Chapter 165

2003 EDITION

Offenses Involving Fraud or Deception

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FORGERY AND RELATED OFFENSES

165.002 Definitions for ORS 165.002 to 165.070. As used in ORS 165.002 to 165.027, and 165.032 to 165.070, unless the context requires otherwise:

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

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

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

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

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

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

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

(8) "Forged instrument" means a written instrument which has been falsely made, completed or altered.

(9) "Electronic record" has the meaning given that term in ORS 84.004.

(10) "Signature" includes, but is not limited to, an electronic signature, as defined in ORS 84.004. [1971 c.743 §151; 2001 c.535 §27]

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

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

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

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

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

165.010 [Repealed by 1971 c.743 §432]

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

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

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

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

(c) A deed, will, codicil, contract or assignment; or

(d) A check for $750 or more, a credit card purchase slip for $750 or more, or a combination of checks and credit card purchase slips that, in the aggregate, total $750 or more, or any other commercial instrument or other document that does or may evidence, create, transfer, alter, terminate or otherwise affect a legal right, interest, obligation or status; or

(e) A public record.

(2) The value of single check or credit card transactions may be added together under subsection (1)(d) of this section if the transactions were committed:

(a) Against multiple victims within a 30-day period; or

(b) Against the same victim within a 180-day period.

(3) Forgery in the first degree is a Class C felony. [1971 c.743 §153; 1993 c.680 §25]

165.015 [Repealed by 1971 c.743 §432]

165.017 Criminal possession of a forged instrument in the second degree. (1) A person commits the crime of criminal possession of a forged instrument in the second degree if, knowing it to be forged and

with intent to utter same, the person possesses a forged instrument.

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

165.020 [Repealed by 1971 c.743 §432]

165.022 Criminal possession of a forged instrument in the first degree. (1) A person commits the crime of criminal possession of a forged instrument in the first degree if, knowing it to be forged and with intent to utter same, the person possesses a forged instrument of the kind specified in ORS 165.013.

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

165.025 [Repealed by 1971 c.743 §432]

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

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

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

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

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

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

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

165.035 [Repealed by 1971 c.743 §432]

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

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

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

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

165.040 [Repealed by 1971 c.743 §432]

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

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

165.045 [Repealed by 1971 c.743 §432]

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

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

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

(2) As used in this section:

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

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

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

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

(a) The card is stolen or forged; or

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

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

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

(3) The value of single credit card transactions may be added together if the transactions were committed:

(a) Against multiple victims within a 30-day period; or

(b) Against the same victim within a 180-day period.

(4) Fraudulent use of a credit card is:

(a) A Class A misdemeanor if the aggregate total amount of property or services the person obtains or attempts to obtain is under $750.

(b) A Class C felony if the aggregate total amount of property or services the person obtains or attempts to obtain is $750 or more. [1971 c.743 §160; 1973 c.133 §7; 1987 c.907 §11; 1993 c.680 §26]

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

(2) For purposes of this section, unless the check or order is postdated, it is prima facie evidence of knowledge that the check or order would not be honored if:

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

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

(3) Negotiating a bad check is:

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

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

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

(a) Makes, possesses, sells, gives or otherwise transfers to another, or offers or advertises pictures or diagrams concerning an instrument, apparatus or device with intent that the same be used or with knowledge or reason to believe the same is intended to or may be used to avoid any lawful telephone or telegraph toll charge or to conceal the existence or place of origin or destination of any telephone or telegraph communication; or

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

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

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

165.072 Definitions for ORS 165.072 and 165.074. As used in this section and ORS 165.074, unless the context requires otherwise:

(1) "Cardholder" means a person to whom a payment card is issued or a person who is authorized to use the payment card.

(2) "Credit card" means a card, plate, booklet, credit card number, credit card account number or other identifying symbol, instrument or device that can be used to pay for, or to obtain on credit, goods or services.

(3) "Financial institution" means a financial institution as that term is defined in ORS 706.008.

(4) "Merchant" means:

(a) An owner or operator of a retail mercantile establishment;

(b) An agent, employee, lessee, consignee, franchisee, officer, director or independent contractor of an owner or operator of a retail mercantile establishment; and

(c) A person who receives what the person believes to be a payment card or information from a payment card from a cardholder as the instrument for obtaining something of value from the person.

(5) "Payment card" means a credit card, charge card, debit card, stored value card or any card that is issued to a person and allows the user to obtain something of value from a merchant.

(6) "Payment card transaction" means a sale or other transaction or act in which a payment card is used to pay for, or to obtain on credit, goods or services.

(7) "Payment card transaction record" means any record or evidence of a payment card transaction, including, without limitation, any paper, sales draft, instrument or other writing and any electronic or magnetic transmission or record.

(8) "Person" does not include a financial institution or its authorized employee, representative or agent.

(9) "Previous conviction" has the meaning given that term in ORS 137.712.

