Chapter 180

2009 EDITION

Attorney General; Department of Justice

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ATTORNEY GENERAL

(Generally)

180.010 Office of Attorney General. There is established the office of Attorney General of the State of Oregon.

180.020 Election; term of office. The Attorney General shall be elected by the electors of this state at the regular general election in the same manner as other state officers are elected. The term of the Attorney General shall commence on the first Monday in January of the year succeeding election. The Attorney General shall hold office for the term of four years, and until a successor is elected and qualified.

180.030 Filing certificate of election or appointment. Before entering upon the duties of office the Attorney General shall qualify by filing with the Secretary of State the certificate of election or of appointment. [Amended by 2005 c.797 §28]

180.040 Governor to fill vacancy by appointment; term of appointee. At any time when a vacancy may by any cause occur in the office of Attorney General, the Governor shall appoint a suitable person to be Attorney General, who shall hold office until the next general election, when a successor shall be elected for a full term and shall qualify as prescribed in ORS 180.030.

180.050 Location of office. The Attorney General shall keep and attend the office of Attorney General at the capital of the state. The state shall provide and furnish the office.

(Powers and Duties)

180.060 Powers and duties of Attorney General. (1) The Attorney General shall:

(a) Appear for the state in the trial of all civil and criminal causes in the Supreme Court or the Court of Appeals in which the state may be directly or indirectly interested.

(b) Appear for the state, when required by the Governor or the legislature, in any court or tribunal in any cause in which the state is a party or in which the state is directly interested.

(c) Appear, commence, prosecute or defend for the state all causes or proceedings in the Supreme Court or the Court of Appeals in which the state is a party or interested.

(d) Appear, commence, prosecute or defend any action, suit, matter, cause or proceeding in any court when requested by any state officer, board or commission when, in the discretion of the Attorney General, the same may be necessary or advisable to protect the interests of the state.

(2) The Attorney General shall give opinion in writing, when requested, upon any question of law in which the State of Oregon or any public subdivision of the state may have an interest, submitted to the Attorney General by the Governor, any officer, agency, department, board or commission of the state or any member of the legislature.

(3)(a) Except as provided in paragraph (b) of this subsection and subsection (4) of this section, the Attorney General may not render opinions or give legal advice to persons other than the state officers listed in subsection (2) of this section.

(b) The Attorney General may, at the request of a state officer listed in subsection (2) of this section, render an opinion to an officer, agency or instrumentality of the federal government if the Attorney General determines that providing the opinion is necessary to meet a condition for assumption by the state of administrative or enforcement responsibilities under federal law.

(4) The Attorney General may represent the state or any agency or officer of the state who appears as the lead plaintiff or a representative party in a class action involving a claim relating to a security, as defined in ORS 59.015, even if one or more members are persons that the Attorney General may not otherwise represent or advise pursuant to this section.

(5) The Attorney General shall consult with, advise and direct the district attorneys in all criminal causes and matters relating to state affairs in their respective counties. The Attorney General may require their aid and assistance in all matters pertaining to the duties of the Attorney General in their respective counties and may, in any case brought to the Supreme Court or the Court of Appeals from their respective counties, demand and receive assistance of the district attorney from whose county such case or matter is brought.

(6) The Attorney General shall, when requested, perform all legal services for the state or any department or officer of the state.

(7) The Attorney General shall have all the power and authority usually appertaining to such office and shall perform the duties otherwise required of the Attorney General by law.

(8) The Attorney General shall assign to each agency, department, board or commission an assistant who shall be the counsel responsible for ensuring the performance of the legal services requested by the agency, department, board or commission. The counsel shall be a person trained in the law concerning such agency, department, board

or commission and shall be approved by the chief administrator of the agency, department, board or commission. The chief administrator may not unreasonably withhold approval of the assistant. If the chief administrator withdraws approval, the Attorney General shall assign replacement counsel to the agency, department, board or commission.

(9) The Attorney General may not appear in an action, suit, matter, cause or proceeding in a court or before a regulatory body on behalf of an officer, agency, department, board or commission without the consent of the officer, agency, department, board or commission.

(10) The responsibility for establishing policies for each agency, department, board or commission shall rest upon the chief administrator of the agency, department, board or commission. [Amended by 1971 c.418 §1; 1999 c.142 §1; 2007 c.153 §1]

180.070 Power of Attorney General to conduct investigations and prosecutions; duties of district attorneys unaffected. (1) The Attorney General may, when directed to do so by the Governor, take full charge of any investigation or prosecution of violation of law in which the circuit court has jurisdiction.

(2) When acting under this section, the Attorney General shall have all the powers of a district attorney, including the power to issue or cause to be issued subpoenas or other process. The Attorney General may, when the Attorney General considers the public interest requires, with or without the concurrence of the district attorney, direct the county grand jury to convene for the investigation and consideration of such matters of a criminal nature as the Attorney General desires to submit to it. The Attorney General may take full charge of the presentation of such matters to the grand jury, issue subpoenas, prepare indictments, and do all other things incident thereto to the same extent as the district attorney may do.

(3) All costs, fees and other expense shall be paid by the county in which the investigation takes place, to the same extent as if conducted by the district attorney of that county.

(4) The power conferred by this section, ORS 180.060, 180.220 or 180.240 does not deprive the district attorneys of any of their authority, or relieve them from any of their duties to prosecute criminal violations of law and advise the officers of the counties composing their districts.

180.073 Subpoena authority in criminal investigation. (1) In any criminal investigation conducted by the Attorney General, the Attorney General may execute in writing and serve a subpoena or subpoena duces tecum upon any person the Attorney General believes to have information or material relevant to the investigation. A subpoena may require that the person appear at a reasonable time and place stated in the subpoena and give oral testimony under oath concerning matters relevant to the investigation. A subpoena duces tecum may require, in addition to or in lieu of giving testimony, that the person produce designated books, papers, documents or tangible items that constitute or contain materials relevant to the investigation for examination, copying or reproduction. A subpoena duces tecum that only requires the production of materials must inform the person subpoenaed if the person must personally appear at the time and place designated in the subpoena.

(2) A resident of this state may be required by subpoena to personally appear only in the county in which the person resides, is employed or personally transacts business. A person who is not a resident of this state may be required by subpoena to personally appear only:

(a) In a county of this state in which the person is served with the subpoena; or

(b) In the state, territory, insular possession subject to the dominion of the United States or foreign country in which the person resides. Any circuit court may issue a letter rogatory for the examination as provided in ORCP 38 B.

(3) A person subpoenaed under this section may move to quash or modify the subpoena if it is oppressive or unreasonable. The motion must be made before the time specified in the subpoena for appearance or production of materials. The motion may be made in:

(a) The circuit court for the county in which the person is required to appear or produce materials;

(b) The circuit court for the county in which the subpoenaed person resides or has a principal office; or

(c) The circuit court for the county in which materials to be produced under a subpoena duces tecum are located.

(4) A person who is subpoenaed under this section and who fails to appear or produce materials as required by the subpoena, or who refuses to be sworn or give testimony, may be found to be in contempt of court. Proceedings to hold a person in contempt under this subsection may be brought in any county where the person

could be required to personally appear under subsection (2) of this section.

(5) ORS 136.585 to 136.600 apply to any subpoena issued pursuant to this section. [1993 c.473 §2]

Note: 180.073 and 180.075 were added to and made a part of ORS chapter 180 by legislative action but were not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

180.075 Disclosure of information obtained under subpoena. Except as provided in this section, the Attorney General may not disclose any testimony or materials obtained under the provisions of ORS 180.073. The Attorney General may disclose testimony or materials only if:

(1) The disclosure is to a federal, state or local law enforcement agency or prosecutor and the purpose of the disclosure is to facilitate a criminal investigation or prosecution;

(2) The disclosure is to a state or federal grand jury; or

(3) A circuit court concludes upon application and affidavit by the Attorney General that there is a particularized need for disclosure of the testimony or materials in a civil, administrative, disciplinary or personnel investigation or proceeding. [1993 c.473 §3]

Note: See note under 180.073.

180.080 Attorney General to manage criminal proceedings in court or before grand jury at request of Governor. When directed by the Governor, the Attorney General shall attend in person, or by one of the assistants of the Attorney General, any term of any court, or appear before the grand jury in any county, for the purpose of managing and conducting in such court, or before such jury, the criminal action or proceeding specified in the requirement. The Attorney General, or the assistant of the Attorney General so attending, shall exercise all the powers and perform all the duties in respect of the action or proceeding which the district attorney would otherwise be authorized to exercise or perform. The district attorney shall only exercise such powers and perform such duties in the action or proceeding as are required of the district attorney by the Attorney General, or the assistant of the Attorney General so attending.

180.090 Investigations and special prosecutions; calling on other departments and officers for assistance; employing special investigators. In making investigations of and conducting special prosecutions for violations or alleged violations of the criminal laws of the state, the Attorney General may call upon the Department of State Police or any other peace officer or department for assistance in making such investigations or, in the discretion of the Attorney General, may employ special investigators for such purpose.

180.095 Department of Justice Protection and Education Revolving Account. (1) The Department of Justice Protection and Education Revolving Account is created in the General Fund. All moneys in the account are continuously appropriated to the Department of Justice and may be used to pay for only the following activities:

(a) Restitution and refunds in proceedings described in paragraph (c) of this subsection;

(b) Consumer and business education relating to the laws governing antitrust, unlawful trade practices and the environment; and

(c) Personal services, travel, meals, lodging and all other costs and expenses incurred by the department in investigating, preparing, commencing and prosecuting the following actions and suits, and enforcing judgments, settlements, compromises and assurances of voluntary compliance arising out of the following actions and suits:

(A) Actions and suits under the state and federal antitrust laws;

(B) Actions and suits under ORS 646.605 to 646.656;

(C) Criminal prosecutions under state and federal environmental laws;

(D) Actions commenced under ORS 59.331; and

(E) Actions and suits under ORS 180.750 to 180.785.

(2) Moneys in the Department of Justice Protection and Education Revolving Account are not subject to allotment. Upon request of the Attorney General, the State Treasurer shall create subaccounts within the account for the purposes of managing moneys in the account and allocating those moneys to the activities described in subsection (1) of this section.

(3) Except as otherwise provided by law, all sums of money received by the Department of Justice under a judgment, settlement, compromise or assurance of voluntary compliance, including damages, restitution, refunds, attorney fees, costs, disbursements and other recoveries, but excluding civil penalties under ORS 646.642, in proceedings described in subsection (1)(c) of this section shall, upon receipt, be deposited with the State Treasurer to the credit of the Department of Justice Protection and Education Revolving Account. However, if the action or suit was based on an expenditure or loss from a public body or a dedicated fund, the amount of such expenditure or loss, after de-

duction of attorney fees and expenses awarded to the department by the court or agreed to by the parties, if any, shall be credited to the public body or dedicated fund and the remainder thereof credited to the Department of Justice Protection and Education Revolving Account.

(4) If the Department of Justice recovers restitution or refunds in a proceeding described in subsection (1)(c) of this section, and the department cannot determine the persons to whom the restitution or refunds should be paid or the amount of the restitution or refund payable to individual claimants is de minimis, the restitution or refunds may not be deposited in the Department of Justice Protection and Education Revolving Account and shall be deposited in the General Fund.

(5) Before April 1 of each odd-numbered year, the Department of Justice shall report to the Joint Committee on Ways and Means:

(a) The department's projection of the balance in the Department of Justice Protection and Education Revolving Account at the end of the biennium in which the report is made and at the end of the following biennium;

(b) The amount of the balance held for restitution and refunds; and

(c) An estimate of the department's anticipated costs and expenses under subsection (1)(b) and (c) of this section for the biennium in which the report is made and for the following biennium.

