

COUNCIL ON COURT PROCEDURES

Minutes of Meeting of March 23, 1991

Oregon State Bar Center
5200 SW Meadows Road
Lake Oswego, Oregon

Present:	Richard L. Barron	Henry Kantor
	Dick Bemis	John V. Kelly
	Lafayette Harter	R. L. Marceau
	Maury Holland	Elizabeth Welch
	Bernard Jolles	Elizabeth Yeats
Absent:	Susan Bischoff	Jack L. Mattison
	Susan P. Graber	William F. Schroeder
	John E. Hart	William C. Snouffer
	Lee Johnson	J. Michael Starr
	Richard T. Kropp	Larry Thorp
	Winfred K.F. Liepe	Paul De Muniz
	Robert B. McConville	

Fredric R. Merrill, Executive Director, was also present.

The meeting was called to order by Chairer Ron Marceau at 9:30 a.m.

The minutes of the meeting held December 15, 1990 were approved as submitted.

The Council then considered the following bills pending in the legislature relating to the ORCP:

1. HB 2885 - Six Person Juries. A memorandum from the Executive Director was distributed and is attached as Exhibit 1. Letters relating to HB 2885 from Council members John Hart and Judge Liepe, who were unable to attend the meeting, are attached as Exhibits 2 and 3, respectively. During the meeting, a letter from Ronald E. Bailey, stating the position of the Oregon Association of Defense Counsel on HB 2885, was received and is attached as Exhibit 4.

Ron Marceau announced that the State Bar Procedure and Practice Committee had met and opposed the bill. Henry Kantor announced that another bill, HB 3542, establishing-six person juries in all civil cases had been introduced.

After discussion, Bernie Jolles moved, with a second by Henry Kantor, that Ron Marceau write to the legislature and indicate that adoption of six-person juries raised some serious questions that should be carefully reviewed and suggest that action be deferred until the Council has an opportunity to review the matter during the next biennium. The motion passed unanimously.

2. SB 376-Relating to Contempt. After discussion, Council members decided to take no action on SB 376.

3. HB 3155 - \$100,000 Bond for Process Servers. After discussion, the Council unanimously agreed that Ron Marceau should write to the legislature and indicate that HB 3155 had never been submitted to the Council for consideration and request that no action be taken until this was done.

4. SB 379 - Paralegal Costs. Ron Marceau reported SB 379 involved the same change which had been rejected by the Council as unnecessary. He stated that he and the Executive Director had testified to this effect at the public hearing on the bill and that the bill had been tabled.

5. SB 396 - Repeal of Bulk Transfers Act. After discussion, Council members decided to take no action on SB 396.

6. SB 401 - Uniform Foreign Money Judgment Act. After discussion, Council members decided to take no action on SB 401.

7. SB 579 - Court Protective Orders. It was pointed out that the subject matter of SB 579 was similar to the issue raised by Bernie Jolles before the Council relating to non-disclosure orders in products liability cases. Action on this matter had been deferred until the next biennium. The Council unanimously agreed that Ron Marceau should write to the legislature and indicate that the subject matter covered by SB 579 is on the Council agenda for the next biennium and request that legislative action not be taken at this time.

8. SB 666 - Irrevocable Letters of Credit. After discussion, Council members decided to take no action on SB 666.

9. HB 3156 - Service of Process at Employer's Office. The Council unanimously directed Ron Marceau to write to the legislature and suggest that HB 3156 could create problems by allowing service of summons on an employee at any office of the employer and request that action be deferred until the next biennium.

The next meeting of the Council will be held in October after new Council members have been appointed.

The meeting was adjourned at 11:00 a.m.

Respectfully submitted,

Fredric R. Merrill
Executive Director

FRM:gh

March 19, 1991

M E M O R A N D U M

TO: MEMBERS, COUNCIL ON COURT PROCEDURES
FROM: Fred Merrill, Executive Director
RE: HB 2885 - Six-person Juries

HB 2885 would amend ORCP 56 and ORCP 59 to provide that a jury consists of six, rather than twelve, persons and that five out of the six jurors could render a verdict.

CONSTITUTIONALITY

Under the jury trial provisions of the Oregon Constitution, six-person juries are clearly permitted. Article VII, sec. 9 could not be more explicit. (Copies of the pertinent constitutional provisions, suggested by Henry Kantor, are attached.)

The six-person jury in federal courts also seems to be clearly constitutional, at least provided a unanimous verdict was required. In a series of cases, decided between 1970 and 1979, the United States Supreme Court retreated from a previous position that twelve-person juries were constitutionally required for civil and criminal cases. In Williams v. Florida, 399 U.S. 78 (1970), the Court held that six-person juries in criminal cases did not offend the sixth amendment. In Colgrove v. Battin, 413 U.S. 149 (1973), the Court held that the seventh amendment did not require twelve-person juries in civil cases. Five years later, in Bellew v. Georgia, 435 U.S. 223 (1978), the Court held that under the sixth amendment, a five-person jury could not be used in a criminal case. Finally, in Burch v. Louisiana, 441 U.S. 130 (1979), the Court held that, if a six-person jury is used in a criminal case, a unanimous verdict is required.

This line of federal cases is not relevant to the constitutionality of civil six-person juries in Oregon. The seventh amendment of the federal constitution does not apply to the states. What is constitutionally permissible, however, may not be advisable or the best policy. The analysis used by the Supreme Court, and the extensive research and writing on jury size spawned by these opinions, is very relevant to a decision whether using six-person juries in all civil cases is a good idea.

EXHIBIT 1 TO MINUTES OF COUNCIL
MEETING HELD 3/23/91

IMPACT OF SIX-PERSON JURY

In the Williams case, the Supreme Court supported its decision to allow six-person juries by concluding that empirical evidence showed no discernible difference in results reached by six- and twelve-person juries. The majority cited four "experiments" to this effect. This portion of the opinion was harshly criticized by commentators. The articles cited were not in fact empirical studies or experiments, but simply unsupported opinions. See Zeisel, "And Then There Were None: The Diminution of the Federal Jury," 38 U. Chi. L. Rev. 710 (1971).

In Colgrove v. Battin, the Court again asserted that the six-person jury was the functional equivalent of the twelve-person jury. This time the majority cited four new empirical studies that reached this conclusion. The validity of these studies and their conclusions was subject to severe criticism by social science researchers and legal commentators. See Zeisel & Diamond, "Convincing Empirical Evidence on the Six-member Jury," 41 U. Chi. L. Rev. 281 (1974).

In the last two opinions, holding that the minimum size for a constitutional jury is six, the majority members of the Court declined to base their conclusion on empirical evidence. This probably reflects the Justice's reluctance or inability to sort through the conflicting mass of empirical data then available. In the years following Williams, literally dozens of empirical and statistical studies of the relationship between jury size and results were undertaken by statisticians, lawyers, sociologists and psychologists. Some of the studies were experimental, using different size groups of volunteers. Some studied the difference in result reached by six- and twelve-person juries in actual cases.

With limited time, and even more limited background in social science research, it is impossible to say much except that the conclusions drawn by these researchers differ wildly. Some empirical support could be probably found for any position one wanted to take on the result of using six-person juries in civil cases. In addition to the two Zeisel articles cited above, the most comprehensive and understandable summaries that I could find were in two law review articles: Lempert, "Uncovering 'Nondiscernible' Differences: Empirical Research and the Jury-size Cases," 73 Mich. L. Rev. 643 (1975), and Kaye, "And Then There Were Twelve: Statistical Reasoning, the Supreme Court, and the Size of the Jury," 68 Cal. L. Rev. 1004 (1980) (cited hereafter as Lempert and Kaye).

The studies do seem to agree on a couple of points:

1. The principal argument for reduction of jury size is cost savings to be achieved. There would undoubtedly be cost

savings, but estimates of likely cost savings tend to be overstated. (Initial estimates for the federal system were four million dollars a year.) Empirical data seems to indicate that the primary savings is the lesser number of jurors needed to process cases. Early assumptions that six-person juries would shorten cases, result in less hung juries, and encourage more settlements are not supported by the data. See studies cited in Kaye, 1008, at footnote 23.

2. One very important difference between six- and twelve-person juries that is statistically supported and generally accepted is that the members of a twelve-person jury are more likely to be broadly representative of the general population. For a twelve-person jury, the average characteristics of the group are more likely to approach the average characteristics of the population from which the group is drawn, than are the average characteristics of a six-person jury. The presence of jurors with viewpoints, abilities, quirks, or racial identities that characterize only a minority of the population is more likely with larger juries. See Lempert, 668-679, and Kaye, 1017-1019.

What the researchers and commentators fail to agree upon is the effect of reduction of jury size on the accuracy and reliability of jury verdicts. Most accept that, at least in some cases, the size of the jury will have an impact on the outcome. They fail to agree on how large a proportion of jury decisions will be changed by size, how important these cases are, and in what direction the changes go. Some studies conclude that six-persons juries are more accurate in their fact-finding; some conclude that twelve-person juries are more accurate. Some studies conclude that six-persons juries favor plaintiffs in civil cases by reducing hung juries and increasing damages; other studies conclude just the opposite. These studies are summarized in detail in Lempert, 684-708, and Kaye, 1019-1034. The conclusions of both authors are best summarized by the following statement by Lempert:

Current knowledge justifies the general conclusion that where the verdicts of six- and twelve-member juries diverge, the verdicts of twelve are likely to be of somewhat higher quality than the verdicts of six, and are likely to be superior with respect to other important values. Lempert, 698.

Neither author is willing to suggest that this difference is important enough to absolutely require twelve-person juries to offset cost-saving achieved by the smaller jury.

CONCLUSIONS

As suggested above, the existing empirical studies do not

overwhelming support any conclusions relating to the relative superiority of six- or twelve-person juries. Use of six-person juries has become common. In addition to use in district courts in Oregon, by 1978 six-person juries were in use in 38 states and 80 out of the 95 federal judicial districts. Kaye, 1005-1006 n. 13.

The extensive literature on jury size does suggest, however, that the matter is very complicated and that some very important values in our civil justice system may be diminished by use of six-person juries. A long-held practice of using larger juries in major civil cases should not be abandoned without careful analysis just because the state is short of money at this particular time.

Enc.

CONSTITUTION OF OREGON

ARTICLE I
BILL OF RIGHTS

Section 17. Jury trial in civil cases. In all civil cases the right of Trial by Jury shall remain inviolate.

ARTICLE VII (Amended)
JUDICIAL DEPARTMENT

* * * *

Section 3. Jury trial; re-examination of issues by appellate court; record on appeal to Supreme Court; affirmance notwithstanding error; determination of case by Supreme Court. In actions at law, where the value in controversy shall exceed \$200, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any court of this state, unless the court can affirmatively say there is no evidence to support the verdict. * * *

* * * *

Section 5. Juries; indictment; information; verdict in civil cases. (1) The Legislative Assembly shall provide by law for:

(a) Selecting juries and qualifications of jurors;

* * * *

(7) In civil cases three-fourths of the jury may render a verdict.

Section 9. Juries of less than 12 jurors. Provision may be made by law for juries consisting of less than 12 but not less than six jurors.

SCHWABE WILLIAMSON & WYATT

ATTORNEYS AT LAW

PACWEST CENTER, SUITES 2600-2650
1211 SOUTHWEST FIFTH AVENUE • PORTLAND, OREGON 97204-3795
TELEPHONE: 503 222-9981 • FAX: 503 796-2900 • TELEX: 4837535 SWK UT

JOHN E. HART

March 15, 1991

RECEIVED
MAR 15 1991

POZZI WILSON ATCHISON
O'LEARY AND CONSOY

Mr. Ron Marceau
Attorney at Law
Suite 300
1201 N.W. Wall
Bend, OR 97701

Re: Council on Court Procedures

Dear Ron:

Due to the short notice, I am unable to attend the March 23 meeting of the Council on Court Procedures as I will be out of town preparing for trial. I did want to write you, nevertheless, to express my extreme concern about Judge Peterson's proposal, HB 2885, making 6-person juries mandatory in all civil cases. I think this is a major mistake; civil litigants are entitled to the considered judgment of 12 individuals for many significant reasons. A strong or dogmatic juror on a panel of 12 loses his or her persuasiveness whereas that same individual can have a much more unreasonable impact on a 6-person jury. I know the Section of Litigation recently voted against this proposition and I hope both the OADC and OTLA will provide you with similar position statements. If 6-member juries were that appealing, all trial lawyers--both plaintiff and defendant--would have been requesting them and this simply has not occurred. I fear Judge Peterson has become preoccupied with expediency and not the quality of justice and reasoned decisions in civil trials.

I am sorry I will not be able to personally attend the meeting.

Best personal regards,



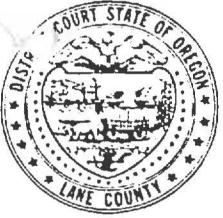
JOHN E. HART

JEH:mfh

cc: Mr. Ron Bailey
Mr. Jan Baisch
✓ Mr. Henry Kantor

EXHIBIT 2 TO MINUTES OF COUNCIL
MEETING HELD 3/23/91

DISTRICT COURT OF THE STATE OF OREGON
FOR LANE COUNTY
LANE COUNTY COURTHOUSE
EUGENE, OREGON 97401



WINFRID K. LIEPE
DISTRICT JUDGE
687-4219

March 15, 1991

PROFESSOR FRED MERRILL
SCHOOL OF LAW
EUGENE OR 97403-1221

Re: Council on Court Procedures

Dear Fred:

I regret that I probably will not be able to be at the meeting of March 23.

I am in favor of HB 2885 providing for six person juries in all civil cases in District and Circuit Courts. This should be accompanied by an amendment of ORCP 57D(2) reducing the number of peremptory challenges from three to two per party.

I would oppose HB 3155 requiring summons not served by Sheriff to be served by persons with \$100,000 errors and omissions insurance coverage. However ORCP 7F(2)(a)(i) should be amended to require proof of service by affidavit (except for sheriff or deputies). This would subject a false proof of service to the penalties of False Swearing, ORS 162.075 or possibly Perjury, ORS 162.065. This would avoid questions about the application of ORS 162.085, Unsworn Falsification, and increase penalties.

The simple process of requiring affidavit under oath may also deter "white lies".

I am generally in favor of the revision of contempt statutes introduced before the 1989 legislature. If SB 376 is roughly the same I would favor it.

Sincerely yours,

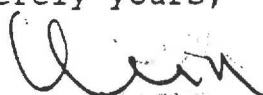

Winfrid K. Liepe
District Judge

EXHIBIT 3 TO MINUTES OF COUNCIL
MEETING HELD 3/23/91

WKL:ga

EX 3

OADC

Oregon Association
of Defense Counsel

• Association Office

SANDRA K. KELLER
825 N.E. 20th Avenue, Suite 120
Portland, Oregon 97232
236-9453
FAX 236-4722

March 22, 1991

VIA FACSIMILE

• OADC Board of Directors

Officers

RONALD E. BAILEY
President
1400 Pacwest Center
1211 S.W. Fifth Avenue
Portland, Oregon 97204
228-6351

MICHAEL C. McCLINTON
Vice President / President Elect
800 Liberty Street, N.E.
P.O. Box 2206
Salem, Oregon 97301
581-1542

KEITH J. BAUER
Secretary/Treasurer
440 Oregon Building
494 State Street
Salem, Oregon 97301
371-3502

Members at Large

LARRY A. BRIBBEZ
139 N.E. Lincoln
P.O. Box 867
Hillsboro, Oregon 97123
648-6677

WYN CALKINS
1183 Olive Street
Eugene, Oregon 97401
345-0371

DENNIS J. HUBEL
Suite 300
1201 N.W. Wall Street
Bend, Oregon 97701
382-3011

FRANK R. LAOSEN
Suite 1300
121 S.W. Morrison
Portland, Oregon 97204
323-9000

ROBERT E. MALONEY, JR.
800 Pacific Building
620 S.W. Yamhill Street
Portland, Oregon 97204
226-6181

KENNETH D. KENNER
1700 Pacwest Center
1211 S.W. Fifth Avenue
Portland, Oregon 97204
222-9981

Mr. Ronald L. Marceau
Marceau, Karnopp, et al.
Attorneys at Law
1201 N.W. Wall St., Suite 300
Bend, OR 97701

Re: House Bill 2885
Six-Person Juries

Dear Ron:

It is my understanding that the Council on Court Procedure will discuss HB 2885 at its meeting on Saturday, March 23 and has invited comments.

Our board, and those association members we have been able to reach in the short time this bill has reached the light of day, strongly favor the 12-person juries in our state system. We oppose any bill that will reduce the jury panel to six.

We cannot present you with any refined analysis to support our opposition. We have the collective sense that 9 out of 12 produces better results, better justice (if you will), than a unanimous six. We have more confidence in that system, and many of us have equal experience with the federal system by which to compare.

The OSB Procedure and Practice Committee met last Saturday to consider this bill. The committee voted unanimously to oppose it.

We have talked with members of that committee. Their reasons for opposition parallel ours: (1) cost savings are de minimis, (2) the system is not broken, (3) there is no analytical justification offered in support of the bill, (4) the cost assumptions appear to be exaggerated, (5) the projected number of trials may

EXHIBIT 4 TO MINUTES OF COUNCIL MEETING
HELD 3/23/91

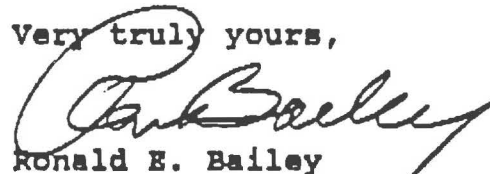
Mr. Ronald L. Marceau
March 22, 1991
Page Two

be exaggerated in view of the increasing incidents of alternative dispute resolutions, and (6) the fact that 12-person juries rank right up there with Mom, apple pie, and General Swartzkopf.

I enclose a copy of the March 13, 1991, letter from Kingsley Click, Deputy State Court Administrator, to Jim Edmonds. This letter is revealing. First, it confirms that the estimated cost avoidance is now revised down to \$350,000 a biennium instead of the nearly \$800,000 which had been reported in Bill Linden's original communication on the subject. Saving a potential \$175,000 per year just isn't worth jeopardizing a system that "don't appear to be broke." Second, the letter fails to recognize a possible increase in costs to change current systems in order to implement a six-person jury system. I am not sure I know what would be required, but I assume that many forms, procedures, uniform jury instructions, etc., would have to be changed. Third, the letter appears to admit that the Judicial Department does not have basic research information on the effect the proposal would have on the quality of justice delivered. The Department is only now gathering data on what should be the most crucial issue, the quality of justice.

This bill has apparently been proposed for cost savings purposes without adequate notice to the trial bar, or study. At the very least, it should be deferred to 1993 for proper analysis and comment.

Very truly yours,



Ronald E. Bailey

REB/jlc
Enclosure
cc: OADC Board
Douglass M. Hamilton, Chair
OADC Civil Practice and Court Procedure Committee

THE SUPREME COURT
Edwin J. Peterson
Chief Justice



1163 State Street
Salem, Oregon 97310
Telephone 378 6026
FAX (503) 373 7516

MEMORANDUM

TO: Oregon State Bar Practice and Procedure Committee;
Oregon State Bar Judicial Administration Committee;
Judicial Conference Practice and Procedure Committee

FROM: Edwin J. Peterson, Chief Justice

RE: Six-person juries

DATE: February 26, 1991

I enclose a copy of LC 2989. It would amend the Rules of Civil Procedure to provide for six-person juries.

I also enclose a memo prepared by my clerk.

I would appreciate your committee's recommendation concerning the merits of the proposed changes.

EJP:ksb

Enclosures

cc: Council on Court Procedures

DRAFT

SUMMARY

Reduces number of jurors in circuit court civil cases from 12 to 6.

A BILL FOR AN ACT

1
2 Relating to circuit court juries; creating new provisions; and amending
3 ORCP 56 and 59 G.

4 **Be It Enacted by the People of the State of Oregon:**

5 SECTION 1. ORCP 56 is amended to read:

6 Trial by jury defined. A trial jury in the circuit court is a body of [12] 6
7 persons drawn as provided in Rule 57. The parties may stipulate that a jury
8 shall consist of any number less than [12] 6 or that a verdict or finding of
9 a stated majority of the jurors shall be taken as the verdict or finding of the
10 jury.

11 SECTION 2. ORCP 59 G. is amended to read:

12 G. Return of jury verdict.

13 G.(1) Declaration of verdict. When the jurors have agreed upon their
14 verdict, they shall be conducted into court by the officer having them in
15 charge. The court shall inquire whether they have agreed upon their verdict.
16 If the foreperson answers in the affirmative, it shall be read.

17 G.(2) Number of jurors concurring. In civil cases three-fourths of the jury
18 may render a verdict. **If the jury consists of six persons, five jurors must**
19 **agree on the verdict unless the parties have stipulated to some other**
20 **number under ORCP 56.**

21 G.(3) Polling the jury. When the verdict is given, and before it is filed,
22 the jury may be polled on the request of a party, for which purpose each
23 juror shall be asked whether it is his or her verdict. If a less number of ju-
24 rors answer in the affirmative than the number required to render a verdict,
25 the jury shall be sent out for further deliberations.

NOTE: Matter in bold face in an amended section is new; matter [italic and bracketed] is existing law to be omitted.

1 G.(4) Informal or insufficient verdict. If the verdict is informal or insuf-
2 ficient, it may be corrected by the jury under the advice of the court, or the
3 jury may be required to deliberate further.

4 G.(5) Completion of verdict; form and entry. When a verdict is given and
5 is such as the court may receive, the clerk shall file the verdict. Then the
6 jury shall be discharged from the case.

