default.

(2) A debtor may waive the right to require disposition of collateral under ORS 79.0620 (5) only by an agreement to that effect entered into and authenticated after default.

(3) Except in a consumer-goods transaction, a debtor or secondary obligor may

waive the right to redeem collateral under ORS 79.0623 only by an agreement to that effect entered into and authenticated after default. [2001 c.445 §122]

(Noncompliance With Chapter)

79.0625 UCC 9-625. Remedies for secured party's failure to comply with article. (1) If it is established that a secured party is not proceeding in accordance with this chapter, a court may order or restrain collection, enforcement or disposition of collateral on appropriate terms and conditions.

(2) Subject to subsections (3), (4) and (6) of this section, a person is liable for damages in the amount of any loss caused by a failure to comply with this chapter. Loss caused by a failure to comply may include loss resulting from the debtor's inability to obtain, or increased costs of, alternative financing.

(3) Except as otherwise provided in ORS 79.0628:

(a) A person that, at the time of the failure, was a debtor, was an obligor, or held a security interest in or other lien on the collateral may, in an individual action only, recover damages under subsection (2) of this section for its loss;

(b) If the collateral is consumer goods, a person that was a debtor or a secondary obligor at the time a secured party failed to comply with ORS 79.0601 to 79.0628 may, in an individual action only, recover an amount not less than \$1,000; and

(c) The court may award reasonable attorney fees to the prevailing party in an action under this subsection.

(4) A debtor whose deficiency is eliminated under ORS 79.0626 may recover damages for the loss of any surplus. However, a debtor or secondary obligor whose deficiency is eliminated or reduced under ORS 79.0626 may not otherwise recover under subsection (2) of this section for noncompliance with the provisions of ORS 79.0601 to 79.0628 relating to collection, enforcement, disposition or acceptance.

(5) Regarding a transaction that is a consumer transaction or in which the collateral is consumer goods, in addition to any damages recoverable under subsection (2) of this section, the debtor, consumer obligor, or person named as a debtor in a filed record, as applicable, may, in an individual action only, recover \$500 for each instance from a person that:

(a) Fails to comply with ORS 79.0208;

(b) Fails to comply with ORS 79.0209;

(c) After July 1, 2001, files a record that the person is not entitled to file under ORS

79.0509 (1) if the record is not released or terminated within 10 days after receipt by the secured party of an authenticated request from the debtor that explains the basis for the request;

(d) Fails to cause the secured party of record to file or send a termination statement as required by ORS 79.0513 (1) or (3); or

(e) Fails to comply with ORS 79.0616 (2) and whose failure is part of a pattern, or consistent with a practice, of noncompliance.

(6) A debtor or consumer obligor may recover damages under subsection (2) of this section and, in addition, \$500 in each case from a person that, without reasonable cause, fails to comply with a request under ORS 79.0210. A recipient of a request under ORS 79.0210 which never claimed an interest in the collateral or obligations that are the subject of a request under ORS 79.0210 has a reasonable excuse for failure to comply with the request within the meaning of this subsection.

(7) If a secured party fails to comply with a request regarding a list of collateral or a statement of account under ORS 79.0210, the secured party may claim a security interest only as shown in the list or statement included in the request as against a person that is reasonably misled by the failure. [2001 c.445 §123]

Chapter 83

RETAIL INSTALLMENT CONTRACTS

Motor Vehicles; Mobile Homes

83.510 Definitions for ORS 83.510 to 83.680. As used in ORS 83.510 to 83.680 except where the context otherwise requires:

(1) "Cash sale price" means the price for which the motor vehicle dealer would sell to the buyer, and the buyer would buy from the motor vehicle dealer, the motor vehicle that is covered by the retail installment contract, if the sale were a sale for cash instead of a retail installment sale. The cash sale price may include any taxes, registration, license and other fees and charges for accessories and their installation and for delivering, servicing, repairing or improving the motor vehicle.

(2) "Finance charge" means that part of the time sale price that exceeds the aggregate of the cash sale price, the amounts, if any, included in a retail installment sale for insurance and other benefits, and official fees.

(3)(a) "Financing agency" means a person engaged, in whole or in part, in purchasing or otherwise acquiring retail installment

contracts or retail lease agreements from one or more motor vehicle dealers or retail lessors. "Financing agency" includes, but is not limited to, financial institutions, as defined in ORS 706.008, and consumer credit companies, if so engaged. "Financing agency" also includes a motor vehicle dealer or retail lessor engaged, in whole or in part, in the business of holding retail installment contracts or retail lease agreements acquired from retail buyers or retail lessees.

(b) "Financing agency" does not include the pledgee or other holder of more than one retail installment contract or retail lease agreement pledged or otherwise given by a motor vehicle dealer or a transferee from the motor vehicle dealer to a lender as collateral security for a loan made to the motor vehicle dealer or transferee of the motor vehicle dealer.

(4) "Holder" of a retail installment contract or retail lease agreement means the motor vehicle dealer or retail lessor of the motor vehicle covered by the contract or lease or, if the contract or lease is purchased or otherwise acquired by a financing agency or other assignee, the financing agency or other assignee.

(5) "Mobile home" means a structure, transportable in one or more sections, that is eight body feet or more in width and 32 body feet or more in length, and that is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities. "Mobile home" includes the plumbing, heating, air conditioning and electrical systems contained within the structure.

(6)(a) "Motor vehicle" or "vehicle" means:

(A) A self-propelled device used for transportation of person or property upon a public highway.

(B) A trailer, semitrailer, mobile home or trailer home.

(b) "Motor vehicle" or "vehicle" does not include tractors, power shovels, road machinery, agricultural machinery, boat trailers or other machinery not designed primarily for highway transportation, which may be used incidentally to transport persons or property on a public highway, or devices that move upon or are guided by a track or travel through the air.

(7) "Motor vehicle dealer" means any person who sells, trades, leases, displays or offers for sale, trade, lease or exchange motor vehicles pursuant to a retail installment contract or retail lease agreement or who offers to negotiate or purchase motor vehicles on behalf of third parties pursuant to a

retail installment contract or retail lease agreement.

(8) "Official fees" means the filing or other fees required by law to be paid to a public officer to perfect the interest or lien, in or on a motor vehicle, retained or taken by a motor vehicle dealer under a retail installment contract or retail lease agreement, and to file or record a release, satisfaction or discharge of the contract.

(9) "Person" means individual, partnership, corporation, association or other group, however organized.

(10) "Retail buyer" or "buyer" means a person who buys a motor vehicle from a motor vehicle dealer and who executes a retail installment contract in connection therewith.

(11) "Retail installment contract" or "contract" means an agreement, entered into in this state, pursuant to which the title to, the property in or a lien upon a motor vehicle, which is the subject matter of a retail installment sale, is retained or taken by a motor vehicle dealer from a retail buyer as security, in whole or in part, for the buyer's obligation. "Retail installment contract" or "contract" includes a chattel mortgage, a conditional sales contract and a contract for the bailment or leasing of a motor vehicle by which the bailee or lessee contracts to pay as compensation for its use a sum substantially equivalent to or in excess of its value and by which it is agreed that the bailee or lessee is bound to become, or for no other or for a merely nominal consideration has the option of becoming, the owner of the motor vehicle upon full compliance with the terms of the contract.

(12)(a) "Retail installment sale" or "sale" means a sale of a motor vehicle by a motor vehicle dealer to a retail buyer for a time sale price payable in one or more installments, payment of which is secured by a retail installment contract. "Retail installment sale" or "sale" includes a bailment or leasing as described in subsection (11) of this section.

(b) "Retail installment sale" or "sale" does not include a sale of a motor vehicle for resale in the ordinary course of the buyer's business.

(13) "Retail lease" means a lease of a motor vehicle by a retail lessor to a retail lessee, payment of which is secured by a retail lease agreement. "Retail lease" does not include a lease that constitutes a retail installment contract.

(14) "Retail lease agreement" means an agreement entered into in this state between a retail lessor and a retail lessee for the lease of a motor vehicle. The agreement shall be in the form of a bailment or lease for the

use of a motor vehicle by an individual for personal, family or household purposes, whether or not the retail lessee has the option to purchase or otherwise become the owner of the motor vehicle at the expiration of the lease.

(15) "Retail lessee" means a person who leases a motor vehicle from a retail lessor by entering into a retail lease agreement.

(16) "Retail lessor" means a motor vehicle dealer who transfers an interest in or supplies a motor vehicle to a retail lessee, regardless of whether or not the motor vehicle dealer is identified as the retail lessor on the retail lease agreement.

(17) "Time sale price" means the aggregate of the cash sale price of the motor vehicle, the amount, if any, included for insurance and other benefits, official fees and the finance charge. [1957 c.625 §1; 1979 c.304 §1; 1979 c.816 §1a; 1987 c.674 §1; 1997 c.631 §383; 2001 c.104 §25; 2001 c.117 §1]

83.520 Form and contents of retail installment contract. (1) A retail installment contract shall be in writing, shall contain all the agreements of the parties, shall contain the names of the motor vehicle dealer and the buyer, the place of business of the motor vehicle dealer, the residence or place of business of the buyer as specified by the buyer and a description of the motor vehicle including its make, year model, model and identification numbers or marks, and shall be signed by the buyer and the motor vehicle dealer.

(2) The printed portion of the contract shall be in at least 8-point type. The contract shall contain in printing or writing of a size equal to at least 10-point bold type, the following:

(a) Both at the top of the contract and directly above the space reserved for the signature of the buyer, the words "RETAIL INSTALLMENT CONTRACT";

(b) A specific statement that liability insurance coverage for bodily injury and property damage caused to others is not included, if that is the case; and

(c) The following notice:

NOTICE TO THE BUYER

Do not sign this contract before you read it or if it contains any blank space, except that:

(1) If delivery of the motor vehicle or mobile home is to be made to you after this contract is signed, the serial number or other identifying information and the due date of the first installment may be filled in at the time of delivery; and

(2) If the name of the financing agency is not known at the time the contract is executed, the name of the financing agency may be inserted in the contract on or about the date the name of the financing agency is known.

You are entitled to a copy of this contract.

You have the right to pay off in advance the full amount due and to obtain a partial refund of the finance charge.

(3) The contract shall contain the following items:

(a) The cash sale price of the motor vehicle which is the subject matter of the retail installment sale.

(b) The amount of the buyer's down payment, itemizing the amounts, if any, paid or credited in money or in goods and containing a brief description of the goods traded in.

(c) The difference between the items set forth in paragraphs (a) and (b) of this subsection.

(d) The amount, if any, included for insurance and other benefits, specifying the coverages and benefits. For purposes of this paragraph, "other benefits" includes any amounts actually paid or to be paid by the motor vehicle dealer pursuant to an agreement with the buyer to discharge a security interest, lien or lease interest on property traded in.

(e) The amount, if any, of official fees.

(f) The principal balance, which is the sum of the items set forth in paragraphs (c), (d) and (e) of this subsection.

(g) The amount of the finance charge.

(h) The time balance, which is the sum of the items set forth in paragraphs (f) and (g) of this subsection.

(i) The time sale price.

(j) A plain and concise statement of the amount in dollars of each installment or future payment to be made by the buyer, the number of installments required, and the date or dates at which, or period or periods in which, the installments are due.

(4) The contract may contain additional items to explain the calculations involved in determining the stated time balance to be paid by the buyer. [1957 c.625 §§2, 3, 5; 1979 c.816 §2; 1995 c.519 §3; 1999 c.525 §1; 2001 c.117 §5]

83.530 Filling blanks. (1) Except as provided in subsection (2) of this section, a retail installment contract shall not be signed by any party to the contract when the contract contains blank spaces to be filled in after the contract is executed.

(2) A retail installment contract may be signed by any party to the contract when the contract contains blank spaces to be filled in after the contract is executed under the following conditions:

(a) If delivery of the motor vehicle is not made at the time of execution, the identifying numbers or marks of the motor vehicle or similar information and the due date of the first installment may be inserted in the contract on or about the date of delivery.

(b) If the name of the financing agency is not known at the time the contract is executed, the name of the financing agency may be inserted in the contract on or about the date the name of the financing agency is known. [1957 c.625 §8; 1995 c.519 §4]

83.540 Delivery of copy of contract to buyer. The motor vehicle dealer shall deliver to the buyer, or mail to the buyer at the address shown on the contract, a copy of the contract signed by the motor vehicle dealer. Until the motor vehicle dealer does so, a buyer who has not received delivery of the motor vehicle shall have an unconditional right to cancel the contract and to receive immediate refund of any amount paid and redelivery of all goods delivered or traded in to the motor vehicle dealer on account of or in contemplation of the contract. An acknowledgment by the buyer of delivery of a copy of the contract shall be printed or written in a size equal to at least 10-point bold type and, if contained in the contract, shall also appear directly above the legend required above the buyer's signature by ORS 83.520 (2)(a). [1957 c.625 §4; 2001 c.117 §6]

83.560 Finance charge. A motor vehicle dealer may, in a retail installment contract, contract for and charge, receive and collect a finance charge agreed upon by the motor vehicle dealer and buyer. [1957 c.625 §§19,20,21; 1979 c.816 §3; 1981 c.412 §2; 2001 c.117 §7]

83.565 Finance charge computed by actuarial method; requirements; notice. (1) Notwithstanding any other provision of ORS 83.510 to 83.680 and 83.820 to 83.895, a motor vehicle dealer, in a retail installment contract, may contract for and charge, receive and collect a finance charge computed by the actuarial method.

(2) When a retail installment contract provides for a finance charge computed by the actuarial method:

(a) The retail installment contract may provide for any other charge, cost or fee allowed under ORS 83.510 to 83.680 and 83.820 to 83.895, in addition to the finance charge.

(b) The amount to be disclosed as the finance charge and used as the finance charge component of the other amounts disclosed pursuant to ORS 83.510 to 83.680 and 83.820

to 83.895 shall be the amount of the finance charge to be paid assuming all payments are made exactly as agreed.

(c) The retail installment contract for the sale of a mobile home may provide that the holder may refuse to accept prepayments of less than the entire amount owed under the retail installment contract if the prepayments:

(A) Are tendered on dates other than a specified date each month; and

(B) Are not in amounts equal to the principal portion of one or more of the earliest unmaturing monthly installments.

(d) The contract shall contain the following notice in printing or writing of a size equal to at least 10-point bold type, in lieu of the notice required by ORS 83.520 (2)(c):

NOTICE TO THE BUYER

Do not sign this contract before you read it or if it contains any blank space, except that:

(1) If delivery of the motor vehicle or mobile home is to be made to you after this contract is signed, the serial number or other identifying information and the due date of the first installment may be filled in at the time of delivery; and

(2) If the name of the financing agency is not known at the time the contract is executed, the name of the financing agency may be inserted in the contract on or about the date the name of the financing agency is known.

You are entitled to a copy of this contract.

You have the right to pay in advance the full amount due and if you do so you may save a portion of the finance charge.

(e) The refund credit provisions of ORS 83.620 shall not apply. [1981 c.910 §4; 1995 c.519 §5; 2001 c.117 §8]

83.580 Insurance. (1) The amount, if any, included for automobile insurance, shall not exceed the premiums chargeable in accordance with rate filings made by the insurer with the Director of the Department of Consumer and Business Services for such insurance.

(2) The amount, if any, included for life, health and accident or other insurance, other than automobile insurance, shall not exceed the premiums charged by the insurer.

(3) Except as provided in ORS 743.377, the motor vehicle dealer or financing agency, if an amount for automobile or other insur-

ance on the motor vehicle is included in a retail installment contract, shall within 30 days after execution of the retail installment contract send or cause to be sent to the buyer a policy or policies or certificate of insurance, written by an insurance company authorized to do business in this state, clearly setting forth the amount of the premium, the kind or kinds of insurance and the scope of the coverage and all the terms, exceptions, limitations, restrictions and conditions of the contract or contracts of insurance. The buyer of a motor vehicle under a retail installment contract shall have the privilege of purchasing such insurance from an insurance producer of the selection of the buyer and of selecting an insurance company acceptable to the motor vehicle dealer; provided, however, that the inclusion of the insurance premium in the retail installment contract when the buyer selects the insurance producer or company, shall be optional with the motor vehicle dealer and in such case the motor vehicle dealer or financing agency shall have no obligation to send, or cause to be sent, to the buyer the policy or certificate of insurance.

(4) If an insurance policy or certificate that was obtained for an amount included in the retail installment contract is canceled, the unearned insurance premium refund received by the holder of the contract shall be credited to the last maturing installments of the retail installment contract except to the extent applied toward payment for similar insurance protecting the interests of the buyer or of the buyer and the holder of the contract. [1957 c.625 §6; 1967 c.359 §677; 2001 c.117 §9; 2003 c.364 §48]

83.590 Delinquency and collection charges. The holder of a retail installment contract, if the contract so provides, may collect a delinquency charge on each installment in default for a period of 10 days or longer. The delinquency charge for any installment shall not exceed five percent of the delinquent installment. In addition to the delinquency charge, the retail installment contract may provide for the payment of reasonable collection costs. The collection costs may include the payment of reasonable attorney fees, if the contract is referred to an attorney not a salaried employee of the holder of the contract for collection, plus the court costs and disbursements. [1957 c.625 §7; 1981 c.552 §1]

83.600 Schedule of payments; receipts. Upon written request from the buyer, the holder of a retail installment contract shall give or forward to the buyer a written statement of the dates and amounts of payments made and the total amount unpaid on the contract. A buyer shall be given a written

receipt for any payment when made in cash. [1957 c.625 §12]

83.610 Delivery to buyer of instrument indicating full payment; release of security. After the payment of all sums for which the buyer is obligated under a retail installment contract or other security agreement, as defined in ORS 79.0102, and upon written demand made by the buyer, the holder of such contract or agreement shall mail to the buyer at the buyer's last-known address, good and sufficient instruments to indicate payment in full and to release all security in the motor vehicle. This section is supplementary to and is not restrictive of ORS 86.440, 86.460 and 803.097 or of ORS chapter 79. [1957 c.625 §23; 1961 c.726 §400; 1983 c.338 §880; 1989 c.148 §5; 2001 c.445 §161]

83.620 Voluntary prepayment by buyer; refund. (1) Notwithstanding the provisions of a retail installment contract to the contrary, the buyer may pay in full at any time before maturity the obligation contained in the retail installment contract. Upon the premature payment, the buyer shall receive a refund credit. The amount of the refund credit shall not be less than the total finance charge to maturity provided for in the contract, less the greater of:

(a) Ten percent of the amount financed or \$75, whichever is less; or

(b) Either of the following, at the discretion of the motor vehicle dealer or holder:

(A) The finance charge earned to the date of prepayment, computed by applying the effective rate on the contract to the actual principal balances outstanding, for the periods of time such balances were actually outstanding. In determining the effective rate, the holder may apply to the scheduled payments the actuarial method by which each scheduled payment is applied first to the accrued and unpaid finance charges and any amount remaining is applied to the reduction of the principal balance.

(B) The finance charge earned to the installment due date nearest the date of prepayment, computed by applying the effective rate on the contract to the actual principal balances outstanding, for the periods of time the balances were actually outstanding. For purposes of rebate computations under this subparagraph, the installment due date preceding the date of prepayment shall be considered to be nearest if prepayment occurs 15 days or less after that installment date. If prepayment occurs more than 15 days after the preceding installment due date, the next succeeding installment due date shall be considered to be nearest to the date of prepayment. In determining the effective rate, the holder may apply to the scheduled payments the actuarial method, by which each

scheduled payment is applied first to the accrued and unpaid finance charges and any amount remaining is applied to reduction of the principal balance.

(2) When the amount of the credit for premature payment is less than \$2, no refund need be made.

(3) This section does not prohibit the holder of a retail installment contract from collecting any charge, cost or fee under ORS 83.590. [1957 c.625 §24; 1977 c.692 §1; 1981 c.910 §2; 1983 c.432 §2; 2001 c.117 §10]

83.630 Extension of scheduled due date; deferment of scheduled payment; refinance charge. The holder of a retail installment contract, upon agreement with the buyer, may extend the scheduled due date or defer the scheduled payment of all or part of any installment or installments. In any such case, the holder may restate the amount of the installments and the time schedule therefor, and collect as a refinance charge for the extension or deferment, a flat service fee not to exceed \$15 and a total additional charge on the balance being extended not exceeding an amount equal to one-twelfth of the annual percentage rate originally charged on the agreement for each month the payments on the agreement are being extended or deferred. [1957 c.625 §25; 1981 c.552 §2; 1995 c.519 §6]

83.635 Acceptance of retail installment contract by lender. If a retail installment contract for the purchase of a motor vehicle meets the requirements of ORS 83.510 to 83.680 and contains information required by federal law to be disclosed in a retail installment contract for the purchase of a motor vehicle, the retail installment contract shall be accepted for consideration by any lender, except for lenders licensed and regulated under the provisions of ORS chapter 725, to whom application for credit relating to the retail installment contract is made. [1995 c.519 §2]

83.650 Effect of negotiation of notes on rights against motor vehicle dealer. (1) No retail installment contract shall require or entail the execution, by the buyer, of any note or series of notes, which when separately negotiated will cut off as against third parties any right of action or defense which the buyer may have against the motor vehicle dealer.

(2) The rights of a holder in due course of any negotiable instrument executed contrary to subsection (1) of this section are not impaired by reason of the violation of subsection (1) of this section, but the buyer may bring an action against the motor vehicle dealer for the recovery of any loss or expense incurred by reason of the violation of subsection (1) of this section. The buyer's action

may be joined with any other right of action the buyer has against the motor vehicle dealer arising out of the installment sale. The court may award reasonable attorney fees to the prevailing party in an action under this section. [1957 c.625 §9; 1995 c.618 §47; 2001 c.117 §11]

83.660 Acceleration provision. No provision in a retail installment contract by which, in the absence of the buyer's default, the holder may, arbitrarily and without reasonable cause, accelerate the maturity of any part or all of the time balance is enforceable. This section does not prohibit provisions in a retail installment contract accelerating any part or all of the time balance in the event of sale or transfer, or removal outside the state of the motor vehicle covered by the contract. [1957 c.625 §13]

83.670 Unenforceable contract provisions. (1) No provision in a retail installment contract for confession of judgment, power of attorney therefor, or wage assignment is enforceable.

(2) No provision in a retail installment contract that authorizes a motor vehicle dealer or holder of the contract or other person acting on the behalf of the motor vehicle dealer or holder to enter upon the buyer's premises unlawfully, or to commit any breach of the peace in the repossession of a motor vehicle is enforceable.

(3) No provision in a retail installment contract by which the buyer waives any right of action against the motor vehicle dealer or holder of the contract, or other person acting on the behalf of the motor vehicle dealer or holder, for any illegal act committed in the collection of payments under the contract or in the repossession of the motor vehicle is enforceable.

(4) No provision in a retail installment contract by which the buyer executes a power of attorney appointing the motor vehicle dealer or holder of the contract, or other person acting on the behalf of the motor vehicle dealer or holder, as the buyer's agent in collection of payments under the contract or in the repossession of the motor vehicle, is enforceable.

(5) No provision in a retail installment contract relieving the motor vehicle dealer from liability for any legal remedies that the buyer may have had against the motor vehicle dealer under the contract, or any separate instrument executed in connection therewith, is enforceable. [1957 c.625 §§14,15,16,17,18; 2001 c.117 §12]

83.680 Waiver of provisions of ORS 83.510 to 83.680. Any waiver of the provisions of ORS 83.510 to 83.680 shall be unenforceable and void. [1957 c.625 §28]

Miscellaneous

83.850 Definitions for ORS 83.850 and 83.860. As used in ORS 83.850 and 83.860:

(1) "Financing agency," "motor vehicle dealer," "retail lease," "retail lessee" and "retail lessor" have the meanings given those terms in ORS 83.510.

(2) "Goods" has the meaning for that term provided in ORS 83.010.

(3) "Motor vehicle" means a motor vehicle as defined in ORS 83.510 purchased primarily for personal, family or household purposes and not primarily for business or commercial purposes.

(4) A loan is made "in close connection with a sale of goods or motor vehicles" if:

(a) The lender directly or indirectly controls, is controlled by or is under common control with the seller or motor vehicle dealer, unless the relationship is remote and is not a factor in the transaction;

(b) The lender gives a commission, rebate or credit in any form to a seller or motor vehicle dealer who refers the borrower to the lender, other than payment of the proceeds of the loan jointly to the seller or motor vehicle dealer and the borrower;

(c) The lender is related to the seller or motor vehicle dealer by blood or marriage;

(d) The seller or motor vehicle dealer directly and materially assists the buyer in obtaining the loan;

(e) The seller or motor vehicle dealer prepares documents that are given to the lender and used in connection with the loan; or

(f) The lender supplies documents to the seller or motor vehicle dealer used by the consumer in obtaining the loan.

(5) A lease is made or funded "in close connection with a retail lease of a motor vehicle" if:

(a) The retail lessor or financing agency directly or indirectly controls, is controlled by or is under common control of the motor vehicle dealer supplying the vehicle to the retail lessee, unless the relationship is remote and is not a factor in the transaction;

(b) The retail lessor or financing agency gives a commission, rebate, financing reserve or credit in any form to a motor vehicle dealer who refers the retail lessee to the retail lessor or financing agency, other than payment of the proceeds of the lease;

(c) The retail lessor or financing agency is related to the motor vehicle dealer by blood or marriage;

(d) The motor vehicle dealer directly or materially assists the retail lessee in obtaining the lease;

(e) The motor vehicle dealer prepares documents that are given to the retail lessor or financing agency and used in connection with the lease; or

(f) The retail lessor or financing agency supplies documents to the motor vehicle dealer used by the retail lessee in obtaining the lease.

(6) Credit extended pursuant to a credit card issued by a lender is not a loan "in close connection with a sale of goods or motor vehicles" or a loan "in close connection with a retail lease of a motor vehicle" unless the credit card is issued contemporaneously with the extension of the credit. [1973 c.626 §1; 2001 c.117 §3]

83.860 Applicability of claims and defenses of borrower or lessee when loan made or lease funded in close connection with sale or retail lease. (1) If a lender makes a loan in close connection with the sale of goods or motor vehicles, the lender is subject to all claims and defenses of the borrower that the borrower as buyer has against the seller or motor vehicle dealer arising out of the sale, notwithstanding any agreement to the contrary. However, the lender's liability to the borrower shall not exceed the amount owing to the lender, exclusive of unearned interest, at the time the claim or defense is asserted.

(2) If a lender who makes a loan in close connection with a sale of goods or motor vehicles negotiates or assigns any note or other instrument taken as evidence of the obligation of the borrower, the holder of the note or other instrument shall be subject to the claims or defenses of the borrowers set forth in subsection (1) of this section. However, the liability of the holder of the note or other instrument to the borrower shall not exceed the amount owing to the lender exclusive of unearned interest at the time the claim or defense is asserted.

(3) If a financing agency makes or funds a lease in close connection with a retail lease of a motor vehicle, the financing agency is subject to all claims and defenses that the retail lessee has against the retail lessor arising out of the retail lease, notwithstanding any agreement to the contrary. However, the financing agency's liability to the retail lessee shall not exceed the amount owing to the financing agency, exclusive of unearned interest, at the time the claim or defense is asserted.

(4) If a financing agency that makes or funds a loan in close connection with a retail lease of a motor vehicle negotiates or assigns

any note or other instrument taken as evidence of the obligation of the retail lessee, the holder of the note or other instrument shall be subject to the claims or defenses of a retail lessee set forth in subsection (3) of this section. However, the liability of the holder of the note or other instrument to a retail lessee shall not exceed the amount owing to the financing agency exclusive of unearned interest at the time the claim or defense is asserted. [1973 c.626 §2; 2001 c.117 §4]

83.875 Definitions for ORS 83.875, 83.880, 83.890 and 83.895. As used in ORS 83.875, 83.880, 83.890 and 83.895:

(1) "Goods" has the meaning for that term provided in ORS 83.010.

(2) "Motor vehicles" means a motor vehicle as defined in ORS 83.510, purchased primarily for personal, family or household purposes and not primarily for business or commercial purposes.

(3) "Retail charge agreement" has the meaning for that term provided by ORS 83.010, and includes a revolving charge agreement or charge agreement.

(4) "Retail installment contract" or "contract" means a retail installment contract for the sale of motor vehicles, goods or services.

(5) "Seller" includes a motor vehicle dealer as defined in ORS 83.510.

(6) "Services" has the meaning given that term in ORS 83.010. [1977 c.274 §5; 1981 c.910 §5; 2001 c.117 §15]

83.880 Sale of motor vehicles, goods or services as time sale rather than loan. A retail installment contract or retail charge agreement for the sale of motor vehicles, goods or services constitutes a bona fide time sale rather than a loan or a use of money; provided that if the contract covers motor vehicles, goods or services purchased primarily for personal, family or household use and not primarily for commercial or business use, the contract also clearly and specifically discloses both a cash price, using the term "cash price" or "cash sale price," and a deferred payment price, using the term "deferred payment price" or "time sale price," or if the agreement complies with ORS 83.080. This section shall apply notwithstanding that the contract is intended to be transferred, or is transferred, to a holder pursuant to a business relationship characterized by one or more of the following:

(1) All or any part of the seller's contracts are transferred to the holder;

(2) The holder provides contract forms to the seller and instructions for the use of the forms;

(3) The holder investigates the credit-worthiness of the buyer before or after the sale;

(4) The price the holder pays the seller for the contract is more than, equal to, or less than that which the retail buyer has contracted to pay to the seller;

(5) The transfer to the holder takes place concurrently with or within a short time of the sale;

(6) The transfer is with or without recourse to the seller; or

(7) The seller purchases services or borrows money from the holder. [1977 c.274 §2; 1981 c.910 §6; 1987 c.674 §2]

83.885 Sale of motor vehicles, personal property or services for business or commercial purposes as time sale rather than loan. A retail installment contract for the sale of motor vehicles, other personal property or services purchased primarily for business or commercial purposes, which discloses both a cash price and a deferred payment or time price, constitutes a bona fide time sale rather than a loan or use of money, notwithstanding that the contract is intended to be transferred, or is transferred, to a holder pursuant to a business relationship however characterized. [1977 c.274 §6]

83.890 Notice required in contract when seller intends to transfer contract.

(1) If the seller intends to transfer the retail installment contract to a holder, who has agreed with the seller to collect payments directly from the retail buyer, the contract shall contain the following notice which shall be in at least 8-point type, or elite typewriter type, and be located on the same side of the page as the customer's signature:

NOTICE: The seller intends to sell this contract to (insert name and mailing address of holder) which, if it buys the contract, will become the owner of the contract and your creditor. After the sale of this contract, all questions concerning either terms of the contract or payments should be directed to the buyer of the contract at the address indicated above.

(2) If the contract is transferred to a holder other than the one identified in the notice, or is retained by the seller, the seller shall cause notice in writing of the name and address of the actual holder to be delivered to the retail buyer within 10 days of the decision. [1977 c.274 §3]

83.895 Effect of seller's failure to provide notice. Any seller who violates ORS 83.890 shall be subject to the provisions contained in ORS 83.170. [1977 c.274 §4]

Chapter 87

STATUTORY LIENS

Possessory Chattel Liens

87.152 Possessory lien for labor or material expended on chattel. A person who makes, alters, repairs, transports, stores, pastures, cares for, provides services for, supplies materials for or performs labor on a chattel at the request of the owner or lawful possessor of the chattel has a lien on that chattel in the possession of the person for the reasonable or agreed charges for labor, materials or services of the person, and the person may retain possession of the chattel until those charges are paid. [1975 c.648 §3]

87.156 Innkeeper's lien. (1) Except as provided in subsection (2) of this section, the keeper of an inn, hotel or motel has a lien on the chattels brought into the inn, hotel or motel belonging to or under the control of a guest or boarder for the reasonable or agreed charges due the keeper from the guest or boarder for accommodation, board and lodging, services, money, labor and materials furnished at the request of the guest or boarder by the keeper. The keeper may retain possession of the chattels until those charges are paid.

(2)(a) The keeper may not retain prescription or nonprescription medications, medical equipment or apparatus, food or food stamps or children's clothing or accessories after the guest or boarder requests return of the property.

(b) If the keeper retains property in violation of this subsection, the keeper waives any claim to unpaid charges against the guest or boarder.

(c) In any action brought by the guest or boarder to compel the return of the property or to recover damages based on its retention, the prevailing party may recover attorney fees. [1975 c.648 §4; 1989 c.590 §2]

87.162 Landlord's lien. Except as provided in ORS 87.156 and 90.120, a landlord has a lien on all chattels, except wearing apparel as defined in ORS 18.345 (1), owned by a tenant or occupant legally responsible for rent, brought upon the leased premises, to secure the payment of rent and such advances as are made on behalf of the tenant. The landlord may retain the chattels until the amount of rent and advances is paid. [1975 c.648 §5; 1981 c.258 §1; 1997 c.374 §8]

87.166 Attachment of liens. (1) Except as provided in subsection (2) of this section, the liens created by ORS 87.152 to 87.162 attach to the chattels described in those sections when:

(a) The services or labor are performed or the materials or money are furnished by the lien claimant to the lien debtor; and

(b) The charges for the services or labor performed and materials or money furnished are due and the lien debtor either knows or should reasonably know that the charges are due.

(2) The lien created by ORS 87.162 attaches to the chattels described in that section on the 20th day after rents or advances occur or attaches when the occupant or tenant attempts to remove the chattels from the premises while there are unpaid rents or advances. A person claiming a lien under ORS 87.162 may take the chattels subject to that lien into the possession of the person when the lien attaches or at any time thereafter. [1975 c.648 §6]

87.172 Time period before foreclosure allowed. (1) Except as otherwise provided in this section, a person claiming a lien under ORS 87.152 to 87.162 must retain the chattel that is subject to the lien for at least 60 days after the lien attaches to the chattel before foreclosing the lien.

(2) A person claiming a lien under ORS 87.152 for cost of care, materials and services bestowed on an animal must retain the animal for at least 30 days after the lien attaches to the animal before foreclosing the lien. If the animal is a dog or cat, the period shall be at least 15 days.

(3) A person claiming a lien under ORS 87.152 for the cost of removing, towing or storage of a vehicle that is appraised by a person who holds a certificate issued under ORS 819.480 to have a value of:

(a) \$1,000 or less but more than \$500, must retain the vehicle at least 30 days after the lien attaches to the vehicle before foreclosing the lien.

(b) \$500 or less, must retain the vehicle at least 15 days after the lien attaches to the vehicle before foreclosing the lien. [1975 c.648 §7; 1979 c.401 §1; 1981 c.861 §1; 1983 c.338 §881; 1993 c.326 §9; 1995 c.758 §18; 2005 c.738 §7]

87.176 Fees for storage of chattel; notice to lien debtor; effect of failure to comply. (1) When the lien claimed under ORS 87.152 to 87.162 is for other than the storage of a chattel, if the lien claimant incurs expenses in storing the chattel prior to foreclosure, the lien claimant may charge reasonable fees for the storage of the chattel for a period not exceeding six months from the date that the lien attaches to the chattel.

A lien claimant seeking to recover storage fees for storage expenses incurred prior to foreclosure shall send a written notice, within 20 days from the date that the storage fees began to accrue, to the lien debtor and every other person that requires notification under ORS 87.196. The claimant shall transmit the notice by certified mail. A person notified under ORS 87.196 need not receive the notice within the 20-day period, but within a reasonable time. If the lien claimant fails to comply with the notice requirements of this subsection, the lien claimant is limited to recovering reasonable fees for the storage of the chattel prior to foreclosure for a period of time not exceeding 20 days from the date that the lien attached to the chattel.

(2) When the lien claimed under ORS 87.152 to 87.162 is for the storage of a chattel, the lien claimant shall send a written notice stating that storage fees are accruing, within 20 days after the chattel has been placed in storage, to the lien debtor and every other person that requires notification under ORS 87.196. The claimant shall transmit the notice by certified mail. A person notified under ORS 87.196 need not receive the notice within the 20-day period, but within a reasonable time. If the claimant fails to comply with the notice requirements of this subsection, the amount of the claimant's lien shall be limited to a sum equal to the reasonable storage expenses incurred within the 20-day period. [1975 c.648 §8; 1993 c.385 §1]

87.177 Bond or deposit of money for lien for storage of chattel; amount; notice to lien claimant; filing affidavit with county officer. (1) When a lien claimed under ORS 87.152 to 87.162 is for the storage of a chattel and the amount of the lien claimed is \$750 or more, the lien debtor, or any other interested person, may file with the recording officer of the county in which the lien claimant obtained possession of the chattel subject to the lien from the lien debtor a bond executed by a corporation authorized to issue surety bonds in the State of Oregon to the effect that the principal or principals on the bond shall pay the amount of the claim and all costs and attorney fees that are awarded against the chattel on account of the lien. The bond shall be in an amount not less than 200 percent of the amount claimed under the lien for the storage of the chattel.

(2)(a) In lieu of the surety bond provided for in subsection (1) of this section, when a lien claimed under ORS 87.152 to 87.162 is for the storage of a chattel and the amount of the lien claimed is \$750 or more, the lien debtor, or any other interested person, may

deposit with the treasurer of the county in which the lien claimant obtained possession of the chattel subject to the lien from the lien debtor a sum of money or its equivalent equal in value to 200 percent of the amount claimed under the lien for the storage of the chattel.

(b) The court in which any proceeding to foreclose the lien for the storage of the chattel may be brought may, upon notice and upon motion by a person who makes a deposit under paragraph (a) of this subsection, order the money invested in such manner as the court may direct. A person who makes a deposit under paragraph (a) of this subsection shall be entitled to any income from the investments and the treasurer of the county shall pay the income when received to the depositor without order.

(3) A bond or money may be filed or deposited under subsection (1) or (2) of this section at any time after a lien for the storage of a chattel is claimed under ORS 87.152 to 87.162 and the amount of the lien claimed is \$750 or more.

(4) A person who files a bond or deposits money under subsections (1) to (3) of this section shall cause to be served upon the lien claimant a notice of the filing or deposit. If the person files a bond, the notice shall include a copy of the bond. The notice shall be filed not later than 20 days after the filing or deposit and shall state the location and time of the filing or deposit.

(5) If a person does not notify the lien claimant as required by subsection (4) of this section, the filing of the bond or the deposit of money is of no effect and the provisions of subsections (1) to (3) of this section do not apply in a suit to foreclose the lien for which the filing or deposit is made.

(6) When a person files a bond with the recording officer of a county under subsections (1) to (3) of this section and serves notice of the filing upon the lien claimant under subsections (4) and (5) of this section, the person shall file with the same recording officer an affidavit stating that the notice was served.

(7) When a person deposits money with the treasurer of a county under subsections (1) to (3) of this section and serves notice of the deposit upon the lien claimant under subsections (4) and (5) of this section, the person shall file with the recording officer of the same county an affidavit stating that the deposit was made and notice was served. [2003 c.193 §§2,3,4]

Note: 87.177 to 87.181 were added to and made a part of 87.152 to 87.212 by legislative action but were not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

87.178 Foreclosure after filing of bond or deposit of money; effect of filing or deposit; disposition of bond or money. (1) When a lien claimed under ORS 87.152 to 87.162 is for the storage of a chattel and the amount of the lien claimed is \$750 or more, any suit to foreclose the lien that is commenced or pending after the filing of a bond or deposit of money under ORS 87.177 (1) to (3) shall proceed as if no filing or deposit had been made except that the lien shall attach to the bond or money upon the filing or deposit and the service of notice of the filing or deposit upon the lien claimant. The chattel described in the claim of lien shall thereafter be entirely free of the lien and shall in no way be involved in subsequent proceedings.

(2) When a bond is filed or money is deposited and, in a suit to enforce the lien for which the filing or deposit is made, the court allows the lien, the lien shall be satisfied out of the bond or money. The court shall include as part of its judgment an order for the return to the person who deposited the money of any amount remaining after the lien for the storage of the chattel is satisfied.

(3) When a bond is filed or money is deposited and, in a suit to enforce the lien for which the filing or deposit is made, the court disallows the lien, the court shall include as part of its judgment an order for the return of the bond or money to the person who filed the bond or deposited the money. [2003 c.193 §5]

Note: See note under 87.177.

87.179 Determination of adequacy of bond. (1) If a lien claimant considers the bond filed with a recording officer of a county under ORS 87.177 (1) to (3) inadequate to protect the claim of the lien claimant for some reason other than the amount of the bond, the lien claimant may petition the court in which the suit to foreclose the lien for the storage of the chattel may be brought for a determination of the adequacy of the bond. The petition must be filed within 10 days of receipt of the notice of the filing of the bond under ORS 87.177 (4) and (5). The petition must describe in detail the reasons for the inadequacy.

(2) Not later than two days after the filing of the petition with the court, the lien claimant shall send a notice of the filing and a copy of the petition by registered or certified mail to the person who filed the bond. After a hearing, if the court determines that the bond is inadequate for one or more of the reasons described by the lien claimant, the court shall order such action as shall make the bond adequate to protect the claim of lien. [2003 c.193 §6]

Note: See note under 87.177.

87.181 Release of lien or return of money. The county recording officer shall record a written release of the lien for the storage of the chattel or the county treasurer in whose office money is deposited under ORS 87.177 (1) to (3) shall return the money to the person who made the deposit when:

(1) The person who filed the bond or deposited the money presents a certified copy of a court's order for the release of the bond or all or some of the money to that person; or

(2) The person who filed the bond or deposited the money presents a written release of lien signed by the lien claimant. [2003 c.193 §7]

Note: See note under 87.177.

87.182 Effect of prior security interest on method of foreclosure. (1) When a lien created by ORS 87.162 is subordinate to a prior duly perfected security interest in a chattel as provided in ORS 87.146, the lien created by ORS 87.162 shall be foreclosed by suit as provided in ORS chapter 88.

(2) Except as provided in subsection (1) of this section, liens created by ORS 87.152 to 87.162 may be foreclosed by suit as provided in ORS chapter 88, or by sale of the chattel subject to the lien at public auction to the highest bidder for cash. [1975 c.648 §9]

87.186 Location of foreclosure sale. Foreclosure of liens created by ORS 87.152 to 87.162 by public sale shall occur in the county in which the lien claimant obtained possession of the chattel subject to the lien from the lien debtor. [1975 c.648 §11]

87.192 Notice of foreclosure sale to lien debtor; public notice. (1) Before a lien claimant forecloses a lien created by ORS 87.152 to 87.162 by sale, the lien claimant shall give notice of the foreclosure sale to the lien debtor by first class mail with certificate of mailing, registered mail or certified mail sent to the lien debtor at the lien debtor's last-known address. The lien claimant shall give notice of the foreclosure sale to the lien debtor:

(a) Except as otherwise provided in this subsection, at least 30 days before the foreclosure sale.

(b) If the lien is for the cost of removing, towing or storage of a vehicle that is appraised at a value of \$500 or less by a person who holds a certificate issued under ORS 819.480, at least 15 days before the foreclosure sale.

(c) If the lien is for the cost of removing, towing or storage of a vehicle that is appraised at a value of \$1,000 or less but more than \$500 by a person who holds a certificate

issued under ORS 819.480, at least 15 days before the foreclosure sale.

(d) If the lien is for the cost of removing, towing or storage of a vehicle that is appraised at a value of more than \$1,000 by a person who holds a certificate issued under ORS 819.480, at least 30 days before the foreclosure sale.

(2) The lien claimant shall give public notice of the foreclosure sale by posting notice of it in a public place at or near the front door of the county courthouse of the county in which the sale is to be held and, except as provided in paragraph (b) of this subsection, in a public place at the location where the lien claimant obtained possession of the chattel to be sold from the lien debtor. The following apply to notice under this subsection:

(a) Notice under this subsection must be given no later than the time required for notice to a lien debtor under subsection (1) of this section.

(b) This subsection does not require posting of notice at the location where the chattel was obtained if the chattel is a vehicle required to obtain a certificate of title issued under ORS chapter 803.

(3) If the chattel to be sold at a foreclosure sale is something other than an abandoned vehicle and has a fair market value of \$1,000 or more, or if the chattel to be sold is an abandoned vehicle and has a fair market value of \$2,500 or more, the lien claimant, in addition to the notice required by subsection (2) of this section, shall have a notice of foreclosure sale printed once a week for two successive weeks in a daily or weekly newspaper, as defined in ORS 193.010, published in the county in which the sale is held or, if there is none, in a daily or weekly newspaper, as defined in ORS 193.010, generally circulated in the county in which the sale is held.

(4) The notice of foreclosure sale required under this section shall contain a particular description of the property to be sold, the name of the owner or reputed owner thereof, the amount due on the lien, the time and the place of the sale and the name of the person foreclosing the lien. [1975 c.648 §10; 1981 c.861 §2; 1983 c.436 §1; 1983 c.338 §882; 1993 c.326 §10; 1995 c.758 §19; 2005 c.738 §8]

87.196 Notice of foreclosure sale to secured parties; effect of notice; effect of failure to give notice. (1) A lien claimant who forecloses a lien created by ORS 87.152 to 87.162 by sale shall give notice of the foreclosure sale by first class, registered or certified mail. The following apply:

(a) Notice shall be given to all persons with a security interest in the chattel to be

sold who have filed a financing statement perfecting that security interest in the office of the Secretary of State or in the office of the appropriate county officer of the county in which the sale is held.

(b) Notwithstanding paragraph (a) of this subsection if the chattel to be sold at the foreclosure sale is a chattel, other than part of the motor vehicle inventory of a dealer issued a vehicle dealer certificate under ORS 822.020, for which a certificate of title is required by the laws of this state, notice need only be given to persons who the certificate of title indicates have a security interest or lien in the chattel.

(c) Notice under this subsection shall be given at least 30 days prior to the foreclosure sale. However, if the lien is claimed under ORS 87.152, the lien claimant shall give the notice required by this subsection:

(A) Not later than the 20th day after the date on which the storage charges begin;

(B) If no storage charges are imposed, not later than the 30th day after the date on which the services provided are completed;

(C) At least 15 days prior to the foreclosure sale if the lien is for the cost of removing, towing or storage of a vehicle that is appraised at a value of \$1,000 or less but more than \$500 by a person who holds a certificate issued under ORS 819.480; and

(D) At least 15 days prior to the foreclosure sale if the lien is for the cost of removing, towing or storage of a vehicle that is appraised at a value of \$500 or less by a person who holds a certificate issued under ORS 819.480.

(2) A person notified under subsection (1) of this section may discharge the lien and preserve the person's security interest in the chattel by paying the lien claimant the amount of the lien claim and reasonable expenses actually incurred in foreclosing the lien claim. If the person does not so discharge the lien before the day of the foreclosure sale, the person's security interest in the chattel is extinguished on the day the foreclosure sale is completed.

(3) If the chattel to be sold at a foreclosure sale is a chattel for which a certificate of title is required by the laws of this state and if the lien claimant does not notify a person as required by this section, the chattel remains subject to that security interest or lien and the buyer of the chattel at a foreclosure sale held under ORS 87.142 to 87.490 or 87.700 to 87.736 takes the chattel subject to the security interest or lien.

(4) If a lien claimant does not notify a person, other than a person indicated on a certificate of title as a secured party or lienholder, who claims a security interest or

lien on the chattel sold at a foreclosure sale as required by subsection (1) of this section, the lien claimant is liable to that person for a sum equal to the fair market value of the chattel sold at the foreclosure sale or the amount due that person under the security agreement or lien at the time of the foreclosure sale, whichever amount is less. The secured party or other lien claimant may recover that sum by an action at law. [1975 c.648 §14; 1981 c.861 §3; 1983 c.338 §883; 1993 c.326 §11; 1995 c.758 §20; 2005 c.86 §1; 2005 c.738 §9]

87.202 Statement of account of foreclosure sale. (1) A person who forecloses a lien created by ORS 87.152 to 87.162 by sale shall file a statement of account verified by the oath of the person with the recording officer of the county in which the sale took place when:

(a) The chattel sold at the foreclosure sale has a fair market value of \$250 or more; or

(b) The chattel sold at the foreclosure sale is an animal bearing a brand or other mark recorded with the State Department of Agriculture under ORS chapter 604.

(2) The statement of account required under subsection (1) of this section must contain:

(a) The amount of the lien claim and the cost of foreclosing the lien;

(b) A copy of the published or posted notice of foreclosure sale;

(c) The amount received for the chattel sold at the sale; and

(d) The name of each person who received proceeds from the foreclosure sale as described in ORS 87.206 and the amount each person received.

(3) A person filing a statement of account under this section shall send a copy of the statement by registered or certified mail to the owner of the chattel sold at the foreclosure sale. The person filing the statement of account shall send the copy to the last-known address of the owner. If the chattel sold at a foreclosure sale is an animal bearing a brand or other mark recorded with the State Department of Agriculture under ORS chapter 604, a person filing a statement of account under this section shall send a copy of the statement to the State Department of Agriculture. [1975 c.648 §13; 2005 c.86 §2]

87.206 Disposition of proceeds of foreclosure sale. (1) The proceeds of a sale to foreclose a lien created by ORS 87.152 to 87.162 shall be applied in the following order:

(a) To the payment of the reasonable and necessary expenses of the sale;

(b) To satisfy the indebtedness secured by the lien under which the sale is made;

(c) Subject to subsection (2) of this section, to satisfy the indebtedness secured by any subordinate lien or security interest, in order of priority, in the chattel; and

(d) To the treasurer of the county in which the foreclosure sale is made. The payment to the treasurer must be accompanied by a copy of the statement of account described in ORS 87.202.

(2) Proceeds may be applied under subsection (1)(c) of this section if the person who forecloses a lien created by ORS 87.152 to 87.162 by sale receives a written request for proceeds from the holder of any subordinate lien or security interest before the day of the foreclosure sale. The person foreclosing the lien may require the holder of the subordinate lien or security interest to furnish reasonable proof of the existence of the security interest or lien. If the person foreclosing the lien does not receive proof of the existence of the subordinate security interest or lien, the person is not required to apply proceeds of the sale to satisfy the indebtedness secured by the subordinate security interest or lien.

(3) If a county treasurer receives proceeds under subsection (1) of this section, the county treasurer shall credit the proceeds to the general revenue fund of the county, subject to the right of the lien debtor or the representative of the lien debtor, to reclaim the proceeds at any time within three years of the date of deposit with the treasurer. If the proceeds are not demanded and claimed within the three-year period, the proceeds become the property of the county. [1975 c.648 §12; 2005 c.86 §3]

87.212 Liability for improper sale of fungible chattels. A person claiming a lien under ORS 87.152 to 87.162 for the storage of fungible chattels shall not sell more of those chattels than is necessary to pay charges due that person for the storage. If a person unnecessarily sells fungible chattels without the consent of the owner thereof, the person shall, for each offense, forfeit to the owner of the chattels a sum equal to the fair market value of the chattels unnecessarily sold and 50 percent of the fair market value in addition as a penalty. The owner shall recover such value and penalty by an action at law. [1975 c.648 §15]

Nonpossessory Chattel Liens

87.216 Nonpossessory lien for labor or material expended on chattel. A person who makes, alters, repairs, transports, stores, provides services for or performs labor on a chattel at the request of the owner of the chattel has a lien on that chattel for the reasonable or agreed charges for the labor or services the person performs and for the

materials the person furnishes in connection therewith. [1975 c.648 §16]

Chapter 90

RESIDENTIAL LANDLORD AND TENANT

Content of Agreements

90.230 Rental agreements for occupancy of recreational vehicle in park; remedy for noncompliance; exception. (1) If a tenancy is for the occupancy of a recreational vehicle in a manufactured dwelling park, mobile home park or recreational vehicle park, all as defined in ORS 197.492, the landlord shall provide a written rental agreement for a month-to-month, week-to-week or fixed-term tenancy. The rental agreement must state:

(a) If applicable, that the tenancy may be terminated by the landlord under ORS 90.427 without cause upon 30 days' written notice for a month-to-month tenancy or upon 10 days' written notice for a week-to-week tenancy.

(b) That any accessory building or structure paid for or provided by the tenant belongs to the tenant and is subject to a demand by the landlord that the tenant remove the building or structure upon termination of the tenancy.

(c) That the tenancy is subject to the requirements of ORS 197.493 (1) for exemption from placement and occupancy restrictions.

(2) If a tenant described in subsection (1) of this section moves following termination of the tenancy by the landlord under ORS 90.427, and the landlord failed to provide the required written rental agreement before the beginning of the tenancy, the tenant may recover the tenant's actual damages or twice the periodic rent, whichever is greater.

(3) If the occupancy fails at any time to comply with the requirements of ORS 197.493 (1) for exemption from placement and occupancy restrictions, and a state agency or local government requires the tenant to move as a result of the noncompliance, the tenant may recover the tenant's actual damages or twice the periodic rent, whichever is greater. This subsection does not apply if the noncompliance was caused by the tenant.

(4) This section does not apply to a vacation occupancy. [2005 c.619 §14]

Landlord Remedies

90.425 Disposition of personal property abandoned by tenant; notice; sale; limitation on landlord liability; tax cancellation; storage agreements; hazardous property. (1) As used in this section:

(a) "Current market value" means the amount in cash, as determined by the county assessor, that could reasonably be expected to be paid for a manufactured dwelling or floating home by an informed buyer to an informed seller, each acting without compulsion in an arm's-length transaction occurring on the assessment date for the tax year or on the date of a subsequent reappraisal by the county assessor.

(b) "Dispose of the personal property" means that, if reasonably appropriate, the landlord may throw away the property or may give it without consideration to a non-profit organization or to a person unrelated to the landlord. The landlord may not retain the property for personal use or benefit.

(c) "Goods" includes those goods left inside a recreational vehicle, manufactured dwelling or floating home or left upon the rental space outside a recreational vehicle, manufactured dwelling or floating home, whether the recreational vehicle, dwelling or home is located inside or outside of a facility.

(d) "Lienholder" means any lienholder of an abandoned recreational vehicle, manufactured dwelling or floating home, if the lien is of record or the lienholder is actually known to the landlord.

(e) "Of record" means:

(A) For a recreational vehicle that is not a manufactured structure as defined in ORS 446.561, that a security interest has been properly recorded with the Department of Transportation pursuant to ORS 802.200 (1)(a)(A) and 803.097.

(B) For a manufactured dwelling or recreational vehicle that is a manufactured structure as defined in ORS 446.561, that a security interest has been properly recorded for the manufactured dwelling or recreational vehicle in the records of the Department of Consumer and Business Services pursuant to ORS 446.611 or on a certificate of title issued by the Department of Transportation prior to May 1, 2005.

(C) For a floating home, that a security interest has been properly recorded with the State Marine Board pursuant to ORS 830.740 to 830.755 for a home registered and titled with the board pursuant to ORS 830.715.

(f) "Owner" means any owner of an abandoned recreational vehicle, manufactured dwelling or floating home, if different

from the tenant and either of record or actually known to the landlord.

(g) "Personal property" means goods, vehicles and recreational vehicles and includes manufactured dwellings and floating homes not located in a facility. "Personal property" does not include manufactured dwellings and floating homes located in a facility and therefore subject to being stored, sold or disposed of as provided under ORS 90.675.

(2) A landlord may not store, sell or dispose of abandoned personal property except as provided by this section. This section governs the rights and obligations of landlords, tenants and any lienholders or owners in any personal property abandoned or left upon the premises by the tenant or any lienholder or owner in the following circumstances:

(a) The tenancy has ended by termination or expiration of a rental agreement or by relinquishment or abandonment of the premises and the landlord reasonably believes under all the circumstances that the tenant has left the personal property upon the premises with no intention of asserting any further claim to the premises or to the personal property;

(b) The tenant has been absent from the premises continuously for seven days after termination of a tenancy by a court order that has not been executed; or

(c) The landlord receives possession of the premises from the sheriff following restitution pursuant to ORS 105.161.

(3) Prior to selling or disposing of the tenant's personal property under this section, the landlord must give a written notice to the tenant that must be:

(a) Personally delivered to the tenant; or

(b) Sent by first class mail addressed and mailed to the tenant at:

(A) The premises;

(B) Any post-office box held by the tenant and actually known to the landlord; and

(C) The most recent forwarding address if provided by the tenant or actually known to the landlord.

(4)(a) In addition to the notice required by subsection (3) of this section, in the case of an abandoned recreational vehicle, manufactured dwelling or floating home, a landlord shall also give a copy of the notice described in subsection (3) of this section to:

(A) Any lienholder of the recreational vehicle, manufactured dwelling or floating home;

(B) Any owner of the recreational vehicle, manufactured dwelling or floating home;

(C) The tax collector of the county where the manufactured dwelling or floating home is located; and

(D) The assessor of the county where the manufactured dwelling or floating home is located.

(b) The landlord shall give the notice copy required by this subsection by personal delivery or first class mail, except that for any lienholder, mail service must be both by first class mail and by certified mail with return receipt requested.

(c) A notice to lienholders under paragraph (a)(A) of this subsection must be sent to each lienholder at each address:

(A) Actually known to the landlord;

(B) Of record; and

(C) Provided to the landlord by the lienholder in a written notice that identifies the personal property subject to the lien and that was sent to the landlord by certified mail with return receipt requested within the preceding five years. The notice must identify the personal property by describing the physical address of the property.

(5) The notice required under subsection (3) of this section must state that:

(a) The personal property left upon the premises is considered abandoned;

(b) The tenant or any lienholder or owner must contact the landlord by a specified date, as provided in subsection (6) of this section, to arrange for the removal of the abandoned personal property;

(c) The personal property is stored at a place of safekeeping, except that if the property includes a manufactured dwelling or floating home, the dwelling or home must be stored on the rented space;

(d) The tenant or any lienholder or owner, except as provided by subsection (18) of this section, may arrange for removal of the personal property by contacting the landlord at a described telephone number or address on or before the specified date;

(e) The landlord shall make the personal property available for removal by the tenant or any lienholder or owner, except as provided by subsection (18) of this section, by appointment at reasonable times;

(f) If the personal property is considered to be abandoned pursuant to subsection (2)(a) or (b) of this section, the landlord may require payment of removal and storage charges, as provided by subsection (7)(d) of this section, prior to releasing the personal property to the tenant or any lienholder or owner;

(g) If the personal property is considered to be abandoned pursuant to subsection (2)(c)

of this section, the landlord may not require payment of storage charges prior to releasing the personal property;

(h) If the tenant or any lienholder or owner fails to contact the landlord by the specified date, or after that contact, fails to remove the personal property within 30 days for recreational vehicles, manufactured dwellings and floating homes or 15 days for all other personal property, the landlord may sell or dispose of the personal property. If the landlord reasonably believes that the personal property will be eligible for disposal pursuant to subsection (10)(b) of this section and the landlord intends to dispose of the property if the property is not claimed, the notice shall state that belief and intent; and

(i) If the personal property includes a recreational vehicle, manufactured dwelling or floating home and if applicable, there is a lienholder or owner that has a right to claim the recreational vehicle, dwelling or home, except as provided by subsection (18) of this section.

(6) For purposes of subsection (5) of this section, the specified date by which a tenant, lienholder or owner must contact a landlord to arrange for the disposition of abandoned personal property is:

(a) For abandoned recreational vehicles, manufactured dwellings or floating homes, not less than 45 days after personal delivery or mailing of the notice; or

(b) For all other abandoned personal property, not less than five days after personal delivery or eight days after mailing of the notice.