(6) The Joint Committee on Ways and Means, after consideration of recommendations made by the Department of Justice, shall use the information reported under subsection (5) of this section to determine an appropriate balance for the revolving account. [1965 c.194 §2; 1971 c.85 §6; 1975 c.446 §6; 1993 c.518 §1; 1999 c.184 §1; 2009 c.820 §§1,1a]

Note: Section 6, chapter 820, Oregon Laws 2009, provides:

Sec. 6. The amendments to ORS 180.095 by sections 1 and 1a of this 2009 Act apply only to judgments entered on or after the effective date of this 2009 Act [July 23, 2009] and to settlements, compromises and assurances of voluntary compliance entered into on or after the effective date of this 2009 Act. [2009 c.820 §6; 2009 c.820 §8]

180.096 Use of Countrywide Financial Corporation settlement proceeds. (1) Notwithstanding the purposes set forth in ORS 180.095, and except as provided in subsection (2) of this section, the Department of Justice shall use the proceeds of the State of Oregon's settlement with Countrywide Financial Corporation that are deposited into the Consumer Protection and Education Revolving Account to make grants, in consultation with the Housing and Community Services Department, to nonprofit entities to provide foreclosure relief services.

(2) The Department of Justice need not use the proceeds identified in subsection (1) of this section if sufficient funding for the purposes identified in subsection (1) of this section is available from another source. [2009 c.864 §7]

Note: The name of the Consumer Protection and Education Revolving Account was changed to the Department of Justice Protection and Education Revolving Account by section 1, chapter 820, Oregon Laws 2009. The text of 180.096 was not amended by enactment of the Legislative Assembly to reflect the new name of the revolving account. Editorial adjustment of 180.096 for the name change has not been made.

Note: 180.096 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 180 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

180.097 [1971 c.85 §§8,9; 1977 c.445 §1; repealed by 1993 c.518 §4]

180.100 Legislative bills; preparation on request. The Attorney General shall, upon request of any member of or of any person elected to either branch of the Legislative Assembly of the State of Oregon, prepare all bills requested by any such member or person within a reasonable length of time prior to the commencement of any session of the legislature, and furnish the bills to such member or person for introduction on or before the first day of the session. The Attorney General shall during the sessions of the legislature prepare bills at the request of any member of the legislature as expeditiously as the number of deputies in the office of the Attorney General will permit.

180.110 Keeping copies of opinions and records of cases; biennial report; printing and binding opinions. The Attorney General shall keep copies of all the opinions of the Attorney General and a record of all cases, in any of the courts and tribunals, prosecuted or defended by the Attorney General or in which the Attorney General appears. The Attorney General shall make a biennial report to the legislature of all the official business transacted by the Attorney General for the biennial period ending December 31 prior to the meeting of the legislature. The Attorney General may have printed and bound all opinions rendered by the Attorney General during the period, for distribution to the various state officers, public libraries and others entitled to receive them. [Amended by 1971 c.418 §2; 2005 c.659 §6]

180.120 Defending in criminal proceedings for Oregon State Police or member thereof; conducting prosecutions. (1) The Attorney General shall:

(a) Defend all criminal actions and proceedings in which the Department of State Police or any member thereof is concerned

as a party, which require the services of an attorney or counsel in order to protect the interests of the state and are necessary for the purposes of the Department of State Police or the members thereof.

(b) Conduct such prosecutions as shall be directed by the Superintendent of State Police with the approval of the Governor.

(2) The Attorney General may appoint an attorney for the purpose of such defense or prosecution and certify the expenses thereof to the Department of State Police for payment from the moneys appropriated for the Department of State Police. [Amended by 1971 c.418 §3]

180.125 Intergovernmental road maintenance agreements. If the Attorney General advises the Department of Transportation under ORS 180.060 about a matter related to an intergovernmental road maintenance agreement described in ORS 366.574 or represents the department in an action related to the agreement, the Attorney General shall:

(1) Recognize that the agreement is a cooperative effort between the department and the counties, entered into for the overall benefit to the public and the mutual benefit of the state and the counties; and

(2) Prefer and encourage, when possible, mutually agreeable resolution of legal issues through further cooperation or alternative dispute resolution to achieve an overall benefit to the public. [2001 c.565 §2]

Note: 180.125 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 180 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

(Personnel)

180.130 Deputy Attorney General. The Attorney General shall appoint a Deputy Attorney General, who shall qualify as required by law, and who may do and perform, in the absence of the Attorney General, all the acts and duties that may be authorized and required to be performed by the Attorney General. The Attorney General shall be responsible for all the acts of the deputy of the Attorney General.

180.140 Other assistants; salaries; representation of indigent clients. (1) The Attorney General shall appoint the other assistants the Attorney General deems necessary to transact the business of the office, each to serve at the pleasure of the Attorney General and perform such duties as the Attorney General may designate and for whose acts the Attorney General shall be responsible. Each assistant shall have full authority under the direction of the Attorney General to perform any duty required by law to be performed by the Attorney General.

(2) Each assistant so appointed shall be a person admitted to the practice of law by the Supreme Court of this state and shall qualify by taking the usual oath of office, conditioned upon the faithful performance of duties.

(3) The Attorney General may appoint temporary assistants for a period not to exceed 15 months. Such temporary assistants shall be legally trained but are not required to be admitted to the practice of law by the Supreme Court of this state.

(4) Each assistant shall receive the salary fixed by the Attorney General, payable as other state salaries are paid. Each assistant so appointed shall devote the full time of the assistant to the business of the state, unless employment on a part-time basis is otherwise fixed by the Attorney General.

(5) Special legal assistants or private counsel may be employed by the Attorney General, under the direction and control of the Attorney General, in particular cases or proceedings, whenever the Attorney General deems it appropriate to protect the interests of the state. The cost of such special assistants or counsel shall be charged to the appropriate officer or agency pursuant to ORS 180.160.

(6) None of the provisions of this chapter prohibit the Attorney General or any of the Attorney General's full-time deputies or assistants from voluntarily representing, without compensation or expenditure of state resources, indigent clients referred by a nonprofit civil legal aid office or pro bono program. [Amended by 1969 c.543 §2; 1971 c.418 §4; 1991 c.782 §1]

180.150 Clerks. Subject to any applicable provisions of the State Personnel Relations Law, the Attorney General shall employ the necessary clerical aid required for the discharge of the duties imposed upon the Attorney General by law, and fix compensation therefor, to be paid as other salaries are paid.

DEPARTMENT OF JUSTICE

(Generally)

180.160 Charges for services to public agencies; rules. Subject to rules prescribed by the Attorney General, in rendering assistance to the respective officers, departments, boards and commissions of state government, and other public bodies, the Department of Justice may charge such officers, agencies and public bodies (including, when appropriate, the Department of Justice itself) separately for the cost of such assistance, said cost including, but not limited to sala-

ries of assistants and administrative and clerical salaries, investigative services, and capital outlay; and shall also charge such officers, departments, boards, commissions or public bodies for other costs incurred and disbursements made pursuant to request or authorization in connection with such assistance, and not paid directly out of moneys appropriated or otherwise available for expenditure by such officers, agencies or public bodies. [1969 c.543 §1; 1971 c.85 §4]

180.165 [1975 c.458 §9; repealed by 1989 c.633 §3]

180.170 Billing for services to public agencies. The Department of Justice shall estimate in advance the expenses that it will incur during the biennium under ORS 180.160 and 180.340, and shall render to officers, departments, boards and commissions of state government and other public bodies an invoice for their share of such expenses for periods within the biennium and in sufficient amounts to provide reasonable cash operating requirements for the Legal Division of the Department of Justice within the biennial period. Each officer, department, board or commission or other public body shall pay to the credit of the Department of Justice Operating Account such invoice as an administrative expense from funds or appropriations available to it in the same manner as other claims against the state or public body are paid. If the estimated expenses for any officer, department, board, commission or public body are more or less than actual expenses for the period covered by the invoice, the difference shall be reflected in the next following estimate of expenses. [1971 c.85 §3; 1973 c.775 §5]

180.180 Department of Justice Operating Account. (1) The Department of Justice Operating Account is created in the General Fund. Moneys credited to the account are continuously appropriated for the purpose of paying expenses incurred by the Department of Justice, including those incurred by the Division of Child Support, but not including expenses described in ORS 180.095, that are reimbursable from the Department of Justice Protection and Education Revolving Account.

(2) All moneys received by the Department of Justice pursuant to its activities, except those received and creditable to the Department of Justice Protection and Education Revolving Account, shall be deposited in the State Treasury to the credit of the Department of Justice Operating Account.

(3) Subaccounts may be used in the Department of Justice Operating Account whenever the Department of Justice determines that operating needs of the department so require.

(4) In order to facilitate financing the operating expenses of the Department of Justice described in subsection (1) of this section, the Department of Justice may at any time during the biennium transfer to the Department of Justice Operating Account with the approval of the Director of the Oregon Department of Administrative Services such funds as it considers necessary, not to exceed $800,000, from funds duly appropriated to the Department of Justice for a biennial period. Such funds so transferred shall be retransferred from the Department of Justice Operating Account to the appropriation from which the original transfer was made. The retransfers shall be accomplished prior to the last day of each biennial period. [1971 c.85 §2; 1981 c.657 §4; 2009 c.820 §2]

180.190 Department of Justice Current Expense Account; Department of Justice Portland Legal Office Petty Cash Account. (1) The Oregon Department of Administrative Services is hereby authorized to draw a warrant in the amount of $50,000 payable to the Department of Justice from the Department of Justice Operating Account which shall then be deposited by the Department of Justice in the State Treasury in an account to be known as the Department of Justice Current Expense Account. Disbursements made from this account shall require the approval of the disbursing officer of the Department of Justice who shall be designated by the Attorney General.

(2) The Oregon Department of Administrative Services is hereby authorized to draw a warrant in the amount of $1,000 payable to the Department of Justice Operating Account which shall then be deposited by the Department of Justice in the State Treasury in an account known as the Department of Justice Portland Legal Office Petty Cash Account. Disbursements from the account shall require the approval of the chief financial officer of the Department of Justice Portland Legal Office who shall be designated by the Attorney General.

(3) The moneys so deposited in subsections (1) and (2) of this section are continuously appropriated for the purposes of this section and ORS 128.670, 180.170 and 294.695. Disbursements may be made for any lawful purpose within the limits of the funds available and to the extent that immediate cash payments are necessary or beneficial to the operations of the department. The accounts shall be reimbursed at intervals not exceeding 30 days from any legislatively authorized appropriation or expenditure limitation in existence at that time for the department by the drawing of a claim in payment of the expenses advanced from the Department of Justice Current Expense Account and the Department of Justice Portland Legal Office

Petty Cash Account. [1973 c.775 §§1,2,3; 1977 c.498 §4; 1985 c.504 §1; 1987 c.229 §6; 1989 c.823 §6]

180.200 Department of Justice Client Trust Account. (1) The Department of Justice Client Trust Account is established in the State Treasury, separate and distinct from the General Fund. All moneys in the account are appropriated continuously and shall be used by the Department of Justice for payments to persons and agencies on whose behalf the department has received moneys.

(2) The trust account established by this section shall consist of moneys received by the Department of Justice on behalf of persons and agencies and temporarily credited to the account prior to distribution of the moneys in accordance with law.

(3) Subaccounts may be established within the Department of Justice Client Trust Account when the department determines that subaccounts are necessary or desirable.