7 **SECTION 3.** The amendments to ORCP 56 and ORCP 59 G. by sections
8 1 and 2 of this Act apply only to actions commenced on or after the effective
9 date of this Act.
10

MEMORANDUM

TO: JUDGE PETERSON
FROM: COLLEEN
DATE: 1/28/91

RE: LESS THAN 12 MEMBER JURIES; Impact on Oregon Statutes

With regard to circuit courts, in the assignment memorandum you state that "By constitution, 12-person juries are required in criminal cases. Art I, sec 11. By statute, we have twelve-person juries in civil cases." You request draft legislation "to permit 6-person juries in all civil cases and in all criminal cases except serious criminal cases (perhaps in capital cases only)."

The statutes currently permit less than twelve jurors in all civil and criminal cases, except cases involving capital offenses. See ORS 136.210(1) (parties to criminal case in circuit court may consent to less than twelve jurors); ORCP 56 (parties to civil case in circuit court may stipulate to less than twelve jurors and to less than unanimous vote); ORS 46.180(2) (mandates six-person jury in district court cases).

Based on this understanding, I assume for purposes of this assignment that your objective is to propose legislation that would make six-person juries mandatory in all criminal and civil cases in circuit court, except capital cases, according to

the (a) discretion of the judge, or (b) statutory requirements. Thus, if legislation is passed requiring six-person juries in all circuit court cases, both civil and criminal, except capital cases, the following statutes must be amended: (NOTE: Statutes are addressed only in relevant part.)

Current ORS 136.210

- (1) Except as provided in subsection (2) of this section, in criminal cases the trial jury shall consist of 12 persons unless the parties consent to a less number. *
* *

Proposed ORS 136.210:

Alternative A:

- (1) Except as provided in subsection (2) of this section, in all criminal cases, except capital cases, the trial jury shall consist of 6 persons unless, in the judge's discretion, a jury consisting of 12 persons is necessary to protect the defendant's right to a fair trial.

NOTE: One serious problem with this proposed wording is that it opens up a new line of attack on the conviction on appeal -- abuse of discretion. It is unrealistic to expect the legislature to pass legislation requiring 6 person juries in all criminal cases, no ifs, ands, or buts. Therefore, such draft language does not appear here. The alternative most likely to have the best chance at passing may be as follows.....

Alternative B:

- (1) Except as provided in subsection (2) of this section, in all criminal cases, except capital cases, the trial jury shall consist of 6 persons unless the parties agree to a larger number not to exceed 12.

Current ORCP 56

A trial jury in the circuit court is a body of 12 persons drawn as provided in Rule 57. The parties may stipulate that a jury shall consist of any number less than 12 or that a verdict or finding of a stated majority of the jurors shall be taken as the verdict or finding of the jury.

Proposed ORCP 56

A trial jury in the circuit court is a body of 6 persons drawn as provided in Rule 57. The parties may stipulate that a jury shall consist of any number more than 6 but not exceeding 12 or that a verdict or finding of a stated majority of the jurors shall be taken as the verdict or finding of the jury.

NOTE: This proposed language just reverses the 6/12 option. Since the constitution provides that in civil cases 3/4 of the jury may render the verdict, there is no need to add in language to that effect.

COUNCIL ON COURT PROCEDURES

Established by the Oregon Legislature in 1977

R. L. Marceau
Chair

Henry Kantor
Vice Chair

Lafayette G. Harter
Secretary/Treasurer

University of Oregon
School of Law
Eugene, Oregon 97403-1221
Telephone: (503) 346-3880
Facsimile: (503) 346-3985

Fredric R. Merrill
Executive Director

Gilma J. Henthorne
Executive Assistant

March 29, 1991

Senator Joyce Cohen
Chair
Senate Committee on Judiciary
S218 State Capitol
Salem, Oregon 97310

Dick Bernis, Esq.

Judge Paul De Munk

John E. Hart, Esq.

Lafayette G. Harter

Dean Maurice Holland

Judge Lee Johnson

and Jolla, Esq.

Henry Kantor, Esq.

Judge John V. Kelly

Richard T. Krapp, Esq.

Judge Winifred K. F. Uepe

Judge Robert B. McConville

R. L. Marceau, Esq.

J. Michael Starr, Esq.

Larry Thorp, Esq.

Judge Richard L. Barron

Susan Bischoff, Esq.

Justice Susan Graber

Judge Jack L. Mattison

William F. Schroeder, Esq.

Judge William C. Shouffer

Judge Elizabeth Welch

Elizabeth Yeats, Esq.

Senator Jim Hill
Vice Chair
Senate Committee on Judiciary
S307 State Capitol
Salem, Oregon 97310

RE: SB 579 (court protective orders)

The Council on Court Procedures asks that no further action be taken on SB 579 this legislative session.

The Council on Court Procedures was established by the legislature in 1977 specifically to review and promulgate civil procedure laws because there wasn't any coordinated system for such review at that time. The Council is a 23-person body created by statute (ORS 1.725) and comprised of judges, lawyers, one law teacher and one public member. The lawyer members of the Council are representative of the civil trial practice in Oregon, i.e., both plaintiff's personal injury attorneys and insurance defense attorneys are members of the Council.

The Council has statutory authority to enact civil procedure rules each Biennium which become law unless changed by the legislative assembly. The Council has submitted eight rule changes this Biennium.

The Council can most effectively perform its statutory responsibilities if all proposals for civil procedure revision are first brought to it for its review. Unfortunately, SB 579 was not submitted to the Council before it was submitted to

Page 2

the legislative assembly. The Council did discuss SB 579 at a special meeting on March 23, 1991.

SB 579 is a rather significant departure from present practice because it would permit disclosure of information in certain circumstances that would otherwise not be subject to disclosure because of a court's protective order. It appears that this is a developing area of the law. It happens that the Council has on its agenda for the next Biennium a similar question (i.e., judicial gag orders concerning litigation settlements).

The Council would like the opportunity to thoroughly review the civil procedural revision contained in SB 579. The Council will review this proposal, and act upon it one way or another, before the 1993-94 Biennium. In any event, the Council will also be available for whatever help it can provide to your committee at this time.

Sincerely



R. L. MARCEAU
Chair

RLM:bd1

cc: Senator Grattan Kerans
Henry Kantor, Vice Chair, Council on Court Procedures
Fred Merrill, Executive Director, Council on Court
Procedures
Bob Oleson, Director, OSB Public Affairs Division

320bbs.21

COUNCIL ON COURT PROCEDURES

Established by the Oregon Legislature in 1977

R. L. Marceau
Chair

Henry Kantor
Vice Chair

Lafayette G. Harter
Secretary/Treasurer

University of Oregon
School of Law
Eugene, Oregon 97403-1221
Telephone: (503) 346-3880
Facsimile: (503) 346-3985

Fredric R. Merrill
Executive Director

Gilma J. Henthorne
Executive Assistant

March 29, 1991

Representative Randy Miller
Chair
House Committee on Judiciary
H388 State Capitol
Salem, Oregon 97310

Representative Tom Mason
Vice Chair
House Committee on Judiciary
H280 State Capitol
Salem, Oregon 97310

Dick Bernis, Esq.

Judge Paul De Muniz

John E. Hart, Esq.

Lafayette G. Harter

Dean Maurice Holland

Judge Lee Johnson

Edward Jones, Esq.

Henry Kantor, Esq.

Judge John V. Kelly

Richard T. Kross, Esq.

Judge Winifred K. F. Lape

Judge Robert B. McConville

R. L. Marceau, Esq.

J. Michael Starr, Esq.

Larry Thorp, Esq.

Judge Richard L. Barron

Susan Bischoff, Esq.

Justice Susan Graber

Judge Jack L. Morrison

William F. Schroeder, Esq.

Judge William C. Shouffer

Judge Elizabeth Welch

Elizabeth Yeata, Esq.

RE: HB 3156 (service of process at employer's office)

The Council on Court Procedures asks that no further action be taken on HB 3156 this legislative session.

HB 3156 would amend the Oregon Rules of Civil Procedure to allow service of summons and complaint on an employee by leaving them at his or her employer's office. This is a very significant change to the existing rule.

The Council on Court Procedures was established by the legislature in 1977 specifically to review and promulgate civil procedure laws because there wasn't any coordinated system for such review at that time. The Council is a 23-person body created by statute (ORS 1.725) and comprised of judges, lawyers, one law teacher and one public member. The lawyer members of the Council are representative of the civil trial practice in Oregon, i.e., both plaintiff's personal injury attorneys and insurance defense attorneys are members of the Council.

The Council has statutory authority to enact civil procedure rules each Biennium which become law unless changed by the legislative assembly. The Council has submitted eight rule changes this Biennium.

Page 2

The Council can most effectively perform its statutory responsibilities if all proposals for civil procedure revision are first brought to it for its review. Unfortunately, HB 3156 was not submitted to the Council before it was submitted to the legislative assembly. The Council did discuss HB 3156 at a special meeting on March 23, 1991.

While the Council has not had any opportunity to really review HB 3156, it does appear to raise rather serious questions (i.e., can an employee of Tektronics be served with summons and complaint by simply leaving it at Tek's Beaverton headquarters?). The Council would like the opportunity to thoroughly review this proposal, and act upon it one way or another, before the 1993-94 Biennium. The Council will also be available for whatever help it can provide to your committee at this time.

Sincerely,



R. L. MARCEAU
Chair

RLM:bd1

cc: Henry Kantor, Vice Chair, Council on Court Procedures
Fred Merrill, Executive Director, Council on Court
Procedures
David V. Brewer, Chair, Oregon State Bar Procedure
and Practice Committee
Bob Oleson, Director, OSB Public Affairs Division

379689a.rtr

COUNCIL ON COURT PROCEDURES

Established by the Oregon Legislature in 1977

R. L. Marceau
Chair

Henry Kantor
Vice Chair

Lafayette G. Harter
Secretary/Treasurer

University of Oregon
School of Law
Eugene, Oregon 97403-1221
Telephone: (503) 346-3880
Facsimile: (503) 346-3985

Fredric R. Merrill
Executive Director

Gilma J. Henthorne
Executive Assistant

March 29, 1991

Senator Bill Bradbury
Co-Chair
Joint Ways and Means
H178 State Capitol
Salem, Oregon 97310

Dick Bennis, Esq.

Judge Paul De Muniz

John E. Hart, Esq.

Lafayette G. Harter

Dean Maurice Holland

Judge Lee Johnson

Edward J. Jones, Esq.

Henry Kantor, Esq.

Judge John V. Kelly

Richard T. Kropp, Esq.

Judge Winfrid K. F. Uepe

Judge Robert B. McConville

R. L. Marceau, Esq.

J. Michael Starr, Esq.

Larry Thorp, Esq.

Judge Richard L. Barron

Susan Bischoff, Esq.

Justice Susan Graber

Judge Jack L. Mattison

William F. Schroeder, Esq.

Judge William C. Snouffer

Judge Elizabeth Welch

Elizabeth Yeats, Esq.

Representative Tony Van Vliet
Co-Chair
Joint Ways and Means
H178 State Capitol
Salem, Oregon 97310

Representative Denny Jones
Subcommittee Chair
H380 State Capitol
Salem, Oregon 97310

RE: HB 3542 (6 person juries)

The Council on Court Procedures asks that no further action be taken on HB 3542 this legislative session.

HB 3542 would amend the Oregon Rules of Civil Procedure by reducing juries from 12 persons to 6, and would reduce the number of peremptory challenges from 3 to 2. Both are very significant changes to ORCP.

The Council on Court Procedures was established by the legislature in 1977 specifically to review and promulgate civil procedure laws because there wasn't any coordinated system for such review at that time. The Council is a 23-person body created by statute (ORS 1.725) and comprised of judges, lawyers, one law teacher and one public member. The lawyer members of the Council are representative of the civil trial practice in Oregon, i.e., both plaintiff's personal injury attorneys and insurance defense attorneys are members of the Council.

Page 2

The Council has statutory authority to enact civil procedure rules each Biennium which become law unless changed by the legislative assembly. The Council has submitted eight rule changes this Biennium.

The Council can most effectively perform its statutory responsibilities if all proposals for civil procedure revision are first brought to it for its review. Unfortunately, the Council did not learn of HB 3542 until late February after it had been submitted to the legislative assembly. The Council did discuss HB 3542 at a special meeting called for this purpose last Saturday (March 23, 1991).

The Council is informed that the Oregon State Bar's Procedure and Practice Committee opposes HB 3542. The Council has received a letter from the President of the Oregon Association of Defense Counsel also opposing civil six person juries.

Both of these trial lawyer groups raise very serious questions about the wisdom of reducing civil juries to 6 persons, and point out that the reduction might not even accomplish significant cost savings (which seems to be the reason for the reduction in the first place).

The Council does regard these proposals as very substantial departures from present practice. The Council would like the opportunity to thoroughly review the civil procedure revisions contained in HB 3542, and act upon them -- one way or another -- before the 1993-94 Biennium. The Council will also be available for whatever help it can provide to your committee at this time.

Sincerely,



R. L. MARCEAU
Chair

RLM:bd1

cc: Kinglsey Click, Deputy State Court Administrator
Ronald E. Bailey, Oregon Association of Defense Counsel
David V. Brewer, Chair, Oregon State Bar Procedure
and Practice Committee
Bob Oleson, Director, OSB Public Affairs Division
Henry Kantor, Vice Chair, Council on Court Procedures
Fred Merrill, Executive Director, Council on Court
Procedures
Representative Beverly Clarno

COUNCIL ON COURT PROCEDURES

Established by the Oregon Legislature in 1977

R. L. Marceau
Chair

Henry Kantor
Vice Chair

Lafayette G. Harter
Secretary/Treasurer

University of Oregon
School of Law
Eugene, Oregon 97403-1221
Telephone: (503) 346-3880
Facsimile: (503) 346-3985

Fredric R. Merrill
Executive Director

Gilma J. Henthorne
Executive Assistant

March 29, 1991

Representative Bill Markham
Chair, State and Federal Affairs
H484 State Capitol
Salem, Oregon 97310

Dick Barria, Esq.

Judge Paul De Muniz

John E. Hart, Esq.

Lafayette G. Harter

Dean Maurice Holland

Judge Lee Johnson

David Jones, Esq.

Henry Kantor, Esq.

Judge John V. Kelly

Richard T. Krapp, Esq.

Judge Winfrid K. F. Liepe

Judge Robert B. McConville

R. L. Marceau, Esq.

J. Michael Starr, Esq.

Larry Thorp, Esq.

Judge Richard L. Barron

Susan Bischoff, Esq.

Justice Susan Graber

Judge Jack L. Mattison

William F. Schroeder, Esq.

Judge William C. Snouffer

Judge Elizabeth Welch

Elizabeth Yeats, Esq.

Representative Larry Sowa
Vice Chair, State and Federal Affairs
H293 State Capitol
Salem, Oregon 97310

RE: HB 3155 (\$100,000 insurance for process servers)

The Council on Court Procedures asks that no further action be taken on HB 3155 this legislative session.

The Council on Court Procedures was established by the legislature in 1977 specifically to review and promulgate civil procedure laws because there wasn't any coordinated system for such review at that time. The Council is a 23-person body created by statute (ORS 1.725) and comprised of judges, lawyers, one law teacher and one public member. The lawyer members of the Council are representative of the civil trial practice in Oregon, i.e., both plaintiff's personal injury attorneys and insurance defense attorneys are members of the Council.

The Council has statutory authority to enact civil procedure rules each Biennium which become law unless changed by the legislative assembly. The Council has submitted eight rule changes this Biennium.

The Council can most effectively perform its statutory responsibilities if all proposals for civil procedure revision are first brought to it for its review. Unfortunately, HB 3155 was not submitted to the Council before it was submitted to the legislative assembly. The Council did discuss HB 3155 at a special meeting on March 23, 1991.

Page 2

HB 3155 would amend the Oregon Rules of Civil Procedure to restrict persons who may serve summons by requiring that persons other than the Sheriff must have errors and omissions insurance with \$100,000 limits.

The Council has really not had an opportunity to review this proposal at all. Accordingly, the Council is unable to evaluate its wisdom or purpose. The Council is not able to readily understand why this departure from present practice has been proposed in the first place.

The Council, therefore, requests that it be given the opportunity to review this proposal, and act upon it one way or another, before the 1993-94 Biennium. In any event, the Council will also be available for whatever help it can provide your committee at this time.

Sincerely,



R. L. MARCEAU
Chair

RLM:bd1

cc: Henry Kantor, Vice Chair, Council on Court Procedures
Fred Merrill, Executive Director, Council on Court
Procedures
David V. Brewer, Chair, Oregon State Bar Procedure
and Practice Committee
Bob Oleson, Director, OSB Public Affairs Division

32968e.01

I am the Executive Director of the Council on Court Procedures. I am appearing on behalf of the Council to ask that action on HB 3156 be postponed until the Council has an opportunity to review the matter during the next biennium, as requested in attached letter from Ron Marceau, Chair of the Council on Court Procedures.

The office service provision in ORCP 7 D(2)(c) was part of the original Oregon Rules of Civil Procedure promulgated in 1979. It was adapted from the Wisconsin service of process statutes. The Wisconsin statute is more limited and only provides for office service upon corporations by leaving the summons at the office of a corporate officer, director, or managing agent. The exact language in the Wisconsin statutes is "... the copy may be left in the office of such officer, director or managing agent with the person who is apparently in charge of the office." Wis. Stat. Ann. 801.11(5)(a).

The Council changed the provision to provide for service on individuals. It felt that leaving a summons at an office, where persons working in that office had a business duty to see that papers delivered there reached the defendant, was a reliable service method. The Council required that the office be one "for the conduct of business". Business was not used in the sense of a profitmaking business but in the sense of a regularly conducted activity where employees would have responsibilities to see that papers received were properly delivered. The Council also required that the delivery be during "normal working hours" and that the summons be left "with the person who is apparently in charge."

Nothing in the rule requires the defendant to own or direct the business or personally pay the rent for the office. The rule does not require that the defendant be the exclusive occupant of the office. The language of the rule does suggest that the person served at least be in a position of some responsibility in the office because it refers to the defendant maintaining an office.

The point again is that service is assured because there is a reliable business duty on all persons working in an office, certainly applicable to the person apparently in charge, to see that the persons for whom they work receive papers delivered to that office. Arguably leaving papers for anyone working at a business office, from the boss to any member of the staff, might be a reasonable service method and should be covered under the

rule. It is also possible that the position of the defendant in the office could be more clearly expressed in the rule.

The proposed amendment, however, goes further and allows an employee to be served by delivery to any office of his or her employer. That would not be a particularly reliable service method. A janitor in a Safeway store in Klamath Falls could be served by leaving the summons at the office of one of Safeway's stores in Portland. It would make an employer a designated agent for service of summons on any of their employees.

Ins)
Matt is
Mon.
Agenda
make fi

House Bill 2885

Sponsored by Representative CLARNO

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure as introduced.

Reduces number of jurors in circuit court civil cases from 12 to 6.

A BILL FOR AN ACT

Relating to circuit court juries; creating new provisions; and amending ORCP 56 and 59 G.

Be It Enacted by the People of the State of Oregon:

SECTION 1. ORCP 56 is amended to read:

Trial by jury defined. A trial jury in the circuit court is a body of (12) six persons drawn as provided in Rule 57. The parties may stipulate that a jury shall consist of any number less than (12) six or that a verdict or finding of a stated majority of the jurors shall be taken as the verdict or finding of the jury.

SECTION 2. ORCP 59 G. is amended to read:

G. Return of jury verdict.

G.(1) Declaration of verdict. When the jurors have agreed upon their verdict, they shall be conducted into court by the officer having them in charge. The court shall inquire whether they have agreed upon their verdict. If the foreperson answers in the affirmative, it shall be read.

G.(2) Number of jurors concurring. In civil cases three-fourths of the jury may render a verdict. If the jury consists of six persons, five jurors must agree on the verdict unless the parties have stipulated to some other number under ORCP 56.

G.(3) Polling the jury. When the verdict is given, and before it is filed, the jury may be polled on the request of a party, for which purpose each juror shall be asked whether it is his or her verdict. If a less number of jurors answer in the affirmative than the number required to render a verdict, the jury shall be sent out for further deliberations.

G.(4) Informal or insufficient verdict. If the verdict is informal or insufficient, it may be corrected by the jury under the advice of the court, or the jury may be required to deliberate further.

G.(5) Completion of verdict; form and entry. When a verdict is given and is such as the court may receive, the clerk shall file the verdict. Then the jury shall be discharged from the case.

SECTION 3. The amendments to ORCP 56 and ORCP 59 G. by sections 1 and 2 of this Act apply only to actions commenced on or after the effective date of this Act.

NOTE: Matter in bold face in an amended section is new.

Post-It™ brand fax transmittal memo 7671 # of pages = 1

To	Henry Kantor	From	CLW
Co.		Co.	
Dept.		Phone #	
Fax #	274-9459	Fax #	

To PWA

House Bill 3155

Sponsored by COMMITTEE ON JUDICIARY

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure as introduced.

Prohibits service of summons by person other than sheriff unless person files \$100,000 certificate of errors and omissions insurance with Secretary of State.

A BILL FOR AN ACT

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16

Relating to service of summons; amending ORCP 7 E.

Be It Enacted by the People of the State of Oregon:

SECTION 1. ORCP 7 E. is amended to read:

E. By whom served; compensation.

E.(1) A summons may be served by any competent person 18 years of age or older who is a resident of the state where service is made or of this state and is not a party to the action nor an officer, director, or employee of, nor attorney for, any party, corporate or otherwise. Compensation to a sheriff or a sheriff's deputy in this state who serves a summons shall be prescribed by statute or rule. If any other person serves the summons, a reasonable fee may be paid for service. This compensation shall be part of disbursements and shall be recovered as provided in Rule 68.