(7) After notifying the tenant as required by subsection (3) of this section, the landlord:

(a) Shall store any abandoned manufactured dwelling or floating home on the rented space and shall exercise reasonable care for the dwelling or home;

(b) Shall store all other abandoned personal property of the tenant, including goods left inside a recreational vehicle, manufactured dwelling or floating home or left upon the rented space outside a recreational vehicle, dwelling or home, in a place of safekeeping and shall exercise reasonable care for the personal property, except that the landlord may:

(A) Promptly dispose of rotting food; and

(B) Allow an animal control agency to remove any abandoned pets or livestock. If an animal control agency will not remove the abandoned pets or livestock, the landlord shall exercise reasonable care for the animals given all the circumstances, including the type and condition of the animals, and may give the animals to an agency that is

willing and able to care for the animals, such as a humane society or similar organization;

(c) Except for manufactured dwellings and floating homes, may store the abandoned personal property at the dwelling unit, move and store it elsewhere on the premises or move and store it at a commercial storage company or other place of safekeeping; and

(d) Is entitled to reasonable or actual storage charges and costs incidental to storage or disposal, including any cost of removal to a place of storage. In the case of an abandoned manufactured dwelling or floating home, the storage charge may be no greater than the monthly space rent last payable by the tenant.

(8) If a tenant, lienholder or owner, upon the receipt of the notice provided by subsection (3) or (4) of this section or otherwise, responds by actual notice to the landlord on or before the specified date in the landlord's notice that the tenant, lienholder or owner intends to remove the personal property from the premises or from the place of safekeeping, the landlord must make that personal property available for removal by the tenant, lienholder or owner by appointment at reasonable times during the 15 days or, in the case of a recreational vehicle, manufactured dwelling or floating home, 30 days following the date of the response, subject to subsection (18) of this section. If the personal property is considered to be abandoned pursuant to subsection (2)(a) or (b) of this section, but not pursuant to subsection (2)(c) of this section, the landlord may require payment of removal and storage charges, as provided in subsection (7)(d) of this section, prior to allowing the tenant, lienholder or owner to remove the personal property. Acceptance by a landlord of such payment does not operate to create or reinstate a tenancy or create a waiver pursuant to ORS 90.412 or 90.417.

(9) Except as provided in subsections (18) to (20) of this section, if the tenant, lienholder or owner of a recreational vehicle, manufactured dwelling or floating home does not respond within the time provided by the landlord's notice, or the tenant, lienholder or owner does not remove the personal property within the time required by subsection (8) of this section or by any date agreed to with the landlord, whichever is later, the tenant's, lienholder's or owner's personal property is conclusively presumed to be abandoned. The tenant and any lienholder or owner that have been given notice pursuant to subsection (3) or (4) of this section shall, except with regard to the distribution of sale proceeds pursuant to subsection (13) of this section, have no further right, title or interest

to the personal property and may not claim or sell the property.

(10) If the personal property is presumed to be abandoned under subsection (9) of this section, the landlord then may:

(a) Sell the personal property at a public or private sale, provided that prior to the sale of a recreational vehicle, manufactured dwelling or floating home:

(A) The landlord may seek to transfer ownership of record of the personal property by complying with the requirements of the appropriate state agency; and

(B) The landlord shall:

(i) Place a notice in a newspaper of general circulation in the county in which the recreational vehicle, manufactured dwelling or floating home is located. The notice shall state:

(I) That the recreational vehicle, manufactured dwelling or floating home is abandoned;

(II) The tenant's and owner's name, if of record or actually known to the landlord;

(III) The address and any space number where the recreational vehicle, manufactured dwelling or floating home is located, and any plate, registration or other identification number for a recreational vehicle or floating home noted on the certificate of title, if actually known to the landlord;

(IV) Whether the sale is by private bidding or public auction;

(V) Whether the landlord is accepting sealed bids and, if so, the last date on which bids will be accepted; and

(VI) The name and telephone number of the person to contact to inspect the recreational vehicle, manufactured dwelling or floating home;

(ii) At a reasonable time prior to the sale, give a copy of the notice required by sub-subparagraph (i) of this subparagraph to the tenant and to any lienholder and owner, by personal delivery or first class mail, except that for any lienholder, mail service must be by first class mail with certificate of mailing;

(iii) Obtain an affidavit of publication from the newspaper to show that the notice required under sub-subparagraph (i) of this subparagraph ran in the newspaper at least one day in each of two consecutive weeks prior to the date scheduled for the sale or the last date bids will be accepted; and

(iv) Obtain written proof from the county that all property taxes and assessments on the manufactured dwelling or floating home have been paid or, if not paid, that the county has authorized the sale, with the sale

proceeds to be distributed pursuant to subsection (13) of this section;

(b) Destroy or otherwise dispose of the personal property if the landlord determines that:

(A) For a manufactured dwelling or floating home, the current market value of the property is \$8,000 or less as determined by the county assessor; or

(B) For all other personal property, the reasonable current fair market value is \$500 or less or so low that the cost of storage and conducting a public sale probably exceeds the amount that would be realized from the sale; or

(c) Consistent with paragraphs (a) and (b) of this subsection, sell certain items and destroy or otherwise dispose of the remaining personal property.

(11)(a) A public or private sale authorized by this section must:

(A) For a recreational vehicle, manufactured dwelling or floating home, be conducted consistent with the terms listed in subsection (10)(a)(B)(i) of this section. Every aspect of the sale including the method, manner, time, place and terms must be commercially reasonable; or

(B) For all other personal property, be conducted under the provisions of ORS 79.0610.

(b) If there is no buyer at a sale of a manufactured dwelling or floating home, the personal property is considered to be worth \$8,000 or less, regardless of current market value, and the landlord shall destroy or otherwise dispose of the personal property.

(12) Notwithstanding ORS 446.155 (1) and (2), unless a landlord intentionally misrepresents the condition of a manufactured dwelling or floating home, the landlord is not liable for the condition of the dwelling or home to:

(a) A buyer of the dwelling or home at a sale pursuant to subsection (10)(a) of this section, with or without consideration; or

(b) A person or nonprofit organization to whom the landlord gives the dwelling or home pursuant to subsection (1)(b), (10)(b) or (11)(b) of this section.

(13)(a) The landlord may deduct from the proceeds of the sale:

(A) The reasonable or actual cost of notice, storage and sale; and

(B) Unpaid rent.

(b) If the sale was of a manufactured dwelling or floating home, after deducting the amounts listed in paragraph (a) of this subsection, the landlord shall remit the remaining proceeds, if any, to the county tax

collector to the extent of any unpaid property taxes and assessments owed on the dwelling or home.

(c) If the sale was of a recreational vehicle, manufactured dwelling or floating home, after deducting the amounts listed in paragraphs (a) and (b) of this subsection, if applicable, the landlord shall remit the remaining proceeds, if any, to any lienholder to the extent of any unpaid balance owed on the lien on the recreational vehicle, dwelling or home.

(d) After deducting the amounts listed in paragraphs (a), (b) and (c) of this subsection, if applicable, the landlord shall remit to the tenant or owner the remaining proceeds, if any, together with an itemized accounting.

(e) If the tenant or owner cannot after due diligence be found, the landlord shall deposit the remaining proceeds with the county treasurer of the county in which the sale occurred. If not claimed within three years, the deposited proceeds revert to the general fund of the county and are available for general purposes.

(14) The county tax collector shall cancel all unpaid property taxes and assessments owed on a manufactured dwelling or floating home, as provided under ORS 311.790, only under one of the following circumstances:

(a) The landlord disposes of the manufactured dwelling or floating home after a determination described in subsection (10)(b) of this section.

(b) There is no buyer of the manufactured dwelling or floating home at a sale described under subsection (11) of this section.

(c)(A) There is a buyer of the manufactured dwelling or floating home at a sale described under subsection (11) of this section;

(B) The current market value of the manufactured dwelling or floating home is \$8,000 or less; and

(C) The proceeds of the sale are insufficient to satisfy the unpaid property taxes and assessments owed on the dwelling or home after distribution of the proceeds pursuant to subsection (13) of this section.

(d)(A) The landlord buys the manufactured dwelling or floating home at a sale described under subsection (11) of this section;

(B) The current market value of the manufactured dwelling or floating home is more than \$8,000;

(C) The proceeds of the sale are insufficient to satisfy the unpaid property taxes and assessments owed on the manufactured dwelling or floating home after distribution of the proceeds pursuant to subsection (13) of this section; and

(D) The landlord disposes of the manufactured dwelling or floating home.

(15) The landlord is not responsible for any loss to the tenant, lienholder or owner resulting from storage of personal property in compliance with this section unless the loss was caused by the landlord's deliberate or negligent act. In the event of a deliberate and malicious violation, the landlord is liable for twice the actual damages sustained by the tenant, lienholder or owner.

(16) Complete compliance in good faith with this section shall constitute a complete defense in any action brought by a tenant, lienholder or owner against a landlord for loss or damage to such personal property disposed of pursuant to this section.

(17) If a landlord does not comply with this section:

(a) The tenant is relieved of any liability for damage to the premises caused by conduct that was not deliberate, intentional or grossly negligent and for unpaid rent and may recover from the landlord up to twice the actual damages sustained by the tenant;

(b) A lienholder or owner aggrieved by the noncompliance may recover from the landlord the actual damages sustained by the lienholder or owner. ORS 90.255 does not authorize an award of attorney fees to the prevailing party in any action arising under this paragraph; and

(c) A county tax collector aggrieved by the noncompliance may recover from the landlord the actual damages sustained by the tax collector, if the noncompliance is part of an effort by the landlord to defraud the tax collector. ORS 90.255 does not authorize an award of attorney fees to the prevailing party in any action arising under this paragraph.

(18) In the case of an abandoned recreational vehicle, manufactured dwelling or floating home, the provisions of this section regarding the rights and responsibilities of a tenant to the abandoned vehicle, dwelling or home also apply to any lienholder except that the lienholder may not sell or remove the vehicle, dwelling or home unless:

(a) The lienholder has foreclosed its lien on the recreational vehicle, manufactured dwelling or floating home;

(b) The tenant or a personal representative or designated person described in subsection (20) of this section has waived all rights under this section pursuant to subsection (25) of this section; or

(c) The notice and response periods provided by subsections (6) and (8) of this section have expired.

(19)(a) In the case of an abandoned manufactured dwelling or floating home but not

including a dwelling or home abandoned following a termination pursuant to ORS 90.429 and except as provided by subsection (2)(d) and (e) of this section, if a lienholder makes a timely response to a notice of abandoned personal property pursuant to subsections (6) and (8) of this section and so requests, a landlord shall enter into a written storage agreement with the lienholder providing that the dwelling or home may not be sold or disposed of by the landlord for up to 12 months. A storage agreement entitles the lienholder to store the personal property on the previously rented space during the term of the agreement, but does not entitle anyone to occupy the personal property.

(b) The lienholder's right to a storage agreement arises upon the failure of the tenant, owner or, in the case of a deceased tenant, the personal representative, designated person, heir or devisee to remove or sell the dwelling or home within the allotted time.

(c) To exercise the right to a storage agreement under this subsection, in addition to contacting the landlord with a timely response as described in paragraph (a) of this subsection, the lienholder must enter into the proposed storage agreement within 60 days after the landlord gives a copy of the agreement to the lienholder. The landlord shall give a copy of the proposed storage agreement to the lienholder in the same manner as provided by subsection (4)(b) of this section. The landlord may include a copy of the proposed storage agreement with the notice of abandoned property required by subsection (4) of this section. A lienholder enters into a storage agreement by signing a copy of the agreement provided by the landlord and personally delivering or mailing the signed copy to the landlord within the 60-day period.

(d) The storage agreement may require, in addition to other provisions agreed to by the landlord and the lienholder, that:

(A) The lienholder make timely periodic payment of all storage charges, as described in subsection (7)(d) of this section, accruing from the commencement of the 45-day period described in subsection (6) of this section. A storage charge may include a utility or service charge, as described in ORS 90.532, if limited to charges for electricity, water, sewer service and natural gas and if incidental to the storage of personal property. A storage charge may not be due more frequently than monthly;

(B) The lienholder pay a late charge or fee for failure to pay a storage charge by the date required in the agreement, if the amount of the late charge is no greater than for late charges described in the rental

agreement between the landlord and the tenant; and

(C) The lienholder maintain the personal property and the space on which the personal property is stored in a manner consistent with the rights and obligations described in the rental agreement between the landlord and the tenant.

(e) During the term of an agreement described under this subsection, the lienholder has the right to remove or sell the property, subject to the provisions of the lien. Selling the property includes a sale to a purchaser who wishes to leave the dwelling or home on the rented space and become a tenant, subject to any conditions previously agreed to by the landlord and tenant regarding the landlord's approval of a purchaser or, if there was no such agreement, any reasonable conditions by the landlord regarding approval of any purchaser who wishes to leave the dwelling or home on the rented space and become a tenant. The landlord also may condition approval for occupancy of any purchaser of the property upon payment of all unpaid storage charges and maintenance costs.

(f)(A) If the lienholder violates the storage agreement, the landlord may terminate the agreement by giving at least 90 days' written notice to the lienholder stating facts sufficient to notify the lienholder of the reason for the termination. Unless the lienholder corrects the violation within the notice period, the agreement terminates as provided and the landlord may sell or dispose of the dwelling or home without further notice to the lienholder.

(B) After a landlord gives a termination notice pursuant to subparagraph (A) of this paragraph for failure of the lienholder to pay a storage charge and the lienholder corrects the violation, if the lienholder again violates the storage agreement by failing to pay a subsequent storage charge, the landlord may terminate the agreement by giving at least 30 days' written notice to the lienholder stating facts sufficient to notify the lienholder of the reason for termination. Unless the lienholder corrects the violation within the notice period, the agreement terminates as provided and the landlord may sell or dispose of the property without further notice to the lienholder.

(C) A lienholder may terminate a storage agreement at any time upon at least 14 days' written notice to the landlord and may remove the property from the rented space if the lienholder has paid all storage charges and other charges as provided in the agreement.

(g) Upon the failure of a lienholder to enter into a storage agreement as provided

by this subsection or upon termination of an agreement, unless the parties otherwise agree or the lienholder has sold or removed the manufactured dwelling or floating home, the landlord may sell or dispose of the property pursuant to this section without further notice to the lienholder.

(20) If the personal property consists of an abandoned manufactured dwelling or floating home and is considered abandoned as a result of the death of a tenant who was the only tenant and who owned the dwelling or home, this section applies, except as follows:

(a) Any personal representative named in a will or appointed by a court to act for the deceased tenant or any person designated in writing by the tenant to be contacted by the landlord in the event of the tenant's death has the same rights and responsibilities regarding the abandoned dwelling or home as a tenant.

(b) The notice required by subsection (3) of this section must be:

(A) Sent by first class mail to the deceased tenant at the premises; and

(B) Personally delivered or sent by first class mail to any personal representative or designated person if actually known to the landlord.

(c) The notice described in subsection (5) of this section must refer to any personal representative or designated person, instead of the deceased tenant, and must incorporate the provisions of this subsection.

(d) If a personal representative, designated person or other person entitled to possession of the property, such as an heir or devisee, responds by actual notice to a landlord within the 45-day period provided by subsection (6) of this section and so requests, the landlord shall enter into a written storage agreement with the representative or person providing that the dwelling or home may not be sold or disposed of by the landlord for up to 90 days or until conclusion of any probate proceedings, whichever is later. A storage agreement entitles the representative or person to store the personal property on the previously rented space during the term of the agreement, but does not entitle anyone to occupy the personal property. If such an agreement is entered, the landlord may not enter a similar agreement with a lienholder pursuant to subsection (19) of this section until the agreement with the personal representative or designated person ends.

(e) If a personal representative or other person requests that a landlord enter into a storage agreement, subsection (19)(c), (d) and (f)(C) of this section applies, with the repre-

sentative or person having the rights and responsibilities of a lienholder with regard to the storage agreement.

(f) During the term of an agreement described under paragraph (d) of this subsection, the representative or person has the right to remove or sell the dwelling or home, including a sale to a purchaser or a transfer to an heir or devisee where the purchaser, heir or devisee wishes to leave the dwelling or home on the rented space and become a tenant, subject to any conditions previously agreed to by the landlord and tenant regarding the landlord's approval for occupancy of a purchaser, heir or devisee or, if there was no such agreement, any reasonable conditions by the landlord regarding approval for occupancy of any purchaser, heir or devisee who wishes to leave the dwelling or home on the rented space and become a tenant. The landlord also may condition approval for occupancy of any purchaser, heir or devisee of the dwelling or home upon payment of all unpaid storage charges and maintenance costs.

(g) If the representative or person violates the storage agreement, the landlord may terminate the agreement by giving at least 30 days' written notice to the representative or person stating facts sufficient to notify the representative or person of the reason for the termination. Unless the representative or person corrects the violation within the notice period, the agreement terminates as provided and the landlord may sell or dispose of the dwelling or home without further notice to the representative or person.

(h) Upon the failure of a representative or person to enter into a storage agreement as provided by this subsection or upon termination of an agreement, unless the parties otherwise agree or the representative or person has sold or removed the manufactured dwelling or floating home, the landlord may sell or dispose of the property pursuant to this section without further notice to the representative or person.

(21) If a governmental agency determines that the condition of a manufactured dwelling, floating home or recreational vehicle abandoned under this section constitutes an extreme health or safety hazard under state or local law and the agency determines that the hazard endangers others in the immediate vicinity and requires quick removal of the property, the landlord may sell or dispose of the property pursuant to this subsection. The landlord shall comply with all provisions of this section, except as follows:

(a) The date provided in subsection (6) of this section by which a tenant, lienholder, owner, personal representative or designated

person must contact a landlord to arrange for the disposition of the property must be not less than 15 days after personal delivery or mailing of the notice required by subsection (3) of this section.

(b) The date provided in subsections (8) and (9) of this section by which a tenant, lienholder, owner, personal representative or designated person must remove the property must be not less than seven days after the tenant, lienholder, owner, personal representative or designated person contacts the landlord.

(c) The notice required by subsection (3) of this section must be as provided in subsection (5) of this section, except that:

(A) The dates and deadlines in the notice for contacting the landlord and removing the property must be consistent with this subsection;

(B) The notice must state that a governmental agency has determined that the property constitutes an extreme health or safety hazard and must be removed quickly; and

(C) The landlord shall attach a copy of the agency's determination to the notice.

(d) If the tenant, a lienholder, owner, personal representative or designated person does not remove the property within the time allowed, the landlord or a buyer at a sale by the landlord under subsection (11) of this section shall promptly remove the property from the facility.

(e) A landlord is not required to enter into a storage agreement with a lienholder, owner, personal representative or designated person pursuant to subsection (19) of this section.

(22)(a) If an official or agency referred to in ORS 453.876 notifies the landlord that the official or agency has determined that all or part of the premises is unfit for use as a result of the presence of an illegal drug manufacturing site involving methamphetamine, and the landlord complies with this subsection, the landlord is not required to comply with subsections (1) to (21) and (23) to (26) of this section with regard to personal property left on the portion of the premises that the official or agency has determined to be unfit for use.

(b) Upon receiving notice from an official or agency determining the premises to be unfit for use, the landlord shall promptly give written notice to the tenant as provided in subsection (3) of this section. The landlord shall also attach a copy of the notice in a secure manner to the main entrance of the dwelling unit. The notice to the tenant shall include a copy of the official's or agency's notice and state:

(A) That the premises, or a portion of the premises, has been determined by an official or agency to be unfit for use due to contamination from the manufacture of methamphetamine and that as a result subsections (1) to (21) and (23) to (26) of this section do not apply to personal property left on any portion of the premises determined to be unfit for use;

(B) That the landlord has hired, or will hire, a contractor to assess the level of contamination of the site and to decontaminate the site;

(C) That upon hiring the contractor, the landlord will provide to the tenant the name, address and telephone number of the contractor; and

(D) That the tenant may contact the contractor to determine whether any of the tenant's personal property may be removed from the premises or may be decontaminated at the tenant's expense and then removed.

(c) To the extent consistent with rules of the Department of Human Services, the contractor may release personal property to the tenant.

(d) If the contractor and the department determine that the premises or the tenant's personal property is not unfit for use, upon notification by the department of the determination, the landlord shall comply with subsections (1) to (21) and (23) to (26) of this section for any personal property left on the premises.

(e) Except as provided in paragraph (d) of this subsection, the landlord is not responsible for storing or returning any personal property left on the portion of the premises that is unfit for use.

(23) In the case of an abandoned recreational vehicle, manufactured dwelling or floating home that is owned by someone other than the tenant, the provisions of this section regarding the rights and responsibilities of a tenant to the abandoned vehicle, dwelling or home also apply to that owner, with regard only to the vehicle, dwelling or home, and not to any goods left inside or outside the vehicle, dwelling or home.

(24) In the case of an abandoned motor vehicle, the procedure authorized by ORS 98.830 and 98.835 for removal of abandoned motor vehicles from private property may be used by a landlord as an alternative to the procedures required in this section.

(25)(a) A landlord may sell or dispose of a tenant's abandoned personal property without complying with subsections (1) to (24) and (26) of this section if, after termination of the tenancy or no more than seven days prior to the termination of the tenancy,

the following parties so agree in a writing entered into in good faith:

(A) The landlord;

(B) The tenant, or for an abandonment as the result of the death of a tenant who was the only tenant, the personal representative, designated person or other person entitled to possession of the personal property, such as an heir or devisee, as described in subsection (20) of this section; and

(C) In the case of a manufactured dwelling, floating home or recreational vehicle, any owner and any lienholder.

(b) A landlord may not, as part of a rental agreement, require a tenant, a personal representative, a designated person or any lienholder or owner to waive any right provided by this section.

(26) Until personal property is conclusively presumed to be abandoned under subsection (9) of this section, a landlord does not have a lien pursuant to ORS 87.152 for storing the personal property. [Formerly 91.840; 1993 c.18 §15; 1993 c.369 §14; 1995 c.559 §31; 1997 c.577 §25; 1999 c.603 §28; 2001 c.44 §1; 2001 c.445 §165; 2001 c.596 §35; 2003 c.378 §14; 2003 c.655 §57; 2003 c.658 §5; 2005 c.5 §1; 2005 c.391 §34; 2005 c.619 §§17,18; 2007 c.906 §31]

Manufactured Dwelling and Floating Home Spaces

90.675 Disposition of manufactured dwelling or floating home left in facility; notice; sale; limitation on landlord liability; tax cancellation; storage agreements; hazardous property. (1) As used in this section:

(a) "Current market value" means the amount in cash, as determined by the county assessor, that could reasonably be expected to be paid for personal property by an informed buyer to an informed seller, each acting without compulsion in an arm's-length transaction occurring on the assessment date for the tax year or on the date of a subsequent reappraisal by the county assessor.

(b) "Dispose of the personal property" means that, if reasonably appropriate, the landlord may throw away the property or may give it without consideration to a non-profit organization or to a person unrelated to the landlord. The landlord may not retain the property for personal use or benefit.

(c) "Lienholder" means any lienholder of abandoned personal property, if the lien is of record or the lienholder is actually known to the landlord.

(d) "Of record" means:

(A) For a manufactured dwelling, that a security interest has been properly recorded in the records of the Department of Consumer and Business Services pursuant to

ORS 446.611 or on a certificate of title issued by the Department of Transportation prior to May 1, 2005.

(B) For a floating home, that a security interest has been properly recorded with the State Marine Board pursuant to ORS 830.740 to 830.755 for a home registered and titled with the board pursuant to ORS 830.715.

(e) "Personal property" means only a manufactured dwelling or floating home located in a facility and subject to ORS 90.505 to 90.840. "Personal property" does not include goods left inside a manufactured dwelling or floating home or left upon a rented space and subject to disposition under ORS 90.425.

(2) A landlord may not store, sell or dispose of abandoned personal property except as provided by this section. This section governs the rights and obligations of landlords, tenants and any lienholders in any personal property abandoned or left upon the premises by the tenant or any lienholder in the following circumstances:

(a) The tenancy has ended by termination or expiration of a rental agreement or by relinquishment or abandonment of the premises and the landlord reasonably believes under all the circumstances that the tenant has left the personal property upon the premises with no intention of asserting any further claim to the premises or to the personal property;

(b) The tenant has been absent from the premises continuously for seven days after termination of a tenancy by a court order that has not been executed; or

(c) The landlord receives possession of the premises from the sheriff following restitution pursuant to ORS 105.161.

(3) Prior to selling or disposing of the tenant's personal property under this section, the landlord must give a written notice to the tenant that must be:

(a) Personally delivered to the tenant; or

(b) Sent by first class mail addressed and mailed to the tenant at:

(A) The premises;

(B) Any post-office box held by the tenant and actually known to the landlord; and

(C) The most recent forwarding address if provided by the tenant or actually known to the landlord.

(4)(a) A landlord shall also give a copy of the notice described in subsection (3) of this section to:

(A) Any lienholder of the personal property;

(B) The tax collector of the county where the personal property is located; and

(C) The assessor of the county where the personal property is located.

(b) The landlord shall give the notice copy required by this subsection by personal delivery or first class mail, except that for any lienholder, mail service must be both by first class mail and by certified mail with return receipt requested.

(c) A notice to lienholders under paragraph (a)(A) of this subsection must be sent to each lienholder at each address:

- (A) Actually known to the landlord;
- (B) Of record; and

(C) Provided to the landlord by the lienholder in a written notice that identifies the personal property subject to the lien and that was sent to the landlord by certified mail with return receipt requested within the preceding five years. The notice must identify the personal property by describing the physical address of the property.

(5) The notice required under subsection (3) of this section must state that:

(a) The personal property left upon the premises is considered abandoned;

(b) The tenant or any lienholder must contact the landlord by a specified date, as provided in subsection (6) of this section, to arrange for the removal of the abandoned personal property;

(c) The personal property is stored on the rented space;

(d) The tenant or any lienholder, except as provided by subsection (18) of this section, may arrange for removal of the personal property by contacting the landlord at a described telephone number or address on or before the specified date;

(e) The landlord shall make the personal property available for removal by the tenant or any lienholder, except as provided by subsection (18) of this section, by appointment at reasonable times;

(f) If the personal property is considered to be abandoned pursuant to subsection (2)(a) or (b) of this section, the landlord may require payment of storage charges, as provided by subsection (7)(b) of this section, prior to releasing the personal property to the tenant or any lienholder;

(g) If the personal property is considered to be abandoned pursuant to subsection (2)(c) of this section, the landlord may not require payment of storage charges prior to releasing the personal property;

(h) If the tenant or any lienholder fails to contact the landlord by the specified date or fails to remove the personal property within 30 days after that contact, the landlord may sell or dispose of the personal

property. If the landlord reasonably believes the county assessor will determine that the current market value of the personal property is \$8,000 or less, and the landlord intends to dispose of the property if the property is not claimed, the notice shall state that belief and intent; and

(i) If applicable, there is a lienholder that has a right to claim the personal property, except as provided by subsection (18) of this section.

(6) For purposes of subsection (5) of this section, the specified date by which a tenant or lienholder must contact a landlord to arrange for the disposition of abandoned personal property must be not less than 45 days after personal delivery or mailing of the notice.

(7) After notifying the tenant as required by subsection (3) of this section, the landlord:

(a) Shall store the abandoned personal property of the tenant on the rented space and shall exercise reasonable care for the personal property; and

(b) Is entitled to reasonable or actual storage charges and costs incidental to storage or disposal. The storage charge may be no greater than the monthly space rent last payable by the tenant.

(8) If a tenant or lienholder, upon the receipt of the notice provided by subsection (3) or (4) of this section or otherwise, responds by actual notice to the landlord on or before the specified date in the landlord's notice that the tenant or lienholder intends to remove the personal property from the premises, the landlord must make that personal property available for removal by the tenant or lienholder by appointment at reasonable times during the 30 days following the date of the response, subject to subsection (18) of this section. If the personal property is considered to be abandoned pursuant to subsection (2)(a) or (b) of this section, but not pursuant to subsection (2)(c) of this section, the landlord may require payment of storage charges, as provided in subsection (7)(b) of this section, prior to allowing the tenant or lienholder to remove the personal property. Acceptance by a landlord of such payment does not operate to create or reinstate a tenancy or create a waiver pursuant to ORS 90.412 or 90.417.

(9) Except as provided in subsections (18) to (20) of this section, if the tenant or lienholder does not respond within the time provided by the landlord's notice, or the tenant or lienholder does not remove the personal property within 30 days after responding to the landlord or by any date agreed to with the landlord, whichever is later, the personal property is conclusively

presumed to be abandoned. The tenant and any lienholder that have been given notice pursuant to subsection (3) or (4) of this section shall, except with regard to the distribution of sale proceeds pursuant to subsection (13) of this section, have no further right, title or interest to the personal property and may not claim or sell the property.

(10) If the personal property is presumed to be abandoned under subsection (9) of this section, the landlord then may:

(a) Sell the personal property at a public or private sale, provided that prior to the sale:

(A) The landlord may seek to transfer ownership of record of the personal property by complying with the requirements of the appropriate state agency; and

(B) The landlord shall:

(i) Place a notice in a newspaper of general circulation in the county in which the personal property is located. The notice shall state:

(I) That the personal property is abandoned;

(II) The tenant's name;

(III) The address and any space number where the personal property is located, and any plate, registration or other identification number for a floating home noted on the title, if actually known to the landlord;

(IV) Whether the sale is by private bidding or public auction;

(V) Whether the landlord is accepting sealed bids and, if so, the last date on which bids will be accepted; and

(VI) The name and telephone number of the person to contact to inspect the personal property;

(ii) At a reasonable time prior to the sale, give a copy of the notice required by sub-subparagraph (i) of this subparagraph to the tenant and to any lienholder, by personal delivery or first class mail, except that for any lienholder, mail service must be by first class mail with certificate of mailing;

(iii) Obtain an affidavit of publication from the newspaper to show that the notice required under sub-subparagraph (i) of this subparagraph ran in the newspaper at least one day in each of two consecutive weeks prior to the date scheduled for the sale or the last date bids will be accepted; and

(iv) Obtain written proof from the county that all property taxes and assessments on the personal property have been paid or, if not paid, that the county has authorized the sale, with the sale proceeds to be distributed pursuant to subsection (13) of this section; or

(b) Destroy or otherwise dispose of the personal property if the landlord determines from the county assessor that the current market value of the property is \$8,000 or less.

(11)(a) A public or private sale authorized by this section must be conducted consistent with the terms listed in subsection (10)(a)(B)(i) of this section. Every aspect of the sale including the method, manner, time, place and terms must be commercially reasonable.

(b) If there is no buyer at a sale described under paragraph (a) of this subsection, the personal property is considered to be worth \$8,000 or less, regardless of current market value, and the landlord shall destroy or otherwise dispose of the personal property.

(12) Notwithstanding ORS 446.155 (1) and (2), unless a landlord intentionally misrepresents the condition of personal property, the landlord is not liable for the condition of the personal property to:

(a) A buyer of the personal property at a sale pursuant to subsection (10)(a) of this section, with or without consideration; or

(b) A person or nonprofit organization to whom the landlord gives the personal property pursuant to subsection (1)(b), (10)(b) or (11)(b) of this section.

(13)(a) The landlord may deduct from the proceeds of the sale:

(A) The reasonable or actual cost of notice, storage and sale; and

(B) Unpaid rent.

(b) After deducting the amounts listed in paragraph (a) of this subsection, the landlord shall remit the remaining proceeds, if any, to the county tax collector to the extent of any unpaid property taxes and assessments owed on the dwelling or home.

(c) After deducting the amounts listed in paragraphs (a) and (b) of this subsection, if applicable, the landlord shall remit the remaining proceeds, if any, to any lienholder to the extent of any unpaid balance owed on the lien on the personal property.

(d) After deducting the amounts listed in paragraphs (a), (b) and (c) of this subsection, if applicable, the landlord shall remit to the tenant the remaining proceeds, if any, together with an itemized accounting.

(e) If the tenant cannot after due diligence be found, the landlord shall deposit the remaining proceeds with the county treasurer of the county in which the sale occurred. If not claimed within three years, the deposited proceeds revert to the general fund of the county and are available for general purposes.

(14) The county tax collector shall cancel all unpaid property taxes and assessments as provided under ORS 311.790 only under one of the following circumstances:

(a) The landlord disposes of the personal property after a determination described in subsection (10)(b) of this section.

(b) There is no buyer of the personal property at a sale described under subsection (11) of this section.

(c)(A) There is a buyer of the personal property at a sale described under subsection (11) of this section;

(B) The current market value of the personal property is \$8,000 or less; and

(C) The proceeds of the sale are insufficient to satisfy the unpaid property taxes and assessments owed on the personal property after distribution of the proceeds pursuant to subsection (13) of this section.

(d)(A) The landlord buys the personal property at a sale described under subsection (11) of this section;

(B) The current market value of the personal property is more than \$8,000;

(C) The proceeds of the sale are insufficient to satisfy the unpaid property taxes and assessments owed on the personal property after distribution of the proceeds pursuant to subsection (13) of this section; and

(D) The landlord disposes of the personal property.

(15) The landlord is not responsible for any loss to the tenant or lienholder resulting from storage of personal property in compliance with this section unless the loss was caused by the landlord's deliberate or negligent act. In the event of a deliberate and malicious violation, the landlord is liable for twice the actual damages sustained by the tenant or lienholder.

(16) Complete compliance in good faith with this section shall constitute a complete defense in any action brought by a tenant or lienholder against a landlord for loss or damage to such personal property disposed of pursuant to this section.

(17) If a landlord does not comply with this section:

(a) The tenant is relieved of any liability for damage to the premises caused by conduct that was not deliberate, intentional or grossly negligent and for unpaid rent and may recover from the landlord up to twice the actual damages sustained by the tenant;

(b) A lienholder aggrieved by the noncompliance may recover from the landlord the actual damages sustained by the lienholder. ORS 90.255 does not authorize an award of attorney fees to the prevailing

party in any action arising under this paragraph; and

(c) A county tax collector aggrieved by the noncompliance may recover from the landlord the actual damages sustained by the tax collector, if the noncompliance is part of an effort by the landlord to defraud the tax collector. ORS 90.255 does not authorize an award of attorney fees to the prevailing party in any action arising under this paragraph.

(18) The provisions of this section regarding the rights and responsibilities of a tenant to the abandoned personal property also apply to any lienholder, except that the lienholder may not sell or remove the dwelling or home unless:

(a) The lienholder has foreclosed the lien on the manufactured dwelling or floating home;

(b) The tenant or a personal representative or designated person described in subsection (20) of this section has waived all rights under this section pursuant to subsection (22) of this section; or

(c) The notice and response periods provided by subsections (6) and (8) of this section have expired.

(19)(a) Except as provided by subsection (20)(d) and (e) of this section, if a lienholder makes a timely response to a notice of abandoned personal property pursuant to subsections (6) and (8) of this section and so requests, a landlord shall enter into a written storage agreement with the lienholder providing that the personal property may not be sold or disposed of by the landlord for up to 12 months. A storage agreement entitles the lienholder to store the personal property on the previously rented space during the term of the agreement, but does not entitle anyone to occupy the personal property.

(b) The lienholder's right to a storage agreement arises upon the failure of the tenant or, in the case of a deceased tenant, the personal representative, designated person, heir or devisee to remove or sell the dwelling or home within the allotted time.

(c) To exercise the right to a storage agreement under this subsection, in addition to contacting the landlord with a timely response as described in paragraph (a) of this subsection, the lienholder must enter into the proposed storage agreement within 60 days after the landlord gives a copy of the agreement to the lienholder. The landlord shall give a copy of the proposed storage agreement to the lienholder in the same manner as provided by subsection (4)(b) of this section. The landlord may include a copy of the proposed storage agreement with the notice of abandoned property required by subsection (4) of this section. A lienholder

enters into a storage agreement by signing a copy of the agreement provided by the landlord and personally delivering or mailing the signed copy to the landlord within the 60-day period.

(d) The storage agreement may require, in addition to other provisions agreed to by the landlord and the lienholder, that:

(A) The lienholder make timely periodic payment of all storage charges, as described in subsection (7)(b) of this section, accruing from the commencement of the 45-day period described in subsection (6) of this section. A storage charge may include a utility or service charge, as described in ORS 90.532, if limited to charges for electricity, water, sewer service and natural gas and if incidental to the storage of personal property. A storage charge may not be due more frequently than monthly;

(B) The lienholder pay a late charge or fee for failure to pay a storage charge by the date required in the agreement, if the amount of the late charge is no greater than for late charges imposed on facility tenants;

(C) The lienholder maintain the personal property and the space on which the personal property is stored in a manner consistent with the rights and obligations described in the rental agreement that the landlord currently provides to tenants as required by ORS 90.510 (4); and

(D) The lienholder repair any defects in the physical condition of the personal property that existed prior to the lienholder entering into the storage agreement, if the defects and necessary repairs are reasonably described in the storage agreement and, for homes that were first placed on the space within the previous 24 months, the repairs are reasonably consistent with facility standards in effect at the time of placement. The lienholder shall have 90 days after entering into the storage agreement to make the repairs. Failure to make the repairs within the allotted time constitutes a violation of the storage agreement and the landlord may terminate the agreement by giving at least 14 days' written notice to the lienholder stating facts sufficient to notify the lienholder of the reason for termination. Unless the lienholder corrects the violation within the notice period, the agreement terminates as provided and the landlord may sell or dispose of the property without further notice to the lienholder.

(e) Notwithstanding subsection (7)(b) of this section, a landlord may increase the storage charge if the increase is part of a facility-wide rent increase for all facility tenants, the increase is no greater than the increase for other tenants and the landlord

gives the lienholder written notice consistent with the requirements of ORS 90.600 (1).

(f) During the term of an agreement described under this subsection, the lienholder has the right to remove or sell the property, subject to the provisions of the lien. Selling the property includes a sale to a purchaser who wishes to leave the property on the rented space and become a tenant, subject to the provisions of ORS 90.680. The landlord may condition approval for occupancy of any purchaser of the property upon payment of all unpaid storage charges and maintenance costs.

(g)(A) Except as provided in paragraph (d)(D) of this subsection, if the lienholder violates the storage agreement, the landlord may terminate the agreement by giving at least 90 days' written notice to the lienholder stating facts sufficient to notify the lienholder of the reason for the termination. Unless the lienholder corrects the violation within the notice period, the agreement terminates as provided and the landlord may sell or dispose of the property without further notice to the lienholder.

(B) After a landlord gives a termination notice pursuant to subparagraph (A) of this paragraph for failure of the lienholder to pay a storage charge and the lienholder corrects the violation, if the lienholder again violates the storage agreement by failing to pay a subsequent storage charge, the landlord may terminate the agreement by giving at least 30 days' written notice to the lienholder stating facts sufficient to notify the lienholder of the reason for termination. Unless the lienholder corrects the violation within the notice period, the agreement terminates as provided and the landlord may sell or dispose of the property without further notice to the lienholder.

(C) A lienholder may terminate a storage agreement at any time upon at least 14 days' written notice to the landlord and may remove the property from the facility if the lienholder has paid all storage charges and other charges as provided in the agreement.

(h) Upon the failure of a lienholder to enter into a storage agreement as provided by this subsection or upon termination of an agreement, unless the parties otherwise agree or the lienholder has sold or removed the property, the landlord may sell or dispose of the property pursuant to this section without further notice to the lienholder.

(20) If the personal property is considered abandoned as a result of the death of a tenant who was the only tenant, this section applies, except as follows:

(a) The provisions of this section regarding the rights and responsibilities of a tenant

to the abandoned personal property shall apply to any personal representative named in a will or appointed by a court to act for the deceased tenant or any person designated in writing by the tenant to be contacted by the landlord in the event of the tenant's death.

(b) The notice required by subsection (3) of this section must be:

(A) Sent by first class mail to the deceased tenant at the premises; and

(B) Personally delivered or sent by first class mail to any personal representative or designated person if actually known to the landlord.

(c) The notice described in subsection (5) of this section must refer to any personal representative or designated person, instead of the deceased tenant, and must incorporate the provisions of this subsection.

(d) If a personal representative, designated person or other person entitled to possession of the property, such as an heir or devisee, responds by actual notice to a landlord within the 45-day period provided by subsection (6) of this section and so requests, the landlord shall enter into a written storage agreement with the representative or person providing that the personal property may not be sold or disposed of by the landlord for up to 90 days or until conclusion of any probate proceedings, whichever is later. A storage agreement entitles the representative or person to store the personal property on the previously rented space during the term of the agreement, but does not entitle anyone to occupy the personal property. If such an agreement is entered, the landlord may not enter a similar agreement with a lienholder pursuant to subsection (19) of this section until the agreement with the personal representative or designated person ends.

(e) If a personal representative or other person requests that a landlord enter into a storage agreement, subsection (19)(c) to (e) and (g)(C) of this section applies, with the representative or person having the rights and responsibilities of a lienholder with regard to the storage agreement.

(f) During the term of an agreement described under paragraph (d) of this subsection, the representative or person has the right to remove or sell the property, including a sale to a purchaser or a transfer to an heir or devisee where the purchaser, heir or devisee wishes to leave the property on the rented space and become a tenant, subject to the provisions of ORS 90.680. The landlord also may condition approval for occupancy of any purchaser, heir or devisee of the property upon payment of all unpaid storage charges and maintenance costs.

(g) If the representative or person violates the storage agreement, the landlord may terminate the agreement by giving at least 30 days' written notice to the representative or person stating facts sufficient to notify the representative or person of the reason for the termination. Unless the representative or person corrects the violation within the notice period, the agreement terminates as provided and the landlord may sell or dispose of the property without further notice to the representative or person.

(h) Upon the failure of a representative or person to enter into a storage agreement as provided by this subsection or upon termination of an agreement, unless the parties otherwise agree or the representative or person has sold or removed the property, the landlord may sell or dispose of the property pursuant to this section without further notice to the representative or person.

(21) If a governmental agency determines that the condition of personal property abandoned under this section constitutes an extreme health or safety hazard under state or local law and the agency determines that the hazard endangers others in the facility and requires quick removal of the property, the landlord may sell or dispose of the property pursuant to this subsection. The landlord shall comply with all provisions of this section, except as follows:

(a) The date provided in subsection (6) of this section by which a tenant, lienholder, personal representative or designated person must contact a landlord to arrange for the disposition of the property must be not less than 15 days after personal delivery or mailing of the notice required by subsection (3) of this section.

(b) The date provided in subsections (8) and (9) of this section by which a tenant, lienholder, personal representative or designated person must remove the property must be not less than seven days after the tenant, lienholder, personal representative or designated person contacts the landlord.

(c) The notice required by subsection (3) of this section must be as provided in subsection (5) of this section, except that:

(A) The dates and deadlines in the notice for contacting the landlord and removing the property must be consistent with this subsection;

(B) The notice must state that a governmental agency has determined that the property constitutes an extreme health or safety hazard and must be removed quickly; and

(C) The landlord shall attach a copy of the agency's determination to the notice.

(d) If the tenant, a lienholder or a personal representative or designated person

does not remove the property within the time allowed, the landlord or a buyer at a sale by the landlord under subsection (11) of this section shall promptly remove the property from the facility.

(e) A landlord is not required to enter into a storage agreement with a lienholder, personal representative or designated person pursuant to subsection (19) of this section.

(22)(a) A landlord may sell or dispose of a tenant's abandoned personal property without complying with the provisions of this section if, after termination of the tenancy or no more than seven days prior to the termination of the tenancy, the following parties so agree in a writing entered into in good faith:

(A) The landlord;

(B) The tenant, or for an abandonment as the result of the death of a tenant who was the only tenant, the personal representative, designated person or other person entitled to possession of the personal property, such as an heir or devisee, as described in subsection (20) of this section; and

(C) Any lienholder.

(b) A landlord may not, as part of a rental agreement, as a condition to approving a sale of property on rented space under ORS 90.680 or in any other manner, require a tenant, a personal representative, a designated person or any lienholder to waive any right provided by this section.

(23) Until personal property is conclusively presumed to be abandoned under subsection (9) of this section, a landlord does not have a lien pursuant to ORS 87.152 for storing the personal property. [1997 c.577 §27b; 1999 c.603 §33; 1999 c.676 §24; 2001 c.44 §2; 2001 c.596 §40; 2003 c.378 §18; 2003 c.655 §58; 2003 c.658 §8; 2005 c.5 §2; 2005 c.619 §§21,22; 2007 c.906 §34]

Chapter 97

ANATOMICAL GIFTS

97.972 Rights and duties of procurement organizations and others; authorized examinations. (1) When a hospital refers an individual at or near death to a procurement organization, the organization shall make a reasonable search of the records of the Department of Transportation and any donor registry that it knows exists for the geographical area in which the individual resides to ascertain whether the individual has made an anatomical gift.

(2) A procurement organization must be allowed reasonable access to information in the records of the Department of Transportation to ascertain whether an individual at or near death is a donor.

(3) When a hospital refers an individual at or near death to a procurement organization, the organization may conduct any reasonable examination necessary to ensure the medical suitability of a body part that is or could be the subject of an anatomical gift for transplantation, therapy, research or education from a donor or a prospective donor. During the examination period, measures necessary to ensure the medical suitability of the body part may not be withdrawn unless the hospital or procurement organization knows that the individual expressed a contrary intent.

(4) Unless otherwise prohibited by law, at any time after a donor's death, the person to whom a body part passes under ORS 97.969 may conduct any reasonable examination necessary to ensure the medical suitability of the body or body part for its intended purpose.

(5) Unless otherwise prohibited by law, an examination under subsection (3) or (4) of this section may include an examination of all medical and dental records of the donor or prospective donor.

(6) Upon the death of a minor who was a donor or had signed a refusal, unless a procurement organization knows the minor is emancipated, the procurement organization shall conduct a reasonable search for the parents of the minor and provide the parents with an opportunity to revoke or amend the anatomical gift or revoke the refusal.

(7) Upon referral by a hospital under subsection (1) of this section, a procurement organization shall make a reasonable search for any person listed in ORS 97.965 having priority to make an anatomical gift on behalf of a prospective donor. If a procurement organization receives information that an anatomical gift to any other person was made, amended or revoked, it shall promptly advise the other person of all relevant information.

(8) Subject to ORS 97.969 (9) and 97.980, the rights of the person to whom a body part passes under ORS 97.969 are superior to the rights of all others with respect to the body part. The person may accept or reject an anatomical gift in whole or in part. Subject to the terms of the document of gift and ORS 97.951 to 97.982, a person who accepts an anatomical gift of an entire body may allow embalming, burial or cremation and use of remains in a funeral service. If the gift is of a body part, the person to whom the body part passes under ORS 97.969, upon the death of the donor and before embalming, burial or cremation, shall cause the body part to be removed without unnecessary mutilation.

(9) Neither the physician who attends the decedent at death nor the physician who determines the time of the decedent's death may participate in the procedures for removing or transplanting a body part from the decedent.

(10) A physician or technician may remove from the body of a donor a donated body part that the physician or technician is qualified to remove. [2007 c.681 §13]

97.977 Donor registry; duty of Department of Transportation to cooperate with donor registry. (1)(a) The Department of Human Services may allow an organ procurement organization to establish a donor registry.

(b) Only one donor registry may be established within this state.

(c) The donor registry shall comply with subsections (3) and (4) of this section.

(2) The Department of Transportation shall:

(a) Cooperate with a person who administers the donor registry established under subsection (1) of this section for the purpose of transferring to the donor registry all relevant information regarding a donor's making, amending or revoking an anatomical gift.

(b) When requested by the organ procurement organization that has established the donor registry in this state, the department shall electronically transfer to the organ procurement organization the name, address, birthdate and donor designation listed on the driver license or identification card of a person designated as a donor. The organ procurement organization shall treat the information transferred from the department as confidential and may use the information only to expedite the making of anatomical gifts authorized by the donor.

(3) The donor registry must:

(a) Allow a donor or other person authorized under ORS 97.955 to include on the donor registry a statement or symbol that the donor has made, amended or revoked an anatomical gift;

(b) Be accessible to a procurement organization to allow the procurement organization to obtain relevant information on the donor registry to determine, at or near death of the donor or a prospective donor, whether the donor or prospective donor has made, amended or revoked an anatomical gift; and

(c) Be accessible for purposes of this subsection seven days a week on a 24-hour basis.

(4) Personally identifiable information on the donor registry about a donor or prospective donor may not be used or disclosed

without the express consent of the donor, prospective donor or person who made the anatomical gift for any purpose other than to determine, at or near death of the donor or prospective donor, whether the donor or prospective donor has made, amended or revoked an anatomical gift. [2007 c.681 §17]

Chapter 98

DISPOSITION OF UNLAWFULLY PARKED VEHICLES AND ABANDONED VEHICLES

98.805 Definitions for ORS 98.810 to 98.818, 98.830, 98.835 and 98.840. As used in this section and ORS 98.810 to 98.818, 98.830, 98.835 and 98.840:

(1) "Owner of a parking facility" means:

(a) The owner, lessee or person in lawful possession of a private parking facility; or

(b) Any officer or agency of this state with authority to control or operate a parking facility.

(2) "Owner of proscribed property" means the owner, lessee or person in lawful possession of proscribed property.

(3) "Parking facility" means any property used for vehicle parking.

(4) "Proscribed property" means any part of private property:

(a) Where a reasonable person would conclude that parking is not normally permitted at all or where a land use regulation prohibits parking; or

(b) That is used primarily for parking at a dwelling unit. As used in this paragraph, "dwelling unit" means a single-family residential dwelling or a duplex.

(5) "Tower" means a person issued a towing business certificate under ORS 822.205.

(6) "Vehicle" has the meaning given that term in ORS 801.590. [1979 c.100 §2; 1981 c.861 §23; 1983 c.436 §2; 2007 c.538 §9]

98.810 Unauthorized parking of vehicle on proscribed property prohibited. A person may not, without the permission of:

(1) The owner of a parking facility, leave or park any vehicle on the parking facility if there is a sign displayed in plain view at the parking facility prohibiting or restricting public parking on the parking facility.

(2) The owner of proscribed property, leave or park any vehicle on the proscribed property whether or not there is a sign prohibiting or restricting parking on the proscribed property. [1953 c.575 §1; 1979 c.100 §3; 1981 c.861 §24; 1983 c.436 §3; 2007 c.538 §10]

98.812 Towing and storage of unlawfully parked vehicle; lien for towage, care and storage charges; notice requirements. (1) If a vehicle has been left or parked in violation of ORS 98.810, the owner of the parking facility or the owner of the proscribed property may have a tower tow the vehicle from the parking facility or the proscribed property and place the vehicle in storage at a secure location under the control of the tower.

(2) A tower who tows a vehicle at the request of an owner of a parking facility or the owner of proscribed property under this section shall provide to the owner or operator of the vehicle the information required in ORS 98.856 in the manner provided in ORS 98.856.

(3) A tower is entitled to a lien on a towed vehicle and its contents for the tower's just and reasonable charges and may retain possession thereof until the just and reasonable charges for the towage, care and storage of the towed vehicle have been paid if the tower complies with the following requirements:

(a) The tower shall notify the local law enforcement agency of the location of the towed vehicle within one hour after the towed vehicle is placed in storage;

(b) If the towed vehicle is registered in Oregon, the tower shall give notice, within 15 days after the towed vehicle is placed in storage, to the owner of the towed vehicle or any other person with an interest in the towed vehicle, as indicated by the certificate of title. If notice under this paragraph is given by mail, it must be transmitted within the 15-day period, but need not be received within that period, but within a reasonable time. If the tower fails to comply with the notice requirements of this paragraph, the amount of the lien is limited to a sum equal to the reasonable expenses incurred within the 15-day period for towage, care and storage of the towed vehicle; and

(c) If the towed vehicle is not registered in Oregon, the tower shall, within 15 days after the towed vehicle is placed in storage, notify and request the title information and the name and address of the owner of the towed vehicle from the motor vehicle agency for the state in which the towed vehicle is registered. The tower shall have 15 days from the date of receipt of the information from the state motor vehicle agency to notify the owner of the towed vehicle or any other person with an interest in the towed vehicle, as indicated by the certificate of title. If notice under this paragraph is given by mail, it must be transmitted within 15 days from the receipt of information from the state motor vehicle agency, but need not be received

within that period, but within a reasonable time. If the tower fails to comply with the notice requirements of this paragraph, the amount of the lien is limited to a sum equal to the reasonable expenses incurred within the period between storage of the towed vehicle and receipt of information from the state motor vehicle agency for towage, care and storage of the towed vehicle.

(4) The lien created by subsection (3) of this section may be foreclosed only in the manner provided by ORS 87.172 (3) and 87.176 to 87.206 for foreclosure of liens arising or claimed under ORS 87.152. [1953 c.575 §2; 1977 c.634 §1; 1979 c.100 §4; 1981 c.861 §25; 1983 c.436 §4; 1993 c.385 §2; 2001 c.424 §1; 2007 c.538 §11]

98.818 Preference of lien. The lien created by ORS 98.812 shall have preference over any and all other liens or encumbrances upon the vehicle. [1953 c.575 §3; 2007 c.538 §11a]

98.830 Towing abandoned vehicle from private property; conditions. A person who is the owner, or is in lawful possession, of private property on which a vehicle has been abandoned may have a tower tow the vehicle from the property if:

(1) The person affixes a notice to the vehicle stating that the vehicle will be towed if it is not removed. The notice required by this subsection must remain on the vehicle for 72 hours before the vehicle may be removed.

(2) The person fills out and signs a form that includes:

(a) A description of the vehicle to be towed;

(b) The location of the property from which the vehicle will be towed; and

(c) A statement that the person has complied with subsection (1) of this section. [1995 c.758 §1; 2007 c.538 §12]

98.835 Immunity from civil liability for towing abandoned vehicle; lien for towage, care and storage charges; notice requirements. (1) A tower who tows a vehicle pursuant to ORS 98.830 is immune from civil liability for towing the vehicle if the tower has a form described in ORS 98.830 (2), filled out by a person purporting to be the owner or a person in lawful possession of the private property from which the vehicle is towed. This subsection does not grant immunity for any loss, damage or injury arising out of any negligent or willful damage to, or destruction of, the vehicle that occurs during the course of the towing.

(2) The tower who tows a vehicle pursuant to ORS 98.830 is entitled to a lien on the towed vehicle and its contents for the tower's just and reasonable charges. The tower may retain possession of the towed vehicle until the just and reasonable charges for the

towage, care and storage of the towed vehicle have been paid if the tower complies with the following requirements:

(a) The tower shall notify the local law enforcement agency of the location of the towed vehicle within one hour after the towed vehicle is placed in storage;

(b) If the towed vehicle is registered in Oregon, the tower shall give notice by first class mail with a certificate of mailing, within 15 days after the towed vehicle is placed in storage, to the owner of the towed vehicle and any other person with an interest in the towed vehicle, as indicated by the certificate of title. If notice under this paragraph is given by mail, it must be transmitted within the 15-day period, but need not be received within that period, but within a reasonable time. If the tower fails to comply with the notice requirements of this paragraph, the amount of the lien is limited to a sum equal to the reasonable expenses incurred within the 15-day period for towage, care and storage of the towed vehicle; and

(c) If the towed vehicle is not registered in Oregon, the tower shall, within 15 days after the towed vehicle is placed in storage, notify and request the title information and the name and address of the owner of the towed vehicle from the motor vehicle agency for the state in which the towed vehicle is registered. The tower shall have 15 days from the date of receipt of the information from the state motor vehicle agency to notify the owner of the towed vehicle or any other person with an interest in the towed vehicle, as indicated by the certificate of title. If notice under this paragraph is given by mail, it must be transmitted within 15 days from the receipt of information from the state motor vehicle agency, but need not be received within that period, but within a reasonable time. If the tower fails to comply with the notice requirements of this paragraph, the amount of the lien is limited to a sum equal to the reasonable expenses incurred within the period between storage of the towed vehicle and receipt of information from the state motor vehicle agency for towage, care and storage of the towed vehicle.

(3) The lien created by subsection (2) of this section may be foreclosed only in the manner provided by ORS 87.172 (3) and 87.176 to 87.206 for foreclosure of liens arising or claimed under ORS 87.152. [1995 c.758 §2; 2001 c.424 §2; 2007 c.538 §13]

98.840 Towing vehicle alternative to procedure in ORS 98.810 to 98.818. The procedure authorized by ORS 98.830 and 98.835 for removal of abandoned vehicles from private property may be used by persons described in ORS 98.805 as an alterna-

tive to the procedures described in ORS 98.810 to 98.818. [1995 c.758 §4; 2007 c.538 §13a]

Chapter 114

ADMINISTRATION OF SMALL ESTATES

114.505 Definitions for ORS 114.505 to 114.560. As used in ORS 114.505 to 114.560:

(1) "Affiant" means the person or persons signing an affidavit filed under ORS 114.515.

(2) "Claiming successors" means:

(a) If the decedent died intestate, the heir or heirs of the decedent, or if there is no heir, an estate administrator of the Department of State Lands appointed under ORS 113.235;

(b) If the decedent died testate, the devisee or devisees of the decedent; and

(c) Any creditor of the estate entitled to payment or reimbursement from the estate under ORS 114.545 (1)(c) who has not been paid or reimbursed the full amount owed such creditor within 60 days after the date of the decedent's death.

(3) "Estate" means decedent's property subject to administration in Oregon. [1973 c.710 §2; 1977 c.239 §1; 1979 c.340 §1; 1979 c.467 §3; 1989 c.228 §1; 2003 c.395 §14; 2005 c.22 §92]

114.515 Value of estate; where affidavit filed; fee; amended affidavit; supplemental affidavit. (1) If the estate of a decedent meets the requirements of subsection (2) of this section, any of the following persons may file an affidavit with the clerk of the probate court in any county where there is venue for a proceeding seeking the appointment of a personal representative for the estate:

(a) One or more of the claiming successors of the decedent.

(b) If the decedent died testate, any person named as personal representative in the decedent's will.

(2) An affidavit under this section may be filed only if:

(a) The fair market value of the estate is \$200,000 or less;

(b) Not more than \$50,000 of the fair market value of the estate is attributable to personal property; and

(c) Not more than \$150,000 of the fair market value of the estate is attributable to real property.

(3) An affidavit under this section may not be filed until 30 days after the death of the decedent.

(4) An affidavit filed under the provisions of this section must contain the information

required in ORS 114.525 and shall be made a part of the probate records.

(5) In determining fair market value under this section, the fair market value of the entire interest in the property included in the estate shall be used without reduction for liens or other debts.

(6) The clerk of the probate court shall charge and collect a fee of \$23 for the filing of any affidavit under this section.

(7) Any error or omission in an affidavit filed under this section may be corrected by filing an amended affidavit within four months after the filing of the affidavit.

(8) One or more supplemental affidavits may be filed at any time after the filing of an affidavit under this section for the purpose of including property not described in the original affidavit. Copies of all previously filed affidavits must be attached to the supplemental affidavit and all information required in ORS 114.525 must be reflected in the supplemental affidavit. A supplemental affidavit may not be filed if by reason of the additional property described in the supplemental affidavit any limitation imposed by subsection (2) of this section is exceeded. [1973 c.710 §§3, 8; 1977 c.239 §2; 1979 c.467 §1; 1981 s.s. c.3 §36; 1985 c.368 §1; 1985 c.496 §6; 1987 c.586 §28; 1989 c.228 §2; 1989 c.856 §1; 1995 c.682 §1; 1997 c.447 §1; 1997 c.801 §32; 2003 c.737 §§59,60; 2005 c.122 §§1,2; 2005 c.273 §§1,2; 2005 c.702 §§69,70,71]

Note: Section 3, chapter 273, Oregon Laws 2005, provides:

Sec. 3. The amendments to ORS 114.515 by sections 1 and 2 of this 2005 Act apply only to decedents who die on or after the effective date of this 2005 Act [January 1, 2006]. [2005 c.273 §3]

Note: Section 15 (19), chapter 860, Oregon Laws 2007, provides:

Sec. 15. (19) In addition to the fee provided for in ORS 114.515 (6), for the period commencing September 1, 2007, and ending June 30, 2009, the clerk of the probate court shall collect a surcharge of \$1 upon the filing of an affidavit under ORS 114.515. [2007 c.860 §15(19)]

114.520 Authorization from Department of State Lands required for filing of affidavit by creditor if decedent dies intestate and without heirs; rules. (1) If a decedent dies intestate and without heirs, a creditor of an estate who is a claiming successor may not file an affidavit under ORS 114.515 unless the creditor has received written authorization from an estate administrator of the Department of State Lands appointed under ORS 113.235. Except as provided by rule adopted by the Director of the Department of State Lands, an estate administrator shall consent to the filing of an affidavit under ORS 114.515 by a creditor only if it appears after investigation that the estate is insolvent.