(4) Notwithstanding ORS 293.140, interest earned on moneys deposited in the trust account or in any of its subaccounts shall be credited to the account or subaccount. [1999 c.76 §1; 2003 c.356 §1]

Note: 180.200 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 180 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

180.205 Tobacco Enforcement Fund. (1) The Tobacco Enforcement Fund is established separate and distinct from the General Fund. The Tobacco Enforcement Fund shall consist of:

(a) Moneys deposited into the fund under ORS 180.450 and 180.491; and

(b) Moneys transferred to the fund under ORS 293.537.

(2) Moneys in the Tobacco Enforcement Fund are continuously appropriated to the Department of Justice for the purpose of enforcing the provisions of ORS 180.400 to 180.455, 180.465 to 180.494, 323.106, 323.806 and 323.810 to 323.816. Moneys in the fund are not subject to allotment under ORS 291.234 to 291.260. [2003 c.801 §23; 2009 c.717 §27]

Note: 180.205 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 180 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

180.210 Department of Justice; Attorney General head and chief law officer. There hereby is constituted an executive department to be known as the Department of Justice. The Attorney General shall be the head of this department and the chief law officer for the state and all its departments.

180.220 Powers and duties. (1) The Department of Justice shall have:

(a) General control and supervision of all civil actions and legal proceedings in which the State of Oregon may be a party or may be interested.

(b) Full charge and control of all the legal business of all departments, commissions and bureaus of the state, or of any office thereof, which requires the services of an attorney or counsel in order to protect the interests of the state.

(2) No state officer, board, commission, or the head of a department or institution of the state shall employ or be represented by any other counsel or attorney at law.

(3) This section is subject to ORS 825.508. [Amended by 1967 c.178 §3]

180.225 Attorney General representing public bodies in antitrust proceedings. In any proceeding under the antitrust laws of the United States in which the state or any public body within the state is interested, the Attorney General may, in the discretion of the Attorney General, represent any such public body at its request, charging it for the cost of such representation pursuant to ORS 180.160. [1971 c.418 §9]

180.230 Compensation not allowed state departments for attorney services. No compensation shall be allowed to any person for services as an attorney or counselor to any department of the state government or to the head thereof, or to any board or commission, except in cases specially authorized by law. [Amended by 1971 c.418 §6]

180.235 Authority of agency to employ counsel; qualification and salary; status. (1) Notwithstanding any provision of law to the contrary, whenever the Attorney General concludes that it is inappropriate and contrary to the public interest for the office of the Attorney General to concurrently represent more than one public officer or agency in a particular matter or class of matters in circumstances which would create or tend to create a conflict of interest on the part of the Attorney General, the Attorney General may authorize one or both of such officers or agencies to employ its own general or special counsel in the particular matter or class of matters and in related matters. Such authorization may be terminated by the Attorney General whenever the Attorney General determines that separate representation is no longer appropriate.

(2) Any counsel so employed shall be a member of the Oregon State Bar and shall be paid a salary or other compensation out of the funds appropriated to such officer or agency.

(3) In any matter in which the Attorney General has authorized employment of such counsel, any references to representation of such officer or agency by the Attorney General contained in any provision of law shall be deemed to refer to such counsel. [1971 c.418 §8]

180.240 Attorney General and Department of Justice to have powers and prerogatives of district attorneys. The Attorney General and the Department of Justice shall have the same powers and prerogatives in each of the several counties of the state as the district attorneys have in their respective counties.

180.250 [1983 c.481 §2; repealed by 1993 c.188 §15]

180.255 [1983 c.481 §3; repealed by 1993 c.188 §15]

180.260 Service of process by department employees. (1) Notwithstanding ORCP 7 E or any other law, employees and officers of the Department of Justice other than attorneys may serve summons, process and other notice, including notices and findings of financial responsibility under ORS 416.415, in litigation and other proceedings in which the state is interested. No employee or officer shall serve process or other notice in any case or proceeding in which the employee or officer has a personal interest or in which it reasonably may be anticipated that the employee or officer will be a material witness.

(2) The authority granted by subsection (1) of this section may be exercised only in, and within reasonable proximity of, the regular business offices of the Department of Justice, or in situations in which the immediate service of process is necessary to protect the legal interests of the state. [1989 c.323 §2]

180.265 Authority of department to delegate certain duties to employees of Department of Revenue. The Department of Justice may delegate to officers and employees of the Department of Revenue the authority to undertake and complete certain filings and other tasks relating to tax claims pending before a United States Bankruptcy Court that the Department of Justice has identified as being routine tasks. [1997 c.84 §7]

180.267 Authority of Department of Justice to require fingerprints. For the purpose of requesting a state or nationwide criminal records check under ORS 181.534, the Department of Justice may require the fingerprints of a person who:

(1)(a) Is applying for employment by the department; or

(b) Provides services or seeks to provide services to the department as a contractor or volunteer; and

(2) Is, or will be, working or providing services in a position in which the person:

(a) Is providing information technology services and has control over, or access to, information technology systems that would allow the person to harm the information technology systems or the information contained in the systems;

(b) Has access to information, the disclosure of which is prohibited by state or federal laws, rules or regulations or information that is defined as confidential under state or federal laws, rules or regulations; or

(c) Has access to personal information about employees or members of the public including Social Security numbers, dates of birth, driver license numbers, personal financial information or criminal background information. [2005 c.730 §74]

Note: 180.267 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 180 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

180.310 [Subsections (1) and (2) enacted as 1957 c.105 §2 and 1957 c.424 §1; 1961 c.629 §1; repealed by 1975 c.458 §18]

(Division of Child Support)

180.320 Cooperation with division in enforcement; confidentiality of information furnished to division. (1) All state agencies, district attorneys and all police officers of the state, county or any municipality or court thereof, shall cooperate with the Division of Child Support of the Department of Justice in furnishing and making available information, records and documents necessary to assist in establishing or enforcing support obligations or paternity, in performing the duties set out in ORS 25.080 and in determining the location of any absent parent or child for the purpose of enforcing any state or federal law regarding the unlawful taking or restraint of a child or for the purpose of making or enforcing a child custody determination. Notwithstanding the provisions of ORS 109.225, 416.430, 432.121, 432.230 and 432.430, records pertaining to the paternity of a child shall be made available upon written request of an authorized representative of the Division of Child Support. Any information obtained pursuant to this subsection is confidential, and shall be used only for the purposes set out in this subsection.

(2) Information furnished to the Division of Child Support by the Department of Revenue and made confidential by ORS 314.835 shall be used by the division and its employees solely for the purpose of enforcing the provisions of ORS 180.320 to 180.365 and shall not be disclosed or made known for any other purpose. Any person who violates the prohibition against disclosure contained in

this subsection, upon conviction, is punishable as provided in ORS 314.991 (2). [1957 c.105 §4; 1971 c.779 §4; 1979 c.690 §13; 1983 c.761 §12; 1985 c.565 §19; 1985 c.610 §14; 1999 c.80 §73]

180.330 District attorneys not relieved from duties relating to enforcement of support laws. ORS 180.320 to 180.365 are not intended to relieve any district attorney from performing the duties, powers and functions of the district attorney under the statutes of this state relating to the enforcement of support and of the criminal laws of this state. [1957 c.105 §5]

180.340 Division of Child Support established; employment of personnel. There is established the Division of Child Support of the Department of Justice to be maintained, operated and controlled under the supervision of the Attorney General. The Attorney General may employ attorneys, investigators and other personnel necessary to carry out the duties and functions of the division and fix their compensation, subject to any applicable provision of the State Personnel Relations Law. [1957 c.105 §1; 1989 c.633 §1; 1997 c.704 §48; 1999 c.839 §1; 2003 c.73 §58]

180.345 Child Support Program. (1) The Department of Justice is responsible for the administration, supervision and operation of the program authorized by Title IV-D of the Social Security Act (42 U.S.C. 651 et seq.), hereinafter the Child Support Program. The Administrator of the Division of Child Support of the Department of Justice is the Child Support Program Director for the State of Oregon.

(2) The Department of Justice, by and through the director, may:

(a) Enter into cooperative agreements with appropriate courts, law enforcement officials, district attorneys, Indian tribes or tribal organizations and state agencies to provide assistance in carrying out Child Support Program services and any other matters of common concern;

(b) Provide billing, receipting, record keeping, accounting and distribution services for child and spousal support cases that receive services required under state and federal law;

(c) Maintain the state plan required under federal law and act as the liaison for the Child Support Program with the United States Department of Health and Human Services;

(d) Establish policy and adopt rules for the operation of the Child Support Program by the Department of Justice and by entities entering into cooperative agreements under this section;

(e) Conduct performance and program audits of entities entering into cooperative agreements under this section; and

(f) Perform any other act necessary or desirable to ensure the effective administration of the Child Support Program under state and federal law.

(3) The Department of Justice shall accept and disburse federal funds made available to the state for provision of the Child Support Program and all related functions in a manner consistent with federal law. The department may retain the state share of moneys recovered under child support assignments for the administration of the Child Support Program as allowed under federal regulations.

(4) It is the policy of the Child Support Program to inform persons served by the program, in a manner consistent with federal law, of resources not provided by the program that are available for assistance in family law matters including, but not limited to, services provided through the courts of this state, the Oregon State Bar, law schools and legal service providers that receive funding from fees collected under ORS 21.480. The program shall consult with the local family law advisory committees established under ORS 3.434 to ensure that eligible individuals are aware of the services offered by the program. The policy described in this subsection shall be incorporated into staff training and is applicable to all entities that have entered into cooperative agreements with the Department of Justice under this section.

(5) The director shall ensure that Child Support Program policy and rules, to the maximum extent practicable, meet the needs of the majority of families served by the program. The director shall guide program staff regarding implementation of the policy and rules. [2003 c.73 §2]

180.350 Investigators to have authority of peace officers. Investigators employed by the Attorney General under ORS 180.320 to 180.365 shall have all the authority given by statute to peace officers of this state, including the authority to serve and execute warrants of arrest. [1957 c.105 §7]

180.360 Division exempt from payment of certain court fees; exemption. Filing, recording or court fees may not be required from the Division of Child Support of the Department of Justice by any circuit court clerk for the filing of any cases, documents, stipulated orders or processes. However, if the division is entitled to recover costs and disbursements, any of those fees taxable as costs and disbursements may be so taxed, and if recovered by the division, shall be paid

to the appropriate officer. A circuit court clerk may not refuse to file a stipulated order, or enter a stipulated judgment, for the reason that the parties signing such order have failed to pay any fee when such order is presented by the Division of Child Support and is signed by a judge. [1957 c.105 §3; 1983 c.761 §13; 1983 c.763 §23; 1999 c.803 §2; 2003 c.576 §192]

180.365 Child Support Suspense Fund. (1) The Child Support Suspense Fund is established in the State Treasury separate and distinct from the General Fund. Interest earned by the Child Support Suspense Fund shall be credited to the Child Support Deposit Fund established under ORS 25.725. All moneys in the Child Support Suspense Fund are appropriated continuously for purposes of ORS 25.020, 25.610, 25.620 and 25.777 and for all other requirements of the Department of Justice as the state disbursement unit.

(2) The department shall maintain all records required under federal law for the distribution of moneys from the Child Support Suspense Fund.

(3) The Child Support Suspense Fund is not subject to the provisions of ORS 291.234 to 291.260. [2003 c.73 §3; 2005 c.22 §124]

180.370 [1957 c.105 §6; repealed by 1997 c.704 §49]

180.380 Disclosure of information to authorized persons. (1) In addition to its other duties, powers and functions, the Division of Child Support may disclose confidential information from the Federal Parent Locator Service to an authorized person if the information is needed to:

(a) Enforce any state or federal law regarding the unlawful taking or restraint of a child;

(b) Make or enforce a child custody determination;

(c) Establish paternity; or

(d) Establish, modify or enforce a child support order.