E.(2) Notwithstanding subsection (1) of this section, no person other than the sheriff shall serve a summons unless the person has filed with the Secretary of State a current certificate of errors and omissions insurance with limits of not less than \$100,000 per occurrence from a company authorized to do business in this state.

What about Nalke & Brunfield?

NOTE: Matter in bold face in an amended section is new; matter (italic and bracketed) is existing law to be omitted.

(f) For the temporary use, possession and control of the real or personal property of the parties or either of them and the payment of instalment liens and encumbrances thereon.

(g) That even if no minor children reside in the family home, the court may require one party to move out of the home for such period of time and under such conditions as the court determines, whether the home is rented, owned or being purchased by one party or both parties if that party assaults or threatens to assault the other.

(2) In case default is made in the payment of any moneys falling due under the terms of an order pending suit, any such delinquent amount shall be entered and docketed as a judgment, and execution or garnishment may issue thereon to enforce payment thereof in the same manner and with like effect as upon a final decree. The remedy provided in this subsection shall be deemed cumulative and not exclusive.

(3) The court shall not require an undertaking in case of the issuance of an order under paragraph (c), (d), (e), (f) or (g) of subsection (1) of this section.

(4) In a suit for annulment or dissolution of marriage or for separation, wherein the parties are copetitioners or the respondent is found by the court to be in default or where respondent having appeared has waived further appearance, the court may, when the cause is otherwise ready for hearing on the merits, in lieu of such hearing, enter a decree of annulment or dissolution or for separation based upon a current affidavit of the petitioner or copetitioners, setting forth a prima facie case, and covering such additional matters as the court may require. If child support or custody of minor children is involved, then the affidavit also shall include:

(a) The net monthly income of each party, to the best of the affiant's knowledge; and

(b) The name of the party with whom the children currently reside and the length of time they have so resided.

Approved by the Governor April 11, 1991

Filed in the office of Secretary of State April 12, 1991

CHAPTER 83

AN ACT

SB 396

Relating to bulk transfers; amending ORS 71.1010, 71.1050, 72.4030 and 646.425 and ORCP 83 A. and 83 D.; and repealing ORS 76.1010, 76.1020, 76.1030, 76.1040, 76.1050, 76.1070, 76.1080, 76.1090, 76.1100, 76.1110 and 79.1110.

Be It Enacted by the People of the State of Oregon:

SECTION 1. ORS 76.1010, 76.1020, 76.1030, 76.1040, 76.1050, 76.1070, 76.1080, 76.1090, 76.1100, 76.1110 and 79.1110 are repealed.

SECTION 2. ORS 71.1010, as amended by section 79, chapter 676, Oregon Laws 1989, is further amended to read:

71.1010. ORS 71.1010 to 71.2080, 72.1010 to 72.7250, 73.1010 to 73.8050, 74.1010 to 74.5040, 75.1010 to 75.1170, [76.1010 to 76.1110,] 77.1010 to 77.6040, 78.1010 to 78.4060, 79.1010 to 79.5070 and sections 1 to 78, chapter 676, Oregon Laws 1989, may be cited as Uniform Commercial Code.

SECTION 3. ORS 71.1050, as amended by section 80, chapter 676, Oregon Laws 1989, is further amended to read:

71.1050. (1) Except as provided hereafter in this section, when a transaction bears a reasonable relation to this state and also to another state or nation the parties may agree that the law either of this state or of such other state or nation shall govern their rights and duties. Failing such agreement the Uniform Commercial Code applies to transactions bearing an appropriate relation to this state.

(2) Where one of the following provisions specifies the applicable law, that provision governs and a contrary agreement is effective only to the extent permitted by the law (including the conflict of laws rules) so specified:

(a) Rights of creditors against sold goods as specified in ORS 72.4020.

(b) Applicability of sections 1 to 78, chapter 676, Oregon Laws 1989, on leases.

(c) Applicability of ORS 74.1010 to 74.5040 as specified in ORS 74.1020.

[(d) Bulk transfers subject to ORS 76.1010 to 76.1110 as specified in ORS 76.1020.]

[(e)] (d) Applicability of ORS 78.1010 to 78.4060 as specified in ORS 78.1060.

[(f)] (e) Perfection provisions of ORS 79.1030.

SECTION 4. ORS 72.4030 is amended to read:

72.4030. (1) A purchaser of goods acquires all title which the transferor had or had power to transfer except that a purchaser of a limited interest acquires rights only to the extent of the interest purchased. A person with voidable title has power to transfer a good title to a good faith purchaser for value. When goods have been delivered under a transaction of purchase the purchaser has such power even though:

(a) The transferor was deceived as to the identity of the purchaser; or

(b) The delivery was in exchange for a check which is later dishonored; or

(c) It was agreed that the transaction was to be a "cash sale"; or

(d) The delivery was procured through fraud punishable as larcenous under the criminal law.

(2) Notwithstanding any other provision of this section, when livestock has been delivered under a transaction of purchase, is transported by private, common or contract carrier and on the accompanying brand inspection certificate or memorandum of brand inspection certificate the seller has noted that as consideration for the transaction of purchase a

draft, check, certificate of deposit or note was given, if the draft, check, certificate of deposit or note is later dishonored, the buyer does not have power to transfer good title to a good faith purchaser for value.

(3) Any entrusting of possession of goods to a merchant who deals in goods of that kind gives the merchant power to transfer all rights of the entruster to a buyer in ordinary course of business.

(4) "Entrusting" includes any delivery and any acquiescence in retention of possession regardless of any condition expressed between the parties to the delivery or acquiescence and regardless of whether the procurement of the entrusting of the possessor's disposition of the goods have been such as to be larcenous under the criminal law.

(5) The rights of other purchasers of goods and of lien creditors are governed by ORS 79.1010 to 79.5070 on secured transactions, ORS 76.1010 to 76.1110 on bulk transfers and ORS 77.1010 to 77.6040 on documents of title.

SECTION 5. ORS 646.425 is amended to read:

646.425. (1) This section applies to a retailer and a supplier who enter into a written contract, written sales agreement or written security agreement whereby the retailer agrees to maintain as a part of the contract a stock of parts of complete or whole machines or attachments sold, manufactured or distributed by the supplier. If the contract, sales agreement or security agreement is terminated, canceled or discontinued, unless the retailer elects to keep the stock under a contractual right to do so, the supplier shall pay the retailer for the farm implements, machinery, attachments and repair parts, or credit their cost to the retailer's account if the retailer has outstanding any sums owing the supplier. The payment or credit shall be as follows:

(a) The payment or the credit for the unused complete farm implements, machinery and attachments in new condition shall be in a sum equal to 100 percent of the net cost of all such complete farm implements, machinery and attachments that are current models and that have been purchased by the retailer from the supplier within the 24 months immediately preceding notification by either party of intent to cancel or discontinue the contract. The payment or credit shall include the transportation charges to the retailer and from the retailer to the supplier, if the charges have been paid by the retailer or invoiced to the retailer's account by the supplier.

(b) The payment or credit for repair parts described in this paragraph shall be a sum equal to 85 percent of the current net prices on the repair parts, including superseded parts, listed in current price lists or catalogs in use by the supplier on the date of cancellation or discontinuance of the contract, and including the transportation charges from the retailer to the destination designated by the supplier which have been paid by the retailer, or invoiced to a retailer's account by the supplier. This paragraph applies to parts which had previously been pur-

chased by the retailer from the supplier and are held by the retailer on the date of the cancellation or discontinuance of the contract or thereafter are received by the retailer from the supplier. The supplier shall pay the retailer or credit to the retailer's account a sum equal to five percent of the current net price of all parts returned for the handling, packing and loading of the parts, unless the supplier elects to catalog or list the inventory and perform packing and loading of the parts itself.

(2) Upon the payment or allowance of credit to the retailer's account of the sum under subsection (1) of this section, the title to the farm implements, farm machinery, attachments or repair parts shall pass to the supplier making the payment or allowing the credit and the supplier shall be entitled to the possession of the farm implements, machinery, attachments or repair parts. However, this section shall not in any way affect any security interest which the supplier may have in the inventory of the retailer.

(3) The provisions of this section shall apply to any annual part return adjustment agreement made between a retailer and a supplier.

(4) The provisions of this section shall be supplemental to any agreement between the retailer and the supplier covering the return of farm implements, machinery, attachments and repair parts. The retailer may elect to pursue either the retailer's contract remedy or the remedy provided under this section. An election by the retailer to pursue the contract remedy shall not bar the retailer's right to the remedy provided under this section as to those farm implements, machinery, attachments and repair parts not affected by the contract remedy. This section does not affect the right of a supplier to charge back to the retailer's account amounts previously paid or credited as a discount incident to the retailer's purchase of goods. *[In addition, any repurchase under this section shall not be subject to the provisions of ORS 76.1010 to 76.1110.]*

SECTION 6. ORCP 83 A. is amended to read:

A. Requirements for issuance. To obtain an order for issuance of provisional process the plaintiff shall cause to be filed with the clerk of the court from which such process is sought a sworn petition and any necessary supplementary affidavits requesting specific provisional process and showing, to the best knowledge, information, and belief of the plaintiff or affiant, that the action is one in which provisional process may issue, and:

A.(1) The name and residence or place of business of the defendant;

A.(2) Whether the underlying claim is based on a consumer transaction and whether provisional process in a consumer good is sought;

A.(3)(a) If the provisional process sought is claim and delivery, a description of the claimed property in particularity sufficient to make possible its identification, and the plaintiff's estimate of the value and location of the property;

A.(3)(b) If the provisional process sought is a restraining order, a statement of the particular acts sought to be restrained;

A.(4) Whether the plaintiff's claim to provisional process is based upon ownership, entitlement to possession, a security interest or otherwise;

A.(5) A copy or verbatim recital of any writing or portion of a writing, if plaintiff relies upon a writing, which evidences the origin or source of the plaintiff's claim to provisional process;

A.(6) Whether the claimed property is wrongfully detained by the defendant or another person;

A.(7) Whether the claimed property has been taken by public authority for a tax, assessment, or fine;

A.(8) If the plaintiff claims that the defendant has waived the right to be heard, a copy of the writing evidencing such waiver and a statement of when and in what manner the waiver occurred;

A.(9) If provisional process is based on notice of a bulk transfer [under ORS chapter 76 or a similar statute or provision of law], a copy of the notice;

A.(10) Facts, if any, which tend to establish that there is a substantial danger that the defendant or another person is engaging in, or is about to engage in, conduct which would place the claimed property in danger of destruction, serious harm, concealment, removal from this state, or transfer to an innocent purchaser.

A.(11) Facts, if any, which tend to establish that without restraint immediate and irreparable injury, damage, or loss will occur;

A.(12) Facts, if any, which tend to establish that there is substantial danger that the defendant or another person probably would not comply with a temporary restraining order; and

A.(13) That there is no reasonable probability that the defendant can establish a successful defense to the underlying claim.

SECTION 7. ORCP 83 D. is amended to read:

D. Effect of notice of bulk transfer. Subject to section B. of this rule, if the court finds that with respect to property of the defendant notice of bulk transfer [under ORS chapter 76 or a similar statute or provision of law] has been given and that the time for possession by the transferee has not passed, the court shall order issuance of provisional process.

Approved by the Governor April 11, 1991
Filed in the office of Secretary of State April 12, 1991

CHAPTER 84

AN ACT SB 5538

Relating to the financial administration of the State Marine Board; limiting expenditures; and declaring an emergency.

Be It Enacted by the People of the State of Oregon:

SECTION 1. Notwithstanding any other law, the following amounts are established for the biennium beginning July 1, 1991, as the maximum limits for payment of expenses from fees, moneys or other revenues, including Miscellaneous Receipts, excluding federal funds, collected or received by the State Marine Board, for the following purposes:

(1) Administration and education.....	\$1,981,746
(2) Marine enforcement.....	\$3,236,491
(3) Facilities construction and maintenance and land acquisition.....	\$6,166,812

SECTION 2. Notwithstanding any other law, the amount of \$1,032,039 is established for the biennium beginning July 1, 1991, as the maximum limit for the payment of expenses from federal funds collected or received by the State Marine Board, for the following purposes:

(1) Administration and education.....	\$ 83,592
(2) Marine enforcement.....	\$ 948,447

SECTION 3. Notwithstanding any other law, all sections of this Act are subject to Executive Department rules related to allotting, controlling and encumbering funds.

SECTION 4. A revolving fund not to exceed \$2,500 may be established within the State Marine Board from funds available under section 1 (1) of this Act. This revolving fund may be used for payment of state claims appropriately authorized by the State Marine Board not to exceed \$50 per transaction. The fund shall be replenished periodically through charges made for such purchases to appropriate accounts or funds.

SECTION 5. This Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this Act takes effect July 1, 1991.

Approved by the Governor April 11, 1991
Filed in the office of Secretary of State April 12, 1991

CHAPTER 85

AN ACT SB 5568

Relating to the financial administration of the Council on Court Procedures; appropriating money; and declaring an emergency.

Be It Enacted by the People of the State of Oregon:

SECTION 1. There is appropriated to the Council on Court Procedures, for the biennium beginning July 1, 1991, out of the General Fund, the amount of \$80,039.

SECTION 2. This Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this Act takes effect July 1, 1991.

(5) The department may require periodic reports from persons who hold permits under ORS 448.305, 454.010 to 454.040, 454.205 to 454.225, 454.405, 454.425, 454.505 to 454.535, 454.605 to 454.745 and this chapter. The report shall be in a form prescribed by the department and shall contain such information as to the amount and nature or common description of the pollutant, contaminant or waste and such other information as the department may require.

(6) Any fee collected under this section shall be deposited in the State Treasury to the credit of an account of the department. Such fees are continuously appropriated to meet the administrative expenses of the program for which they are collected. The fees accompanying an application to a regional air pollution control authority pursuant to a permit program authorized by the commission shall be retained by and shall be income to the regional authority. Such fees shall be accounted for and expended in the same manner as are other funds of the regional authority. However, if the department finds after hearing that the permit program administered by the regional authority does not conform to the requirements of the permit program approved by the commission pursuant to ORS 468.555, such fees shall be deposited and expended as are permit fees submitted to the department.

SECTION 2. In addition to and not in lieu of any other appropriation, there is appropriated to the Department of Environmental Quality from the General Fund, for the biennium beginning July 1, 1991, the sum of \$220,000 for the purpose of carrying out the department's responsibilities under the Federal Water Pollution Control Act.

SECTION 3. This Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this Act takes effect July 1, 1991.

Approved by the Governor July 31, 1991
Filed in the office of Secretary of State July 31, 1991

CHAPTER 724

AN ACT

SB 376

Relating to contempt of court; creating new provisions; amending ORS 3.311, 8.710, 21.010, 23.720, 25.020, 52.040, 107.445, 107.718, 110.092, 133.381, 135.055, 136.617, 136.619, 151.250, 151.450, 161.685, 243.726 and 662.130 and ORCP 47 G. and 78 B.; and repealing ORS 33.010, 33.020, 33.030, 33.040, 33.050, 33.060, 33.070, 33.080, 33.090, 33.095, 33.100, 33.110, 33.130, 33.140 and 33.150 and ORCP 78 D.

Be It Enacted by the People of the State of Oregon:

SECTION 1. Definitions. For the purposes of sections 1 to 14 of this Act:

(1) "Confinement" means custody or incarceration, whether actual or constructive.

(2) "Contempt of court" means the following acts, done willfully:

(a) Misconduct in the presence of the court that interferes with a court proceeding or with the administration of justice, or that impairs the respect due the court;

(b) Disobedience of, resistance to or obstruction of the court's authority, process, orders or judgments;

(c) Refusal as a witness to appear, be sworn or answer a question contrary to an order of the court;

(d) Refusal to produce a record, document or other object contrary to an order of the court; or

(e) Violation of a statutory provision that specifically subjects the person to the contempt power of the court.

(3) "Punitive sanction" means a sanction imposed to punish a past contempt of court.

(4) "Remedial sanction" means a sanction imposed to terminate a continuing contempt of court or to compensate for injury, damage or costs resulting from a past or continuing contempt of court.

SECTION 2. Nature of contempt power; corporate defendants. (1) The power of a court to impose a remedial or punitive sanction for contempt of court is an inherent judicial power. Sections 1 to 14 of this Act establish procedures to govern the exercise of that power.

(2) A corporation is liable for contempt if:

(a) The conduct constituting contempt is engaged in by an agent of the corporation while acting within the scope of employment and on behalf of the corporation;

(b) The conduct constituting contempt consists of an omission to discharge a specific duty of affirmative performance imposed on corporations by a court; or

(c) The conduct constituting contempt is engaged in, authorized, solicited, requested, commanded or knowingly tolerated by the board of directors or by a high managerial agent acting within the scope of employment and on behalf of the corporation.

(3) The board of directors and high managerial agents shall be subject to the contempt powers of a court for contempt by a corporation if those persons engage in, authorize, solicit, request, command or knowingly tolerate the conduct constituting contempt.

(4) As used in this section, "agent" and "high managerial agent" have those meanings given in ORS 161.170.

SECTION 3. Court-appointed counsel. Whenever sections 1 to 14 of this Act provide for court-appointed counsel, appointment of counsel and payment of counsel and related expenses shall be made as follows:

(1) For contempt of a circuit court, a district court, the Oregon Tax Court, the Court of Appeals

or the Supreme Court, appointment and payment of counsel shall be made as provided in ORS 135.050, 135.055 and 151.430 to 151.480 and applicable contracts entered into by the State Court Administrator under ORS 151.460.

(2) For contempt of a justice court, municipal court or other public body not described in subsection (1) of this section, payment for and appointment of counsel shall be made as otherwise provided by law for the court or public body.

SECTION 4. Types of sanctions. (1) A court may impose either remedial or punitive sanctions for contempt.

(2) Confinement may be remedial or punitive. The sanction is:

(a) Remedial if it continues or accumulates until the defendant complies with the court's order or judgment.

(b) Punitive if it is for a definite period that will not be reduced even if the defendant complies with the court's order or judgment.

(3) A fine may be remedial or punitive. A fine is:

(a) Punitive if it is for a past contempt.

(b) Remedial if it is for continuing contempt and the fine accumulates until the defendant complies with the court's judgment or order or if the fine may be partially or entirely forgiven when the defendant complies with the court's judgment or order.

(4) Any sanction requiring payment of amounts to one of the parties to a proceeding is remedial.

(5) Any sanction imposed by a court for contempt is in addition to any civil remedy or criminal sanction that may be available as a result of the conduct constituting contempt. In any civil or criminal proceedings arising out of the conduct constituting contempt, the court shall take into consideration any contempt sanctions previously imposed for the same act.

SECTION 5. Procedure for imposition of remedial sanctions. (1) Except as otherwise provided in ORS 161.685, proceedings to impose remedial sanctions for contempt shall be conducted as provided in this section.

(2) The following persons may initiate the proceeding or, with leave of the court, participate in the proceeding, by filing a motion requesting that defendant be ordered to appear:

(a) A party aggrieved by an alleged contempt of court;

(b) A district attorney;

(c) A city attorney;

(d) The Attorney General; or

(e) Any other person specifically authorized by statute to seek imposition of sanctions for contempt.

(3) A motion to initiate a proceeding under this section shall be filed in the proceeding to which the contempt is related, if there is a related proceeding.

(4) The person initiating a proceeding under this section shall file supporting documentation or affi-

davits sufficient to give defendant notice of the specific acts alleged to constitute contempt.

(5) The court may issue an order directing the defendant to appear. The defendant shall be personally served with the order to appear in the manner provided in ORCP 7 and 9. The court may order service by a method other than personal service or issue an arrest warrant if, based upon motion and supporting affidavit, the court finds that the defendant cannot be personally served.

(6) The court may impose a remedial sanction only after affording the defendant opportunity for a hearing tried to the court. The defendant may waive the opportunity for a hearing by stipulated order filed with the court.

(7) A defendant has no right to a jury trial and, except as provided in this section, has only those rights accorded to a defendant in a civil action.

(8) A defendant is entitled to be represented by counsel. A court shall not impose on a defendant a remedial sanction of confinement unless, before the hearing is held, the defendant is:

(a) Informed that such sanction may be imposed; and

(b) Afforded the same right to court-appointed counsel required in proceedings for the imposition of an equivalent punitive sanction of confinement.

(9) If the defendant is not represented by counsel when coming before the court, the court shall inform the defendant of the right to counsel, and of the right to appointed counsel if the defendant is entitled to appointed counsel under subsection (8) of this section.

(10) Inability to comply with an order of the court is an affirmative defense.

(11) In any proceeding for imposition of a remedial sanction other than confinement, proof of contempt shall be by clear and convincing evidence. In any proceeding for imposition of a remedial sanction of confinement, proof of contempt shall be beyond a reasonable doubt.

(12) Proceedings under this section are subject to rules adopted under section 13 of this Act. Proceedings under this section are not subject to the Oregon Rules of Civil Procedure except as provided in subsection (5) of this section or as may be provided in rules adopted under section 13 of this Act.

SECTION 6. Procedure for imposition of punitive sanctions. (1) Except as otherwise provided in ORS 161.685, proceedings to impose punitive sanctions for contempt shall be conducted as provided in this section.

(2) The following persons may initiate the proceeding by an accusatory instrument charging a person with contempt of court and seeking a punitive sanction:

(a) A city attorney.

(b) A district attorney.

(c) The Attorney General.

(3) If a city attorney, district attorney or Attorney General who regularly appears before the court

declines to prosecute a contempt, and the court determines that remedial sanctions would not provide an effective alternative remedy, the court may appoint an attorney who is authorized to practice law in this state, and who is not counsel for an interested party, to prosecute the contempt. The court shall allow reasonable compensation for the appointed attorney's attendance, to be paid by:

(a) The Executive Department, if the attorney is appointed by the Supreme Court, the Court of Appeals or the Oregon Tax Court;

(b) The city where the court is located, if the attorney is appointed by a municipal court; and

(c) The county where the prosecution is initiated, in all other cases.