(2) A creditor of an estate who is subject to subsection (1) of this section may give

written notice to an estate administrator of the Department of State Lands informing the estate administrator that the creditor intends to file an affidavit under ORS 114.515. Upon receiving the notice permitted by this subsection, the estate administrator shall investigate the assets and liabilities of the estate. Within 30 days after receiving the notice required by this subsection, the estate administrator shall either:

(a) Give written authorization to the creditor for the filing of an affidavit by the creditor under ORS 114.515; or

(b) Inform the creditor that the Department of State Lands will file an affidavit as claiming successor under ORS 114.515.

(3) If a decedent dies intestate and without heirs, a creditor of an estate who is a claiming successor and who files an affidavit under ORS 114.515 must notate at the top of the affidavit that the affidavit is being filed by a creditor of the estate. If the affidavit contains the notation required by this subsection, the clerk of the probate court may not accept the affidavit for filing unless there is attached to the affidavit written authorization for the filing of the affidavit by the creditor from an estate administrator of the Department of State Lands. The written authorization may be a copy of a memorandum of an interagency agreement between the Department of State Lands and another state agency. [1997 c.88 §2; 2003 c.395 §15]

114.525 Content of affidavit. An affidavit filed under ORS 114.515 shall:

(1) State the name, age, domicile, post-office address and Social Security number of the decedent;

(2) State the date and place of the decedent's death. A certified copy of the death certificate shall be attached to the affidavit;

(3) Describe and state the fair market value of all property in the estate, including a legal description of any real property;

(4) State that no application or petition for the appointment of a personal representative has been granted in Oregon;

(5) State whether the decedent died testate or intestate, and if the decedent died testate, the will shall be attached to the affidavit;

(6) List the heirs of the decedent and the last address of each heir as known to the affiant, and state that a copy of the affidavit showing the date of filing and a copy of the will, if the decedent died testate, will be delivered to each heir or mailed to the heir at the last-known address;

(7) If the decedent died testate, list the devisees of the decedent and the last address of each devisee as known to the affiant and

state that a copy of the will and a copy of the affidavit showing the date of filing will be delivered to each devisee or mailed to the devisee at the last-known address;

(8) State the interest in the property described in the affidavit to which each heir or devisee is entitled and the interest, if any, that will escheat;

(9) State that reasonable efforts have been made to ascertain creditors of the estate. List the expenses of and claims against the estate remaining unpaid or on account of which the affiant or any other person is entitled to reimbursement from the estate, including the known or estimated amounts thereof and the names and addresses of the creditors as known to the affiant, and state that a copy of the affidavit showing the date of filing will be delivered to each creditor who has not been paid in full or mailed to the creditor at the last-known address;

(10) Separately list the name and address of each person known to the affiant to assert a claim against the estate that the affiant disputes and the known or estimated amount thereof and state that a copy of the affidavit showing the date of filing will be delivered to each such person or mailed to the person at the last-known address;

(11) State that a copy of the affidavit showing the date of filing will be mailed or delivered to the Department of Human Services;

(12) State that claims against the estate not listed in the affidavit or in amounts larger than those listed in the affidavit may be barred unless:

(a) A claim is presented to the affiant within four months of the filing of the affidavit at the address stated in the affidavit for presentment of claims; or

(b) A personal representative of the estate is appointed within the time allowed under ORS 114.555; and

(13) If the affidavit lists one or more claims that the affiant disputes, state that any such claim may be barred unless:

(a) A petition for summary determination is filed within four months of the filing of the affidavit; or

(b) A personal representative of the estate is appointed within the time allowed under ORS 114.555. [1973 c.710 §6; 1977 c.239 §3; 1979 c.340 §2; 1989 c.228 §3; 1991 c.191 §3; 1995 c.453 §1; 2001 c.104 §35; 2001 c.620 §2; 2001 c.900 §18a; 2003 c.196 §1; 2003 c.395 §16; 2005 c.22 §93]

114.535 Transfer of decedent's property to affiant; proceedings to compel transfer. (1) Any person indebted to the decedent or having possession of personal property belonging to the estate, to whom a

certified copy of the affidavit filed under ORS 114.515 is delivered by the affiant on or after the 10th day following the filing of the affidavit, shall pay, transfer or deliver the personal property to the affiant. Any person who has received property of the decedent under ORS 446.616, 722.262 or 803.094, or any similar statute providing for the transfer of property of an estate which is not being probated shall pay, transfer or deliver the property to the affiant if the person would be required to pay, transfer or deliver the property to a personal representative of the estate. The transferor is discharged and released from any liability or responsibility for the transfer in the same manner and with the same effect as if the property had been transferred, delivered or paid to a personal representative of the estate of the decedent.

(2) A transfer agent of any corporate security registered in the name of the decedent shall change the registered ownership on the books of the corporation to the person entitled thereto on presentation of a certified copy of the affidavit filed under ORS 114.515.

(3) If a person to whom an affidavit is delivered refuses to pay, deliver or transfer any personal property to the affiant or the person entitled to the property as disclosed in the affidavit filed under ORS 114.515, the property may be recovered or its payment, delivery or transfer compelled upon proof of the transferee's entitlement in a proceeding brought for the purpose by or on behalf of the transferee.

(4) If the affidavit was signed by the Director of Human Services or a designee of the director, the director or the designee may certify a copy of the affidavit for the purposes described in subsection (1) or (2) of this section. [1973 c.710 §4; 1979 c.340 §3; 1989 c.228 §4; 1991 c.67 §23; 1997 c.631 §404; 2003 c.196 §2; 2003 c.655 §60]

114.540 Procedure for claims; disallowance; summary determination. (1) A claim against an estate with respect to which an affidavit is filed under ORS 114.515 may be presented to the affiant within four months after the affidavit was filed. If an amended affidavit is filed under ORS 114.515 (7), claims against the estate must be filed within four months after the filing of the amended affidavit. If a supplemental affidavit is filed under ORS 114.515 (8), claims against the estate must be filed within four months after the filing of the supplemental affidavit. Each claim presented to the affiant must include the information required by ORS 115.025.

(2) A claim presented to the affiant shall be considered allowed as presented unless within 60 days after the date of presentment of the claim the affiant mails or delivers a

notice of disallowance of the claim in whole or in part to the claimant and any attorney for the claimant. A notice of disallowance of a claim shall inform the claimant that the claim has been disallowed in whole or in part and, to the extent disallowed, will be barred unless:

(a) The claimant proceeds as provided in subsection (3) of this section; or

(b) A personal representative is appointed within the time allowed under ORS 114.555.

(3) A creditor of the estate whose claim has been presented within the time permitted by subsection (1) of this section and disallowed by the affiant may within 30 days after the date of mailing or delivery of the notice of disallowance file with the probate court a petition for summary determination of the claim by the court. A creditor of the decedent whose claim is listed in the affidavit as disputed may within four months after the filing of the affidavit file with the probate court a petition for summary determination of the creditor's claim by the court. The court shall hear the matter without a jury, after notice to the creditor and affiant, and any interested person may be heard in the proceeding. The claim may be proved as provided in ORS 115.195 (2). Upon the hearing the court shall determine the claim in a summary manner and shall make an order allowing or disallowing the claim in whole or in part. If the court allows the claim in whole or in part, the order shall direct the affiant, to the extent of property of the estate allocable to the payment of the claim pursuant to ORS 115.125, or any claiming successor to whom payment, delivery or transfer has been made under ORS 114.505 to 114.560 as a person entitled thereto as disclosed in the affidavit, to the extent of the value of the property received, to pay to the creditor the amount so allowed. No appeal may be taken from the order of the court made upon the summary determination. [1989 c.228 §7; 2003 c.523 §3; 2005 c.122 §4]

114.545 Duties of person filing affidavit; payment of claims; conveyance of real property; liability of person to whom property transferred or payment made.

(1) The affiant:

(a) Shall take control of the property of the estate coming into the possession of the affiant.

(b) Within 30 days after filing the affidavit shall mail, deliver or cause to be recorded each instrument which the affidavit states will be mailed, delivered or recorded.

(c) From and to the extent of the property of the estate, shall pay or reimburse any person who has paid:

(A) Expenses described in ORS 115.125 (1)(b) and (c) and listed in the affidavit;

(B) Claims listed in the affidavit as undisputed;

(C) Allowed claims presented to the affiant within the time permitted by ORS 114.540; and

(D) Claims which the probate court directs the affiant to pay.

(d) Shall pay claims and expenses under paragraph (c) of this subsection in the order of priority prescribed by ORS 115.125.

(e) May transfer or sell any vehicle that is part of the estate before the completion of the period established under ORS 114.555 if the affiant complies with the requirements established by the Department of Transportation for such purposes under ORS 803.094.

(f) May convey any real or personal property that is part of the estate before the completion of the period established under ORS 114.555, provided that each heir or devisee succeeding to the interest conveyed joins in the conveyance and that any proceeds of sale, net of the reasonable expenses of sale and any debt secured as of the date of the decedent's death by a duly perfected lien on the property, shall become a part of the estate subject to ORS 114.505 to 114.560. If the property is a manufactured structure as defined in ORS 446.561, the affiant must assign interest in the structure as provided in ORS 446.616. Any conveyance to a purchaser in good faith and for a valuable consideration made by the affiant and the heir or devisee succeeding to the interest conveyed, or made by the heir or devisee succeeding to the interest conveyed after completion of the period established under ORS 114.555, conveys the interest stated in the conveyance free of any interest of the claiming successors, and the purchaser has no duty with respect to application of the consideration paid for the conveyance.

(2) Any claiming successor to whom payment, delivery or transfer is made under ORS 114.505 to 114.560 as a person entitled thereto as disclosed in the affidavit is personally answerable and accountable:

(a) To the extent of the value of the property received, to creditors of the estate to the extent such creditors are entitled to payment under subsection (1) of this section; and

(b) To any personal representative of the estate of the decedent thereafter appointed.

(3) The affiant shall cause to be recorded in the deed records of any county in which real property belonging to the decedent is situated an affidavit or claiming successor's

deed executed in the manner required by ORS chapter 93.

(4) For a manufactured structure as defined in ORS 446.561 belonging to a decedent and assessed as personal property, the affiant shall file with the Department of Consumer and Business Services the necessary information for recording the successor's interest in the manufactured structure on an ownership document. [1973 c.710 §7; 1979 c.340 §4; 1985 c.300 §5; 1989 c.148 §6; 1989 c.228 §5; 1991 c.191 §4; 2003 c.655 §61]

114.550 Summary review of administration of estate; hearing. The affiant or any claiming successor of the estate who has not been paid the full amount owed such claiming successor may, within two years after the filing of an affidavit under ORS 114.515, file with the probate court a petition for summary review of administration of the estate. A creditor may not file a petition under this section if the creditor received a copy of an affidavit filed under ORS 114.515 delivered or mailed to such creditor within 30 days after the date the affidavit was filed, the creditor was shown as a disputed creditor in the affidavit, and the creditor has not filed a petition for summary determination under ORS 114.540. The court shall hear the matter without a jury, after notice to the claiming successor and the affiant, and any interested person may be heard in the proceeding. Upon the hearing the court shall review administration of the estate in a summary manner and may order the affiant to sell property of the estate and pay creditors, to pay creditors of the estate from property of the estate or of the affiant, or to distribute property of the estate to the claiming successors, or may order any person who has received property of the estate to pay amounts owed to claiming successors of the estate in whole or in part. [1989 c.228 §8; 2003 c.196 §3]

114.555 Effect of failure to appoint personal representative. If a personal representative is not appointed within four months after the filing of the affidavit authorized by ORS 114.515, the interest of the decedent in all of the property described in the affidavit is transferred to the person or persons shown by the affidavit to be entitled thereto, and any other claims against the property are barred except as provided in ORS 114.540, 114.545 and 114.550. [1973 c.710 §5; 1977 c.239 §4; 1989 c.228 §10]

114.560 Exclusive remedy. The exclusive remedy of a person injured by the failure of the affiant or any claiming successor to comply with the requirements of ORS 114.505 to 114.560 shall be a summary determination under ORS 114.540, a summary review of administration under ORS 114.550, or appointment of a personal representative

for the estate within the time allowed by ORS 114.555. [1989 c.228 §9]

Chapter 133

ARREST AND RELATED PROCEDURES

General Provisions

133.033 Peace officer; community caretaking functions. (1) Except as otherwise expressly prohibited by law, any peace officer of this state, as defined in ORS 133.005, is authorized to perform community caretaking functions.

(2) As used in this section, "community caretaking functions" means any lawful acts that are inherent in the duty of the peace officer to serve and protect the public. "Community caretaking functions" includes, but is not limited to:

(a) The right to enter or remain upon the premises of another if it reasonably appears to be necessary to:

(A) Prevent serious harm to any person or property;

(B) Render aid to injured or ill persons;

or

(C) Locate missing persons.

(b) The right to stop or redirect traffic or aid motorists or other persons when such action reasonably appears to be necessary to:

(A) Prevent serious harm to any person or property;

(B) Render aid to injured or ill persons;

or

(C) Locate missing persons.

(3) Nothing contained in this section shall be construed to limit the authority of a peace officer that is inherent in the office or that is granted by any other provision of law. [1991 c.959 §1]

Note: 133.033 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 133 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

Criminal Citations

133.066 Criminal citations generally. (1) A criminal citation may include a complaint or may be issued without a form of complaint. If a criminal citation is issued without a complaint, the citation must be in the form provided by ORS 133.068. If a criminal citation is issued with a complaint, the citation must be in the form provided by ORS 133.069.

(2) A criminal citation may be issued with a complaint only if a procedure for the issuance of a citation with a complaint has

been authorized by the district attorney for the county in which the crime is alleged to have been committed.

(3) A complaint or information may be filed with the court before or after the issuance of a criminal citation without a complaint. Nothing in this section affects the requirement that a complaint or information be filed for the crime charged.

(4) More than one crime may be charged in a single criminal citation. However, if a defendant is to be charged with driving while under the influence of intoxicants in violation of ORS 813.010, a separate criminal citation must be used for the charge of driving while under the influence of intoxicants and that citation may not be used to charge the defendant with the commission of any other crime.

(5) Uniform citation forms for crimes shall be adopted by the Supreme Court under ORS 1.525. In adopting those forms, the Supreme Court may combine the requirements for criminal citations under this section and the requirements for violation citations under ORS 153.045. A crime and a violation may not be charged on the same citation form. [1999 c.1051 §57]

133.068 Contents of criminal citation issued without complaint. A criminal citation issued without a form of complaint must contain:

(1) The name of the court at which the cited person is to appear.

(2) The name of the person cited.

(3) A brief description of the offense for which the person is charged, the date, time and place at which the offense occurred, the date on which the citation was issued, and the name of the peace officer who issued the citation.

(4) The date, time and place at which the person cited is to appear in court, and a summons to so appear.

(5) Whether a complaint or information had been filed with the court at the time the citation was issued.

(6) If the arrest was made by a private party, the name of the arresting person.

(7) The following:

READ CAREFULLY

This citation is not a complaint or an information. A complaint or an information may be filed and you will be provided a copy thereof at the time of your first appearance. You **MUST** appear in court at the time set in the citation. **IF YOU FAIL TO APPEAR AND A COMPLAINT OR INFORMATION**

HAS BEEN FILED, THE COURT WILL IMMEDIATELY ISSUE A WARRANT FOR YOUR ARREST.

[1999 c.1051 §60]

133.069 Contents of criminal citation issued with complaint; nonconformance.

(1) A criminal citation issued with a form of complaint must contain:

(a) The name of the court at which the cited person is to appear.

(b) The name of the person cited.

(c) A complaint containing at least the following:

(A) The name of the court, the name of the state or of the city or other public body in whose name the action is brought and the name of the defendant.

(B) A statement or designation of the crime that can be readily understood by a person making a reasonable effort to do so and the date, time and place at which the crime is alleged to have been committed.

(C) A form of certificate in which the peace officer must certify that the peace officer has sufficient grounds to believe, and does believe, that the person named in the complaint committed the offense specified in the complaint. A certificate conforming to this subparagraph shall be deemed equivalent to a sworn complaint.

(d) The date on which the citation was issued, and the name of the peace officer who issued the citation.

(e) The date, time and place at which the person cited is to appear in court, and a summons to so appear.

(f) If the arrest was made by a private party, the name of the arresting person.

(2) The district attorney for the county shall review any criminal citation issued with a form of complaint that is to be filed in a circuit or justice court. The review must be done before the complaint is filed.

(3) If the complaint does not conform to the requirements of this section, the court shall set the complaint aside upon motion of the defendant made before entry of a plea. A pretrial ruling on a motion to set aside may be appealed by the state.

(4) A court may amend a complaint at its discretion. [1999 c.1051 §61; 2001 c.870 §10; 2005 c.566 §1]

133.073 Electronic filing of criminal citation; court rules.

(1) Notwithstanding ORS 133.065, a peace officer, following procedures established by court rule, may file a criminal citation with or without a form of complaint with the court by electronic

means, without an actual signature of the officer, in lieu of filing a duplicate paper copy of the citation. A peace officer who files a criminal citation under this section is deemed to certify the citation and any complaint included with the citation by that filing and has the same rights, responsibilities and liabilities in relation to the citation and any complaint included with the citation as an officer has in relation to citations and complaints that are filed with the court in paper form and are certified by actual signature.

(2) A court may allow electronic filing of criminal citations as described under subsection (1) of this section. Procedures established to allow electronic filing of criminal citations under this section shall be established by court rule and shall include procedures necessary to ensure that:

(a) An electronically filed criminal citation with or without a form of complaint includes all information required on a uniform citation adopted by the Supreme Court under ORS 1.525.

(b) An electronically filed criminal citation with or without a form of complaint is verifiable as being filed by a specific peace officer.

(c) Members of the public can obtain copies of and review a criminal citation with or without a form of complaint that is electronically filed and maintained under this section in the same manner as the manner used for those filed on paper.

(3) For a criminal citation with a form of complaint issued under ORS 133.069, the district attorney's review required by ORS 133.069 and, if necessary, amendments for legal sufficiency, must be completed before the electronic filing of the citation with the form of complaint is made with a court under this section. [2005 c.566 §15]

Warrant of Arrest

133.110 Issuance; citation. If an information or a complaint has been filed with the magistrate, and the magistrate is satisfied that there is probable cause to believe that the person has committed the crime specified in the information or complaint, the magistrate shall issue a warrant of arrest. If the offense is subject to issuance of a criminal citation under ORS 133.055, the court may authorize a peace officer to issue and serve a criminal citation in lieu of arrest. [Amended by 1969 c.244 §3; 1973 c.836 §68; 1983 c.661 §4; 1999 c.1051 §66]

133.120 Authority to issue warrant. A judge of the Supreme Court or the Court of Appeals may issue a warrant of arrest for any crime committed or triable within the

state, and any other magistrate mentioned in ORS 133.030 may issue a warrant for any crime committed or triable within the territorial jurisdiction of the magistrate's court. [Amended by 1969 c.198 §60; 1973 c.836 §69; 1977 c.746 §2; 1983 c.661 §5]

133.140 Content and form of warrant.

A warrant of arrest shall:

(1) Be in writing;

(2) Specify the name of the person to be arrested, or if the name is unknown, shall designate the person by any name or description by which the person can be identified with reasonable certainty;

(3) State the nature of the crime;

(4) State the date when issued and the county or city where issued;

(5) Be in the name of the State of Oregon or the city where issued, be signed by and bear the title of the office of the magistrate having authority to issue a warrant for the crime charged;

(6) Command any peace officer, or any parole and probation officer for a person who is being supervised by the Department of Corrections or a county community corrections agency, to arrest the person for whom the warrant was issued and to bring the person before the magistrate issuing the warrant, or if the magistrate is absent or unable to act, before the nearest or most accessible magistrate in the same county;

(7) Specify that the arresting officer may enter premises, in which the officer has probable cause to believe the person to be arrested to be present, without giving notice of the officer's authority and purpose, if the issuing judge has approved a request for such special authorization; and

(8) Specify the amount of security for release. [Amended by 1961 c.443 §1; 1973 c.836 §70; 1977 c.746 §3; 1983 c.661 §6; 2005 c.668 §3]

Arrest

133.220 Who may make arrest. An arrest may be effected by:

(1) A peace officer under a warrant;

(2) A peace officer without a warrant;

(3) A parole and probation officer under a warrant as provided in ORS 133.239;

(4) A parole and probation officer without a warrant for violations of conditions of probation, parole or post-prison supervision;

(5) A private person; or

(6) A federal officer. [Amended by 1981 c.808 §2; 2005 c.668 §4]

133.225 Arrest by private person. (1) A private person may arrest another person for any crime committed in the presence of the private person if the private person has

probable cause to believe the arrested person committed the crime. A private person making such an arrest shall, without unnecessary delay, take the arrested person before a magistrate or deliver the arrested person to a peace officer.

(2) In order to make the arrest a private person may use physical force as is justifiable under ORS 161.255. [1973 c.836 §74]

133.235 Arrest by peace officer; procedure. (1) A peace officer may arrest a person for a crime at any hour of any day or night.

(2) A peace officer may arrest a person for a crime, pursuant to ORS 133.310 (1), whether or not such crime was committed within the geographical area of such peace officer's employment, and the peace officer may make such arrest within the state, regardless of the situs of the offense.

(3) The officer shall inform the person to be arrested of the officer's authority and reason for the arrest, and, if the arrest is under a warrant, shall show the warrant, unless the officer encounters physical resistance, flight or other factors rendering this procedure impracticable, in which case the arresting officer shall inform the arrested person and show the warrant, if any, as soon as practicable.

(4) In order to make an arrest, a peace officer may use physical force as justifiable under ORS 161.235, 161.239 and 161.245.

(5) In order to make an arrest, a peace officer may enter premises in which the officer has probable cause to believe the person to be arrested to be present.

(6) If after giving notice of the officer's identity, authority and purpose, the officer is not admitted, the officer may enter the premises, and by a breaking, if necessary.

(7) A person may not be arrested for a violation except to the extent provided by ORS 153.039 and 810.410. [1973 c.836 §71; 1981 c.818 §1; 1999 c.1051 §67]

133.245 Arrest by federal officer; procedure. (1) A federal officer may arrest a person:

(a) For any crime committed in the federal officer's presence if the federal officer has probable cause to believe the person committed the crime.

(b) For any felony or Class A misdemeanor if the federal officer has probable cause to believe the person committed the crime.

(c) When rendering assistance to or at the request of a law enforcement officer, as defined in ORS 414.805.

(d) When the federal officer has received positive information in writing or by tele-

phone, telegraph, teletype, radio, facsimile machine or other authoritative source that a peace officer holds a warrant for the person's arrest.

(2) The federal officer shall inform the person to be arrested of the federal officer's authority and reason for the arrest.

(3) In order to make an arrest, a federal officer may use physical force as is justifiable and authorized of a peace officer under ORS 161.235, 161.239 and 161.245.

(4)(a) A federal officer making an arrest under this section without unnecessary delay shall take the arrested person before a magistrate or deliver the arrested person to a peace officer.

(b) The federal officer retains authority over the arrested person only until the person appears before a magistrate or until the law enforcement agency having general jurisdiction over the area in which the arrest took place assumes responsibility for the person.

(5) A federal officer when making an arrest for a nonfederal offense under the circumstances provided in this section shall have the same immunity from suit as a state or local law enforcement officer.

(6) A federal officer is authorized to make arrests under this section upon certification by the Department of Public Safety Standards and Training that the federal officer has received proper training to enable that officer to make arrests under this section. [1981 c.808 §3; 1993 c.254 §2; 1995 c.79 §48; 1997 c.853 §34]

133.310 Authority of peace officer to arrest without warrant. (1) A peace officer may arrest a person without a warrant if the officer has probable cause to believe that the person has committed any of the following:

(a) A felony.

(b) A misdemeanor.

(c) An unclassified offense for which the maximum penalty allowed by law is equal to or greater than the maximum penalty allowed for a Class C misdemeanor.

(d) Any other crime committed in the officer's presence.

(2) A peace officer may arrest a person without a warrant when the peace officer is notified by telegraph, telephone, radio or other mode of communication by another peace officer of any state that there exists a duly issued warrant for the arrest of a person within the other peace officer's jurisdiction.

(3) A peace officer shall arrest and take into custody a person without a warrant

when the peace officer has probable cause to believe that:

(a) There exists an order issued pursuant to ORS 30.866, 107.095 (1)(c) or (d), 107.716, 107.718, 124.015, 124.020, 163.738 or 419B.845 restraining the person;

(b) A true copy of the order and proof of service on the person has been filed as required in ORS 107.720, 124.030, 163.741 or 419B.845; and

(c) The person to be arrested has violated the terms of that order.

(4) A peace officer shall arrest and take into custody a person without a warrant if:

(a) The person protected by a foreign restraining order as defined by ORS 24.190 presents a copy of the foreign restraining order to the officer and represents to the officer that the order supplied is the most recent order in effect between the parties and that the person restrained by the order has been personally served with a copy of the order or has actual notice of the order; and

(b) The peace officer has probable cause to believe that the person to be arrested has violated the terms of the foreign restraining order.

(5) A peace officer shall arrest and take into custody a person without a warrant if:

(a) The person protected by a foreign restraining order as defined by ORS 24.190 has filed a copy of the foreign restraining order with a court or has been identified by the officer as a party protected by a foreign restraining order entered in the Law Enforcement Data System or in the databases of the National Crime Information Center of the United States Department of Justice; and

(b) The peace officer has probable cause to believe that the person to be arrested has violated the terms of the foreign restraining order.

(6) A peace officer shall arrest and take into custody a person without a warrant if the peace officer has probable cause to believe:

(a) The person has been charged with an offense and is presently released as to that charge under ORS 135.230 to 135.290; and

(b) The person has failed to comply with a no contact condition of the release agreement. [Amended by 1963 c.448 §1; 1973 c.836 §72; 1974 c.42 §2; 1977 c.845 §2; 1979 c.522 §2; 1981 c.780 §8; 1981 c.818 §2; 1983 c.338 §887; 1983 c.661 §7; 1987 c.730 §4a; 1989 c.171 §15; 1991 c.208 §2; 1991 c.222 §2; 1993 c.626 §10; 1993 c.731 §3; 1995 c.353 §11; 1995 c.666 §24; 1997 c.249 §45; 1997 c.863 §2; 1999 c.250 §2; 1999 c.1040 §8; 1999 c.1051 §68; 2005 c.753 §1]

133.315 Liability of peace officer making arrest. (1) No peace officer shall be held

criminally or civilly liable for making an arrest pursuant to ORS 133.055 (2) or 133.310 (3) or (5) provided the peace officer acts in good faith and without malice.

(2) No peace officer shall be criminally or civilly liable for any arrest made under ORS 133.310 (4) if the officer reasonably believes that:

(a) A document or other writing supplied to the officer under ORS 133.310 (4) is an accurate copy of a foreign restraining order as defined by ORS 24.190 and is the most recent order in effect between the parties; and

(b) The person restrained by the order has been personally served with a copy of the order or has actual notice of the order. [1977 c.845 §9; subsection (2) enacted as 1991 c.222 §3; 1999 c.250 §3]

Note: 133.315 (2) was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 133 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

Chapter 146

INVESTIGATIONS OF DEATHS

146.003 Definitions for ORS 146.003 to 146.189 and 146.710 to 146.992. As used in ORS 146.003 to 146.189 and 146.710 to 146.992, unless the context requires otherwise:

(1) “Approved laboratory” means a laboratory approved by the State Medical Examiner as competent to perform the blood sample analysis required by ORS 146.113 (2).

(2) “Assistant district medical examiner” means a physician appointed by the district medical examiner to investigate and certify deaths within a county or district.

(3) “Cause of death” means the primary or basic disease process or injury ending life.

(4) “Death requiring investigation” means the death of a person occurring in any one of the circumstances set forth in ORS 146.090.

(5) “Deputy medical examiner” means a person appointed by the district medical examiner to assist in the investigation of deaths within a county.

(6) “District medical examiner” means a physician appointed by the State Medical Examiner to investigate and certify deaths within a county or district, including a Deputy State Medical Examiner.

(7) “Law enforcement agency” means a county sheriff’s office, municipal police department and the Oregon State Police.

(8) “Legal intervention” includes an execution pursuant to ORS 137.463, 137.467 and

137.473 and other legal use of force resulting in death.

(9) "Manner of death" means the designation of the probable mode of production of the cause of death, including natural, accidental, suicidal, homicidal, legal intervention or undetermined.

(10) "Medical examiner" means a physician appointed as provided by ORS 146.003 to 146.189 to investigate and certify the cause and manner of deaths requiring investigation, including the State Medical Examiner.

(11) "Pathologist" means a physician holding a current license to practice medicine and surgery and who is eligible for certification by the American Board of Pathology.

(12) "Unidentified human remains" does not include human remains that are unidentified human remains that are part of an archaeological site or suspected of being Native American and covered under ORS chapters 97 and 390 and ORS 358.905 to 358.961. [1973 c.408 §1a; 1995 c.744 §17; 2007 c.500 §1]

146.035 State Medical Examiner; personnel; records; right to examine records.

(1) There shall be established within the Department of State Police the State Medical Examiner's office for the purpose of directing and supporting the state death investigation program.

(2) The State Medical Examiner shall manage all aspects of the State Medical Examiner's program.

(3) Subject to the State Personnel Relations Law, the State Medical Examiner may employ or discharge other personnel of the State Medical Examiner's office.

(4) The State Medical Examiner's office shall:

(a) File and maintain appropriate reports on all deaths requiring investigation.

(b) Maintain an accurate list of all active district medical examiners, assistant district medical examiners and designated pathologists.

(c) Transmit monthly to the Department of Transportation a report for the preceding calendar month of all information obtained under ORS 146.113.

(5) Any parent, spouse, child or personal representative of the deceased, or any person who may be criminally or civilly liable for the death, or their authorized representatives respectively, may examine and obtain copies of any medical examiner's report, autopsy report or laboratory test report ordered by a medical examiner under ORS 146.117. The system described in ORS 192.517 (1) shall

have access to reports described in this subsection as provided in ORS 192.517. [1973 c.408 §4; 1987 c.142 §1; 1995 c.504 §3; 1995 c.744 §8; 2003 c.14 §60; 2005 c.498 §1]

146.045 Duties of State Medical Examiner. (1) After consultation with the State Medical Examiner Advisory Board, the State Medical Examiner shall appoint each Deputy State Medical Examiner.

(2) The State Medical Examiner shall:

(a) Appoint and discharge each district medical examiner as provided by ORS 146.065 (2).

(b) Designate those pathologists authorized to perform autopsies under ORS 146.117 (2).

(c) Approve those laboratories authorized to perform the analyses required under ORS 146.113 (2).

(3) The State Medical Examiner may:

(a) Assume control of a death investigation in cooperation with the district attorney.

(b) Order an autopsy in a death requiring investigation.

(c) Certify the cause and manner of a death requiring investigation.

(d) Amend a previously completed death certificate on a death requiring investigation.

(e) Order a body exhumed in a death requiring investigation.

(f) Designate a Deputy State Medical Examiner as Acting State Medical Examiner.

(g) After a reasonable and thorough investigation, complete and file a death certificate for a person whose body is not found.

(4) Distribution of moneys from the State Medical Examiner's budget for partial reimbursement of each county's autopsy expenditures shall be made subject to approval of the State Medical Examiner.

(5) Within 45 days of receipt of information that a person is missing at sea and presumed dead, the State Medical Examiner shall determine whether the information is credible and, if so, complete and file a death certificate for the person presumed dead. If the information is determined not to be credible, the State Medical Examiner may continue the death investigation. [1973 c.408 §5; 2005 c.90 §1]

146.090 Deaths requiring investigation.

(1) The medical examiner shall investigate and certify the cause and manner of all human deaths:

(a) Apparently homicidal, suicidal or occurring under suspicious or unknown circumstances;

(b) Resulting from the unlawful use of controlled substances or the use or abuse of chemicals or toxic agents;

(c) Occurring while incarcerated in any jail, correction facility or in police custody;

(d) Apparently accidental or following an injury;

(e) By disease, injury or toxic agent during or arising from employment;

(f) While not under the care of a physician during the period immediately previous to death;

(g) Related to disease which might constitute a threat to the public health; or

(h) In which a human body apparently has been disposed of in an offensive manner.

(2) As used in this section, "offensive manner" means a manner offensive to the generally accepted standards of the community. [1973 c.408 §12; 1979 c.744 §4; 1985 c.207 §1]

146.113 Authority to order removal of body fluids. (1) A medical examiner or district attorney may, in any death requiring investigation, order samples of blood or urine taken for laboratory analysis.

(2) When a death requiring an investigation as a result of a motor vehicle accident occurs within five hours after the accident and the deceased is over 13 years of age, a blood sample shall be taken and forwarded to an approved laboratory for analysis. Such blood or urine samples shall be analyzed for the presence and quantity of ethyl alcohol, and if considered necessary by the State Medical Examiner, the presence of controlled substances.

(3) Laboratory reports of the analysis shall be made a part of the State Medical Examiner's and district medical examiner's files. [1973 c.408 §17; 1979 c.744 §5]

(3) "Deadly physical force" means physical force that under the circumstances in which it is used is readily capable of causing death or serious physical injury.

(4) "Peace officer" means a sheriff, constable, marshal, municipal police officer, member of the Oregon State Police, investigator of the Criminal Justice Division of the Department of Justice or investigator of a district attorney's office and such other persons as may be designated by law.

(5) "Person" means a human being and, where appropriate, a public or private corporation, an unincorporated association, a partnership, a government or a governmental instrumentality.

(6) "Physical force" includes, but is not limited to, the use of an electrical stun gun, tear gas or mace.

(7) "Physical injury" means impairment of physical condition or substantial pain.

(8) "Serious physical injury" means physical injury which creates a substantial risk of death or which causes serious and protracted disfigurement, protracted impairment of health or protracted loss or impairment of the function of any bodily organ.

(9) "Possess" means to have physical possession or otherwise to exercise dominion or control over property.

(10) "Public place" means a place to which the general public has access and includes, but is not limited to, hallways, lobbies and other parts of apartment houses and hotels not constituting rooms or apartments designed for actual residence, and highways, streets, schools, places of amusement, parks, playgrounds and premises used in connection with public passenger transportation. [1971 c.743 §3; 1973 c.139 §1; 1979 c.656 §3; 1991 c.67 §33; 1993 c.625 §4; 1995 c.651 §5]

Note: Legislative Counsel has substituted "chapter 743, Oregon Laws 1971," for the words "this Act" in sections 2, 3, 4, 5, 6, 7, 19, 20, 21 and 36, chapter 743, Oregon Laws 1971, compiled as 161.015, 161.025, 161.035, 161.045, 161.055, 161.085, 161.195, 161.200, 161.205 and 161.295. Specific ORS references have not been substituted, pursuant to 173.160. These sections may be determined by referring to the 1971 Comparative Section Table located in Volume 20 of ORS.

Chapter 161

CRIMES AND PUNISHMENTS

General Definitions

161.015 General definitions. As used in chapter 743, Oregon Laws 1971, and ORS 166.635, unless the context requires otherwise:

(1) "Dangerous weapon" means any weapon, device, instrument, material or substance which under the circumstances in which it is used, attempted to be used or threatened to be used, is readily capable of causing death or serious physical injury.

(2) "Deadly weapon" means any instrument, article or substance specifically designed for and presently capable of causing death or serious physical injury.

Criminal Liability

161.085 Definitions with respect to culpability. As used in chapter 743, Oregon Laws 1971, and ORS 166.635, unless the context requires otherwise:

(1) "Act" means a bodily movement.

(2) "Voluntary act" means a bodily movement performed consciously and includes the conscious possession or control of property.

(3) "Omission" means a failure to perform an act the performance of which is required by law.

(4) "Conduct" means an act or omission and its accompanying mental state.

(5) "To act" means either to perform an act or to omit to perform an act.

(6) "Culpable mental state" means intentionally, knowingly, recklessly or with criminal negligence as these terms are defined in subsections (7), (8), (9) and (10) of this section.

(7) "Intentionally" or "with intent," when used with respect to a result or to conduct described by a statute defining an offense, means that a person acts with a conscious objective to cause the result or to engage in the conduct so described.

(8) "Knowingly" or "with knowledge," when used with respect to conduct or to a circumstance described by a statute defining an offense, means that a person acts with an awareness that the conduct of the person is of a nature so described or that a circumstance so described exists.

(9) "Recklessly," when used with respect to a result or to a circumstance described by a statute defining an offense, means that a person is aware of and consciously disregards a substantial and unjustifiable risk that the result will occur or that the circumstance exists. The risk must be of such nature and degree that disregard thereof constitutes a gross deviation from the standard of care that a reasonable person would observe in the situation.

(10) "Criminal negligence" or "criminally negligent," when used with respect to a result or to a circumstance described by a statute defining an offense, means that a person fails to be aware of a substantial and unjustifiable risk that the result will occur or that the circumstance exists. The risk must be of such nature and degree that the failure to be aware of it constitutes a gross deviation from the standard of care that a reasonable person would observe in the situation. [1971 c.743 §7; 1973 c.139 §2]

Note: See note under 161.015.

161.095 Requirements of culpability. (1) The minimal requirement for criminal liability is the performance by a person of conduct which includes a voluntary act or the omission to perform an act which the person is capable of performing.

(2) Except as provided in ORS 161.105, a person is not guilty of an offense unless the person acts with a culpable mental state with respect to each material element of the offense that necessarily requires a culpable mental state. [1971 c.743 §8]

161.105 Culpability requirements inapplicable to certain violations and offenses. (1) Notwithstanding ORS 161.095, a culpable mental state is not required if:

(a) The offense constitutes a violation, unless a culpable mental state is expressly included in the definition of the offense; or

(b) An offense defined by a statute outside the Oregon Criminal Code clearly indicates a legislative intent to dispense with any culpable mental state requirement for the offense or for any material element thereof.

(2) Notwithstanding any other existing law, and unless a statute enacted after January 1, 1972, otherwise provides, an offense defined by a statute outside the Oregon Criminal Code that requires no culpable mental state constitutes a violation.

(3) Although an offense defined by a statute outside the Oregon Criminal Code requires no culpable mental state with respect to one or more of its material elements, the culpable commission of the offense may be alleged and proved, in which case criminal negligence constitutes sufficient culpability, and the classification of the offense and the authorized sentence shall be determined by ORS 161.505 to 161.605 and 161.615 to 161.655. [1971 c.743 §9]

161.125 Intoxication as defense; drug or controlled substance use or dependence as defense. (1) The use of drugs or controlled substances, dependence on drugs or controlled substances or voluntary intoxication shall not, as such, constitute a defense to a criminal charge, but in any prosecution for an offense, evidence that the defendant used drugs or controlled substances, or was dependent on drugs or controlled substances, or was intoxicated may be offered by the defendant whenever it is relevant to negative an element of the crime charged.

(2) When recklessness establishes an element of the offense, if the defendant, due to the use of drugs or controlled substances, dependence on drugs or controlled substances or voluntary intoxication, is unaware of a risk of which the defendant would have been aware had the defendant been not intoxicated, not using drugs or controlled substances, or not dependent on drugs or controlled substances, such unawareness is immaterial. [1971 c.743 §11; 1973 c.697 §13; 1979 c.744 §6]

Inchoate Crimes

161.405 "Attempt" described. (1) A person is guilty of an attempt to commit a crime when the person intentionally engages in

conduct which constitutes a substantial step toward commission of the crime.

(2) An attempt is a:

(a) Class A felony if the offense attempted is murder or treason.

(b) Class B felony if the offense attempted is a Class A felony.

(c) Class C felony if the offense attempted is a Class B felony.

(d) Class A misdemeanor if the offense attempted is a Class C felony or an unclassified felony.

(e) Class B misdemeanor if the offense attempted is a Class A misdemeanor.

(f) Class C misdemeanor if the offense attempted is a Class B misdemeanor.

(g) Violation if the offense attempted is a Class C misdemeanor or an unclassified misdemeanor. [1971 c.743 §54]

Classes of Offenses

161.505 “Offense” described. An offense is conduct for which a sentence to a term of imprisonment or to a fine is provided by any law of this state or by any law or ordinance of a political subdivision of this state. An offense is either a crime, as described in ORS 161.515, or a violation, as described in ORS 153.008. [1971 c.743 §65; 1975 c.451 §173; 1981 c.626 §2; 1981 c.692 §7; 1999 c.1051 §43]

161.515 “Crime” described. (1) A crime is an offense for which a sentence of imprisonment is authorized.

(2) A crime is either a felony or a misdemeanor. [1971 c.743 §66]

161.525 “Felony” described. Except as provided in ORS 161.585 and 161.705, a crime is a felony if it is so designated in any statute of this state or if a person convicted under a statute of this state may be sentenced to a maximum term of imprisonment of more than one year. [1971 c.743 §67]

161.535 Classification of felonies. (1) Felonies are classified for the purpose of sentence into the following categories:

(a) Class A felonies;

(b) Class B felonies;

(c) Class C felonies; and

(d) Unclassified felonies.

(2) The particular classification of each felony defined in the Oregon Criminal Code, except murder under ORS 163.115 and treason under ORS 166.005, is expressly designated in the section defining the crime. An offense defined outside this code which, because of the express sentence provided is within the definition of ORS 161.525, shall be considered an unclassified felony. [1971 c.743 §68]

161.545 “Misdemeanor” described. A crime is a misdemeanor if it is so designated in any statute of this state or if a person convicted thereof may be sentenced to a maximum term of imprisonment of not more than one year. [1971 c.743 §69]

161.555 Classification of misdemeanors. (1) Misdemeanors are classified for the purpose of sentence into the following categories:

(a) Class A misdemeanors;

(b) Class B misdemeanors;

(c) Class C misdemeanors; and

(d) Unclassified misdemeanors.

(2) The particular classification of each misdemeanor defined in the Oregon Criminal Code is expressly designated in the section defining the crime. An offense defined outside this code which, because of the express sentence provided is within the definition of ORS 161.545, shall be considered an unclassified misdemeanor.

(3) An offense defined by a statute of this state, but without specification as to its classification or as to the penalty authorized upon conviction, shall be considered a Class A misdemeanor. [1971 c.743 §70]

161.566 Misdemeanor treated as violation; prosecuting attorney’s election. (1) Except as provided in subsection (4) of this section, a prosecuting attorney may elect to treat any misdemeanor as a Class A violation. The election must be made by the prosecuting attorney orally at the time of the first appearance of the defendant or in writing filed on or before the time scheduled for the first appearance of the defendant. If no election is made within the time allowed, the case shall proceed as a misdemeanor.

(2) If a prosecuting attorney elects to treat a misdemeanor as a Class A violation under this section, the court shall amend the accusatory instrument to reflect the charged offense as a Class A violation and clearly denominate the offense as a Class A violation in any judgment entered in the matter. Notwithstanding ORS 153.018, the maximum fine that a court may impose upon conviction of a violation under this section may not exceed the amount provided in ORS 161.635 for the class of misdemeanor receiving violation treatment.

(3) If a prosecuting attorney elects to treat a misdemeanor as a Class A violation under this section, and the defendant fails to make any required appearance in the matter, the court may enter a default judgment against the defendant in the manner provided by ORS 153.102. Notwithstanding ORS 153.018, the maximum fine that the court may impose under a default judgment en-

tered pursuant to ORS 153.102 is the maximum fine for the class of misdemeanor receiving violation treatment.

(4) A prosecuting attorney may not elect to treat misdemeanors created under ORS 811.540 or 813.010 as violations under the provisions of this section.

(5) The election provided for in this section may be made by a city attorney acting as prosecuting attorney in the case of municipal ordinance offenses, a county counsel acting as prosecuting attorney under a county charter in the case of county ordinance offenses, and the Attorney General acting as prosecuting attorney in those criminal actions or proceedings within the jurisdiction of the Attorney General.

(6) Notwithstanding ORS 137.290 (1)(d), the unitary assessment imposed upon conviction of a violation under this section is the amount provided in ORS 137.290 for the misdemeanor receiving violation treatment. [1999 c.1051 §47; 2003 c.737 §89]

161.568 Misdemeanor treated as violation; court's election. (1) Except as provided in subsection (4) of this section, a court may elect to treat any misdemeanor as a Class A violation for the purpose of entering a default judgment under ORS 153.102 if:

(a) A complaint or information has been filed with the court for the misdemeanor;

(b) The defendant has failed to make an appearance in the proceedings required by the court or by law; and

(c) The court has given notice to the district attorney for the county and the district attorney has informed the court that the district attorney does not object to treating the misdemeanor as a Class A violation.

(2) If the court treats a misdemeanor as a Class A violation under this section, the court shall amend the accusatory instrument to reflect the charged offense as a Class A violation and clearly denominate the offense as a Class A violation in the judgment entered in the matter.

(3) Notwithstanding ORS 153.018, if the court treats a misdemeanor as a Class A violation under this section, the maximum fine that the court may impose under a default judgment entered pursuant to ORS 153.102 is the maximum fine for the class of misdemeanor receiving violation treatment.

(4) A court may not treat misdemeanors created under ORS 811.540 or 813.010 as violations under the provisions of this section.

(5) Notwithstanding ORS 137.290 (1)(d), the unitary assessment imposed upon conviction of a violation under this section is the amount provided in ORS 137.290 for the

misdemeanor receiving violation treatment. [1999 c.1051 §48; 2003 c.737 §90]

161.570 Felony treated as misdemeanor. (1) As used in this section, "non-person felony" has the meaning given that term in the rules of the Oregon Criminal Justice Commission.

(2) A district attorney may elect to treat a Class C nonperson felony or a violation of ORS 475.840 (3)(a), 475.854, 475.864 (2) or 475.874 as a Class A misdemeanor. The election must be made by the district attorney orally or in writing at the time of the first appearance of the defendant. If a district attorney elects to treat a Class C felony or a violation of ORS 475.840 (3)(a), 475.854, 475.864 (2) or 475.874 as a Class A misdemeanor under this subsection, the court shall amend the accusatory instrument to reflect the charged offense as a Class A misdemeanor.

(3) If, at some time after the first appearance of a defendant charged with a Class C nonperson felony or a violation of ORS 475.840 (3)(a), 475.854, 475.864 (2) or 475.874, the district attorney and the defendant agree to treat the charged offense as a Class A misdemeanor, the court may allow the offense to be treated as a Class A misdemeanor by stipulation of the parties.

(4) If a Class C felony or a violation of ORS 475.840 (3)(a), 475.854, 475.864 (2) or 475.874 is treated as a Class A misdemeanor under this section, the court shall clearly denominate the offense as a Class A misdemeanor in any judgment entered in the matter.

(5) If no election or stipulation is made under this section, the case proceeds as a felony.

(6) Before a district attorney may make an election under subsection (2) of this section, the district attorney shall adopt written guidelines for determining when and under what circumstances the election may be made. The district attorney shall apply the guidelines uniformly.

(7) Notwithstanding ORS 161.635, the maximum fine that a court may impose upon conviction of a misdemeanor under this section may not exceed the amount provided in ORS 161.625 for the class of felony receiving Class A misdemeanor treatment. [2003 c.645 §2; 2005 c.708 §47; 2007 c.286 §1]

161.585 Classification of certain crimes determined by punishment. (1) When a crime punishable as a felony is also punishable by imprisonment for a maximum term of one year or by a fine, the crime shall be classed as a misdemeanor if the court imposes a punishment other than imprisonment under ORS 137.124 (1).

(2) Notwithstanding the provisions of ORS 161.525, upon conviction of a crime punishable as described in subsection (1) of this section, the crime is a felony for all purposes until one of the following events occurs, after which occurrence the crime is a misdemeanor for all purposes:

(a) Without imposing a sentence of probation, the court imposes a sentence of imprisonment other than to the legal and physical custody of the Department of Corrections.

(b) Without imposing a sentence of probation, the court imposes a fine.

(c) Upon revocation of probation, the court imposes a sentence of imprisonment other than to the legal and physical custody of the Department of Corrections.

(d) Upon revocation of probation, the court imposes a fine.

(e) The court declares the offense to be a misdemeanor, either at the time of imposing a sentence of probation, upon suspension of imposition of a part of a sentence, or on application of defendant or the parole and probation officer of the defendant thereafter.

(f) The court imposes a sentence of probation on the defendant without imposition of any other sentence upon conviction and defendant is thereafter discharged without any other sentence.

(g) Without imposing a sentence of probation and without imposing any other sentence, the court declares the offense to be a misdemeanor and discharges the defendant.

(3) The provisions of this section shall apply only to persons convicted of a felony committed prior to November 1, 1989. [1971 c.743 §73; 1987 c.320 §85; 1989 c.790 §52; 1993 c.14 §18; 2005 c.264 §15]

Disposition of Offenders

161.605 Maximum prison terms for felonies. The maximum term of an indeterminate sentence of imprisonment for a felony is as follows:

(1) For a Class A felony, 20 years.

(2) For a Class B felony, 10 years.

(3) For a Class C felony, 5 years.

(4) For an unclassified felony as provided in the statute defining the crime. [1971 c.743 §74]

161.610 Enhanced penalty for use of firearm during commission of felony; pleading; minimum penalties; suspension or reduction of penalty. (1) As used in this section, "firearm" means a weapon which is designed to expel a projectile by the action of black powder or smokeless powder.

(2) The use or threatened use of a firearm, whether operable or inoperable, by a defendant during the commission of a felony may be pleaded in the accusatory instrument and proved at trial as an element in aggravation of the crime as provided in this section. When a crime is so pleaded, the aggravated nature of the crime may be indicated by adding the words "with a firearm" to the title of the offense. The unaggravated crime shall be considered a lesser included offense.

(3) Notwithstanding the provisions of ORS 161.605 or 137.010 (3) and except as otherwise provided in subsection (6) of this section, if a defendant is convicted of a felony having as an element the defendant's use or threatened use of a firearm during the commission of the crime, the court shall impose at least the minimum term of imprisonment as provided in subsection (4) of this section. Except as provided in ORS 144.122 and 144.126 and subsection (5) of this section, in no case shall any person punishable under this section become eligible for work release, parole, temporary leave or terminal leave until the minimum term of imprisonment is served, less a period of time equivalent to any reduction of imprisonment granted for good time served or time credits earned under ORS 421.121, nor shall the execution of the sentence imposed upon such person be suspended by the court.

(4) The minimum terms of imprisonment for felonies having as an element the defendant's use or threatened use of a firearm in the commission of the crime shall be as follows:

(a) Except as provided in subsection (5) of this section, upon the first conviction for such felony, five years, except that if the firearm is a machine gun, short-barreled rifle, short-barreled shotgun or is equipped with a firearms silencer, the term of imprisonment shall be 10 years.

(b) Upon conviction for such felony committed after punishment pursuant to paragraph (a) of this subsection or subsection (5) of this section, 10 years, except that if the firearm is a machine gun, short-barreled rifle, short-barreled shotgun or is equipped with a firearms silencer, the term of imprisonment shall be 20 years.

(c) Upon conviction for such felony committed after imprisonment pursuant to paragraph (b) of this subsection, 30 years.

(5) If it is the first time that the defendant is subject to punishment under this section, rather than impose the sentence otherwise required by subsection (4)(a) of this section, the court may:

(a) For felonies committed prior to November 1, 1989, suspend the execution of the sentence or impose a lesser term of imprisonment, when the court expressly finds mitigating circumstances justifying such lesser sentence and sets forth those circumstances in its statement on sentencing; or

(b) For felonies committed on or after November 1, 1989, impose a lesser sentence in accordance with the rules of the Oregon Criminal Justice Commission.

(6) When a defendant who is convicted of a felony having as an element the defendant's use or threatened use of a firearm during the commission of the crime is a person who was waived from juvenile court under ORS 137.707 (5)(b)(A), 419C.349, 419C.352, 419C.364 or 419C.370, the court is not required to impose a minimum term of imprisonment under this section. [1979 c.779 §2; 1985 c.552 §1; 1989 c.790 §72; 1989 c.839 §18; 1991 c.133 §3; 1993 c.692 §9; 1999 c.951 §3; 2005 c.407 §1]

161.615 Prison terms for misdemeanors. Sentences for misdemeanors shall be for a definite term. The court shall fix the term of imprisonment within the following maximum limitations:

(1) For a Class A misdemeanor, 1 year.

(2) For a Class B misdemeanor, 6 months.

(3) For a Class C misdemeanor, 30 days.

(4) For an unclassified misdemeanor, as provided in the statute defining the crime. [1971 c.743 §75]

161.620 Sentences imposed upon waiver from juvenile court. Notwithstanding any other provision of law, a sentence imposed upon any person waived from the juvenile court under ORS 419C.349, 419C.352, 419C.364 or 419C.370 shall not include any sentence of death or life imprisonment without the possibility of release or parole nor imposition of any mandatory minimum sentence except that a mandatory minimum sentence under:

(1) ORS 163.105 (1)(c) shall be imposed; and

(2) ORS 161.610 may be imposed. [1985 c.631 §9; 1989 c.720 §3; 1993 c.33 §306; 1993 c.546 §119; 1995 c.422 §131y; 1999 c.951 §2]

Note: 161.620 was added to and made a part of ORS 161.615 to 161.685 by legislative action but was not added to any smaller series in that series. See Preface to Oregon Revised Statutes for further explanation.

161.625 Fines for felonies. (1) A sentence to pay a fine for a felony shall be a sentence to pay an amount, fixed by the court, not exceeding:

(a) \$500,000 for murder or aggravated murder.

(b) \$375,000 for a Class A felony.

(c) \$250,000 for a Class B felony.

(d) \$125,000 for a Class C felony.

(2) A sentence to pay a fine for an unclassified felony shall be a sentence to pay an amount, fixed by the court, as provided in the statute defining the crime.

(3)(a) If a person has gained money or property through the commission of a felony, then upon conviction thereof the court, in lieu of imposing the fine authorized for the crime under subsection (1) or (2) of this section, may sentence the defendant to pay an amount, fixed by the court, not exceeding double the amount of the defendant's gain from the commission of the crime.

(b) The provisions of paragraph (a) of this subsection do not apply to the felony theft of a companion animal, as defined in ORS 164.055, or a captive wild animal.

(4) As used in this section, "gain" means the amount of money or the value of property derived from the commission of the felony, less the amount of money or the value of property returned to the victim of the crime or seized by or surrendered to lawful authority before the time sentence is imposed. "Value" shall be determined by the standards established in ORS 164.115.

(5) When the court imposes a fine for a felony the court shall make a finding as to the amount of the defendant's gain from the crime. If the record does not contain sufficient evidence to support a finding the court may conduct a hearing upon the issue.

(6) Except as provided in ORS 161.655, this section does not apply to a corporation. [1971 c.743 §76; 1981 c.390 §1; 1991 c.837 §11; 1993 c.680 §36; 2003 c.615 §1; 2003 c.737 §86]

161.635 Fines for misdemeanors. (1) A sentence to pay a fine for a misdemeanor shall be a sentence to pay an amount, fixed by the court, not exceeding:

(a) \$6,250 for a Class A misdemeanor.

(b) \$2,500 for a Class B misdemeanor.

(c) \$1,250 for a Class C misdemeanor.

(2) A sentence to pay a fine for an unclassified misdemeanor shall be a sentence to pay an amount, fixed by the court, as provided in the statute defining the crime.

(3) If a person has gained money or property through the commission of a misdemeanor, then upon conviction thereof the court, instead of imposing the fine authorized for the offense under this section, may sentence the defendant to pay an amount fixed by the court, not exceeding double the amount of the defendant's gain from the commission of the offense. In that event, ORS 161.625 (4) and (5) apply.

(4) This section does not apply to corporations. [1971 c.743 §77; 1981 c.390 §2; 1993 c.680 §30; 1995 c.545 §2; 1999 c.1051 §44; 2003 c.737 §87]

Authority of Sentencing Court

161.705 Reduction of certain felonies to misdemeanors. Notwithstanding ORS 161.525, the court may enter judgment of conviction for a Class A misdemeanor and make disposition accordingly when:

(1)(a) A person is convicted of any Class C felony;

(b) A person is convicted of a Class B felony pursuant to ORS 475.860 (2);

(c) A person is convicted of the Class B felony of possession of marijuana pursuant to ORS 475.864 (2); or

(d) A person convicted of any of the felonies described in paragraphs (a) to (c) of this subsection, or of a Class A felony pursuant to ORS 166.720, has successfully completed a sentence of probation; and

(2) The court, considering the nature and circumstances of the crime and the history and character of the defendant, believes that it would be unduly harsh to sentence the defendant for a felony. [1971 c.743 §83; 1977 c.745 §31; 1979 c.124 §1; 1981 c.769 §8; 2005 c.708 §48]

Chapter 163

OFFENSES AGAINST PERSONS

Homicide

163.005 Criminal homicide. (1) A person commits criminal homicide if, without justification or excuse, the person intentionally, knowingly, recklessly or with criminal negligence causes the death of another human being.

(2) "Criminal homicide" is murder, manslaughter, criminally negligent homicide or aggravated vehicular homicide.

(3) "Human being" means a person who has been born and was alive at the time of the criminal act. [1971 c.743 §87; 2007 c.867 §4]

163.095 "Aggravated murder" defined. As used in ORS 163.105 and this section, "aggravated murder" means murder as defined in ORS 163.115 which is committed under, or accompanied by, any of the following circumstances:

(1)(a) The defendant committed the murder pursuant to an agreement that the defendant receive money or other thing of value for committing the murder.

(b) The defendant solicited another to commit the murder and paid or agreed to pay the person money or other thing of value for committing the murder.

(c) The defendant committed murder after having been convicted previously in any jurisdiction of any homicide, the elements of which constitute the crime of murder as de-

finied in ORS 163.115 or manslaughter in the first degree as defined in ORS 163.118.

(d) There was more than one murder victim in the same criminal episode as defined in ORS 131.505.

(e) The homicide occurred in the course of or as a result of intentional maiming or torture of the victim.

(f) The victim of the intentional homicide was a person under the age of 14 years.

(2)(a) The victim was one of the following and the murder was related to the performance of the victim's official duties in the justice system:

(A) A police officer as defined in ORS 181.610;

(B) A correctional, parole and probation officer or other person charged with the duty of custody, control or supervision of convicted persons;

(C) A member of the Oregon State Police;

(D) A judicial officer as defined in ORS 1.210;

(E) A juror or witness in a criminal proceeding;

(F) An employee or officer of a court of justice; or

(G) A member of the State Board of Parole and Post-Prison Supervision.

(b) The defendant was confined in a state, county or municipal penal or correctional facility or was otherwise in custody when the murder occurred.

(c) The defendant committed murder by means of an explosive as defined in ORS 164.055.