(10) "Reencoder" means an electronic device that places encoded information from one payment card onto another payment card.

(11) "Scanning device" means an electronic device that is used to access, read, scan, obtain, memorize or store, temporarily or permanently, information encoded on a payment card. [1991 c.398 §1; 1997 c.631 §419; 2003 c.383 §1]

165.074 Unlawful factoring of payment card transaction. (1) A person commits the crime of unlawful factoring of a payment card transaction if the person intentionally or knowingly:

(a) Presents to or deposits with, or causes another to present to or deposit with, a financial institution for payment a payment card transaction record that is not the result of a payment card transaction between the cardholder and the person;

(b) Employs, solicits or otherwise causes a merchant to present to or deposit with a financial institution for payment a payment card transaction record that is not the result of a payment card transaction between the cardholder and the merchant;

(c) Employs, solicits or otherwise causes another to become a merchant for purposes of engaging in conduct made unlawful by this section;

(d) Uses a scanning device to access, read, scan, obtain, memorize or store information encoded on a payment card:

(A) Without the permission of the cardholder; or

(B) With the intent to defraud another person; or

(e) Uses a reencoder to place encoded information from one payment card onto another payment card:

(A) Without the permission of the cardholder of the payment card from which encoded information is being taken; or

(B) With the intention to defraud another person.

(2) Unlawful factoring of a payment card transaction is a Class C felony.

(3) Notwithstanding subsection (2) of this section, unlawful factoring of a payment card transaction is a Class B felony if the person has one or more previous convictions under this section. [1991 c.398 §2; 2003 c.383 §2]

BUSINESS AND COMMERCIAL OFFENSES

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

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

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

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

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

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

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

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

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

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

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

Note: Legislative Counsel has substituted "chapter 743, Oregon Laws 1971," for the words "this Act" in section 162, chapter 743, Oregon Laws 1971, compiled as 165.075. 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 18 of ORS.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

165.102 Obtaining execution of documents by deception. (1) A person commits the crime of obtaining execution of documents by deception if, with intent to defraud or injure another or to acquire a substantial benefit, the person obtains by means of fraud, deceit or subterfuge the execution of a written instrument affecting or purporting to affect the pecuniary interest of any person.

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

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

165.107 Failing to maintain a metal purchase record. (1) A person commits the crime of failing to maintain a metal purchase record if the person buys or otherwise obtains new, used or secondhand nonferrous metals or alloys thereof without keeping a

record of all such articles purchased or obtained.

(2) The person purchasing or obtaining the metal shall retain the record required by subsection (1) of this section for a period of not less than one year and the person shall make the record available to any peace officer on demand. The record shall contain:

(a) A general description of all property purchased.

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

(c) The name, address, description and signature of the person who sells, makes delivery or otherwise makes the metal available.

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

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

(4) As used in this section, "nonferrous metal" includes, but is not limited to, aluminum, stainless steel, copper, copper wire, copper cable, brass, electrolytic nickel and zinc. "Nonferrous metal" does not include precious metals when actually used in the manufacture, repair, sale or resale of jewelry.

(5) Failing to maintain a metal purchase record is a Class B misdemeanor. [1971 c.743 §169; 1995 c.222 §1]

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

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

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

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

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

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

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

165.110 [Repealed by 1971 c.743 §432]

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

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

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

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

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

(4) A person who violates any provision of this section commits a Class A violation.

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

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

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

(a) "Assignment" means any specific written, recorded, pictorial, artistic or other academic task, including but not limited to a term paper, thesis, dissertation, essay or report, intended for submission to any post-secondary institution in fulfillment of the re-

quirements for a degree, diploma, certificate or course of study at any such institution.

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

(c) "Post-secondary institution" means any public or private post-secondary educational institution. [1981 c.673 §§1,2; 1999 c.1051 §158]

165.115 [Repealed by 1971 c.743 §432]

165.120 [Repealed by 1971 c.743 §432]

165.125 [Repealed by 1971 c.743 §432]

165.130 [Repealed by 1971 c.743 §432]

165.135 [Repealed by 1971 c.743 §432]

165.140 [Repealed by 1971 c.743 §432]

165.145 [Repealed by 1971 c.743 §432]

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165.155 [Repealed by 1971 c.743 §432]

165.160 [Repealed by 1971 c.743 §432]

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165.170 [Repealed by 1971 c.743 §432]

165.175 [Repealed by 1971 c.743 §432]

165.180 [Repealed by 1971 c.743 §432]

165.185 [Repealed by 1971 c.743 §432]

165.190 [Repealed by 1971 c.743 §432]

165.205 [Amended by 1971 c.290 §1; repealed by 1971 c.743 §432]

165.210 [Repealed by 1971 c.743 §432]

165.215 [Repealed by 1971 c.743 §432]

165.220 [Repealed by 1971 c.743 §432]

165.225 [Amended by 1955 c.436 §1; 1959 c.508 §1; repealed by 1971 c.743 §432]