(4) The prosecutor may initiate proceedings on the prosecutor's own initiative, on the request of a party to an action or proceeding or on the request of the court. After the prosecutor files an accusatory instrument, the court may issue any order or warrant necessary to compel the appearance of the defendant.

(5) Except as otherwise provided by this section, the accusatory instrument is subject to the same requirements and laws applicable to an accusatory instrument in a criminal proceeding, and all proceedings on the accusatory instrument shall be in the manner prescribed for criminal proceedings.

(6) Except for the right to a jury trial, the defendant is entitled to the constitutional and statutory protections, including the right to court-appointed counsel, that a defendant would be entitled to in a criminal proceeding in which the fine or term of imprisonment that could be imposed is equivalent to the punitive sanctions sought in the contempt proceeding. This subsection does not affect any right to a jury that may otherwise be created by statute.

(7) Inability to comply with an order of the court is an affirmative defense. If the defendant proposes to rely in any way on evidence of inability to comply with an order of the court, the defendant shall, not less than five days before the trial of the cause, file and serve upon the city attorney, district attorney or Attorney General prosecuting the contempt a written notice of intent to offer that evidence. If the defendant fails to file and serve the notice, the defendant shall not be permitted to introduce evidence of inability to comply with an order of the court at the trial of the cause unless the court, in its discretion, permits such evidence to be introduced where just cause for failure to file the notice, or to file the notice within the time allowed, is made to appear.

(8) The court may impose a remedial sanction in addition to or in lieu of a punitive sanction.

(9) In any proceeding for imposition of a punitive sanction, proof of contempt shall be beyond a reasonable doubt.

SECTION 7. Compelling attendance. (1) If a person served with an order to appear under section

5 of this Act fails to appear at the time and place specified in the order, the court may issue any order or warrant necessary to compel the appearance of the defendant.

(2) A person against whom a complaint has been issued under section 6 of this Act may be cited to appear in lieu of custody as provided in ORS 133.055. If the person fails to appear at the time and place specified in the citation, the court may issue any order or warrant necessary to compel the appearance of the defendant.

(3) When the court issues a warrant for contempt, the court shall specify a security amount. Unless the defendant pays the security amount upon arrest, the sheriff shall keep the defendant in custody until either a release decision is made by the court or until disposition of the contempt proceedings.

(4) The defendant shall be discharged from the arrest upon executing and delivering to the sheriff, at any time before the return day of the warrant, a security release or a release agreement as provided in ORS 135.230 to 135.290, to the effect that the defendant will appear on the return day and abide by the order or judgment of the court or officer or pay, as may be directed, the sum specified in the warrant.

(5) The sheriff shall return the warrant and the security deposit, if any, given to the sheriff by the defendant by the return day specified in the warrant.

(6) When a warrant for contempt issued under subsection (2) of this section has been returned after having been served and the defendant does not appear on the return day, the court may do either or both of the following:

(a) Issue another warrant.

(b) Proceed against the security deposited upon the arrest.

(7) If the court proceeds against the security under subsection (6) of this section and the sum specified is recovered, the court may award to any party to the action any or all of the money recovered as remedial damages.

(8) Security deposited under this section shall not be subject to the assessments provided for in ORS 137.306.

SECTION 7a. (1) Upon the motion of the person initiating the proceeding, the court may compel the testimony of a witness as provided under ORS 136.617 in a contempt proceeding under section 5 or 6 of this Act.

(2) In any case where the person initiating the proceeding is not represented by the district attorney, county counsel or Attorney General, the person initiating the proceeding shall serve a notice of intent to compel testimony on the district attorney of the county where the contempt proceeding is pending and on the Attorney General. The notice shall be served not less than 14 calendar days before any hearing on the motion to compel testimony.

(3) The notice required by this section shall identify the witness whose testimony the person ini-

tiating the proceeding intends to compel and include, if known, the witness' name, date of birth, residence address and social security number, and other pending proceedings or criminal charges involving the witness. The notice shall also include the case name and number of the contempt proceeding and the date, time and place set for any hearing scheduled as provided in ORS 136.617.

(4) If the person initiating the proceeding fails to serve the required advance notice or fails to serve the notice within the time required, the court shall grant a continuance for not less than 14 calendar days from the date the notice is served to allow the district attorney and Attorney General opportunity to be heard on the matter of compelling testimony. The court may compel testimony under this subsection only after the full notice period and opportunity to be heard, unless before that time the district attorney and Attorney General waive in writing any objection to the motion to compel.

(5) In any hearing on a motion to compel testimony under this section, the district attorney of the county in which the contempt proceeding is pending and the Attorney General each may appear to present evidence or arguments to support or oppose the motion.

(6) In lieu of compelling testimony under this section, the court may continue the contempt proceeding until disposition of any criminal action that is pending against the witness whose testimony is sought and that charges the witness with a crime.

SECTION 8. Summary imposition of sanction.

A court may summarily impose a sanction upon a person who commits a contempt of court in the immediate view and presence of the court. The sanction may be imposed for the purpose of preserving order in the court or protecting the authority and dignity of the court. The provisions of sections 5 and 6 of this Act do not apply to summary imposition of sanctions under this section.

SECTION 9. Sanctions authorized. (1) Unless otherwise provided by statute, a court may impose one or more of the following remedial sanctions:

(a) Payment of a sum of money sufficient to compensate a party for loss, injury or costs suffered by the party as the result of a contempt of court.

(b) Confinement for so long as the contempt continues, or six months, whichever is the shorter period.

(c) An amount not to exceed \$500 or one percent of the defendant's annual gross income, whichever is greater, for each day the contempt of court continues. The sanction imposed under this paragraph may be imposed as a fine or to compensate a party for the effects of the continuing contempt.

(d) An order designed to insure compliance with a prior order of the court, including probation.

(e) Payment of all or part of any attorney fees incurred by a party as the result of a contempt of court.

(f) A sanction other than the sanctions specified in paragraphs (a) to (e) of this subsection if the court determines that the sanction would be an effective remedy for the contempt.

(2) Unless otherwise provided by statute, a court may impose one or more of the following punitive sanctions for each separate contempt of court:

(a) A fine of not more than \$500 or one percent of the defendant's annual gross income, whichever is greater.

(b) Forfeiture of any proceeds or profits obtained through the contempt.

(c) Confinement for not more than six months.

(d) Probation or community service.

(3) In a summary proceeding under section 8 of this Act, a court may impose one or more of the following sanctions for each separate contempt of court:

(a) A punitive fine of not more than \$500;

(b) Confinement as a punitive sanction for not more than 30 days; or

(c) Probation or community service.

(4) The court may impose a punitive sanction for past conduct constituting contempt of court even though similar present conduct is a continuing contempt of court.

SECTION 10. Referral to another judge. A judge may be disqualified from a contempt proceeding as provided for in other cases under ORS 14.210 to 14.270 and 46.141. ORS 14.260 (3) shall not apply to a motion to disqualify a judge in a contempt proceeding. The judge to whom the contempt is referred shall assume authority over and conduct any further proceedings relating to the contempt.

SECTION 11. Appeal. (1) The imposition of a sanction for contempt shall be by a judgment. The judgment shall be entered in the register as a final judgment.

(2) A defendant may appeal from a judgment imposing a remedial sanction in the same manner as from a judgment in an action at law. An appeal from a judgment imposing a punitive sanction shall be in the manner provided for appeals in ORS chapter 138. Appeals from judgments imposing sanctions for contempt in municipal courts and justice's courts shall be in the manner provided by law for appeals from those courts.

(3)(a) If a motion to initiate proceedings to impose remedial sanctions is filed in a related proceeding under section 5 (3) of this Act before entry of judgment in the related proceeding, and the court determines that the defendant is in contempt, the court may suspend imposition of sanctions and entry of judgment on the contempt until entry of judgment in the related proceeding.

(b) If a motion to initiate proceedings to impose remedial sanctions is filed in a related proceeding under section 5 (3) of this Act before entry of judgment in the related proceeding, and the court denies the motion or declines to impose sanctions, the court

shall enter judgment on that denial or determination only as part of the judgment in the related proceeding.

(4) An appeal from a contempt judgment shall not stay any action or proceeding to which the contempt is related.

SECTION 12. Limitations of actions. (1) Except as provided in subsection (5) of this section, proceedings under section 5 of this Act to impose remedial sanctions for contempt and under section 6 of this Act to impose punitive sanctions for contempt shall be commenced within two years of the act or omission constituting the contempt.

(2) For the purposes of this section, a proceeding to impose remedial sanctions shall be deemed commenced as to each defendant when the motion provided for in section 5 of this Act is filed.

(3) Proceedings to impose punitive sanctions are subject to ORS 131.135, 131.145 and 131.155.

(4) The time limitations imposed by subsection (1) of this section shall not act to bar proceedings to impose sanctions for an act or omission that constitutes a continuing contempt at the time contempt proceedings are commenced. The willful failure of an obligor, as that term is defined in ORS 25.010, to pay a support obligation after that obligation becomes a judgment is a contempt without regard to when the obligation became a judgment.

(5) Proceedings to impose remedial or punitive sanctions for failure to pay a support obligation by an obligor, as defined in ORS 25.010, shall be commenced within 10 years of the act or omission constituting contempt.

SECTION 13. Rules. The Supreme Court may adopt rules to carry out the purposes of sections 1 to 14 of this Act.

SECTION 14. Applicability. Sections 1 to 13 of this Act apply to every court and judicial officer of this state, including municipal, county and justice courts. Rules adopted by the Supreme Court apply to those courts, but the application of such rules to municipal, county and justice courts does not confer any supervisory or administrative authority on the Supreme Court or the State Court Administrator with respect to those courts.

SECTION 15. The section headings used in this Act are provided only for convenience in locating provisions of this Act and do not become part of the statutory law of this state or express any legislative intent in the enactment of this Act.

SECTION 15a. ORS 3.311 is amended to read:

3.311. (1) Upon entry of an order of the presiding judge of a circuit court referring an action under ORS 3.305, the clerk of the court shall cause a copy of the order to be delivered to the reference judge. Upon receipt of the copy of the order, the reference

judge shall set the action for trial on reference at a time and in a place agreeable to the parties.

(2) At least five days before the date set for a trial on reference, the reference judge shall notify the clerk of the court of the time and place of the trial. The clerk shall post a notice of the time and place of the trial in a conspicuous place for trial notices at the principal location for the sitting of the court in the county in which the action is commenced.

(3) Any person interested in attending a trial on reference is entitled to do so as in a trial of a civil action in the court. Upon receipt of written request by any person, the reference judge shall give the person written notice of the time and place set for a trial on reference.

(4) Except as otherwise provided in ORS 3.300 to 3.321, the reference judge has all the judicial powers and duties of a judge of the circuit court to regulate all proceedings in the trial and disposition of the action on reference.

(5) The reference judge shall provide clerical personnel necessary for the conduct of the proceedings in the trial on reference, including a trial court reporter unless waived by the parties. If use of a trial court reporter is waived by the parties, the proceedings in the trial shall be reported by an audio record reporting device.

(6) The trial on reference shall be conducted in the same manner as a trial by the circuit court without a jury. The reference judge shall apply the substantive law used in the courts of this state in deciding the issues submitted by the parties. Unless waived in whole or part by the parties, the reference judge shall apply the rules of pleading, practice, procedure and evidence used in the circuit courts of this state.

(7) The parties may procure the attendance of witnesses before the reference judge by the issuance and service of subpoenas as provided in ORCP 55. If, without adequate excuse, a witness fails to appear or give evidence, that witness may be punished as for a contempt by the reference judge and be subjected to the consequences, penalties and remedies provided in ORCP 55 G.

(8) Reference judges may conduct proceedings for the imposition of remedial sanctions under section 5 of this 1991 Act, but may not conduct proceedings for the imposition of punitive sanctions under section 6 of this 1991 Act.

SECTION 16. ORS 8.710 is amended to read:

8.710. If a district attorney fails to attend any court at which the district attorney is required to be, or is related to the accused by consanguinity or affinity, or, prior to the district attorney's election as district attorney, represented the accused in the matter to be investigated by the grand jury or the crime charged in the indictment, or is associated with the accused in business, or is interested financially in the matter or property out of which the alleged crime or criminal action arose, or is a

stockholder in any corporation, any officer or stockholder of which is charged with the commission of any crime, or declines to prosecute or participate in proceedings for the imposition of sanctions for a contempt of court under section 6 of this 1991 Act, or because of any other conflict cannot ethically serve as district attorney in a particular case, and such facts appear to the satisfaction of the court by affidavit or otherwise, the court shall appoint a regularly licensed and practicing attorney of this state who is not counsel for an interested party to perform the duties of district attorney during the district attorney's absence or inability to serve, or the trial or investigation of such accused. When the district attorney is disqualified as provided in this section, the person so appointed by the court shall receive reasonable compensation for that person's attendance, to be allowed by the court. The court in such case shall order compensation to be paid by the county, except that when the person so appointed performs the district attorney's responsibilities under ORS 25.080 [and 33.060], the court shall order compensation to be paid by the Executive Department of the state from funds available for that purpose.

SECTION 17. ORS 21.010 is amended to read:

21.010. (1) Except as provided in subsection (2) of this section, the appellant in an appeal or the petitioner in a judicial review in the Supreme Court or the Court of Appeals shall pay a filing fee of \$100 in the manner prescribed by ORS 19.035. The respondent in such case, upon entering first appearance or filing first brief in the court, shall pay to the State Court Administrator the sum of \$60. The party entitled to costs and disbursements on such appeal shall recover from the opponent the amount so paid.

(2) Filing and appearance fees shall not be assessed in appeals from habeas corpus proceedings under ORS 34.710, post-conviction relief proceedings under ORS 138.650, juvenile court under ORS 419.561 and the involuntary commitment of allegedly mentally ill persons under ORS 426.135 or allegedly mentally retarded persons under ORS 427.295, or on judicial review of orders of the Psychiatric Security Review Board under ORS 161.385 (8) or orders of the State Board of Parole and Post-Prison Supervision.

(3) Filing and appearance fees shall be assessed in an appeal from an appeal to a circuit or district court from a justice court or municipal court in an action alleging commission of a state offense designated as a violation or infraction or an action alleging violation of a city charter or ordinance, but not in an action alleging commission of a state crime.

(4) Filing and appearance fees shall only be assessed in an appeal in a contempt proceeding [but, on motion of a party after the decision on appeal, the court shall refund any filing or appearance fee if the court determines that the proceeding was a criminal action] seeking imposition of remedial sanctions under the provisions of section 5 of this 1991 Act.

SECTION 18. ORS 23.720 is amended to read:

23.720. (1)(a) On the appearance of the judgment debtor, the judgment debtor may be examined on oath concerning the judgment debtor's property. Examination of the judgment debtor, if required by the plaintiff in the writ, shall be reduced to writing, and filed with the clerk by whom the execution was issued. Both parties may examine witnesses in their own behalf. The power to call witnesses includes the power to subpoena them.

(b) If by examination of the judgment debtor it appears that the judgment debtor has any property liable to execution or garnishment, the court or judge before whom the proceeding takes place, or to whom the report of the referee is made, shall make an order requiring the judgment debtor to apply the same in satisfaction of the judgment, or that such property be levied on by execution, or garnishment or both, as may seem most likely to effect the object of the proceeding.

(2)(a) At any time after judgment, plaintiff may serve personally or in the same manner as a summons, or by any form of mail addressed to the judgment debtor and requesting a receipt, written interrogatories concerning the judgment debtor's property and financial affairs. The interrogatories shall notify the judgment debtor that the judgment debtor's failure to answer the interrogatories truthfully shall subject the judgment debtor to the penalties for false swearing contained in ORS 162.075 and for contempt of court as provided in [ORS 33.020] sections 1 to 14 of this 1991 Act.

(b) Within 20 days after receipt of the interrogatories the judgment debtor shall answer all questions under oath and return the original interrogatories to the judgment creditor or the judgment creditor's attorney, and shall retain a copy thereof.

(c) Failure of the judgment debtor to comply with the provisions of this section is [an indirect] contempt of the authority of the court and the judgment creditor may [proceed as provided in ORS 33.040] commence proceedings under the provisions of sections 1 to 14 of this 1991 Act.

SECTION 19. ORS 25.020 is amended to read:

25.020. (1)(a) After October 1, 1991 when any court decrees, orders or modifies any existing order for support of any person under ORS chapter 107, 108, 109, 110, 416 or 419, or when any such order exists, the obligor shall make payment thereof to the Department of Human Resources when the obligee is receiving general or public assistance, as defined by ORS 411.010, or care, support or services pursuant to ORS 418.015, and for a period of three months from the month following the month in which the obligee ceased to receive assistance or care, support or services, and for any period of time following for which there remains unpaid support assigned to the State of Oregon, and for any case referred by the district attorney or the Support Enforcement Division of the Department of Justice, whichever is appropriate. The Department of Hu-

man Resources shall, except for amounts required by federal law or regulation to be paid to the obligee, retain either all of the support money or the amount equal to the general or public assistance or care, support or services paid, whichever is less.

(b) The department may immediately transmit payments received from any obligor who has not previously tendered any payment by a check or instrument which was not paid or was dishonored, to the obligee, without waiting for payment or clearance of the check or instrument received.

(c) The Department of Human Resources shall notify each obligor by mail when support payments shall be made to the department and when the obligation to make payments in this manner shall cease.

(2) The decree or order shall contain the home address and Social Security number of the obligee and the home, business address and Social Security number of the obligor. Each person shall inform the court and the Department of Human Resources in writing of any change in home or business address within 10 days after such change. The Department of Human Resources may also require of the parties any additional information which is authorized by law and is necessary for the operation of support enforcement and collection activities.

(3) When a support payment which is due the Department of Human Resources or the clerk of the court, whichever is appropriate, is delinquent, the department or clerk shall promptly send notice to the defaulting party of the amount due. If payment is not made to the department or clerk within 10 days after the notice is sent, the department or clerk shall send to the Support Enforcement Division of the Department of Justice or to the district attorney, whichever is appropriate, a copy of the statement of the delinquent amount. *[A statement of the amount due may be used in lieu of the affidavit required under ORS 33.040.]*

(4) Whether or not any payments by an obligor are delinquent, payment of any money by an obligor direct to an obligee or on behalf of an obligee to a person other than the Department of Human Resources or the clerk of the court out of which the order is issued, whichever is appropriate, shall not be credited against the support obligation of the obligor during the period payments are required to be made to the department or clerk.

(5) Subject to ORS 25.030, this section, to the extent it imposes any duty or function upon the Department of Human Resources, shall be deemed to supersede any provisions of ORS chapters 107, 108, 109, 110, 416 and 419 which would otherwise impose the same duties or functions upon the county clerk.

SECTION 20. ORS 52.040 is amended to read: 52.040. *[ORS 33.010 to 33.110 and 33.130 to 33.150] Sections 1 to 14 of this 1991 Act, defining contempts, and the proceeding for [punishing a party guilty of a] imposing sanctions for contempt, shall apply to justices' courts, except as otherwise specially provided in ORS 52.050.*

SECTION 21. ORS 107.445 is amended to read: 107.445. In any proceeding brought under ORS 107.095, 108.110 and 108.120, and in any contempt proceeding brought to compel compliance with any order or decree in any suit for marital annulment, dissolution or separation, the court may make an order awarding to a party, or directly to the party's attorney, a sum of money determined to be reasonable as an attorney fee at trial and on appeal therein. When a district attorney initiates or prosecutes a proceeding pursuant to *[ORS 33.060] sections 1 to 14 of this 1991 Act for enforcement of a restraining order issued under ORS 107.716 or 107.718 or for enforcement of a support order*, the court may order a reasonable attorney fee to be paid by the respondent to the county in which the district attorney holds office. The order shall be entered and docketed as a judgment, and execution may issue thereon in the same manner and with like effect as upon a final decree. A judgment so ordered or decreed is enforceable by the party or attorney in whose favor the order is issued against property of the other party or against any property held jointly or in common between the parties.

SECTION 22. ORS 107.718 is amended to read: 107.718. (1) When a person files a petition under ORS 107.710, the circuit court shall hold an ex parte hearing in person or by telephone on the day the petition is filed or on the following judicial day. Upon a showing that the petitioner has been the victim of abuse committed by the respondent within 180 days preceding the filing of the petition and that there is an immediate and present danger of further abuse to the petitioner, the court shall, if requested, order, for a period of one year or until the order is withdrawn or amended, or until the order is superseded as provided in ORS 107.722, whichever is sooner:

(a) That temporary custody of the minor children of the petitioner or of the parties be awarded to the petitioner, or that temporary custody of the minor children of the respondent or of the parties be awarded to the respondent, subject to reasonable visitation rights of the noncustodial parent, which the court shall order, unless such visitation is not in the best interest of the child;

(b) That the respondent be required to move from the petitioner's residence, if in the sole name of the petitioner, or if the parties are married to each other;

(c) That a peace officer accompany the party who is leaving or has left the parties' residence to remove essential personal effects of the party or the party's children, or both, including but not limited to clothing, diapers, medications, social security cards, birth certificates and identification;

(d) That either or both of the parties be restrained from molesting, interfering with or menacing the other;

(e) That the respondent be restrained from molesting, interfering with or menacing the minor

children whose custody is awarded to the petitioner; or

(f) That the respondent be restrained from entering on any premises when it appears to the court that such restraint is necessary to prevent the respondent from molesting, interfering with or menacing the petitioner or with the minor children whose custody is awarded to the petitioner.

(2) Immediate and present danger under this section includes but is not limited to situations in which the respondent has recently threatened petitioner with additional bodily harm.