(2)(a) If the request for information is made for a purpose described in subsection (1)(a) or (b) of this section, the division may provide the most recent address and place of employment of the child or parent.

(b) If the request for information is made for a purpose described in subsection (1)(c) or (d) of this section, the division may provide the following information:

(A) The Social Security number and address of the parent or alleged parent;

(B) The name, address and federal employer identification number of the employer of the parent or alleged parent; and

(C) The wages or other income from and benefits of employment of the parent or alleged parent.

(c) If there is evidence of possible domestic violence or child abuse by the individual requesting information under subsection (1) of this section, the division may disclose information under this subsection only to a court in accordance with rules adopted by the division.

(3) As used in ORS 180.320 and this section:

(a) "Authorized person" includes:

(A) Any agent or attorney of any state who has the duty or authority under the law of such state to enforce a child custody determination;

(B) Any court or any agent of the court having jurisdiction to make or enforce a judgment of paternity, a judgment of support or a child custody determination;

(C) Any agent or attorney of the United States or of a state who has the duty or authority to investigate, enforce or bring a prosecution with respect to the unlawful taking or restraint of a child;

(D) A state agency responsible for administering an approved child welfare plan or an approved foster care and adoption assistance plan; and

(E) A custodial parent, legal guardian or agent of a child, other than a child receiving temporary assistance for needy families, who is seeking to establish paternity or to establish, modify or enforce a child support order.

(b) "Custody determination" means a judgment or other order of a court providing for the custody of, parenting time with or visitation with a child, and includes permanent and temporary orders, and initial orders and modifications. [1985 c.610 §16; 1989 c.633 §2; 1993 c.33 §318; 1997 c.707 §29; 1999 c.859 §5; 2003 c.450 §2; 2003 c.576 §393]

(Tobacco Master Settlement Agreement)

180.400 Legislative findings. The Legislative Assembly finds that violations of ORS 323.800 to 323.806 threaten the integrity of the tobacco Master Settlement Agreement, the fiscal soundness of the state and the public health. The Legislative Assembly finds that enacting procedural enhancements will aid the enforcement of ORS 323.800 to 323.806 and thereby safeguard the integrity of the Master Settlement Agreement, the fiscal soundness of the state and the public health. The provisions of ORS 180.400 to 180.455 and 323.106 are not intended to and may not be interpreted to amend ORS 323.800 to 323.806. [2003 c.801 §1; 2005 c.22 §125]

Note: 180.400 to 180.455 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 180 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

180.405 Definitions. As used in ORS 180.400 to 180.455 and 323.106:

(1) "Brand family" means all styles of cigarettes sold under the same trademark and differentiated from one another by means of additional modifiers or descriptors, including, but not limited to, cigarettes labeled "menthol," "lights," "kings," "100s" and any cigarettes sold under a brand name, alone or in conjunction with any other word, trademark, logo, symbol, motto, selling message, recognizable pattern of colors or other indicia of product identification, that are identical to, similar to or identifiable with a previously known brand of cigarettes.

(2) "Cigarette" has the meaning given that term in ORS 323.800.

(3) "Distributor" means a person who is licensed under ORS 323.105 and any other person who is a distributor for the purposes of ORS 323.005 to 323.482.

(4) "Master Settlement Agreement" has the meaning given that term in ORS 323.800.

(5) "Nonparticipating manufacturer" means any tobacco product manufacturer that is not a participating manufacturer.

(6) "Participating manufacturer" has the meaning given that term in section II(jj) of the Master Settlement Agreement.

(7) "Qualified escrow fund" has the meaning given that term in ORS 323.800.

(8) "Tobacco product manufacturer" has the meaning given that term in ORS 323.800.

(9) "Units sold" has the meaning given that term in ORS 323.800. [2003 c.801 §2]

Note: See note under 180.400.

180.410 Manufacturer certification. (1) Every tobacco product manufacturer whose cigarettes are sold in this state whether directly or through a distributor, retailer or similar intermediary shall execute and deliver a certification to the Attorney General certifying that as of the date of the certification, the tobacco product manufacturer is either:

(a) A participating manufacturer; or

(b) In full compliance with ORS 323.806 and with rules adopted under ORS 180.445 and 180.450.

(2) The certification required by subsection (1) of this section shall be on a form prescribed by the Attorney General and shall be submitted no later than April 30 each year. The form shall permit the tobacco product manufacturer to indicate the electronic mail address to which the Attorney General may send notice of changes in the directory developed under ORS 180.425 if the tobacco product manufacturer elects to receive electronic mail notice.

(3) A participating manufacturer shall include in the certification required by subsection (1) of this section a list of its brand families. The participating manufacturer shall update the list at least 30 days prior to any addition or modification to its brand families by executing and delivering a supplemental certification to the Attorney General.

(4) A participating manufacturer may not include a brand family in the list required by subsection (3) of this section unless the participating manufacturer affirms that the cigarettes in the brand family are to be considered the participating manufacturer's cigarettes for purposes of calculating the participating manufacturer's payments under the Master Settlement Agreement for the relevant year, in the volume and shares determined under the Master Settlement Agreement. This subsection does not limit or otherwise affect the right of the state to maintain that cigarettes in a brand family are those of a different tobacco product manufacturer for purposes of calculating payments under the Master Settlement Agreement or for purposes of ORS 323.800 to 323.806.

(5) A nonparticipating manufacturer shall include in the certification required by subsection (1) of this section a complete list of:

(a) All of its brand families and the number of units of each brand family that were sold in the state during the preceding calendar year;

(b) All of its brand families that have been sold in the state at any time during the current calendar year;

(c) Any brand family of the manufacturer sold in the state during the preceding calendar year that is no longer being sold in the state as of the date of the certification, which may be indicated on the list described in paragraph (a) of this subsection by an asterisk; and

(d) The name and address of every other tobacco product manufacturer that manufactured a brand family described in paragraph (a) or (b) of this subsection in the preceding or current calendar year.

(6) A nonparticipating manufacturer shall update the list required by subsection (5) of this section at least 30 days prior to any addition or modification to its brand families by executing and delivering a supplemental certification to the Attorney General.

(7) A nonparticipating manufacturer may not include a brand family in the list required by subsection (5) of this section unless the nonparticipating manufacturer affirms that the cigarettes in the brand family are to be considered the nonparticipating manufac-

turer's cigarettes for purposes of ORS 323.800 to 323.806. This subsection does not limit or otherwise affect the right of the state to maintain that cigarettes in a brand family are those of a different tobacco product manufacturer for purposes of calculating payments under the Master Settlement Agreement or for purposes of ORS 323.800 to 323.806. [2003 c.801 §3; 2005 c.22 §126]

Note: See note under 180.400.

180.415 Nonparticipating manufacturer certification; rules. In the certification required by ORS 180.410 (1), a nonparticipating manufacturer shall further certify:

(1) That the nonparticipating manufacturer is registered to do business in the State of Oregon or has appointed a resident agent for service of process and provided notice of the appointment as required by ORS 180.430.

(2) That the nonparticipating manufacturer:

(a) Has established and continues to maintain a qualified escrow fund; and

(b) Has executed a qualified escrow agreement that has been reviewed and approved by the Attorney General and that governs the qualified escrow fund. The Attorney General shall adopt rules defining the form and content of a model escrow agreement. A nonparticipating manufacturer that executes the model escrow agreement is deemed to have satisfied the requirement that it use a form of escrow agreement that has been reviewed and approved by the Attorney General.

(3)(a) The name, address and telephone number of the financial institution where the nonparticipating manufacturer has established the qualified escrow fund required by ORS 323.806;

(b) The account number of the qualified escrow fund and any subaccount number for the State of Oregon;

(c) The amount the nonparticipating manufacturer placed in the qualified escrow fund for cigarettes sold in Oregon during the preceding calendar year, the amount and date of each deposit and evidence or verification as may be deemed necessary by the Attorney General to confirm the amounts and dates; and

(d) The amount and date of any withdrawal of funds the nonparticipating manufacturer made at any time from the qualified escrow fund or from any other qualified escrow fund into which the nonparticipating manufacturer ever made escrow payments pursuant to ORS 323.806. [2003 c.801 §4]

Note: See note under 180.400.

180.420 Document retention period. A tobacco product manufacturer that certifies to the Attorney General as required by ORS 180.410 and 180.415 shall retain all invoices and documentation of sales and other information relied upon for the certifications for a period of five years. [2003 c.801 §5]

Note: See note under 180.400.

180.425 Attorney General's directory; rules. (1) The Attorney General shall develop and make available for public inspection a directory listing all tobacco product manufacturers that have provided current and accurate certifications conforming to the requirements of ORS 180.410 and 180.415 and all brand families that are listed in the certifications.

(2) The Attorney General may not include or retain in the directory the name or brand families of any nonparticipating manufacturer that fails to provide the required certification or whose certification the Attorney General determines is not in compliance with ORS 180.410 and 180.415, unless the Attorney General has determined that the violation has been cured to the satisfaction of the Attorney General. The Attorney General shall adopt rules defining the criteria by which the Attorney General will exercise the discretion granted by this subsection.

(3) The Attorney General may not include or retain in the directory a nonparticipating manufacturer or a brand family if the Attorney General concludes that:

(a) Any escrow payment required from the nonparticipating manufacturer pursuant to ORS 323.806 for any period for any brand family, whether listed or not listed by the nonparticipating manufacturer, has not been fully paid into a qualified escrow fund governed by a qualified escrow agreement that has been approved by the Attorney General; or

(b) Any outstanding final judgment, including interest thereon, for a violation of ORS 323.806 has not been fully satisfied for the brand family or the nonparticipating manufacturer.

(4) The Attorney General shall update the directory in order to correct mistakes and to add or remove a tobacco product manufacturer or a brand family to keep the directory in conformity with the requirements of this section. The Attorney General shall update the directory with new brand families upon receipt of an annual or supplemental certification listing new brand families if the Attorney General determines that the annual or supplemental certification is in compliance with the requirements of ORS 180.410 and 180.415. The Attorney General

shall make the determination about compliance within 45 days of receipt of the certification.

(5) The Attorney General shall:

(a) Create and maintain a list of persons, including but not limited to tobacco product manufacturers and distributors, that are interested in receiving electronic mail notifications of changes in the directory developed under this section;

(b) Develop a registration form to be completed by persons interested in receiving electronic mail notification of changes in the directory developed under this section that are not otherwise required by ORS 180.435 (4) or rules adopted under ORS 180.445 or 180.450 to submit their electronic mail addresses to the Attorney General; and

(c) Immediately upon making any change in the directory developed under this section, send electronic mail notices of the change to all persons on the list created under this subsection. [2003 c.801 §6; 2009 c.227 §2]

Note: See note under 180.400.

180.430 Nonresident nonparticipating manufacturer service agent. (1)(a) Any nonresident or foreign nonparticipating manufacturer that has not registered to do business in the State of Oregon as a foreign corporation or business entity shall, as a condition precedent to having its brand families listed or retained in the directory developed under ORS 180.425, appoint and continuously engage the services of a resident agent in this state. The agent shall act as agent for service of process on whom all process in any action or proceeding against the nonparticipating manufacturer concerning or arising out of the enforcement of this section or ORS 180.410, 180.415, 180.420, 180.435, 180.440 or 323.806, or rules adopted under ORS 180.445 or 180.450, may be served in any manner authorized by law. Service on the agent constitutes legal and valid service of process on the nonparticipating manufacturer.