165.230 [Repealed by 1971 c.743 §432]

165.235 [Repealed by 1971 c.743 §432]

165.240 [Repealed by 1971 c.743 §432]

165.245 [Repealed by 1971 c.743 §432]

165.250 [Repealed by 1971 c.743 §432]

165.255 [Repealed by 1971 c.743 §432]

165.260 [Repealed by 1971 c.743 §432]

165.265 [Repealed by 1971 c.743 §432]

165.270 [1957 c.369 §1; repealed by 1971 c.743 §432]

165.280 [1961 c.318 §1; repealed by 1971 c.743 §432]

165.285 [1969 c.290 §3; repealed by 1971 c.743 §432]

165.290 [1963 c.588 §2; repealed by 1971 c.743 §432]

165.295 [1963 c.588 §3; repealed by 1971 c.743 §432]

165.300 [1963 c.588 §4; repealed by 1971 c.743 §432]

165.305 [Repealed by 1971 c.743 §432]

165.310 [Repealed by 1971 c.743 §432]

165.315 [Repealed by 1971 c.743 §432]

165.320 [Repealed by 1971 c.743 §432]

165.325 [Repealed by 1971 c.743 §432]

165.330 [Repealed by 1971 c.743 §432]

165.335 [Repealed by 1971 c.743 §432]

165.340 [Amended by 1957 c.655 §1; repealed by 1971 c.743 §432]

165.345 [Repealed by 1971 c.743 §432]

165.350 [Repealed by 1971 c.743 §432]

165.352 [1961 c.454 §75(2); repealed by 1971 c.743 §432]

165.355 [Repealed by 1971 c.743 §432]

165.405 [Repealed by 1971 c.743 §432]

165.410 [Repealed by 1971 c.743 §432]

165.415 [Repealed by 1971 c.743 §432]

165.420 [Amended by 1961 c.261 §1; repealed by 1971 c.743 §432]

165.425 [Repealed by 1971 c.743 §432]

165.430 [Repealed by 1971 c.743 §432]

165.435 [Repealed by 1971 c.743 §432]

165.440 [Repealed by 1971 c.743 §432]

165.445 [Repealed by 1971 c.743 §432]

165.450 [Repealed by 1971 c.743 §432]

165.455 [Repealed by 1971 c.743 §432]

165.460 [Repealed by 1971 c.743 §432]

165.465 [Repealed by 1971 c.743 §432]

CRIMES INVOLVING COMMUNICATIONS

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

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

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

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

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

(3) Any person violating this section, in addition to the penalty prescribed in ORS 165.990 (1) to (3) is liable in a civil suit for all damages occasioned thereby. [Formerly 757.616]

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

(2) Any person violating this section, in addition to the penalty prescribed in ORS 165.990 (1) to (3), is liable in treble damages to the party aggrieved, for all loss or injury sustained by reason of such wrongful act. [Formerly 757.621]

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

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

(b) Postpone any message out of its order; or

(c) Refuse or neglect to deliver any message received by telegraph.

(2) This section does not require:

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

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

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

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

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

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

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

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

165.520 Opening, reading or publishing letter; federal jurisdiction. Any person who willfully opens or reads, or causes to be opened and read, any sealed letter not addressed to the person, without being authorized so to do either by the writer of such letter or by the person to whom it is addressed, or who willfully, without like au-

thority, publishes any letter or portion thereof knowing it to have been so opened, shall be punished upon conviction by imprisonment in the county jail for not less than one month nor more than one year, or by fine not less than $50 nor more than $500. This section does not extend to or include any act made punishable by the laws of the United States.

165.525 [Repealed by 1971 c.743 §432]

165.530 [Repealed by 1971 c.743 §432]

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

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

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

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

(3) "Radio communication" means the transmission by radio or other wireless methods of writing, signs, signals, pictures and sounds of all kinds, including all instrumentalities, facilities, equipment and services (including, among other things, the receipt, forwarding and delivering of communications) incidental to such transmission.

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

165.540 Obtaining contents of communications. (1) Except as otherwise provided in ORS 133.724 or 133.726 or subsections (2) to (7) of this section, a person may not:

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

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

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

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

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

(2)(a) The prohibitions in subsection (1)(a), (b) and (c) of this section do not apply to:

(A) Officers, employees or agents of a telecommunication or radio communication company who perform the acts prohibited by subsection (1)(a), (b) and (c) of this section for the purpose of construction, maintenance or conducting of their telecommunication or radio communication service, facilities or equipment.

(B) Public officials in charge of and at jails, police premises, sheriffs' offices, Department of Corrections institutions and other penal or correctional institutions, except as to communications or conversations between an attorney and the client of the attorney.

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

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

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

(5) The prohibitions in subsection (1)(c) of this section do not apply to a person who records a conversation during a felony that endangers human life.