(3) An instruction brochure shall be available from the clerk of the circuit court explaining the rights set forth under ORS 107.700 to 107.730. The petition and order forms shall be available from the clerk of the court and shall be in substantially the following form:

IN THE CIRCUIT COURT OF THE STATE OF OREGON FOR THE COUNTY OF _____

_____,) NO. _____
 Petitioner,)
) PETITION FOR
) RESTRAINING
 and) ORDER TO
) PREVENT ABUSE
 _____)
 Respondent.)

(PETITIONER MUST COMPLETE THIS FORM. FAILURE TO PROVIDE COMPLETE AND TRUTHFUL INFORMATION AS INDICATED MAY BE PUNISHABLE AS CONTEMPT OF COURT UNDER [ORS 33.010 to 33.150] SECTIONS 1 TO 14 OF THIS 1991 ACT AND MAY RESULT IN A DENIAL OF RELIEF UNDER THIS PETITION.)

Petitioner alleges:

I. I am a resident of _____ County, Oregon, or respondent is a resident of _____ County, Oregon.

II. I was married to respondent on _____, 19____. I was divorced from respondent on _____. I have been living with respondent since _____, 19____. I lived with respondent from _____, 19____, to _____. I am related to respondent by blood or marriage. Respondent is an adult and is my _____ (relationship).

III. I am a victim of abuse committed by respondent within the 180 days preceding the filing of this petition, in that respondent has:

- _____ caused me bodily injury.
- _____ attempted to cause me bodily injury.
- _____ placed me in fear of imminent serious bodily injury.
- _____ caused me to engage in involuntary sexual relations by force, threat of force.

IV.

The abuse I am complaining about happened on _____ (date) at _____ (location). Respondent injured or threatened to injure me in the following way:

V.

I am in immediate and present danger of further abuse, because _____.

VI.

- _____ There (is ___ or is not ___) a proceeding for marital annulment, dissolution or separation, or a filiation (paternity) proceeding, pending between me and the respondent. It is filed in _____ (county and state).
- _____ There (is ___ or is not ___) another custody or family abuse prevention act proceeding pending between me and respondent. It is filed in _____ (county and state).
- _____ There (is ___ or is not ___) another custody order now in effect as to our children.
- _____ I am requesting custody of my child(ren). For the last six months the child(ren) have lived: In the following county and state:

_____ with the following person(s): _____

The child(ren) are presently residing with the following person(s): _____

VII.

- Petitioner should be granted the following relief:
- _____ Respondent should be restrained from, in any manner, molesting, interfering with or menacing me.
 - _____ Respondent should be restrained from, in any manner, molesting, interfering with or menacing the minor child(ren) in my custody: (name children) _____
 - _____ Respondent should be required to move from the petitioner's residence, or the parties' marital residence and should not return to this _____ residence, located at _____, except with a peace officer to remove the following essential personal effects of the respondent or if the respondent is the custodian, the follow-

ing essential personal effects of the respondent's children, or both: Clothing, diapers, medications, social security cards, birth certificates and identification.

- Respondent should be restrained from entering my:
 - home
 - school
 - business
 - place of employment

- Petitioner is permitted to return to the parties' residence with a peace officer to remove the following essential personal effects of petitioner or if the petitioner is the custodian, the following essential personal effects of the petitioner's children, or both:

- Petitioner should be awarded custody of the following minor children of the parties, who are now residing with petitioner, or who are the petitioner's children, subject to reasonable visitation rights of the respondent, unless such visitation is not in the best interest of the child:

- Respondent should be awarded custody of the following minor children of the parties, who are now residing with respondent, or who are the respondent's children, subject to reasonable visitation rights of the petitioner, unless such visitation is not in the best interest of the child:

WHEREFORE, petitioner prays for the relief petitioned for in Paragraph VI and such other relief as the Court thinks just.

Petitioner

STATE OF OREGON)
) ss.
County of _____)

I, _____, being first duly sworn, depose and say that I am the petitioner herein; that the allegations set forth in the foregoing petition are true and correct as I verily believe.

SUBSCRIBED AND SWORN to before me this _____ day of _____, 19 _____.

NOTARY PUBLIC FOR OREGON
My Commission Expires: _____

IN THE CIRCUIT COURT OF THE STATE OF OREGON FOR THE COUNTY OF _____

_____,
Petitioner,
and _____,
Respondent.

)
) NO.
) RESTRaining ORDER
)
)
)
)
)

This matter coming before this Court on the petition of petitioner, IT IS HEREBY:

- ORDERED that respondent is restrained (prohibited) from, in any manner, molesting, interfering with or menacing petitioner;
- ORDERED that each party is restrained (prohibited) from, in any manner, molesting, interfering with or menacing the other party;

- ORDERED that respondent is restrained (prohibited) from, in any manner, molesting, interfering with or menacing the minor child(ren) in petitioner's custody:

_____;

- ORDERED that respondent is restrained (prohibited) from entering petitioner's:
 - home
 - school
 - business
 - place of employment

- ORDERED that respondent shall move from the residence and shall not return to this residence located at _____ except with a peace officer in order to remove the following essential personal effects of the respondent or if the respondent is the legal custodian, the following essential personal effects of the respondent's children, or both: Clothing, diapers, medications, social security cards, birth certificates and identification.

- ORDERED that a peace officer shall accompany the petitioner to the parties' residence in order to remove the following essential personal effects of petitioner or if the petitioner is the legal custodian, the following essential personal effects of the petitioner's children, or both:

DATED this _____ day of _____, 19____.

CIRCUIT COURT JUDGE
TO THE RESPONDENT; THIS ORDER BECOMES EFFECTIVE IMMEDIATELY. IF YOU WISH TO CONTEST THE CONTINUATION OF THIS ORDER YOU MUST WRITE TO _____ AND REQUEST A HEARING. YOUR REQUEST MUST BE MADE WITHIN 30 DAYS AFTER YOU RECEIVE THESE PAPERS, EXCEPT THAT A REQUEST RELATING TO CHILD CUSTODY MAY BE MADE AT ANY TIME. YOU MUST INCLUDE YOUR ADDRESS AND TELEPHONE NUMBER WITH YOUR REQUEST. AT A HEARING A JUDGE WILL DECIDE WHETHER THE ORDER SHOULD BE CANCELED OR CHANGED. UNTIL SUCH A HEARING, THIS ORDER IS IN EFFECT. VIOLATION OF THIS ORDER CONSTITUTES CONTEMPT OF COURT, PUNISHABLE BY A FINE OF UP TO \$300, A JAIL TERM OF UP TO SIX MONTHS, OR BOTH.

— ORDERED that petitioner shall be awarded temporary custody of the following minor children of the parties or who are not respondent's children:

— ORDERED that with respect to the minor children of the parties in the temporary custody of the petitioner, the respondent is awarded the following temporary visitation rights (The court may enter an order denying visitation rights if the court finds that visitation with respondent is not in the best interest of the child):

— ORDERED that respondent shall be awarded temporary custody of the following minor children of the parties, or who are not petitioner's children:

— ORDERED that with respect to the minor children of the parties in the temporary custody of the respondent, the petitioner is awarded the following temporary visitation rights (The court may enter an order denying visitation rights if the court finds that visitation with petitioner is not in the best interest of the child):

— ORDERED that no further service is necessary because respondent appeared in person before the court.

— ORDERED that the SECURITY AMOUNT FOR VIOLATION OF ANY PROVISION OF THIS ORDER IS \$5,000 UNLESS OTHERWISE SPECIFIED;

— ORDERED that the above provisions of this restraining order are in effect for a period of one year.

RELEVANT DATA:

Respondent:
Address: _____
Birthdate: _____
Race: _____
Age: _____
Height: _____
Weight: _____
Hair Color: _____
Eye Color: _____

Petitioner:
Address: _____
(If you wish to have your residential address withheld from respondent, use a contact address so the court and the sheriff can reach you if necessary.)
Birthdate: _____
Race: _____
Age: _____
Height: _____
Weight: _____
Hair Color: _____
Eye Color: _____

IN THE CIRCUIT COURT OF THE STATE OF OREGON FOR THE COUNTY OF _____

_____,) NO. _____
Petitioner,)
vs.) AFFIDAVIT OF PROOF
_____,) OF SERVICE

Respondent.)
 STATE OF)
 OREGON)
) ss.
 County of _____)

I am a resident of the State of Oregon. I am a competent person over the age of 18 years. I am not an attorney for or a party to this case, or an officer, director or employee of any party to this case.

On the _____ day of _____, 19____, I served the Restraining Order and the Petition for Restraining Order to Prevent Abuse in this case personally upon the above-named respondent in _____ County by delivering to the respondent a copy of those papers, each of which was certified to be a true copy of each original.

Signature of _____
 SUBSCRIBED AND SWORN TO before me
 this _____ day of _____, 19____.

NOTARY PUBLIC FOR OREGON
 My Commission Expires: _____

IN THE CIRCUIT COURT OF THE STATE OF
 OREGON FOR THE COUNTY OF _____

_____,) NO. _____
 Petitioner,)
 vs.) MOTION AND ORDER
 _____) OF DISMISSAL
)
 Respondent.)

Comes now petitioner, _____, and moves this Court for an order allowing the voluntary withdrawal and dismissal of the Restraining Order on file herein.

IT IS SO ORDERED this _____ day of _____, 19____.

JUDGE

(4) If the court orders relief:

(a) The clerk of the court shall provide without charge the number of certified true copies of the petition and order necessary to effect service and shall have a true copy of the petition and order delivered to the county sheriff for service upon the respondent.

(b) The county sheriff shall serve the respondent personally unless the petitioner elects to have the respondent served personally by a private party. Return of service shall be made in accordance with ORS 107.720.

(c) No filing fee, service fee or hearing fee shall be charged for proceedings seeking only the relief provided under ORS 107.700 to 107.730.

(5) If the county sheriff:

(a) Determines that the order and petition are incomplete or otherwise fail to conform to the requirements of this section and ORS 33.060 and 107.720, or cannot be entered into the Law Enforcement Data System, the order and petition shall be returned to the clerk of the court. The clerk of the court shall notify the petitioner, at the address provided by the petitioner, of the error or omission.

(b) After accepting the order and petition, cannot complete service within 10 days, the sheriff shall notify the petitioner, at the address provided by the petitioner, that the documents have not been served. If the petitioner does not respond within 10 days, the county sheriff shall return the documents to the clerk of the court.

(6) Within 30 days after a restraining order is served under this section, the respondent therein may request a court hearing upon any relief granted. At any time after the restraining order is issued and while it remains in effect, the respondent therein may request a court hearing upon the issue of custody of minor children under the order. If the respondent requests a hearing, the clerk of the court shall notify the petitioner of the date and time of such hearing. The petitioner shall give to the clerk of the court information sufficient to allow such notification.

SECTION 23. ORS 110.092 is amended to read:

110.092. All duties of support, including the duty to pay arrearages, are enforceable by a proceeding under this chapter including a proceeding for [civil] contempt. The defense that the parties are immune to suit because of their relationship as husband and wife or parent and child is not available to the obligor. Jurisdiction of any proceeding under this chapter is vested in the circuit court of each county.

SECTION 24. ORS 133.381 is amended to read:

133.381. (1) When a peace officer arrests a person pursuant to ORS 133.310 (3) or pursuant to a warrant issued under [ORS 33.040] section 7 of this 1991 Act by a court or judicial officer for the arrest of a person charged with contempt for violating an order issued under ORS 107.095 (1)(c) or (d), 107.716 or 107.718, if the person is arrested in a county other than that in which the warrant or order was originally issued, the peace officer shall take the person before a magistrate as provided in ORS 133.450. If it becomes necessary to take the arrested person to the county in which the warrant or order was originally issued, the costs of such transportation shall be paid by that county.

(2) If a person arrested for the reasons described in subsection (1) of this section is subsequently found [guilty of] subject to the imposition of sanctions for contempt, the court, in addition to any other [sentence] sanction it may impose, may order the person to repay a county all costs of transportation incurred by the county pursuant to subsection (1) of this section.

SECTION 25. ORS 135.055 is amended to read:

135.055. (1) Counsel appointed pursuant to ORS 135.045 or 135.050, if other than counsel provided pursuant to ORS 151.010 or 151.460, shall, upon certification by the court, be paid fair compensation for representation in the case:

(a) By the county, subject to the approval of the governing body of the county, in a proceeding in a county or justice's court.

(b) By the state from funds available for the purpose, in a proceeding in a circuit or district court.

(2) Compensation payable to appointed counsel under subsection (1) of this section:

(a) In a proceeding in a county or justice's court shall not be less than \$30 per hour.

(b) In a proceeding in a circuit or district court shall be subject to the applicable compensation established under ORS 151.430 (5).

(3) The person for whom counsel has been appointed is entitled to reasonable expenses for investigation, preparation and presentation of the case. The person or the counsel for the person may upon motion, which need not be disclosed to the district attorney prior to conclusion of the case, secure approval and authorization of payment of such expenses as the court finds are necessary and proper in the investigation, preparation and presentation of the case, including but not limited to travel, telephone calls, photocopying or other reproduction of documents, necessary costs associated with obtaining the attendance of witnesses for the defense and expert witness fees. The motion must be accompanied by a supporting affidavit which sets out in detail the purpose of the requested expenditure, the name of the service provider or other recipient of the funds, the dollar amount of the requested expenditure which may not be exceeded without additional authorization and the date or dates during which the service will be rendered or events will occur for which the expenditure is requested. Entitlement under this subsection to payment for expenses is subject to cost guidelines and standards established under ORS 151.430. Entitlement to payment of extraordinary expenses is dependent upon obtaining authorization from the court, except as otherwise provided in the cost guidelines and standards established under ORS 151.430. Approved and authorized expenses shall be paid:

(a) By the county, in respect to a proceeding in a county or justice's court.

(b) By the state from funds available for the purpose, in respect to a proceeding in a circuit or district court.

(c) By the city, in respect to a proceeding in municipal court.

(4) Upon completion of all services by the counsel appointed pursuant to ORS 135.045 or 135.050, the counsel shall submit to the court a statement of all reasonable fees and expenses of investigation, preparation, presentation and representation paid or incurred, supported by appropriate receipts or vouchers and certified by the counsel to be true and accurate. The counsel, at that time, may request payment or reimbursement for any such expenses for which payment has not yet been approved and authorized.

(5) The total fees and expenses payable under this section shall be subject to the review of the presiding judge of the court, or if there is no presiding judge, the judge of the court. The presiding judge, or judge of the court, shall certify that such amount is fair reimbursement for fees and expenses for representation in the case as provided in subsection (6) of this section. Upon certification and any verification as provided under subsection (6) of this section, the amount of the fees and expenses approved by the court and not already paid shall be paid:

(a) By the county, in respect to a proceeding in a county or justice's court.

(b) By the state from funds available for the purpose, in respect to a proceeding in a circuit or district court.

(6)(a) The presiding judge, or judge of the court, shall certify to the administrative authority responsible for paying fees and expenses under this section that the amount for payment is reasonable and that the amount is properly payable out of public funds.

(b) With any certification by the court of fees or expenses that the State Court Administrator is to pay for counsel or other costs of indigent representation under sections 1 to 14 of this 1991 Act, ORS [33.095,] 135.045, 135.055, 135.705, 144.317, 144.343, 151.430, 151.450, 151.460, 161.346, 161.365, 161.665, 163.105, 419.498, 419.525, 426.255 and 426.307, the court shall include any information identified and requested by the State Court Administrator as needed for audit, statistical or any other purpose pertinent to insure the proper disbursement of state funds or pertinent to the provision of appointed counsel compensated at state expense.

(c) The presiding judge may authorize the clerk of the court to make the certification required under this section in some or all cases where the amount for payment meets the cost guidelines and standards

established pursuant to ORS 151.430 (5) and (6). The authorization must be in writing and must specify the types of cases to which the authorization applies.

SECTION 25a. ORS 136.617 is amended to read: 136.617. In any criminal proceeding before a court of record or in any proceeding before a grand jury, or in any proceeding before a court of record under ORS 646.760, or in any proceeding for the imposition of remedial or punitive sanction for contempt, if a witness refuses to testify or produce evidence of any kind on the ground that the witness may be incriminated thereby, the prosecuting attorney may move the court to order the witness to testify or produce evidence. The court shall forthwith hold a summary hearing at which the prosecuting attorney shall show reasonable cause to believe the witness possesses knowledge relevant to the proceeding, or that no privilege protects the evidence sought to be produced. The witness may show cause why the witness should not be compelled to testify or produce evidence. The court shall order the witness to testify regarding the subject matter under inquiry upon such showing of reasonable cause or shall order the production of evidence upon a finding that no privilege protects the evidence sought, unless the court finds that to do so would be clearly contrary to the public interest. The court shall hold the summary hearing outside the presence of the jury and the public and may require the prosecuting attorney to disclose the purpose of the testimony or evidence. The witness shall be entitled to be represented by counsel at the summary hearing.

SECTION 25b. ORS 136.619 is amended to read: 136.619. (1) A witness who, in compliance with a court order issued under ORS 136.617, testifies or produces evidence that the witness would have been privileged to withhold but for the court order, may not be prosecuted or subjected to any penalty or forfeiture for any matter about which the witness testified or produced evidence. However, the witness may nevertheless be prosecuted or subjected to penalty for any perjury, false swearing or contempt committed in answering, or failing to answer, or in producing, or failing to produce, evidence in accordance with the order. If a person refuses to testify after being ordered to testify as provided in this section, the person shall be subject to penalty for contempt of court for failure to comply with the order.

(2) Subsection (1) of this section shall not prevent the use of post-judgment collection procedures, including but not limited to wage withholding, income withholding, benefit withholding, assignment, garnishment or execution, based on matters about which a defendant testifies or produces evidence in compliance

with a court order issued under ORS 136.617 in any proceeding for the imposition of remedial or punitive sanctions for contempt.

SECTION 26. ORS 151.250 is amended to read: 151.250. (1) In accordance with subsections (2) to (4) of this section and the determinations of the committee under ORS 151.280 (2) or (7), the defender may act as attorney at any stage of a proceeding before any court, including the Supreme Court, for an individual who is committed to the legal and physical custody of the Department of Corrections pursuant to ORS 137.124, and the proceeding is other than:

- (a) A habeas corpus proceeding;
- (b) A proceeding for which counsel is appointed under ORS 135.045, 135.050, 419.498 or 426.100; or
- (c) A proceeding of contempt of court, *criminal or civil*.

(2) The defender may act only at the request of the individual described in subsection (1) of this section, or, if no such request is made, at the request of the court or magistrate.

(3) The individual on whose behalf the defender is requested to act shall submit to the defender, in the form prescribed by the committee, an affidavit of the financial circumstances of the individual.

(4) At the request of the defender or an individual who seeks the defender's aid, the court or magistrate before whom a proceeding is pending or to whom an application for relief has been made, shall finally determine whether the individual is eligible under this section for the defender's aid.

SECTION 27. ORS 151.450 is amended to read: 151.450. The State Court Administrator shall:

(1) Pay the compensation for counsel, other than the Public Defender established by ORS 151.280, appointed to represent indigents in the state courts, and other costs and expenses of that representation that are required to be paid by the state under sections 1 to 14 of this 1991 Act, ORS [33.095,] 34.355, 135.055, 138.490, 138.500, 138.590, 161.327, 161.365, 161.385, 419.498, 419.525, 419.563, 426.100, 426.135, 426.275, 426.307, 427.265, 427.295, 436.265, 436.315 or any other provisions of law that expressly provide for payment of such compensation costs or expenses by the State Court Administrator.

(2) Pay the fees and expenses of qualified interpreters for indigent handicapped persons required to be paid by the state under ORS 40.325 (4).

(3) Develop a system for conducting financial and performance audits of indigent defense contracts.

SECTION 27a. ORS 161.685 is amended to read: 161.685. (1) When a defendant who has been sentenced or ordered to pay a fine, or to make

restitution as defined in ORS 137.103, defaults in the payment thereof or of any instalment, the court on motion of the district attorney or upon its own motion may require the defendant to show cause why the default should not be treated as contempt of court, and may issue a show cause citation or a warrant of arrest for the appearance of the defendant.

[(2) Unless the defendant shows that the default was not attributable to an intentional refusal to obey the order of the court or to a failure on the part of the defendant to make a good faith effort to make the payment, the court may find that the default constitutes contempt and may order the defendant committed until the fine or the restitution, or a specified part thereof, is paid.]

(2) If the court finds that the default constitutes contempt, the court may impose one or more of the sanctions authorized by section 9 of this 1991 Act.

(3) When a fine or an order of restitution is imposed on a corporation or unincorporated association, it is the duty of the person authorized to make disbursement from the assets of the corporation or association to pay the fine or make the restitution from those assets, and the failure to do so may be held to be contempt unless the person makes the showing required in subsection (2) of this section.

(4) Notwithstanding section 9 of this 1991 Act, the term of [imprisonment] confinement for contempt for nonpayment of fines or failure to make restitution shall be set forth in the commitment order, and shall not exceed one day for each \$25 of the fine or restitution, 30 days if the fine or order of restitution was imposed upon conviction of a violation or misdemeanor, or one year in any other case, whichever is the shorter period.

(5) If it appears to the satisfaction of the court that the default in the payment of a fine or restitution is not contempt, the court may enter an order allowing the defendant additional time for payment, reducing the amount thereof or of each instalment or revoking the fine or order of restitution or the unpaid portion thereof in whole or in part.

(6) A default in the payment of a fine or costs or failure to make restitution or any instalment thereof may be collected by any means authorized by law for the enforcement of a judgment. The levy of execution or garnishment for the collection of a fine or restitution shall not discharge a defendant [committed to imprisonment] confined for contempt until the amount of the fine or restitution has actually been collected.