(d) Notwithstanding ORS 163.115 (1)(b), the defendant personally and intentionally committed the homicide under the circumstances set forth in ORS 163.115 (1)(b).

(e) The murder was committed in an effort to conceal the commission of a crime, or to conceal the identity of the perpetrator of a crime.

(f) The murder was committed after the defendant had escaped from a state, county or municipal penal or correctional facility and before the defendant had been returned to the custody of the facility. [1977 c.370 §1; 1981 c.873 §1; 1991 c.742 §13; 1991 c.837 §12; 1993 c.185 §20; 1993 c.623 §2; 1997 c.850 §1; 2005 c.264 §17]

163.115 Murder; affirmative defense to certain felony murders; sentence of life imprisonment required; minimum term.

(1) Except as provided in ORS 163.118 and 163.125, criminal homicide constitutes murder:

(a) When it is committed intentionally, except that it is an affirmative defense that,

at the time of the homicide, the defendant was under the influence of an extreme emotional disturbance;

(b) When it is committed by a person, acting either alone or with one or more persons, who commits or attempts to commit any of the following crimes and in the course of and in furtherance of the crime the person is committing or attempting to commit, or during the immediate flight therefrom, the person, or another participant if there be any, causes the death of a person other than one of the participants:

(A) Arson in the first degree as defined in ORS 164.325;

(B) Criminal mischief in the first degree by means of an explosive as defined in ORS 164.365;

(C) Burglary in the first degree as defined in ORS 164.225;

(D) Escape in the first degree as defined in ORS 162.165;

(E) Kidnapping in the second degree as defined in ORS 163.225;

(F) Kidnapping in the first degree as defined in ORS 163.235;

(G) Robbery in the first degree as defined in ORS 164.415;

(H) Any felony sexual offense in the first degree defined in this chapter;

(I) Compelling prostitution as defined in ORS 167.017; or

(J) Assault in the first degree, as defined in ORS 163.185, and the victim is under 14 years of age, or assault in the second degree, as defined in ORS 163.175 (1)(a) or (b), and the victim is under 14 years of age; or

(c) By abuse when a person, recklessly under circumstances manifesting extreme indifference to the value of human life, causes the death of a child under 14 years of age or a dependent person, as defined in ORS 163.205, and:

(A) The person has previously engaged in a pattern or practice of assault or torture of the victim or another child under 14 years of age or a dependent person; or

(B) The person causes the death by neglect or maltreatment.

(2) An accusatory instrument alleging murder by abuse under subsection (1)(c) of this section need not allege specific incidents of assault or torture.

(3) It is an affirmative defense to a charge of violating subsection (1)(b) of this section that the defendant:

(a) Was not the only participant in the underlying crime;

(b) Did not commit the homicidal act or in any way solicit, request, command, importune, cause or aid in the commission thereof;

(c) Was not armed with a dangerous or deadly weapon;

(d) Had no reasonable ground to believe that any other participant was armed with a dangerous or deadly weapon; and

(e) Had no reasonable ground to believe that any other participant intended to engage in conduct likely to result in death.

(4) It is an affirmative defense to a charge of violating subsection (1)(c)(B) of this section that the child or dependent person was under care or treatment solely by spiritual means pursuant to the religious beliefs or practices of the child or person or the parent or guardian of the child or person.

(5)(a) A person convicted of murder, who was at least 15 years of age at the time of committing the murder, shall be punished by imprisonment for life.

(b) When a defendant is convicted of murder under this section, the court shall order that the defendant shall be confined for a minimum of 25 years without possibility of parole, release to post-prison supervision, release on work release or any form of temporary leave or employment at a forest or work camp.

(c) At any time after completion of a minimum period of confinement pursuant to paragraph (b) of this subsection, the State Board of Parole and Post-Prison Supervision, upon the petition of a prisoner so confined, shall hold a hearing to determine if the prisoner is likely to be rehabilitated within a reasonable period of time. The sole issue is whether or not the prisoner is likely to be rehabilitated within a reasonable period of time. At the hearing the prisoner has:

(A) The burden of proving by a preponderance of the evidence the likelihood of rehabilitation within a reasonable period of time; and

(B) The right, if the prisoner is without sufficient funds to employ an attorney, to be represented by legal counsel, appointed by the board, at board expense; and

(C) The right to a subpoena upon a showing of the general relevance and reasonable scope of the evidence sought, provided that any subpoena issued on behalf of the prisoner must be issued by the State Board of Parole and Post-Prison Supervision pursuant to rules adopted by the board.

(d) If, upon hearing all of the evidence, the board, upon a unanimous vote of all of its members, finds that the prisoner is capable of rehabilitation and that the terms of

the prisoner's confinement should be changed to life imprisonment with the possibility of parole, release to post-prison supervision or work release, it shall enter an order to that effect and the order shall convert the terms of the prisoner's confinement to life imprisonment with the possibility of parole, release to post-prison supervision or work release and may set a release date. Otherwise, the board shall deny the relief sought in the petition.

(e) The board's final order shall be accompanied by findings of fact and conclusions of law. The findings of fact shall consist of a concise statement of the underlying facts supporting the findings as to each contested issue of fact and as to each ultimate fact required to support the board's order.

(f) Not less than two years after the denial of the relief sought in a petition under paragraph (c) of this subsection, the prisoner may petition again for a change in the terms of confinement. Further petitions for a change may be filed at intervals of not less than two years thereafter.

(6) As used in this section:

(a) "Assault" means to intentionally, knowingly or recklessly cause physical injury to another person. "Assault" does not include the causing of physical injury in a motor vehicle accident that occurs by reason of the reckless conduct of a defendant.

(b) "Neglect or maltreatment" means a violation of ORS 163.535, 163.545 or 163.547 or a failure to provide adequate food, clothing, shelter or medical care that is likely to endanger the health or welfare of a child under 14 years of age or a dependent person. This paragraph is not intended to replace or affect the duty or standard of care required under ORS chapter 677.

(c) "Pattern or practice" means one or more previous episodes.

(d) "Torture" means to intentionally inflict intense physical pain upon an unwilling victim as a separate objective apart from any other purpose. [1971 c.743 §88; 1975 c.577 §1; 1979 c.2 §1; 1981 c.873 §5; 1985 c.763 §1; 1989 c.985 §1; 1993 c.664 §1; 1995 c.421 §3; 1995 c.657 §1; 1997 c.850 §2; 1999 c.782 §4; 2007 c.717 §2]

Note: See note under 163.105.

163.117 Aiding commission of suicide not murder. It is a defense to a charge of murder that the defendant's conduct consisted of causing or aiding, without the use of duress or deception, another person to commit suicide. Nothing contained in this section shall constitute a defense to a prosecution for, or preclude a conviction of, manslaughter or any other crime. [1981 c.873 §8]

163.118 Manslaughter in the first degree. (1) Criminal homicide constitutes manslaughter in the first degree when:

(a) It is committed recklessly under circumstances manifesting extreme indifference to the value of human life;

(b) It is committed intentionally by a defendant under the influence of extreme emotional disturbance as provided in ORS 163.135, which constitutes a mitigating circumstance reducing the homicide that would otherwise be murder to manslaughter in the first degree and need not be proved in any prosecution;

(c) A person recklessly causes the death of a child under 14 years of age or a dependent person, as defined in ORS 163.205, and:

(A) The person has previously engaged in a pattern or practice of assault or torture of the victim or another child under 14 years of age or a dependent person; or

(B) The person causes the death by neglect or maltreatment, as defined in ORS 163.115; or

(d) It is committed recklessly or with criminal negligence by a person operating a motor vehicle while under the influence of intoxicants in violation of ORS 813.010 and:

(A) The person has at least three previous convictions for driving while under the influence of intoxicants under ORS 813.010, or its statutory counterpart in any jurisdiction, in the 10 years prior to the date of the current offense; or

(B)(i) The person has a previous conviction for any of the crimes described in subsection (2) of this section, or their statutory counterparts in any jurisdiction; and

(ii) The victim's serious physical injury in the previous conviction was caused by the person driving a motor vehicle.

(2) The previous convictions to which subsection (1)(d)(B) of this section applies are:

(a) Assault in the first degree under ORS 163.185;

(b) Assault in the second degree under ORS 163.175; or

(c) Assault in the third degree under ORS 163.165.

(3) Manslaughter in the first degree is a Class A felony.

(4) It is an affirmative defense to a charge of violating:

(a) Subsection (1)(c)(B) of this section that the child or dependent person was under care or treatment solely by spiritual means pursuant to the religious beliefs or practices

of the child or person or the parent or guardian of the child or person.

(b) Subsection (1)(d)(B) of this section that the defendant was not under the influence of intoxicants at the time of the conduct that resulted in the previous conviction. [1975 c.577 §2; 1981 c.873 §6; 1997 c.850 §3; 2007 c.867 §2]

163.125 Manslaughter in the second degree. (1) Criminal homicide constitutes manslaughter in the second degree when:

- (a) It is committed recklessly;
- (b) A person intentionally causes or aids another person to commit suicide; or
- (c) A person, with criminal negligence, causes the death of a child under 14 years of age or a dependent person, as defined in ORS 163.205, and:

(A) The person has previously engaged in a pattern or practice of assault or torture of the victim or another child under 14 years of age or a dependent person; or

(B) The person causes the death by neglect or maltreatment, as defined in ORS 163.115.

(2) Manslaughter in the second degree is a Class B felony. [1971 c.743 §89; 1975 c.577 §3; 1997 c.850 §4; 1999 c.954 §1]

163.145 Criminally negligent homicide.

(1) A person commits the crime of criminally negligent homicide when, with criminal negligence, the person causes the death of another person.

(2) Criminally negligent homicide is a Class B felony. [1971 c.743 §91; 2003 c.815 §2]

163.149 Aggravated vehicular homicide. (1) Criminal homicide constitutes aggravated vehicular homicide when it is committed with criminal negligence, recklessly or recklessly under circumstances manifesting extreme indifference to the value of human life by a person operating a motor vehicle while under the influence of intoxicants in violation of ORS 813.010 and:

(a) The person has a previous conviction for any of the crimes described in subsection (2) of this section, or their statutory counterparts in any jurisdiction; and

(b) The victim's death in the previous conviction was caused by the person driving a motor vehicle.

(2) The previous convictions to which subsection (1) of this section applies are:

(a) Manslaughter in the first degree under ORS 163.118;

(b) Manslaughter in the second degree under ORS 163.125; or

(c) Criminally negligent homicide under ORS 163.145.

(3) It is an affirmative defense to a prosecution under this section that the defendant was not under the influence of intoxicants at the time of the conduct that resulted in the previous conviction.

(4) Aggravated vehicular homicide is a Class A felony. [2007 c.867 §1]

Assault and Related Offenses

163.160 Assault in the fourth degree.

(1) A person commits the crime of assault in the fourth degree if the person:

- (a) Intentionally, knowingly or recklessly causes physical injury to another; or
- (b) With criminal negligence causes physical injury to another by means of a deadly weapon.

(2) Assault in the fourth degree is a Class A misdemeanor.

(3) Notwithstanding subsection (2) of this section, assault in the fourth degree is a Class C felony if the person commits the crime of assault in the fourth degree and:

- (a) The person has previously been convicted of assaulting the same victim;
- (b) The person has previously been convicted at least three times under this section or under equivalent laws of another jurisdiction and all of the assaults involved domestic violence, as defined in ORS 135.230; or
- (c) The assault is committed in the immediate presence of, or is witnessed by, the person's or the victim's minor child or stepchild or a minor child residing within the household of the person or victim.

(4) For the purposes of subsection (3) of this section, an assault is witnessed if the assault is seen or directly perceived in any other manner by the child. [1977 c.297 §5; 1997 c.694 §1; 1999 c.1073 §1]

163.165 Assault in the third degree. (1) A person commits the crime of assault in the third degree if the person:

(a) Recklessly causes serious physical injury to another by means of a deadly or dangerous weapon;

(b) Recklessly causes serious physical injury to another under circumstances manifesting extreme indifference to the value of human life;

(c) Recklessly causes physical injury to another by means of a deadly or dangerous weapon under circumstances manifesting extreme indifference to the value of human life;

(d) Intentionally, knowingly or recklessly causes, by means other than a motor vehicle, physical injury to the operator of a public transit vehicle while the operator is in control of or operating the vehicle. As used in

this paragraph, “public transit vehicle” has the meaning given that term in ORS 166.116;

(e) While being aided by another person actually present, intentionally or knowingly causes physical injury to another;

(f) While committed to a youth correction facility, intentionally or knowingly causes physical injury to another knowing the other person is a staff member of a youth correction facility while the other person is acting in the course of official duty;

(g) Intentionally, knowingly or recklessly causes physical injury to an emergency medical technician or paramedic, as those terms are defined in ORS 682.025, while the technician or paramedic is performing official duties;

(h) Being at least 18 years of age, intentionally or knowingly causes physical injury to a child 10 years of age or younger;

(i) Knowing the other person is a staff member, intentionally or knowingly propels any dangerous substance at the staff member while the staff member is acting in the course of official duty or as a result of the staff member’s official duties; or

(j) Intentionally, knowingly or recklessly causes, by means other than a motor vehicle, physical injury to the operator of a taxi while the operator is in control of the taxi.

(2) Assault in the third degree is a Class C felony. When a person is convicted of violating subsection (1)(i) of this section, in addition to any other sentence it may impose, the court shall impose a term of incarceration in a state correction facility.

(3) As used in this section:

(a) “Dangerous substance” includes, but is not limited to, blood, urine, saliva, semen and feces.

(b) “Staff member” means:

(A) A corrections officer as defined in ORS 181.610, a youth correction officer, a Department of Corrections or Oregon Youth Authority staff member or a person employed pursuant to a contract with the department or youth authority to work with, or in the vicinity of, inmates or youth offenders; and

(B) A volunteer authorized by the department, youth authority or other entity in charge of a corrections facility to work with, or in the vicinity of, inmates or youth offenders.

(c) “Youth correction facility” has the meaning given that term in ORS 162.135. [1971 c.743 §92; 1977 c.297 §3; 1991 c.475 §1; 1991 c.564 §1; 1995 c.738 §1; 1997 c.249 §49; 1999 c.1011 §1; 2001 c.104 §50; 2001 c.830 §1; 2001 c.851 §4]

163.175 Assault in the second degree.

(1) A person commits the crime of assault in the second degree if the person:

(a) Intentionally or knowingly causes serious physical injury to another;

(b) Intentionally or knowingly causes physical injury to another by means of a deadly or dangerous weapon; or

(c) Recklessly causes serious physical injury to another by means of a deadly or dangerous weapon under circumstances manifesting extreme indifference to the value of human life.

(2) Assault in the second degree is a Class B felony. [1971 c.743 §93; 1975 c.626 §1; 1977 c.297 §2; 2005 c.22 §110]

163.185 Assault in the first degree. (1)

A person commits the crime of assault in the first degree if the person:

(a) Intentionally causes serious physical injury to another by means of a deadly or dangerous weapon;

(b) Intentionally or knowingly causes serious physical injury to a child under six years of age; or

(c) Intentionally, knowingly or recklessly causes serious physical injury to another while operating a motor vehicle under the influence of intoxicants in violation of ORS 813.010 and:

(A) The person has at least three previous convictions for driving while under the influence of intoxicants under ORS 813.010, or its statutory counterpart in any jurisdiction, in the 10 years prior to the date of the current offense; or

(B)(i) The person has a previous conviction for any of the crimes described in subsection (2) of this section, or their statutory counterparts in any jurisdiction; and

(ii) The victim’s death or serious physical injury in the previous conviction was caused by the person driving a motor vehicle.

(2) The previous convictions to which subsection (1)(c)(B) of this section apply are:

(a) Manslaughter in the first degree under ORS 163.118;

(b) Manslaughter in the second degree under ORS 163.125;

(c) Criminally negligent homicide under ORS 163.145;

(d) Assault in the first degree under this section;

(e) Assault in the second degree under ORS 163.175; or

(f) Assault in the third degree under ORS 163.165.

(3) Assault in the first degree is a Class A felony.

(4) It is an affirmative defense to a prosecution under subsection (1)(c)(B) of this section that the defendant was not under the influence of intoxicants at the time of the conduct that resulted in the previous conviction. [1971 c.743 §94; 1975 c.626 §2; 1977 c.297 §1; 2005 c.513 §1; 2007 c.867 §3]

163.190 Menacing. (1) A person commits the crime of menacing if by word or conduct the person intentionally attempts to place another person in fear of imminent serious physical injury.

(2) Menacing is a Class A misdemeanor. [1971 c.743 §95]

163.195 Recklessly endangering another person. (1) A person commits the crime of recklessly endangering another person if the person recklessly engages in conduct which creates a substantial risk of serious physical injury to another person.

(2) Recklessly endangering another person is a Class A misdemeanor. [1971 c.743 §96]

Chapter 164

OFFENSES AGAINST PROPERTY

Theft and Related Offenses

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

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

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

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

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

(5) Commits theft by receiving as provided in ORS 164.095. [1971 c.743 §123; 2007 c.71 §47]

164.043 Theft in the third degree. (1) A person commits the crime of theft in the third degree if, by means other than extortion, the person:

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

(b) The total value of the property in a single or an aggregate transaction is under \$50.

(2) Theft in the third degree is a Class C misdemeanor. [1987 c.907 §2]

164.045 Theft in the second degree. (1) A person commits the crime of theft in the

second degree if, by other than extortion, the person:

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

(b) The total value of the property in a single or aggregate transaction is \$50 or more but is under \$200 in a case of theft by receiving and under \$750 in any other case.

(2) Theft in the second degree is a Class A misdemeanor. [1971 c.743 §124; 1987 c.907 §3; 1993 c.680 §19]

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

(a) The total value of the property in a single or aggregate transaction is \$200 or more in a case of theft by receiving, and \$750 or more in any other case;

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

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

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

(e) The subject of the theft is a livestock animal, a companion animal or a wild animal removed from habitat or born of a wild animal removed from habitat, pursuant to ORS 497.308 (2)(c); or

(f) The subject of the theft is a precursor substance.

(2) As used in this section:

(a) "Companion animal" means a dog or cat possessed by a person, business or other entity for purposes of companionship, security, hunting, herding or providing assistance in relation to a physical disability.

(b) "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.

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

(d) "Livestock animal" means a ratite, psittacine, horse, gelding, mare, stallion, colt,

mule, ass, jenny, bull, steer, cow, calf, goat, sheep, lamb, llama, pig or hog.

(e) "Precursor substance" has the meaning given that term in ORS 475.940.

(3) Theft in the first degree is a Class C felony. [1971 c.743 §125; 1973 c.405 §1; 1983 c.740 §32; 1987 c.907 §4; 1991 c.837 §9; 1993 c.252 §5; 1993 c.680 §20; 2005 c.706 §10]

164.135 Unauthorized use of a vehicle.

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

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

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

(c) Having custody of a vehicle, boat or aircraft pursuant to an agreement with the owner thereof whereby such vehicle, boat or aircraft is to be returned to the owner at a specified time, the person knowingly retains or withholds possession thereof without consent of the owner for so lengthy a period beyond the specified time as to render such retention or possession a gross deviation from the agreement.

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

(3) Subsection (1)(a) of this section does not apply to a person who rides in or otherwise uses a public transit vehicle, as defined in ORS 166.116, if the vehicle is being operated by an authorized operator within the scope of the operator's employment. [1971 c.743 §134; 2001 c.851 §1; 2007 c.71 §50]

Burglary and Criminal Trespass

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

(2) Criminal trespass in the second degree is a Class C misdemeanor. [1971 c.743 §139; 1999 c.1040 §9]

164.272 Unlawful entry into motor vehicle. (1) A person commits the crime of unlawful entry into a motor vehicle if the person enters a motor vehicle, or any part

of a motor vehicle, with the intent to commit a crime.

(2) Unlawful entry into a motor vehicle is a Class A misdemeanor.

(3) As used in this section, "enters" includes, but is not limited to, inserting:

(a) Any part of the body; or

(b) Any object connected with the body. [1995 c.782 §1]

Note: 164.272 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 164 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

Criminal Mischief

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

(2) Criminal mischief in the third degree is a Class C misdemeanor. [1971 c.743 §145]

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

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

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

(2) Criminal mischief in the second degree is a Class A misdemeanor. [1971 c.743 §146]

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

(a) Damages or destroys property of another:

(A) In an amount exceeding \$750;

(B) By means of an explosive;

(C) By starting a fire in an institution while the person is committed to and confined in the institution;

(D) Which is a livestock animal as defined in ORS 164.055;

(E) Which is the property of a public utility, telecommunications carrier, railroad, public transportation facility or medical facility used in direct service to the public; or

(F) By intentionally interfering with, obstructing or adulterating in any manner the service of a public utility, telecommunications carrier, railroad, public transportation facility or medical facility; or

(b) Intentionally uses, manipulates, arranges or rearranges the property of a public utility, telecommunications carrier, railroad, public transportation facility or medical facility used in direct service to the public so as to interfere with its efficiency.

(2) As used in subsection (1) of this section:

(a) "Institution" includes state and local correctional facilities, mental health facilities, juvenile detention facilities and state training schools.

(b) "Medical facility" means a health care facility as defined in ORS 442.015, a licensed physician's office or anywhere a licensed medical practitioner provides health care services.

(c) "Public utility" has the meaning provided for that term in ORS 757.005 and includes any cooperative, people's utility district or other municipal corporation providing an electric, gas, water or other utility service.

(d) "Railroad" has the meaning provided for that term in ORS 824.020.

(e) "Public transportation facility" means any property, structure or equipment used for or in connection with the transportation of persons for hire by rail, air or bus, including any railroad cars, buses or airplanes used to carry out such transportation.

(f) "Telecommunications carrier" has the meaning given that term in ORS 133.721.

(3) Criminal mischief in the first degree is a Class C felony. [1971 c.743 §147; 1973 c.133 §6; 1975 c.344 §1; 1979 c.805 §1; 1983 c.740 §33a; 1987 c.447 §104; 1987 c.907 §10; 1989 c.584 §2; 1991 c.837 §13; 1991 c.946 §2; 1993 c.94 §1; 1993 c.332 §3; 1999 c.1040 §11; 1999 c.1093 §2; 2003 c.543 §4]

Robbery

164.395 Robbery in the third degree. (1) A person commits the crime of robbery in the third degree if in the course of committing or attempting to commit theft or unauthorized use of a vehicle as defined in ORS 164.135 the person uses or threatens the immediate use of physical force upon another person with the intent of:

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

(b) Compelling the owner of such property or another person to deliver the property or to engage in other conduct which

might aid in the commission of the theft or unauthorized use of a vehicle.

(2) Robbery in the third degree is a Class C felony. [1971 c.743 §148; 2003 c.357 §1]

164.405 Robbery in the second degree.

(1) A person commits the crime of robbery in the second degree if the person violates ORS 164.395 and the person:

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

(b) Is aided by another person actually present.

(2) Robbery in the second degree is a Class B felony. [1971 c.743 §149]

164.415 Robbery in the first degree.

(1) A person commits the crime of robbery in the first degree if the person violates ORS 164.395 and the person:

(a) Is armed with a deadly weapon;

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

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

(2) Robbery in the first degree is a Class A felony. [1971 c.743 §150; 2007 c.71 §51]

Littering

164.775 Deposit of trash within 100 yards of waters or in waters; license suspensions; civil penalties; credit for work in lieu of fine. (1) It is unlawful for any person to discard any glass, cans or other trash, rubbish, debris or litter on land within 100 yards of any of the waters of the state, as defined in ORS 468B.005, other than in receptacles provided for the purpose of holding such trash, rubbish, debris or litter.

(2) It is unlawful for any person to discard any glass, cans or other similar refuse in any waters of the state, as defined in ORS 468.700.

(3) In addition to or in lieu of the penalties provided for violation of any provision of this section, the court in which any individual is convicted of a violation of this section may order suspension of certain permits or licenses for a period not to exceed 90 days if the court finds that the violation occurred during or in connection with the exercise of the privilege granted by the permit or license. The permits and licenses to which this section applies are motor vehicle operator's permits or licenses, hunting licenses, fishing licenses or boat registrations.

(4)(a) Any person sentenced under subsection (6) of this section to pay a fine for violation of this section shall be permitted, in default of the payment of the fine, to work at clearing rubbish, trash and debris from

the lands and waters described by subsections (1) and (2) of this section. Credit in compensation for such work shall be allowed at the rate of \$25 for each day of work.

(b) In any case, upon conviction, if punishment by imprisonment is imposed upon the defendant, the form of the sentence shall include that the defendant shall be punished by confinement at labor clearing rubbish, trash and debris from the lands and waters described by subsections (1) and (2) of this section, for not less than one day nor more than five days.

(5) A citation conforming to the requirements of ORS 133.066 shall be used for all violations of subsection (1) or (2) of this section in the state.

(6) Violation of this section is a Class B misdemeanor.

(7) In addition to and not in lieu of the criminal penalty authorized by subsection (6) of this section, the civil penalty authorized by ORS 468.140 may be imposed for violation of this section.

(8) Nothing in this section or ORS 164.785 prohibits the operation of a disposal site, as defined in ORS 459.005, for which a permit is required by the Department of Environmental Quality, for which such a permit has been issued and which is being operated and maintained in accordance with the terms and conditions of such permit. [Formerly 449.107; 1999 c.1051 §132]

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

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

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

(c) Permitting any rubbish, trash, garbage, debris or other refuse to be thrown from a vehicle that the person is operating. This subsection does not apply to a person operating a vehicle transporting passengers for hire subject to regulation by the Interstate Commerce Commission or the Department of Transportation or a person operating a school bus described under ORS 801.460.

(2) As used in this section:

(a) "Public transportation facility" has the meaning given that term in ORS 164.365.

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

(3) Offensive littering is a Class C misdemeanor. [1971 c.743 §283; 1975 c.344 §2; 1983 c.338 §897; 1985 c.420 §20; 2007 c.71 §52]

Chapter 165

MISREPRESENTATION OF AGE BY MINOR

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

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

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

(2) Misrepresentation of age by a minor is a Class C misdemeanor.

(3) In addition to and not in lieu of any other penalty established by law, a person who, using a driver permit or license or other identification issued by the Department of Transportation of this state or its equivalent in another state, commits the crime of misrepresentation of age by a minor in order to purchase or consume alcoholic liquor may be required to perform community service and the court shall order that the person's driving privileges and right to apply for driving privileges be suspended for a period not to exceed one year. If a court has issued an order denying driving privileges under this section, the court, upon petition of the person, may withdraw the order at any time the court deems appropriate. The court notification to the department under this subsection may include a recommendation that the person be granted a hardship permit under ORS 807.240 if the person is otherwise eligible for the permit.

(4) The prohibitions of this section do not apply to any person acting under the direction of the Oregon Liquor Control Commission or under the direction of state or local law enforcement agencies for the purpose of investigating possible violations of laws prohibiting sales of alcoholic beverages to persons who are under a certain, specified age.

(5) The prohibitions of this section do not apply to a person under the age of 21 years who is acting under the direction of a licensee for the purpose of investigating possible violations by employees of the licensee of laws prohibiting sales of alcoholic beverages to persons who are under the age of 21 years. [1971 c.743 §285; 1991 c.860 §1; 1993 c.18 §25; 2001 c.791 §3]

Chapter 166

FIREARMS AND OTHER WEAPONS

Possession and Use of Weapons

166.250 Unlawful possession of firearms. (1) Except as otherwise provided in this section or ORS 166.260, 166.270, 166.274, 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;

(b) Possesses a handgun that is concealed and readily accessible to the person within any vehicle; 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 Department of Human Services 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; 1999 c.1040 §1; 2001 c.666 §§33,45; 2003 c.614 §8]

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, parole and probation officers 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) Active or reserve 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.

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

(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.

(3) The exceptions listed in subsection (1)(b) to (h) of this section constitute affirmative defenses to a charge of violating ORS 166.250. [Amended by 1977 c.207 §1; 1991 c.67 §36; 1993 c.735 §1; 1995 c.670 §2; 1999 c.1040 §3]

Possession of Weapon or Destructive Device in Public Building or Court Facility

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 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) "Court facility" means a courthouse or that portion of any other building occupied by a circuit court, the Court of Appeals, the Supreme Court or the Oregon Tax Court or occupied by personnel related to the operations of those courts, or in which activities related to the operations of those courts take place.

(3) "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.

(4) "Public building" means a hospital, a capitol building, a public or private school, as defined in ORS 339.315, a college or university, 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, other than a court facility.

(5) "Weapon" means:

(a) A firearm;

(b) Any dirk, dagger, ice pick, slingshot, metal knuckles or any similar instrument or a knife other than an ordinary pocket knife, the use of which could inflict injury upon a person or property;

(c) Mace, tear gas, pepper mace or any similar deleterious agent as defined in ORS 163.211;

(d) An electrical stun gun or any similar instrument;

(e) A tear gas weapon as defined in ORS 163.211;

(f) A club, bat, baton, billy club, bludgeon, knobkerrie, nunchaku, nightstick, truncheon or any similar instrument, the use of which could inflict injury upon a person or property; or

(g) A dangerous or deadly weapon as those terms are defined in ORS 161.015. [1969 c.705 §1; 1977 c.769 §2; 1979 c.398 §1; 1989 c.982 §4; 1993 c.741 §2; 1999 c.577 §2; 1999 c.782 §6; 2001 c.201 §1]

166.370 Possession of firearm or dangerous weapon in public building or court facility; 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)(a) Except as otherwise provided in paragraph (b) of this subsection, a person who intentionally possesses:

(A) A firearm in a court facility is guilty, upon conviction, of a Class C felony. A person who intentionally possesses a firearm in a court facility shall surrender the firearm to a law enforcement officer.

(B) A weapon, other than a firearm, in a court facility may be required to surrender the weapon to a law enforcement officer or to immediately remove it from the court facility. A person who fails to comply with this subparagraph is guilty, upon conviction, of a Class C felony.

(b) The presiding judge of a judicial district may enter an order permitting the possession of specified weapons in a court facility.

(3) 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) An active or reserve 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 or dangerous weapon 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.

(4) The exceptions listed in subsection (3)(b) to (f) of this section constitute affirmative defenses to a charge of violating subsection (1) of this section.

(5)(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.

(6) Any weapon carried in violation of this section is subject to the forfeiture provisions of ORS 166.279.

(7) Notwithstanding the fact that a person's conduct in a single criminal episode constitutes a violation of both subsections (1) and (5) of this section, the district attorney may charge the person with only one of the offenses.

(8) 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; 1999 c.782 §7; 1999 c.1040 §4; 2001 c.666 §§24,36; 2003 c.614 §6]

166.373 Possession of weapon in court facility by peace officer or federal officer.

(1) Notwithstanding ORS 166.370 (2) and except as provided in subsection (2) of this section, a peace officer, as defined in ORS

161.015, or a federal officer, as defined in ORS 133.005, may possess a weapon in a court facility if the officer:

(a) Is acting in an official capacity and is officially on duty;

(b) Is carrying a weapon that the employing agency of the officer has authorized the officer to carry; and

(c) Is in compliance with any security procedures established under subsections (3) and (4) of this section.

(2) A judge may prohibit a peace officer or a federal officer from possessing a weapon in a courtroom. A notice of the prohibition of the possession of a weapon by an officer in a courtroom must be posted outside the entrance to the courtroom.

(3) A presiding judge of a judicial district or the Chief Justice of the Supreme Court may establish procedures regulating the possession of a weapon in a court facility by a peace officer or a federal officer subject to the following:

(a) The procedures must be established through a plan for court security improvement, emergency preparedness and business continuity under ORS 1.177 or 1.180; and

(b) Notice of the procedures must be posted at the entrance to the court facility, or at an entrance for peace officers or federal officers if the entrance is separate from the entrance to the court facility, and at a security checkpoint in the court facility.

(4) A judge may establish procedures regulating the possession of a weapon in a courtroom by a peace officer or a federal officer. A notice of the procedures regulating the possession of a weapon by an officer must be posted outside the entrance to the courtroom. [2001 c.201 §3; 2005 c.804 §7]

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, cross-bow, 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 824.020. [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]

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]

Miscellaneous

166.649 Throwing an object off an overpass in the 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]

166.651 Throwing an object off an overpass in the 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]

Chapter 167

TOBACCO PURCHASE BY MINOR

167.401 Tobacco purchase by minors prohibited; exceptions. (1) Except as provided in subsection (4) of this section, no person under 18 years of age shall purchase, attempt to purchase or acquire tobacco products as defined in ORS 431.840. Except when such minor is in a private residence accompanied by the parent or guardian of the minor and with the consent of such parent or guardian, no person under 18 years of age shall have personal possession of tobacco products.

(2) Any person who violates subsection (1) of this section commits a violation.

(3)(a) In lieu of any other penalty established by law, a person who is convicted for the first time of a violation of subsection (1) of this section may be ordered to participate in a tobacco education program or a tobacco use cessation program or to perform community service related to diseases associated with consumption of tobacco products. A person may be ordered to participate in such a program only once.

(b) In addition to and not in lieu of any other penalty established by law, a person who is convicted of a second violation of subsection (1) of this section through misrepresentation of age may be required to participate in a tobacco education or a tobacco use cessation program or to perform community service related to diseases associated with the consumption of tobacco products, and the court shall order that the person's driving privileges and right to apply for driving privileges be suspended for a period not to exceed one year. If a court has issued an order denying driving privileges under this subsection, the court, upon petition of the person, may withdraw the order at any time the court deems appropriate. The court notification to the Department of Transportation under this subsection may include a recommendation that the person be granted a hardship permit under ORS 807.240 if the person is otherwise eligible for the permit.

(4) A minor acting under the supervision of an adult may purchase, attempt to purchase or acquire tobacco products for the purpose of testing compliance with a federal law, state statute, local law or retailer management policy limiting or regulating the delivery of tobacco products to minors. [1999 c.1077 §8]

Note: 167.401 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 167 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

Chapter 184

DEPARTMENT OF TRANSPORTATION OPERATING FUND

184.642 Department of Transportation Operating Fund; sources; uses. (1) The Department of Transportation Operating Fund is established in the State Treasury separate and distinct from the General Fund and separate and distinct from the State Highway Fund. Except as otherwise provided in subsection (3)(e) of this section, moneys in the Department of Transportation Operating Fund are continuously appropriated to the

Department of Transportation to pay expenses of the department that are incurred in the performance of functions the department is statutorily required or authorized to perform and that may not constitutionally be paid from revenues described in section 3a, Article IX of the Oregon Constitution.

(2) The operating fund shall consist of the following:

(a) Taxes paid on motor vehicle fuels or on the use of fuel in a motor vehicle for which a person is entitled to a refund under a provision described in this paragraph but for which no refund is claimed, in amounts determined under ORS 184.643. This paragraph applies to refund entitlements described in ORS 319.280 (1)(a) and (e), 319.320 (1)(a) and 319.831 (1)(b).

(b) Fees collected under ORS 822.700 for issuance or renewal of:

- (A) Dismantler certificates;
- (B) Vehicle dealer certificates;
- (C) Driver training certificates;
- (D) Commercial driver training school certificates; and
- (E) Appraiser certificates.

(c) Fees collected under ORS 822.705.

(d) Moneys from civil penalties imposed under ORS 822.009.

(e) Fees collected under ORS 807.410 for identification cards.

(f) Fees collected by the department for issuance of permits to engage in activities described in ORS 374.305 to 374.330 that are not directly connected to the construction, reconstruction, improvement, repair, maintenance, operation and use of a public highway, road, street or roadside rest area.

(g) Interest and other earnings on moneys in the operating fund.

(3) Moneys in the Department of Transportation Operating Fund established by subsections (1) and (2) of this section may be spent only as follows:

(a) Taxes described in subsection (2)(a) of this section may be used only for payment of expenses of the Department of Transportation that:

(A) May not constitutionally be paid from revenues described in section 3a, Article IX of the Oregon Constitution;

(B) Are incurred in the performance of functions the department is statutorily required or authorized to perform; and

(C) Are not payable from moneys described in paragraphs (b) to (e) of this subsection.

(b) Fees collected under subsection (2)(b) of this section may be used only to carry out

the regulatory functions of the department relating to the businesses that generate the fees.

(c) Fees collected under ORS 822.705 may be used only for the purposes described in ORS 822.705.

(d) Moneys collected from civil penalties imposed under ORS 822.009 may be used only for regulation of vehicle dealers.

(e) Moneys collected under ORS 807.410 from fees for identification cards shall be used first to pay the expenses of the department for performing the functions of the department relating to identification cards. After paying the expenses related to identification cards, the department shall transfer the remaining moneys collected under ORS 807.410 to the Elderly and Disabled Special Transportation Fund established in ORS 391.800.

(f) Moneys from the permits described in subsection (2)(f) of this section may be used for costs of issuing the permits and monitoring the activities that generate the fees.

(g) Moneys from interest and other earnings on moneys in the operating fund may be used for any purpose for which other moneys in the fund may be used. [2001 c.820 §§1,2; 2003 c.601 §1; 2003 c.655 §62; 2005 c.654 §§22,23]

Note: 184.642 and 184.643 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 184 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

184.643 Transfer of certain fuel tax moneys to operating fund. Once each year the Oregon Department of Administrative Services, after consultation with the Oregon Transportation Commission and the Department of Transportation, shall estimate the amount of taxes paid for which persons are entitled to refunds under ORS 319.280 (1)(a) and (e), 319.320 (1)(a) and 319.831 (1)(b). After deducting the amount of any refunds actually paid, the Oregon Department of Administrative Services shall certify the remaining amount to the Department of Transportation. The Department of Transportation shall transfer the remaining amount from the Driver and Motor Vehicle Suspense Account to the Department of Transportation Operating Fund established by ORS 184.642 (1) and (2). [2001 c.820 §3; 2003 c.16 §1]

Note: See note under 184.642.

Chapter 247

VOTER REGISTRATION

247.012 Method of registering or updating a registration; when registration occurs; minimum registration information required; effect of missing registration information; registration locations.

(1) A qualified person may register to vote or update a registration to vote by:

(a) Delivering by mail or otherwise a completed registration card to any county clerk, the Secretary of State, any office of the Department of Transportation or any designated voter registration agency as described in ORS 247.208;

(b) Personally delivering the card to an official designated by a county clerk under subsection (7) of this section; or

(c) Completing the voter registration portion of the application for issuance or renewal of a driver license, issuance of a state identification card under ORS 807.400 or a change of address at an office of the Department of Transportation under ORS 247.017.

(2) If a registration card is mailed or delivered to:

(a) Any person other than a county clerk or the Secretary of State, the person shall forward the card to a county clerk or the Secretary of State not later than the fifth day after receiving the card; or

(b) The Secretary of State or a county clerk for a county other than the county in which the person applying for registration resides, the Secretary of State or county clerk shall forward the card to the county clerk for the county in which the person resides not later than the fifth day after receiving the card.

(3) Registration of a qualified person occurs:

(a) When a legible, accurate and complete registration card is received in the office of any county clerk, the Office of the Secretary of State, an office of the Department of Transportation, a designated voter registration agency under ORS 247.208 or at a location designated by a county clerk under subsection (7) of this section;

(b) On the date a registration card is postmarked if the card is received after the 21st day immediately preceding an election but is postmarked not later than the 21st day immediately preceding the election; or

(c) In the case of a registration card missing a date of birth, containing an incomplete date of birth or containing an unintentional scrivener's error that is supplied or corrected as described in subsection (4) or

(6) of this section, on the date that registration would have occurred if the registration card had not been missing the date of birth, contained an incomplete date of birth or contained the scrivener's error.

(4) If a registration card is legible, accurate and contains, at a minimum, the registrant's name, residence address, date of birth and signature, the county clerk shall register the person. If this information is missing from the registration card or the date of birth is incomplete, the county clerk shall attempt to contact the person to obtain the missing or incomplete information. The county clerk may supply the registrant's date of birth from any previous registration of the registrant.

(5) If a registration card meets the requirements of subsection (4) of this section but is missing an indication of political party affiliation, the registrant shall be considered not affiliated with any political party. This subsection does not apply if an elector is updating a registration within the same county.

(6) If a registration card contains an unintentional scrivener's error, the county clerk may attempt to contact the person to correct the error.

(7) A county clerk may appoint officials to accept registration of persons at designated locations. The appointments and locations shall be in writing and filed in the office of the county clerk. The county clerk shall be responsible for the performance of duties by those appointed.

(8) A registration card received and accepted under this section shall be considered an active registration.

(9) A registration may be updated at any time. [1979 c.190 §41; 1985 c.808 §1a; 1989 c.20 §1; 1989 c.173 §5; 1989 c.979 §2; 1993 c.713 §6; 1995 c.742 §1; 1999 c.410 §6; 1999 c.824 §1]

247.014 Transfer of voter registration information by Department of Transportation. In implementing ORS 247.012, 247.017 and 247.171, the Department of Transportation shall take steps reasonably necessary to allow transfer of voter registration information by electronic or magnetic medium. [1991 c.940 §4]

247.016 Registration of person who is 17 years of age. (1) Subject to subsection (2) of this section, an otherwise qualified person who is at least 17 years of age may register to vote.

(2) A person who registers to vote under subsection (1) of this section may not vote in an election until the person attains the age of 18 years. [2007 c.555 §2]

247.017 Voter registration at certain Department of Transportation offices; rules. (1) The Department of Transportation shall make a voter registration card available to any person at any office of the department where licenses or renewal applications are distributed or received.

(2) When a person who is at least 17 years of age applies for issuance or renewal of an Oregon driver license, as defined in ORS 801.245, or issuance of a state identification card under ORS 807.400 or submits a change of address application form at a department office where driver license issuance or renewal applications, state identification card applications or change of address applications are distributed or received, department personnel shall inform the person that the person may register to vote at the department office. Department personnel shall ask the applicant whether the applicant is registered to vote at the applicant's current address and if not, whether the applicant would like to register to vote at the department office.

(3) Each office shall deliver in a timely manner the completed voter registration cards to the county clerk or elections officer of the county in which the office is located. The county clerk or elections officer of the county where the office is located shall forward the registration card to the county clerk or elections officer of the county in which the applicant resides. The county clerk or elections officer may reject any registration card in accordance with ORS 247.174. The Secretary of State shall determine by rule the time and manner the completed registration cards are to be delivered to the appropriate county clerk or elections officer.

(4) The department shall develop a driver license issuance or renewal and voter registration application procedure and a state identification card issuance and voter registration application procedure and a change of address and voter registration application procedure that allows an applicant for a license, renewal, state identification card or change of address to register to vote by providing the information required by ORS 247.171 and the information required for the issuance or renewal of a license or for issuance of a state identification card. The Secretary of State shall approve the voter registration portion of each application procedure and change of address procedure.

(5) The voter registration portion of an application described in subsection (4) of this section shall comply with provisions of the National Voter Registration Act of 1993 (P.L. 103-31).

(6) The Secretary of State shall adopt rules establishing procedures for meeting the requirements of subsection (3) of this section.

(7) Information relating to the failure of an applicant under this section to sign the voter registration portion of an application for issuance or renewal of a driver license, issuance of a state identification card or for a change of address may not be used for other than voter registration purposes. [Formerly 802.090; 1995 c.742 §2; 2007 c.555 §4]

247.025 Registration deadline. To vote in an election:

(1) A person's registration card must be received at an office or location described in ORS 247.012 not later than the time the office or location closes for business on the 21st day immediately preceding the election, but in no case later than midnight of the 21st day immediately preceding the election; or

(2) A person's registration card must be postmarked not later than the 21st day immediately preceding the election. [1979 c.190 §43; 1985 c.833 §1; 1987 c.719 §9; 1987 c.733 §1; 1993 c.713 §7; 1999 c.410 §8]

247.171 State and federal voter registration cards; Secretary of State approval of voter registration application forms of voter registration agencies; content of voter registration cards. (1) Except as provided in this subsection, the Secretary of State shall design, prepare and distribute state voter registration cards. The Secretary of State shall also distribute federal registration cards. Any person may apply in writing to the Secretary of State for permission to print, copy or otherwise prepare and distribute the registration cards designed by the Secretary of State. The secretary may revoke any permission granted under this subsection at any time. All registration cards shall be distributed to the public without charge.

(2) The Secretary of State shall approve any voter registration application form developed for use by the Department of Transportation under ORS 247.017 or by any other agency designated a voter registration agency under ORS 247.208.

(3) Each voter registration card designed or approved by the Secretary of State shall describe the penalties for knowingly supplying false information on the registration card and shall contain space for a person to provide the following information:

(a) Full name;

(b) Residence address, mailing address or any other information necessary to locate the residence of the person offering to register to vote;

(c) The name of the political party with which the person is affiliated, if any;

(d) Date of birth;

(e) An indication that the person is a citizen of the United States; and

(f) A signature attesting to the fact that the person is qualified to be an elector.

(4) Any form containing a voter registration card may also include space for a person to provide:

(a) A telephone number where the person may be contacted; and

(b) If previously registered to vote in this state, the name then supplied by the person and the county and, if known, the address of previous registration.

(5) A person shall not supply any information under subsection (3) or (4) of this section knowing it to be false.

(6) A county clerk or other person accepting registration cards shall not request any information unless it is authorized by state or federal law.

(7) A person shall attest to the information supplied on the voter registration card by signing the completed registration card.

(8) Any completed and signed registration card described in subsection (3) of this section shall be the official registration card of the elector. [1957 c.608 §36; 1965 c.464 §2; 1971 c.241 §5; 1975 c.678 §16; 1977 c.168 §4; 1979 c.190 §47; 1985 c.808 §4; 1985 c.833 §3; 1987 c.320 §150; 1987 c.719 §11; 1987 c.733 §3; 1989 c.20 §3; 1989 c.173 §1; 1989 c.979 §5; 1993 c.713 §10; 1995 c.742 §3]

247.174 Determining if person qualified to register or update registration; hearing. (1) The qualifications of any person who requests to be registered or to update a registration shall be determined in the first instance by the county clerk or official designated by the county clerk to register persons as electors from the evidence present.

(2) The county clerk or official designated by the county clerk to register persons as electors may reject any registration or update of a registration if the clerk or official determines that the person is not qualified or that the registration card is illegible, inaccurate or incomplete. The clerk or official shall promptly notify the person of the rejection.

(3) A person whose registration or update to a registration is rejected may apply to the county clerk not later than the 10th day after the rejection for a hearing on the person's qualifications to register or update the registration. Not later than the 10th day after the date the county clerk receives the application, the clerk shall notify the applicant of the place and time of the hearing on the qualifications. The hearing shall be held not sooner than the second nor later than

the 20th day after notice is given. At the hearing the applicant may present evidence of qualification. If the county clerk, upon the conclusion of the hearing, determines that the applicant is qualified, the county clerk shall register or update the registration of the applicant. [Formerly 247.141; 1983 c.83 §28; 1985 c.471 §2; 1985 c.833 §4; 1987 c.719 §12; 1987 c.733 §4; 1993 c.713 §11]

247.178 Distribution of registration cards. Any person may distribute a registration card in any reasonable manner that facilitates elector registration, including but not limited to distribution of the card door to door. The card shall be available at any field office of the Department of Transportation where applications for driver licenses or vehicle registrations are accepted and at any office of an agency designated a voter registration agency under ORS 247.208. [Formerly 247.045; 1993 c.713 §12; 1993 c.741 §20]

247.208 Voter registration agencies; designation; prohibited activities; required services. (1) The Secretary of State by rule, in accordance with the requirements of the National Voter Registration Act of 1993 (P.L. 103-31), shall designate agencies as voter registration agencies. Agencies designated may include state, county, city or district offices and federal and nongovernmental offices with the agreement of the federal or nongovernmental offices.

(2) Services required by the National Voter Registration Act of 1993 (P.L. 103-31) shall be made available in connection with any registration card at each voter registration agency designated by the Secretary of State.

(3) A person providing services referred to in subsection (2) of this section at a voter registration agency shall not:

(a) Seek to influence the political preference or party registration of a person registering to vote;

(b) In accordance with provisions of the Oregon Constitution, display such political preference or party allegiance;

(c) Make any statement to a person registering to vote or take any action the purpose or effect of which is to discourage a person from registering to vote;

(d) Make any statement to a person registering to vote or take any action the purpose or effect of which is to lead the person to believe that a decision to register or not to register has any bearing on the availability of services or benefits; or

(e) Seek to induce any person to register or vote in any particular manner.

(4) Each state agency required to be designated a voter registration agency under the National Voter Registration Act of 1993 (P.L.

103-31) shall, with each application for service or assistance and with each recertification, renewal or change of address form relating to the service or assistance:

(a) Distribute a registration card, including all statements required under the National Voter Registration Act of 1993 (P.L. 103-31); and

(b) Provide a form including other information required by the National Voter Registration Act of 1993 (P.L. 103-31).

(5) Information relating to a declination to register to vote in connection with an application made at an office described in subsection (4) of this section shall not be used for any purpose other than voter registration.

(6) A completed registration card accepted at a voter registration agency designated under this section shall be delivered to a county clerk or the Secretary of State. [1993 c.713 §5]

Chapter 283

MARKING OF STATE-OWNED VEHICLES

283.390 State-owned vehicles to be marked; exceptions. (1) Any state department or institution owning or operating automobiles or trucks shall have printed or painted in plain lettering of a size so as to be readily read the name of the department or institution owning or operating the vehicle, followed by the words "State of Oregon."

(2) A vehicle need not be marked as required by subsection (1) of this section and need bear only such evidence of registration as is required on privately owned vehicles if:

(a) In the opinion of the Director of the Oregon Department of Administrative Services, the marking of the vehicle as required by subsection (1) of this section would unduly hinder the department or institution owning or operating the vehicle in carrying out its duties and functions; and

(b) The department has approved in writing the operation of the particular vehicle without being marked as required by subsection (1) of this section.

(3) Notwithstanding subsection (1) of this section, the department shall, upon request of any state law enforcement agency or state parole or probation agency for which the department obtains vehicles, obtain for the agencies vehicles that are not marked as required by subsection (1) of this section and that have registration described in ORS 805.060. [Formerly 291.724; 1987 c.6 §3; 1993 c.741 §118]

Chapter 291

AGENCY FEE RESTRICTIONS

291.055 Agency fee approval required; exemptions; restoration of temporarily reduced fees. (1) Notwithstanding any other law that grants to a state agency the authority to establish fees, all new state agency fees or fee increases adopted after July 1 of any odd-numbered year:

(a) Are not effective for agencies in the executive department of government unless approved in writing by the Director of the Oregon Department of Administrative Services;

(b) Are not effective for agencies in the judicial department of government unless approved in writing by the Chief Justice of the Supreme Court;

(c) Are not effective for agencies in the legislative department of government unless approved in writing by the President of the Senate and the Speaker of the House of Representatives;

(d) Shall be reported by the state agency to the Oregon Department of Administrative Services within 10 days of their adoption; and

(e) Are rescinded on July 1 of the next following odd-numbered year, or on adjournment sine die of the regular session of the Legislative Assembly meeting in that year, whichever is later, unless otherwise authorized by enabling legislation setting forth the approved fees.

(2) This section does not apply to:

(a) Any tuition or fees charged by the State Board of Higher Education and state institutions of higher education.

(b) Taxes or other payments made or collected from employers for unemployment insurance required by ORS chapter 657 or premium assessments required by ORS 656.612 and 656.614 or contributions and assessments calculated by cents per hour for workers' compensation coverage required by ORS 656.506.

(c) Fees or payments required for:

(A) Health care services provided by the Oregon Health and Science University, by the Oregon Veterans' Homes and by other state agencies and institutions pursuant to ORS 179.610 to 179.770.

(B) Assessments and premiums paid to the Oregon Medical Insurance Pool established by ORS 735.614 and 735.625.

(C) Copayments and premiums paid to the Oregon medical assistance program.

(d) Fees created or authorized by statute that have no established rate or amount but are calculated for each separate instance for each fee payer and are based on actual cost of services provided.

(e) State agency charges on employees for benefits and services.

(f) Any intergovernmental charges.

(g) Forest protection district assessment rates established by ORS 477.210 to 477.265 and the Oregon Forest Land Protection Fund fees established by ORS 477.760.

(h) State Department of Energy assessments required by ORS 469.421 (8) and 469.681.

(i) Any charges established by the State Parks and Recreation Director in accordance with ORS 565.080 (3).

(j) Assessments on premiums charged by the Insurance Division of the Department of Consumer and Business Services pursuant to ORS 731.804 or fees charged by the Division of Finance and Corporate Securities of the Department of Consumer and Business Services to banks, trusts and credit unions pursuant to ORS 706.530 and 723.114.

(k) Public Utility Commission operating assessments required by ORS 756.310 or charges paid to the Residential Service Protection Fund required by chapter 290, Oregon Laws 1987.

(L) Fees charged by the Housing and Community Services Department for intellectual property pursuant to ORS 456.562.

(m) New or increased fees that are anticipated in the legislative budgeting process for an agency, revenues from which are included, explicitly or implicitly, in the legislatively adopted budget for the agency.

(n) Tolls approved by the Oregon Transportation Commission pursuant to ORS 383.004.

(3)(a) Fees temporarily decreased for competitive or promotional reasons or because of unexpected and temporary revenue surpluses may be increased to not more than their prior level without compliance with subsection (1) of this section if, at the time the fee is decreased, the state agency specifies the following:

(A) The reason for the fee decrease; and

(B) The conditions under which the fee will be increased to not more than its prior level.

(b) Fees that are decreased for reasons other than those described in paragraph (a) of this subsection may not be subsequently increased except as allowed by ORS 291.050 to 291.060 and 294.160. [1995 c.576 §2; 1997 c.37 §1; 1997 c.684 §3; 2003 c.605 §3; 2005 c.727 §§14,15; 2005

c.744 §§24d,24e; 2005 c.777 §16; 2007 c.531 §§14,15; 2007 c.827 §§2,3]

Note: Section 4, chapter 827, Oregon Laws 2007, provides:

Sec. 4. (1) ORS 291.055 (2)(m) first applies to agency fees adopted on or after July 1, 2007, that are adopted in conformance with legislative discussions of the budget adopted for the agency for the biennium beginning July 1, 2007.

(2) The amendments to ORS 291.055 (3)(a) by sections 2 and 3 of this 2007 Act apply to agency fees increased in accordance with ORS 291.055 (3)(a) on or after July 1, 2007. [2007 c.827 §4]

Note: See note under 291.050.

Chapter 305

LICENSEE AND CONTRACTOR LISTS

305.380 Definitions for ORS 305.385. As used in ORS 305.385:

(1) "Agency" means any department, board, commission, division or authority of the State of Oregon, or any political subdivision of this state which imposes a local tax administered by the Department of Revenue under ORS 305.620.

(2) "License" means any written authority required by law or ordinance as a prerequisite to the conduct of a business, trade or profession.

(3) "Provider" means any person who contracts to supply goods, services or real estate space to an agency.

(4) "Tax" means a state tax imposed by ORS 401.792 to 401.816 and 320.005 to 320.150 and ORS chapters 118, 314, 316, 317, 318, 321 and 323 and the elderly rental assistance program under ORS 310.630 to 310.706 and local taxes administered by the Department of Revenue under ORS 305.620. [1987 c.843 §6; 1997 c.99 §35; 1997 c.170 §16; 2005 c.94 §21]

305.385 Agencies to supply licensee and contractor lists; contents; effect of department determination on taxpayer status of licensee or contractor; rules. (1) Upon request of the Department of Revenue, an agency issuing or renewing a license to conduct a business, trade or profession shall annually, on or before March 1, supply the department with a list of specified licenses issued or renewed by the agency during the preceding calendar year.

(2) Upon request of the department, an agency shall annually, on or before March 1, supply the department with a list of specified persons contracting with the agency to provide goods, services or real estate space to the agency during the preceding calendar year.

(3) The lists required by subsections (1) and (2) of this section shall contain the name, address, Social Security or federal

employer identification number of each licensee or provider or such other information as the department may by rule require.

(4)(a) If the department determines that any licensee or provider has neglected or refused to file any return or to pay any tax and that such person has not filed in good faith a petition before the department contesting the tax, and the department has been unable to obtain payment of the tax through other methods of collection, the Director of the Department of Revenue may, notwithstanding ORS 118.525, 314.835 or 314.840 or any similar provision of law, notify the agency and the person in writing.

(b) Upon receipt of such notice, the agency shall refuse to reissue, renew or extend any license, contract or agreement until the agency receives a certificate issued by the department that the person is in good standing with respect to any returns due and taxes payable to the department as of the date of the certificate.

(c) Upon the written request of the director and after a hearing and notice to the licensee as required under any applicable provision of law, the agency shall suspend the person's license if the agency finds that the returns and taxes have not been filed or paid and that the licensee has not filed in good faith a petition before the department contesting the tax and the department has been unable to obtain payment of the tax through other methods of collection. For the purpose of the agency's findings, the written representation to that effect by the department to the agency shall constitute prima facie evidence of the person's failure to file returns or pay the tax. The department shall have the right to intervene in any license suspension proceeding.

(d) Any license suspended under this subsection shall not be reissued or renewed until the agency receives a certificate issued by the department that the licensee is in good standing with respect to any returns due and taxes payable to the department as of the date of the certificate.

(5) The department may enter into an installment payment agreement with a licensee or provider with respect to any unpaid tax, penalty and interest. The agreement shall provide for interest on the outstanding amount at the rate prescribed by ORS 305.220. The department may issue a provisional certificate of good standing pursuant to subsection (4)(b) and (d) of this section which shall remain in effect so long as the licensee or provider fully complies with the terms of the installment agreement. Failure by the licensee or provider to fully comply with the terms of the installment agreement shall render the agreement and the provi-

sional certificate of good standing null and void, unless the department determines that the failure was due to reasonable cause. If the department determines that the failure was not due to reasonable cause, the total amount of the tax, penalty and interest shall be immediately due and payable, and the department shall notify any affected agency that the licensee or provider is not in good standing. The agency shall then take appropriate action under subsection (4)(b) and (d) of this section.

(6) No contract or other agreement for the purpose of providing goods, services or real estate space to any agency shall be entered into, renewed or extended with any person, unless the person certifies in writing, under penalty of perjury, that the person is, to the best of the person's knowledge, not in violation of any tax laws described in ORS 305.380 (4).

(7) The certification under subsection (6) of this section shall be required for each contract and renewal or extension of a contract or may be provided on an annual basis. A certification shall not be required for a contract if the consideration for the goods, services or real estate space provided under the contract is no more than \$1,000.

(8)(a) The requirements of the certification under subsection (6) of this section shall be subject to the rules adopted by the department in accordance with this section.

(b) The department may by rule exempt certain contracts from the requirements of subsection (6) of this section. [1987 c.843 §7; 1989 c.656 §1; 1997 c.99 §36]

Chapter 308

ASSESSMENT OF MOBILE HOMES FOR TAXATION

308.865 Notice and payment of taxes before movement of mobile modular unit.

(1) A person may not move a mobile modular unit to a new situs within the same county or outside the county until the person has:

(a) Given notice of the move to the county tax collector; and

(b) Paid all property taxes and special assessments for the current tax year and all outstanding delinquent property taxes and special assessments for all past tax years.

(2) Upon receiving notice of a move, the county tax collector shall send copies of the notice to the county assessor and the Department of Transportation.

(3) In computing taxes and special assessments on a mobile modular unit that will become due, the following apply:

(a) If the assessor can compute the exact amount of taxes, special assessments, fees and charges, the assessor is authorized to levy and the tax collector is authorized to collect such amount.

(b) If the assessor is unable to compute such amount at such time, the owner shall either pay an amount computed using the value then on the assessment roll for the mobile modular unit or that value which next would be used on an assessment roll and the assessor's best estimate of taxes, special assessments, fees and other charges.