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

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

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

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

(7) The prohibitions in subsection (1)(a), (c), (d) and (e) of this section do not apply to any:

(a) Radio communication that is transmitted by a station operating on an authorized frequency within the amateur or citizens bands; or

(b) Person who intercepts a radio communication that is transmitted by any governmental, law enforcement, civil defense or public safety communications system, including police and fire, readily accessible to the general public provided that the interception is not for purposes of illegal activity.

(8) Violation of subsection (1) or (2)(b) of this section is a Class A misdemeanor. [1955 c.675 §§2,7; 1959 c.681 §2; 1961 c.460 §1; 1979 c.744 §9; 1983 c.693 §1; 1983 c.740 §35; 1983 c.824 §1; 1987 c.320 §87; 1989 c.983 §14a; 1989 c.1078 §1; 2001 c.104 §54; 2001 c.385 §4; 2003 c.14 §62]

Note: Section 9, chapter 385, Oregon Laws 2001, provides:

Sec. 9. Evidence of a conversation obtained by a law enforcement officer under ORS 165.540 (5) (1999 Edition) prior to the effective date of this 2001 Act [June 15, 2001] is not inadmissible as evidence solely because of the officer's failure to obtain an order under ORS 133.724. [2001 c.385 §9]

165.542 Reports required concerning use of electronic listening device. (1) Within 30 days after the use of an electronic listening device under ORS 133.726 (7) or 165.540 (5), the law enforcement agency using the device shall report to the district attorney of the county in the agency's jurisdiction:

(a) The number of uses of the device and duration of the interceptions made by the law enforcement agency;

(b) The offense investigated;

(c) The identity of the law enforcement agency intercepting the communication; and

(d) Whether the person wearing the device was a law enforcement officer or a person under the supervision of the officer and the number of persons in each category who wore the device.

(2) During January of each year, the district attorney of a county in which electronic listening devices were used under ORS 133.726 (7) or 165.540 (5) shall report to the Department of Justice:

(a) The information required by subsection (1) of this section with respect to the use of electronic listening devices during the preceding calendar year; and

(b) The aggregate number of instances in which electronic listening devices have been used in the county under ORS 133.726 (7) or 165.540 (5) during the preceding calendar year.

(3) The law enforcement agency shall include as part of the case file any use of electronic listening devices under ORS 133.726 (7) or 165.540 (5).

(4) During April of each odd-numbered calendar year, the Department of Justice shall transmit to the Legislative Assembly a report including a summary of the information required by subsections (1) and (2) of this section.

(5) Failure to comply with the reporting requirements of this section shall not affect the admissibility of evidence. [1989 c.1078 §2; 2001 c.385 §7]

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

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

165.545 Prohibitions not applicable to fire or police activities. Nothing in ORS 165.535, 165.540 and this section, shall be construed as preventing fire or police governmental entities from recording, replaying or broadcasting telecommunication or radio communication that directly concern police or fire operation at the telephone or radio operation center or centers of such governmental entity. [1959 c.681 §6; 1981 c.806 §2; 1983 c.740 §36]

165.549 Prevention of telephone communications when hostage taken; duties of telephone company; defense against liability. (1) A supervising law enforcement

official having jurisdiction in a geographical area in which the official has probable cause to believe that a hostage is being held may order a telephone company security employee or alternate described in subsection (2) of this section to cut, reroute or divert telephone lines to prevent telephone communications between the individual holding the hostage and any individual other than a peace officer or an individual designated by the peace officer.

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

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

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

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

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

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

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

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

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

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

165.570 Improper use of emergency reporting system. (1) A person commits the crime of improper use of an emergency reporting system if the person knowingly:

(a) Calls a 9-1-1 emergency reporting system or the School Safety Hotline for a purpose other than to report a situation that the person reasonably believes requires prompt service in order to preserve human life or property; or

(b) Allows another person to use telephone equipment owned, rented or leased by or under the control of the person to call a 9-1-1 emergency reporting system or the School Safety Hotline for a purpose other than to report a situation that the other person reasonably believes requires prompt service in order to preserve human life or property.

(2) As used in this section:

(a) "9-1-1 emergency reporting system" has the meaning given that term in ORS 401.710.

(b) "School Safety Hotline" means the toll-free telephone line established under ORS 180.650.

(3) Improper use of an emergency reporting system is a Class A misdemeanor. [1995 c.566 §1; 2001 c.619 §4]

165.572 Interference with making a report. (1) A person commits the crime of interference with making a report if the person, by removing, damaging or interfering with a telephone line, telephone or similar communication equipment, intentionally prevents or hinders another person from making a report to a law enforcement agency, a law enforcement official, an agency charged with the duty of taking public safety reports or a 9-1-1 emergency reporting system.

(2) Interference with making a report is a Class A misdemeanor. [1999 c.946 §1]

CELLULAR TELEPHONES

165.575 Definitions. As used in ORS 165.575 to 165.583:

(1) "Cellular telephone" means a radio telecommunications device that may be used to obtain access to the public and cellular switch telephone networks and that is pro-

grammed by the manufacturer with an electronic serial number.