(7) Except as otherwise provided in this section, proceedings under this section shall be conducted:

(a) As provided in section 5 of this 1991 Act, if the court seeks to impose remedial sanctions as described in sections 1 to 14 of this 1991 Act; and

(b) As provided in section 6 of this 1991 Act, if the court seeks to impose punitive sanctions as described in sections 1 to 14 of this 1991 Act.

(8) Confinement under this section may be custody or incarceration, whether actual or constructive.

SECTION 28. ORS 243.726 is amended to read:

243.726. (1) Participation in a strike shall be unlawful for any public employee who is not included in an appropriate bargaining unit for which an exclusive representative has been certified by the board or recognized by the employer; or is included in an appropriate bargaining unit which provides for resolution of a labor dispute by referral to final and binding arbitration; or when the strike is not made lawful under ORS 240.060, 240.065, 240.080, 240.123, 243.650 to 243.782, 292.055, 341.290, 662.705, 662.715 and 662.785.

(2) It shall be lawful for a public employee who is not prohibited from striking under subsection (1) of this section and who is in the appropriate bargaining unit involved in a labor dispute to participate in a strike after:

(a) The requirements of ORS 243.712 and 243.722 relating to the resolution of labor disputes have been complied with in good faith;

(b) Thirty days have elapsed since the board has made public the factfinder's findings of fact and recommendations; and

(c) The exclusive representative has given 10 days' notice by certified mail of its intent to strike and stating the reasons for its intent to strike to the board and the public employer.

(3)(a) Where the strike occurring or is about to occur creates a clear and present danger or threat to the health, safety or welfare of the public, the public employer concerned may petition the circuit court of the county in which the strike has taken place or is to take place for equitable relief including but not limited to appropriate injunctive relief.

(b) If the strike is a strike of state employees the petition shall be filed in the Circuit Court of Marion County.

(c) If, after hearing, the court finds that the strike creates a clear and present danger or threat to the health, safety or welfare of the public, it shall grant appropriate relief. Such relief shall include an order that the labor dispute be submitted to final and binding arbitration within 10 days of the court's order. The manner of selection of a board of arbitration shall be as set forth in ORS 240.060, 240.065, 240.080, 240.123, 243.650 to 243.782, 292.055, 341.290, 662.705, 662.715 and 662.785.

(4)(a) No labor organization shall declare or authorize a strike of public employees which is or would be in violation of this section. When it is alleged in good faith by the public employer that a labor organization has declared or authorized a strike of public employees which is or would be in violation of this section, the employer may petition the board for a declaration that the strike is or would be unlawful. The board, after conducting an investigation and hearing, may make such declaration if it finds that such declaration or authorization of a strike is or would be unlawful.

(b) When a labor organization or individual disobeys an order of the appropriate circuit court issued pursuant to enforcing an order of the board involving this section and ORS 243.736, they shall be punished according to the provisions of [ORS 33.010 to 33.150, 33.410 to 33.430, 33.510, 33.520, 33.610, 33.710, 33.720 and 36.300 to 36.365] sections 1 to 14 of this 1991 Act, except that the amount of the fine shall be at the discretion of the court.

(5) An unfair labor practice by a public employer shall not be a defense to a prohibited strike. The board upon the filing of an unfair labor charge alleging that a public employer has committed an unfair labor practice during or arising out of the collective bargaining procedures set forth in ORS 243.712 and 243.722, shall take immediate action on such charge and if required, petition the court of competent jurisdiction for appropriate relief or a restraining order.

(6) As used in this section, "danger or threat to the health, safety or welfare of the public" does not include an economic or financial inconvenience to the public or to the public employer that is normally incident to a strike by public employees.

SECTION 29. ORS 662.130 is amended to read:

662.130. (1) In all cases arising under ORS 662.010 to 662.130 in which a person is charged with contempt in a court of this state, the accused shall enjoy the right to a speedy and public trial by an impartial jury wherein the contempt has been committed; provided, this right shall not apply to contempts committed in the presence of the court or so near thereto as to interfere directly with the administration of justice or to the misbehavior, misconduct or disobedience of any officer of the court in respect to the writs, orders or process of the court.

(2) The defendant in any proceeding for contempt of court may file with the court a demand for the retirement of the judge sitting in the proceeding, if the contempt arises from an attack upon the character or conduct of such judge and if the attack occurred elsewhere than in the presence of the court or so near thereto as to interfere directly with the administration of justice. Upon the filing of any such demand the judge shall thereupon proceed no fur-

ther, but another judge shall be designated as provided by law. The demand shall be filed prior to the hearing in the contempt proceeding.

(3) Except as provided in subsections (1) and (2) of this section, proceedings for imposition of sanctions for contempt shall be conducted as provided under sections 1 to 14 of this 1991 Act.

SECTION 30. ORCP 47 G. is amended to read:

G. Affidavits made in bad faith. Should it appear to the satisfaction of the court at any time that any of the affidavits presented pursuant to this rule are presented in bad faith or solely for the purpose of delay, the court shall forthwith order the party employing them to pay to the other party the amount of the reasonable expenses which the filing of the affidavits caused the other party to incur, including reasonable attorney fees, and any offending party or attorney may be [adjudged guilty of] subject to sanctions for contempt.

SECTION 31. ORCP 78 B. is amended to read:

B. Enforcement; contempt. The court or judge thereof may enforce an order or judgment directing a party to perform a specific act by punishing the party refusing or neglecting to comply therewith, as for a contempt as provided in [ORS 33.010 through 33.150] sections 1 to 14 of this 1991 Act.

SECTION 32. ORS 33.010, 33.020, 33.030, 33.040, 33.050, 33.060, 33.070, 33.080, 33.090, 33.095, 33.100, 33.110, 33.130, 33.140 and 33.150 and ORCP 78 D. are repealed.

Approved by the Governor July 31, 1991

Filed in the office of Secretary of State July 31, 1991

CHAPTER 725

AN ACT

SB 380

Relating to alternative jurors; amending ORS 136.260, 136.270 and 136.150; and declaring an emergency.

Be It Enacted by the People of the State of Oregon:

SECTION 1. ORS 136.260 is amended to read:

136.260. (1) In the trial of a person charged with a felony, the court may in its discretion, after the jury is impaneled and sworn, direct the calling of one [or two] to six additional jurors, to be known as "alternate jurors." Such jurors shall be drawn from the same source and in the same manner and shall have the same qualifications as other jurors in the case. They shall be subject to the same examination and be challenged in the same manner as other jurors. [The prosecution is entitled to one, and the defendant to two, peremptory challenges in the selection of each alternate juror and,] In the drawing of alternate jurors, the names of jurors excused for

(d) A controlled substance in Schedule IV, is guilty of a Class B misdemeanor.

(e) A controlled substance in Schedule V, is guilty of a Class C misdemeanor.

(2) Notwithstanding the placement of marijuana in a schedule of controlled substances under ORS 475.005 to 475.285, 475.295 and 475.940 to 475.995:

(a) Any person who delivers marijuana for consideration is guilty of a Class B felony.

(b) Any person who delivers, for no consideration, less than one avoirdupois ounce of the dried leaves, stems and flowers of the plant Cannabis family Moraceae is guilty of a Class A misdemeanor, except that any person who delivers, for no consideration, less than five grams of the dried leaves, stems and flowers of the plant Cannabis family Moraceae is guilty of a violation, punishable by a fine of not less than \$500 and not more than \$1,000.

(3) Except as authorized in ORS 475.005 to 475.285, 475.295 and 475.940 to 475.995, it is unlawful for any person to create or deliver a counterfeit substance. Any person who violates this subsection with respect to:

(a) A counterfeit substance in Schedule I, is guilty of a Class A felony.

(b) A counterfeit substance in Schedule II, is guilty of a Class B felony.

(c) A counterfeit substance in Schedule III, is guilty of a Class C felony.

(d) A counterfeit substance in Schedule IV, is guilty of a Class B misdemeanor.

(e) A counterfeit substance in Schedule V, is guilty of a Class C misdemeanor.

(4) It is unlawful for any person knowingly or intentionally to possess a controlled substance unless the substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of professional practice, or except as otherwise authorized by ORS 475.005 to 475.285, 475.295 and 475.940 to 475.995. Any person who violates this subsection with respect to:

(a) A controlled substance in Schedule I, is guilty of a Class B felony.

(b) A controlled substance in Schedule II, is guilty of a Class C felony.

(c) A controlled substance in Schedule III, is guilty of a Class A misdemeanor.

(d) A controlled substance in Schedule IV, is guilty of a Class C misdemeanor.

(e) A controlled substance in Schedule V, is guilty of a violation.

(f) Notwithstanding the placement of marijuana in a schedule of controlled substances under ORS 475.005 to 475.285, 475.295 and 475.940 to 475.995, any person who knowingly or intentionally is in unlawful possession of less than one avoirdupois ounce of the dried leaves, stems and flowers of the plant Cannabis family Moraceae is guilty of a violation, punishable by a fine of not less than \$500 and not more than \$1,000.

(5) In any prosecution under this section for manufacture, possession or delivery of that

plant of the genus *Lophophora* commonly known as peyote, it is an affirmative defense that the peyote is being used or is intended for use:

(a) In connection with the good faith practice of a religious belief;

(b) As directly associated with a religious practice; and

(c) In a manner that is not dangerous to the health of the user or others who are in the proximity of the user.

(6) The affirmative defense created in subsection (5) of this section is not available to any person who has possessed or delivered the peyote while incarcerated in a correctional facility in this state.

Approved by the Governor June 24, 1991

Filed in the office of Secretary of State June 24, 1991

CHAPTER 330

AN ACT

HB 2384

Relating to financial responsibility.

Be It Enacted by the People of the State of Oregon:

SECTION 1. Section 2 of this Act is added to and made a part of ORS chapter 806.

SECTION 2. (1) A person commits the offense of giving false information about liability insurance to a police officer if the person knowingly gives false information about the person's motor vehicle liability insurance coverage to any police officer who is enforcing motor vehicle laws.

(2) The offense described in this section, giving false information about liability insurance to a police officer, is a Class B misdemeanor.

Approved by the Governor June 24, 1991

Filed in the office of Secretary of State June 25, 1991

CHAPTER 331

AN ACT

SB 666

Relating to irrevocable letters of credit; amending ORS 9.070, 19.038, 19.040, 20.160, 20.170, 20.310, 22.020, 23.310, 23.350, 33.510, 33.520, 33.530, 52.170, 59.115, 59.175, 87.342, 87.435, 87.440, 92.060, 92.065, 92.090, 92.095, 98.610, 99.050, 105.515, 118.300, 119.310, 128.155, 128.412, 183.482, 198.220, 204.020, 210.120, 210.130, 210.150, 258.046, 262.065, 275.314, 305.140, 316.164, 323.120, 324.200, 334.225, 337.090, 366.470, 374.310, 381.270, 384.140, 447.118, 452.550, 453.065, 459.235, 461.330, 462.065, 468.400, 471.645, 471.650, 479.840, 480.150, 508.415, 516.130, 523.120, 527.510, 532.530, 537.753, 539.180, 543.560, 552.428, 558.050, 565.070, 565.210, 565.220, 576.385, 578.110, 579.130, 585.045, 585.047, 599.610, 603.025, 603.034, 652.325, 652.340, 657.505, 657.507,

657.545, 658.075, 658.076, 658.407, 658.415, 671.690, 696.375, 696.395, 705.105, 706.005, 707.700, 708.230, 708.235, 708.525, 709.030, 709.220, 711.585, 716.070, 717.080, 717.086, 717.090, 722.032, 722.034, 723.102, 723.122, 726.070, 731.328, 732.105, 732.115, 742.352, 742.354, 744.635, 750.045, 751.065, 767.062, 767.120, 767.210, 773.030, 776.540, 822.020, 822.030, 822.110, 822.120, 823.100 and 823.120 and ORCP 82 A.

Be It Enacted by the People of the State of Oregon:

SECTION 1. ORS 9.070 is amended to read:

9.070. (1) The president shall preside at all meetings of the state bar and of the board of governors, and in the absence or inability to act of the president, the vice president shall preside. However, the board of governors may designate another member of the bar to preside at meetings of the state bar. Other duties of the president and vice president and the duties of the secretary and treasurer shall be such as the board of governors may prescribe.

(2) The secretary and the treasurer shall each give bond, with some qualified surety company as surety, or an irrevocable letter of credit issued by a commercial bank, as that term is defined in ORS 706.005, in either case in such amount as the board shall fix, conditioned for the faithful accounting for all money received by them in their official capacities.

(3) All fees shall be paid into the treasury of the state bar, and when so paid shall become part of its funds and shall be disbursed only on order of the board of governors.

SECTION 2. ORCP 82 A. is amended to read:

A. Security required.

A.(1) Restraining orders; preliminary injunctions.

A.(1)(a) No restraining order or preliminary injunction shall issue except upon the giving of security by the applicant, in such sum as the court deems proper, for the payment of such costs, damages, and attorney fees as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained.

A.(1)(b) No security will be required under this subsection where:

A.(1)(b)(i) A restraining order or preliminary injunction is sought to protect a person from violent or threatening behavior; or

A.(1)(b)(ii) A restraining order or preliminary injunction is sought to prevent unlawful conduct when the effect of the injunction is to restrict the enjoined party to available judicial remedies.

A.(2) Receivers. No receiver shall be appointed except upon the giving of security by the receiver in such sum as the court deems proper for the payment of any costs, damages, and attorney fees as may be sustained or suffered by any party due to the wrongful act of the receiver.

A.(3) Attachment or claim and delivery.

A.(3)(a) Before any property is attached under Rule 84 or taken by the sheriff under Rule 85, the plaintiff must file with the clerk a surety bond or

an irrevocable letter of credit issued by a commercial bank as that term is defined in ORS 706.005, in an amount fixed by the court, and to the effect that the plaintiff will pay all costs that may be adjudged to the defendant, and all damages which the defendant may sustain by reason of the attachment or taking, if the same be wrongful or without sufficient cause, not exceeding the sum specified in the bond or letter of credit.

A.(3)(b) Upon motion by the defendant and a showing that defendant's potential costs or damages exceed the amount of the bond or letter of credit, the court may require the plaintiff to give additional security.

A.(3)(c) No bond or letter of credit shall be required before property is taken by the sheriff under Rule 85 if the court, in the order authorizing issuance of provisional process, finds that the claim for which probable cause exists is that defendant acquired the property contrary to law.

A.(4) Other provisional process. No other provisional process shall issue except upon the giving of security by the plaintiff in such sum as the court deems proper, for payment of such costs, damages, and attorney fees as may be incurred or suffered by any party who is wrongfully damaged by such provisional process.

A.(5) Form of security or bond. Unless otherwise ordered by the court under subsection (6) of this section, any security or bond provided for by these rules shall be in the form of a security bond issued by a corporate surety qualified by law to issue surety insurance as defined in ORS 731.186, or a letter of credit issued by a commercial bank, as that term is defined in ORS 706.005.

A.(6) Modification of security requirements by court. The court may waive, reduce, or limit any security or bond provided by these rules, or may authorize a non-corporate surety bond or deposit in lieu of bond, or require other security, upon an ex parte showing of good cause and on such terms as may be just and equitable.

B. Security; proceedings against sureties. Whenever these rules or other rule or statute require or permit the giving of security by a party, and security is given in the form of a bond or stipulation or other undertaking with one or more sureties, or in the form of an irrevocable letter of credit issued by a commercial bank as that term is defined in ORS 706.005, each surety and each letter of credit issuer submits to the jurisdiction of the court and irrevocably appoints the clerk of the court as such surety's or such issuer's agent upon whom any papers affecting the surety's or issuer's liability on the bond, [or] undertaking or letter of credit may be served. Any surety's or issuer's liability may be enforced on motion without the necessity of an independent action. The motion and such notice of the motion as the court prescribes may be served on the clerk of the court, who shall forthwith mail copies to the sureties or issuers if their addresses are known.

C. Approval by clerk. Except where approval by a judge is otherwise required, the clerk is authorized to approve all **irrevocable letters of credit, undertakings, bonds, and stipulations of security** given in the form and amount prescribed by statute, rule, or order of the court, where the same are executed by a corporate surety under subsection D.(2) of this rule, or where the same are issued by a commercial bank as that term is defined in ORS 706.005.

D. Qualifications of sureties.

D.(1) Individuals. Each individual surety must be a resident of the state. If there is one individual surety, that surety must be worth twice the sum specified in the undertaking, exclusive of property exempt from execution, and over and above all just debts and liabilities; where there is more than one individual surety, each may be worth a lesser amount if the total net worth of all of them is equal to twice the sum specified in the undertaking. No attorney at law, peace officer, clerk of any court, or other officer of any court is qualified to be surety on the undertaking.

D.(2) Corporations. A corporate surety must be qualified by law to issue surety insurance as defined in ORS 731.186.

E. Affidavits of sureties.

E.(1) Individuals. The bond or undertaking must contain an affidavit of each surety which shall state that such surety possesses the qualifications prescribed by section D. of this rule.

E.(2) Corporations. The bond or undertaking of a corporate surety must contain affidavits showing the authority of the agent to act for the corporation and stating that the corporation is qualified to issue surety insurance as defined in ORS 731.186.

E.(3) Service. When [a] **irrevocable letter of credit, bond or undertaking** is given for the benefit of a party, a copy of such **letter of credit, bond or undertaking** shall be served on that party promptly in the manner prescribed in Rule 9 A. Proof of service thereof shall thereupon be filed promptly in the court in which the **letter of credit, bond or undertaking** has been filed.

F. Objections to sureties. If the party for whose benefit [a] **irrevocable letter of credit, bond or undertaking** is given is not satisfied with the sufficiency of the issuers or sureties, that party may, within 10 days after the receipt of a copy of the **letter of credit or bond**, serve upon the party giving the **letter of credit or bond**, or the attorney for the party giving the **letter of credit or bond**, a notice that the party for whose benefit the **letter of credit or bond** is given fails to do so, that party is deemed to have waived all objection to the issuers or sureties.

G. Hearing on objections to sureties.

G.(1) Request for hearing. Notice of objections to an issuer or a surety as provided in section F. of this rule shall be filed in the form of a motion for hearing on objections to the **irrevocable letter of**

credit or bond. Upon demand of the objecting party, each issuer or surety shall appear at the hearing of such motion and be subject to examination as to such issuer's or surety's pecuniary responsibility or the validity of the execution of the **letter of credit or bond.** Upon hearing of such motion, the court may approve or reject the **letter of credit or bond** as filed or require such amended, substitute, or additional **letter of credit or bond** as the circumstances will warrant.

G.(2) Information to be furnished. Sureties on any bond or undertaking and any **irrevocable letter of credit issuers** shall furnish such information as may be required by the judge approving the same.

G.(3) Surety insurers. It shall be sufficient justification for a surety insurer when examined as to its qualifications to exhibit the certificate of authority issued to it by the Insurance Commissioner [Director of the Department of Insurance and Finance] or a certified copy thereof.

SECTION 3. ORS 19.038 is amended to read:

19.038. (1) Except as provided in ORS 19.045, within 14 days after the filing of the notice of the appeal, the appellant shall serve on the adverse party or the attorney of the adverse party an undertaking as provided in ORS 19.040, and within such 14 days shall file with the clerk of the trial court the original undertaking, with proof of service indorsed thereon.

(2) Within 14 days after the service of the undertaking, the adverse party or the attorney of the adverse party may except to the sufficiency of the sureties or **letter of credit issuers** or the amount specified in the undertaking, or the adverse party shall be deemed to have waived the right thereto.

(3) The qualifications of sureties or **letter of credit issuers** in the undertaking on appeal shall be the same as in bail on arrest, and, if excepted to, they shall justify in like manner.

SECTION 4. ORS 19.040 is amended to read:

19.040. (1) The undertaking of the appellant shall be given in the minimum amount of \$500 unless otherwise fixed by the trial court with one or more sureties or in the form of one or more **irrevocable letters of credit issued by one or more commercial banks, as defined in ORS 706.005**, to the effect that the appellant will pay all damages, costs and disbursements which may be awarded against the appellant on the appeal not exceeding the sum therein specified; but such undertaking does not stay the proceedings, unless the undertaking further provides to the effect following:

(a) If the judgment appealed from is for the recovery of money, or of personal property or the value thereof, that if the same or any part thereof is affirmed, the appellant will satisfy it so far as affirmed.

(b) If the judgment appealed from is for the recovery of the possession of real property, for a partition thereof, or the foreclosure of a lien thereon, that during the possession of such property by the

appellant the appellant will not commit, or suffer to be committed, any waste thereon, and that if such judgment or any part thereof is affirmed, the appellant will pay the value of the use and occupation of such property, so far as affirmed, from the time of the appeal until the delivery of the possession thereof, not exceeding the sum therein specified, to be ascertained and tried by the trial court or judge thereof.

(c) If the judgment appealed from requires the transfer or delivery of any personal property, unless the things required to be transferred or delivered are brought into court, or placed in the custody of such officer or receiver as the trial court may appoint, that the appellant will obey the judgment of the appellate court. The amount of such undertaking shall be specified therein, and be fixed by the trial court or judge thereof.

(d) When the judgment appealed from is for the foreclosure of a lien, and also against the person for the amount of the debt secured thereby, the undertaking shall also be to the effect that the appellant will pay any portion of the judgment remaining unsatisfied after the sale of the property upon which the lien is foreclosed, not exceeding the sum therein specified, to be fixed by the trial court or judge thereof.

(2) When the judgment appealed from requires the execution of a conveyance or other instrument, execution of the judgment is not stayed by the appeal, unless the instrument is executed and deposited with the clerk within the time allowed to file the undertaking, to abide the judgment of the appellate court.