(b) The nonparticipating manufacturer shall provide the name, address, telephone number and proof of the appointment and availability of the agent to the Attorney General.

(2) The nonparticipating manufacturer shall provide notice to the Attorney General at least 30 calendar days prior to termination of the authority of an agent and shall provide proof to the satisfaction of the Attorney General of the appointment of a new agent at least five calendar days prior to the termination of an existing agent appointment. If an agent terminates an agency appointment, the nonparticipating manufacturer shall notify the Attorney General of the termination within five calendar days and shall include proof to the Attorney General of the appointment of a new agent.

(3) A nonparticipating manufacturer whose cigarettes are sold in this state who has not appointed or designated an agent as required by this section shall be deemed to have appointed the Secretary of State as the agent and may be proceeded against in courts of this state by service of process upon the Secretary of State. However, the appointment of the Secretary of State as the agent does not satisfy the condition precedent to having brand families of the nonparticipating manufacturer listed or retained in the directory. [2003 c.801 §7]

Note: See note under 180.400.

180.435 Distributor obligations; production of records and testimony; Attorney General and Department of Revenue information sharing; nonparticipating manufacturer escrow requirements. (1) Not later than 20 days after the end of each calendar quarter, and more frequently if so directed by the Attorney General, a distributor shall report such information as the Attorney General requires to facilitate compliance by tobacco product manufacturers with this section and ORS 180.410, 180.415, 180.420, 180.430 and 180.440, and with rules adopted under ORS 180.445 and 180.450. The information shall include, but need not be limited to, a list by brand family of the total number of cigarettes or, in the case of roll-your-own tobacco, the equivalent stick count for which the distributor affixed stamps or otherwise paid the tax due during the previous calendar quarter.

(2) A distributor shall maintain for a period of five years all invoices and documentation of sales of cigarettes manufactured by nonparticipating manufacturers and any other information relied upon in reporting to the Attorney General under subsection (1) of this section. The distributor shall make the invoices and other documentation available to the Attorney General upon request.

(3)(a) The Attorney General may compel by subpoena the production of any books, papers, records or other information required to be maintained under subsection (2) of this section and may require any person to appear and provide testimony pertinent to the information described in subsection (2) of this section. The subpoena shall have the same force and effect and be served in the same manner as in a civil action in the circuit court.

(b) If a person fails to produce any books, papers, records or other information required to be produced, fails to appear or testify about a matter for which testimony may be compelled or otherwise fails to comply with

a subpoena issued under this subsection, the Attorney General may apply to the circuit court of the county in which the person to whom the subpoena was issued resides or may be found. The application shall be for an order requiring the person to comply with the demand or request of the Attorney General. The application shall be made by ex parte motion. The order of the court shall require the person against whom the order is directed to comply with the request or demand of the Attorney General within 10 days after the service of the order, or such further time as the court may grant, or to justify the failure to comply with the order within that time.

(c) Failure to comply with an order under this subsection shall constitute contempt of court. The remedy provided under this paragraph shall be in addition to any other remedy provided by law.

(4) A distributor shall provide the Attorney General with an electronic mail address so that the Attorney General may notify the distributor of the information required under subsections (1) and (8) of this section.

(5) The Attorney General and the Department of Revenue may share with each other information received under this section and ORS 180.410, 180.415 and 323.106 and may share such information with federal, state or local agencies for purposes of enforcement of this section and ORS 180.410, 180.415, 180.420, 180.430, 180.440 and 323.806, rules adopted under ORS 180.445 and 180.450 and corresponding laws of other states.

(6) The Attorney General may at any time require a nonparticipating manufacturer to produce proof from the financial institution in which the nonparticipating manufacturer has established a qualified escrow fund for the purpose of compliance with ORS 323.806 of the amount of moneys in the fund, exclusive of interest, the amount and date of each deposit and the amount and date of each withdrawal from the fund.

(7) The Attorney General shall, upon request of a nonparticipating manufacturer whose compliance with escrow requirements is at issue, provide the manufacturer with copies of all documents upon which any proposed addition to the escrow is based. Documents required to be provided under this subsection include, but are not necessarily limited to, reports under this section from distributors. The information provided to the manufacturer under this subsection may not include information about brand families or products of any tobacco product manufacturer other than the one to whom the information is provided. The information may be used only for the purpose of determining the appropriate amount of escrow deposits.

(8) The Attorney General may require a distributor or a tobacco product manufacturer to submit any additional information, including, but not limited to, samples of the packaging and labeling of each brand family, to enable the Attorney General to determine whether a tobacco product manufacturer is in compliance with this section and ORS 180.410, 180.415, 180.420, 180.430 and 180.440 and with rules adopted under ORS 180.445 and 180.450. [2003 c.801 §8; 2009 c.227 §1]

Note: See note under 180.400.

180.440 Prohibited conduct; penalty. (1) A person may not:

(a) Affix a stamp to a package or other container of cigarettes of a tobacco product manufacturer or brand family that is not included in the directory developed under ORS 180.425;

(b) Sell, offer for sale or possess for sale cigarettes of a tobacco product manufacturer or brand family that the person acquired at a time when the tobacco product manufacturer or brand family was not included in the directory developed under ORS 180.425; or

(c) Possess in this state for sale in another jurisdiction cigarettes of a tobacco product manufacturer or brand family that the person acquired at a time when the tobacco product manufacturer or brand family was not included in the directory developed under ORS 180.425 and was not in compliance with the Master Settlement Agreement qualifying statute in the other jurisdiction or with statutes that supplement the qualifying statute in that jurisdiction.

(2) A person who sells, offers for sale, distributes, acquires, holds, owns, possesses, transports, imports or causes to be imported cigarettes that the person knows or should know are intended for sale or distribution in violation of subsection (1) of this section commits a Class A misdemeanor. [2003 c.801 §11; 2009 c.70 §1]

Note: See note under 180.400.

180.445 Quarterly escrow deposits; rules. (1) To promote compliance with the provisions of ORS 180.410, 180.415, 180.420, 180.430, 180.435 and 180.440, the Attorney General may adopt rules requiring a nonparticipating manufacturer to make the escrow deposits required by ORS 323.806 in quarterly installments during the year in which the sales covered by the deposits are made. The Attorney General may require a nonparticipating manufacturer to produce information sufficient to enable the Attorney General to determine the adequacy of the amount of the installment deposit.

(2) If the Attorney General adopts rules requiring a nonparticipating manufacturer to make escrow deposits in quarterly install-

ments, the rules may also provide that a nonparticipating manufacturer that has been in continuous compliance for one year with ORS 180.410, 180.415, 180.420, 180.430, 180.435, 180.440 and 323.806 may make escrow deposits required by ORS 323.806 in annual payments during the second and subsequent years in which deposits are required. [2003 c.801 §9]

Note: See note under 180.400.

180.450 Judicial review; civil remedies; rules. (1) A determination by the Attorney General to omit or remove from the directory developed under ORS 180.425 a brand family or tobacco product manufacturer is subject to review in the manner prescribed by ORS 183.484 for judicial review of orders in other than contested cases.

(2) The Attorney General may adopt rules necessary to effect the purposes of ORS 180.400 to 180.455 and 323.106.

(3) In any action brought by the state to enforce ORS 180.410, 180.415, 180.420, 180.430, 180.435, 180.440 or 323.806, or any rule adopted under this section or ORS 180.445, the state may recover the costs of investigation, expert witness fees, costs of the action and reasonable attorney fees. Moneys recovered under this subsection shall be deposited into the Tobacco Enforcement Fund established under ORS 180.205.

(4) If a court determines that a person has violated any provision of ORS 180.410, 180.415, 180.420, 180.430, 180.435 or 180.440, or any rule adopted under this section or ORS 180.445, the court shall order any profits, gain, gross receipts or other benefit from the violation to be disgorged and paid to the Tobacco Enforcement Fund established under ORS 180.205.

(5) Unless otherwise expressly provided, the remedies or penalties provided by this section and ORS 180.440 and 180.455 are cumulative to each other and to the remedies or penalties available under all other laws of this state. [2003 c.801 §10]

Note: See note under 180.400.

180.455 Revocation or suspension of distributor license; refusal to issue license; penalties; remedies. (1) Upon a determination that a distributor has violated ORS 180.440, the Department of Revenue may revoke or suspend the license of the distributor in the manner provided by ORS 323.140. Each stamp affixed and each offer to sell cigarettes in violation of ORS 180.440 constitutes a separate violation.

(2) Upon a determination that a person applying for a license under ORS 323.105 has violated ORS 180.440 at any time within the five years preceding the application, the department may refuse to issue the license. The department shall provide opportunity for hearing and judicial review in the manner provided in ORS 323.140.

(3)(a) Upon a determination that a person has violated ORS 180.440 (1)(b) or (c), the department may impose a civil penalty in an amount not to exceed the greater of $5,000 or 500 percent of the retail value of the cigarettes sold, offered for sale or possessed for sale. Judicial review of an order imposing a civil penalty shall be as provided in ORS 305.445 and 305.501.

(b) Upon a determination that a person has violated ORS 180.440 (1)(a), the department may impose a civil penalty in an amount not to exceed $5,000. Judicial review of an order imposing a civil penalty shall be as provided in ORS 305.445 and 305.501.

(4) The Attorney General may seek an injunction to restrain a threatened or actual violation of ORS 180.435 or 180.440 by a person and to compel the person to comply with those sections. In any action brought pursuant to this subsection, the state may recover the costs of investigation, the costs of the action, reasonable attorney fees and a civil penalty for each violation not to exceed $5,000. The civil penalty must be imposed in the manner provided by ORS 183.745.

(5) A person who violates ORS 180.440 (1) engages in an unlawful practice in violation of ORS 646.608. [2003 c.801 §12; 2009 c.70 §2]

Note: See note under 180.400.

(Smokeless Tobacco Master Settlement Agreement)

180.465 Legislative findings. The Legislative Assembly finds that violations of ORS 323.810 to 323.816 threaten the integrity of the Smokeless Tobacco Master Settlement Agreement, the fiscal soundness of the state and the public health. The Legislative Assembly finds that enacting procedural enhancements will aid the enforcement of ORS 323.810 to 323.816 and thereby safeguard the integrity of the Smokeless Tobacco Master Settlement Agreement, the fiscal soundness of the state and the public health. [2009 c.717 §6]

180.468 Definitions. As used in ORS 180.465 to 180.494:

(1) "Distributor" means a person who is licensed under ORS 323.520 and any other person who is a distributor for the purposes of ORS 323.500 to 323.645.

(2) "Nonparticipating manufacturer" means any tobacco product manufacturer that is not a participating manufacturer.

(3) "Participating manufacturer" has the meaning given that term in section II(ee) of

the Smokeless Tobacco Master Settlement Agreement.

(4) "Qualified escrow fund" has the meaning given that term in ORS 323.810.

(5) "Smokeless Tobacco Master Settlement Agreement" has the meaning given that term in ORS 323.810.

(6) "Smokeless tobacco products" has the meaning given that term in ORS 323.810.

(7) "Tobacco product manufacturer" has the meaning given that term in ORS 323.810.

(8) "Units sold" has the meaning given that term in ORS 323.810. [2009 c.717 §7]

180.471 Manufacturer certification. (1) Every tobacco product manufacturer whose smokeless tobacco products are sold in this state, whether directly or through a distributor, retailer or similar intermediary, shall execute and deliver a certification to the Attorney General certifying that, as of the date of the certification, the tobacco product manufacturer is either:

(a) A participating manufacturer; or

(b) In full compliance with ORS 323.816 and with rules adopted under ORS 180.489 and 180.491.