(2) "Cellular telephone service" means all services and cellular telephone equipment and capabilities available from a provider to an end user for a fee.

(3) "Cloned cellular telephone" or "counterfeit cellular telephone" means a cellular telephone, the electronic serial number of which has been altered by someone other than the manufacturer.

(4) "Cloning paraphernalia" means materials that, when possessed in combination, are capable of creating a cloned cellular telephone. "Cloning paraphernalia" includes, but is not limited to:

(a) Scanners to intercept electronic serial numbers and mobile identification numbers;

(b) Cellular telephones;

(c) Cables;

(d) EPROM chips;

(e) EPROM burners;

(f) Software for programming the cellular telephone with a false electronic serial number, mobile identification number, other identifiable data or a combination thereof;

(g) Computers containing software described in paragraph (f) of this subsection; and

(h) Lists of electronic serial number and mobile identification number combinations.

(5) "Electronic serial number" means a unique number that is programmed into a cellular telephone by the manufacturer, transmitted by the cellular telephone and used by cellular telephone providers to validate radio transmissions to the system as having been made by an authorized device.

(6) "End user" is a person who pays a fee to subscribe to cellular telephone service from a provider or a person receiving a call from or sending a call to the person paying or subscribing for cellular telephone service.

(7) "Intercept" means to electronically capture, record, reveal or otherwise access the signals emitted or received during the operation of a cellular telephone by any instrument, device or equipment without the consent of the sender or receiver.

(8) "Mobile identification number" means the cellular telephone number assigned to the cellular telephone by the cellular telephone provider.

(9) "Provider" means a licensed seller of cellular telephone service or a reselling agent authorized by a licensed seller. [1995 c.524 §1]

165.577 Cellular counterfeiting in the third degree. (1) A person commits the crime of cellular counterfeiting in the third degree if the person knowingly possesses a cloned cellular telephone and knows that the telephone is unlawfully cloned.

(2) Cellular counterfeiting in the third degree is a Class A misdemeanor. [1995 c.524 §2]

165.579 Cellular counterfeiting in the second degree. (1) A person commits the crime of cellular counterfeiting in the second degree if the person knowingly possesses, and knows the unlawful nature of using, any cloning paraphernalia or any instrument capable of intercepting electronic serial numbers, mobile identification numbers, other identifiable data or a combination thereof and:

(a) Causes more than $100 in losses or damages; or

(b) Intercepts or obtains, or attempts to intercept or obtain, cellular telephone service of more than $100 in value.

(2) Cellular counterfeiting in the second degree is a Class C felony. [1995 c.524 §3]

165.581 Cellular counterfeiting in the first degree. (1) A person commits the crime of cellular counterfeiting in the first degree if the person knowingly possesses or distributes, and knows the unlawful nature of using, any cloning paraphernalia or any instrument capable of intercepting electronic serial numbers, mobile identification numbers, other identifiable data or a combination thereof and agrees with, encourages, solicits or permits one or more other persons to engage in or cause, or obtain cellular telephone service through, cellular counterfeiting and:

(a) Causes more than $100 in losses or damages; or

(b) Intercepts, obtains or causes to be obtained cellular telephone service of more than $100 in value.

(2) Cellular counterfeiting in the first degree is a Class B felony. [1995 c.524 §4]

165.583 Exemptions from ORS 165.577, 165.579 and 165.581. The provisions of ORS 165.577, 165.579 and 165.581 do not apply to:

(1) Officers, employees or agents of cellular telephone service providers who engage in conduct prohibited by ORS 165.577, 165.579 or 165.581 for the purpose of constructing, maintaining or conducting the radio telecommunication service or for law enforcement purposes;

(2) Law enforcement officers and public officials in charge of jails, police premises, sheriffs' offices, Department of Corrections institutions and other penal or correctional institutions, or any other person under the

color of law, who engages in conduct prohibited by ORS 165.577, 165.579 or 165.581 for the purpose of law enforcement or in the normal course of the officer's or official's employment activities or duties; and

(3) Officers, employees or agents of federal or state agencies that are authorized to monitor or intercept cellular telephone service in the normal course of the officer's, employee's or agent's employment. [1995 c.524 §5]

165.585 [1995 c.524 §§6,7; repealed by 2001 c.666 §56]

165.586 Forfeiture of cloning paraphernalia; civil liability. (1) In addition to any other sentence the court may impose upon a conviction under ORS 165.577, 165.579 or 165.581, the court may order the forfeiture of any cloning paraphernalia used in violating ORS 165.577, 165.579 or 165.581.

(2) A prosecution under ORS 165.577, 165.579 or 165.581 does not preclude civil liability under any applicable provision of law. [2001 c.666 §51]

Note: 165.586 becomes operative July 31, 2005. See section 58, chapter 666, Oregon Laws 2001, as amended by section 14d, chapter 926, Oregon Laws 2001, and section 12, chapter 614, Oregon Laws 2003.