(c) ORS 311.370 applies to all taxes collected under this subsection. [1969 c.605 §14; 1971 c.529 §31; 1973 c.91 §5; 1977 c.884 §10; 1979 c.350 §10; 1983 c.311 §1; 1985 c.16 §455; 1985 c.416 §§1, 1a; 1991 c.459 §172; 1993 c.551 §3; 1993 c.696 §12; 1997 c.541 §§221,221a; 1999 c.359 §8; 2003 c.655 §65]

Note: 308.865, 308.866, 308.875, 308.880 and 308.905 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 308 by legislative action. See Preface to Oregon Revised Statutes for further explanation.

308.866 Definition of mobile modular unit; statement of value; receipt. (1) As used in ORS 308.865 and this section, "mobile modular unit" means a prefabricated structure that is more than eight and one-half feet wide, is used for commercial or business purposes and is capable of being moved on the highway.

(2) The owner as of January 1 of each year of a mobile modular unit that is taxed as personal property shall submit no later than the following March 1 a statement of the value of the unit and of its location. The owner shall submit the statement to the county assessor of the county in which the unit is located on January 1 of the year for which the statement is submitted. An owner who fails to provide the statement is subject to the late filing penalty as provided in ORS 308.295. The Department of Revenue shall prescribe the form of statement.

(3) When taxes on a mobile modular unit have been paid in accordance with the provisions of ORS 308.865, the tax collector shall issue the owner of the unit a receipt indicating that the taxes have been paid.

(4) Notwithstanding any other provision of law, the county tax collector shall accept a cashier's check or money order in payment of taxes on a mobile modular unit. [1993 c.551 §1.2; 1995 c.256 §4; 1997 c.541 §223; 2003 c.655 §66]

Note: See note under 308.865.

308.875 Manufactured structures classified as real or personal property; effect of classification on other transactions. If the manufactured structure and the land upon which the manufactured structure is situated are owned by the same person, the assessor shall assess the manufactured

structure as real property. If the manufactured structure is owned separately and apart from the land upon which it is located, the assessor shall assess and tax the manufactured structure as personal property. A change in the property classification of a manufactured structure for ad valorem tax purposes does not change the property classification of the structure with respect to any transactions between the owner and security interest holders or other persons. Manufactured structures classified as personal property need not be returned under ORS 308.290. [1969 c.605 §16; 1971 c.529 §12; 1973 c.91 §6; 1983 c.748 §4; 1985 c.16 §456; 1993 c.696 §13; 2003 c.655 §67]

Note: See note under 308.865.

308.880 Travel or special use trailer eligible for ad valorem taxation upon application of owner. (1) The owner of any travel trailer described in ORS 801.565 that is being used either as a permanent home or for other than recreational purposes may apply to the assessor in the county in which it has situs to have the travel trailer assessed for ad valorem taxation. If the assessor determines that the travel trailer is being used either as a permanent home or for other than recreational uses, the assessor shall place the travel trailer on the assessment and tax rolls the same as if it were a manufactured structure. The assessor shall accept the travel trailer plate for the vehicle and return the plate to the Department of Transportation, and shall, as appropriate, record the travel trailer in the county deed records or assist in obtaining an ownership document for the travel trailer under ORS 446.571. Any travel trailer placed on the assessment and tax rolls under this section is considered a manufactured structure for all purposes.

(2) The owner of any special use trailer described in ORS 801.500 that is eight and one-half feet or less in width may apply to the assessor of the county in which it has situs to have the special use trailer assessed for ad valorem taxation. If the assessor determines that the special use trailer is eight and one-half feet or less in width and is permanently situated in one place, the assessor shall place the special use trailer on the assessment and tax rolls in the same way as if it were a manufactured structure. The assessor shall accept any special use trailer plate for the vehicle and return the plate to the Department of Transportation, and shall, as appropriate, record the special use trailer in the county deed records or assist in obtaining an ownership document for the special use trailer under ORS 446.571. Any special use trailer placed on the assessment and tax rolls under this section is considered a manufactured structure for all purposes. [1969

c.605 §59; 1971 c.529 §5; 1983 c.338 §907; 1993 c.696 §14; 1995 c.79 §135; 2003 c.655 §68; 2005 c.94 §56]

Note: See note under 308.865.

308.885 Determination of real market value of manufactured structure without physical appraisal. Each year that a physical appraisal is not made of a manufactured structure, the assessor shall consider the value of the manufactured structure, and shall apply uniform depreciation or trending factors, if necessary to arrive at the real market value of manufactured structures of a like class. [1971 c.529 §15; 1991 c.459 §173]

308.905 Special assessment on manufactured structure; collection; use. (1) A special assessment is levied upon each manufactured structure that is assessed for ad valorem property tax purposes as personal property. The amount of the assessment is \$5.

(2) The county assessor shall determine and list the manufactured structures in the county that are assessed for the current assessment year as personal property. Upon making a determination and list, the county assessor shall cause the special assessment levied under subsection (1) of this section to be entered on the general assessment and tax roll prepared for the current assessment year as a charge against each manufactured structure so listed. Upon entry, the special assessment shall become a lien, be assessed and be collected in the same manner and with the same interest, penalty and cost charges as apply to ad valorem property taxes in this state.

(3) Any amounts of special assessment collected pursuant to subsection (2) of this section shall be deposited in the county treasury, shall be paid over by the county treasurer to the State Treasury and shall be credited to the Mobile Home Parks Purchase Account to be used exclusively for the purposes described in ORS 456.581. [1989 c.919 §3]

Note: See note under 308.865.

Chapter 332

SCHOOLS AND SCHOOL DISTRICTS Transportation

332.405 Transportation; board and room; pedestrian facilities. (1) The district school board shall provide transportation for pupils or combinations of pupils and other persons to and from school-related activities where required by law or when considered advisable by the board.

(2) The board may furnish board and room for pupils in lieu of transportation when reasonable board and room can be provided at equal or less expense than transpor-

tation. The board may also provide board and room in a facility that existed on July 1, 1998, or a replacement facility for that facility, for pupils attending a district school through an interdistrict agreement described in ORS 327.006 (7)(a)(B) or through a power of attorney authorized under ORS 109.056 (2). This subsection does not apply to a pupil who attends a district school through a power of attorney and who is a foreign exchange student enrolled in a school under a cultural exchange program.

(3) The transportation costs or expenses for board and room shall be paid from funds available to the district for that purpose.

(4) The district school board may expend district funds to improve or provide for pedestrian facilities off district property if the board finds that the expenditure reduces transportation costs of the district and enhances the safety of pupils going to and from schools of the district. [Formerly 338.010; 1981 c.237 §1; 1981 c.403 §3; 1993 c.45 §53; 1999 c.961 §4]

332.415 Transportation of students attending private or parochial schools. Whenever any district school board lawfully provides for transportation for pupils attending public schools, all children attending any private or parochial school under the compulsory school attendance laws shall, where the private or parochial school is along or near the route designated by said board, be entitled equally to the same rights, benefits and privileges as to transportation so provided for. [Formerly 338.060]

332.427 Availability of district vehicles for public transportation purposes. (1) A district school board may enter into contracts whereby motor vehicles operated by, or under lease with, the district for transportation of school children may be leased or otherwise made available to qualified persons or agencies, public or private, or may use such motor vehicles, as agreed upon by the Department of Transportation, for public transportation purposes, subject to such terms and conditions as the district school board considers consistent with district use of such vehicles.

(2) Transportation provided pursuant to subsection (1) of this section shall only serve points along a route where the transportation provided will not be in competition with any passenger carrier operated under provisions of ORS chapter 825 or with any mass transit district organized under ORS chapter 267.

(3) Motor vehicles used for public transportation purposes pursuant to this section shall not be subject to ORS chapter 825.

(4) Only those vehicles operated by the district that comply with rules adopted by

the State Board of Education under ORS 820.100 and 820.120, relating to standards of vehicle construction and equipment may be used for public transportation purposes. Drivers of the vehicles shall be at least 18 years of age and shall comply with rules adopted by the State Board of Education under ORS 820.110, relating to qualifications of school bus drivers.

(5) Nothing in this section shall limit the use of school buses for the transportation of nonstudents to or from school activities whether a fee is charged or not. [1971 c.559 §4; 1973 c.690 §1; 1975 c.161 §4; 1981 c.403 §1; 1983 c.740 §104; 1985 c.16 §459; 1985 c.420 §21; 1989 c.491 §20]

Insurance

332.435 Liability insurance; self-insurance program for liability; medical and hospital benefits for students. Any district school board may enter into contracts of insurance for liability or operate a self-insurance program for liability covering all activities engaged in by the district for medical and hospital benefits for students engaging in athletic contests and in traffic patrols and may pay the necessary premiums thereon. Failure to procure such insurance or operate such a program shall in no case be construed as negligence or lack of diligence on the part of the district school board or the members thereof. [Formerly 332.235; 1967 c.627 §13; 1997 c.795 §2]

332.437 Insurance reserve fund. Any school district board by resolution may establish an insurance reserve fund by making transfers from the district's general fund. Transfers to the insurance reserve fund shall be included in the district budget prepared and published in accordance with ORS 294.305 to 294.565. If at any time conditions arise which dispense with the necessity for further transfers to or expenditures from a fund established pursuant to this section, the district board shall so declare by resolution. The resolution shall order the balance remaining in such fund to be transferred to the general fund of the district and shall declare the insurance reserve fund closed. [1971 c.599 §1; 1975 c.770 §23]

Traffic Regulation

332.445 Regulation of vehicles on school property; rules. (1) As used in this section, "vehicles" means and includes all motor vehicles as defined in ORS 801.360 and every other mechanical device in or on which a person or thing is or may be carried and which is intended for such use except road rollers, farm tractors, traction engines, police ambulances, devices moved exclusively on stationary tracks, devices operated by electric energy transmitted through trolley

poles from trolley wires and devices powered exclusively by human power.

(2) A district school board by resolution may adopt, modify or abolish rules prohibiting, restricting or regulating the operation and parking of vehicles, or particular classes or kinds of vehicles, upon property controlled by the district, as the board considers convenient or necessary for the policing of such property. The district school board may require that before a quarterly or yearly parking privilege for any vehicle is granted to any full-time or part-time student to use district property, the student must show that the vehicle is operated by a student holding a valid driver's license, that the vehicle is currently registered and that the student driving the vehicle is insured under a motor vehicle liability insurance policy that meets the requirements described under ORS 806.080 or that the student or owner of the vehicle has provided the Department of Transportation with other satisfactory proof of compliance with the financial responsibility requirements of this state.

(3) The rules adopted under subsection (2) of this section shall become effective when appropriate signs giving notice thereof are erected upon property controlled by the district.

(4) Every peace officer may enforce the rules adopted under subsection (2) of this section.

(5) The district and any municipal corporation or any department, agency or political subdivision of this state may enter into agreements or contracts with each other for the purpose of providing a uniform system of enforcement of the rules adopted under subsection (2) of this section. [Formerly 332.205; 1983 c.338 §912; 1993 c.45 §55; 1993 c.221 §1]

Chapter 336

STUDENT DRIVER TRAINING

336.790 Definitions for ORS 336.790 to 336.815. As used in ORS 336.790 to 336.815, unless the context requires otherwise:

(1) "Commercial driver training school" means a school operated by a person issued a commercial driver training school certificate by the Department of Transportation under ORS 822.515.

(2) "Private school" means a private or parochial high school.

(3) "Public school" means a common or union high school district, education service district, a community college district and the Oregon School for the Deaf. [Formerly 343.705; 1997 c.118 §1; 1997 c.249 §98; 2001 c.295 §11; 2001 c.706 §1; 2007 c.70 §94; 2007 c.858 §65]

336.795 Purposes of traffic safety education course. A traffic safety education course shall be conducted in order to facilitate the policing of the streets and highways of this state and to reduce the direct cost thereof by educating youthful drivers in safe and proper driving practices. [Formerly 343.710; 2001 c.104 §113]

336.800 School course in traffic safety education. (1) Any private school, public school or commercial driver training school may offer a course in traffic safety education. The curriculum for the traffic safety education course shall be established by the Department of Transportation under ORS 802.345.

(2) A person employed to teach a traffic safety education course must meet qualifications established by the department under ORS 802.345. [Formerly 343.720; 1997 c.383 §9; 1999 c.328 §8; 2001 c.706 §2; 2007 c.858 §66]

336.805 Tuition; waiver; costs; reimbursement. (1) Each public school offering a course in traffic safety education may charge tuition therefor and shall keep accurate records of the cost thereof in the manner required under rules adopted by the Department of Transportation under ORS 802.345. As provided in ORS 336.810, each public school shall be reimbursed \$210 per pupil completing the course, including any private school pupil completing the course in a public school.

(2) If funds available to the Department of Transportation for the Student Driver Training Fund are not adequate to pay all approved claims in full, public schools shall receive a pro rata reimbursement based upon the ratio that the total amount of funds available bears to the total amount of funds required for maximum allowable reimbursement.

(3) Tuition authorized by subsection (1) of this section shall not exceed the cost to the public school of providing traffic safety education less the state reimbursement. Tuition may be reduced or waived by a public school for low income pupils.

(4) A public school may also offer a traffic safety education course to pupils in neighboring public schools that do not offer traffic safety education.

(5) Each public school offering a course in traffic safety education shall adopt written policies and procedures regarding reduced or waived tuition for low income pupils.

(6) Each public school offering a course in traffic safety education shall adopt written policies and procedures for the admission of pupils from neighboring public schools. [Formerly 343.730; 1997 c.119 §2; 1999 c.328 §9; 2005 c.699 §1; 2007 c.858 §67]

336.810 Student Driver Training Fund.

(1) There is created the Student Driver Training Fund, separate and distinct from the General Fund. All payments required under ORS 336.795 to 336.815 and moneys paid into the fund under ORS 802.110 and all expenses incurred in the administration of those sections shall be made to and borne by the fund. Interest earned by the fund shall be credited to the fund.

(2) The Department of Transportation shall annually distribute the funds available in the Student Driver Training Fund in the manner provided in ORS 336.805.

(3) The department shall make periodic studies to determine the effectiveness of traffic safety education courses conducted under authority of ORS 336.790 to 336.815. [Formerly 343.740; 1999 c.328 §10]

336.815 Contract with commercial driver training school. Any public school may contract with a commercial driver training school for the instruction of students enrolled in a traffic safety education course. [Formerly 343.750; 1997 c.119 §1; 1999 c.328 §11; 2001 c.706 §3]

Chapter 339

COMPULSORY SCHOOL ATTENDANCE

339.030 Exemptions from compulsory school attendance; rules. (1) In the following cases, children may not be required to attend public full-time schools:

(a) Children being taught in a private or parochial school in the courses of study usually taught in grades 1 through 12 in the public schools and in attendance for a period equivalent to that required of children attending public schools in the 1994-1995 school year.

(b) Children proving to the satisfaction of the district school board that they have acquired equivalent knowledge to that acquired in the courses of study taught in grades 1 through 12 in the public schools.

(c) Children who have received a high school diploma.

(d) Children being taught for a period equivalent to that required of children attending public schools by a private teacher the courses of study usually taught in grades 1 through 12 in the public school.

(e) Children being educated in the children's home by a parent or legal guardian.

(f) Children excluded from attendance as provided by law.

(2) The State Board of Education by rule shall establish procedures whereby, on a semiannual basis, an exemption from com-

pulsory attendance may be granted to the parent or legal guardian of any child 16 or 17 years of age who is lawfully employed full-time, lawfully employed part-time and enrolled in school, a community college or an alternative education program as defined in ORS 336.615. An exemption also may be granted to any child who is an emancipated minor or who has initiated the procedure for emancipation under ORS 419B.550 to 419B.558. [Amended by 1965 c.100 §276; 1967 c.67 §8; 1971 c.494 §1; 1973 c.728 §1; 1985 c.579 §1; 1989 c.619 §1; 1993 c.546 §138; 1995 c.769 §2; 1999 c.59 §85; 1999 c.717 §1; 2001 c.490 §8; 2007 c.407 §3]

339.035 Teaching by private teacher, parent or guardian; notice; examination; rules; effect of low or declining score. (1) As used in this section, "education service district" means the education service district that contains the school district of which the child is a resident.

(2) When a child is taught or is withdrawn from a public school to be taught by a parent, legal guardian or private teacher, as provided in ORS 339.030, the parent, legal guardian or private teacher must notify the education service district in writing. In addition, when a child who is taught by a parent, legal guardian or private teacher moves to a new education service district, the parent, legal guardian or private teacher shall notify the new education service district in writing. The education service district shall acknowledge receipt of any notification in writing.

(3) Children being taught as provided in subsection (2) of this section shall be examined at grades 3, 5, 8 and 10 in accordance with the following procedures:

(a) The State Board of Education shall adopt by rule a list of approved comprehensive examinations that are readily available.

(b)(A) The parent or legal guardian shall select an examination from the approved list and arrange to have the examination administered to the child by a qualified neutral person, as defined by rule by the State Board of Education.

(B) If the child was withdrawn from public school, the first examination shall be administered to the child at least 18 months after the date on which the child was withdrawn from public school.

(C) If the child never attended public or private school, the first examination shall be administered to the child prior to the end of grade three.

(c) The person administering the examination shall:

(A) Score the examination; and

(B) Report the results of the examination to the parent or legal guardian.

(d) Upon request of the superintendent of the education service district, the parent or legal guardian shall submit the results of the examination to the education service district.

(4)(a) If the composite test score of the child places the child below the 15th percentile based on national norms, the child shall be given an additional examination within one year of when the first examination was administered.

(b) If the composite test score of the child on the second examination shows a declining score, then the child shall be given an additional examination within one year of when the second examination was administered and the superintendent of the education service district may:

(A) Allow the child to continue to be taught by a parent, legal guardian or private teacher; or

(B) Place the education of the child under the supervision of a person holding a teaching license who is selected by the parent or legal guardian at the expense of the parent or legal guardian. If the composite test score of the child continues to show a declining score, the superintendent of the education service district may:

(i) Allow the child to continue under the educational supervision of a licensed teacher selected by the parent or legal guardian and require that the child be given an additional examination within one year of when the last examination was administered;

(ii) Allow the child to be taught by a parent, legal guardian or private teacher and require that the child be given an additional examination within one year of when the last examination was administered; or

(iii) Order the parent or legal guardian to send the child to school for a period not to exceed 12 consecutive months as determined by the superintendent.

(c) If the parent or legal guardian of the child does not consent to placing the education of the child under the supervision of a licensed teacher who is selected by the parent or legal guardian, then the superintendent of the education service district may order the child to return to school for a period not to exceed 12 consecutive months as determined by the superintendent.

(d) If the composite test score of the child on an examination is equal to or greater than the percentile score on the prior test, the child may be taught by a parent, legal guardian or private teacher and for the next examination be examined pursuant to paragraph (a) of this subsection or subsection (3) of this section.

(5)(a) Notwithstanding the examination requirements of subsections (3) and (4) of this section, the parent or legal guardian of a child with a disability who has an individualized education plan and is receiving special education and related services through the school district or who is being educated in accordance with a privately developed plan shall be evaluated for satisfactory educational progress according to the recommendations of the plan.

(b) The parent or legal guardian of a child with a disability who was evaluated by service providers selected by the parent or legal guardian based on a privately developed plan shall submit a report of such evaluation to the education service district in lieu of the examination results required by subsections (3) and (4) of this section.

(c) A child with a disability described in this subsection shall not be subject to the examination requirements of subsections (3) and (4) of this section unless the examination is recommended in the plan in effect for the child. [1985 c.579 §2; 1989 c.619 §4; 1999 c.717 §1a; 2007 c.70 §95]

TUITION AND FEES

339.141 Tuition prohibited for regular school program; other programs. (1) For the purposes of this section:

(a) "Public charter school" has the meaning given that term in ORS 338.005.

(b) "Regular school program" means the regular curriculum provided in the required full-time day sessions in the schools of the district, including public charter schools, for grades 1 through 12 and the school program for kindergarten during the period of approximately nine months each year when the schools of the district or public charter schools are normally in operation and does not include summer sessions or evening sessions.

(c) "Tuition" means payment for the cost of instruction and does not include fees authorized under ORS 339.155.

(2) Except as provided in subsection (3) of this section, district school boards and public charter schools may establish tuition rates to be paid by pupils receiving instruction in educational programs, classes or courses of study, including traffic safety education, which are not a part of the regular school program. Tuition charges, if made, shall not exceed the estimated cost to the district or public charter school of furnishing the program, class or course of study.

(3) Except as provided in ORS 336.805 for traffic safety education:

(a) No tuition shall be charged to any resident pupil regularly enrolled in the regu-

lar school program for special instruction received at any time in connection therewith.

(b) No program, class or course of study for which tuition is charged, except courses of study beyond the 12th grade, shall be eligible for reimbursement from state funds. [Formerly 336.165; 1999 c.200 §31; 1999 c.328 §12]

339.147 When tuition authorized; waiver of tuition and fees. (1)(a) Notwithstanding ORS 339.141, no district school board or public charter school as defined in ORS 338.005 shall require tuition for courses not part of the regular school program, except for traffic safety education, from a pupil who is a member of a low-income family in an amount in excess of what the low-income family may receive as money specifically to be used for payment of such tuition.

(b) As used in this subsection, "low-income family" means a family whose children qualify for free or reduced price school meals under a federal program, including but not limited to the National School Lunch Act and the Child Nutrition Act of 1966, and all their subsequent amendments.

(2) A family that does not qualify under subsection (1) of this section but believes the payment of school tuition is a severe hardship may request the district school board or public charter school to waive in whole or in part the payment of such tuition.

(3) Any parent or guardian who believes that payment of any fee authorized under ORS 339.155 is a severe hardship may request the district school board or public charter school to waive payment of the fee and the board or public charter school shall waive in whole or in part the fee upon a finding of hardship. Consideration shall be given to any funds specifically available to the parent, guardian or child for the payment of fees or other school expenses.

(4) No district school board or public charter school shall impose or collect fees authorized under ORS 339.155 from any student who is a ward of a juvenile court or of the Oregon Youth Authority or the Department of Human Services unless funds are available therefor in the court's, authority's or department's budget.

(5) No district school board or public charter school is required to waive any fee imposed under ORS 339.155 (5)(a) or (d). [Formerly 336.168; 1997 c.249 §99; 1999 c.200 §32; 1999 c.328 §13]

STUDENT CONDUCT AND DISCIPLINE

339.254 Suspension of student driving privileges; policy content. (1) A school district board may establish a policy regarding when a school superintendent or the board may file with the Department of Transportation a written request to suspend the driving privileges of a student or the right to apply for driving privileges. Such policy shall include:

(a) A provision authorizing the superintendent or the school district board to file with the Department of Transportation a written request to suspend the driving privileges of a student or the right to apply for driving privileges only if the student is at least 15 years of age and:

(A) The student has been expelled for bringing a weapon to school;

(B) The student has been suspended or expelled at least twice for assaulting or menacing a school employee or another student, for willful damage or injury to school property or for use of threats, intimidation, harassment or coercion against a school employee or another student; or

(C) The student has been suspended or expelled at least twice for possessing, using or delivering any controlled substance or for being under the influence of any controlled substance at a school or on school property or at a school sponsored activity, function or event.

(b) A provision requiring the school superintendent to meet with the parent or guardian of the student before submitting a written request to the Department of Transportation.

(c) A provision authorizing the school superintendent or board to request that the driving privileges of the student or the right to apply for driving privileges be suspended for no more than one year.

(d) Notwithstanding paragraph (c) of this subsection, a provision stating that, if a school superintendent or the school district board files a second written request with the Department of Transportation to suspend the driving privileges of a student, the request is that those privileges be suspended until the student is 21 years of age.

(e) A provision that a student may appeal the decision of a school superintendent regarding driving privileges of a student under the due process procedures of the school district for suspensions and expulsions.

(2) If the driving privileges of a student are suspended, the student may apply to the Department of Transportation for a hardship driver permit under ORS 807.240. [1995 c.656 §5; 2003 c.695 §1; 2005 c.209 §30]

339.257 Documentation of enrollment status for students applying for driving privileges; notification of student withdrawal from school to Department of Transportation. (1) The principal or a designee of the principal of a secondary school shall provide documentation of enrollment status on a form provided by the Department of Transportation to any student at least 15 years of age and under 18 years of age who is properly enrolled in the school and who needs the documentation in order to apply for issuance or reinstatement of driving privileges. The form shall be available at the administrative offices of the school district for a student who applies for issuance or reinstatement of driving privileges during school holidays.

(2) A school district board may establish a policy authorizing the superintendent of the school district or the board to notify the department of the withdrawal from school of a student who is at least 15 years of age and under 18 years of age. For purposes of this subsection, a student shall be considered to have withdrawn from school after more than 10 consecutive school days of unexcused absences or 15 school days total of unexcused absences during a single semester. A policy adopted under this subsection shall include a provision allowing a student to appeal a decision to notify the department.

(3) The governing body of a private school may establish a policy authorizing a representative of the school to notify the department of a student's withdrawal. Terms and conditions of the policy shall be the same as those described in subsection (2) of this section for a school district board. [1999 c.789 §4]

SCHOOL TRAFFIC PATROLS

339.650 "Traffic patrol" defined. As used in ORS 339.650 to 339.665 "traffic patrol" means one or more individuals appointed by a public, private or parochial school to protect pupils in their crossing of streets or highways on their way to or from the school by directing the pupils or by cautioning vehicle operators. [Formerly 336.450]

339.655 Traffic patrols authorized; medical benefits; rules. (1) A district school board may do all things necessary, including the expenditure of district funds, to organize, supervise, control or operate traffic patrols. A district school board may make rules relating to traffic patrols which are consistent with rules under ORS 339.660 (1).

(2) The establishment, maintenance and operation of a traffic patrol does not constitute negligence on the part of any school district or school authority.

(3) A district school board may provide medical or hospital care for an individual who is injured or disabled while acting as a member of a traffic patrol. [Formerly 336.460]

339.660 Rules on traffic patrols; eligibility; authority. (1) To promote safety the State Board of Education after consultation with the Department of Transportation and the Department of State Police, shall make rules relating to traffic patrols.

(2) A member of a traffic patrol:

(a) Shall be at least 18 years of age unless the parent or guardian of the member of the traffic patrol has consented in writing to such membership and ceases to be a member if such consent is revoked.

(b) May display a badge marked "traffic patrol" while serving as a member.

(c) May display a directional sign or signal in cautioning drivers where students use a school crosswalk of the driver's responsibility to obey ORS 811.015. [Formerly 336.470]

339.665 Intergovernmental cooperation and assistance in connection with traffic patrols. (1) The Department of Education and the Department of Transportation shall cooperate with any public, private or parochial school in the organization, supervision, control and operation of its traffic patrol.

(2) The Department of State Police, the sheriff of each county or the police of each city may assist any public, private or parochial school in the organization, supervision, control and operation of its traffic patrol. [Formerly 336.480]

Chapter 366

STATE HIGHWAYS

State Highway Fund

366.505 Composition and use of highway fund. (1) The State Highway Fund shall consist of:

(a) All moneys and revenues derived under and by virtue of the sale of bonds, the sale of which is authorized by law and the proceeds thereof to be dedicated to highway purposes.

(b) All moneys and revenues accruing from the licensing of motor vehicles, operators and chauffeurs.

(c) Moneys and revenues derived from any tax levied upon gasoline, distillate, liberty fuel or other volatile and inflammable liquid fuels, except moneys and revenues described in ORS 184.642 (2)(a) that become part of the Department of Transportation Operating Fund.

(d) Moneys and revenues derived from or made available by the federal government for road construction, maintenance or betterment purposes.

(e) All moneys and revenues received from all other sources which by law are allocated or dedicated for highway purposes.

(2) The highway fund shall be deemed and held as a trust fund, separate and distinct from the General Fund, and may be used only for the purposes authorized by law and is continually appropriated for such purposes.

(3) All interest earnings on any of the funds designated in subsection (1) of this section shall be placed to the credit of the highway fund. [Amended by 1953 c.125 §5; 1989 c.966 §43; 2001 c.820 §5]

366.506 Highway cost allocation study; purposes; design; report; use of report by Legislative Assembly. (1) Once every two years, the Oregon Department of Administrative Services shall conduct either a full highway cost allocation study or an examination of data collected since the previous study. The purposes of the study or examination of data are to determine:

(a) The proportionate share that the users of each class of vehicle should pay for the costs of maintenance, operation and improvement of the highways, roads and streets in the state; and

(b) Whether the users of each class are paying that share.

(2) The department may use any study design it determines will best accomplish the purposes stated in subsection (1) of this section. In designing the study the department may make decisions that include, but are not limited to, the methodology to be used for the study, what constitutes a class of vehicle for purposes of collection of data under subsections (1) to (4) of this section and the nature and scope of costs that will be included in the study.

(3) The department may appoint a study review team to participate in the study or examination of data required by subsection (1) of this section. The team may perform any functions assigned by the department, including but not limited to consulting on the design of the study.

(4) A report on the results of the study or examination of data shall be submitted to the legislative revenue committees and the legislative committees with primary responsibility for transportation by January 31 of each odd-numbered year.

(5) The Legislative Assembly shall use the report described in subsections (1) to (4) of this section to determine whether adjust-

ments to revenue sources described in section 3a (3), Article IX of the Oregon Constitution, are needed in order to carry out the purposes of section 3a (3), Article IX of the Oregon Constitution. If such adjustments are needed, the Legislative Assembly shall enact whatever measures are necessary to make the adjustments. [2003 c.755 §§1,2]

Note: 366.506 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 366 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

366.507 Modernization program; funding; conditions and criteria. The Department of Transportation shall use an amount equal to the amount of moneys in the State Highway Fund that becomes available for its use from the increase in tax rates created by the amendments to ORS 319.020, 319.530, 825.476 and 825.480 by sections 1, 2 and 10 to 15, chapter 209, Oregon Laws 1985, and an amount equal to one-third of the amount of moneys in the State Highway Fund that becomes available for its use from any increase in tax rates created by the amendments to ORS 319.020, 319.530, 825.476 and 825.480 by sections 5, 6 and 8 to 15, chapter 899, Oregon Laws 1987, and from any increase in tax rates that results from the provisions of sections 16 and 17, chapter 899, Oregon Laws 1987, to establish and operate a state modernization program for highways. The program established under this section and the use of moneys in the program are subject to the following:

(1) The moneys may be used by the department to retire bonds that the department issues for the modernization program under bonding authority of the department.

(2) The intent of the modernization program is to increase highway safety, to accelerate improvements from the backlog of needs on the state highways and to fund modernization of highways and local roads to support economic development in Oregon. Projects both on and off the state highway system are eligible.

(3) Projects to be implemented by the modernization program shall be selected by the Oregon Transportation Commission. The criteria for selection of projects will be established after public hearings that allow citizens an opportunity to review the criteria. The commission may use up to one-half of moneys available under this section for modernization projects selected by the commission from a list of projects of statewide significance.

(4) In developing criteria for selection of projects, the commission shall consider the following:

(a) Projects must be of significance to the state highway system.

(b) Except for projects that are of statewide significance, projects must be equitably distributed throughout Oregon.

(c) Projects may be on county or city arterial roads connecting to or supporting a state highway.

(d) Priority may be given to projects that make a meaningful contribution to increased highway safety.

(e) Priority may also be given to projects that encourage economic development where:

(A) There is commitment by private industry to construct a facility.

(B) There is support from other state agencies.

(f) Priority may be given where there is local government or private sector financial participation, or both, in the improvement in addition to improvements adjacent to the project.

(g) Priority may be given where there is strong local support.

(5) Except as otherwise provided in this subsection, federal moneys or moneys from the State Highway Fund other than those described in this section may be used for the modernization program as long as the total amount used is equal to the amount described in this section. Federal moneys that are appropriated by Congress for specific projects and federal moneys that are allocated by the United States Department of Transportation for specific projects may not be used for the modernization program under this section. [1985 c.209 §9; 1987 c.899 §2; 1999 c.969 §4; 2001 c.766 §§1,2; 2003 c.618 §§14,15; 2005 c.837 §13]

366.508 Legislative findings. (1) The Legislative Assembly finds that:

(a) Estimated highway, road and street revenues from current sources will not adequately meet the need for continued development of a statewide road and bridge system that is economically efficient, provides accessibility to and from commercial, agricultural, industrial, tourist and recreational facilities and enhances the highway safety, environmental quality and land use goals of this state;

(b) Responsibility for the cost of the highway, road and street system should be proportional and should be based on the number and types of vehicles that use the system and on the frequency of their use; and

(c) Expansion, modernization, maintenance, repair, reconstruction, increased capacity and enhanced safety on all roads and

bridges is crucial to the economic revitalization of Oregon.

(2) The Legislative Assembly declares that the purpose of this section and ORS 319.020, 319.530, 366.507, 366.739, 366.774, 366.790, 825.476 and 825.480 is:

(a) To enhance the revenue base for the state, counties and cities for continued development and maintenance of the road and bridge system; and

(b) To enhance the revitalization of this state's economy by implementing a long-term plan for the state, counties and cities that establishes priorities for road and bridge improvements. [1987 c.899 §1]

Note: 366.508 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 366 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

366.510 Turning over highway funds to State Treasurer. All state officials charged with the collection of highway funds shall, upon the first of each month after collection, unless a different time is otherwise provided, turn the same over to the State Treasurer, who shall enter such revenues in the account of the highway fund. [Amended by 1967 c.454 §106]

366.512 Collection of certain registration fees for State Parks and Recreation Department Fund. (1) The Department of Transportation shall collect all registration fees for campers, motor homes and travel trailers. Such fees shall be paid into the State Parks and Recreation Department Fund.

(2) As used in this section:

(a) "Camper" has the meaning given that term in ORS 801.180.

(b) "Motor home" has the meaning given that term in ORS 801.350.

(c) "Travel trailer" has the meaning given that term in ORS 801.565. [1969 c.605 §46; 1979 c.186 §13; 1983 c.338 §918; 1983 c.363 §2; 1985 c.16 §460; 1985 c.395 §6; 1989 c.904 §36; 1993 c.696 §15; 2003 c.14 §161; 2003 c.655 §72; 2005 c.22 §§260,261]

366.514 Use of highway fund for footpaths and bicycle trails. (1) Out of the funds received by the Department of Transportation or by any county or city from the State Highway Fund reasonable amounts shall be expended as necessary to provide footpaths and bicycle trails, including curb cuts or ramps as part of the project. Footpaths and bicycle trails, including curb cuts or ramps as part of the project, shall be provided wherever a highway, road or street is being constructed, reconstructed or relocated. Funds received from the State Highway Fund may also be expended to maintain footpaths and trails and to provide footpaths

and trails along other highways, roads and streets.

(2) Footpaths and trails are not required to be established under subsection (1) of this section:

(a) Where the establishment of such paths and trails would be contrary to public safety;

(b) If the cost of establishing such paths and trails would be excessively disproportionate to the need or probable use; or

(c) Where sparsity of population, other available ways or other factors indicate an absence of any need for such paths and trails.

(3) The amount expended by the department or by a city or county as required or permitted by this section shall never in any one fiscal year be less than one percent of the total amount of the funds received from the highway fund. However:

(a) This subsection does not apply to a city in any year in which the one percent equals \$250 or less, or to a county in any year in which the one percent equals \$1,500 or less.

(b) A city or county in lieu of expending the funds each year may credit the funds to a financial reserve fund in accordance with ORS 294.525, to be held for not more than 10 years, and to be expended for the purposes required or permitted by this section.

(c) For purposes of computing amounts expended during a fiscal year under this subsection, the department, a city or county may record the money as expended:

(A) On the date actual construction of the facility is commenced if the facility is constructed by the city, county or department itself; or

(B) On the date a contract for the construction of the facilities is entered with a private contractor or with any other governmental body.

(4) For the purposes of this chapter, the establishment of paths, trails and curb cuts or ramps and the expenditure of funds as authorized by this section are for highway, road and street purposes. The department shall, when requested, provide technical assistance and advice to cities and counties in carrying out the purpose of this section. The department shall recommend construction standards for footpaths and bicycle trails. Curb cuts or ramps shall comply with the requirements of ORS 447.310 and rules adopted under ORS 447.231. The department shall, in the manner prescribed for marking highways under ORS 810.200, provide a uniform system of signing footpaths and bicycle trails which shall apply to paths and trails

under the jurisdiction of the department and cities and counties. The department and cities and counties may restrict the use of footpaths and bicycle trails under their respective jurisdictions to pedestrians and nonmotorized vehicles, except that motorized wheelchairs shall be allowed to use footpaths and bicycle trails.

(5) As used in this section, "bicycle trail" means a publicly owned and maintained lane or way designated and signed for use as a bicycle route. [1971 c.376 §2; 1979 c.825 §1; 1983 c.19 §1; 1983 c.338 §919; 1991 c.417 §7; 1993 c.503 §12; 1997 c.308 §36; 2001 c.389 §1]

366.516 Incurring obligations payable from anticipated revenues. The Department of Transportation may incur obligations to be paid from the State Highway Fund for the construction, reconstruction, improvement, repair or maintenance of highways, streets and bridges in excess of the amount then standing to the credit of the State Highway Fund if in the opinion of the department there will be sufficient funds available for the payment of such obligations when they become due and payable and all other debts, obligations and expenses chargeable against the State Highway Fund including those amounts that are required by law to be set aside from the State Highway Fund for particular purposes. Obligations incurred under the authority of this section need not be payable in the same biennial period during which the obligation is incurred. [1953 c.125 §2]

366.517 Department may determine certain accounting procedures. The Department of Transportation shall determine the accounting period for which any expenditures shall be charged against the State Highway Fund. The department may charge such expenditures against the State Highway Fund at the time the expenditures are actually paid even though the expenditures were obligated during a prior accounting period. The department may keep its accounts on a calendar year basis. [1953 c.125 §3; 1967 c.454 §40]

366.518 Expenditures from highway fund to be reported, budgeted and limited to amounts budgeted. The Department of Transportation shall submit a biennial statement and budget estimate as required by law, and shall limit its expenditures from the State Highway Fund during each biennial period to the total amount of the budget approved according to law; provided, that the word "expenditures" shall mean all money actually paid out or due and payable, but shall not mean liabilities or obligations incurred but not due and payable until a subsequent biennial period. The provisions of any law establishing a Legislative Assembly emergency committee shall apply to expendi-

tures from the State Highway Fund. [1953 c.125 §4]

366.520 Expenses in legalizing state highways. The expenses incurred in any proceeding by the Department of Transportation under ORS 368.201 to 368.221, when applied to state highways, shall be paid out of the highway fund. [Amended by 1981 c.153 §62]

366.522 Appropriations from highway fund for legislative interim committees. It hereby is declared to be the policy and intent of the Legislative Assembly that the total appropriations out of the State Highway Fund made by it for the payment of expenses incurred by the Legislative Assembly by and through its interim committee during any biennium shall be deemed to be the maximum amount necessary for such purpose. Any unexpended and unobligated balance remaining in any such appropriation heretofore or hereafter made shall, after the expiration of the biennium for which the appropriation was made, be returned to the State Highway Fund and may thereafter be used for any purpose authorized by law. [1953 c.84 §1]

Allocations to Counties

366.739 Allocation of moneys to counties and cities generally. Except as otherwise provided in ORS 366.744, the taxes collected under ORS 319.020, 319.530, 803.090, 803.420, 818.225, 825.476 and 825.480, minus \$71.2 million per biennium, shall be allocated 24.38 percent to counties under ORS 366.762 and 15.57 percent to cities under ORS 366.800. [Formerly 366.524]

366.762 Appropriation from highway fund for counties. There shall be and hereby are appropriated out of the highway fund annually such sums of money established under ORS 366.739 out of all moneys credited to the State Highway Fund by the State Treasurer between July 1 of any year and June 30 of the following year that are subject to the appropriation under this section by ORS 366.739. The appropriation shall be distributed among the several counties for the purposes provided by law. [Formerly 366.525]

366.764 Basis of allocation of appropriation to counties. The sum designated in ORS 366.762 shall be remitted by warrant to the county treasurers of the several counties. The remittance in any year shall be in proportion of the number of vehicles, trailers, semitrailers, pole trailers and pole or pipe trailers registered in each county, to the total number of such vehicles registered in the state as of December 31 of the preceding year, as indicated by motor vehicles registration records. All such vehicles owned and operated by the state and registered under ORS 805.040, 805.045 and 805.060 shall be ex-

cluded from the computation in making the apportionment. [Formerly 366.530]

366.766 Remitting appropriation to counties. The appropriation made by ORS 366.762 shall be remitted to the counties on a monthly basis within 35 days after the end of the month for which a distribution is made in an amount determined in ORS 366.739 and 366.762 and credited to the highway fund for such remittance. [Formerly 366.535]

366.768 Advances from highway fund to county. Upon satisfactory showing before the Department of Transportation by any county that the county does not have sufficient funds with which to pay, when due, bonded indebtedness incurred for highway purposes, the department may certify to such fact. Pursuant to the certificate, a warrant shall be drawn in favor of the county against the highway fund in the amount set out in each certificate, which amount so advanced shall be deducted from the next payment due the county under ORS 366.762 to 366.768. [Formerly 366.540]

366.772 Allocation of moneys to counties with road funding deficit. (1) Not later than July 31 in each calendar year, the sum of \$500,000 shall be withdrawn from the appropriation specified in ORS 366.762, and the sum of \$250,000 shall be withdrawn from moneys available to the Department of Transportation from the State Highway Fund. The sums withdrawn shall be set up in a separate account to be administered by the Department of Transportation.

(2) Not later than July 31 in each calendar year, the sum of \$750,000 shall be withdrawn from the separate account described in subsection (1) of this section and distributed to counties that had a county road base funding deficit in the prior fiscal year. A county's share of the \$750,000 shall be based on the ratio of the amount of the county's road base funding deficit to the total amount of county road base funding deficits of all counties.

(3) Moneys allocated as provided in this section may be used only for maintenance, repair and improvement of existing roads.

(4) As used in this section:

(a) "Arterial highway" has the meaning given that term in ORS 801.127.

(b) "Collector highway" has the meaning given that term in ORS 801.197.

(c) "County road base funding deficit" means the amount of a county's minimum county road base funding minus the amount of that county's dedicated county road funding. A county has a county road base funding deficit only if the amount of the dedicated county road funding is less than the amount of the minimum county road base funding.

(d) “Dedicated county road funding” for a county means:

(A) Moneys received from federal forest reserves and apportioned to the county road fund in accordance with ORS 294.060;

(B) State Highway Fund moneys distributed to the county, other than moneys distributed under this section and not including moneys allocated under section 15, chapter 911, Oregon Laws 2007; and

(C) Federal Highway Administration revenues allocated by formula to the county annually under the federal-aid highway program authorized by 23 U.S.C. chapter 1. These moneys do not include federal funds received by the county through a competitive grant process.

(e) “Minimum county road base funding” means \$4,500 per mile of county roads that are arterial and collector highways beginning on July 1, 2008, and thereafter means \$4,500 per mile of county roads that are arterial and collector highways as adjusted annually on the basis of the Portland-Salem, OR-WA, Consumer Price Index for All Urban Consumers for All Items, as published by the Bureau of Labor Statistics of the United States Department of Labor. [Formerly 366.541; 2007 c.911 §14]

Note: The amendments to 366.772 by section 20, chapter 618, Oregon Laws 2003, and section 14, chapter 911, Oregon Laws 2007, become operative July 1, 2008. See section 21, chapter 618, Oregon Laws 2003. The text that is operative until July 1, 2008, is set forth for the user’s convenience.

366.772. (1) Not later than July 31 in each calendar year, the sum of \$750,000 shall be withdrawn from the appropriation specified in ORS 366.762, and the sum of \$250,000 shall be withdrawn from moneys available to the Department of Transportation from the State Highway Fund. The sums withdrawn shall be set up in a separate account to be administered by the Department of Transportation.

(2) Not later than July 31 in each calendar year, the sum of \$1 million shall be withdrawn from the separate account described in subsection (1) of this section and distributed to counties that had a county road base funding deficit in the prior fiscal year. A county’s share of the \$1 million shall be based on the ratio of the amount of the county’s road base funding deficit to the total amount of county road base funding deficits of all counties.

(3) Moneys allocated as provided in this section may be used only for maintenance, repair and improvement of existing roads.

(4) As used in this section:

(a) “County road base funding deficit” means the amount of a county’s minimum county road base funding minus the amount of that county’s dedicated county road funding. A county has a county road base funding deficit only if the amount of the dedicated county road funding is less than the amount of the minimum county road base funding.

(b) “Dedicated county road funding” for a county means:

(A) Moneys received from federal forest reserves and apportioned to the county road fund in accordance with ORS 294.060;

(B) State Highway Fund moneys distributed to the county, other than moneys distributed under this section; and

(C) Federal Highway Administration revenues allocated by formula to the county annually under the federal-aid highway program authorized by 23 U.S.C. chapter 1. These moneys do not include federal funds received by the county through a competitive grant process.

(c) “Minimum county road base funding” means \$1 million beginning on July 1, 2003, and thereafter means \$1 million as adjusted annually on the basis of the Portland-Salem, OR-WA, Consumer Price Index for All Urban Consumers for All Items, as published by the Bureau of Labor Statistics of the United States Department of Labor.

Note: 366.772 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 366 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

366.774 Authorized use of allocation to counties; report by counties to Legislative Assembly. (1) Moneys paid to counties under ORS 366.762 to 366.768 shall be used only for the purposes stated in sections 3 and 3a, Article IX of the Oregon Constitution, and the statutes enacted pursuant thereto including ORS 366.514.

(2) Counties receiving moneys under ORS 366.762 to 366.768 shall report annually to the Legislative Assembly the expenditures of those moneys in each of the following areas:

- (a) Administration;
- (b) Bicycle paths;
- (c) Construction and expansion;
- (d) Operations and maintenance;
- (e) Other payments;
- (f) Payments to other governments; and
- (g) Repair and preservation.

(3) The Association of Oregon Counties shall make an annual report to the Legislative Assembly presenting the information required by subsection (2) of this section. The report shall be made to the committees of the Legislative Assembly with primary jurisdiction over transportation matters.

(4) For the purposes of subsection (2) of this section, each county shall account for moneys paid to the county under ORS 366.762 to 366.768 separately from any other county moneys. [Formerly 366.542]

Note: 366.774 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 366 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

Chapter 377

MOTORIST INFORMATION SIGNS

377.737 Giving or receiving compensation or value for signs; rules. (1) To determine whether a person is giving or receiving, or has given or received, compensation or anything of value as defined by the Department of Transportation by rule for displaying a sign, the department may issue an investigative demand upon any person it reasonably believes may have relevant documents or information.

(2) If any person after being served an investigative demand under subsection (1) of this section fails or refuses to obey the demand, the Department of Transportation may request that the Department of Justice apply to an appropriate circuit court and, after a hearing, request an order requiring compliance with the demand. [2007 c.199 §2]

377.753 Permits for outdoor advertising signs; rules. (1) Notwithstanding the provisions of ORS 377.715, 377.725 and 377.770, the Department of Transportation may issue permits for outdoor advertising signs placed on benches or shelters erected or maintained for use by customers of a mass transit district, a transportation district or other public transportation agency.

(2) The department shall determine by rule the fees and criteria for the number, size, and location of such signs but the department may not issue a permit for a sign that is visible from an interstate highway. [2007 c.199 §3]

Chapter 383

TOLLWAYS

383.003 Definitions for ORS 383.003 to 383.075. As used in ORS 383.003 to 383.075:

(1) "Department" means the Department of Transportation.

(2) "Electronic toll collection system" means a system that records use of a tollway by electronic transmissions to or from the vehicle using the tollway and that collects tolls, or that is capable of charging an account established by a person for use of the tollway.

(3) "Photo enforcement system" means a system of sensors installed to work in conjunction with an electronic toll collection system and other traffic control devices and that automatically produces videotape or one or more photographs, microphotographs or other recorded images of a vehicle in con-

nection with the collection or enforcement of tolls.

(4) "Private entity" means any nongovernmental entity, including a corporation, partnership, company or other legal entity, or any natural person.

(5) "Related facility" means any real or personal property that:

(a) Will be used to operate, maintain, renovate or facilitate the use of the tollway;

(b) Will provide goods or services to the users of the tollway; or

(c) Can be developed efficiently when tollways are developed and will generate revenue that may be used to reduce tolls or will be deposited in the State Tollway Account.

(6) "Toll" means any fee or charge for the use of a tollway.

(7) "Toll booth collections" means the manual or mechanical collection of cash or charging of an account at a toll plaza, toll booth or similar fixed toll collection facility.

(8) "Tollway" means any roadway, path, highway, bridge, tunnel, railroad track, bicycle path or other paved surface or structure specifically designed as a land vehicle transportation route, the construction, operation or maintenance of which is wholly or partially funded with toll revenues resulting from an agreement under ORS 383.005.

(9) "Tollway operator" means the unit of government or the private entity that is responsible for the construction, reconstruction, installation, improvement, maintenance, repair and operation of a tollway or a related facility.

(10) "Tollway project" means any capital project involving the acquisition of land for, or the construction, reconstruction, improvement, installation, development or equipping of, a tollway, related facilities or any portion thereof.

(11) "Unit of government" means any department or agency of the federal government, any state, or any agency, office or department thereof, and any city, county, district, port or other public corporation organized and existing under statutory law or under a voter-approved charter. [1995 c.668 §2; 2007 c.531 §3]

383.004 Establishment of tolls; rules.

(1) Except as provided in subsection (2) of this section, a toll may not be established unless the Oregon Transportation Commission has reviewed and approved the toll. The commission shall adopt rules specifying the process under which proposals to establish tolls will be reviewed. When reviewing a proposal to establish tolls, the commission shall take into consideration:

(a) The amount and classification of the traffic using, or anticipated to use, the tollway;

(b) The amount of the toll proposed to be established for each class or category of tollway user and, if applicable, the different amounts of the toll depending on time and day of use;

(c) The extent of the tollway, including improvements necessary for tollway operation and improvements necessary to support the flow of traffic onto or off of the tollway;

(d) The location of toll plazas or toll collection devices to collect the toll for the tollway;

(e) The cost of constructing, reconstructing, improving, installing, maintaining, repairing and operating the tollway;

(f) The amount of indebtedness incurred for the construction of the tollway and debt service requirements, if any;

(g) The value of assets, equipment and services required for the operation of the tollway;

(h) The period of time during which the toll will be in effect;

(i) The process for altering the amount of the toll during the period of operation of the tollway;

(j) The method of collecting the toll; and

(k) The rate of return that would be fair and reasonable for a private equity holder, if any, in the tollway.

(2) Nothing in ORS 383.003 to 383.075 prohibits a city or county from establishing a toll on any highway, as defined in ORS 801.305, that the city or county has jurisdiction over as a road authority pursuant to ORS 810.010. [2007 c.531 §2]

383.006 Authority of tollway operator.

A tollway operator may operate toll booth collections, an electronic toll collection system, a photo enforcement system or any combination of toll booth collections, an electronic toll collection system and a photo enforcement system. [2007 c.531 §6]

383.009 State Tollway Account;

sources; uses. (1) There is hereby established the State Tollway Account as a separate account within the State Highway Fund. The State Tollway Account shall consist of:

(a) All moneys and revenues received by the Department of Transportation from or made available by the federal government to the department for any tollway project or for the operation or maintenance of any tollway;

(b) Any moneys received by the department from any other unit of government or any private entity for a tollway project or

from the operation or maintenance of any tollway;

(c) All moneys and revenues received by the department from any loan made by the department for a tollway project pursuant to ORS 383.005, and from any lease, agreement, franchise or license for the right to the possession and use, operation or management of a tollway project;

(d) All tolls and other revenues received by the department from the users of any tollway project;

(e) The proceeds of any bonds authorized to be issued under ORS 383.023 for tollway projects;

(f) Any moneys that the department has legally transferred from the State Highway Fund to the State Tollway Account for tollway projects;

(g) All moneys and revenues received by the department from all other sources that by donation, grant, contract or law are allocated or dedicated for tollway projects;

(h) All interest earnings on investments made from any of the moneys held in the State Tollway Account; and

(i) All civil penalties and administrative fees paid to the department from the enforcement of tolls.

(2) Moneys in the State Tollway Account may be used by the department for the following purposes:

(a) To finance preliminary studies and reports for any tollway project;

(b) To acquire land to be owned by the state for tollways and any related facilities therefor;

(c) To finance the construction, renovation, operation, improvement, maintenance or repair of any tollway project;

(d) To make grants or loans to a unit of government for tollway projects;

(e) To make loans to private entities for tollway projects;

(f) To pay the principal, interest and premium due with respect to, and to pay the costs connected with the issuance or ongoing administration of any bonds or other financial obligations authorized to be issued by, or the proceeds of which are received by, the department for any tollway project;

(g) To provide a guaranty or other security for any bonds or other financial obligations, including but not limited to financial obligations with respect to any bond insurance, surety or credit enhancement device issued or incurred by the department, a unit of government or a private entity, for the purpose of financing a single tollway project

or any related group or system of tollways or related facilities; and

(h) To pay the costs incurred by the department in connection with its oversight, operation and administration of the State Tollway Account, the proposals and projects submitted under ORS 383.015 and the tollway projects financed under ORS 383.005.

(3) For purposes of securing bonds authorized by ORS 383.023 or providing a guaranty, surety or other security authorized by subsection (2)(g) of this section, the department may:

(a) Irrevocably pledge all or any portion of the amounts that are credited to, or are required to be credited to, the State Tollway Account;

(b) Establish subaccounts in the State Tollway Account, and make covenants regarding the credit to and use of amounts in those accounts and subaccounts; and

(c) Establish separate trust funds or accounts and make covenants to transfer to those separate trust funds or accounts all or any portion of the amounts that are required to be deposited in the State Tollway Account.

(4) Notwithstanding any other provision of ORS 383.001 to 383.075, the department shall not pledge any funds or amounts at any time held in the State Tollway Account as security for the obligations of a private entity unless the department has entered into a binding and enforceable agreement that provides the department reasonable assurance that the department will be repaid, with appropriate interest, any amounts that the department is required to advance pursuant to that pledge.

(5) Moneys in the State Tollway Account are continuously appropriated to the department for purposes authorized by this section. [1995 c.668 §4; 2005 c.22 §264; 2007 c.531 §12]

383.014 Interstate system compatibility; rules. The Oregon Transportation Commission shall set standards by rule for electronic toll collection systems and photo enforcement systems used on tollways in this state to ensure that systems used in Oregon and systems used in the State of Washington are compatible to the extent technology permits. [2007 c.531 §8]

383.015 Initiation of project; fees; rules; conditions for authorization; studies. (1) Tollway projects may be initiated by the Department of Transportation, by a unit of government having an interest in the installation of a tollway, or by a private entity interested in constructing or operating a tollway project. The department shall charge an administrative fee for reviewing

and considering any tollway project proposed by a private entity, which the department shall establish by rule. All such administrative fees shall be deposited into the State Tollway Account.

(2) The department shall adopt rules pursuant to which it will consider authorization of a tollway project. The rules shall require consideration of:

(a) The opinions and interests of units of government encompassing or adjacent to the path of the proposed tollway project in having the tollway installed;

(b) The probable impact of the proposed tollway project on local environmental, aesthetic and economic conditions and on the economy of the state in general;

(c) The extent to which funding other than state funding is available for the proposed tollway project;

(d) The likelihood that the estimated use of the tollway project will provide sufficient revenues to independently finance the costs related to the construction and future maintenance, repair and reconstruction of the tollway project, including the repayment of any loans to be made from moneys in the State Tollway Account;

(e) With respect to tollway projects, any portion of which will be financed with state funds or department loans or grants:

(A) The relative importance of the proposed tollway project compared to other proposed tollways; and

(B) Traffic congestion and economic conditions in the communities that will be affected by competing tollway projects; and

(f) The effects of tollway implementation on community and local street traffic.

(3) Notwithstanding any other provision of ORS 383.001 to 383.075, no tollway project shall be authorized unless the department finds that either:

(a) Based on the department's estimate of present and future traffic patterns, the revenues generated by the tollway project will be sufficient, after payment of all obligations incurred in connection with the acquisition, construction and operation of such tollway project, to ensure the continued maintenance, repair and reconstruction of the tollway project without the contribution of additional public funds; or

(b) The revenues generated by the tollway project will be at least sufficient to pay its operational expenses and a portion of the costs of its construction, maintenance, repair and reconstruction, and the importance of the tollway project to the welfare or economy of the state is great enough to justify the use of public funding for a portion

of its construction, maintenance, repair and reconstruction.

(4) If the department finds that a proposed tollway project qualifies for authorization under this section, the department may conduct or cause to be conducted any environmental, geological or other studies required by law as a condition of construction of the tollway project. The costs of completing the studies for any proposed tollway project may be paid by moneys in the State Tollway Account, provided that any such payment shall constitute a loan against the proposed tollway project and shall be reimbursed to the State Tollway Account as a part of the permanent financing for the project. [1995 c.668 §7; 1997 c.390 §2; 2007 c.531 §17]

383.035 Failure to pay toll; penalty. (1) A person who fails to pay a toll, established pursuant to ORS 383.004, shall pay to the Department of Transportation the amount of the toll, a civil penalty of not more than \$25 and an administrative fee established by the tollway operator not to exceed the actual cost of collecting the unpaid toll.

(2) In addition to any other penalty, the Department of Transportation shall refuse to renew the motor vehicle registration of the motor vehicle owned by a person who has not paid the toll, the civil penalty and any administrative fee charged under this section.

(3) This section does not apply to:

(a) A person operating a vehicle owned by a unit of government or the tollway operator;

(b) A person who is a member of a category of persons exempted by the Oregon Transportation Commission from paying a toll; or

(c) A person who is a member of a category of persons made eligible by the commission for paying a reduced toll, to the extent of the reduction. [2007 c.531 §4]

383.045 Evidence from photo enforcement system; payment of fees. (1) Except as provided in subsection (2) of this section, a recorded image of a vehicle and the registration plate of the vehicle produced by a photo enforcement system at the time the driver of the vehicle did not pay a toll shall be prima facie evidence that the registered owner of the vehicle is the driver of the vehicle.

(2) If the registered owner of a vehicle is a person in the vehicle rental or leasing business, the registered owner may elect to identify the person who was operating the vehicle at the time the toll was not paid or to pay the toll, civil penalty and administrative fee.

(3) A registered owner of a vehicle who pays the toll, civil penalty and administrative fee is entitled to recover the same from the driver, renter or lessee of the vehicle. [2007 c.531 §10]

383.055 Assessment and collection of unpaid tolls; rules. The Oregon Transportation Commission shall establish a process by rule for the assessment of unpaid tolls and the collection of civil penalties and administrative fees under ORS 383.035. [2007 c.531 §9]

383.065 Information provided for toll booth collections. The Department of Transportation may provide to a tollway operator the information needed by the operator for toll booth collections or for the operation of an electronic toll collection system or a photo enforcement system. [2007 c.531 §7]

383.075 Driver records and information used to collect and enforce tolls. (1) Except as provided in subsections (2) and (3) of this section, records and information used to collect and enforce tolls are exempt from disclosure under public records law and are to be used solely for toll collection and traffic management by the Department of Transportation.

(2) Information collected or maintained by an electronic toll collection system may not be disclosed to anyone except:

(a) The owner of an account that is charged for the use of a tollway;

(b) A financial institution, as necessary to collect tolls owed;

(c) Employees of the department;

(d) The tollway operator and authorized employees of the operator;

(e) A law enforcement officer who is acting in the officer's official capacity in connection with toll enforcement; and

(f) An administrative law judge or court in an action or proceeding in relation to unpaid tolls or administrative fees or civil penalties related to unpaid tolls.