(2) The certification required by subsection (1) of this section shall be on a form prescribed by the Attorney General and shall be submitted no later than April 30 each year. The form shall permit the tobacco product manufacturer to indicate the electronic mail address to which the Attorney General may send notice of changes in the directory developed under ORS 180.477 if the tobacco product manufacturer elects to receive electronic mail notice. [2009 c.717 §8]

180.474 Nonparticipating manufacturer certification; rules. In the certification required by ORS 180.471, a nonparticipating manufacturer shall further certify:

(1) That the nonparticipating manufacturer is registered to do business in the State of Oregon or has appointed a resident agent for service of process and provided notice of the appointment as required by ORS 180.480.

(2) That the nonparticipating manufacturer:

(a) Has established and continues to maintain a qualified escrow fund; and

(b) Has executed a qualified escrow agreement that has been reviewed and approved by the Attorney General and that governs the qualified escrow fund. The Attorney General shall adopt rules defining the form and content of a model escrow agreement. A nonparticipating manufacturer that executes the model escrow agreement is deemed to have satisfied the requirement that it use a form of escrow agreement that has been reviewed and approved by the Attorney General.

(3)(a) The name, address and telephone number of the financial institution where the nonparticipating manufacturer has established the qualified escrow fund required by ORS 323.816;

(b) The account number of the qualified escrow fund and any subaccount number for the State of Oregon;

(c) The amount the nonparticipating manufacturer placed in the qualified escrow fund for smokeless tobacco products sold in Oregon during the preceding calendar year, the amount and date of each deposit and evidence or verification as may be deemed necessary by the Attorney General to confirm the amounts and dates; and

(d) The amount and date of any withdrawal of funds the nonparticipating manufacturer made at any time from the qualified escrow fund or from any other qualified escrow fund into which the nonparticipating manufacturer ever made escrow payments pursuant to ORS 323.816. [2009 c.717 §9]

180.477 Attorney General's directory; rules. (1) The Attorney General shall develop and make available for public inspection a directory listing all tobacco product manufacturers that have provided current and accurate certifications conforming to the requirements of ORS 180.471 and 180.474.

(2) The Attorney General may not include or retain in the directory the name of any nonparticipating manufacturer that fails to provide the required certification or whose certification the Attorney General determines is not in compliance with ORS 180.471 and 180.474, unless the Attorney General has determined that the violation has been cured to the satisfaction of the Attorney General. The Attorney General shall adopt rules defining the criteria by which the Attorney General will exercise the discretion granted by this subsection.

(3) The Attorney General may not include or retain in the directory a nonparticipating manufacturer if the Attorney General concludes that:

(a) Any escrow payment required from the nonparticipating manufacturer pursuant to ORS 323.816 for any period has not been fully paid into a qualified escrow fund governed by a qualified escrow agreement that has been approved by the Attorney General; or

(b) Any outstanding final judgment against the nonparticipating manufacturer, including interest thereon, for a violation of ORS 323.816 has not been fully satisfied.

(4) The Attorney General shall update the directory in order to correct mistakes and to add or remove a tobacco product manufacturer to keep the directory in conformity with the requirements of this section. The Attorney General shall update the directory with new tobacco product manufacturers upon receipt of an annual or supplemental certification listing new tobacco product manufacturers if the Attorney General determines that the annual or supplemental certification is in compliance with the requirements of ORS 180.471 and 180.474. The Attorney General shall make the determination about compliance within 45 days of receipt of the certification.

(5) The Attorney General shall:

(a) Create and maintain a list of persons, including but not limited to tobacco product manufacturers and distributors, that are interested in receiving electronic mail notifications of changes in the directory developed under this section;

(b) Develop a registration form to be completed by persons interested in receiving electronic mail notification of changes in the directory developed under this section that are not otherwise required by ORS 180.483 (3) or rules adopted under ORS 180.489 and 180.491 to submit their electronic mail addresses to the Attorney General; and

(c) Immediately upon making any change in the directory developed under this section, send electronic mail notices of the change to all persons on the list created under this subsection. [2009 c.717 §10]

180.480 Nonresident nonparticipating manufacturer service agent. (1)(a) Any nonresident or foreign nonparticipating manufacturer that has not registered to do business in the State of Oregon as a foreign corporation or business entity shall, as a condition precedent to being listed or retained in the directory developed under ORS 180.477, appoint and continuously engage the services of a resident agent in this state. The agent shall act as agent for service of process on whom all process in any action or proceeding against the nonparticipating manufacturer concerning or arising out of the enforcement of this section or ORS 180.471, 180.474, 180.477, 180.483, 180.486 or 323.816, or rules adopted under ORS 180.489 and 180.491, may be served in any manner authorized by law. Service on the agent constitutes legal and valid service of process on the nonparticipating manufacturer.

(b) The nonparticipating manufacturer shall provide the name, address, telephone number and proof of the appointment and availability of the agent to the Attorney General.

(2) The nonparticipating manufacturer shall provide notice to the Attorney General at least 30 calendar days prior to termination of the authority of an agent and shall provide proof to the satisfaction of the Attorney General of the appointment of a new agent at least five calendar days prior to the termination of an existing agent appointment. If an agent terminates the agent's appointment, the nonparticipating manufacturer shall notify the Attorney General of the termination within five calendar days and shall include proof to the Attorney General of the appointment of a new agent.

(3) A nonparticipating manufacturer whose smokeless tobacco products are sold in this state who has not appointed or designated an agent as required by this section shall be deemed to have appointed the Secretary of State as the agent and may be proceeded against in courts of this state by service of process upon the Secretary of State. However, the appointment of the Secretary of State as the agent does not satisfy the condition precedent to the nonparticipating manufacturer being listed or retained in the directory. [2009 c.717 §11]

180.483 Distributor obligations; Attorney General and Department of Revenue information sharing; nonparticipating manufacturer escrow requirements. (1) Not later than 20 days after the end of each calendar quarter, and more frequently if so directed by the Attorney General, a distributor of smokeless tobacco products subject to the requirements of ORS 323.500 to 323.645 shall report such information as the Attorney General requires to facilitate compliance by tobacco product manufacturers with this section and ORS 180.471, 180.474, 180.477, 180.480, 180.486 and 323.816 and with rules adopted under ORS 180.489 and 180.491. The information shall include, but need not be limited to, a list of the total number of units sold of smokeless tobacco products for which the distributor paid the tax due during the previous calendar quarter.

(2) A distributor shall maintain for a period of five years all invoices and documentation of sales of smokeless tobacco products manufactured by nonparticipating manufacturers and any other information relied upon in reporting to the Attorney General under subsection (1) of this section. The distributor shall make the invoices and other documentation available to the Attorney General upon request.

(3) A distributor shall provide the Attorney General with an electronic mail address so that the Attorney General may notify the distributor of the information required under subsections (1) and (7) of this section.

(4) The Attorney General and the Department of Revenue may share with each other information received under this section and ORS 180.471, 180.474 and 323.520 and may share such information with federal, state or local agencies for purposes of enforcement of this section and ORS 180.471, 180.474, 180.477, 180.480, 180.486 and 323.816, rules adopted under ORS 180.489 and 180.491 and corresponding laws of other states.

(5) The Attorney General may at any time require a nonparticipating manufacturer to produce proof from the financial institution in which the nonparticipating manufacturer has established a qualified escrow fund for the purpose of compliance with ORS 323.816 of the amount of moneys in the fund, exclusive of interest, the amount and date of each deposit and the amount and date of each withdrawal from the fund.

(6) The Attorney General shall, upon request of a nonparticipating manufacturer whose compliance with escrow requirements is at issue, provide the manufacturer with copies of all documents upon which any proposed addition to the escrow is based. Documents required to be provided under this subsection include, but are not necessarily limited to, reports under this section from distributors. The information provided to the manufacturer under this subsection may not include information about products of any tobacco product manufacturer other than the one to whom the information is provided. The information may be used only for the purpose of determining the appropriate amount of escrow deposits.

(7) The Attorney General may require a distributor or a tobacco product manufacturer to submit any additional information, including, but not limited to, samples of the packaging and labeling of each smokeless tobacco product manufactured or distributed, to enable the Attorney General to determine whether a tobacco product manufacturer is in compliance with this section and ORS 180.471, 180.474, 180.477, 180.480, 180.486 and 323.816 and with rules adopted under ORS 180.489 and 180.491. [2009 c.717 §12]

180.486 Prohibited conduct; penalty. (1) A person may not:

(a) Sell, offer for sale or possess for sale in this state smokeless tobacco products of a tobacco product manufacturer that is not included in the directory developed under ORS 180.477;

(b) Sell, offer for sale or possess for sale in this state smokeless tobacco products of a tobacco product manufacturer that the person acquired at a time when the tobacco product manufacturer was not included in the directory developed under ORS 180.477;

(c) Possess in this state for sale in another jurisdiction smokeless tobacco products of a tobacco product manufacturer that the person acquired at a time when the tobacco product manufacturer was not included in the directory developed under ORS 180.477 and was not in compliance with the Smokeless Tobacco Master Settlement Agreement qualifying statute in the other jurisdiction or with statutes that supplement the qualifying statute in that jurisdiction; or

(d) Distribute, in this state, free samples of smokeless tobacco products:

(A) To persons under 21 years of age; or

(B) In any area, unless access by persons under 21 years of age to that area is prohibited.

(2) A person who sells, offers for sale, distributes, acquires, holds, owns, possesses, transports, imports or causes to be imported smokeless tobacco products that the person knows or should know are intended for sale or distribution in violation of subsection (1) of this section commits a Class A misdemeanor. [2009 c.717 §13]

180.489 Quarterly escrow deposits; rules. (1) To promote compliance with the provisions of ORS 180.471, 180.474, 180.477, 180.480, 180.483 and 180.486, the Attorney General may adopt rules requiring a nonparticipating manufacturer to make the escrow deposits required by ORS 323.816 in quarterly installments during the year in which the sales covered by the deposits are made. The Attorney General may require a nonparticipating manufacturer to produce information sufficient to enable the Attorney General to determine the adequacy of the amount of the installment deposit.

(2) If the Attorney General adopts rules requiring a nonparticipating manufacturer to make escrow deposits in quarterly installments, the rules may also provide that a nonparticipating manufacturer that has been in continuous compliance for one year with ORS 180.471, 180.474, 180.477, 180.480, 180.483, 180.486 and 323.816 may make escrow deposits required by ORS 323.816 in annual payments during the second and subsequent years in which deposits are required. [2009 c.717 §14]

180.491 Judicial review; civil remedies; rules. (1) A determination by the Attorney General to omit or remove a tobacco product manufacturer from the directory developed under ORS 180.477 is subject to review in the manner prescribed by ORS 183.484 for judicial review of orders in other than contested cases.

(2) The Attorney General may adopt rules necessary to effect the purposes of ORS 180.465 to 180.494 and 323.520 (3).

(3) In any action brought by the state to enforce ORS 180.471, 180.474, 180.477, 180.480, 180.483, 180.486 or 323.816, or any rule adopted under this section or ORS 180.489, the state may recover the costs of investigation, expert witness fees, costs of the action and reasonable attorney fees. Moneys recovered under this subsection shall be deposited into the Tobacco Enforcement Fund established under ORS 180.205.

(4) If a court determines that a person has violated any provision of ORS 180.471, 180.474, 180.477, 180.480, 180.483, 180.486 or 323.816, or any rule adopted under this section or ORS 180.489, the court shall order any profits, gain, gross receipts or other benefit from the violation to be disgorged and paid to the Tobacco Enforcement Fund established under ORS 180.205.