165.605 [Repealed by 1971 c.743 §432]

165.610 [Repealed by 1971 c.743 §432]

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

165.620 [Repealed by 1971 c.743 §432]

165.625 [Repealed by 1971 c.743 §432]

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

USE OF PEN REGISTERS AND TRAP AND TRACE DEVICES

165.657 Definitions for ORS 165.659 to 165.669. As used in ORS 165.659 to 165.669, unless the context requires otherwise:

(1) "Electronic communication" has the meaning given in ORS 133.721.

(2) "Pen register" means a device which records or decodes electronic or other impulses which identify the numbers dialed or otherwise transmitted on the telephone line to which such device is attached, but does not include any device used by a provider or customer of a provider of electronic or wire communication service for billing or recording as an incident to billing for communications services provided by such provider or any device used by a provider or customer of a wire communication service for cost accounting or other like purposes in the ordinary course of its business.

(3) "Police officer" has the meaning given in ORS 133.525.

(4) "Trap and trace device" means a device which captures the incoming electronic or other impulses which identify the originating number of an instrument or device from which a wire or electronic communication was transmitted.

(5) "Wire communication" has the meaning given in ORS 133.721. [1989 c.983 §15]

165.659 General prohibition. Except as provided in ORS 133.545, 133.575, 133.595, 133.617, 133.619, 133.721, 133.724, 133.729, 133.731, 133.735, 133.737, 133.739, 165.540 and 165.657 to 165.673, no person may install or use a pen register or trap and trace device. [1989 c.983 §16]

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

165.661 When provider of communication service may use devices. The provider of electronic or wire communication service may use a pen register or a trap and trace device:

(1) In the operation, maintenance and testing of a wire or electronic communication service or in the protection of the rights or property of such provider or in the protection of users of that service from abuse of service or unlawful use of service;

(2) To record the fact that a wire or electronic communication was initiated or completed in order to protect such provider, another provider furnishing service toward the completion of the wire communication or a user of that service, from fraudulent, unlawful or abusive use of service; or

(3) When the consent of the user of that service has been obtained. [1989 c.983 §17]

165.663 Use by police; application to court; statement required. Any police officer may apply to the circuit court in which judicial district the targeted telephone is located for an ex parte order or extension of an order authorizing the installation and use of a pen register or a trap and trace device. The application shall:

(1) Be in writing under oath;

(2) Include the identity of the applicant and the identity of the law enforcement agency conducting the investigation;

(3) Contain a statement demonstrating that there is probable cause to believe that an individual is committing, has committed or is about to commit:

(a) A particular felony of murder, kidnapping, arson, robbery, bribery, extortion or other crime dangerous to life and punishable as a felony;

(b) A crime punishable as a felony under ORS 475.992 or 475.995;

(c) A crime under ORS 166.720 that includes as part of the pattern of racketeering activity at least one incident of conduct that constitutes a felony; or

(d) Any conspiracy to commit a crime described in paragraphs (a) to (c) of this subsection; and

(4) Contain a statement demonstrating that use of a pen register or trap and trace device will yield evidence relevant to the crime. [1989 c.983 §18; 2003 c.451 §1]

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

165.667 Order by court; findings; contents of order. (1) Upon application made under ORS 133.545, the court shall enter an ex parte order authorizing the installation and use of a pen register or a trap and trace device if the court finds that there is probable cause to believe that:

(a) An individual is committing, has committed or is about to commit:

(A) A particular felony of murder, kidnapping, arson, robbery, bribery, extortion or other crime dangerous to life and punishable as a felony;

(B) A crime punishable as a felony under ORS 475.992 or 475.995;

(C) A crime under ORS 166.720 that includes as part of the pattern of racketeering activity at least one incident of conduct that constitutes a felony; or

(D) Any conspiracy to commit a crime described in subparagraphs (A) to (C) of this paragraph; and

(b) Use of a pen register or trap and trace device will yield evidence relevant to the crime.

(2) The order shall:

(a) Specify the identity, if known, of the person to whom is leased or in whose name is listed the telephone line to which the pen register or trap and trace device is to be attached;

(b) Specify the identity, if known, of the person who is the subject of the criminal investigation;

(c) Specify the number and, if known, physical location of the telephone number to which the pen register or trap and trace device is to be attached and, in the case of a trap and trace device, the geographic limits of the trap and trace order;

(d) Contain a statement of the offense to which the information likely to be obtained by the pen register or trap and trace device relates;

(e) Direct, upon the request of the applicant, the furnishing of information, facilities and technical assistance necessary to accomplish the installation of the pen register or trap and trace device;

(f) Authorize the installation and use of a pen register or a trap and trace device for a period not to exceed 30 days, which may be extended by application and order for a period not to exceed an additional 30 days;