(3) Information collected or maintained by a photo enforcement system may not be disclosed to anyone except:

(a) The registered owner or apparent driver of the vehicle;

(b) Employees of the department;

(c) The tollway operator and authorized employees of the operator;

(d) A law enforcement officer who is acting in the officer's official capacity in connection with toll enforcement; and

(e) An administrative law judge or court in an action or proceeding in relation to unpaid tolls or administrative fees or civil penalties related to unpaid tolls. [2007 c.531 §11]

Chapter 401

EMERGENCY MANAGEMENT AND SERVICES

401.025 Definitions. As used in ORS 190.155 to 190.170, 401.015 to 401.107, 401.257 to 401.325 and 401.355 to 401.584, unless the context requires otherwise:

(1) “Abnormal disruption of the market” means any human created or natural event or circumstance that causes essential consumer goods or services to be not readily available.

(2) “Beneficiary” has the meaning given that term in ORS 656.005.

(3) “Commission” means the Seismic Safety Policy Advisory Commission established under ORS 401.337.

(4) “Emergency” means a human created or natural event or circumstance that causes or threatens widespread:

- (a) Loss of life;
- (b) Injury to person or property;
- (c) Human suffering; or
- (d) Financial loss.

(5) “Emergency management agency” means an organization created and authorized under ORS 401.015 to 401.107, 401.257 to 401.325 and 401.355 to 401.584 by the state, county or city to provide for and ensure the conduct and coordination of functions for comprehensive emergency program management.

(6) “Emergency program management” includes all the tasks and activities necessary to provide, support and maintain the ability of the emergency services system to prevent or reduce the impact of emergency or disaster conditions which includes, but is not limited to, coordinating development of plans, procedures, policies, fiscal management, coordination with nongovernmental agencies and organizations, providing for a coordinated communications and alert and notification network and a public information system, personnel training and development and implementation of exercises to routinely test the emergency services system.

(7) “Emergency program manager” means the person administering the emergency management agency of a county or city.

(8) “Emergency service agency” means an organization within a local government which performs essential services for the public’s benefit prior to, during or following an emergency. This includes, but is not limited to, organizational units within local governments, such as law enforcement, fire control, health, medical and sanitation ser-

vices, public works and engineering, public information and communications.

(9) “Emergency service worker” means an individual who, under the direction of an emergency service agency or emergency management agency, performs emergency services and:

(a) Is a registered volunteer or independently volunteers to serve without compensation and is accepted by the Office of Emergency Management or the emergency management agency of a county or city; or

(b) Is a member of the Oregon State Defense Force acting in support of the emergency services system.

(10) “Emergency services” includes those activities provided by state and local government agencies with emergency operational responsibilities to prepare for and carry out any activity to prevent, minimize, respond to or recover from an emergency. These activities include, without limitation, coordination, preparedness planning, training, interagency liaison, fire fighting, oil or hazardous material spill or release cleanup as defined in ORS 466.605, law enforcement, medical, health and sanitation services, engineering and public works, search and rescue activities, warning and public information, damage assessment, administration and fiscal management, and those measures defined as “civil defense” in 50 U.S.C. app. 2252.

(11) “Emergency services system” means that system composed of all agencies and organizations involved in the coordinated delivery of emergency services.

(12) “Essential consumer goods or services” means goods or services that:

(a) Are or may be bought or acquired primarily for personal, family or household purposes, including but not limited to residential construction materials or labor, shelter for payment such as a hotel room, food, water or petroleum products such as gasoline or diesel fuel; and

(b) Are necessary for the health, safety or welfare of consumers.

(13) “Human created or natural event or circumstance” includes, but is not limited to:

(a) Fire, explosion, flood, severe weather, landslides or mud slides, drought, earthquake, volcanic activity, tsunamis or other oceanic phenomena, spills or releases of oil or hazardous material as defined in ORS 466.605, contamination, utility or transportation emergencies, disease, blight, infestation, civil disturbance, riot, sabotage, acts of terrorism and war; and

(b) A rapid influx of individuals from outside this state, a rapid migration of individuals from one part of this state to another

or a rapid displacement of individuals if the influx, migration or displacement results from the type of event or circumstance described in paragraph (a) of this subsection.

(14) "Injury" means any personal injury sustained by an emergency service worker by accident, disease or infection arising out of and in the course of emergency services or death resulting proximately from the performance of emergency services.

(15) "Local government" means any governmental entity authorized by the laws of this state.

(16) "Major disaster" means any event defined as a "major disaster" under 42 U.S.C. 5122(2).

(17) "Oregon emergency management plan" means the state emergency preparedness operations and management plan. The Office of Emergency Management is responsible for coordinating emergency planning with government agencies and private organizations, preparing the plan for the Governor's signature, and maintaining and updating the plan as necessary.

(18) "Search and rescue" means the acts of searching for, rescuing or recovering, by means of ground or marine activity, any person who is lost, injured or killed while out of doors. However, "search and rescue" does not include air activity in conflict with the activities carried out by the Oregon Department of Aviation.

(19) "Sheriff" means the chief law enforcement officer of a county. [1983 c.586 §2; 1985 c.733 §21; 1987 c.373 §84; 1989 c.361 §8; 1991 c.418 §1; 1991 c.956 §10; 1993 c.187 §1; 1999 c.935 §29; 2005 c.825 §9; 2007 c.97 §10; 2007 c.223 §5; 2007 c.740 §20]

Chapter 419C

JUVENILE COURT PROCEEDINGS

Waivers

419C.340 Authority to waive youth to adult court. In the circumstances set forth in ORS 419C.349, 419C.352, 419C.364, 419C.367 and 419C.370, the court may waive the youth to the appropriate court handling criminal actions, or to municipal court. [1993 c.33 §211; 1993 c.546 §76]

419C.358 Consolidation of nonwaivable and waivable charges. When a person is waived for prosecution as an adult, the person shall be waived only on the actual charges justifying the waiver under ORS 419C.349 (2) or 419C.352, as the case may be. Any nonwaivable charges arising out of the same act or transaction as the waivable charge shall be consolidated with the waivable charge for purposes of conducting

the adjudicatory hearing on the nonwaivable charges. [1993 c.33 §216; 1993 c.546 §82]

419C.361 Disposition of nonwaivable consolidated charges and lesser included offenses.

(1) Notwithstanding that the juvenile court has waived the case under ORS 419C.349, 419C.352, 419C.355, 419C.358, 419C.364, 419C.367 and 419C.370, the court of waiver shall return the case to the juvenile court unless an accusatory instrument is filed in the court of waiver alleging, in the case of a person under 16 years of age, a crime listed in ORS 419C.352 or, in the case of any other person, a crime listed in ORS 419C.349 (2). Also in the case of a waived person, when a trial has been held in the court of waiver upon an accusatory instrument alleging a crime listed in ORS 419C.349 (2) or 419C.352, as the case may be, and the person is found guilty of any lesser included offense that is not itself a waivable offense, the trial court shall not sentence the defendant therein, but the trial court shall order a presentence report to be made in the case, shall set forth in a memorandum such observations as the court may make regarding the case and shall then return the case to the juvenile court in order that the juvenile court make disposition in the case based upon the guilty finding in the court of waiver. Disposition shall be as if the juvenile court itself had found the youth to be in its jurisdiction pursuant to ORS 419C.005. The records and consequences of the case shall, in all respects, be as if the juvenile court itself had found the youth to be in its jurisdiction pursuant to ORS 419C.005. When the person is found guilty of a nonwaivable charge that was consolidated with a waivable charge under ORS 419C.358, the case shall be returned to the juvenile court for disposition as provided in this subsection for lesser included offenses.

(2) Nothing in this section or ORS 419C.358 applies to a waiver under ORS 419C.364 or 419C.370. [1993 c.33 §217; 1993 c.546 §83]

419C.370 Waiver of motor vehicle, boating, game, violation and property cases.

(1) The juvenile court may enter an order directing that all cases involving:

(a) Violation of a law or ordinance relating to the use or operation of a motor vehicle, boating laws or game laws be waived to criminal or municipal court;

(b) An offense classified as a violation under the laws of this state or a political subdivision of this state be waived to municipal court if the municipal court has agreed to accept jurisdiction; and

(c) A misdemeanor that entails theft, destruction, tampering with or vandalism of property be waived to municipal court if the

municipal court has agreed to accept jurisdiction.

(2) Cases waived under subsection (1) of this section are subject to the following:

(a) That the criminal or municipal court prior to hearing a case, other than a case involving a parking violation, in which the defendant is or appears to be under 18 years of age notify the juvenile court of that fact; and

(b) That the juvenile court may direct that any such case be waived to the juvenile court for further proceedings.

(3)(a) When a person who has been waived under subsection (1)(c) of this section is convicted of a property offense, the municipal court may impose any sanction authorized for the offense except for incarceration. The municipal court shall notify the juvenile court of the disposition of the case.

(b) When a person has been waived under subsection (1) of this section and fails to appear as summoned or is placed on probation and is alleged to have violated a condition of the probation, the juvenile court may recall the case to the juvenile court for further proceedings. When a person has been returned to juvenile court under this paragraph, the juvenile court may proceed as though the person had failed to appear as summoned to the juvenile court or had violated a juvenile court probation order under ORS 419C.446.

(4) Records of cases waived under subsection (1)(c) of this section are juvenile records for purposes of expunction under ORS 419A.260. [1993 c.33 §220; 1993 c.546 §86; 1995 c.481 §1; 1999 c.158 §1; 1999 c.615 §1; 2003 c.396 §104]

419C.372 Handling of motor vehicle, boating or game cases not requiring waiver. If the youth's conduct consists, or is alleged to consist, of a violation of a law or ordinance relating to the use or operation of a motor vehicle, boating laws or game laws and it appears to the court that the nature of the offense and the youth's background are such that a proceeding as provided in this chapter is not warranted, the court may handle:

(1) Cases involving boating laws or game laws as provided in ORS 419C.374.

(2) Cases involving the use or operation of a motor vehicle as provided under ORS 809.412. [1993 c.33 §221; 1993 c.546 §95]

419C.374 Alternative conduct of proceedings involving traffic, boating and game cases. (1) A petition relating to boating or game offenses shall be filed as provided in ORS 419C.250, 419C.255 and

419C.258. Motor vehicle offenses are subject to ORS 809.412.

(2) Summons as provided in ORS 419C.300 shall be issued to the parent or other person having physical custody of the youth, requiring the parent or other person to appear with the youth before the court at the time and place stated in the summons.

(3) The summons may be served as provided in ORS 419C.309, 419C.312 and 419C.315 or by mailing a copy thereof to the parent or other person having physical custody of the youth. If the summons is served personally, a warrant may be issued as provided in ORS 419C.320.

(4) A hearing shall be held as provided in ORS 419C.142, 419C.280 and 419C.400. At the termination of the hearing, if the court finds the matters alleged in the petition to be true, it may enter an order finding the youth to be a:

(a) Youth motor vehicle offender and dispose of the case as provided in ORS 809.412; or

(b) Youth boating law offender or a game law offender and may dispose of the case as provided in subsection (5) of this section.

(5) In a proceeding under this chapter, the juvenile court may suspend a hunting or fishing license or permit where a game violation is involved and may make such other recommendations where a boating violation is involved. [1993 c.33 §222; 1995 c.422 §79]

Disposition

419C.472 Suspension of driving privileges. (1) The court may order that the driving privileges of a youth be suspended if:

(a) The petition alleges that the youth is within the jurisdiction of the court for violating ORS 471.430;

(b) The youth has been issued a summons under ORS 419C.306; and

(c) The youth fails to appear as required by the summons.

(2) When a court issues an order under subsection (1) of this section:

(a) The court shall send a notice to the Department of Transportation certifying that the youth failed to appear and that the court has ordered the suspension of the driving privileges of the youth; and

(b) Neither the state nor a juvenile department counselor may file a petition under ORS 419C.250 alleging that the youth is within the jurisdiction of the court for having committed an act that if committed by an adult would constitute a violation of ORS 153.992. [2001 c.817 §5]

Chapter 447

PARKING SPACES FOR PERSONS WITH DISABILITIES

447.233 Accessible parking space requirements; inspection of spaces; violation. (1) The Director of the Department of Consumer and Business Services shall include in the state building code, as defined

in ORS 455.010, a requirement that the number of accessible parking spaces specified in subsection (2) of this section be provided for affected buildings subject to the state building code and that the spaces be signed as required by subsection (2) of this section. Spaces may also be marked in a manner specified in the state building code.

(2)(a) The number of accessible parking spaces shall be:

Total Parking In Lot	Required Minimum Number of Accessible Spaces	Required Minimum Number of Van Accessible Spaces	Required Minimum Number of "Wheelchair User Only" Spaces
1 to 25	1	1	-
26 to 50	2	1	-
51 to 75	3	1	-
76 to 100	4	1	-
101 to 150	5	-	1
151 to 200	6	-	1
201 to 300	7	-	1
301 to 400	8	-	1
401 to 500	9	-	2
501 to 1,000	2% of total	-	1 in every 8 accessible spaces or portion thereof
1,001 and over	20 plus 1 for each 100 over 1,000	-	1 in every 8 accessible spaces or portion thereof

(b) In addition, one in every eight accessible spaces, but not less than one, shall be van accessible. Where five or more parking spaces are designated accessible, any space that is designated as van accessible shall be reserved for wheelchair users. A van accessible parking space shall be at least nine feet wide and shall have an adjacent access aisle that is at least eight feet wide.

(c) Accessible parking spaces shall be at least nine feet wide and shall have an adjacent access aisle that is at least six feet wide.

(d) The access aisle shall be located on the passenger side of the parking space except that two adjacent accessible parking spaces may share a common access aisle.

(e) A sign shall be posted for each accessible parking space. The sign shall be clearly visible to a person parking in the space, shall be marked with the International Symbol of Access and shall indicate that the spaces are reserved for persons with disabled person parking permits. A van accessible parking space shall have an additional sign marked "Van Accessible" mounted below the sign. A van accessible parking space reserved for wheelchair users shall have a sign that includes the words "Wheelchair User Only."

(f) Accessible parking spaces and signs shall be designed in compliance with the

standards set forth by the Oregon Transportation Commission in consultation with the Oregon Disabilities Commission.

(3) No ramp or obstacle may extend into the parking space or the aisle, and curb cuts and ramps may not be situated in such a way that they could be blocked by a legally parked vehicle.

(4) Parking spaces required by this section shall be maintained so as to meet the requirements of this section at all times and to meet the standards established by the state building code.

(5) The director is authorized to inspect parking spaces and facilities and buildings subject to the provisions of this section, and to do whatever is necessary to enforce the requirements, including the maintenance requirements, of this section. Municipalities and counties may administer and enforce the requirements of this section in the manner provided under ORS 455.148 or 455.150 for administration and enforcement of specialty codes. All plans for parking spaces subject to the provisions of this section must be approved by the director prior to the creation of the spaces.

(6) Requirements adopted under this section do not apply to long-term parking facilities at the Portland International Airport.

(7) Any reported violation of this section shall be investigated by the administrative authority. The administrative authority shall make a final decision and order correction, if necessary, within 30 days of notification. Any aggrieved person may appeal within 30 days of the decision by the administrative authority to the appropriate municipal appeals board or, at the option of the local jurisdiction, directly to the Building Codes Structures Board established under ORS 455.132. The appeal shall be acted upon within 60 days of filing. The decision of the municipal appeals board may be appealed to the board. The board shall act on the appeal within 60 days of filing. All appeals to the board shall be filed in accordance with ORS 455.690. [1979 c.809 §2; 1981 c.275 §1; 1983 c.338 §930; 1987 c.187 §1; 1989 c.243 §15; 1991 c.741 §6; 1993 c.503 §8; 1993 c.744 §77; 2001 c.573 §5; 2007 c.468 §1]

Chapter 468A

MOTOR VEHICLE POLLUTION CONTROL

468A.350 Definitions for ORS 468A.350 to 468A.400. As used in ORS 468A.350 to 468A.400:

(1) "Certified system" means a motor vehicle pollution control system for which a certificate of approval has been issued under ORS 468A.365 (3).

(2) "Factory-installed system" means a motor vehicle pollution control system installed by the manufacturer which meets criteria for emission of pollutants in effect under federal laws and regulations applicable on September 9, 1971, or which meets criteria adopted pursuant to ORS 468A.365 (1), whichever criteria are stricter.

(3) "Motor vehicle" includes any self-propelled vehicle used for transporting persons or commodities on public roads and highways but does not include a vehicle of special interest as that term is defined in ORS 801.605, if the vehicle is maintained as a collector's item and used for exhibitions, parades, club activities and similar uses but not used primarily for the transportation of persons or property, or a racing activity vehicle as defined in ORS 801.404.

(4) "Motor vehicle pollution control system" means equipment designed for installation on a motor vehicle for the purpose of reducing the pollutants emitted from the vehicle, or a system or engine adjustment or modification which causes a reduction of pollutants emitted from the vehicle. [Formerly 468.360; 2007 c.693 §8]

468A.355 Legislative findings. For purposes of ORS 468A.350 to 468A.400, the Legislative Assembly finds:

(1) That the emission of pollutants from motor vehicles is a significant cause of air pollution in many portions of this state.

(2) That the control and elimination of such pollutants are of prime importance for the protection and preservation of the public health, safety and well-being and for the prevention of irritation to the senses, interference with visibility, and damage to vegetation and property.

(3) That the state has a responsibility to establish procedures for compliance with standards which control or eliminate such pollutants.

(4) That the Oregon goal for pure air quality is the achievement of an atmosphere with no detectable adverse effect from motor vehicle air pollution on health, safety, welfare and the quality of life and property. [Formerly 449.951 and then 468.365]

468A.360 Motor vehicle emission and noise standards; copy to Department of Transportation. (1) After public hearing and in accordance with the applicable provisions of ORS chapter 183, the Environmental Quality Commission may adopt motor vehicle emission standards. For the purposes of this section, the commission may include, as a part of such standards, any standards for the control of noise emissions adopted pursuant to ORS 467.030.

(2) The commission shall furnish a copy of standards adopted pursuant to this section to the Department of Transportation and shall publish notice of the standards in a manner reasonably calculated to notify affected members of the public. [Formerly 468.370]

468A.363 Purpose of ORS 468A.363, 468A.365, 468A.400 and 815.300. The Legislative Assembly declares the purpose of ORS 468A.363, 468A.365, 468A.400 and 815.300 is to:

(1) Insure that the health of citizens in the Portland area is not threatened by recurring air pollution conditions.

(2) Provide necessary authority to the Environmental Quality Commission to implement one of the critical elements of the air quality maintenance strategy for the Portland area related to improvements in the motor vehicle inspection program.

(3) Insure that the Department of Environmental Quality is able to submit an approvable air quality maintenance plan for the Portland area through the year 2006 to the Environmental Protection Agency as soon as possible so that area can again be designated as an attainment area and impediments to industrial growth imposed in the Clean Air Act can be removed.

(4) Direct the Environmental Quality Commission to use existing authority to incorporate the following programs for emission reduction credits into the air quality maintenance plan for the Portland area:

(a) California or United States Environmental Protection Agency emission standards for new lawn and garden equipment sold in the Portland area.

(b) Transportation-efficient land use requirements of the transportation planning rule adopted by the Land Conservation and Development Commission.

(c) Improvements in the vehicle inspection program as authorized in ORS 468A.350 to 468A.400, including emission reduction from on-road vehicles resulting from enhanced testing, elimination of exemptions for 1974 and later model year vehicles, and expansion of inspection program boundaries.

(d) An employer trip reduction program that provides an emission reduction from on-road vehicles.

(e) A parking ratio program that limits the construction of new parking spaces for employment, retail and commercial locations.

(f) Emission reductions resulting from any new federal motor vehicle fuel tax.

(g) State and federal alternative fuel vehicles fleet programs that result in emission reductions.

(h) Installation of maximum achievable control technology by major sources of hazardous air pollutants as required by the federal Clean Air Act, as amended, resulting in emission reductions.

(i) As a safety margin, or as a substitute in whole or in part for other elements of the plan, emission reductions resulting from any new state gasoline tax or for any new vehicle registration fee that allows use of revenue for air quality improvement purposes. [1993 c.791 §2]

Note: 468A.363 was added to and made a part of 468A.350 to 468A.400 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

468A.365 Certification of motor vehicle pollution control systems and inspection of motor vehicles; rules. The Environmental Quality Commission shall:

(1) Determine and adopt by rule criteria for certification of motor vehicle pollution control systems. In determining the criteria the commission shall consider the following:

(a) The experience of any other state or the federal government;

(b) The cost of the system and of its installation;

(c) The durability of the system;

(d) The ease of determining whether the system, when installed on a motor vehicle, is functioning properly; and

(e) Any other factors which, in the opinion of the commission, render such a system suitable for the control of motor vehicle air pollution or for the protection of the health, safety and welfare of the public.

(2) Prescribe by rule the manner in which a motor vehicle pollution control system shall be tested for certification. The rules may prescribe a more rigorous inspection procedure in the areas designated under ORS 815.300 (2)(a), including any expansion of such boundary under ORS 815.300 (2)(b), in order to reduce air pollution emissions in those areas of the state. No such rule shall require testing for certification more often than once during the period for which registration or renewal of registration for a motor vehicle is issued. No rule shall require testing for certification of a motor vehicle that is exempted from the requirement for certification under ORS 815.300.

(3) Issue certificates of approval for classes of motor vehicle pollution control systems which, after being tested by the commission or by a method acceptable to the commission, the commission finds meet the criteria adopted under subsection (1) of this section.

(4) Designate by rule classifications of motor vehicles for which certified systems are available.

(5) Revoke, suspend or restrict a certificate of approval previously issued upon a determination that the system no longer meets the criteria adopted under subsection (1) of this section pursuant to procedures for a contested case under ORS chapter 183.

(6) Designate suitable methods and standards for testing systems and inspecting motor vehicles to determine and insure compliance with the standards and criteria established by the commission.

(7) Except as provided in ORS 468A.370, contract for the use of or the performance of tests or other services within or without the state. [Formerly 468.375; 1993 c.791 §3]

468A.370 Cost-effective inspection program; contracts for inspections. The Environmental Quality Commission shall determine the most cost-effective method of conducting a motor vehicle pollution control system inspection program as required by ORS 468A.365. Upon finding that savings to the public and increased efficiency would result and the quality of the program would be adequately maintained, the commission may contract with a unit of local government or with a private individual, partnership or corporation authorized to do business in the

State of Oregon, for the performance of tests or other services associated with conducting a motor vehicle pollution control system inspection program. [Formerly 468.377]

468A.375 Notice to state agencies concerning certifications. The Department of Environmental Quality shall notify the Department of Transportation and the Oregon State Police whenever certificates of approval for motor vehicle pollution control systems are approved, revoked, suspended or restricted by the Environmental Quality Commission. [Formerly 449.963 and then 468.380]

468A.380 Licensing of personnel and equipment; certification of motor vehicles; rules. (1) The Environmental Quality Commission by rule may:

(a) Establish criteria and examinations for the qualification of persons eligible to inspect motor vehicles and motor vehicle pollution control systems and execute the certificates described under ORS 815.310, and for the procedures to be followed in such inspections.

(b) Establish criteria and examinations for the qualification of equipment, apparatus and methods used by persons to inspect motor vehicles and motor vehicle pollution control systems.

(c) Establish criteria and examinations for the testing of motor vehicles.

(2) Subject to rules of the commission, the Department of Environmental Quality shall:

(a) Issue licenses to any person, type of equipment, apparatus or method qualified pursuant to subsection (1) of this section.

(b) Revoke, suspend or modify licenses issued pursuant to paragraph (a) of this subsection in accordance with the provisions of ORS chapter 183 relating to contested cases.

(c) Issue certificates of compliance for motor vehicles which, after being tested in accordance with the rules of the commission, meet the criteria established under subsection (1) of this section and the standards adopted pursuant to ORS 468A.350 to 468A.385 and 468A.400. [Formerly 468.390]

468A.385 Determination of compliance of motor vehicles. (1) The Environmental Quality Commission shall establish and maintain procedures and programs for determining whether motor vehicles meet the minimum requirements necessary to secure a certificate under ORS 815.310.

(2) Such procedures and programs include, but are not limited to, the installation of a certified system and the adjustment, tune-up, or other mechanical work performed on the motor vehicle in accordance with the

requirements of the commission. [Formerly 468.395]

468A.387 Operating schedules for testing stations. (1) The Department of Environmental Quality shall establish flexible weekday operating schedules for testing stations that conduct motor vehicle pollution control system inspections described under ORS 468A.365 that extend the hours of operation to 9 p.m. for some testing stations for some days of the week.

(2) After determining the hours of operation for testing stations under subsection (1) of this section, the department shall advertise the hours of operation in as many ways as practicable, including but not limited to:

(a) Enclosing information about the hours of operation in all mailings and notices related to motor vehicle emission testing and motor vehicle registration renewal notices;

(b) Posting the hours of operation at Department of Transportation field offices;

(c) Broadcasting public service announcements; and

(d) Using appropriate Internet and other electronic media services that may be available. [1999 c.475 §2]

468A.390 Designation of areas of the state subject to motor vehicle emission inspection program; rules. (1) If the need for a motor vehicle pollution control system inspection program is identified for an area in the State of Oregon Clean Air Act Implementation Plan, then the Environmental Quality Commission, by rule, shall designate boundaries, in addition to the areas specified in ORS 815.300 (2)(a) and (b), within which motor vehicles are subject to the requirement under ORS 815.300 to have a certificate of compliance issued under ORS 468A.380 to be registered or have the registration of the vehicle renewed.

(2) Whenever the Environmental Quality Commission designates boundaries under this section within which vehicles are subject to the requirements of ORS 815.300, the commission shall notify the Department of Transportation and shall provide the Department of Transportation with information necessary to perform the Department of Transportation's duties under ORS 815.300. [Formerly 468.397]

468A.395 Bond or letter of credit; remedy against person licensed under ORS 468A.380; cancellation of license. (1) Any person licensed to issue certificates of compliance pursuant to ORS 468A.380 shall file with the Department of Environmental Quality a surety bond or an irrevocable letter of credit issued by an insured institution, as defined in ORS 706.008. The bond or letter of credit shall be executed to the State of

Oregon in the sum of \$1,000. It shall be approved as to form by the Attorney General, and shall be conditioned that inspections and certifications will be made only by persons who meet the qualifications fixed by the Environmental Quality Commission and will be made without fraud or fraudulent representations and without violating any of the provisions of ORS 468A.350 to 468A.400, 815.295, 815.300, 815.310, 815.320 and 815.325.

(2) In addition to any other remedy that a person may have, if any person suffers any loss or damage by reason of the fraud, fraudulent representations or violation of any of the provisions of ORS 468A.350 to 468A.400, 815.295, 815.300, 815.310, 815.320 and 815.325 by a person licensed pursuant to ORS 468A.380, the injured person has the right of action against the business employing such licensed person and a right of action in the person's own name against the surety upon the bond or the letter of credit issuer.

(3) The license issued pursuant to ORS 468A.380 of any person whose bond is canceled by legal notice shall be canceled immediately by the department. If the license is not renewed or is voluntarily or involuntarily canceled, the sureties of the bond or the letter of credit issuers shall be relieved from liability accruing subsequent to such cancellation by the department. [Formerly 468.400; 1997 c.631 §480]

468A.400 Fees; collection; use. (1) The Department of Environmental Quality shall:

(a) Establish and collect fees for application, examination and licensing of persons, equipment, apparatus or methods in accordance with ORS 468A.380 and within the following limits:

(A) The fee for licensing shall not exceed \$5.

(B) The fee for renewal of licenses shall not exceed \$1.

(b) Establish fees for the issuance of certificates of compliance. The department may classify motor vehicles and establish a different fee for each such class. The fee for the issuance of certificates shall be established by the Environmental Quality Commission in an amount based upon the costs of administering this program. Before establishing the fees, the commission shall determine the most cost effective program consistent with Clean Air Act requirements for each area of the state pursuant to ORS 468A.370.

(2) The department shall collect the fees established pursuant to subsection (1)(b) of this section at the time of the issuance of

certificates of compliance as required by ORS 468A.380 (2)(c).

(3) On or before the 15th day of each month, the commission shall pay into the State Treasury all moneys received as fees pursuant to subsections (1) and (2) of this section during the preceding calendar month. The State Treasurer shall credit such money to the Department of Environmental Quality Motor Vehicle Pollution Account, which is hereby created. The moneys in the Department of Environmental Quality Motor Vehicle Pollution Account are continuously appropriated to the department to be used by the department solely or in conjunction with other state agencies and local units of government for:

(a) Any expenses incurred by the department and, if approved by the Governor, any expenses incurred by the Department of Transportation in the certification, examination, inspection or licensing of persons, equipment, apparatus or methods in accordance with the provisions of ORS 468A.380 and 815.310.

(b) Such other expenses as are necessary to study traffic patterns and to inspect, regulate and control the emission of pollutants from motor vehicles in this state.

(4) The Department of Environmental Quality may enter into an agreement with the Department of Transportation to collect the licensing and renewal fees described in subsection (1)(a) of this section subject to the fees being paid and credited as provided in subsection (3) of this section. [Formerly 468.405; 1993 c.18 §122; 1993 c.791 §4]

468A.405 Authority to limit motor vehicle operation and traffic; rules. The Environmental Quality Commission and regional air pollution control authorities organized pursuant to ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.505 to 454.535, 454.605 to 454.755 and ORS chapters 468, 468A and 468B by rule may regulate, limit, control or prohibit motor vehicle operation and traffic as necessary for the control of air pollution which presents an imminent and substantial endangerment to the health of persons. [Formerly 449.747 and then 468.410]

468A.410 Administration and enforcement of rules adopted under ORS 468A.405. Cities, counties, municipal corporations and other agencies, including the Department of State Police and the Department of Transportation, shall cooperate with the Environmental Quality Commission and regional air pollution control authorities in the administration and enforcement of the terms of any rule adopted pursuant to ORS 468A.405. [Formerly 449.751 and then 468.415]

468A.415 Legislative findings. The Legislative Assembly finds that extending additional statewide controls and fees on industrial and motor vehicle sources of air pollution may not be sufficient to attain and maintain desired air quality standards in the Portland-Vancouver air quality maintenance area. Additional approaches are needed to address growth in vehicle miles of travel that satisfy mobility needs and allow for economic growth while meeting the air quality goals for the region. [1991 c.752 §13]

468A.420 Oxygenated motor vehicle fuels; when required by rule. (1) The Environmental Quality Commission shall adopt rules consistent with section 211 of the Clean Air Act to require oxygenated motor vehicle fuels to be used in any carbon monoxide nonattainment area in the state.

(2) The rules adopted under subsection (1) of this section shall require:

(a) Oxygenated fuels to be used during any portion of the year during which the nonattainment area is prone to high ambient concentrations of carbon monoxide.

(b) The use of oxygenated fuels in carbon monoxide nonattainment areas on or before November 1, 1992.

(3) An oxygenated fuel shall contain 2.7 percent or more oxygen by weight. Methods to achieve this requirement may include but need not be limited to the use of ethanol blends. [1991 c.752 §13b]

468A.455 Police enforcement. The Oregon State Police, the county sheriff and municipal police are authorized to use such reasonable force as is required in the enforcement of any rule adopted pursuant to ORS 468A.405 and may take such reasonable steps as are required to assure compliance therewith, including but not limited to:

(1) Locating appropriate signs and signals for detouring, prohibiting and stopping motor vehicle traffic; and

(2) Issuing warnings or citations. [Formerly 449.753 and then 468.420]

Chapter 471

PROHIBITIONS RELATING TO LIQUOR

471.430 Purchase or possession of alcoholic beverages by person under 21; entry of licensed premises by person under 21; community service and suspension of driving privileges; assessment and treatment. (1) A person under the age of 21 years may not attempt to purchase, purchase or acquire alcoholic beverages. Except when such minor is in a private residence accompanied by the parent or guardian of the mi-

nor and with such parent's or guardian's consent, a person under the age of 21 years may not have personal possession of alcoholic beverages.

(2) For the purposes of this section, personal possession of alcoholic beverages includes the acceptance or consumption of a bottle of such beverages, or any portion thereof or a drink of such beverages. However, this section does not prohibit the acceptance or consumption by any person of sacramental wine as part of a religious rite or service.

(3) Except as authorized by rule or as necessitated in an emergency, a person under the age of 21 years may not enter or attempt to enter any portion of a licensed premises that is posted or otherwise identified as being prohibited to the use of minors.

(4)(a) Except as provided in paragraph (b) of this subsection, a person who violates subsection (1) or (3) of this section commits a Class B violation.

(b) A person commits a Class A violation if the person violates subsection (1) of this section by reason of personal possession of alcoholic beverages while the person is operating a motor vehicle, as defined in ORS 801.360.

(5) In addition to and not in lieu of any other penalty established by law, a person under the age of 21 years who violates subsection (1) of this section through misrepresentation of age may be required to perform community service and the court shall order that the person's driving privileges and right to apply for driving privileges be suspended for a period not to exceed one year. If a court has issued an order denying driving privileges under this section, the court, upon petition of the person, may withdraw the order at any time the court deems appropriate. The court notification to the Department of Transportation under this subsection may include a recommendation that the person be granted a hardship permit under ORS 807.240 if the person is otherwise eligible for the permit.

(6) In addition to and not in lieu of any penalty established by law, the court may order a person who violates this section to undergo assessment and treatment as provided in ORS 471.432. The court shall order a person to undergo assessment and treatment as provided in ORS 471.432 if the person has previously been found to have violated this section.

(7) The prohibitions of this section do not apply to a person under the age of 21 years who is acting under the direction of the Oregon Liquor Control Commission or under the direction of state or local law enforce-

ment agencies for the purpose of investigating possible violations of laws prohibiting sales of alcoholic beverages to persons who are under the age of 21 years.

(8) The prohibitions of this section do not apply to a person under the age of 21 years who is acting under the direction of a licensee for the purpose of investigating possible violations by employees of the licensee of laws prohibiting sales of alcoholic beverages to persons who are under the age of 21 years. [Amended by 1963 c.243 §2; 1965 c.166 §1; 1971 c.159 §6; 1975 c.493 §1; 1979 c.313 §8; 1991 c.860 §2; 1999 c.646 §1; 1999 c.1051 §186; 2001 c.791 §4; 2007 c.41 §1; 2007 c.298 §1]

Chapter 476

THROWING AWAY LIGHTED OBJECTS

476.715 Throwing away of lighted matches, cigarettes and other materials prohibited; posting copy of section in public conveyances. No one shall, at any time, throw away any lighted tobacco, cigars, cigarettes, matches or other lighted material, on any forestland, private road, public highway or railroad right of way within this state. Everyone operating a public conveyance shall post a copy of this section in a conspicuous place within the smoking compartments of such conveyance. [Formerly 477.164]

476.990 Penalties. (1) Violation of ORS 476.150 (2) is a misdemeanor. All penalties, fees or forfeitures collected under the provisions of this subsection, ORS 476.010 to 476.090, 476.155 to 476.170 and 476.210 to 476.270 shall be paid into the State Treasury.

(2) Violation of ORS 476.380 (1) is a misdemeanor.

(3) Violation of ORS 476.410 to 476.440 is punishable, upon conviction, by a fine of not less than \$25 nor more than \$250, or by imprisonment in the county jail for not less than 10 or more than 60 days, or both. Justices of the peace and district judges shall have concurrent jurisdiction with the circuit courts over prosecutions for such violations.

(4) Violation of any provision of ORS 476.510 to 476.610 is a misdemeanor.

(5) Subject to ORS 153.022, violation of ORS 476.710 or 476.715 or of any rule or regulation of the State Parks and Recreation Department promulgated thereunder is punishable, upon conviction, by a fine not exceeding \$500 or imprisonment in the county jail not exceeding six months, or both. [Subsection (5) of 1959 Replacement Part formerly 477.990(5); 1961 c.52 §1; subsection (2) enacted as 1967 c.420 §4; subsection (6) enacted as 1967 c.417 §13 and 1967 c.417 §15; 1971 c.563 §10; 1971 c.743 §383; 1999 c.1051 §312; 2001 c.104 §216]

Chapter 480

EXPLOSIVES AND FLAMMABLE MATERIALS

Explosives Generally

480.010 Labels for blasting powder and fuse. All blasting powder and fuse shipped into this state for use, or manufactured in this state for use in this state, shall have stamped or printed upon the outside of the original package, box, case or wrapper the date of manufacture of the contents.

480.020 Prohibition against sale of bad powder. Whenever any blasting powder shows a state of disintegration or decomposition sufficient so that it remains in a soft condition in a temperature of 32 degrees Fahrenheit, or is in a state of crystallization, which is revealed by some portions being in a hard condition and surrounded by other portions in a soft condition, it shall be deemed bad and dangerous powder, and its sale and use is prohibited.

480.030 Fuse unfit for use and sale; prohibition of use. Whenever any fuse shows by its appearance to have been overheated, or if it is in a hard and brittle condition, which is seen by breaks and cracks in the wrapper around the outside of the fuse, the same shall be declared unfit for use and sale, and its use is forbidden.

480.040 Sale, exchange or possession, when unlawful. No person shall sell or exchange, or offer or expose for sale or exchange, or have in possession for use by employees of the person:

(1) Any blasting powder or fuse which has not been stamped or printed upon as required in ORS 480.010.

(2) Any blasting powder of which the sale and use is prohibited by ORS 480.020.

(3) Any fuse declared to be unfit for use as prohibited by ORS 480.030.

480.050 Prohibition against intrastate transportation of explosives in passenger vehicle operated by common carrier; exception. No person shall transport, carry or convey, or have transported, carried or conveyed, any dynamite, gunpowder or other like explosives, between any places in Oregon, on any car or other vehicle of any description operated by a common carrier which car or vehicle is carrying passengers for hire. However, it shall be lawful to transport on any such car or vehicle small arms, ammunition in any quantity, such fuses, torpedoes, rockets or other signal devices as may be essential to promote safety in operation, and properly packed and marked samples of explosives for laboratory

examination, not exceeding a net weight of one-half pound each and not exceeding 20 samples at one time in a single car or vehicle. Such samples shall not be carried in that part of a car or vehicle which is intended for the transportation of passengers for hire. Nothing in this section shall be construed to prevent the transportation of military or naval forces, with their accompanying munitions of war, on passenger equipment, cars or vehicles.

480.060 Transportation of certain explosives prohibited. No person shall transport, carry or convey, or have transported, carried or conveyed, liquid nitroglycerine, fulminate in bulk in dry condition, or other like explosives, between any places in Oregon, on any car or other vehicle of any description operated by a common carrier in the transportation of passengers.

480.070 Fire bombs prohibited; exceptions. (1) No person shall possess a fire bomb. For the purpose of this section a "fire bomb" is a breakable container containing a flammable liquid with a flash point of 150 degrees Fahrenheit or less, having an integral wick or similar device capable of being ignited, but no device commercially manufactured primarily for the purpose of illuminating shall be deemed to be a fire bomb for the purpose of this section.

(2) This section shall not prohibit the authorized use or possession of such fire bomb by a member of the Armed Forces of the United States or by any member of a regularly organized public fire or police department. [1967 c.417 §21]

480.085 Requirement for removal of unused explosives from work area. (1) In addition to any other legal requirements, all users of explosives shall be responsible for the removal of all unused explosives from any area of use after the work for which the explosive was required is completed or when the user is absent for more than 30 days from the area of use, unless the explosives are stored in a manner meeting the safety requirements promulgated by the State Fire Marshal pursuant to ORS 476.030.

(2) As used in this section:

(a) "Explosives" means dynamite, blasting powder, black powder, nitroglycerin, detonators, nitro-jelly, prima-cord and detonating fuse.

(b) "User" means any person using explosives for any purpose whatsoever, and regardless of whether such person is being compensated for such use. [1963 c.384 §1]

480.095 Penalty and civil liability for violation of ORS 480.085. Persons violating ORS 480.085 are subject to the penalty provided in ORS 480.990 (4) and are liable in

civil action for damages to any person suffering injury from handling or otherwise coming in contact with unused explosives that are left in an area of use in violation of ORS 480.085, regardless of any negligence or lack of negligence on the part of the defendant. [1963 c.384 §2; 2007 c.71 §158]

Regulation of Gasoline Dispensing

480.310 Definitions for ORS 480.315 to 480.385. As used in ORS 480.315 to 480.385:

(1) "Class 1 flammable liquids" means liquids with a flash point below 25 degrees Fahrenheit, closed cup tester.

(2) "Nonretail facility" means an unattended facility where Class 1 flammable liquids are dispensed through a card or key activated fuel dispensing device to nonretail customers. [Amended by 1991 c.863 §48]

480.315 Policy. The Legislative Assembly declares that, except as provided in ORS 480.345 to 480.385, it is in the public interest to maintain a prohibition on the self-service dispensing of Class 1 flammable liquids at retail. The Legislative Assembly finds and declares that:

(1) The dispensing of Class 1 flammable liquids by dispensers properly trained in appropriate safety procedures reduces fire hazards directly associated with the dispensing of Class 1 flammable liquids;

(2) Appropriate safety standards often are unenforceable at retail self-service stations in other states because cashiers are often unable to maintain a clear view of and give undivided attention to the dispensing of Class 1 flammable liquids by customers;

(3) Higher liability insurance rates charged to retail self-service stations reflect the dangers posed to customers when they leave their vehicles to dispense Class 1 flammable liquids, such as the increased risk of crime and the increased risk of personal injury resulting from slipping on slick surfaces;

(4) The dangers of crime and slick surfaces described in subsection (3) of this section are enhanced because Oregon's weather is uniquely adverse, causing wet pavement and reduced visibility;

(5) The dangers described in subsection (3) of this section are heightened when the customer is a senior citizen or has a disability, especially if the customer uses a mobility aid, such as a wheelchair, walker, cane or crutches;

(6) Attempts by other states to require the providing of aid to senior citizens and persons with disabilities in the self-service dispensing of Class 1 flammable liquids at retail have failed, and therefore, senior citi-

zens and persons with disabilities must pay the higher costs of full service;

(7) Exposure to toxic fumes represents a health hazard to customers dispensing Class 1 flammable liquids;

(8) The hazard described in subsection (7) of this section is heightened when the customer is pregnant;

(9) The exposure to Class 1 flammable liquids through dispensing should, in general, be limited to as few individuals as possible, such as gasoline station owners and their employees or other trained and certified dispensers;

(10) The typical practice of charging significantly higher prices for full-service fuel dispensing in states where self-service is permitted at retail:

(a) Discriminates against customers with lower incomes, who are under greater economic pressure to subject themselves to the inconvenience and hazards of self-service;

(b) Discriminates against customers who are elderly or have disabilities who are unable to serve themselves and so must pay the significantly higher prices; and

(c) Increases self-service dispensing and thereby decreases maintenance checks by attendants, which results in neglect of maintenance, endangering both the customer and other motorists and resulting in unnecessary and costly repairs;

(11) The increased use of self-service at retail in other states has contributed to diminishing the availability of automotive repair facilities at gasoline stations;

(12) Self-service dispensing at retail in other states does not provide a sustained reduction in fuel prices charged to customers;

(13) A general prohibition of self-service dispensing of Class 1 flammable liquids by the general public promotes public welfare by providing increased safety and convenience without causing economic harm to the public in general;

(14) Self-service dispensing at retail contributes to unemployment, particularly among young people;

(15) Self-service dispensing at retail presents a health hazard and unreasonable discomfort to persons with disabilities, elderly persons, small children and those susceptible to respiratory diseases;

(16) The federal Americans with Disabilities Act, Public Law 101-336, requires that equal access be provided to persons with disabilities at retail gasoline stations; and

(17) Small children left unattended when customers leave to make payment at retail

self-service stations creates a dangerous situation. [1991 c.863 §49a; 1999 c.59 §160; 2007 c.70 §276]

480.320 Use of coin-operated pumps and dispensing of gasoline by self-service declared hazardous. The installation and use of coin-operated dispensing devices for Class 1 flammable liquids and the dispensing of Class 1 flammable liquids by self-service, are declared hazardous. [Amended by 1959 c.73 §1]

480.330 Operation of gasoline dispensing device by public prohibited; aviation fuel exception. An owner, operator or employee of a filling station, service station, garage or other dispensary where Class 1 flammable liquids, except aviation fuels, are dispensed at retail may not permit any person other than the owner, operator or employee to use or manipulate any pump, hose, pipe or other device for dispensing the liquids into the fuel tank of a motor vehicle or other retail container. [Amended by 2001 c.285 §1]

480.340 Coin-operated or self-service gasoline pumps prohibited; automatic shut-off devices regulated; aviation fuel exception. An owner, operator or employee of a filling station, service station, garage or other dispensary where Class 1 flammable liquids, except aviation fuels, are dispensed at retail may not install or use or permit the use of:

(1) A coin-operated or self-service dispensing device for the liquids.

(2) A device that permits the dispensing of the liquids when the hand of the operator of the discharge nozzle is removed from the control lever, except one equipped with an automatic nozzle of a type that has been approved by the State Fire Marshal and that has a latch-open device as an integral part of the assembly, capable of shutting off the flow of the liquids reliably when the tank is filled or when the nozzle falls or slips from the filling neck of the tank. A person may not use an automatic nozzle to dispense the liquids unless the owner, operator or employee is in the immediate vicinity of the tank being filled. [Amended by 1959 c.73 §2; 2001 c.285 §2]

480.349 Use of gasoline dispensing device by motorcycle operator. (1) As used in this section, "motorcycle" has the meaning given that term in ORS 801.365.

(2) Notwithstanding ORS 480.330 and 480.340:

(a) Upon the request of an operator of a motorcycle, the owner, operator or employee of a filling station, service station, garage or other dispensary where Class 1 flammable liquids are dispensed at retail shall set the fuel dispensing device and hand the dis-

charge nozzle to the operator of the motorcycle.

(b) An operator of a motorcycle who is handed a discharge nozzle under paragraph (a) of this subsection:

(A) May dispense Class 1 flammable liquids into the operator's motorcycle.

(B) Shall, after dispensing the liquids, return the discharge nozzle to the owner, operator or employee.

(3) The owner, operator or employee who is handed the discharge nozzle shall return the nozzle to the pump or take any other actions necessary to ensure safe completion of the fueling operation. [2001 c.344 §2]

Note: 480.349 was added to and made a part of 480.315 to 480.385 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

Liquid Petroleum Gas

480.410 Definition. As used in ORS 480.420 to 480.460, "LP gas" or "liquid petroleum gas" means any liquid composed predominately of any of the following hydrocarbons or mixtures of the same: Propane, propylene, butanes (normal butane or isobutane) and butylenes. [Amended by 1957 c.712 §1]

480.420 Liquid petroleum gas rules and regulations; conformity with standards of National Fire Protection Association.

(1) The State Fire Marshal shall make, promulgate and enforce regulations establishing minimum general standards for the design, construction, location, installation and operation of equipment for storing, handling, transporting by tank truck or tank trailer and utilizing liquid petroleum gases and specifying the degree of odorization of the gases, and shall establish standards and rules for the issuance, suspension and revocation of licenses and permits provided in ORS 480.410 to 480.460.

(2) The regulations required shall be such as are reasonably necessary for the protection of the health, welfare and safety of the public and of persons using or handling such materials, and shall be in substantial conformity with the generally accepted standards of safety relating to the same matter. Regulations in substantial conformity with the published standards of the National Fire Protection Association pamphlet No. 58 and pamphlet No. 59 for the design, installation and construction of containers and equipment thereto pertaining, for the storage and handling of liquefied petroleum gases, including utility gas plants, as recommended by the National Fire Protection Association, and the published standards of the National Fire Protection Association pamphlet No. 54 for liquefied petroleum gas piping and appli-

ance installations in buildings, shall be deemed to be in substantial conformity with the generally accepted standards of safety relating to the same subject matter. [Amended by 1957 c.712 §2; 1961 c.477 §1; 1967 c.417 §26]

480.430 Liquefied petroleum gas containers; certain uses prohibited. No person other than the owner of the container or receptacle and those authorized by the owner so to do, shall sell, fill, refill, deliver or permit to be delivered or used in any manner any liquefied petroleum gas container or receptacle for any gas or compound or for any other purpose. [Amended by 1965 c.602 §25]

480.432 Licenses required; exceptions.

(1) A person may not engage in or work at the business of installing, extending, altering or repairing any LP gas appliance or piping, vent or flue connection pertaining to or in connection with LP gas installations within the state, either as employer or individual, unless the person has received an LP gas installation license from the State Fire Marshal in accordance with ORS 480.410 to 480.460.

(2) A person may not do any LP gas fitting or gas venting work, install, repair or remodel any piping or venting or do any installation, repair service, connection or disconnection of any LP gas appliance that is subject to inspection under ORS 480.410 to 480.460 unless the person has received an LP gas fitter license from the State Fire Marshal in accordance with ORS 480.410 to 480.460.

(3) A person may not operate any LP gas delivery equipment installed on a motorized vehicle unless the person has received an LP gas truck equipment license from the State Fire Marshal in accordance with ORS 480.410 to 480.460.

(4) Any person under the terms of this section who is required to have an LP gas fitter or LP gas truck equipment license is also required to have an LP gas installation license, unless the person is an employee of an employer who has an LP gas installation license as provided by this section.

(5) A person who holds a valid journeyman plumber license under ORS 693.060 or who is in an approved journeyman plumber apprenticeship established under ORS 660.002 to 660.210 is exempt from the licensing requirements of subsections (1) and (2) of this section, except that the apprentice or journeyman plumber may not install an LP gas tank or make any connection to an LP gas tank unless the apprentice or journeyman plumber is licensed as required under this section.

(6) A person who holds a license issued by the Department of Consumer and Busi-

ness Services under ORS 480.630 of a class that authorizes the person to fabricate, install, alter or repair pressure piping and to install boilers and pressure vessels by attachment of piping connector is exempt from the licensing requirements of subsections (1) and (2) of this section, except that the person may not install an LP gas tank or make any connection to an LP gas tank unless the person is licensed as required under this section.

(7) Subsections (1) to (4) of this section do not apply to LP gas installations in a manufactured dwelling or recreational vehicle performed during the construction of the manufactured dwelling or recreational vehicle, or the alteration or repair of an LP gas installation in a manufactured dwelling or recreational vehicle made pursuant to the manufacturer's warranty. [1957 c.712 §4; 1967 c.417 §27; 1999 c.558 §4; 1999 c.852 §1; 2001 c.104 §221; 2003 c.652 §1; 2005 c.758 §34]

480.434 Examination of applicants for licenses; examination fee; issuance of license. (1) The State Fire Marshal shall examine applicants for licenses required under ORS 480.410 to 480.460 as to their knowledge of LP gas, its properties, related equipment and applicable safety regulations. An applicant for examination must submit an examination application, accompanied by an examination fee of \$40, prior to the examination.

(2) LP gas fitters and drivers must be examined and obtain a license after not more than a 60-day probationary period of on-the-job training under licensed supervision.

(3) The State Fire Marshal shall examine LP gas installation license applicants regarding the applicable code and statutory responsibilities. The successful examination of one member of a firm or executive of a corporation at each business or dealership location fulfills the examination requirement on behalf of the firm or corporation. Each LP gas business or dealership location must obtain an LP gas installation license.

(4) If satisfied that the applicant has the requisite knowledge, the State Fire Marshal shall issue the appropriate license or licenses to the applicant, as provided in ORS 480.410 to 480.460. [1957 c.712 §5; 1967 c.417 §28; 1987 c.346 §1; 2003 c.652 §2]

480.435 Licenses; revocation; suspension; refusal to issue or renew. In accordance with ORS chapter 183, the State Fire Marshal may revoke or suspend or may refuse to issue or renew a license required pursuant to ORS 480.410 to 480.460, or may place the licensee in a probationary status subject to specified conditions, if the State Fire Marshal finds that the person to whom the license was issued:

(1) Deliberately falsified the application form for the LP gas license or examination;

(2) Has committed a violation of ORS 162.305;

(3) Failed to comply with any provision of ORS 480.410 to 480.460, or any rule adopted pursuant thereto; or

(4) Failed to maintain the status required under ORS 480.434. [1987 c.346 §3]

480.436 License fees; term of licenses; delinquency penalty. (1) The annual fee for the LP gas installation license is \$85.

(2) The biennial fee for an LP gas fitter license or an LP gas truck equipment license is \$15.

(3) All licenses must be renewed on or before a date specified by the State Fire Marshal. Unless revoked or suspended by the State Fire Marshal for failure to comply with the provisions of ORS 480.410 to 480.460, an LP gas installation license continues in force for one year from the date of issuance and is not transferable. An LP gas fitter license or an LP gas truck equipment license continues in force for two years from the date of issuance and is not transferable. The State Fire Marshal, by rule, may establish a system for staggered license expiration dates that includes prorated fees for periods of less than one year for an LP gas installation license and less than two years for an LP gas fitter license or an LP gas truck equipment license.

(4) If the fees provided for in this section are due and payable and are not paid within 30 days after service of written notice by the State Fire Marshal therefor, the fees are delinquent and a penalty equal to the greater of 10 percent of the license fee amount or \$15 is imposed for the delinquency. [1957 c.712 §6; 1967 c.417 §29; 1973 c.832 §15; 1993 c.115 §1; 1995 c.79 §293; 1999 c.558 §1; 2003 c.652 §3]

480.440 Inspection of certain storage tanks; fee. The State Fire Marshal shall annually inspect an installation of storage tanks located at dealers' plants. The State Fire Marshal may annually inspect an installation of tanks used for delivery purposes. The State Fire Marshal shall collect a fee of \$100 for each plant inspection and \$24 for each delivery unit inspection. [Amended by 1953 c.228 §4; 1957 c.712 §7; 1967 c.417 §30; 1973 c.832 §16; 1999 c.558 §2; 2003 c.652 §4]

480.445 Regulation of liquid petroleum gas container or receptacle siting and installation. (1) The regulation of liquid petroleum gas containers or receptacles by the State Fire Marshal pursuant to ORS 480.410 to 480.460 is not a program affecting land use under ORS 197.180.

(2) A local government may not regulate the siting, installation, maintenance or re-

removal of a liquid petroleum gas container or receptacle regulated by the State Fire Marshal pursuant to ORS 480.410 to 480.460, except as provided in subsection (3) of this section or ORS 480.450 (7).

(3) A local government may:

(a) Regulate the siting and installation of a liquid petroleum gas container or receptacle with a capacity of more than 1,200 gallons or a group of containers and receptacles with an aggregate capacity of more than 4,000 gallons to protect the public health and safety.

(b) Regulate the siting and installation of liquid petroleum gas containers or receptacles in a flood plain regulated by local ordinance.

(c) Regulate the siting and installation of liquid petroleum gas containers or receptacles that are not accessory to an authorized or authorizable land use.

(d) Prohibit the siting and installation of liquid petroleum gas containers or receptacles of specified types or sizes in specific zones within an urban growth boundary to protect the public health and safety.

(e) Regulate, through the local government's assistant to the State Fire Marshal as described in ORS 476.060, the placement of liquid petroleum gas containers or receptacles for the purpose of fire prevention. [2005 c.88 §2]

Note: 480.445 was added to and made a part of 480.410 to 480.460 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

480.450 Notice of new installations; fees; inspections after original inspection; notice of changes; correction of improper installations required. (1) The installer shall notify the State Fire Marshal, before the last day of each month, of all new installations made during the preceding month of containers or receptacles for liquid petroleum gas, including installations for private homes and apartments. The installer shall certify on a form provided by the State Fire Marshal that all of the new installations are duly and properly reported. The State Fire Marshal may require that the notification include the location and description of the installation and the name of the user. All fees due and payable must accompany the notification. The replacement of empty containers or receptacles with other containers constructed in accordance with Interstate Commerce Commission specifications is not a new installation or change in the original installation that requires notification to the State Fire Marshal or necessitates further inspection of the installation. The State Fire Marshal shall collect from the installer an installation fee of \$35 for each tank installed

or for all tanks at the installation if the total combined capacity is 200 gallons or less. The State Fire Marshal or deputies of the fire marshal or assistants shall inspect a reasonable number of the installations and maintain a record of the inspections in the office of the State Fire Marshal.

(2) In addition to any installation or inspection fee, the State Fire Marshal may charge a plan review fee, not to exceed \$100, for any liquid petroleum gas container and receptacle plan review required under a uniform fire code prescribed by the State Fire Marshal by rule.

(3) After the initial installation, liquid petroleum gas containers may be inspected once every 10 years except when changes have been made in the original installation. An installer making changes must notify the State Fire Marshal of the changes in the same manner provided in this section for new installations. The State Fire Marshal shall collect from the owner a fee of \$35 for the inspection of each container. The manner of inspection, requirement of corrections, satisfaction of requirements and collection of fees due and payable must conform with the provisions of ORS 480.410 to 480.460 for new installations. Upon request of the State Fire Marshal, LP gas installation licensees shall furnish a list of the locations of 10-year old installations that they service.

(4) If, upon inspection of any tank, the new installation does not comply with the requirements of the State Fire Marshal, the State Fire Marshal shall instruct the installer as to what corrections are necessary for compliance with the State Fire Marshal's requirements. The installer of the new installation shall, within the time set by the State Fire Marshal, not to exceed 60 days after notification, notify the State Fire Marshal that the new installation complies with the requirements of the fire marshal. If the installer fails to notify the State Fire Marshal, or the State Fire Marshal has reason to believe that the corrections have not been made, the State Fire Marshal shall reinspect the new installation and shall collect from the installer an additional fee of \$24. The user, not the installer, shall pay the additional fee resulting from actions of the user that require correction to achieve compliance with the requirements of the State Fire Marshal.

(5) A person who receives notice from the State Fire Marshal must correct any improper installation within the time set by the State Fire Marshal, not to exceed 60 days after receipt of the notice.

(6) If the fees provided for in this section are due and payable and are not paid within 30 days after service of written notice by the

State Fire Marshal therefor, or if the installer fails to notify the State Fire Marshal by the last day of the month succeeding the month a new installation is made or a change is made requiring an inspection, the fees are delinquent and a penalty equal to the greater of 10 percent of the fee amount or \$15, is imposed for the delinquency. The State Fire Marshal shall collect all fees and penalties in the name of the State of Oregon in the same manner that other debts are collected.

(7) The provisions of this section do not apply to liquid petroleum gas installations if made entirely within the jurisdiction of a governmental subdivision granted the exemption provided by ORS 476.030 (3) and written evidence of the licensing of the installation by the approved authority is submitted to the State Fire Marshal. The provisions of this section do not apply to LP gas installations made in manufactured dwellings or recreational vehicles that are constructed or altered in accordance with applicable rules of the Department of Consumer and Business Services. [Amended by 1953 c.228 §4; 1957 c.712 §8; part renumbered 480.460; 1967 c.417 §31; 1973 c.832 §17; 1987 c.346 §4; 1987 c.414 §159a; 1993 c.18 §124; 1993 c.185 §33; 1995 c.79 §294; 1995 c.305 §1; 1999 c.558 §3; 2003 c.652 §5]

480.460 Disposition of fees. All fees received by the State Fire Marshal under ORS 480.200 to 480.290 and 480.410 to 480.460 shall be paid by the fire marshal to the State Treasurer monthly and shall constitute and be an appropriation available for the payment of salaries and expenses of deputies and clerical and other assistants of the State Fire Marshal. [Formerly part of 480.450; 1973 c.832 §18]

Penalties

480.990 Penalties. (1) Violation of any provision of ORS 480.010 to 480.040 is a Class B violation.

(2) Violation of any provision of ORS 480.050, 480.060 or 480.290 is a Class C misdemeanor.