(5) Unless otherwise expressly provided, the remedies or penalties provided by this section and ORS 180.486 and 180.494 are cumulative to each other and to the remedies or penalties available under all other laws of this state. [2009 c.717 §15]

180.494 Revocation or suspension of distributor license; refusal to issue license; penalties; remedies. (1) Upon a determination that a distributor has violated ORS 180.486, the Department of Revenue may revoke or suspend the license of the distributor in the manner provided by ORS 323.535. Each offer to sell smokeless tobacco products in violation of ORS 180.486 constitutes a separate violation.

(2) Upon a determination that a person applying for a license under ORS 323.520 has violated ORS 180.486 at any time within the five years preceding the application, the department may refuse to issue the license. The department shall provide opportunity for hearing and judicial review in the manner provided in ORS 323.535.

(3)(a) Upon a determination that a person has violated ORS 180.486 (1)(b) or (c), the department may impose a civil penalty in an amount not to exceed the greater of $5,000 or 500 percent of the retail value of the smokeless tobacco products sold, offered for sale or possessed for sale. Judicial review of an order imposing a civil penalty shall be as provided in ORS 305.445 and 305.501.

(b) Upon a determination that a person has violated ORS 180.486 (1)(a), the department may impose a civil penalty in an amount not to exceed $5,000. Judicial review of an order imposing a civil penalty shall be as provided in ORS 305.445 and 305.501.

(4) The Attorney General may seek an injunction to restrain a threatened or actual violation of ORS 180.483 or 180.486 by a distributor and to compel the distributor to comply with ORS 180.483 and 180.486. In any action brought pursuant to this subsection, the state may recover the costs of investigation, the costs of the action and reasonable attorney fees.

(5) A person who violates ORS 180.486 (1) engages in an unlawful practice in violation of ORS 646.608. [2009 c.717 §16]

(Consumer Protection Services)

180.510 Functions of Department of Justice; personnel. The Department of Justice shall carry out the functions of the Attorney General under this section and ORS 20.098, 83.710 to 83.750, 83.820 to 83.895, 180.520, 646.605 to 646.656, 646.990, 803.375, 803.385 and 815.410 to 815.430. The Attorney General may employ personnel necessary to carry out the duties and functions described in this section and fix their compensation, subject to any applicable provisions of the State Personnel Relations Law. [1971 c.744 §25; 1981 c.320 §2; 1985 c.251 §10]

180.520 Duties of department; agency cooperation; Consumer Advisory Council created; membership; compensation and expenses. (1) It shall be the duty of the Department of Justice to:

(a) Coordinate consumer services carried on by state departments and agencies;

(b) Further consumer education;

(c) Conduct studies and research concerned with consumer services; receive, process, investigate and take action on complaints from consumers; and refer such complaints as require further action to appropriate agencies for enforcement;

(d) Inform the Governor and the Attorney General and other law enforcement agencies of violations of laws or rules affecting consumers as its investigations or studies may reveal;

(e) Advise the executive and legislative branches in matters affecting consumer interests;

(f) Study and report all matters referred to it by the Legislative Assembly or the Governor;

(g) Inform the public through appearances at federal and state committee, commission or department hearings of the policies, decisions or legislation beneficial or detrimental to consumers; and

(h) Evaluate consumer sales contracts for compliance with plain language standards under ORS 180.545.

(2) Every state agency shall cooperate with the Department of Justice in carrying out its functions under this section.

(3) To assist in carrying out chapter 753, Oregon Laws 1971, there is created in the department a Consumer Advisory Council.

(a) The Consumer Advisory Council shall consist of seven members appointed by the Attorney General, two of whom shall represent business, two of whom shall represent labor, and three of whom shall represent voluntary consumer agencies.

(b) The members of the council shall be entitled to compensation and expenses computed as provided in ORS 292.495.

(c) All meetings of the council shall be open and public and all persons shall be permitted to attend any meeting of the council. [1981 c.320 §3; 1985 c.587 §§5,8; 1993 c.744 §40]

Note: 180.520 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 180 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

(Plain Language Review of Consumer Contracts)

180.540 Review of consumer contracts for conformity with plain language standards. (1) Except as provided in subsection (2) of this section, a seller or extender of credit may submit to the Department of Justice a consumer contract issued by the seller or extender of credit for the purpose of obtaining review of the consumer contract for the consumer contract's compliance with plain language standards in ORS 180.545.

(2) For the purpose of obtaining a review of a consumer contract for the consumer contract's compliance with plain language standards in ORS 180.545, if a consumer contract:

(a) Is an insurance policy, the seller or extender of credit issuing the policy may submit the policy to the Director of the Department of Consumer and Business Services.

(b) Is an agreement for a loan or other extension of credit in which the extender of credit is an insured institution, as defined in ORS 706.008, the extender of credit under the agreement may submit the agreement to the Director of the Department of Consumer and Business Services.

(c) Is an agreement for a loan or other extension of credit in which the extender of credit is a credit union, as that term is defined in ORS 723.006, or a licensee under ORS chapter 725, the extender of credit under the agreement may submit the agreement to the Director of the Department of Consumer and Business Services.

(3) For purposes of this section, a consumer contract is a written contract made in the course of a consumer transaction to the value of $50,000, excluding interest or finance charges, in which the contract involves any of the following, primarily for personal, family or household use:

(a) Real estate, goods or services as defined in ORS 646.605.

(b) Any extension of credit, including the lending of money. [1985 c.587 §§1,6,9; 1997 c.631 §421; 2009 c.541 §5]

Note: 180.540 to 180.555 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 180 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

180.545 Plain language standards; approval; fees. (1) The agency to whom a consumer contract is submitted under ORS 180.540 shall review the contract to determine whether it complies with plain language standards. A consumer contract complies with plain language standards if it:

(a) Uses words that convey meanings clearly and directly;

(b) Uses the present tense and active voice whenever possible;

(c) Primarily uses simple sentences;

(d) Defines only those words that cannot be properly explained or qualified in the text;

(e) Explains at the beginning that the form is a contract between parties;

(f) Uses margins adequate for ease in reading; and

(g) Uses frequent section headings, in a narrative format, to help locate provisions.

(2) If the agency determines that the consumer contract complies with the standards in subsection (1) of this section, the agency shall certify to that effect to the seller or extender of credit who submitted the contract for review.

(3) An agency reviewing contracts under this section shall charge a reasonable fee for reviewing each consumer contract. The agency may require payment of the fee when the contract is submitted for review. Fees received under this section shall be disposed of as follows:

(a) Fees received by the Department of Justice shall be credited to the Department of Justice Operating Account.

(b) Fees received by the Director of the Department of Consumer and Business Services shall be credited to the Consumer and Business Services Fund. [1985 c.587 §§2,7,10]

Note: See note under 180.540.

180.550 Compliance statement. A seller or extender of credit may state the following on a consumer contract determined by the reviewing agency to comply with the plain language standards under ORS 180.545: "The

form of this contract meets Oregon plain language guidelines." [1985 c.587 §3]

Note: See note under 180.540.

180.555 Exemptions; effect of certification; admissibility. (1) An agency need not review any consumer contract:

(a) For which a federal or state statute, rule or regulation prescribes standards of readability applicable to the entire contract.

(b) For which particular words, phrases, provisions or forms of agreement are specifically required, recommended or indorsed by a state or federal statute, rule or regulation.

(2) Certification of a consumer contract under ORS 180.545 is not an approval of the contract's legality or legal effect. The fact that a consumer contract has been certified or not shall not be admissible in any action to interpret or enforce the contract or any term of contract. [1985 c.587 §4]

Note: See note under 180.540.

(Investigation of Organized Crime)

180.600 Definitions. As used in ORS 180.600 to 180.630:

(1) "Department" means the state Department of Justice.

(2) "Organized crime" means any combination or conspiracy of two or more persons to engage in criminal activity as a significant source of income or livelihood, or to violate, aid or abet the violation of criminal laws relating to prostitution, gambling, loan sharking, theft, abuse of controlled substances, illegal alcohol or controlled substance distribution, counterfeiting, extortion or corruption of law enforcement officers or other public officers or employees. [1977 c.754 §1; 1979 c.744 §10]

180.610 Investigation of organized criminal activity; powers and duties of department. The Department of Justice shall:

(1) Provide all administrative, clerical, investigative and legal assistance required by ORS 180.600 to 180.630.

(2) Establish a coordinated system of collecting, storing and disseminating information relating to organized crime.

(3) Develop and maintain a liaison between local, state and federal law enforcement agencies in Oregon, assisting them in the investigation and suppression of organized criminal activity and encouraging cooperation among those agencies.

(4) Conduct comprehensive factual studies of organized criminal activity in Oregon, outlining existing state and local policies and procedures with respect to organized crime, and formulating and proposing such changes in those policies and procedures as the department may deem appropriate.

(5) Investigate allegations of corruption or malfeasance by public officials in Oregon and, where appropriate, coordinate, cooperate and assist in taking legal action.

(6) Investigate investment of funds in Oregon suspected to have been generated by criminal activities. [1977 c.754 §2]

180.620 Investigators to have authority of peace officers. All investigators employed pursuant to ORS 180.600 to 180.630 shall have all statutory powers and authority of peace officers and police officers of the State of Oregon. [1977 c.754 §3]

180.630 Acceptance of federal grant of funds; expenditure limitations. Subject to the provisions of ORS 291.375, the Department of Justice may submit applications for federal grants and, when approved, accept and expend funds received subject to budgetary limits imposed by the Legislative Assembly or as modified by the Emergency Board. [1977 c.754 §4]

180.640 Criminal Justice Revolving Account. (1) There is hereby established an account in the General Fund in the State Treasury to be known as the Criminal Justice Revolving Account. The creation of and disbursement of moneys from the revolving account shall not require an allotment or allocation of moneys pursuant to ORS 291.234 to 291.260. All moneys in the account are continuously appropriated for the purposes set forth in subsection (3) of this section.

(2) Notwithstanding ORS 180.180, all costs of investigation and prosecution, including attorney fees, awarded to the Department of Justice in an action or proceeding under ORS 166.715 to 166.735, whether by final judgment, settlement or otherwise, and all proceeds of civil penalties imposed under ORS 166.725, shall be deposited in the account established by this section. The maximum allowable balance in such account is $750,000. When moneys in the account exceed $750,000, the excess funds shall be deposited in the General Fund of the State Treasury.

(3) Moneys in the revolving account may be used by the Attorney General to reimburse the Department of Justice, district attorneys and state and local governmental departments and agencies for the costs of investigation and prosecution of any civil or criminal action or proceeding under ORS 166.715 to 166.735, to maintain and preserve property subject to forfeiture pending its sale or other disposition and to reimburse expenses of the Department of Justice incurred

in carrying out the provisions of ORS 180.600 to 180.630.

(4) The Attorney General may present an accounting to the State Treasurer for costs and expenses referred to in subsection (3) of this section. To the extent that sufficient funds exist in the Criminal Justice Revolving Account, the State Treasurer promptly shall reimburse the Department of Justice for the costs and expenses included in the Attorney General's accounting. [1983 c.292 §6; 1983 c.715 §5]

(School Safety Hotline)

180.650 Establishment; rules; plan. (1) As used in this section, "local law enforcement contact" means a local law enforcement officer that a school district wants to be notified when a report concerning a school within the school district is received on the School Safety Hotline.

(2) Subject to the availability of funds, the Department of Justice shall establish a toll-free telephone line that is available to school-age children and other members of the public for the purpose of reporting criminal or suspicious activities on school grounds or at school-sponsored activities. The toll-free telephone line established under this section shall be known as the School Safety Hotline.