(g) Direct that the order and application be sealed until otherwise ordered by the court; and

(h) Direct the person owning or leasing the line to which the pen register or the trap and trace device is attached, or who has been ordered by the court to provide assistance to the applicant, not to disclose the existence of the pen register or trap and trace device or the existence of the investigation to the listed subscriber or to any other person, unless or until otherwise ordered by the court. [1989 c.983 §19; 2003 c.451 §2]

165.669 Duties imposed upon certain persons upon service of order authorizing installation of pen register or trap and trace device; compensation to persons; immunity. (1) Upon service of an order issued under ORS 133.545, 133.575, 133.595, 133.617, 133.619, 133.721, 133.724, 133.729, 133.731, 133.735, 133.737, 133.739, 165.540 and 165.657 to 165.673, a provider of wire or electronic communication service, landlord, custodian or other person shall furnish the investigating law enforcement agency forthwith with all information, facilities and technical assistance necessary to accomplish the installation of the pen register unobtrusively and with a minimum of interference with the services that the person so ordered by the court accords the party with respect to whom the installation and use is to take place, if such assistance is directed by the order.

(2) Under service of an order issued under ORS 133.545, 133.575, 133.595, 133.617, 133.619, 133.721, 133.724, 133.729, 133.731, 133.735, 133.737, 133.739, 165.540 and 165.657 to 165.673, a provider of wire or electronic communication service, landlord, custodian or other person shall furnish the investigating law enforcement agency forthwith with all information, facilities and technical assistance necessary to accomplish the installation of the trap and trace device unobtrusively and with a minimum of interference with the services that the person so ordered by the court accords the party with respect to whom the installation and use is to take place, if such assistance is directed by the order. Unless otherwise ordered by the court, the results of the trap and trace device shall be furnished to the police officer designated in the order at reasonable intervals during regular business hours for the duration of the order.

(3) A provider of wire or electronic communication service, landlord, custodian or other person who furnishes facilities or technical assistance pursuant to ORS

133.545, 133.575, 133.595, 133.617, 133.619, 133.721, 133.724, 133.729, 133.731, 133.735, 133.737, 133.739, 165.540 and 165.657 to 165.673 shall be reasonably compensated for such reasonable expenses incurred in providing such facilities and assistance.

(4) No cause of action shall lie in any court against any provider of wire or electronic communication service, its officers, employees, agents or other specified persons for providing information, facilities or assistance in accordance with the terms of a court order under ORS 133.545, 133.575, 133.595, 133.617, 133.619, 133.721, 133.724, 133.729, 133.731, 133.735, 133.737, 133.739, 165.540 and 165.657 to 165.673. [1989 c.983 §§20,21,22,23]

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

165.671 Defense to civil or criminal action. A good faith reliance on a court order, a legislative authorization or a statutory authorization is a complete defense against any civil or criminal action brought under ORS 133.545, 133.575, 133.595, 133.617, 133.619, 133.721, 133.724, 133.726, 133.729, 133.731, 133.735, 133.737, 133.739, 165.540 and 165.657 to 165.673. [1989 c.983 §24; 2001 c.385 §8]

165.673 Disclosure of results prohibited; exception. No law enforcement agency shall disclose lists of telephone numbers produced by a pen register or trap and trace device except in the performance of a law enforcement function or as otherwise provided by law or order of a court. [1989 c.983 §25]

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

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

FALSE CLAIMS FOR HEALTH CARE PAYMENTS

165.690 Definitions. As used in ORS 165.690, 165.692 and 165.694:

(1) "Claim for health care payment" means any request or demand for a health care payment, whether made in the form of a bill, claim form, cost report, invoice, electronic transmission or any other document. "Claim for health care payment" does not include any statement by a person on an application for coverage under a contract or certificate of health care coverage issued by an insurer, health care service contractor, health maintenance organization or other legal entity that is self-insured and provides health care benefits to its employees.

(2) "Health care payment" means money paid in compensation for the delivery of specified health care services, whether under a contract, certificate or policy of insurance, by a health care payor.

(3) "Health care payor" means:

(a) Any insurance company authorized to provide health insurance in this state;

(b) A health maintenance organization;

(c) A health care service contractor;

(d) Any legal entity that is self-insured and provides benefits for health care services to its employees;

(e) Any legal entity responsible for handling claims for health care services under a state or federal medical assistance program;

(f) The State of Oregon or any local government within this state that makes payments for health care services;

(g) Any insurer authorized under ORS chapter 731 to transact workers' compensation or casualty insurance in this state; or

(h) Any employer authorized under ORS chapter 656 to self-insure its workers' compensation risk.

(4) "Health care services" means any medical or remedial care or service, including supplies delivered in connection with the care or service, that is recognized under state law.