(3) Violation of ORS 480.070 is a Class A misdemeanor.

(4) Violation of ORS 480.085 is a Class B violation.

(5) Violation of any provision of ORS 480.110 to 480.165 is a Class B misdemeanor. Violations thereof may be prosecuted in state or municipal courts when violations occur within the municipality served thereby. Justice courts shall have concurrent jurisdiction with circuit courts in all proceedings arising within ORS 480.110 to 480.165.

(6) Subject to ORS 153.022, violation of any provision of ORS 480.210, 480.215, 480.235 and 480.265 or of any rule or regu-

lation adopted under ORS 480.280 (1) is a Class B misdemeanor.

(7) Violation of any provision of ORS 480.420 to 480.460 is a Class B violation.

(8) Subject to ORS 153.022, violation of any provision of ORS 480.510 to 480.670, or any rule promulgated pursuant thereto, is a Class A misdemeanor. Whenever the Board of Boiler Rules has reason to believe that any person is liable to punishment under this subsection, it may certify the facts to the Attorney General, who may cause an appropriate proceeding to be brought. [Subsection (4) of 1963 Replacement Part enacted as 1961 c.722 §3; subsection (10) enacted as 1961 c.485 §24; subsection (4) enacted as 1963 c.384 §3; 1965 c.602 §24; subsection (3) enacted as 1967 c.417 §22; subsection (7) enacted as 1971 c.518 §25; 1983 c.676 §22; 1985 c.165 §3; 1987 c.158 §111; 1991 c.863 §59; 1999 c.1051 §193]

Chapter 646A

ENFORCEMENT OF EXPRESS WARRANTIES ON NEW MOTOR VEHICLES

646A.400 Definitions for ORS 646A.400 to 646A.418. As used in ORS 646A.400 to 646A.418:

(1) "Consumer" means:

(a) The purchaser or lessee, other than for purposes of resale, of a new motor vehicle normally used for personal, family or household purposes;

(b) Any person to whom a new motor vehicle used for personal, family or household purposes is transferred for the same purposes during the duration of an express warranty applicable to such motor vehicle; and

(c) Any other person entitled by the terms of such warranty to enforce the obligations of the warranty.

(2) "Motor vehicle" means a passenger motor vehicle as defined in ORS 801.360. [Formerly 646.315]

646A.402 Availability of remedy. The remedy under the provisions of ORS 646A.400 to 646A.418 is available to a consumer if:

(1) A new motor vehicle does not conform to applicable manufacturer's express warranties;

(2) The consumer reports each nonconformity to the manufacturer, its agent or its authorized dealer, for the purpose of repair or correction, during the period of one year following the date of original delivery of the motor vehicle to the consumer or during the period ending on the date on which the mileage on the motor vehicle reaches 12,000 miles, whichever period ends earlier; and

(3) The manufacturer has received direct written notification from or on behalf of the

consumer and has had an opportunity to correct the alleged defect. "Notification" under this subsection includes, but is not limited to, a request by the consumer for an informal dispute settlement procedure under ORS 646A.408. [Formerly 646.325]

646A.404 Consumer's remedies; manufacturer's affirmative defenses. (1) If the manufacturer or its agents or authorized dealers are unable to conform the motor vehicle to any applicable manufacturer's express warranty by repairing or correcting any defect or condition that substantially impairs the use, market value or safety of the motor vehicle to the consumer after a reasonable number of attempts, the manufacturer shall:

(a) Replace the motor vehicle with a new motor vehicle; or

(b) Accept return of the vehicle from the consumer and refund to the consumer the full purchase or lease price paid, including taxes, license and registration fees and any similar collateral charges excluding interest, less a reasonable allowance for the consumer's use of the vehicle.

(2) Refunds shall be made to the consumer and lienholder, if any, as their interests may appear. A reasonable allowance for use is that amount directly attributable to use by the consumer prior to the first report of the nonconformity to the manufacturer, agent or dealer and during any subsequent period when the vehicle is not out of service by reason of repair.

(3) It shall be an affirmative defense to any claim under ORS 646A.400 to 646A.418:

(a) That an alleged nonconformity does not substantially impair such use, market value or safety; or

(b) That a nonconformity is the result of abuse, neglect or unauthorized modifications or alterations of the motor vehicle by the consumer. [Formerly 646.335]

646A.406 Presumption of reasonable attempt to conform; extension of time for repairs; notice to manufacturer. (1) It shall be presumed that a reasonable number of attempts have been undertaken to conform a motor vehicle to the applicable manufacturer's express warranties if, during the period of one year following the date of original delivery of the motor vehicle to a consumer or during the period ending on the date on which the mileage on the motor vehicle reaches 12,000 miles, whichever period ends earlier:

(a) The same nonconformity has been subject to repair or correction four or more times by the manufacturer or its agent or

authorized dealer, but such nonconformity continues to exist; or

(b) The vehicle is out of service by reason of repair or correction for a cumulative total of 30 or more business days.

(2) A repair or correction for purposes of subsection (1) of this section includes a repair that must take place after the expiration of the earlier of either period.

(3) The period ending on the date on which the mileage on the motor vehicle reaches 12,000 miles, the one-year period and the 30-day period shall be extended by any period of time during which repair services are not available to the consumer because of a war, invasion, strike, fire, flood or other natural disaster.

(4) In no event shall the presumption described in subsection (1) of this section apply against a manufacturer unless the manufacturer has received prior direct written notification from or on behalf of the consumer and has had an opportunity to cure the defect alleged. [Formerly 646.345]

646A.408 Use of informal dispute settlement procedure as condition for remedy; binding effect on manufacturer.

If the manufacturer has established or participates in an informal dispute settlement procedure that substantially complies with the provisions of 16 C.F.R. part 703, as from time to time amended, and causes the consumer to be notified of the procedure, ORS 646A.404 concerning refunds or replacement shall not apply to any consumer who has not first resorted to the procedure. A decision resulting from arbitration pursuant to the informal dispute settlement procedure shall be binding on the manufacturer. [Formerly 646.355]

646A.410 Informal dispute settlement procedure; recordkeeping; review by Department of Justice.

A manufacturer which has established or participates in an informal dispute settlement procedure shall keep records of all cases submitted to the procedure under ORS 646A.408 and shall make the records available to the Department of Justice if the department requests them. The department may review all case records kept under this section to determine whether or not the arbitrators are complying with the provisions of ORS 646A.400 to 646A.418 in reaching their decisions. [Formerly 646.357]

646A.412 Action in court; damages if manufacturer does not act in good faith; attorney fees.

(1) If a consumer brings an action in court under ORS 646A.400 to 646A.418 against a manufacturer and the consumer is granted one of the remedies specified in ORS 646A.404 (1) by the court, the consumer shall also be awarded up to

three times the amount of any damages, not to exceed \$50,000 over and above the amount due the consumer under ORS 646A.404 (1), if the court finds that the manufacturer did not act in good faith.

(2) The court may award reasonable attorney fees to the prevailing party in an appeal or action under this section. [Formerly 646.359]

646A.414 Limitations on actions against dealers. (1) Nothing in ORS 646A.400 to 646A.418 creates a cause of action by a consumer against a vehicle dealer.

(2) A manufacturer may not join a dealer as a party in any proceeding brought under ORS 646A.400 to 646A.418, nor may the manufacturer try to collect from a dealer any damages assessed against the manufacturer in a proceeding brought under ORS 646A.400 to 646A.418. [Formerly 646.361]

646A.416 Limitation on commencement of action. Any action brought under ORS 646A.400 to 646A.418 shall be commenced within one year following whichever period ends earlier:

(1) The period ending on the date on which the mileage on the motor vehicle reaches 12,000 miles; or

(2) The period of one year following the date of the original delivery of the motor vehicle to the consumer. [Formerly 646.365]

646A.418 Remedies supplementary to existing statutory or common law remedies; election of remedies. Nothing in ORS 646A.400 to 646A.418 is intended in any way to limit the rights or remedies that are otherwise available to a consumer under any other law. However, if the consumer elects to pursue any other remedy in state or federal court, the remedy available under ORS 646A.400 to 646A.418 shall not be available insofar as it would result in recovery in excess of the recovery authorized by ORS 646A.404 without proof of fault resulting in damages in excess of such recovery. [Formerly 646.375]

Chapter 652

HOURS OF LABOR

652.050 Definitions for ORS 652.050 to 652.080. As used in ORS 652.050 to 652.080:

(1) "Firefighter" means a person whose principal duties consist of preventing or combating fire or preventing loss of life or property from fire.

(2) "Regularly organized fire department" means any organization maintained for the purpose of preventing or

combating fire and employing one or more persons on a full-time basis as firefighters.

(3) "Volunteer firefighter" means a person who performs services as a firefighter for a regularly organized fire department and whose work hours and work shifts are voluntary and whose volunteer service is not a condition of employment. [Amended by 1983 c.319 §1]

Chapter 742

MOTOR VEHICLE LIABILITY INSURANCE

Issuance of Insurance Card

742.447 Insurance card. Every insurer that issues motor vehicle insurance that is designed to meet either the financial or future responsibility requirements of ORS chapter 806 shall issue with the policy a card that shows the effective date and the expiration date of the insurance. [1993 c.746 §1]

Note: 742.447 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 742 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

General Provisions

742.449 Prohibition on assignment to high risk category on certain grounds. An insurer issuing motor vehicle liability insurance policies in this state may not assign an insured or applicant for insurance to a higher risk category than the person would otherwise be assigned to solely because the person has:

(1) Let a prior motor vehicle liability policy lapse, unless the person was in violation of ORS 806.010 at any time after the prior policy lapsed; or

(2) Had driving privileges suspended pursuant to ORS 809.280 (7) or (9) if the suspension is based on a nondriving offense. [1989 c.419 §2; 1991 c.860 §6]

742.450 Contents of motor vehicle liability policy; permitted exclusions. (1) Every motor vehicle liability insurance policy issued for delivery in this state shall state the name and address of the named insured, the coverage afforded by the policy, the premium charged therefor, the policy period and the limits of liability.

(2) Every motor vehicle liability insurance policy issued for delivery in this state shall contain an agreement or indorsement stating that, as respects bodily injury and death or property damage, or both, the insurance provides either:

(a) The coverage described in ORS 806.070 and 806.080; or

(b) The coverage described in ORS 806.270.

(3) The agreement or indorsement required by subsection (2) of this section shall also state that the insurance provided is subject to all the provisions of the Oregon Vehicle Code relating to financial responsibility requirements as defined in ORS 801.280 or future responsibility filings as defined in ORS 801.290, as appropriate.

(4) Every motor vehicle liability insurance policy issued for delivery in this state shall provide liability coverage to at least the limits specified in ORS 806.070.

(5) Every motor vehicle liability insurance policy issued for delivery in this state shall provide liability coverage, up to the limits of coverage under the policy for a vehicle owned by the named insured, for the operation by the named insured of a motor vehicle provided to the named insured, without regard to whether the named insured is charged for the use of the motor vehicle, if:

(a) The motor vehicle is provided to the named insured by a person engaged in the business of repairing or servicing motor vehicles; and

(b) The motor vehicle is provided to the named insured as a temporary replacement vehicle while the named insured's vehicle is being repaired or serviced.

(6) A motor vehicle liability insurance policy issued for delivery in this state may exclude by name from coverage required by subsection (2)(a) of this section any person other than the named insured, for any of the reasons stated in subsection (7) of this section. When an insurer excludes a person as provided by this subsection, the insurer shall obtain a statement or indorsement, signed by each of the named insureds, that the policy will not provide any coverage required by subsection (2)(a) of this section when the motor vehicle is driven by any named excluded person.

(7) A person may be excluded from coverage under a motor vehicle liability insurance policy as provided in subsection (6) of this section:

(a) Because of the driving record of the person. The Director of the Department of Consumer and Business Services by rule may establish restrictions on the use of the driving record in addition to other restrictions established by law.

(b) Because of any reason or set of criteria established by the director by rule.

(8) Every motor vehicle liability insurance policy issued for delivery in this state shall contain a provision that provides liability coverage for each family member of

the insured residing in the same household as the insured in an amount equal to the amount of liability coverage purchased by the insured. [Formerly 486.541 and then 743.776; 1991 c.768 §3; 1999 c.438 §2; 2007 c.782 §1]

742.454 Liabilities that need not be covered. The motor vehicle liability insurance policy required by ORS 806.010, 806.060, 806.080, 806.240 or 806.270 need not insure any liability under any workers' compensation law; nor any liability on account of bodily injury to or death of an employee of the insured while engaged in the employment, other than domestic, of the insured, or while engaged in the operation, maintenance or repair of a vehicle; nor any liability for damage to property owned by, rented to, in charge of, or transported by the insured. [Formerly 486.546 and then 743.778]

742.456 When insurer's liability accrues; nonforfeiture provisions. The liability of an insurer with respect to the motor vehicle liability insurance policy required by ORS 806.060, 806.240 or 806.270 shall become absolute whenever injury or damage covered by the policy occurs. The policy may not be canceled or annulled as to such liability by any agreement between the insurer and the insured after the occurrence of the injury or damage. No statement made by the insured or on behalf of the insured and in violation of the policy shall defeat or void the policy. This section does not apply to motor vehicle liability insurance policies other than those required in connection with ORS 806.060, 806.240 or 806.270. [Formerly 486.551 and then 743.779]

742.458 General provisions governing liability policies. Every motor vehicle liability insurance policy shall be subject to the following provisions, which need not be contained therein:

(1) The policy, the written application therefor, if any, and any rider or indorsement that does not conflict with the laws relating to motor vehicle liability insurance policies shall constitute the entire contract between the parties.

(2) The satisfaction by the insured of a judgment for injury or damage shall not be a condition precedent to the right or duty of the insurer to make payment on account of such injury or damage.

(3) Any binder issued pending the issuance of a motor vehicle liability insurance policy shall be deemed to fulfill the requirements for such a policy. [Formerly 486.556 and then 743.781]

742.460 Insurer's right to provide for reimbursement and proration. Any motor vehicle liability insurance policy may provide that the insured shall reimburse the insurer for any payment the insurer would not have

been obligated to make under the terms of the policy except for the provisions of ORS 742.450 to 742.464, 806.080 and 806.270 and it may further provide for the prorating of the insurance thereunder with other valid and collectible insurance. [Formerly 486.561 and then 743.782; 1995 c.79 §363]

742.462 Insurer's right to settle claims. The insurer shall have the right to settle any claim covered by the policy, and if such settlement is made in good faith, the amount thereof shall be deductible from the limits of liability specified in respect to a motor vehicle liability insurance policy. [Formerly 486.564 and then 743.784]

742.464 Excess coverage permitted; combining policies to meet requirements. Any policy which grants the coverage required for a motor vehicle liability insurance policy under ORS 742.450, 806.080 and 806.270 may also grant any lawful coverage in excess of or in addition to the required coverage, and such excess or additional coverage shall not be subject to the provisions of ORS 742.031, 742.400 and 742.450 to 742.464. With respect to a policy which grants such excess or additional coverage only that part of the coverage which is required by ORS 806.080 and 806.270 is subject to the requirements of those sections. [Formerly 486.566 and then 743.785]

742.466 Disputes over coverage for physical damage; independent appraisal; rules. (1) In the event of a dispute between the insurer and insured under a motor vehicle liability policy concerning coverage for physical damage, if the policy contains a provision authorizing the insured to obtain an independent appraisal by a disinterested party of the physical damage, that provision shall apply.

(2) If a motor vehicle liability policy does not contain a provision described in subsection (1) of this section, then notwithstanding any other provision of the policy, any resolution of the dispute shall be subject to rules adopted by the Director of the Department of Consumer and Business Services. [Formerly 743.840]

742.468 Certain policies not considered motor vehicle liability policies. For purposes of statutes mandating kinds or amounts of coverage that motor vehicle liability policies must contain, the following shall not be considered motor vehicle liability policies:

- (1) Comprehensive general liability policies.
- (2) Excess liability policies.
- (3) Umbrella liability policies. [1993 c.709 §10]

Age-Based Discount

742.490 Premium reduction; conditions; application. (1) Any rate, rating plan or rating system filed with the Director of the Department of Consumer and Business Services for a motor vehicle insurance policy offering liability, personal injury protection or collision coverage, shall provide an appropriate reduction in premium charges for such coverage if:

(a) The principal operator of the covered vehicle is an insured 55 years of age or older.

(b) The principal operator of the covered vehicle has successfully completed, within the appropriate time as specified in this subsection, a motor vehicle accident prevention course approved by the Department of Transportation. To meet the requirements of this subsection, a course must be completed no more than three years prior to the beginning of the policy period for which the discounted rate applies if the person is less than 70 years of age at the time of taking the course or no more than two years prior to the beginning of the policy period for which the discounted rate applies if the person is 70 years of age or more at the time of taking the course.

(c) There are no persons under 25 years of age who regularly operate the vehicle.

(d) The vehicle is not classified for underwriting purposes as used for a business.

(2) If the person qualifying for a premium reduction under subsection (1) of this section is the principal operator of two or more vehicles, the premium discount shall apply to only one vehicle. No more than one premium discount may be applied to one vehicle. [1989 c.379 §§2,4]

742.492 Duration of reduction. Except as otherwise provided in this section, the premium reduction required by ORS 742.490 (1) shall be effective for an insured for a three-year period after successful completion of the approved course if the person is less than 70 years of age at the time of taking the course or for a two-year period after successful completion of an approved course if the person is 70 years of age or more at the time of taking the course. An insurer may require, as a condition of maintaining the discount, that the insured:

(1) Not be involved in an accident for which the insured is at fault; and

(2) Not be convicted of or plead guilty or nolo contendere to a moving traffic violation. [1989 c.379 §3]

742.494 Certification of completion of course. Any organization offering a motor vehicle accident prevention course approved by the Department of Transportation shall

issue a certificate to each person who successfully completes the course. The person shall present the certificate to an insurer to qualify for the premium discount required under ORS 742.490 (1). [1989 c.379 §5]

742.496 Limitation on qualification for discount. No person shall receive a discount under ORS 742.490 to 742.494 if the person takes the approved course as a punishment, specified by a court or other government entity, for a moving traffic violation. [1989 c.379 §6]

Uninsured Motorist Coverage

742.500 Definitions for ORS 742.500 to 742.506. As used in ORS 742.500 to 742.506:

(1) "Uninsured motorist coverage" means coverage within the terms and conditions specified in ORS 742.504 insuring the insured, the heirs or legal representative of the insured for all sums which the insured or they shall be legally entitled to recover as damages for bodily injury or death caused by accident and arising out of the ownership, maintenance or use of an uninsured motor vehicle in amounts or limits not less than the amounts or limits prescribed for bodily injury or death under ORS 806.070.

(2) "Motor vehicle" means every self-propelled device in, upon or by which any person or property is or may be transported or drawn upon a public highway, but does not include:

(a) Devices used exclusively upon stationary rails or tracks;

(b) Motor trucks as defined in ORS 801.355 that have a registration weight, as defined by ORS 803.430 of more than 8,000 pounds, when the insured has employees who operate such trucks and such employees are covered by any workers' compensation law, disability benefits law or any similar law; or

(c) Farm-type tractors or self-propelled equipment designed for use principally off public highways. [Formerly 743.786]

742.502 Uninsured motorist coverage; underinsurance coverage. (1) Every motor vehicle liability policy insuring against loss suffered by any natural person resulting from liability imposed by law for bodily injury or death arising out of the ownership, maintenance or use of a motor vehicle shall provide in the policy or by indorsement on the policy uninsured motorist coverage when the policy is either:

(a) Issued for delivery in this state; or

(b) Issued or delivered by an insurer doing business in this state with respect to any motor vehicle then principally used or principally garaged in this state.

(2)(a) A motor vehicle bodily injury liability policy shall have the same limits for uninsured motorist coverage as for bodily injury liability coverage unless a named insured in writing elects lower limits. The insured may not elect limits lower than the amounts prescribed to meet the requirements of ORS 806.070 for bodily injury or death. Uninsured motorist coverage shall include underinsurance coverage for bodily injury or death caused by accident and arising out of the ownership, maintenance or use of a motor vehicle with motor vehicle liability insurance that provides recovery in an amount that is less than the insured's uninsured motorist coverage. Underinsurance coverage shall be equal to uninsured motorist coverage less the amount recovered from other motor vehicle liability insurance policies.

(b) If a named insured elects lower limits, the named insured shall sign a statement electing lower limits within 60 days of the time the named insured makes the election. The statement shall acknowledge that a named insured was offered uninsured motorist coverage with the limits equal to those for bodily injury liability. The statement shall contain a brief summary, which may not be construed as part of the insurance contract, of what uninsured and underinsured motorist coverages provide and shall state the price for coverage with limits equal to the named insured's bodily injury liability limits and the price for coverage with the lower limits requested by the named insured. The statement shall remain in force until rescinded in writing by a named insured or until the motor vehicle bodily injury liability limits are changed. The form of statement used to comply with this paragraph shall be approved by the Department of Consumer and Business Services.

(c) A statement electing lower limits need not be signed when vehicles are either added to or subtracted from a policy or when the policy is amended, renewed, modified or replaced by the same company or group of companies under common ownership or control unless the liability limits of the policy are changed.

(3) The insurer issuing the policy may offer one or more options of uninsured motorist coverage larger than the amounts prescribed to meet the requirements of ORS 806.070 and in excess of the limits provided under the policy for motor vehicle bodily injury liability insurance. Offers of uninsured motorist coverage shall include underinsurance coverage for bodily injury or death caused by accident and arising out of the ownership, maintenance or use of a motor vehicle with motor vehicle liability insurance that provides recovery in an amount that is

less than the insured's uninsured motorist coverage. Underinsurance coverage shall be equal to uninsured motorist coverage less the amount recovered from other motor vehicle liability insurance policies.

(4) Underinsurance coverage is subject to ORS 742.504 and 742.542.

(5) Uninsured motorist coverage and underinsurance coverage shall provide coverage for bodily injury or death when:

(a) The limits for uninsured motorist coverage of the insured equal the limits of the liability policy of the person whose fault caused the bodily injury or death; and

(b) The amount of liability insurance recovered is less than the limits for uninsured motorist coverage of the insured.

(6) Uninsured motorist coverage and underinsurance coverage shall provide coverage for bodily injury or death if the amount recovered from a self-insurer is less than the limits for uninsured motorist coverage of the insured.

(7) As used in this section and except as otherwise provided in this subsection, "amount recovered from other motor vehicle liability insurance policies" means the proceeds of liability insurance or the proceeds received from a public body under ORS 30.270 recovered by or on behalf of the injured party. Proceeds recovered on behalf of the injured party include proceeds received by the injured party's insurer as reimbursement for personal injury protection benefits provided to the injured person, proceeds received by the medical providers of the injured person and proceeds received as attorney fees on the claim of the injured person. Where applicable liability insurance policy limits are exhausted upon payment, settlement or judgment by division among two or more injured persons, "amount recovered from other motor vehicle liability insurance policies" means the proceeds that are recovered by or on behalf of the injured person but does not include any proceeds of that liability policy received by other injured persons. [Formerly 743.789; 1993 c.709 §11; 1997 c.808 §1; 2003 c.220 §1; 2005 c.235 §1; 2007 c.287 §2; 2007 c.782 §2]

742.504 Required provisions of uninsured motorist coverage. Every policy required to provide the coverage specified in ORS 742.502 shall provide uninsured motorist coverage that in each instance is no less favorable in any respect to the insured or the beneficiary than if the following provisions were set forth in the policy. However, nothing contained in this section requires the insurer to reproduce in the policy the particular language of any of the following provisions:

(1)(a) Notwithstanding ORS 30.270, the insurer will pay all sums that the insured, the heirs or the legal representative of the insured is legally entitled to recover as general and special damages from the owner or operator of an uninsured vehicle because of bodily injury sustained by the insured caused by accident and arising out of the ownership, maintenance or use of the uninsured vehicle. Determination as to whether the insured, the insured's heirs or the insured's legal representative is legally entitled to recover such damages, and if so, the amount thereof, shall be made by agreement between the insured and the insurer, or, in the event of disagreement, may be determined by arbitration as provided in subsection (10) of this section.

(b) No judgment against any person or organization alleged to be legally responsible for bodily injury, except for proceedings instituted against the insurer as provided in this policy, shall be conclusive, as between the insured and the insurer, on the issues of liability of the person or organization or of the amount of damages to which the insured is legally entitled.

(2) As used in this policy:

(a) "Bodily injury" means bodily injury, sickness or disease, including death resulting therefrom.

(b) "Hit-and-run vehicle" means a vehicle that causes bodily injury to an insured arising out of physical contact of the vehicle with the insured or with a vehicle the insured is occupying at the time of the accident, provided:

(A) The identity of either the operator or the owner of the hit-and-run vehicle cannot be ascertained;

(B) The insured or someone on behalf of the insured reported the accident within 72 hours to a police, peace or judicial officer, to the Department of Transportation or to the equivalent department in the state where the accident occurred, and filed with the insurer within 30 days thereafter a statement under oath that the insured or the legal representative of the insured has a cause or causes of action arising out of the accident for damages against a person or persons whose identities are unascertainable, and setting forth the facts in support thereof; and

(C) At the insurer's request, the insured or the legal representative of the insured makes available for inspection the vehicle the insured was occupying at the time of the accident.

(c) "Insured," when unqualified and when applied to uninsured motorist coverage, means:

(A) The named insured as stated in the policy and any person designated as named

insured in the schedule and, while residents of the same household, the spouse of any named insured and relatives of either, provided that neither the relative nor the spouse is the owner of a vehicle not described in the policy and that, if the named insured as stated in the policy is other than an individual or husband and wife who are residents of the same household, the named insured shall be only a person so designated in the schedule;

(B) Any child residing in the household of the named insured if the insured has performed the duties of a parent to the child by rearing the child as the insured's own although the child is not related to the insured by blood, marriage or adoption; and

(C) Any other person while occupying an insured vehicle, provided the actual use thereof is with the permission of the named insured.

(d) "Insured vehicle," except as provided in paragraph (e) of this provision, means:

(A) The vehicle described in the policy or a newly acquired or substitute vehicle, as each of those terms is defined in the public liability coverage of the policy, insured under the public liability provisions of the policy; or

(B) A nonowned vehicle operated by the named insured or spouse if a resident of the same household, provided that the actual use thereof is with the permission of the owner of the vehicle and the vehicle is not owned by nor furnished for the regular or frequent use of the insured or any member of the same household.

(e) "Insured vehicle" does not include a trailer of any type unless the trailer is a described vehicle in the policy.

(f) "Occupying" means in or upon or entering into or alighting from.

(g) "Phantom vehicle" means a vehicle that causes bodily injury to an insured arising out of a motor vehicle accident that is caused by a vehicle that has no physical contact with the insured or the vehicle the insured is occupying at the time of the accident, provided:

(A) The identity of either the operator or the owner of the phantom vehicle cannot be ascertained;

(B) The facts of the accident can be corroborated by competent evidence other than the testimony of the insured or any person having an uninsured motorist claim resulting from the accident; and

(C) The insured or someone on behalf of the insured reported the accident within 72 hours to a police, peace or judicial officer, to the Department of Transportation or to the

equivalent department in the state where the accident occurred, and filed with the insurer within 30 days thereafter a statement under oath that the insured or the legal representative of the insured has a cause or causes of action arising out of the accident for damages against a person or persons whose identities are unascertainable, and setting forth the facts in support thereof.

(h) "State" includes the District of Columbia, a territory or possession of the United States and a province of Canada.

(i) "Stolen vehicle" means an insured vehicle that causes bodily injury to the insured arising out of a motor vehicle accident if:

(A) The vehicle is operated without the consent of the insured;

(B) The operator of the vehicle does not have collectible motor vehicle bodily injury liability insurance;

(C) The insured or someone on behalf of the insured reported the accident within 72 hours to a police, peace or judicial officer or to the equivalent department in the state where the accident occurred; and

(D) The insured or someone on behalf of the insured cooperates with the appropriate law enforcement agency in the prosecution of the theft of the vehicle.

(j) "Sums that the insured, the heirs or the legal representative of the insured is legally entitled to recover as general and special damages from the owner or operator of an uninsured vehicle" means the amount of damages that:

(A) A claimant could have recovered in a civil action from the owner or operator at the time of the injury after determination of fault or comparative fault and resolution of any applicable defenses;

(B) Are calculated without regard to the tort claims limitations of ORS 30.260 to 30.300; and

(C) Are no larger than benefits payable under the terms of the policy as provided in subsection (7) of this section.

(k) "Uninsured vehicle," except as provided in paragraph (L) of this provision, means:

(A) A vehicle with respect to the ownership, maintenance or use of which there is no collectible motor vehicle bodily injury liability insurance, in at least the amounts or limits prescribed for bodily injury or death under ORS 806.070 applicable at the time of the accident with respect to any person or organization legally responsible for the use of the vehicle, or with respect to which there is collectible bodily injury liability insurance applicable at the time of the accident but the insurance company writing the insurance

denies coverage or the company writing the insurance becomes voluntarily or involuntarily declared bankrupt or for which a receiver is appointed or becomes insolvent. It shall be a disputable presumption that a vehicle is uninsured in the event the insured and the insurer, after reasonable efforts, fail to discover within 90 days from the date of the accident, the existence of a valid and collectible motor vehicle bodily injury liability insurance applicable at the time of the accident.

(B) A hit-and-run vehicle.

(C) A phantom vehicle.

(D) A stolen vehicle.

(E) A vehicle that is owned or operated by a self-insurer:

(i) That is not in compliance with ORS 806.130 (1)(c); or

(ii) That provides recovery to an insured in an amount that is less than the limits for uninsured motorist coverage of the insured.

(L) "Uninsured vehicle" does not include:

(A) An insured vehicle, unless the vehicle is a stolen vehicle;

(B) Except as provided in paragraph (k)(E) of this subsection, a vehicle that is owned or operated by a self-insurer within the meaning of any motor vehicle financial responsibility law, motor carrier law or any similar law;

(C) A vehicle that is owned by the United States of America, Canada, a state, a political subdivision of any such government or an agency of any such government;

(D) A land motor vehicle or trailer, if operated on rails or crawler-treads or while located for use as a residence or premises and not as a vehicle;

(E) A farm-type tractor or equipment designed for use principally off public roads, except while actually upon public roads; or

(F) A vehicle owned by or furnished for the regular or frequent use of the insured or any member of the household of the insured.

(m) "Vehicle" means every device in, upon or by which any person or property is or may be transported or drawn upon a public highway, but does not include devices moved by human power or used exclusively upon stationary rails or tracks.

(3) This coverage applies only to accidents that occur on and after the effective date of the policy, during the policy period and within the United States of America, its territories or possessions, or Canada.

(4)(a) This coverage does not apply to bodily injury of an insured with respect to which the insured or the legal representative

of the insured shall, without the written consent of the insurer, make any settlement with or prosecute to judgment any action against any person or organization who may be legally liable therefor.

(b) This coverage does not apply to bodily injury to an insured while occupying a vehicle, other than an insured vehicle, owned by, or furnished for the regular use of, the named insured or any relative resident in the same household, or through being struck by the vehicle.

(c) This coverage does not apply so as to inure directly or indirectly to the benefit of any workers' compensation carrier, any person or organization qualifying as a self-insurer under any workers' compensation or disability benefits law or any similar law or the State Accident Insurance Fund Corporation.

(d) This coverage does not apply with respect to underinsured motorist benefits unless:

(A) The limits of liability under any bodily injury liability insurance applicable at the time of the accident regarding the injured person have been exhausted by payment of judgments or settlements to the injured person or other injured persons;

(B) The described limits have been offered in settlement, the insurer has refused consent under paragraph (a) of this subsection and the insured protects the insurer's right of subrogation to the claim against the tortfeasor;

(C) The insured gives credit to the insurer for the unrealized portion of the described liability limits as if the full limits had been received if less than the described limits have been offered in settlement, and the insurer has consented under paragraph (a) of this subsection; or

(D) The insured gives credit to the insurer for the unrealized portion of the described liability limits as if the full limits had been received if less than the described limits have been offered in settlement and, if the insurer has refused consent under paragraph (a) of this subsection, the insured protects the insurer's right of subrogation to the claim against the tortfeasor.

(e) When seeking consent under paragraph (a) or (d) of this subsection, the insured shall allow the insurer a reasonable time in which to collect and evaluate information related to consent to the proposed offer of settlement. The insured shall provide promptly to the insurer any information that is reasonably requested by the insurer and that is within the custody and control of the insured. Consent will be presumed to be given if the insurer does not respond within

a reasonable time. For purposes of this paragraph, a “reasonable time” is no more than 30 days from the insurer’s receipt of a written request for consent, unless the insured and the insurer agree otherwise.

(5)(a) As soon as practicable, the insured or other person making claim shall give to the insurer written proof of claim, under oath if required, including full particulars of the nature and extent of the injuries, treatment and other details entering into the determination of the amount payable hereunder. The insured and every other person making claim hereunder shall submit to examinations under oath by any person named by the insurer and subscribe the same, as often as may reasonably be required. Proof of claim shall be made upon forms furnished by the insurer unless the insurer fails to furnish the forms within 15 days after receiving notice of claim.

(b) Upon reasonable request of and at the expense of the insurer, the injured person shall submit to physical examinations by physicians selected by the insurer and shall, upon each request from the insurer, execute authorization to enable the insurer to obtain medical reports and copies of records.

(6) If, before the insurer makes payment of loss hereunder, the insured or the legal representative of the insured institutes any legal action for bodily injury against any person or organization legally responsible for the use of a vehicle involved in the accident, a copy of the summons and complaint or other process served in connection with the legal action shall be forwarded immediately to the insurer by the insured or the legal representative of the insured.

(7)(a) The limit of liability stated in the declarations as applicable to “each person” is the limit of the insurer’s liability for all damages because of bodily injury sustained by one person as the result of any one accident and, subject to the above provision respecting each person, the limit of liability stated in the declarations as applicable to “each accident” is the total limit of the company’s liability for all damages because of bodily injury sustained by two or more persons as the result of any one accident.

(b) Any payment made under this coverage to or for an insured shall be applied in reduction of any amount that the insured may be entitled to recover from any person who is an insured under the bodily injury liability coverage of this policy.

(c) Any amount payable under the terms of this coverage because of bodily injury sustained in an accident by a person who is an insured under this coverage shall be reduced by:

(A) All sums paid on account of the bodily injury by or on behalf of the owner or operator of the uninsured vehicle and by or on behalf of any other person or organization jointly or severally liable together with the owner or operator for the bodily injury, including all sums paid under the bodily injury liability coverage of the policy; and

(B) The amount paid and the present value of all amounts payable on account of the bodily injury under any workers’ compensation law, disability benefits law or any similar law.

(d) Any amount payable under the terms of this coverage because of bodily injury sustained in an accident by a person who is an insured under this coverage shall be reduced by the credit given to the insurer pursuant to subsection (4)(d)(C) or (D) of this section.

(e) The amount payable under the terms of this coverage may not be reduced by the amount of liability proceeds offered, described in subsection (4)(d)(B) or (D) of this section, that has not been paid to the injured person. If liability proceeds have been offered and not paid, the amount payable under the terms of the coverage shall include the amount of liability limits offered but not accepted due to the insurer’s refusal to consent. The insured shall cooperate so as to permit the insurer to proceed by subrogation or assignment to prosecute the claim against the uninsured motorist.

(8) No action shall lie against the insurer unless, as a condition precedent thereto, the insured or the legal representative of the insured has fully complied with all the terms of this policy.

(9)(a) With respect to bodily injury to an insured:

(A) While occupying a vehicle owned by a named insured under this coverage, the insurance under this coverage is primary.

(B) While occupying a vehicle not owned by a named insured under this coverage, the insurance under this coverage shall apply only as excess insurance over any primary insurance available to the occupant that is similar to this coverage, and this excess insurance shall then apply only in the amount by which the applicable limit of liability of this excess coverage exceeds the sum of the applicable limits of liability of all primary insurance available to the occupant.

(b) If an insured is an insured under other primary or excess insurance available to the insured that is similar to this coverage, then the insured’s damages are deemed not to exceed the higher of the applicable limits of liability of this insurance or the additional primary or excess insurance avail-

able to the insured, and the insurer is not liable under this coverage for a greater proportion of the insured's damages than the applicable limit of liability of this coverage bears to the sum of the applicable limits of liability of this insurance and other primary or excess insurance available to the insured.

(c) With respect to bodily injury to an insured while occupying any motor vehicle used as a public or livery conveyance, the insurance under this coverage shall apply only as excess insurance over any other insurance available to the insured that is similar to this coverage, and this insurance shall then apply only in the amount by which the applicable limit of liability of this coverage exceeds the sum of the applicable limits of liability of all other insurance.

(10) If any person making claim hereunder and the insurer do not agree that the person is legally entitled to recover damages from the owner or operator of an uninsured vehicle because of bodily injury to the insured, or do not agree as to the amount of payment that may be owing under this coverage, then, in the event the insured and the insurer elect by mutual agreement at the time of the dispute to settle the matter by arbitration, the arbitration shall take place as described in section 2, chapter 328, Oregon Laws 2007. Any judgment upon the award rendered by the arbitrators may be entered in any court having jurisdiction thereof, provided, however, that the costs to the insured of the arbitration proceeding do not exceed \$100 and that all other costs of arbitration are borne by the insurer. "Costs" as used in this provision does not include attorney fees or expenses incurred in the production of evidence or witnesses or the making of transcripts of the arbitration proceedings. The person and the insurer each agree to consider themselves bound and to be bound by any award made by the arbitrators pursuant to this coverage in the event of such election. At the election of the insured, the arbitration shall be held:

(a) In the county and state of residence of the insured;

(b) In the county and state where the insured's cause of action against the uninsured motorist arose; or

(c) At any other place mutually agreed upon by the insured and the insurer.

(11) In the event of payment to any person under this coverage:

(a) The insurer shall be entitled to the extent of the payment to the proceeds of any settlement or judgment that may result from the exercise of any rights of recovery of the person against any uninsured motorist le-

gally responsible for the bodily injury because of which payment is made;

(b) The person shall hold in trust for the benefit of the insurer all rights of recovery that the person shall have against such other uninsured person or organization because of the damages that are the subject of claim made under this coverage, but only to the extent that the claim is made or paid herein;

(c) If the insured is injured by the joint or concurrent act or acts of two or more persons, one or more of whom is uninsured, the insured shall have the election to receive from the insurer any payment to which the insured would be entitled under this coverage by reason of the act or acts of the uninsured motorist, or the insured may, with the written consent of the insurer, proceed with legal action against any or all persons claimed to be liable to the insured for the injuries. If the insured elects to receive payment from the insurer under this coverage, then the insured shall hold in trust for the benefit of the insurer all rights of recovery the insured shall have against any other person, firm or organization because of the damages that are the subject of claim made under this coverage, but only to the extent of the actual payment made by the insurer;

(d) The person shall do whatever is proper to secure and shall do nothing after loss to prejudice such rights;

(e) If requested in writing by the insurer, the person shall take, through any representative not in conflict in interest with the person, designated by the insurer, such action as may be necessary or appropriate to recover payment as damages from such other uninsured person or organization, such action to be taken in the name of the person, but only to the extent of the payment made hereunder. In the event of a recovery, the insurer shall be reimbursed out of the recovery for expenses, costs and attorney fees incurred by the insurer in connection therewith; and

(f) The person shall execute and deliver to the insurer any instruments and papers as may be appropriate to secure the rights and obligations of the person and the insurer established by this provision.

(12)(a) The parties to this coverage agree that no cause of action shall accrue to the insured under this coverage unless within two years from the date of the accident:

(A) Agreement as to the amount due under the policy has been concluded;

(B) The insured or the insurer has formally instituted arbitration proceedings;

(C) The insured has filed an action against the insurer; or

(D) Suit for bodily injury has been filed against the uninsured motorist and, within two years from the date of settlement or final judgment against the uninsured motorist, the insured has formally instituted arbitration proceedings or filed an action against the insurer.

(b) For purposes of this subsection:

(A) "Date of settlement" means the date on which a written settlement agreement or release is signed by an insured or, in the absence of these documents, the date on which the insured or the attorney for the insured receives payment of any sum required by the settlement agreement. An advance payment as defined in ORS 31.550 shall not be deemed a payment of a settlement for purposes of the time limitation in this subsection.

(B) "Final judgment" means a judgment that has become final by lapse of time for appeal or by entry in an appellate court of an appellate judgment. [Formerly 743.792; 1993 c.18 §156; 1993 c.596 §38; 1997 c.808 §2; 2003 c.175 §2; 2005 c.22 §490; 2005 c.236 §1; 2005 c.246 §2; 2005 c.247 §2; 2007 c.131 §1; 2007 c.287 §3; 2007 c.328 §5; 2007 c.457 §1; 2007 c.782 §3]

Note: The amendments to 742.504 by section 6, chapter 328, Oregon Laws 2007, become operative January 2, 2012, and apply to motor vehicle liability policies issued or renewed on or after January 2, 2012. See sections 7 and 11, chapter 328, Oregon Laws 2007. The text that is operative on and after January 2, 2012, is set forth for the user's convenience.

742.504. Every policy required to provide the coverage specified in ORS 742.502 shall provide uninsured motorist coverage that in each instance is no less favorable in any respect to the insured or the beneficiary than if the following provisions were set forth in the policy. However, nothing contained in this section requires the insurer to reproduce in the policy the particular language of any of the following provisions:

(1)(a) Notwithstanding ORS 30.270, the insurer will pay all sums that the insured, the heirs or the legal representative of the insured is legally entitled to recover as general and special damages from the owner or operator of an uninsured vehicle because of bodily injury sustained by the insured caused by accident and arising out of the ownership, maintenance or use of the uninsured vehicle. Determination as to whether the insured, the insured's heirs or the insured's legal representative is legally entitled to recover such damages, and if so, the amount thereof, shall be made by agreement between the insured and the insurer, or, in the event of disagreement, may be determined by arbitration as provided in subsection (10) of this section.

(b) No judgment against any person or organization alleged to be legally responsible for bodily injury, except for proceedings instituted against the insurer as provided in this policy, shall be conclusive, as between the insured and the insurer, on the issues of liability of the person or organization or of the amount of damages to which the insured is legally entitled.

(2) As used in this policy:

(a) "Bodily injury" means bodily injury, sickness or disease, including death resulting therefrom.

(b) "Hit-and-run vehicle" means a vehicle that causes bodily injury to an insured arising out of physical contact of the vehicle with the insured or with a vehicle the insured is occupying at the time of the accident, provided:

(A) The identity of either the operator or the owner of the hit-and-run vehicle cannot be ascertained;

(B) The insured or someone on behalf of the insured reported the accident within 72 hours to a police, peace or judicial officer, to the Department of Transportation or to the equivalent department in the state where the accident occurred, and filed with the insurer within 30 days thereafter a statement under oath that the insured or the legal representative of the insured has a cause or causes of action arising out of the accident for damages against a person or persons whose identities are unascertainable, and setting forth the facts in support thereof; and

(C) At the insurer's request, the insured or the legal representative of the insured makes available for inspection the vehicle the insured was occupying at the time of the accident.

(c) "Insured," when unqualified and when applied to uninsured motorist coverage, means:

(A) The named insured as stated in the policy and any person designated as named insured in the schedule and, while residents of the same household, the spouse of any named insured and relatives of either, provided that neither the relative nor the spouse is the owner of a vehicle not described in the policy and that, if the named insured as stated in the policy is other than an individual or husband and wife who are residents of the same household, the named insured shall be only a person so designated in the schedule;

(B) Any child residing in the household of the named insured if the insured has performed the duties of a parent to the child by rearing the child as the insured's own although the child is not related to the insured by blood, marriage or adoption; and

(C) Any other person while occupying an insured vehicle, provided the actual use thereof is with the permission of the named insured.

(d) "Insured vehicle," except as provided in paragraph (e) of this provision, means:

(A) The vehicle described in the policy or a newly acquired or substitute vehicle, as each of those terms is defined in the public liability coverage of the policy, insured under the public liability provisions of the policy; or

(B) A nonowned vehicle operated by the named insured or spouse if a resident of the same household, provided that the actual use thereof is with the permission of the owner of the vehicle and the vehicle is not owned by nor furnished for the regular or frequent use of the insured or any member of the same household.

(e) "Insured vehicle" does not include a trailer of any type unless the trailer is a described vehicle in the policy.

(f) "Occupying" means in or upon or entering into or alighting from.

(g) "Phantom vehicle" means a vehicle that causes bodily injury to an insured arising out of a motor vehicle accident that is caused by a vehicle that has no physical contact with the insured or the vehicle the insured is occupying at the time of the accident, provided:

(A) The identity of either the operator or the owner of the phantom vehicle cannot be ascertained;

(B) The facts of the accident can be corroborated by competent evidence other than the testimony of the insured or any person having an uninsured motorist claim resulting from the accident; and

(C) The insured or someone on behalf of the insured reported the accident within 72 hours to a police, peace or judicial officer, to the Department of Transportation or to the equivalent department in the state where the accident occurred, and filed with the insurer within 30 days thereafter a statement under oath that the insured or the legal representative of the insured

has a cause or causes of action arising out of the accident for damages against a person or persons whose identities are unascertainable, and setting forth the facts in support thereof.

(h) "State" includes the District of Columbia, a territory or possession of the United States and a province of Canada.

(i) "Stolen vehicle" means an insured vehicle that causes bodily injury to the insured arising out of a motor vehicle accident if:

(A) The vehicle is operated without the consent of the insured;

(B) The operator of the vehicle does not have collectible motor vehicle bodily injury liability insurance;

(C) The insured or someone on behalf of the insured reported the accident within 72 hours to a police, peace or judicial officer or to the equivalent department in the state where the accident occurred; and

(D) The insured or someone on behalf of the insured cooperates with the appropriate law enforcement agency in the prosecution of the theft of the vehicle.

(j) "Sums that the insured, the heirs or the legal representative of the insured is legally entitled to recover as general and special damages from the owner or operator of an uninsured vehicle" means the amount of damages that:

(A) A claimant could have recovered in a civil action from the owner or operator at the time of the injury after determination of fault or comparative fault and resolution of any applicable defenses;

(B) Are calculated without regard to the tort claims limitations of ORS 30.260 to 30.300; and

(C) Are no larger than benefits payable under the terms of the policy as provided in subsection (7) of this section.

(k) "Uninsured vehicle," except as provided in paragraph (L) of this provision, means:

(A) A vehicle with respect to the ownership, maintenance or use of which there is no collectible motor vehicle bodily injury liability insurance, in at least the amounts or limits prescribed for bodily injury or death under ORS 806.070 applicable at the time of the accident with respect to any person or organization legally responsible for the use of the vehicle, or with respect to which there is collectible bodily injury liability insurance applicable at the time of the accident but the insurance company writing the insurance denies coverage or the company writing the insurance becomes voluntarily or involuntarily declared bankrupt or for which a receiver is appointed or becomes insolvent. It shall be a disputable presumption that a vehicle is uninsured in the event the insured and the insurer, after reasonable efforts, fail to discover within 90 days from the date of the accident, the existence of a valid and collectible motor vehicle bodily injury liability insurance applicable at the time of the accident.

(B) A hit-and-run vehicle.

(C) A phantom vehicle.

(D) A stolen vehicle.

(E) A vehicle that is owned or operated by a self-insurer:

(i) That is not in compliance with ORS 806.130 (1)(c); or

(ii) That provides recovery to an insured in an amount that is less than the limits for uninsured motorist coverage of the insured.

(L) "Uninsured vehicle" does not include:

(A) An insured vehicle, unless the vehicle is a stolen vehicle;

(B) Except as provided in paragraph (k)(E) of this subsection, a vehicle that is owned or operated by a self-insurer within the meaning of any motor vehicle financial responsibility law, motor carrier law or any similar law;

(C) A vehicle that is owned by the United States of America, Canada, a state, a political subdivision of any such government or an agency of any such government;

(D) A land motor vehicle or trailer, if operated on rails or crawler-treads or while located for use as a residence or premises and not as a vehicle;

(E) A farm-type tractor or equipment designed for use principally off public roads, except while actually upon public roads; or

(F) A vehicle owned by or furnished for the regular or frequent use of the insured or any member of the household of the insured.

(m) "Vehicle" means every device in, upon or by which any person or property is or may be transported or drawn upon a public highway, but does not include devices moved by human power or used exclusively upon stationary rails or tracks.

(3) This coverage applies only to accidents that occur on and after the effective date of the policy, during the policy period and within the United States of America, its territories or possessions, or Canada.

(4)(a) This coverage does not apply to bodily injury of an insured with respect to which the insured or the legal representative of the insured shall, without the written consent of the insurer, make any settlement with or prosecute to judgment any action against any person or organization who may be legally liable therefor.

(b) This coverage does not apply to bodily injury to an insured while occupying a vehicle, other than an insured vehicle, owned by, or furnished for the regular use of, the named insured or any relative resident in the same household, or through being struck by the vehicle.

(c) This coverage does not apply so as to inure directly or indirectly to the benefit of any workers' compensation carrier, any person or organization qualifying as a self-insurer under any workers' compensation or disability benefits law or any similar law or the State Accident Insurance Fund Corporation.

(d) This coverage does not apply with respect to underinsured motorist benefits unless:

(A) The limits of liability under any bodily injury liability insurance applicable at the time of the accident regarding the injured person have been exhausted by payment of judgments or settlements to the injured person or other injured persons;

(B) The described limits have been offered in settlement, the insurer has refused consent under paragraph (a) of this subsection and the insured protects the insurer's right of subrogation to the claim against the tortfeasor;

(C) The insured gives credit to the insurer for the unrealized portion of the described liability limits as if the full limits had been received if less than the described limits have been offered in settlement, and the insurer has consented under paragraph (a) of this subsection; or

(D) The insured gives credit to the insurer for the unrealized portion of the described liability limits as if the full limits had been received if less than the described limits have been offered in settlement and, if the insurer has refused consent under paragraph (a) of this subsection, the insured protects the insurer's right of subrogation to the claim against the tortfeasor.

(e) When seeking consent under paragraph (a) or (d) of this subsection, the insured shall allow the insurer a reasonable time in which to collect and evaluate information related to consent to the proposed offer of

settlement. The insured shall provide promptly to the insurer any information that is reasonably requested by the insurer and that is within the custody and control of the insured. Consent will be presumed to be given if the insurer does not respond within a reasonable time. For purposes of this paragraph, a "reasonable time" is no more than 30 days from the insurer's receipt of a written request for consent, unless the insured and the insurer agree otherwise.

(5)(a) As soon as practicable, the insured or other person making claim shall give to the insurer written proof of claim, under oath if required, including full particulars of the nature and extent of the injuries, treatment and other details entering into the determination of the amount payable hereunder. The insured and every other person making claim hereunder shall submit to examinations under oath by any person named by the insurer and subscribe the same, as often as may reasonably be required. Proof of claim shall be made upon forms furnished by the insurer unless the insurer fails to furnish the forms within 15 days after receiving notice of claim.

(b) Upon reasonable request of and at the expense of the insurer, the injured person shall submit to physical examinations by physicians selected by the insurer and shall, upon each request from the insurer, execute authorization to enable the insurer to obtain medical reports and copies of records.

(6) If, before the insurer makes payment of loss hereunder, the insured or the legal representative of the insured institutes any legal action for bodily injury against any person or organization legally responsible for the use of a vehicle involved in the accident, a copy of the summons and complaint or other process served in connection with the legal action shall be forwarded immediately to the insurer by the insured or the legal representative of the insured.

(7)(a) The limit of liability stated in the declarations as applicable to "each person" is the limit of the insurer's liability for all damages because of bodily injury sustained by one person as the result of any one accident and, subject to the above provision respecting each person, the limit of liability stated in the declarations as applicable to "each accident" is the total limit of the company's liability for all damages because of bodily injury sustained by two or more persons as the result of any one accident.

(b) Any payment made under this coverage to or for an insured shall be applied in reduction of any amount that the insured may be entitled to recover from any person who is an insured under the bodily injury liability coverage of this policy.

(c) Any amount payable under the terms of this coverage because of bodily injury sustained in an accident by a person who is an insured under this coverage shall be reduced by:

(A) All sums paid on account of the bodily injury by or on behalf of the owner or operator of the uninsured vehicle and by or on behalf of any other person or organization jointly or severally liable together with the owner or operator for the bodily injury, including all sums paid under the bodily injury liability coverage of the policy; and

(B) The amount paid and the present value of all amounts payable on account of the bodily injury under any workers' compensation law, disability benefits law or any similar law.

(d) Any amount payable under the terms of this coverage because of bodily injury sustained in an accident by a person who is an insured under this coverage shall be reduced by the credit given to the insurer pursuant to subsection (4)(d)(C) or (D) of this section.

(e) The amount payable under the terms of this coverage may not be reduced by the amount of liability

proceeds offered, described in subsection (4)(d)(B) or (D) of this section, that has not been paid to the injured person. If liability proceeds have been offered and not paid, the amount payable under the terms of the coverage shall include the amount of liability limits offered but not accepted due to the insurer's refusal to consent. The insured shall cooperate so as to permit the insurer to proceed by subrogation or assignment to prosecute the claim against the uninsured motorist.

(8) No action shall lie against the insurer unless, as a condition precedent thereto, the insured or the legal representative of the insured has fully complied with all the terms of this policy.

(9)(a) With respect to bodily injury to an insured:

(A) While occupying a vehicle owned by a named insured under this coverage, the insurance under this coverage is primary.

(B) While occupying a vehicle not owned by a named insured under this coverage, the insurance under this coverage shall apply only as excess insurance over any primary insurance available to the occupant that is similar to this coverage, and this excess insurance shall then apply only in the amount by which the applicable limit of liability of this excess coverage exceeds the sum of the applicable limits of liability of all primary insurance available to the occupant.

(b) If an insured is an insured under other primary or excess insurance available to the insured that is similar to this coverage, then the insured's damages are deemed not to exceed the higher of the applicable limits of liability of this insurance or the additional primary or excess insurance available to the insured, and the insurer is not liable under this coverage for a greater proportion of the insured's damages than the applicable limit of liability of this coverage bears to the sum of the applicable limits of liability of this insurance and other primary or excess insurance available to the insured.

(c) With respect to bodily injury to an insured while occupying any motor vehicle used as a public or livery conveyance, the insurance under this coverage shall apply only as excess insurance over any other insurance available to the insured that is similar to this coverage, and this insurance shall then apply only in the amount by which the applicable limit of liability of this coverage exceeds the sum of the applicable limits of liability of all other insurance.

(10) If any person making claim hereunder and the insurer do not agree that the person is legally entitled to recover damages from the owner or operator of an uninsured vehicle because of bodily injury to the insured, or do not agree as to the amount of payment that may be owing under this coverage, then, in the event the insured and the insurer elect by mutual agreement at the time of the dispute to settle the matter by arbitration, the arbitration shall take place under the arbitration laws of the State of Oregon or, if the parties agree, according to any other procedure. Any judgment upon the award rendered by the arbitrators may be entered in any court having jurisdiction thereof, provided, however, that the costs to the insured of the arbitration proceeding do not exceed \$100 and that all other costs of arbitration are borne by the insurer. "Costs" as used in this provision does not include attorney fees or expenses incurred in the production of evidence or witnesses or the making of transcripts of the arbitration proceedings. The person and the insurer each agree to consider themselves bound and to be bound by any award made by the arbitrators pursuant to this coverage in the event of such election. At the election of the insured, the arbitration shall be held:

(a) In the county and state of residence of the insured;

(b) In the county and state where the insured's cause of action against the uninsured motorist arose; or

(c) At any other place mutually agreed upon by the insured and the insurer.

(11) In the event of payment to any person under this coverage:

(a) The insurer shall be entitled to the extent of the payment to the proceeds of any settlement or judgment that may result from the exercise of any rights of recovery of the person against any uninsured motorist legally responsible for the bodily injury because of which payment is made;

(b) The person shall hold in trust for the benefit of the insurer all rights of recovery that the person shall have against such other uninsured person or organization because of the damages that are the subject of claim made under this coverage, but only to the extent that the claim is made or paid herein;

(c) If the insured is injured by the joint or concurrent act or acts of two or more persons, one or more of whom is uninsured, the insured shall have the election to receive from the insurer any payment to which the insured would be entitled under this coverage by reason of the act or acts of the uninsured motorist, or the insured may, with the written consent of the insurer, proceed with legal action against any or all persons claimed to be liable to the insured for the injuries. If the insured elects to receive payment from the insurer under this coverage, then the insured shall hold in trust for the benefit of the insurer all rights of recovery the insured shall have against any other person, firm or organization because of the damages that are the subject of claim made under this coverage, but only to the extent of the actual payment made by the insurer;

(d) The person shall do whatever is proper to secure and shall do nothing after loss to prejudice such rights;

(e) If requested in writing by the insurer, the person shall take, through any representative not in conflict in interest with the person, designated by the insurer, such action as may be necessary or appropriate to recover payment as damages from such other uninsured person or organization, such action to be taken in the name of the person, but only to the extent of the payment made hereunder. In the event of a recovery, the insurer shall be reimbursed out of the recovery for expenses, costs and attorney fees incurred by the insurer in connection therewith; and

(f) The person shall execute and deliver to the insurer any instruments and papers as may be appropriate to secure the rights and obligations of the person and the insurer established by this provision.

(12)(a) The parties to this coverage agree that no cause of action shall accrue to the insured under this coverage unless within two years from the date of the accident:

(A) Agreement as to the amount due under the policy has been concluded;

(B) The insured or the insurer has formally instituted arbitration proceedings;

(C) The insured has filed an action against the insurer; or

(D) Suit for bodily injury has been filed against the uninsured motorist and, within two years from the date of settlement or final judgment against the uninsured motorist, the insured has formally instituted arbitration proceedings or filed an action against the insurer.

(b) For purposes of this subsection:

(A) "Date of settlement" means the date on which a written settlement agreement or release is signed by an insured or, in the absence of these documents, the date on which the insured or the attorney for the insured receives payment of any sum required by the settlement agreement. An advance payment as defined in ORS 31.550 shall not be deemed a payment of a

settlement for purposes of the time limitation in this subsection.

(B) "Final judgment" means a judgment that has become final by lapse of time for appeal or by entry in an appellate court of an appellate judgment.

Note: Sections 2 and 4, chapter 328, Oregon Laws 2007, provide:

Sec. 2. Unless the parties agree otherwise, arbitration proceedings under ORS 742.504 shall be conducted as follows:

(1) Parties to an arbitration proceeding shall submit the dispute to arbitration by a panel of three arbitrators. The panel shall consist of one arbitrator chosen by each party and one arbitrator chosen by the two arbitrators previously chosen to sit on the panel.

(2) An arbitration proceeding shall be conducted under local court rules in the county where the arbitration is held. [2007 c.328 §2]

Sec. 4. Section 2 of this 2007 Act is repealed on January 2, 2012. [2007 c.328 §4]

742.506 Allocation of responsibility among insurers. Notwithstanding the contrary provisions of any policy, the provisions of ORS 742.504 (9)(a) to (c) shall control allocation of responsibility between insurers, except that if all policies potentially involved expressly allocate responsibility between insurers, or self-insurers, without repugnancy, then the terms of the policies shall control. [Formerly 743.795]

742.508 Definitions for ORS 742.508 and 742.510. As used in this section and ORS 742.510:

(1) "Covered motor vehicle" means a private passenger motor vehicle or a self-propelled mobile home that is owned by the named insured for which a premium has been paid for coverage under this section and ORS 742.510.