(3) If the appeal is dismissed, the judgment, so far as it is for the recovery of money, may, by the appellate court, be enforced in the amount specified against the sureties or letter of credit issuers in the undertaking for a stay of proceedings, as if they were parties to the judgment.

(4) The liability of the surety or letter of credit issuer shall be limited to the amount specified in the undertaking and such amount shall be stated in all appeal bonds and irrevocable letters of credit and shall be fixed by the trial court or judge thereof unless it is in the minimum amount as provided in subsection (1) of this section.

SECTION 5. ORS 20.160 is amended to read:

20.160. The attorney of a plaintiff who resides out of the state or is a foreign corporation, against whom costs are adjudged in favor of a defendant, is liable to the defendant therefor; and if the attorney neglects to pay the same, upon the information of the defendant shall be punished as for a contempt. The attorney may relieve or discharge the attorney from such liability by filing, [an undertaking] at the commencement of the action or suit, or at any time thereafter before judgment or decree[,] an undertaking executed by one or more sufficient sureties, or an irrevocable letter of credit issued by a commercial bank as defined in ORS 706.005, in either case providing for the payment to the

defendant of the costs and disbursements that may be adjudged to the attorney[, executed by one or more sufficient sureties].

SECTION 6. ORS 20.170 is amended to read:

20.170. The sureties in the undertaking described in ORS 20.160 shall possess the qualifications of sureties in an undertaking for bail on arrest. [and their] The sufficiency of any surety or irrevocable letter of credit issuer may be excepted to by the defendant at any time within five days from notice of filing the same, and if so, they shall justify in an amount not less than \$200, in like manner and with like effect as sureties for bail on arrest. Until the time for excepting to the sufficiency of the sureties or letter of credit issuers has expired or, if excepted to, until they are found sufficient, the attorney is liable as if no undertaking or letter of credit had been given. A deposit of \$200 or other sum which the court or judge may direct, with the clerk, may be made in lieu of such undertaking or letter of credit.

SECTION 7. ORS 20.310 is amended to read:

20.310. (1) In any appeal to the Court of Appeals or review by the Supreme Court, the court shall allow costs and disbursements to the prevailing party, unless a statute provides that in the particular case costs and disbursements shall not be allowed to the prevailing party or shall be allowed to some other party, or unless the court directs otherwise. If, under a special provision of any statute, a party has a right to recover costs, such party shall also have a right to recover disbursements. On the same terms and conditions, when the Supreme Court denies a petition for review, the respondent on review is entitled to costs and disbursements reasonably incurred in connection with the petition for review.

(2) Costs and disbursements on appeal to the Court of Appeals or Supreme Court or on petition for review by the Supreme Court are the filing or appearance fee, the reasonable cost for any bond, irrevocable letter of credit, attorney fees as provided by law, the printing, including the abstract of record, required by rule of the court, and the transcript of testimony or other proceedings, when necessarily forming part of the record on appeal.

SECTION 8. ORS 22.020 is amended to read:

22.020. (1) In any cause, action, proceeding or matter before any court, board or commission in this state or upon appeal from any action of any such court, board or commission, where bond, security deposit or bail of any character is required or permitted for any purpose, it is lawful for the party required or permitted to furnish such security, bail or bond to deposit, in lieu thereof, in the manner provided in ORS 22.020 to 22.070, money, an irrevocable letter of credit issued by a commercial bank as defined in ORS 706.005, a certified check or checks on any state or national bank within this country payable to the officer with whom such check is filed, satisfactory municipal bonds negoti-

able by delivery, or obligations of the United States Government negotiable by delivery, equal in amount to the amount of the bond, security deposit or bail so required or permitted.

(2) Notwithstanding subsection (1) of this section, an irrevocable letter of credit may not be furnished to a court in lieu of other security, bail or bond to be deposited in any criminal offense, action, proceeding or matter before any court nor in any cause, action, proceeding or matter before any court under ORS 105.395, 111.185, 113.005, 113.035, 113.105, 113.115, 114.325, 126.137, 126.177, 126.237, 126.243, 126.273 and 126.935. In any other type of civil cause, action, proceeding or matter before any court, an irrevocable letter of credit may be furnished pursuant to subsection (1) of this section subject to approval of its terms by the parties and to its being in the form and amount prescribed by statute, rule or order of the court.

SECTION 9. ORS 23.310 is amended to read:

23.310. (1) Subject to subsections (2) and (3) of this section, whenever a writ of execution is delivered into the hands of any sheriff or constable, under which the personal property of any person, firm or corporation is to be held or sold for the satisfaction of any judgment or costs of action or suit, if the sheriff or constable has actual notice of any third-party claim to the personal property, or is in doubt as to ownership of the property, or of encumbrances thereon, or damage to the property held that may result by reason of its perishable character, such sheriff or constable may require the judgment creditor to file with the sheriff or constable a good and sufficient bond or irrevocable letter of credit indemnifying the sheriff or constable and the sureties in the undertaking of the sheriff or constable against any loss or damage by reason of the illegality of any such holding or sale on execution, or by reason of damage to any personal property held under execution, which bond or irrevocable letter of credit shall be in double the amount of the judgment by which the personal property is either held or to be sold.

(2) At the request of the judgment creditor the sheriff may accept a bond or irrevocable letter of credit less than double the amount of the judgment but in no event will the sheriff or constable approve a bond or irrevocable letter of credit less than double the estimated value of the property to be seized.

(3) When the property or the value of a third party interest exceeds the value of the judgment, the sheriff or constable may require an indemnity bond or irrevocable letter of credit of double the estimated value of the property to be seized.

SECTION 10. ORS 23.350 is amended to read:

23.350. Notwithstanding the verdict of the jury is for the claimant, the sheriff shall proceed to sell the property seized in satisfaction of the execution, if the plaintiff tenders to the sheriff an irrevocable

letter of credit issued by a commercial bank as defined in ORS 706.005, or a written undertaking, executed by two or more good and sufficient sureties, residents of the state, and householders or freeholders therein[.]. The irrevocable letter of credit or undertaking shall be in double the value of the property, to the effect that the plaintiff will indemnify the sheriff against all damages and costs which the sheriff may sustain in consequence of the seizure and sale of such property, and moreover, that the plaintiff will pay to the claimant of such property all damages which the sheriff may sustain in consequence of such seizure and sale. If such irrevocable letter of credit or undertaking is given, it shall be returned by the sheriff with the execution.

SECTION 11. ORS 33.510 is amended to read:

33.510. The surety or the representatives of any surety upon the bond of any trustee, committee, guardian, assignee, receiver, executor, administrator or other fiduciary, and any irrevocable letter of credit issuer for any trustee, committee, guardian, assignee, receiver, executor, administrator or other fiduciary is entitled as a matter of right to be discharged from liability as provided in this section, and to that end may, on notice to the principal named in the bond or irrevocable letter of credit, apply to the court that accepted the bond or irrevocable letter of credit or to the court of which the judge who accepted the bond or irrevocable letter of credit was a member or to any judge thereof, praying to be relieved from liability [as surety] for the act or omission of the principal occurring after the date of the order relieving [the surety] such person, and that the principal be required to account and give new sureties or cause to be issued new letters of credit. Notice of the application shall be served on the principal personally not less than five days prior to the date on which the application is to be made, unless it satisfactorily appears to the court or judge that personal service cannot be had with due diligence within the state, in which case notice may be given by personal service without the state or in such manner as the court or judge directs. Pending the hearing of the application the court or judge may restrain the principal from acting except to preserve the trust estate until further order. If upon the return of the application the principal fails to file a new bond or irrevocable letter of credit to the satisfaction of the court or judge, the court or judge must make an order requiring the principal to file a new bond or irrevocable letter of credit within a period not exceeding five days. If the new bond or irrevocable letter of credit is filed upon the return of the application, or within the time fixed by the order, the court or judge must make a decree or order requiring the principal to account for all acts and proceedings to and including the date of the decree or order, and to file such account within a time fixed, not exceeding 20 days, and discharge the surety or letter of credit issuer making application from liability for any act or default of the principal subse-

quent to the date of the decree or order. If the principal fails to file a new bond or irrevocable letter of credit within the time specified, a decree or order must be made revoking the appointment of the principal or removing and requiring the principal to file an account within not more than 20 days. If the principal fails to file the account, the surety or letter of credit issuer may make and file an account with like force and effect as though filed by the principal, and upon settlement thereof and upon the trust fund or estate being found or made good and paid over or properly secured, credit shall be given for all commissions, costs, disbursements and allowances to which the principal would be entitled were the principal accounting, and allowance shall be made to the surety or letter of credit issuer for the expense incurred in filing the account and procuring the settlement thereof. After the filing of the account, either by the principal or the surety or the letter of credit issuer, the court or judge must, upon the petition of the principal or surety or the letter of credit issuer, issue an order requiring all persons interested in the estate or trust to attend a settlement of the account at a time and place therein specified, and upon the trust fund or estate being found or made good and paid over or properly secured, the surety or the letter of credit issuer shall be discharged from all liability. Upon demand in writing by the principal, the surety or the letter of credit issuer shall return any compensation that has been paid for the unexpired period of the bond or the letter of credit.

SECTION 12. ORS 33.520 is amended to read:

33.520. Any trustee, committee, guardian, assignee, receiver, executor, administrator or other fiduciary shall be entitled to have any surety on the bond of the fiduciary or of any irrevocable letter of credit issuer discharged from liability thereon, and the fiduciary may file a new bond or irrevocable letter of credit as provided in this section. The fiduciary may, on written notice to the surety or letter of credit issuer and to all other interested persons, apply to the court that accepted the bond or irrevocable letter of credit, or to a judge thereof, praying that the surety or irrevocable letter of credit be discharged from liability thereon, and that the principal be allowed to file a new bond or irrevocable letter of credit and to account. Notice of the application shall be served on the surety or letter of credit issuer and on each of the persons interested, within the state, not less than 10 days prior to the date on which the application is to be made, unless it satisfactorily appears to the court or judge that the notice cannot with due diligence be served within the state, in which case notice may be given in such manner as the court or judge shall direct. Upon the return of the application, the principal may file a new bond or irrevocable letter of credit satisfactory to the court or judge, and therewith file an account of all proceedings, whereupon the court or judge shall proceed, upon due notice to all persons interested, to judicially settle the ac-

count and duly credit and charge the principal; and upon the trust fund or estate being found or made good and paid over or properly secured, the surety or letter of credit issuer shall be discharged from all liability.

SECTION 13. ORS 33.530 is amended to read:

33.530. (1) When a bond or an irrevocable letter of credit of any personal representative, guardian or conservator is terminated upon the issuance of a new bond or irrevocable letter of credit to the personal representative, guardian or conservator by a new surety or letter of credit issuer, the former surety or letter of credit issuer shall not be liable on the old bond or irrevocable letter of credit for any acts or omissions of the personal representative, guardian or conservator which occur after the issuance of the new bond or irrevocable letter of credit.

(2) A new surety for a personal representative, guardian or conservator who issues a new bond or irrevocable letter of credit after the termination of a previous bond or irrevocable letter of credit written by another surety or letter of credit issuer for a personal representative, guardian or conservator shall not be liable for any acts or omissions of the personal representative, guardian or conservator which occurred prior to the issuance of the new bond or irrevocable letter of credit.

SECTION 14. ORS 52.170 is amended to read:

52.170. If the plaintiff is a nonresident of this state, the justice may require the plaintiff to give an undertaking with one or more sureties, or an irrevocable letter of credit issued by a commercial bank, as defined in ORS 706.005, for the disbursements of the action before issuing the summons; and if at any time before the commencement of the trial the defendant applies therefor, the justice must require such plaintiff to give the undertaking or irrevocable letter of credit. If the plaintiff is a resident of this state, the justice may, in the discretion of the justice, upon a like application on the part of the defendant, require the plaintiff to give such undertaking or irrevocable letter of credit. However, if the plaintiff is a resident of Oregon and makes the affidavit that the plaintiff is unable to furnish the undertaking or irrevocable letter of credit as required by this section, the giving of such undertaking or irrevocable letter of credit shall be waived.

SECTION 15. ORS 59.115 is amended to read:

59.115. (1) A person who sells a security is liable as provided in subsection (2) of this section to a purchaser of the security if the person:

(a) Sells a security in violation of the Oregon Securities Law or of any condition, limitation or restriction imposed upon a registration or license under the Oregon Securities Law; or

(b) Sells a security by means of an untrue statement of a material fact or an omission to state a material fact necessary in order to make the state-

ments made, in light of the circumstances under which they are made, not misleading (the buyer not knowing of the untruth or omission), and who does not sustain the burden of proof that the person did not know, and in the exercise of reasonable care could not have known, of the untruth or omission.

(2) The purchaser may recover, in addition to costs and reasonable attorney fees at trial and on appeal:

(a) Upon tender of the security, the consideration paid for the security, and interest from the date of payment equal to the greater of the rate of interest specified in ORS 82.010 for judgments and decrees for the payment of money or the rate provided in the security if the security is an interest-bearing obligation, less any amount received on the security; or

(b) If the purchaser no longer owns the security, damages in the amount that would be recoverable upon a tender, less the value of the security when the purchaser disposed of it and less interest on such value at the rate of interest specified in ORS 82.010 for judgments and decrees for the payment of money from the date of disposition.

(3) Every person who directly or indirectly controls a seller liable under subsection (1) of this section, every partner, officer, or director of such seller, every person occupying a similar status or performing similar functions, and every person who participates or materially aids in the sale is also liable jointly and severally with and to the same extent as the seller, unless the nonseller sustains the burden of proof that the nonseller did not know, and, in the exercise of reasonable care, could not have known, of the existence of the facts on which the liability is based. Any person held liable under this section shall be entitled to contribution from those jointly and severally liable with that person.

(4) Any tender specified in this section may be made at any time before entry of judgment.

(5) Except as otherwise provided in this subsection, no action or suit may be commenced under this section more than three years after the sale. An action under this section for a violation of paragraph (b) of subsection (1) of this section or ORS 59.135 may be commenced within three years after the sale or two years after the person bringing the action discovered or should have discovered the facts on which the action is based, whichever is later. Failure to commence an action on a timely basis is an affirmative defense.

(6) No action may be commenced under this section solely because an offer was made prior to registration of the securities.

(7) Any person having a right of action against a broker-dealer, mortgage broker, investment adviser or against a salesperson acting within the course and scope or apparent course and scope of authority of the salesperson, under this section shall have a right of action under the bond or irrevocable letter of credit provided in ORS 59.175.

SECTION 16. ORS 59.175 is amended to read:

59.175. (1) The director by rule shall establish procedures for licensing broker-dealers, mortgage brokers, investment advisers and salespersons. The director may coordinate licensing with any national registration or licensing system.

(2) The director may require an applicant for a license as a broker-dealer, mortgage broker or investment adviser, including the applicant's partners, directors, officers or any person occupying a similar status or performing similar functions, and any person directly or indirectly controlling such applicant and a person for whom application for a license as a salesperson is made, to pass an examination on such person's knowledge and understanding of the Oregon Securities Law and the securities business. The director may establish by rule a fee for the examination.

(3) The director may make such further examination of the applicant and its affairs as the director deems advisable and may require by rule or order that the applicant publish an announcement of the application in such manner as the director may specify.

(4) Every applicant for a license as a broker-dealer, mortgage broker or investment adviser shall file with the director a corporate surety bond or irrevocable letter of credit issued by a commercial bank as defined in ORS 706.005 or such other security as the director may approve by rule running to the State of Oregon in the sum of \$10,000. However, a mortgage broker who is in the business of executing transactions only as set forth in ORS 59.035 (7) shall not be subject to the bond requirement set forth in this section.

(5) If the application, surety bond, irrevocable letter of credit or other security and fees are in order and the director is satisfied that the application should not be denied upon one or more of the grounds specified in ORS 59.205 to 59.225, the director shall license the broker-dealer, mortgage broker, investment adviser or salesperson.

(6) A licensee under ORS 59.165 shall amend the license application when there are material changes in the information contained in the original application.

(7) The Director of the Department of Insurance and Finance shall charge and collect for:

(a) An application for a license as a broker-dealer, mortgage broker or investment adviser, a fee of \$100;

(b) An application to renew a license as a broker-dealer, mortgage broker or investment adviser, a fee of \$50;

(c) An application for a license as a salesperson, a fee of \$15; and

(d) An application to renew a license as a salesperson, a fee of \$15.

(8) The fees under this section are not refundable.

SECTION 17. ORS 87.342 is amended to read:

87.342. (1) The owner of a chattel subject to a lien created by ORS 87.216 to 87.232, or any other

interested person, may file with the recording officer of the county in whose office the claim of lien is filed a bond executed by a corporation authorized to issue surety bonds in the State of Oregon to the effect that the owner of the chattel against which the lien is claimed shall pay the amount of the claim and all costs and attorney fees which are awarded against the chattel on account of the lien. The bond shall be in an amount not less than 150 percent of the amount claimed under the lien, and must be filed prior to the commencement of a foreclosure proceeding by the lien claimant.

(2)(a) In lieu of the surety bond provided for in subsection (1) of this section, a person may deposit with the treasurer of the county in which the claim for lien is filed **an irrevocable letter of credit issued by a commercial bank as defined in ORS 706.005, or a sum of money or its equivalent equal in value to 150 percent of the amount claimed under the lien.**

(b) When a person deposits money or an **irrevocable letter of credit** with the treasurer of a county under this subsection, the person shall file with the recording officer of the same county an affidavit stating that the deposit was made.

(3) When a bond is filed under subsection (1) of this section or **an irrevocable letter of credit** or money deposited and an affidavit filed under subsection (2) of this section, the recording officer shall issue to the owner or other person a certificate stating that the bond, **irrevocable letter of credit** or money is substituted for the chattel and that the lien on the chattel is discharged. A marginal entry of the discharge and bond, **irrevocable letter of credit** or money shall be made in the index of liens on chattels containing the original record of the claim of lien.

(4) When a bond is filed under subsection (1) of this section, or money or **an irrevocable letter of credit** is deposited under subsection (2) of this section, the owner or other person filing the bond or depositing the money or **an irrevocable letter of credit** shall promptly send a copy of the certificate received from the recording officer under subsection (3) of this section to the lien claimant by registered or certified mail sent to the lien claimant at the last-known address of the lien claimant.

(5) If the lien claimant establishes the validity of the lien claim by a suit to enforce it, the lien claimant is entitled to judgment or decree against the sureties upon the bond, **against the irrevocable letter of credit issuer** or against the deposited money.

SECTION 18. ORS 87.435 is amended to read:

87.435. (1) The owner of papers or personal property subject to a lien created by ORS 87.430, or any other interested person, may file with the recording officer of the county in which the attorney has the principal office of the attorney a bond executed by a corporation authorized to issue surety bonds in the State of Oregon to the effect that the

owner of the papers and personal property against which the lien is claimed shall pay the amount of the claim and all costs which are awarded against the papers and personal property on account of the lien. The bond shall be in an amount not less than 150 percent of the amount claimed under the lien, and must be filed prior to the commencement of a foreclosure proceeding by the attorney.

(2)(a) In lieu of the surety bond provided for in subsection (1) of this section, a person may deposit with the treasurer of the county in which the attorney has the principal office of the attorney **an irrevocable letter of credit issued by a commercial bank as defined in ORS 706.005, or a sum of money or its equivalent equal in value to 150 percent of the amount claimed under the lien.**

(b) When a person deposits money or an **irrevocable letter of credit** with the treasurer of a county under this subsection, the person shall file with the recording officer of the same county an affidavit stating that the deposit was made.

(3) When a bond is filed under subsection (1) of this section or money or **an irrevocable letter of credit** deposited and an affidavit filed under subsection (2) of this section, the recording officer shall issue to the owner or other person a certificate stating that the bond, **irrevocable letter of credit** or money is substituted for the chattel and that the lien on the chattel is discharged.

(4) When a bond is filed under subsection (1) of this section, or money or **an irrevocable letter of credit** is deposited under subsection (2) of this section, the owner or other person filing the bond or depositing the money shall promptly send a copy of the certificate received from the recording officer under subsection (3) of this section to the attorney by registered or certified mail.

(5) If the attorney establishes the validity of the lien claim by a suit to enforce it under ORS chapter 88, the attorney is entitled to judgment or decree against the sureties upon the bond, **against the irrevocable letter of credit issuer** or against the deposited money.

SECTION 19. ORS 87.440 is amended to read:

87.440. If an attorney considers the bond filed with a recording officer or the **irrevocable letter of credit deposited with the treasurer** of a county inadequate to protect the claim of the attorney for lien for some reason other than the amount of the bond or **irrevocable letter of credit**, the attorney shall, within 10 days of receipt of the notice of filing, petition the court in which the suit to foreclose the lien may be brought for a determination of the adequacy of the bond or **irrevocable letter of credit**. The attorney shall state in detail the reasons for the inadequacy. If the court determines that the bond is inadequate for one or more of the reasons stated by the attorney, the court shall order such action as shall make the bond or **irrevocable letter of credit** adequate to protect the claim for lien.

SECTION 20. ORS 92.060 is amended to read:

92.060. (1) The initial point of all subdivision plats shall be marked with a monument, either of concrete or galvanized iron pipe. If concrete is used it shall not be less than 6 inches by 6 inches by 24 inches and shall contain not less than five cubic inches of ferrous material permanently imbedded in the concrete. If galvanized iron pipe is used it shall not be less than two inches in inside diameter and three feet long. The monument shall be set or driven six inches below the surface of the ground. The location of the monument shall be with reference by survey to a section corner, one-quarter corner, one-sixteenth corner, Donation Land Claim corner or to a monumented lot corner or boundary corner of a recorded subdivision or condominium. The county surveyor may authorize the setting of another type of monument in circumstances where setting the required monuments is impracticable.