(3)(a) The department shall adopt rules necessary to establish and operate the School Safety Hotline. The department shall include in the rules provisions that protect the identity of a caller while maximizing opportunities to allow follow-up calls by either the callers or the local law enforcement contacts to provide or obtain further information.

(b) The department is not responsible for investigating reports received on the hotline. The appropriate school district and appropriate local law enforcement agency shall take any follow-up action that they deem appropriate.

(4) At least annually, a school district shall provide the department with a list of the school district's local law enforcement contacts.

(5) The department may contract with a private entity or enter into an interagency agreement with a state agency or political subdivision of the state to establish and operate the School Safety Hotline.

(6) The department, in collaboration with school officials, law enforcement agencies and other interested persons, shall develop a plan to promote the use of the hotline by school-age children. [2001 c.619 §1]

Note: 180.650 and 180.660 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 180 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

180.660 Funding; rules. (1) The Department of Justice shall seek funds to establish and operate the School Safety Hotline. The department may accept gifts, grants and donations from any source for the purpose of carrying out its duties under ORS 180.650.

(2) All moneys received by the department under subsection (1) of this section shall be paid over to the State Treasurer monthly for deposit in the Department of Justice Operating Account created under the provisions of ORS 180.180. Amounts deposited pursuant to this subsection are continuously appropriated to the Attorney General to pay the expenses of the department in administering the School Safety Hotline.

(3) The department may begin rulemaking and take other steps in preparation for establishing and operating the School Safety Hotline but may not enter into binding obligations until funds have been committed. [2001 c.619 §2]

Note: See note under 180.650.

(Batterers' Intervention Programs)

180.700 Advisory committee; rules. The Attorney General shall appoint an advisory committee composed at least of representatives from local supervisory authorities, batterers' intervention programs and domestic violence victims' advocacy groups. The Attorney General, in consultation with the advisory committee, shall adopt rules that establish standards for batterers' intervention programs. The rules adopted must include, but are not limited to:

(1) Standards for contacts between the defendant and the victim;

(2) Standards for the dissemination of otherwise confidential medical, mental health and treatment records;

(3) Standards that protect to the greatest extent practicable the confidentiality of defendants who are participating in domestic violence deferred sentencing agreements;

(4) A requirement that the designated batterers' intervention program must report to the defendant's local supervisory authority any criminal assaults, threats to harm the victim or any substantial violation of the program's rules by the defendant; and

(5) Standards for batterers' intervention programs that are most likely to end domestic violence and increase victims' safety. [2001 c.634 §1]

Note: 180.700 and 180.710 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 180 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

180.710 Program reviews. (1) A local supervisory authority, in consultation with a local domestic violence coordinating council recognized by this state or a county, may periodically review batterers' intervention programs located within the jurisdiction of the local supervisory authority for compliance with rules promulgated under ORS 180.700.

(2) If a review is completed under subsection (1) of this section, a copy of the review shall be sent by the local supervisory authority to the presiding judge and the district attorney for the county in which the local supervisory authority operates. [2001 c.634 §2]

Note: See note under 180.700.

(False Claims)

180.750 Definitions. As used in ORS 180.750 to 180.785:

(1) "Claim" means a request or demand made to a public agency, including a request or demand made pursuant to a contract, that seeks moneys, property, services or benefits that will be provided in whole or in part by a public body, whether directly or through reimbursement of another public agency that provides the moneys, property, services or benefits.

(2) "False claim" means a claim that:

(a) Contains, or is based on, false or fraudulent information;

(b) Contains any statement or representation that is untrue in whole or part; or

(c) Omits information that could have a material effect on the value, validity or authenticity of the claim.

(3) "Public agency" means:

(a) A public body;

(b) The United States or a federal agency;

(c) A person who contracts with a public body; or

(d) A person other than an individual who receives a grant from a public body.

(4) "Public body" has the meaning given that term in ORS 174.109. [2009 c.292 §1]

Note: 180.750 to 180.785 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 180 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

180.755 Prohibited acts. (1) A person may not:

(a) Present for payment or approval, or cause to be presented for payment or approval, a claim that the person knows is a false claim.

(b) In the course of presenting a claim for payment or approval, make or use, or cause to be made or used, a record or statement that the person knows to contain, or to be based on, false or fraudulent information.

(c) Agree or conspire with other persons to present for payment or approval a claim that the person knows is a false claim.

(d) Deliver, or cause to be delivered, property to a public agency in an amount the person knows is less than the amount for which the person receives a certificate or receipt.

(e) Make or deliver a document certifying receipt of property used by a public agency, or intended to be used by a public agency, that the person knows contains false or fraudulent information.

(f) Buy property of a public agency from an officer or employee of a public agency if the person knows that the officer or employee is not authorized to sell the property.

(g) Receive property of a public agency from an officer or employee of the public agency as a pledge of an obligation or debt if the person knows that the officer or employee is not authorized to pledge the property.

(h) Make or use, or cause to be made or used, a false or fraudulent statement to conceal, avoid or decrease an obligation to pay or transmit moneys or property to a public agency if the person knows that the statement is false or fraudulent.

(i) Fail to disclose a false claim that benefits the person within a reasonable time after discovering that the false claim has been presented or submitted for payment or approval.

(2) For the purposes of this section, a person has knowledge that a claim, record, statement, document or information is false or fraudulent if the person:

(a) Has actual knowledge of the false or fraudulent nature of the claim, record, statement, document or information;

(b) Acts in deliberate ignorance of the false or fraudulent nature of the claim, record, statement, document or information; or

(c) Acts in reckless disregard of the false or fraudulent nature of the claim, record, statement, document or information.

(3) In an action under ORS 180.760, the Attorney General need not prove that a person specifically intended to defraud a public agency to establish that a person acted with knowledge as described in subsection (2) of this section. [2009 c.292 §2]

Note: Section 9, chapter 292, Oregon Laws 2009, provides:

Sec. 9. Section 2 of this 2009 Act [180.755] applies only to conduct that occurs on or after the effective date of this 2009 Act [January 1, 2010]. [2009 c.292 §9]

Note: See note under 180.750.

180.760 Civil action for violation; remedies. (1) The Attorney General may bring a civil action in the name of the State of Oregon against a person who violates ORS 180.755. The Attorney General may bring the action in the Circuit Court for Marion County or in a circuit court in any county in which part of the conduct that constituted the violation took place.

(2) Repayment of or intent to repay any amounts obtained by a person as a result of a violation of ORS 180.755 is not a defense in an action under this section.

(3) The fact that a public agency has not paid any amounts to a person as a result of a violation of ORS 180.755 or has not suffered any injury by reason of a violation of ORS 180.755, is not a defense in an action under this section.

(4) A court shall award to the state all damages arising from a violation of ORS 180.755. In addition, the court shall award to the state a penalty equal to the greater of $10,000 for each violation or an amount equal to twice the amount of damages incurred for each violation. The court may mitigate an award of a penalty under this subsection based on any fine or penalty assessed against the defendant for substantially the same acts or omissions in a judgment under the federal False Claims Act, 31 U.S.C. 3729, et seq., as in effect on January 1, 2010, or under the federal Civil Monetary Penalty Law, 42 U.S.C. 1320a-7a, as in effect on January 1, 2010, that is no longer subject to appeal.

(5) If a court finds that an act or omission of an individual on behalf of a corporation or other legal entity constitutes a violation of ORS 180.755, the court may find that both the individual and the legal entity violated ORS 180.755, and impose a separate penalty under subsection (4) of this section against both the individual and the legal entity.

(6) Notwithstanding subsections (4) and (5) of this section, if the state prevails in an action under this section, the court may not award a penalty under subsection (4) of this section if:

(a) The defendant provided the Attorney General with all information known to the defendant about the violation within 30 days after the defendant first acquired the information;

(b) The defendant fully cooperated with the Attorney General in the investigation of the violation; and

(c) At the time the defendant provided the Attorney General with information about the violation, an investigation, court proceeding or administrative action related to the violation had not been commenced.

(7) For the purpose of determining the amount of damages under this section:

(a) The value of property, services or benefits obtained by a person who makes a claim may be established based on the market value of property, services or benefits at the time and place of receipt or delivery of the property, services or benefits.

(b) If the market value of property, services or benefits at the time and place of receipt or delivery of the property, services or benefits cannot be reasonably ascertained, the value of the property, services or benefits may be established based on the replacement cost of the property, services or benefits.

(c) If a written instrument has no readily ascertainable market value, the value of the instrument may be established based on the value determined as provided in ORS 164.115 (2).

(d) The Attorney General may establish damages using statistical or sampling methodology, or any other system that reasonably estimates damages incurred, without separately proving the damages incurred from each violation of ORS 180.755.

(8) The court may award reasonable attorney fees and costs of investigation, preparation and litigation to the state if the state prevails in an action under this section. The court may award reasonable attorney fees and costs of investigation, preparation and litigation to a defendant who prevails in an action under this section if the court determines that the Attorney General had no objectively reasonable basis for bringing the action or no reasonable basis for appealing an adverse decision of the trial court. [2009 c.292 §3]

Note: See note under 180.750.

180.765 Statute of limitation. An action under ORS 180.760 must be brought within three years after the date that the officer or employee of the public agency charged with responsibility for the claim discovers the violation of ORS 180.755. In no event may an action under ORS 180.760 be brought more than 10 years after the date on which the violation is committed. [2009 c.292 §4]

Note: See note under 180.750.

180.770 Estoppel. (1) Any judgment that is no longer subject to appeal and that was rendered in favor of the state or of the United States in a criminal proceeding based on conduct that gives rise to an action under ORS 180.760, whether based on a verdict after trial or upon a plea of guilty or nolo contendere, estops a defendant in an action under ORS 180.760 from denying the elements of the offense for which the defendant was convicted.

(2) A criminal or administrative action need not be brought against a person as a condition to bringing an action against the person under ORS 180.760. [2009 c.292 §5]

Note: See note under 180.750.

180.775 Investigative demand. (1) If it appears to the Attorney General that a person has possession, custody or control of any information, document or other materials that are relevant to an investigation of a violation of ORS 180.755, or that could lead to the discovery of relevant information in an investigation of a violation of ORS 180.755, the Attorney General may cause an investigative demand to be served upon the person. The investigative demand may require the person:

(a) To appear and testify under oath at the time and place stated in the investigative demand;

(b) To answer written interrogatories; or

(c) To produce relevant documentary material or physical evidence for examination at the time and place stated in the investigative demand.

(2) An investigative demand under this section shall be served in the manner provided by ORS 646.622 and may be enforced in the manner provided by ORS 646.626. [2009 c.292 §6]

Note: See note under 180.750.

180.780 Distribution of recovered amounts. (1) If a judgment is entered in favor of the state under ORS 180.760, the Attorney General shall first apply amounts collected under the judgment to reimburse the state for the costs, attorney fees and expenses, including investigative costs, incurred as a result of the violation of ORS 180.755.

(2) After reimbursement under subsection (1) of this section, amounts collected under the judgment must be paid to any public agency or fund that suffered a loss by reason of the violation of ORS 180.755.

(3) Any amount remaining after distribution as provided in subsections (1) and (2) of this section must be deposited in the Department of Justice Protection and Education Revolving Account. [2009 c.292 §7; 2009 c.820 §1b]

Note: See note under 180.750.

180.785 Remedy not exclusive. The remedies provided under ORS 180.760 are in addition to any other remedy, civil or criminal, that may be available under any other provision of law. Claims based on remedies available under other provisions of law may be joined in an action under ORS 180.760. [2009 c.292 §8]

Note: See note under 180.750.