(5) "Person" means an individual, corporation, partnership or association that provides health care services or any other form of legal or business entity that provides health care services. [1995 c.496 §1; 2001 c.556 §1]

165.692 Making false claim for health care payment. A person commits the crime of making a false claim for health care payment when the person:

(1) Knowingly makes or causes to be made a claim for health care payment that contains any false statement or false representation of a material fact in order to receive a health care payment; or

(2) Knowingly conceals from or fails to disclose to a health care payor the occurrence of any event or the existence of any information with the intent to obtain a health care payment to which the person is not entitled, or to obtain or retain a health care payment in an amount greater than that to which the person is or was entitled. [1995 c.496 §2]

165.694 Aggregation of claims. (1) Single acts of making a false claim for health care payment may be added together into aggregated counts of making false claims for health care payments if the acts were committed:

(a) Against multiple health care payors by similar means within a 30-day period; or

(b) Against the same health care payor, or a contractor, or contractors, of the same health care payor, within a 180-day period.

(2) The charging instrument must identify those claims that are part of any aggregated counts. [1995 c.496 §3]

165.696 Who may commence prosecution. The district attorney or the Attorney General may commence a prosecution under ORS 165.692. [1995 c.496 §6]

165.698 Notice of conviction. The prosecuting attorney shall notify the Department of Human Services and any appropriate licensing boards of the conviction of a person under ORS 165.692. [1995 c.496 §5]

MISCELLANEOUS

165.800 Identity theft. (1) A person commits the crime of identity theft if the person, with the intent to deceive or to defraud, obtains, possesses, transfers, creates, utters or converts to the person's own use the personal identification of another person.

(2) Identity theft is a Class C felony.

(3) It is an affirmative defense to violating subsection (1) of this section that the person charged with the offense:

(a) Was under 21 years of age at the time of committing the offense and the person used the personal identification of another person solely for the purpose of purchasing alcohol;

(b) Was under 18 years of age at the time of committing the offense and the person used the personal identification of another person solely for the purpose of purchasing tobacco products; or

(c) Used the personal identification of another person solely for the purpose of misrepresenting the person's age to gain access to a:

(A) Place the access to which is restricted based on age; or

(B) Benefit based on age.

(4) As used in this section:

(a) "Another person" means a real or imaginary person.

(b) "Personal identification" includes, but is not limited to, any written document or electronic data that does, or purports to, provide information concerning:

(A) A person's name, address or telephone number;

(B) A person's driving privileges;

(C) A person's Social Security number or tax identification number;

(D) A person's citizenship status or alien identification number;

(E) A person's employment status, employer or place of employment;

(F) The identification number assigned to a person by a person's employer;

(G) The maiden name of a person or a person's mother;

(H) The identifying number of a person's depository account at a financial institution, as defined in ORS 706.008, or a credit card account;

(I) A person's signature or a copy of a person's signature;

(J) A person's electronic mail name, electronic mail signature, electronic mail address or electronic mail account;

(K) A person's photograph;

(L) A person's date of birth; and

(M) A person's personal identification number. [1999 c.1022 §1; 2001 c.870 §3]

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]

165.810 Unlawful possession of a personal identification device. (1) A person commits the crime of unlawful possession of a personal identification device if the person possesses a personal identification device with the intent to use the device to commit a crime. As used in this subsection, "personal identification device" means a device that is used to manufacture or print:

(a) A driver license or permit or an identification card issued by any state or the federal government;

(b) An employee identification card issued by an employer; or

(c) A credit or debit card.

(2) Unlawful possession of a personal identification device is a Class C felony. [2003 c.632 §1]

165.813 Unlawful possession of fictitious identification. (1) A person commits the crime of unlawful possession of fictitious identification if the person possesses a personal identification card containing identification information for a fictitious person with the intent to use the personal identification card to commit a crime.

(2) Unlawful possession of fictitious identification is a Class C felony.

(3) It is an affirmative defense to violating subsection (1) of this section that the person charged with the offense:

(a) Was under 21 years of age at the time of committing the offense and the person possessed the personal identification card solely for the purpose of enabling the person to purchase alcohol; or

(b) Was under 18 years of age at the time of committing the offense and the person possessed the personal identification card solely for the purpose of enabling the person to purchase tobacco products. [2003 c.632 §2]

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

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

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

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

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

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

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

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

(3) Whenever the genuineness or execution of any such instrument received by telegraph is denied on oath by the person sought to be charged thereby, it is incumbent upon the party claiming under or alleging the same to prove the existence and execution of the original writing from which the telegraphic copy was transmitted.

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

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

PENALTIES

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

(2) Violation of ORS 165.485 or 165.490 is punishable, upon conviction, by a fine of not exceeding $1,000 or imprisonment in the

county jail for not exceeding one year, or both.

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

(4)(a) Violation of ORS 165.692 is a Class C felony punishable as provided in ORS chapter 161.

(b) Criminal prosecution of violators of ORS 165.692 shall be commenced within five years after the commission of the crime. [Formerly 757.992; subsection (4) of 1995 Edition enacted as 1995 c.496 §4]