(2) "Insured vehicle" means a motor vehicle described in the declarations for which a specific premium charge indicates that underinsured motorists coverage is afforded but the term "insured vehicle" shall not include a vehicle while used as a public or livery conveyance.

(3) "Private passenger motor vehicle" means a four-wheel passenger or station wagon type motor vehicle not more than 12 years old and not used as a public or livery conveyance, and includes any other four-wheel motor vehicle of the utility, pickup body, sedan delivery or panel truck type not used for wholesale or retail delivery.

(4)(a) "Uninsured vehicle" means:

(A) A vehicle with respect to the ownership, maintenance or use of which there is no collectible property damage insurance, in at least the amounts or limits prescribed under ORS 806.070 (2)(c) applicable at the time of the accident with respect to any person or organization legally responsible for the use of such vehicle, or with respect to which there is such collectible insurance applicable

at the time of the accident but the insurance company writing the same denies coverage thereunder or, within two years of the date of the accident, such company writing the same becomes voluntarily or involuntarily declared bankrupt or for which a receiver is appointed or becomes insolvent. It shall be a disputable presumption that a vehicle is uninsured in the event the insured and the insurer, after reasonable efforts, fail to discover within 90 days from the date of the accident, the existence of valid and collectible property damage insurance applicable at the time of the accident.

(B) A hit-and-run vehicle as defined in subsection (5) of this section.

(C) A phantom vehicle as defined in subsection (5) of this section.

(b) As used in this section and ORS 742.510, "uninsured vehicle" does not include:

(A) An insured vehicle;

(B) A vehicle which is owned or operated by a self-insurer within the meaning of any motor vehicle financial responsibility law, motor carrier law or any similar law;

(C) A vehicle which is owned by the United States of America, Canada, a state, a political subdivision of any such government or an agency of any of the foregoing;

(D) A land motor vehicle or trailer, if operated on rails or crawler-treads or while located for use as a residence or premises and not as a vehicle;

(E) A farm-type tractor or equipment designed for use principally off public roads, except while actually upon public roads; or

(F) A vehicle owned by or furnished for the regular or frequent use of the insured or any member of the household of the insured.

(5) As used in this section:

(a) "Hit-and-run vehicle" means a vehicle that causes damage to the covered vehicle of an insured arising out of physical contact between the vehicles, provided:

(A) There cannot be ascertained the identity of either the operator or the owner of such hit-and-run vehicle;

(B) The insured or someone on behalf of the insured reports the accident within 72 hours to a police, peace or judicial officer, to the Department of Transportation or to the equivalent department in the state where the accident occurred, and files with the insurer within 30 days thereafter a statement under oath that the insured or the legal representative of the insured has a cause or causes of action arising out of such accident for

damages against a person or persons whose identity is unascertainable, and setting forth the facts in support thereof; and

(C) At the insurer's request, the insured or the legal representative of the insured makes available for inspection the vehicle which was insured at the time of the accident.

(b) "Phantom vehicle" means a vehicle that causes damage to the covered vehicle of an insured, although there is no physical contact between the vehicles, provided:

(A) There cannot be ascertained the identity of either the operator or the owner of such phantom vehicle;

(B) The facts of such accident can be corroborated by competent evidence other than the testimony of the insured or any passenger in the insured motor vehicle; and

(C) The insured or someone on behalf of the insured shall have reported the accident within 72 hours to a police, peace or judicial officer, to the Department of Transportation or to the equivalent department in the state where the accident occurred, and shall have filed with the insurer within 30 days thereafter a statement under oath that the insured or the legal representative of the insured has a cause or causes of action arising out of such accident for damages against a person or persons whose identity is unascertainable, and setting forth the facts in support thereof. [Formerly 743.796; 2003 c.175 §3]

Note: 742.508 and 742.510 [formerly 743.796 and 743.797] were added to and made a part of ORS chapter 743 by legislative action but were not added to ORS chapter 742 or any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

742.510 Property damage coverage for damage to vehicle caused by uninsured vehicle.

(1) Every insurer issuing motor vehicle liability insurance policies on private passenger motor vehicles or on self-propelled mobile homes for delivery in this state shall have for sale coverage for property damage to a vehicle of the insured caused by an uninsured vehicle. Coverage offered under this section shall be at least the amount prescribed to meet the requirements of ORS 806.070 for insurance for injury to or destruction of the property of others in any one accident.

(2) A policy with the coverage described in this section does not cover the first \$300 of property damage to the covered motor vehicle as the result of an accident with a hit-and-run vehicle or phantom vehicle. In all other cases the first \$200 damage is not covered.

(3) Coverage for property damage described in this section:

(a) Applies only to the amount of damages the insured may be legally entitled to recover.

(b) Does not include coverage for loss of use of the covered vehicle. [Formerly 743.797; 1991 c.768 §5]

Note: See note under 742.508.

Personal Injury Protection Benefits

742.518 Definitions for ORS 742.518 to 742.542. As used in ORS 742.518 to 742.542:

(1) "Evaluation services" means physical examinations or reviews of medical records of beneficiaries conducted at the request of an insurer by either an employee of the insurer or a third-party medical record or bill review service to determine whether the provision or continuation of medical services is necessary or reasonable.

(2) "Managed care services" means any system of health care delivery that attempts to control or coordinate use of health care services in order to contain health care expenditures or improve quality of health care services.

(3) "Motor vehicle" means a self-propelled land motor vehicle or trailer, other than:

(a) A farm-type tractor or other self-propelled equipment designed for use principally off public roads, while not upon public roads;

(b) A vehicle operated on rails or crawler-treads; or

(c) A vehicle located for use as a residence or premises.

(4) "Motorcycle" and "moped" have the meanings given those terms in ORS 801.345 and 801.365.

(5) "Occupying" means in, or upon, or entering into or alighting from.

(6) "Pedestrian" means a person while not occupying a self-propelled vehicle other than a wheelchair or a similar low-powered motorized or mechanically propelled vehicle that is designed specifically for use by a person with a physical disability and that is determined to be medically necessary for the occupant of the wheelchair or other low-powered vehicle.

(7) "Personal injury protection benefits" means the benefits described in ORS 742.518 to 742.542.

(8) "Private passenger motor vehicle" means a four-wheel passenger or station wagon type motor vehicle not used as a public or livery conveyance, and includes any other four-wheel motor vehicle of the utility, pickup body, sedan delivery or panel truck type not used for wholesale or retail delivery

other than farming, a self-propelled mobile home and a farm truck.

(9) "Proof of loss" means documentation that allows an insurer to determine whether a person is entitled to personal injury protection benefits and the amount of any benefit that is due.

(10) "Provider" has the meaning given that term in ORS 743.801. [2005 c.465 §2; 2007 c.70 §318; 2007 c.692 §1]

742.520 Personal injury protection benefits for motor vehicle liability policies; applicability. (1) Every motor vehicle liability policy issued for delivery in this state that covers any private passenger motor vehicle shall provide personal injury protection benefits to the person insured thereunder, members of that person's family residing in the same household, children not related to the insured by blood, marriage or adoption who are residing in the same household as the insured and being reared as the insured's own, passengers occupying the insured motor vehicle and pedestrians struck by the insured motor vehicle.

(2) Personal injury protection benefits apply to a person's injury or death resulting:

(a) In the case of the person insured under the policy and members of that person's family residing in the same household, from the use, occupancy or maintenance of any motor vehicle, except the following vehicles:

(A) A motor vehicle, including a motorcycle or moped, that is owned or furnished or available for regular use by any of such persons and that is not described in the policy;

(B) A motorcycle or moped which is not owned by any of such persons, but this exclusion applies only when the injury or death results from such person's operating or riding upon the motorcycle or moped; and

(C) A motor vehicle not included in subparagraph (A) or (B) of this paragraph and not a private passenger motor vehicle. However, this exclusion applies only when the injury or death results from such person's operating or occupying the motor vehicle.

(b) In the case of a passenger occupying or a pedestrian struck by the insured motor vehicle, from the use, occupancy or maintenance of the vehicle.

(3) Personal injury protection benefits consist of payments for expenses, loss of income and loss of essential services as provided in ORS 742.524.

(4) An insurer shall pay all personal injury protection benefits promptly after proof of loss has been submitted to the insurer.

(5) The potential existence of a cause of action in tort does not relieve an insurer from the duty to pay personal injury protection benefits.

(6) Disputes between insurers and beneficiaries about the amount of personal injury protection benefits, or about the denial of personal injury protection benefits, shall be decided by arbitration if mutually agreed to at the time of the dispute. Arbitration under this subsection shall take place as described in ORS 742.521.

(7) An insurer:

(a) May not enter into or renew any contract that provides, or has the effect of providing, managed care services to beneficiaries.

(b) May enter into or renew any contract that provides evaluation services for beneficiaries. [Formerly 743.800; 1991 c.768 §6; 1993 c.282 §1; 1993 c.596 §39; 1995 c.658 §114; 1997 c.344 §§1,2; 1997 c.808 §§3,4; 1999 c.434 §1; 2003 c.813 §1; 2005 c.465 §3; 2007 c.328 §8]

742.521 Conditions applicable to arbitration proceedings. (1) Arbitration proceedings under ORS 742.520 shall be conducted under local court rules in the county where the arbitration is held.

(2) Findings and awards made in an arbitration proceeding under this section:

(a) Are binding on the parties to the arbitration proceeding;

(b) Are not binding on any other party; and

(c) May not be used for the purpose of collateral estoppel. [2007 c.328 §3]

Note: 742.521 was added to and made a part of ORS chapter 742 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

742.522 Binding arbitration under ORS 742.520; costs. (1) Costs to the insured of the arbitration proceeding under ORS 742.520 (6) shall not exceed \$100 and all other costs of arbitration shall be borne by the insurer.

(2) As used in this section, "costs" does not include attorney fees or expenses incurred in the production of evidence or witnesses or the making of transcripts of the arbitration proceedings. [Formerly 743.802; 2007 c.328 §9]

742.524 Contents of personal injury protection benefits; deductibles. (1) Personal injury protection benefits as required by ORS 742.520 shall consist of the following payments for the injury or death of each person:

(a) All reasonable and necessary expenses of medical, hospital, dental, surgical, ambulance and prosthetic services incurred within one year after the date of the person's injury,

but not more than \$15,000 in the aggregate for all such expenses of the person. Expenses of medical, hospital, dental, surgical, ambulance and prosthetic services shall be presumed to be reasonable and necessary unless the provider is given notice of denial of the charges not more than 60 calendar days after the insurer receives from the provider notice of the claim for the services. At any time during the first 50 calendar days after the insurer receives notice of claim, the provider shall, within 10 business days, answer in writing questions from the insurer regarding the claim. For purposes of determining when the 60-day period provided by this paragraph has elapsed, counting of days shall be suspended if the provider does not supply written answers to the insurer within 10 days and shall not resume until the answers are supplied.

(b) If the injured person is usually engaged in a remunerative occupation and if disability continues for at least 14 days, 70 percent of the loss of income from work during the period of the injured person's disability until the date the person is able to return to the person's usual occupation. This benefit is subject to a maximum payment of \$1,250 per month and a maximum payment period in the aggregate of 52 weeks. As used in this paragraph, "income" includes but is not limited to salary, wages, tips, commissions, professional fees and profits from an individually owned business or farm.

(c) If the injured person is not usually engaged in a remunerative occupation and if disability continues for at least 14 days, the expenses reasonably incurred by the injured person for essential services that were performed by a person who is not related to the injured person or residing in the injured person's household in lieu of the services the injured person would have performed without income during the period of the person's disability until the date the person is reasonably able to perform such essential services. This benefit is subject to a maximum payment of \$30 per day and a maximum payment period in the aggregate of 52 weeks.

(d) All reasonable and necessary funeral expenses incurred within one year after the date of the person's injury, but not more than \$5,000.

(e) If the injured person is a parent of a minor child and is required to be hospitalized for a minimum of 24 hours, \$25 per day for child care, with payments to begin after the initial 24 hours of hospitalization and to be made for as long as the person is unable to return to work if the person is engaged in a remunerative occupation or for as long as the person is unable to perform essential services that the person would have per-

formed without income if the person is not usually engaged in a remunerative occupation, but not to exceed \$750.

(2) With respect to the insured person and members of that person's family residing in the same household, an insurer may offer forms of coverage for the benefits required by subsection (1)(a), (b) and (c) of this section with deductibles of up to \$250. [Formerly 743.805; 1991 c.768 §7; 2003 c.813 §2; 2005 c.341 §1]

742.525 Provider charges. (1) Except as provided in subsection (2) of this section, a provider shall charge a person who receives personal injury protection benefits or that person's insurer the lesser of:

(a) An amount that does not exceed the amount the provider charges the general public; or

(b) An amount that does not exceed the fee schedules for medical services published pursuant to ORS 656.248 for expenses of medical, hospital, dental, surgical, ambulance and prosthetic services.

(2) For expenses of hospital services that are subject to the adjusted cost-to-charge ratio specified for a hospital in the hospital fee schedule published pursuant to ORS 656.248, a provider of hospital services shall charge a person who receives personal injury protection benefits or that person's insurer the greater of:

(a) The amount of the hospital charges multiplied by the adjusted cost-to-charge ratio specified for the hospital; or

(b) Ninety percent of the hospital charges. [2003 c.813 §4; 2005 c.341 §4]

Note: 742.525 was added to and made a part of 742.518 to 742.542 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

742.526 Primary nature of benefits. (1) The personal injury protection benefits with respect to:

(a) The insured and members of the family of the insured residing in the same household injured while occupying the insured motor vehicle shall be primary.

(b) Passengers injured while occupying the insured motor vehicle shall be primary.

(c) The insured and members of family residing in the same household injured as pedestrians shall be primary.

(d) The insured and members of family residing in the same household injured while occupying a motor vehicle not insured under the policy shall be excess.

(e) Pedestrians injured by the insured motor vehicle, other than the insured and members of family residing in the same household, shall be excess over any other collateral benefits to which the injured per-

son is entitled, including but not limited to insurance benefits, governmental benefits or gratuitous benefits.

(2) The personal injury protection benefits may be reduced or eliminated, if it is so provided in the policy, when the injured person is entitled to receive, under the laws of this state or any other state or the United States, workers' compensation benefits or any other similar medical or disability benefits. [Formerly 743.810]

742.528 Notice of denial of payment of benefits. An insurer who denies payment of personal injury protection benefits to or on behalf of an insured shall:

(1) Provide written notice of the denial, within 60 calendar days of receiving a claim from the provider, to the insured, stating the reason for the denial and informing the insured of the method for contesting the denial; and

(2) Provide a copy of the notice of the denial, within 60 calendar days of receiving a claim from the provider, to a provider of services under ORS 742.524 (1)(a). [Formerly 743.812; 1993 c.265 §1]

742.529 Payment based on incorrect determination of responsibility; notice; repayment. If personal injury protection benefits are paid based on information that appeared to establish proof of loss and the insurer paying the benefits later determines the insurer was not responsible for the payment, the insurer shall give notice and explanation to the provider that the payment was incorrectly issued. Immediately after receiving the notice and explanation the provider shall promptly repay the insurer. [2007 c.692 §3]

Note: 742.529 was added to and made a part of 742.518 to 742.542 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

742.530 Exclusions from coverage. (1) The insurer may exclude from the coverage for personal injury protection benefits any injured person who:

(a) Intentionally causes self-injury;

(b) Is participating in any prearranged or organized racing or speed contest or practice or preparation for any such contest; or

(c) Willfully conceals or misrepresents any material fact in connection with a claim for personal injury protection benefits.

(2) The insurer may exclude from the coverage for the benefits required by ORS 742.524 (1)(b) and (c) any person injured as a pedestrian in an accident outside this state, other than the insured person or a member of that person's family residing in the same household. [Formerly 743.815; 2005 c.341 §2]

742.532 Benefits may be more favorable than those required by ORS 742.520, 742.524 and 742.530. Nothing in ORS 742.518 to 742.542 is intended to prevent an insurer from providing more favorable benefits than the personal injury protection benefits described in ORS 742.520, 742.524 and 742.530. [Formerly 743.820]

742.534 Reimbursement of other insurers paying benefits; arbitrating issues of liability and amount of reimbursement. (1) Except as provided in ORS 742.544, every authorized motor vehicle liability insurer whose insured is or would be held legally liable for damages for injuries sustained in a motor vehicle accident by a person for whom personal injury protection benefits have been furnished by another such insurer, or for whom benefits have been furnished by an authorized health insurer, shall reimburse such other insurer for the benefits it has so furnished if it has requested such reimbursement, has not given notice as provided in ORS 742.536 that it elects recovery by lien in accordance with that section and is entitled to reimbursement under this section by the terms of its policy. Reimbursement under this subsection, together with the amount paid to injured persons by the liability insurer, shall not exceed the limits of the policy issued by the insurer.

(2) In calculating such reimbursement, the amount of benefits so furnished shall be diminished in proportion to the amount of negligence attributable to the person for whom benefits have been so furnished, and the reimbursement shall not exceed the amount of damages legally recoverable by the person.

(3) Disputes between insurers as to such issues of liability and the amount of reimbursement required by this section shall be decided by arbitration.

(4) Findings and awards made in such an arbitration proceeding are not admissible in any action at law or suit in equity.

(5) If an insurer does not request reimbursement under this section for recovery of personal injury protection payments, then the insurer may only recover personal injury protection payments under the provisions of ORS 742.536 or 742.538. [Formerly 743.825; 1993 c.709 §7; 2007 c.392 §1]

742.536 Notice of claim or legal action to insurer; insurer to elect manner of recovery of benefits furnished; lien of insurer. (1) When an authorized motor vehicle liability insurer has furnished personal injury protection benefits, or an authorized health insurer has furnished benefits, for a person injured in a motor vehicle accident, if such injured person makes claim, or institutes legal action, for damages for such inju-

ries against any person, such injured person shall give notice of such claim or legal action to the insurer by personal service or by registered or certified mail. Service of a copy of the summons and complaint or copy of other process served in connection with such a legal action shall be sufficient notice to the insurer, in which case a return showing service of such notice shall be filed with the clerk of the court but shall not be a part of the record except to give notice.

(2) The insurer may elect to seek reimbursement as provided in this section for benefits it has so furnished, out of any recovery under such claim or legal action, if the insurer has not been a party to an inter-insurer reimbursement proceeding with respect to such benefits under ORS 742.534 and is entitled by the terms of its policy to the benefit of this section. The insurer shall give written notice of such election within 30 days from the receipt of notice or knowledge of such claim or legal action to the person making claim or instituting legal action and to the person against whom claim is made or legal action instituted, by personal service or by registered or certified mail. In the case of a legal action, a return showing service of such notice of election shall be filed with the clerk of the court but shall not be a part of the record except to give notice to the claimant and the defendant of the lien of the insurer.

(3) If the insurer so serves such written notice of election and, where applicable, such return is so filed:

(a) The insurer has a lien against such cause of action for benefits it has so furnished, less the proportion, not to exceed 100 percent, of expenses, costs and attorney fees incurred by the injured person in connection with the recovery that the amount of the lien before such reduction bears to the amount of the recovery.

(b) The injured person shall include as damages in such claim or legal action the benefits so furnished by the insurer.

(c) In the case of a legal action, the action shall be taken in the name of the injured person.

(4) As used in this section, "makes claim" or "claim" refers to a written demand made and delivered for a specific amount of damages and which meets other requirements reasonably established by the director's rule. [Formerly 743.828]

742.538 Subrogation rights of insurers to certain amounts received by claimant; recovery actions against persons causing injury. If a motor vehicle liability insurer has furnished personal injury protection benefits, or a health insurer has furnished

benefits, for a person injured in a motor vehicle accident, and the interinsurer reimbursement benefit of ORS 742.534 is not available under the terms of that section, and the insurer has not elected recovery by lien as provided in ORS 742.536, and is entitled by the terms of its policy to the benefit of this section:

(1) The insurer is entitled to the proceeds of any settlement or judgment that may result from the exercise of any rights of recovery of the injured person against any person legally responsible for the accident, to the extent of such benefits furnished by the insurer less the insurer's share of expenses, costs and attorney fees incurred by the injured person in connection with such recovery.

(2) The injured person shall hold in trust for the benefit of the insurer all such rights of recovery which the injured person has, but only to the extent of such benefits furnished.

(3) The injured person shall do whatever is proper to secure, and shall do nothing after loss to prejudice, such rights.

(4) If requested in writing by the insurer, the injured person shall take, through any representative not in conflict in interest with the injured person designated by the insurer, such action as may be necessary or appropriate to recover such benefits furnished as damages from such responsible person, such action to be taken in the name of the injured person, but only to the extent of the benefits furnished by the insurer. In the event of a recovery, the insurer shall also be reimbursed out of such recovery for the injured person's share of expenses, costs and attorney fees incurred by the insurer in connection with the recovery.

(5) In calculating respective shares of expenses, costs and attorney fees under this section, the basis of allocation shall be the respective proportions borne to the total recovery by:

(a) Such benefits furnished by the insurer; and

(b) The total recovery less (a).

(6) The injured person shall execute and deliver to the insurer such instruments and papers as may be appropriate to secure the rights and obligations of the insurer and the injured person as established by this section.

(7) Any provisions in a motor vehicle liability insurance policy or health insurance policy giving rights to the insurer relating to subrogation or the subject matter of this section shall be construed and applied in accordance with the provisions of this section. [Formerly 743.830]

742.540 Rules. The Director of the Department of Consumer and Business Services shall have authority to issue such rules as are reasonably necessary to carry out the purposes of ORS 742.518 to 742.542. [Formerly 743.833]

742.542 Effect of personal injury protection benefits paid. Payment by a motor vehicle liability insurer of personal injury protection benefits for its own insured shall be applied in reduction of the amount of damages that the insured may be entitled to recover from the insurer under uninsured or underinsured motorist coverage for the same accident but may not be applied in reduction of the uninsured or underinsured motorist coverage policy limits. [Formerly 743.835; 1997 c.808 §10]

742.544 Reimbursement for personal injury protection benefits paid. (1) A provider of personal injury protection benefits shall be reimbursed for personal injury protection payments made on behalf of any person only to the extent that the total amount of benefits paid exceeds the economic damages as defined in ORS 31.710 suffered by that person. As used in this section, "total amount of benefits" means the amount of money recovered by a person from:

(a) Applicable underinsured motorist benefits described in ORS 742.502 (2);

(b) Liability insurance coverage available to the person receiving the personal injury protection benefits from other parties to the accident;

(c) Personal injury protection payments; and

(d) Any other payments by or on behalf of the party whose fault caused the damages.

(2) Nothing in this section requires a person to repay more than the amount of personal injury protection benefits actually received. [1993 c.709 §9]

Cancellation

742.560 Definitions for ORS 742.560 to 742.572. As used in ORS 742.560 to 742.572:

(1) "Cancellation" means termination of coverage by an insurer, other than termination at the request of the insured, during a policy period.

(2) "Expiration" means termination of coverage by reason of the policy having reached the end of the term for which it was issued or the end of the period for which a premium has been paid.

(3) "Nonpayment of premium" means failure of the named insured to discharge when due any of the insured's obligations in connection with the payment of premiums on the policy, or any installment of such pre-

mium, whether the premium is payable directly to the insurer or an insurance producer who is its agent or indirectly under any premium finance plan or extension of credit.

(4) “Nonrenewal” means a notice by an insurer to the named insured that the insurer is unwilling to renew a policy.

(5) “Policy” means any insurance policy that provides automobile liability coverage, uninsured motorist coverage, automobile medical payments coverage or automobile physical damage coverage on individually owned private passenger vehicles, including pickup and panel trucks and station wagons, that are not used as a public or livery conveyance for passengers, nor rented to others. However, ORS 742.560 to 742.572 do not apply to any policy:

(a) Issued under an automobile assigned risk plan;

(b) Insuring more than four automobiles;

(c) Covering garage, automobile sales agency, repair shop, service station or public parking place operation hazards; or

(d) Issued principally to cover personal or premises liability of an insured even though such insurance may also provide some incidental coverage for liability arising out of the ownership, maintenance or use of a motor vehicle on the premises of such insured or on the ways immediately adjoining such premises.

(6) “Renewal” or “to renew” means to continue coverage for an additional policy period upon expiration of the current policy period of a policy. Any policy with a policy period or term of less than six months shall for the purpose of ORS 742.560 to 742.572 be considered as if written for a policy period or term of six months. Any policy written for a term longer than one year or any policy with no fixed expiration date shall for the purpose of ORS 742.560 to 742.572 be considered as if written for successive policy periods or terms of one year but not extending beyond the actual term for which the policy was written. [Formerly 743.900; 2003 c.364 §103; 2007 c.71 §239]

742.562 Grounds for cancellation of policies; notice required; applicability. (1) A notice of cancellation of a policy shall be effective only if it is based on one or more of the following reasons:

(a) Nonpayment of premium.

(b) Fraud or material misrepresentation affecting the policy or in the presentation of a claim thereunder, or violation of any of the terms or conditions of the policy.

(c) The named insured or any operator either resident in the same household or who

customarily operates an automobile insured under the policy has had driving privileges suspended or revoked pursuant to law during the policy period, or, if the policy is a renewal, during its policy period or the 180 days immediately preceding its effective date. An insurer may not cancel a policy for the reason that the driving privileges of the named insured or operator were suspended pursuant to ORS 809.280 (7) or (9) if the suspension was based on a nondriving offense.

(2) This section shall not apply to any policy or coverage which has been in effect less than 60 days at the time notice of cancellation is mailed or delivered by the insurer unless it is a renewal policy.

(3) This section shall not apply to nonrenewal. [Formerly 743.905; 1991 c.860 §7a]

742.564 Manner of giving cancellation notice. (1) No notice of cancellation of a policy to which ORS 742.562 applies shall be effective unless mailed or delivered by the insurer to the named insured at least 30 days prior to the effective date of cancellation and accompanied by a statement of the reason or reasons for cancellation, provided, however, that where cancellation is for nonpayment of premium at least 10 days’ notice of cancellation accompanied by the reason therefor shall be given.

(2) This section shall not apply to nonrenewal. [Formerly 743.910]

742.566 Renewal of policies; requirements for refusal to renew. (1) An insurer shall offer renewal of a policy, contingent upon payment of premium as stated in the offer, to an insured unless the insurer mails or delivers to the named insured, at the address shown in the policy, at least 30 days’ advance notice of nonrenewal. Such notice shall contain or be accompanied by a statement of the reason or reasons for nonrenewal.

(2) The insurer shall not be required to notify the named insured or any other insured of nonrenewal of the policy if the insurer has mailed or delivered a notice of expiration or cancellation on or prior to the 30th day preceding expiration of the policy period.

(3) Notwithstanding the failure of an insurer to comply with this section, the policy shall terminate on the effective date of any replacement or succeeding automobile insurance policy, with respect to any automobile designated in both policies.

(4) An insurer may not refuse to renew a policy for the reason that the driving privileges of the named insured or any operator either resident in the same household or who customarily operates an automobile insured under the policy were suspended pursuant to

ORS 809.280 (7) or (9) if the suspension was based on a nondriving offense. [Formerly 743.916; 1991 c.860 §7b]

742.568 Proof of cancellation or non-renewal notice. Proof of mailing notice of cancellation, or of intention not to renew or of reasons for cancellation, to the named insured at the address shown in the policy, shall be sufficient proof of notice. [Formerly 743.920]

742.570 Notifying insured under canceled or unrenewed policy of eligibility for participation in insurance pool. When automobile bodily injury and property damage liability coverage is canceled, other than for nonpayment of premium, or in the event of failure to renew automobile bodily injury and property damage liability coverage to which ORS 742.566 applies, the insurer shall notify the named insured of possible eligibility for automobile liability insurance through any insurance pool or facility operating in this state, whether voluntarily or under statute or rule. Such notice shall accompany or be included in the notice of cancellation or the notice of intent not to renew. [Formerly 743.925]

742.572 Immunity from liability of persons furnishing information regarding cancellation or nonrenewal of policies. There shall be no liability on the part of and no cause of action of any nature shall arise against the Director of the Department of Consumer and Business Services or against any insurer, its authorized representative, its agents, its employees, or any firm, person or corporation furnishing to the insurer information as to reasons for cancellation or nonrenewal, for any statement made by any of them in any written notice of cancellation or nonrenewal, or in any other communication, oral or written, specifying the reasons for cancellation or nonrenewal, or providing of information pertaining thereto, or for statements made or evidence submitted at any hearings conducted in connection therewith. [Formerly 743.930]

Report by Insurer to Department of Transportation

742.580 Report of cancellation, nonrenewal or issuance of motor vehicle liability policy. Every insurer that issues motor vehicle insurance that is designed to meet either the financial or future responsibility requirements of ORS chapter 806 shall report to the Department of Transportation within 30 days of the day that a person or the insurer cancels or fails to renew such a policy and within 15 days of the day that an insurer issues such a policy. The insurer shall report the person's name and residence address, the vehicle identification number of each vehicle

covered by the policy, whether the policy was bought, canceled or not renewed and any other information required by the department by rule under ORS 806.195. [1993 c.746 §4]

Chapter 746

INSURANCE TRADE PRACTICES

746.015 Discrimination; noncompliance; hearing. (1) No person shall make or permit any unfair discrimination between individuals of the same class and equal expectation of life, or between risks of essentially the same degree of hazard, in the availability of insurance, in the application of rates for insurance, in the dividends or other benefits payable under insurance policies, or in any other terms or conditions of insurance policies.

(2) Discrimination by an insurer in the application of its underwriting standards or rates based solely on an individual's physical disability is prohibited, unless such action is based on sound actuarial principles or is related to actual or reasonably anticipated experience. For purposes of this subsection, "physical disability" shall include, but not be limited to, blindness, deafness, hearing or speaking impairment or loss, or partial loss, of function of one or more of the upper or lower extremities.

(3) Discrimination by an insurer in the application of its underwriting standards or rates based solely upon an insured's or applicant's attaining or exceeding 65 years of age is prohibited, unless such discrimination is clearly based on sound actuarial principles or is related to actual or reasonably anticipated experience.

(4)(a) No insurer, on the basis of the status of an insured or prospective insured as a victim of domestic violence, shall do any of the following:

(A) Deny, cancel or refuse to issue or renew an insurance policy;

(B) Demand or require a greater premium or payment;

(C) Designate domestic violence as a preexisting condition for which coverage will be denied or reduced;

(D) Exclude or limit coverage for losses or deny a claim; or

(E) Fix any lower rate for or discriminate in the fees or commissions of an insurance producer for writing or renewing a policy.

(b) The fact that an insured or prospective insured is or has been a victim of domestic violence shall not be considered a permitted underwriting or rating criterion.

(c) Nothing in this subsection prohibits an insurer from taking an action described in paragraph (a) of this subsection if the action is otherwise permissible by law and is taken in the same manner and to the same extent with respect to all insureds and prospective insureds without regard to whether the insured or prospective insured is a victim of domestic violence.

(d) An insurer that complies in good faith with the requirements of this subsection shall not be subject to civil liability due to such compliance.

(e) For purposes of this subsection, "domestic violence" means the occurrence of one or more of the following acts between family or household members:

(A) Attempting to cause or intentionally or knowingly causing physical injury;

(B) Intentionally or knowingly placing another in fear of imminent serious physical injury; or

(C) Committing sexual abuse in any degree as defined in ORS 163.415, 163.425 and 163.427.

(5) If the Director of the Department of Consumer and Business Services has reason to believe that an insurer in the application of its underwriting standards or rates is not complying with the requirements of this section, the director shall, unless the director has reason to believe the noncompliance is willful, give notice in writing to the insurer stating in what manner such noncompliance is alleged to exist and specifying a reasonable time, not less than 10 days after the date of mailing, in which the noncompliance may be corrected.

(6)(a) If the director has reason to believe that noncompliance by an insurer with the requirements of this section is willful, or if, within the period prescribed by the director in the notice required by subsection (5) of this section, the insurer does not make the changes necessary to correct the noncompliance specified by the director or establish to the satisfaction of the director that such specified noncompliance does not exist, the director may hold a hearing in connection therewith. Not less than 10 days before the date of such hearing the director shall mail to the insurer written notice of the hearing, specifying the matters to be considered.

(b) If, after the hearing, the director finds that the insurer's application of its underwriting standards or rates violates the requirements of this section, the director may issue an order specifying in what respects such violation exists and stating when, within a reasonable period of time, further such application shall be prohibited. If the

director finds that the violation was willful, the director may suspend or revoke the certificate of authority of the insurer.

(7) Affiliated workers' compensation insurers having reinsurance agreements which result in one carrier ceding 80 percent or more of its workers' compensation premium to the other, while utilizing different workers' compensation rate levels without objective evidence to support such differences, shall be presumed to be engaging in unfair discrimination. [1967 c.359 §568; 1977 c.331 §1; 1979 c.140 §1; 1987 c.676 §2; 1987 c.884 §53; 1997 c.564 §1; 1999 c.59 §229; 2003 c.364 §134; 2007 c.70 §319]

746.035 Inducements not specified in policy. Except as otherwise expressly provided by the Insurance Code, no person shall permit, offer to make or make any contract of insurance, or agreement as to such contract, unless all agreements or understandings by way of inducement are plainly expressed in the policy issued thereon. [1967 c.359 §570]

746.075 Misrepresentation generally.

(1) A person may not engage, directly or indirectly, in any action described in subsection (2) of this section in connection with:

(a) The offer or sale of any insurance; or

(b) Any inducement or attempted inducement of any insured or person with ownership rights under an issued life insurance policy to lapse, forfeit, surrender, assign, effect a loan against, retain, exchange or convert the policy.

(2) Subsection (1) of this section applies to the following actions:

(a) Making, issuing, circulating or causing to be made, issued or circulated, any estimate, illustration, circular or statement misrepresenting the terms of any policy issued or to be issued or the benefits or advantages therein or the dividends or share of surplus to be received thereon;

(b) Making any false or misleading representation as to the dividends or share of surplus previously paid on similar policies;

(c) Making any false or misleading representation as to the financial condition of any insurer, or as to the legal reserve system upon which any life insurer operates;

(d) Using any name or title of any policy or class of policies misrepresenting the true nature thereof;

(e) Employing any device, scheme or artifice to defraud;

(f) Obtaining money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statement, in light of the circumstances under which it was made, not misleading;

(g) Engaging in any other transaction, practice or course of business that operates as a fraud or deceit upon the purchaser, insured or person with policy ownership rights; or

(h) Materially misrepresenting the provider network of an insurer offering managed health insurance or preferred provider organization insurance as defined in ORS 743.801, including its composition and the availability of its providers to enrollees in the plan. [1967 c.359 §574; 2001 c.266 §7]

746.100 Misrepresentation in insurance applications or transactions. No person shall make a false or fraudulent statement or representation on or relative to an application for insurance, or for the purpose of obtaining a fee, commission, money or benefit from an insurer or insurance producer. [Formerly 736.460; 2003 c.364 §138]

746.110 False, deceptive or misleading statements. No person shall make, publish, disseminate, circulate, or place before the public, or cause, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in a newspaper, magazine or other publication, or in the form of a notice, circular, pamphlet, letter or poster, or over any radio or television station, or in any other way, an advertisement, announcement or statement containing any assertion, representation or statement with respect to the business of insurance or with respect to any person in the conduct of the insurance business, which is untrue, deceptive or misleading. [Formerly 736.608]

746.120 Illegal dealing in premiums. No person shall willfully collect any sum as premium or charge for insurance which is not then provided, or is not in due course to be provided subject to acceptance of the risk by the insurer, under an insurance policy issued by an insurer in conformity to the Insurance Code. [1967 c.359 §579]

746.195 Insurance on property securing loan or credit; certain practices by depository institutions prohibited. (1) A depository institution may not:

(a) Solicit the sale of insurance for the protection of real or personal property after a person indicates interest in securing a loan or credit extension, until the depository institution has agreed to make the loan or credit extension;

(b) Refuse to accept a written binder issued by an insurance producer as proof that temporary insurance exists covering the real or personal property that is the subject matter of, or security for, a loan or extension of credit, and that a policy of insurance will be issued covering that property. A written binder issued by an insurance producer or

insurer covering real or personal property that is the subject matter of, or security for, a loan or extension of credit shall be effective until a policy of insurance is issued in lieu thereof, including within its terms the identical insurance bound under the binder and the premium therefor, or until notice of the cancellation of the binder is received by the borrower and the depository institution extending credit or offering the loan. When a depository institution closes on a binder under ORS 742.043, the insurance producer or insurer issuing the binder shall be bound to provide a policy of insurance, equivalent in coverage to the coverage set forth in the binder, within 60 days from the date of the binder. The provisions of this paragraph do not apply when prohibited by federal or state statute or regulations; or

(c) Use or disclose to any other insurance producer, other than the original insurance producer, the information relating to a policy of insurance furnished by a borrower unless the original insurance producer fails to deliver a policy of insurance within 60 days prior to expiration to the depository institution without first procuring the written consent of the borrower.

(2) As used in this section, "depository institution" means a financial institution as that term is defined in ORS 706.008. [1977 c.742 §4; 1987 c.916 §10; 2003 c.363 §12; 2003 c.364 §144a]

746.201 Depository institution to obtain required property insurance when borrower does not; notice required. (1) In a contract or loan agreement, or in a separate document accompanying the contract or loan agreement and signed by the mortgagor, borrower or purchaser, that provides for a loan or other financing secured by the mortgagor's, borrower's or purchaser's real or personal property and that authorizes the secured party to place insurance on the property when the mortgagor, borrower or purchaser fails to maintain the insurance as required by the contract or loan agreement or the separate document, a warning in substantially the following form shall be set forth in 10-point type:

WARNING

Unless you provide us with evidence of the insurance coverage as required by our contract or loan agreement, we may purchase insurance at your expense to protect our interest. This insurance may, but need not, also protect your interest. If the collateral becomes damaged, the coverage we purchase may not pay any claim you make or any claim made against you. You may later cancel this coverage by providing evidence

that you have obtained property coverage elsewhere.

You are responsible for the cost of any insurance purchased by us. The cost of this insurance may be added to your contract or loan balance. If the cost is added to your contract or loan balance, the interest rate on the underlying contract or loan will apply to this added amount. The effective date of coverage may be the date your prior coverage lapsed or the date you failed to provide proof of coverage.

The coverage we purchase may be considerably more expensive than insurance you can obtain on your own and may not satisfy any need for property damage coverage or any mandatory liability insurance requirements imposed by applicable law.

(2) Substantial compliance by a secured party with subsection (1) of this section constitutes a complete defense to any claim arising under the laws of this state challenging the secured party's placement of insurance on the real or personal property in which the secured party has a security interest, for the protection of the secured party's interest in the property.

(3) Nothing contained in this section shall be construed to require any secured party to place or maintain insurance on real or personal property in which the secured party has a security interest, and the secured party shall not be liable to the mortgagor, borrower or purchaser or to any other party as a result of the failure of the secured party to place or maintain such insurance.

(4) The failure of a secured party prior to January 1, 1996, to include in a contract or loan agreement, or in a separate document accompanying the contract or loan agreement, the notice set forth in subsection (1) of this section shall not be admissible in any court or arbitration proceeding or otherwise used to prove that a secured party's actions with respect to the placement or maintenance of insurance on real or personal property in which the secured party has a security interest are or were unlawful or otherwise improper. A secured party shall not be liable to the mortgagor, borrower or purchaser or to any other party for placing such insurance in accordance with the terms of an otherwise legal contract or loan agreement with the mortgagor, borrower or purchaser entered into prior to January 1, 1996. [1977 c.742 §5; 1995 c.313 §3; 2003 c.363 §13]

746.213 Definitions for ORS 746.213 to 746.219. As used in ORS 746.213 to 746.219:

(1) "Affiliate" means any company that controls, is controlled by or is under common control with another company.

(2) "Customer" means an individual who purchases, applies to purchase or is solicited to purchase insurance products primarily for personal, family or household purposes.

(3) "Depository institution" means a financial institution as that term is defined in ORS 706.008. [2003 c.363 §2]

Note: 746.213 to 746.219 were added to and made a part of the Insurance Code by legislative action but were not added to ORS chapter 746 or any series therein. See Preface to Oregon Revised Statutes for further explanation.

746.215 Regulation of depository institutions with regard to insurance sales or solicitations. (1) A depository institution or an affiliate of a depository institution that lends money or extends credit may not:

(a) As a condition precedent to the lending of money or extension of credit, or any renewal thereof, require that the person to whom the money or credit is extended, or whose obligation a creditor is to acquire or finance, negotiate any policy or renewal thereof through a particular insurer or group of insurers or insurance producer or group of insurance producers.

(b) Reject an insurance policy solely because the policy has been issued or underwritten by a person who is not associated with the depository institution or affiliate when insurance is required in connection with a loan or the extension of credit.

(c) As a condition for extending credit or offering any product or service that is equivalent to an extension of credit, require that a customer obtain insurance from a depository institution or an affiliate of a depository institution, or from a particular insurer or insurance producer. This paragraph does not prohibit a depository institution or an affiliate of a depository institution from informing a customer or prospective customer that insurance is required in order to obtain a loan or credit, that loan or credit approval is contingent upon the procurement by the customer of acceptable insurance or that insurance is available from the depository institution or an affiliate of the depository institution.

(d) Unreasonably reject an insurance policy furnished by the customer or borrower for the protection of the property securing the credit or loan. A rejection is not considered unreasonable if it is based on reasonable standards that are uniformly applied and that relate to the extent of coverage required and to the financial soundness and the services of an insurer. The standards may not discriminate against any particular type of insurer or call for rejection of an insurance

policy because the policy contains coverage in addition to that required in the credit transaction.

(e) Require that any customer, borrower, mortgagor, purchaser, insurer or insurance producer pay a separate charge in connection with the handling of any insurance policy required as security for a loan on real estate, or pay a separate charge to substitute the insurance policy of one insurer for that of another. A charge prohibited in this paragraph does not include the interest that may be charged on premium loans or premium advancements in accordance with the terms of the loan or credit document. This paragraph does not apply to charges that would be required when the depository institution or an affiliate of a depository institution is the licensed insurance producer providing the insurance.

(f) Require any procedures or conditions of an insurer or insurance producer not customarily required of insurers or insurance producers affiliated or in any way connected with the depository institution.

(g) Use an advertisement or other insurance promotional material that would cause a reasonable person to mistakenly believe that the federal government or the state is responsible for the insurance sales activity of, or stands behind the credit of, the depository institution or its affiliate.

(h) Use an advertisement or other insurance promotional material that would cause a reasonable person to mistakenly believe that the federal government or the state guarantees any returns on insurance products or is a source of payment on any insurance obligation of or sold by the depository institution or its affiliate.

(i) Act as an insurance producer unless properly licensed in accordance with ORS 744.062, 744.063 or 744.064.

(j) Pay or receive any commission, brokerage fee or other compensation as an insurance producer, unless the depository institution or affiliate holds a valid insurance producer license for the applicable class of insurance. However, an unlicensed depository institution or affiliate may make a referral to a licensed insurance producer if the depository institution or affiliate does not negotiate, sell or solicit insurance. In the case of a referral of a customer, however, the unlicensed depository institution or affiliate may be compensated for the referral only if the compensation is a fixed dollar amount for each referral that does not depend on whether the customer purchases the insurance product from the licensed insurance producer. Any depository institution or affiliate that accepts deposits from the public in an area in which such transactions are rou-

tinely conducted in the depository institution may receive for each customer referral no more than a one-time, nominal fee of a fixed dollar amount for each referral that does not depend on whether the referral results in a transaction.

(k) Solicit or sell insurance, other than credit insurance or flood insurance, unless the solicitation or sale is completed through documents separate from any credit transactions.

(L) Except as provided in ORS 746.201, include the expense of insurance premiums, other than credit insurance premiums or flood insurance premiums, in the primary credit transaction without the express written consent of the customer.

(m) Solicit or sell insurance unless the insurance sales activities of the depository institution or affiliate are, to the extent practicable, physically separated from areas where retail deposits are routinely accepted by depository institutions.

(n) Solicit or sell insurance unless the depository institution or affiliate maintains separate and distinct books and records relating to the insurance transactions, including all files relating to and reflecting consumer complaints.

(2) A depository institution or an affiliate of a depository institution that lends money or extends credit and that solicits insurance primarily for personal, family or household purposes shall disclose to the customer in writing that the insurance related to the credit extension may be purchased from an insurer or insurance producer of the customer's choice, subject only to the depository institution's right to reject a given insurer or insurance producer as provided in subsection (1)(d) of this section. The disclosure shall inform the customer that the customer's choice of insurer or insurance producer will not affect the credit decision or credit terms in any way, except that the depository institution may impose reasonable requirements concerning the creditworthiness of the insurer and the extent of coverage chosen as provided in subsection (1)(d) of this section. [2003 c.363 §3; 2005 c.22 §497]

Note: See note under 746.213.

746.217 Disclosures to customers. (1)

A depository institution that sells insurance, and any person that sells insurance on behalf of a depository institution, or on the premises of a depository institution where the depository institution is engaged in the business of taking deposits or making loans, shall disclose to the customer in writing, when practicable and in a clear and conspicuous manner, prior to a sale, that the insurance:

- (a) Is not a deposit;
- (b) Is not insured by the Federal Deposit Insurance Corporation or any other federal government agency;
- (c) Is not guaranteed by the depository institution or an affiliate of the depository institution if applicable, or any person that is selling insurance if applicable; and
- (d) When appropriate, involves investment risk, including the possible loss of value.

(2) The requirements of subsection (1) of this section apply:

(a) To an affiliate of a depository institution only to the extent that it sells insurance on the premises of a depository institution where the depository institution is engaged in the business of taking deposits or making loans or on behalf of a depository institution.

(b) When an individual purchases insurance primarily for personal, family or household purposes and only to the extent that the disclosure would be accurate.

(3) For the purpose of subsection (1) of this section, a person is selling insurance on behalf of a depository institution, whether on the premises of the depository institution or at another location, if either one of the following applies:

(a) The person represents to the customer that the sale of the insurance is by or on behalf of the depository institution; or

(b) The depository institution refers a customer to the person that sells insurance and the depository institution has a contractual arrangement to receive commissions or fees derived from the sale of insurance resulting from the referral. [2003 c.363 §4]

Note: See note under 746.213.

746.230 Unfair claim settlement practices. (1) No insurer or other person shall commit or perform any of the following unfair claim settlement practices:

(a) Misrepresenting facts or policy provisions in settling claims;

(b) Failing to acknowledge and act promptly upon communications relating to claims;

(c) Failing to adopt and implement reasonable standards for the prompt investigation of claims;

(d) Refusing to pay claims without conducting a reasonable investigation based on all available information;

(e) Failing to affirm or deny coverage of claims within a reasonable time after completed proof of loss statements have been submitted;

(f) Not attempting, in good faith, to promptly and equitably settle claims in which liability has become reasonably clear;

(g) Compelling claimants to initiate litigation to recover amounts due by offering substantially less than amounts ultimately recovered in actions brought by such claimants;

(h) Attempting to settle claims for less than the amount to which a reasonable person would believe a reasonable person was entitled after referring to written or printed advertising material accompanying or made part of an application;

(i) Attempting to settle claims on the basis of an application altered without notice to or consent of the applicant;

(j) Failing, after payment of a claim, to inform insureds or beneficiaries, upon request by them, of the coverage under which payment has been made;

(k) Delaying investigation or payment of claims by requiring a claimant or the physician of the claimant to submit a preliminary claim report and then requiring subsequent submission of loss forms when both require essentially the same information;

(L) Failing to promptly settle claims under one coverage of a policy where liability has become reasonably clear in order to influence settlements under other coverages of the policy; or

(m) Failing to promptly provide the proper explanation of the basis relied on in the insurance policy in relation to the facts or applicable law for the denial of a claim.

(2) No insurer shall refuse, without just cause, to pay or settle claims arising under coverages provided by its policies with such frequency as to indicate a general business practice in this state, which general business practice is evidenced by:

(a) A substantial increase in the number of complaints against the insurer received by the Department of Consumer and Business Services;

(b) A substantial increase in the number of lawsuits filed against the insurer or its insureds by claimants; or

(c) Other relevant evidence.

(3)(a) No health maintenance organization, as defined in ORS 750.005, shall unreasonably withhold the granting of participating provider status from a class of statutorily authorized health care providers for services rendered within the lawful scope of practice if the health care providers are licensed as such and reimbursement is for services mandated by statute.

(b) Any health maintenance organization that fails to comply with paragraph (a) of this subsection shall be subject to discipline under ORS 746.015.

(c) This subsection does not apply to group practice health maintenance organizations that are federally qualified pursuant to Title XIII of the Health Maintenance Organization Act. [1967 c.359 §588a; 1973 c.281 §1; 1989 c.594 §1]

746.260 Driving record not to be considered in issuance of motor vehicle insurance. (1) Except as provided in subsection (4) of this section, when an individual applies for a policy or a renewal of a policy of casualty insurance providing automobile liability coverage, uninsured motorist coverage, automobile medical payments coverage or automobile physical damage coverage on an individually owned passenger vehicle including pickup and panel trucks and station wagons, an insurer shall not consider either the employment driving record or the nonemployment driving record of the individual in determining whether the policy will be issued or renewed or in determining the rates for the policy. An insurer shall not cancel such policy or discriminate in regard to other terms or conditions of the policy based upon the employment driving record or the nonemployment driving record of the individual.

(2) As used in this section, "employment driving record" and "nonemployment driving record" mean the employment driving record and nonemployment driving record described in ORS 802.200.

(3) This section is not intended to affect the enforcement of the motor vehicle laws.

(4) An insurer may use the abstract of the individual's nonemployment driving record as authorized under ORS 746.265. [1973 c.113 §2; 1979 c.662 §2; 1983 c.338 §969; 1987 c.5 §6]

746.265 Purposes for which abstract of nonemployment driving record may be considered. (1) Subject to subsection (2) of this section, when an individual applies for a policy or a renewal of a policy of casualty insurance providing automobile liability coverage, uninsured motorist coverage, automobile medical payments coverage or automobile physical damage coverage on an individually owned passenger vehicle including pickup and panel trucks and station wagons, the insurer may consider the abstract of the nonemployment driving record of the individual under ORS 802.220:

(a) For the purpose of determining whether to issue or renew the individual's policy.

(b) For the purpose of determining the rates of the individual's policy.

(2) For the purposes specified in subsection (1) of this section, an insurer issuing or renewing a policy described in subsection (1) of this section shall not consider any:

(a) Accident or conviction for violation of motor vehicle laws that occurred more than three years immediately preceding the application for the policy or renewal of the policy;

(b) Diversion agreements under ORS 813.220 that were entered into more than three years immediately preceding the application for the policy or renewal of the policy; or

(c) Suspension of driving privileges pursuant to ORS 809.280 (7) or (9) if the suspension is based on a nondriving offense.

(3) Subsection (2) of this section does not apply if an insurer considers the nonemployment driving record of an individual under ORS 802.220 for the purpose of providing a discount to the individual. [1987 c.5 §5; 1989 c.853 §1; 1991 c.860 §7; 1999 c.59 §231; 2001 c.327 §1]

746.275 Definitions for ORS 746.275 to 746.300. As used in ORS 746.275 to 746.300:

(1) "Adjuster" means a person authorized to do business under ORS 744.505 or 744.515.

(2) "Motor vehicle liability insurance policy" means an insurance policy which provides automobile liability coverage, uninsured motorist coverage, automobile medical payments coverage or automobile physical damage coverage on motor vehicles, but does not include any insurance policy:

(a) Covering garage, automobile sales agency, repair shop, service station or public parking place operation hazards; or

(b) Issued principally to cover personal or premises liability of an insured, even though such insurance may also provide some incidental coverage for liability arising out of the ownership, maintenance or use of a motor vehicle on the premises of such insured or on the ways immediately adjoining such premises.

(3) "Motor vehicle body and frame repair shop" means a business or a division of a business organized for the purpose of effecting repairs to motor vehicles which have been physically damaged. [1977 c.785 §1]

Note: 746.275 to 746.300 and 746.991 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 746 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

746.280 Designation of particular motor vehicle repair shop by insurer prohibited; notice; limitation of costs. (1) An insurer may not require that a particular person make the repairs to the insured's motor vehicle as a condition for recovery by the

insured under a motor vehicle liability insurance policy.

(2) Prior to providing a recommendation that a particular person make repairs to the insured's motor vehicle, the person adjusting the claim on behalf of the insurer shall inform the insured of the rights conferred by subsection (1) of this section by communicating in a statement substantially similar to the following:

OREGON LAW PROHIBITS US FROM REQUIRING YOU TO GET REPAIRS TO YOUR VEHICLE AT A PARTICULAR MOTOR VEHICLE REPAIR SHOP. YOU HAVE THE RIGHT TO SELECT THE MOTOR VEHICLE REPAIR SHOP OF YOUR CHOICE.

(3) If an insured elects to have the motor vehicle repaired at a motor vehicle repair shop other than a shop recommended by the insurer, the insurer may not limit the cost of repairs necessary to return the motor vehicle to a preloss condition relative to safety, function and appearance other than as stated in the policy or as otherwise allowed by law.

(4) If an insured accepts the insurer's recommendation, the insurer shall provide, electronically or in printed form, a statement to the insured within three business days after the date of acceptance in substantially the following form:

WE HAVE RECOMMENDED A MOTOR VEHICLE REPAIR SHOP. IF YOU AGREE TO USE OUR RECOMMENDED REPAIR SHOP, YOUR VEHICLE WILL RECEIVE REPAIRS RETURNING IT TO A PRELOSS CONDITION RELATIVE TO SAFETY, FUNCTION AND APPEARANCE AT NO ADDITIONAL COST TO YOU OTHER THAN AS STATED IN THE INSURANCE POLICY OR AS OTHERWISE ALLOWED BY LAW.

[1977 c.785 §2; 2007 c.506 §1]

Note: See note under 746.275.

746.285 Notice of prohibition in motor vehicle repair shops; size; location. A person operating a motor vehicle body and frame repair shop shall display in a conspicuous place in the shop a sign in bold face type in letters at least two inches high reading substantially as follows:

PURSUANT TO OREGON INSURANCE LAW, AN INSURANCE COMPANY MAY

NOT REQUIRE THAT REPAIRS BE MADE TO A MOTOR VEHICLE BY A PARTICULAR PERSON OR REPAIR SHOP.

[1977 c.785 §3]

Note: See note under 746.275.

746.287 Insurer requirement of installation of aftermarket crash part in vehicle. (1) Without the consent of the owner of the vehicle, an insurer may not require, directly or indirectly, that a motor vehicle body and frame repair shop supply or install any aftermarket crash part unless the part has been certified by an independent test facility to be at least equivalent to the part being replaced.

(2) For purposes of this section, an aftermarket crash part is at least equivalent to the part being replaced if the aftermarket crash part is the same kind of part and is at least the same quality with respect to fit, finish, function and corrosion resistance. [1987 c.622 §3]

Note: See note under 746.275.

746.289 Insurer offer of crash part warranty. Any insurer which offers a motor vehicle insurance policy that provides coverage for repair of the vehicle shall make available to its insured a crash part warranty for crash parts not made by the original equipment manufacturer as described in ORS 746.292 when the insured requests one. [1987 c.622 §4]

Note: 746.289 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 746, ORS 746.275 to 746.300 or any other series by legislative action. See Preface to Oregon Revised Statutes for further explanation.

746.290 Notice of prohibition in policies and by adjusters. (1) An adjuster establishing loss under a motor vehicle liability insurance policy shall advise the insured of the provisions of ORS 746.280.

(2) Every motor vehicle liability insurance policy issued in this state after December 31, 1977, and any extension or renewal after that date of a policy issued before that date shall be accompanied by a statement in clear and conspicuous language approved by the director of:

(a) The rights and responsibilities of the insured when a claim is submitted; and

(b) The provisions of ORS 746.280. [1977 c.785 §4]

Note: See note under 746.275.

746.292 Motor vehicle repair shops; invoices; estimates; warranties; prohibited practices. (1) All work done by a motor vehicle body and frame repair shop shall be recorded on an invoice and shall describe all service work done and parts supplied. If any used parts are supplied, the invoice shall

clearly state that fact. If any component system installed is composed of new and used parts, such invoice shall clearly state that fact. One copy of the invoice shall be given to the customer and one copy shall be retained by the motor vehicle body and frame repair shop.

(2) Before commencing repair work and upon the request of any customer, a motor vehicle body and frame repair shop shall make an estimate in writing of the parts and labor necessary for the repair work, and shall not charge for the work done or parts supplied in excess of the estimate without the consent of such customer.

(3)(a) If crash parts to be used in the repair work are supplied by the original equipment manufacturer, the parts shall be accompanied by a warranty that guarantees the customer that the parts meet or exceed standards used in manufacturing the original equipment.

(b) If crash parts to be used in the repair work are not supplied by the original equipment manufacturer, the estimate shall include a statement that says:

This estimate has been prepared based on the use of a motor vehicle crash part not made by the original equipment manufacturer. The use of a motor vehicle crash part not made by the original equipment manufacturer may invalidate any remaining warranties of the original equipment manufacturer on that motor vehicle part. The person who prepared this estimate will provide a copy of the part warranty for crash parts not made by the original equipment manufacturer for comparison purposes.

(4) No motor vehicle body and frame shop may:

(a) Supply or install used parts, or any component system composed of new and used parts, when new parts or component systems are or were to be supplied or installed.

(b) Supply or install, without the owner's consent, any aftermarket crash part unless the part has been certified by an independent test facility to be at least equivalent to the part being replaced. For purposes of this paragraph, an aftermarket crash part is at least equivalent to the part being replaced if the aftermarket crash part is the same kind

of part and is at least the same quality with respect to fit, finish, function and corrosion resistance.

(c) Charge for repairs not actually performed, or add the cost of repairs not actually to be performed to any repair estimate.

(d) Refuse any insurer, or its insured, or their agents or employees, reasonable access to any repair facility for the purpose of inspecting or reinspecting the damaged vehicle during usual business hours.

(5) As used in ORS 746.287 and this section, "aftermarket crash part" means a motor vehicle replacement part, sheet metal or plastic, that constitutes the visible exterior of the vehicle, including an inner or outer panel, is generally repaired or replaced as the result of a collision and is not supplied by the original equipment manufacturer. [1977 c.785 §5; 1987 c.622 §1]

Note: See note under 746.275.

746.295 Proof and amount of loss under motor vehicle liability policies; determination by insurer. Nothing in ORS 746.275 to 746.300 or 746.991 shall prohibit an insurer from establishing proof of loss requirements for motor vehicle liability insurance policies, investigating and determining the amount of an insured's loss through its agents or employees or negotiating with any person for the repair of such loss. [1977 c.785 §6]

Note: See note under 746.275.

746.300 Liability of insurers and motor vehicle repair shops for damages; attorney fees. An insured whose insurer violates ORS 746.280 or 746.290, or a customer whose motor vehicle body and frame repair shop violates ORS 746.292, may file an action to recover actual damages or \$100, whichever is greater, for each violation. The court may award reasonable attorney fees to the prevailing party in an action under this section. [1977 c.785 §7; 1981 c.897 §102; 1995 c.618 §129]

Note: See note under 746.275.

746.308 Violation of provisions regarding totaled vehicles as violation of Insurance Code. An insurer that violates ORS 819.014 or 819.018 shall be considered to have violated a provision of the Insurance Code. [1991 c.820 §7]

Note: 746.308 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 746 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.