(2) In subdivision plats, the intersections, points of curves and points of tangents, or the point of intersection of the curve if the point is within the pavement area of the road, of the centerlines of all public streets and roads and all points on the exterior boundary where the boundary line changes direction, shall be marked with monuments either of concrete, galvanized iron pipe, or iron or steel rods. If concrete is used it shall be as described in subsection (1) of this section. If galvanized iron pipe is used it shall not be less than three-quarter inch inside diameter and 30 inches long, and if iron or steel rods are used they shall not be less than five-eighths of an inch in least dimension and 30 inches long. The county surveyor may authorize the setting of another type of monument in circumstances where setting the required monuments is impracticable.

(3) All lot corners except lot corners of cemetery lots shall be marked with monuments of either galvanized iron pipe not less than one-half inch inside diameter or iron or steel rods not less than five-eighths inch in least dimension and not less than 24 inches long. The county surveyor may authorize the setting of another type of monument in circumstances where setting the required monuments is impracticable.

(4) Points shall be plainly and permanently marked upon monuments so that measurements may be taken to them to within one-tenth of a foot.

(5) Monuments shall be set with such accuracy that measurements may be taken between monuments within one-tenth of a foot or within 1/5,000 of the distance shown on the subdivision or partition plat, whichever is greater.

(6) All monuments on the exterior boundaries of a subdivision shall be placed and the monuments shall be referenced on the plat of the subdivision before the plat of the subdivision is offered for recording. However, interior monuments for the subdivision need not be set prior to the recording of the plat of the subdivision if the registered professional land surveyor performing the survey work certifies that the interior monuments will be set on or before a specified date as provided in ORS 92.070 (2) and if the person subdividing the land furnishes to the

county or city by which the subdivision was approved a bond, cash deposit, irrevocable letter of credit issued by a commercial bank as defined in ORS 706.005 or other security as required by the county or city guaranteeing the payment of the cost of setting the interior monuments for the subdivision as provided in ORS 92.065.

(7) All monuments on the exterior boundary and all parcel corner monuments of partitions shall be placed before the partition is offered for recording. Unless the governing body provides otherwise, any parcels created that are greater than 10 acres need not be surveyed or monumented.

SECTION 21. ORS 92.065 is amended to read:

92.065. (1) If the interior corners of a subdivision are to be monumented on or before a specified date after the recording of the plat of the subdivision, the person subdividing the land described in the subdivision plat shall furnish to the county surveyor, prior to approval of the subdivision plat by the county surveyor, a bond, cash deposit, irrevocable letter of credit issued by a commercial bank as defined in ORS 706.005 or other security, as required at the option of the city or county, in an amount equal to 120 percent of the estimated cost of performing the work for the interior monumentation.

(2) The county surveyor may require that the setting of the interior corners of the subdivision be delayed, according to the provisions of this section, if the installation of street and utility improvements has not been completed, or if other conditions or circumstances justify the delay.

(3) The person subdividing the lands described in subsection (1) of this section shall pay the surveyor for performing the interior monumentation work and notify the county surveyor of the payment. The county surveyor, within three months after the notice, shall release the bond, irrevocable letter of credit or other required security, or return the cash deposit upon a finding that the payment has been made. Upon written request from the person subdividing the land, the governing body may pay the surveyor from moneys within a cash deposit held by it for that purpose and return the excess of the cash deposit, if any, to the person who made the deposit. If the subdivider has not paid the surveyor within 30 days of final approval of the interior monumentation, the city or county may pay the surveyor from moneys held in a cash deposit, if any, or require payment to be made from other security.

(4) In the event of the death, disability or retirement from practice of the surveyor charged with the responsibility for setting interior monuments for a subdivision or upon the failure or refusal of the surveyor to set the monuments, the county surveyor shall cause the monumentation to be completed and referenced for recording as provided in ORS 92.070. If another surveyor completes the interior monumentation, the surveyor completing the interior monumentation shall place the surveyor's seal and signature on the original subdivision plat and any

true and exact copies filed in accordance with ORS 92.120 (2). Payment of the fees for completing said monumentation shall be made by the subdivider within 30 days of the completion of such work. In the event that the subdivider fails to pay such fees within 30 days, the bond, cash deposit, irrevocable letter of credit or other security may be used to pay such fees; and when such cash or other securities are inadequate to cover the cost incurred by the county surveyor, the balance due will constitute a lien on any lots in the subdivision that are still in the ownership of the subdivider when recorded pursuant to ORS 93.600 to 93.800.

SECTION 22. ORS 92.090 is amended to read:

92.090. (1) No tentative subdivision plan or subdivision plat of a subdivision shall be approved which bears a name, approved by the county surveyor or the county assessor, which is the same as, similar to or pronounced the same as the name of any other subdivision in the same county, unless the land platted is contiguous to and platted by the same party that platted the subdivision bearing that name or unless the party files and records the consent of the party that platted the contiguous subdivision bearing that name. All subdivision plats must continue the lot numbers and, if used, the block numbers of the subdivision plat of the same name last filed.

(2) No tentative plan for a proposed subdivision and no tentative plan for a proposed major partition shall be approved unless:

(a) The streets and roads are laid out so as to conform to the plats of subdivisions and major partitions already approved for adjoining property as to width, general direction and in all other respects unless the city or county determines it is in the public interest to modify the street or road pattern.

(b) Streets and roads held for private use are clearly indicated on the tentative plan and all reservations or restrictions relating to such private roads and streets are set forth thereon.

(c) The tentative plan complies with the applicable zoning ordinances and regulations and the ordinances or regulations adopted under ORS 92.044 that are then in effect for the city or county within which the land described in the plan is situated.

(3) No plat of a proposed subdivision or partition shall be approved unless:

(a) Streets and roads for public use are dedicated without any reservation or restriction other than reversionary rights upon vacation of any such street or road and easements for public utilities.

(b) Streets and roads held for private use and indicated on the tentative plan of such subdivision or major partition have been approved by the city or county.

(c) The subdivision or partition plat complies with any applicable zoning ordinances and regulations and any ordinance or regulation adopted under ORS 92.044 that are then in effect for the city or county within which the land described in the subdivision or partition plat is situated.

(d) The subdivision or partition plat is in substantial conformity with the provisions of the tentative plan for the subdivision or partition, as approved.

(e) The subdivision or partition plat contains a donation to the public of all common improvements, including but not limited to streets, roads, parks, sewage disposal and water supply systems, the donation of which was made a condition of the approval of the tentative plan for the subdivision or partition.

(f) Explanations of all common improvements required as conditions of approval of the tentative plan of the subdivision or partition have been recorded and referenced on the subdivision or partition plat.

(4) Subject to any standards and procedures adopted pursuant to ORS 92.044, no plat of a subdivision shall be approved by a city or county unless the city or county has received and accepted:

(a) A certification by a city-owned domestic water supply system or by the owner of a privately owned domestic water supply system, subject to regulation by the Public Utility Commission of Oregon, that water will be available to the lot line of each and every lot depicted in the proposed subdivision plat;

(b) A bond, irrevocable letter of credit, contract or other assurance by the subdivider to the city or county that a domestic water supply system will be installed by or on behalf of the subdivider to the lot line of each and every lot depicted in the proposed subdivision plat; and the amount of any such bond, irrevocable letter of credit, contract or other assurance by the subdivider shall be determined by a registered professional engineer, subject to any change in such amount as determined necessary by the city or county; or

(c) In lieu of paragraphs (a) and (b) of this subsection, a statement that no domestic water supply facility will be provided to the purchaser of any lot depicted in the proposed subdivision plat, even though a domestic water supply source may exist. A copy of any such statement, signed by the subdivider and indorsed by the city or county, shall be filed by the subdivider with the Real Estate Commissioner and shall be included by the commissioner in any public report made for the subdivision under ORS 92.385. If the making of a public report has been waived or the subdivision is otherwise exempt under the Oregon Subdivision Control Law, the subdivider shall deliver a copy of the statement to each prospective purchaser of a lot in the subdivision at or prior to the signing by the purchaser of the first written agreement for the sale of the lot. The subdivider shall take a signed receipt from the purchaser upon delivery of such a statement, shall immediately send a copy of the receipt to the commissioner and shall keep any such receipt on file in this state, subject to inspection by the commissioner, for a period of three years after the date the receipt is taken.

(5) Subject to any standards and procedures adopted pursuant to ORS 92.044, no plat of a subdivi-

vision shall be approved by a city or county unless the city or county has received and accepted:

(a) A certification by a city-owned sewage disposal system or by the owner of a privately owned sewage disposal system that is subject to regulation by the Public Utility Commission of Oregon that a sewage disposal system will be available to the lot line of each and every lot depicted in the proposed subdivision plat;

(b) A bond, **irrevocable letter of credit**, contract or other assurance by the subdivider to the city or county that a sewage disposal system will be installed by or on behalf of the subdivider to the lot line of each and every lot depicted on the proposed subdivision plat; and the amount of such bond, **irrevocable letter of credit**, contract or other assurance shall be determined by a registered professional engineer, subject to any change in such amount as the city or county considers necessary; or

(c) In lieu of paragraphs (a) and (b) of this subsection, a statement that no sewage disposal facility will be provided to the purchaser of any lot depicted in the proposed subdivision plat, where the Department of Environmental Quality has approved the proposed method or an alternative method of sewage disposal for the subdivision in its evaluation report described in ORS 454.755 (1)(b). A copy of any such statement, signed by the subdivider and indorsed by the city or county shall be filed by the subdivider with the Real Estate Commissioner and shall be included by the commissioner in the public report made for the subdivision under ORS 92.385. If the making of a public report has been waived or the subdivision is otherwise exempt under the Oregon Subdivision Control Law, the subdivider shall deliver a copy of the statement to each prospective purchaser of a lot in the subdivision at or prior to the signing by the purchaser of the first written agreement for the sale of the lot. The subdivider shall take a signed receipt from the purchaser upon delivery of such a statement, shall immediately send a copy of the receipt to the commissioner and shall keep any such receipt on file in this state, subject to inspection by the commissioner, for a period of three years after the date the receipt is taken.

SECTION 23. ORS 92.095 is amended to read:

92.095. (1) No subdivision plat shall be recorded unless all ad valorem taxes, including potential additional taxes, interest and penalties imposed on land disqualified for special assessment granted under ORS 308.370 (2), 321.272 (2) or 321.420 (2), and all special assessments, fees, or other charges required by law to be placed upon the tax roll have been paid which have become a lien upon the subdivision or which will become a lien during the calendar year.

(2) After January 1, and before the certification under ORS 311.105 of any year, the subdivider shall:

(a) If the exact amount of taxes, special assessments, fees and charges are able to be computed by the assessor, pay such amount to the tax collector.

The assessor is authorized to levy and the tax collector is authorized to collect such amount.

(b) If the assessor is unable to compute such amount at such time, either (A) pay the amount estimated by the assessor to be needed to pay the taxes, special assessments, fees and other charges to become due, or (B) deposit with the tax collector a bond or **irrevocable letter of credit** with a good and sufficient undertaking in such amount as the assessor considers adequate to insure payment of the taxes to become due. In no event shall the bond or **irrevocable letter of credit** amount exceed twice the amount of the previous year's taxes, special assessments, fees and other charges upon such subdivision.

(3) Taxes paid or [bonded] for which security is given under paragraph (a) or (b) of subsection (2) of this section shall be entitled to the discount provided by ORS 311.505.

(4) ORS 311.370 shall apply to all taxes levied and collected under subsection (2) of this section, except that any deficiency shall constitute a personal debt against the person subdividing the land and not a lien against the subdivision land, and shall be collected as provided by law for the collection of personal property taxes.

(5) If a subdivision plat is recorded, any potential additional taxes, interest or penalties imposed upon land disqualified for special assessment granted under ORS 308.370 (2), 321.272 (2) or 321.420 (2) shall become a lien upon the subdivision on the day before the subdivision plat was recorded.

SECTION 24. ORS 98.610 is amended to read:

98.610. Any person may enter upon private property where any part of a fallen tree belonging to or under the control of the person has been lost from a railroad or motor vehicle, for the purpose of recovering and reclaiming the same. Before entering the land the person shall post a bond or an **irrevocable letter of credit** issued by a commercial bank as defined in ORS 706.005 with the Public Utility Commission, to be approved by the commission, in such sum as the commission may provide. The bond or **irrevocable letter of credit** shall run to the Public Utility Commission to insure to any landowner the payment of any damage resulting from removal or reclaiming of such property. The owner of the land shall be compensated for any damages resulting from the removal or for damage to the property of the owner caused by any part of a felled tree falling from motor vehicles or railroads.

SECTION 25. ORS 99.050 is amended to read:

99.050. Any person may enter upon private property where any part of a fallen tree belonging to or under the control of such person has been cast by freshets or high waters, for the purpose of recovering and reclaiming the same. Before entering the land the person shall post a bond or an **irrevocable letter of credit** issued by a commercial bank as defined in ORS 706.005 with the Public Utility Commission, to be approved by the commissioner, in

such sum as the commissioner may provide. The bond or irrevocable letter of credit shall run to the Public Utility Commission to insure to any landowner the payment of any damage resulting from removal or reclaiming of such property. The owner of the land shall be compensated for any damages resulting from the removal.

NOTE: Section 26 was deleted by amendment. Subsequent sections were not renumbered.

SECTION 27. ORS 105.515 is amended to read:

105.515. At any time before an order to abate is made or a warrant to abate is issued, the defendant may, on motion to the court or judge thereof, have an order to stay the issuing of the warrant for such period as may be necessary, not exceeding six months, to allow the defendant to abate the nuisance, upon giving an undertaking to the plaintiff in a sufficient amount, in the form of an irrevocable letter of credit issued by a commercial bank as defined in ORS 706.005, or a bond with one or more sureties, to the satisfaction of the court or judge thereof, that the defendant will abate the nuisance within the time and in the manner specified in the order.

NOTE: Sections 28 to 33 were deleted by amendment. Subsequent sections were not renumbered.

SECTION 34. ORS 118.300 is amended to read:

118.300. Any person or corporation beneficially interested in any property chargeable with a tax under this chapter and personal representatives and trustees, may elect, within nine months from the death of the decedent, not to pay such tax until the person or persons beneficially interested therein shall come into actual possession or enjoyment thereof. If it is personal property, the person or persons so electing shall give a bond or irrevocable letter of credit to the state in double the amount of the tax, with such sureties or issued by such commercial bank as defined in ORS 706.005 as the Director of the Department of Revenue may approve, conditioned for the payment of such tax and interest thereon, at such time and period as the person or persons beneficially interested therein may come into actual possession or enjoyment of such property, which bond shall be executed and filed, and a full return of such property made to the Director of the Department of Revenue within six months from the date of transfer thereof, as in this section provided. Such bond or letter of credit must be renewed every five years.

SECTION 35. ORS 119.310 is amended to read:

119.310. Except when deficiency is due to negligence, to intentional disregard of rules and regulations, or to defraud with intent to evade tax, where it is shown to the satisfaction of the Director of the Department of Revenue that the payment of a deficiency upon the date prescribed for the payment thereof will result in undue hardship to the donor, the director may grant an extension for the

payment of such deficiency or any part thereof for a period not in excess of 18 months, and in exceptional cases for a further period not in excess of 12 months. If an extension is granted, the donor shall furnish a bond or irrevocable letter of credit in such amount, not less than double the amount of the deficiency, and with such sureties or issued by such commercial bank as defined in ORS 706.005, as the director deems necessary, conditioned upon the payment of the deficiency in accordance with the terms of the extension.

NOTE: Sections 36 through 41 were deleted by amendment. Subsequent sections were not renumbered.

SECTION 42. ORS 128.155 is amended to read:

128.155. A beneficiary who petitions a court under ORS 128.135 or 128.145 shall file with the petition an irrevocable letter of credit issued by a commercial bank, as defined in ORS 706.055, or an undertaking with one or more sureties to the effect that the beneficiary will pay all costs, disbursements and reasonable attorney fees that may be ordered against the beneficiary in the proceeding. If the beneficiary is unsuccessful in the proceeding and the court finds that the beneficiary filed the petition in bad faith, or that the petition was frivolous, the court may tax the costs and disbursements of the proceeding, including any appeal therein, and reasonable attorney fees against the unsuccessful beneficiary and the letter of credit issuer or the surety on the undertaking. If the beneficiary is successful, the court may tax the costs and disbursements of the proceeding, including any appeal therein, and reasonable attorney fees against the trust estate or the trustee individually.

SECTION 43. ORS 128.412 is amended to read:

128.412. The provisions of ORS 128.400 to 128.440, 128.990, 128.991, 692.180 and 692.285 shall not include:

(1) Agreements to sell or sales of graves, crypts or niches where such graves, crypts or niches are in existence at the time of the sale or agreement to sell and are located in an endowment care cemetery as defined in ORS 97.810.

(2) Agreements to sell or sales of crypts or niches where such crypts or niches are not in existence at the time of the sale or agreement to sell and are to be located in an endowment care cemetery; provided that:

(a) Thirty-five percent of the sales price of such crypts or niches is deposited in accordance with the provisions of ORS 128.415; or

(b) Such endowment care cemetery deposits a bond [with the Secretary of State in the amount of \$25,000] with a corporate surety. The bond shall be in a company authorized to do business in this state, or an irrevocable letter of credit issued by a commercial bank as defined in ORS 706.005. The bond or letter of credit shall be in the amount of \$25,000.

(3) Agreements to sell or sales of burial vaults or markers for installation in an endowment care cemetery; provided that:

(a) Sixty-six and two-thirds percent of the sale price of such vaults or markers is deposited in accordance with the provisions of ORS 128.415;

(b) Such endowment care cemetery is at the time of the sale or agreement to sell and for not less than 24 months before such sale or agreement has been in continuous operation as an endowment care cemetery and has assumed the obligation to supply and install the vault or marker and maintain it as part of its endowment care program; and

(c) Such endowment care cemetery deposits:[]

(A) A bond with the Secretary of State in the amount of \$10,000 with a corporate or personal surety. Such personal surety shall submit a sworn financial statement as of the date of the bond and annually thereafter as long as the bond is in effect to insure the availability of the total amount of the sale price when required; or

(B) An irrevocable letter of credit with the Secretary of State in the amount of \$10,000, issued by a commercial bank as defined in ORS 706.005.

SECTION 44. ORS 183.482 is amended to read:

183.482. (1) Jurisdiction for judicial review of contested cases is conferred upon the Court of Appeals. Proceedings for review shall be instituted by filing a petition in the Court of Appeals. The petition shall be filed within 60 days only following the date the order upon which the petition is based is served unless otherwise provided by statute. If a petition for rehearing has been filed, then the petition for review shall be filed within 60 days only following the date the order denying the petition for rehearing is served. If the agency does not otherwise act, a petition for rehearing or reconsideration shall be deemed denied the 60th day following the date the petition was filed, and in such cases, petition for judicial review shall be filed within 60 days only following such date. Date of service shall be the date on which the agency delivered or mailed its order in accordance with ORS 183.470.

(2) The petition shall state the nature of the order the petitioner desires reviewed, and shall state whether the petitioner was a party to the administrative proceeding, was denied status as a party or is seeking judicial review as a person adversely affected or aggrieved by the agency order. In the latter case, the petitioner shall, by supporting affidavit, state the facts showing how the petitioner is adversely affected or aggrieved by the agency order. Before deciding the issues raised by the petition for review, the Court of Appeals shall decide, from facts set forth in the affidavit, whether or not the petitioner is entitled to petition as an adversely affected or an aggrieved person. Copies of the petition shall be served by registered or certified mail upon the agency, and all other parties of record in the agency proceeding.

(3)(a) The filing of the petition shall not stay enforcement of the agency order, but the agency may do so upon a showing of:

(A) Irreparable injury to the petitioner; and

(B) A colorable claim of error in the order.

(b) When a petitioner makes the showing required by paragraph (a) of this subsection, the agency shall grant the stay unless the agency determines that substantial public harm will result if the order is stayed. If the agency denies the stay, the denial shall be in writing and shall specifically state the substantial public harm that would result from the granting of the stay.

(c) When the agency grants a stay it may impose such reasonable conditions as the giving of a bond, irrevocable letter of credit or other undertaking and that the petitioner file all documents necessary to bring the matter to issue before the Court of Appeals within specified reasonable periods of time.

(d) Agency denial of a motion for stay is subject to review by the Court of Appeals under such rules as the court may establish.

(4) Within 30 days after service of the petition, or within such further time as the court may allow, the agency shall transmit to the reviewing court the original or a certified copy of the entire record of the proceeding under review, but, by stipulation of all parties to the review proceeding, the record may be shortened. Any party unreasonably refusing to stipulate to limit the record may be taxed by the court for the additional costs. The court may require or permit subsequent corrections or additions to the record when deemed desirable. Except as specifically provided in this subsection, the cost of the record shall not be taxed to the petitioner or any intervening party. However, the court may tax such costs and the cost of agency transcription of record to a party filing a frivolous petition for review.

(5) If, on review of a contested case, before the date set for hearing, application is made to the court for leave to present additional evidence, and it is shown to the satisfaction of the court that the additional evidence is material and that there were good and substantial reasons for failure to present it in the proceeding before the agency, the court may order that the additional evidence be taken before the agency upon such conditions as the court deems proper. The agency may modify its findings and order by reason of the additional evidence and shall, within a time to be fixed by the court, file with the reviewing court, to become a part of the record, the additional evidence, together with any modifications or new findings or orders, or its certificate that it elects to stand on its original findings and order, as the case may be.

(6) At any time subsequent to the filing of the petition for review and prior to the date set for hearing the agency may withdraw its order for purposes of reconsideration. If an agency withdraws an order for purposes of reconsideration, it shall, within such time as the court may allow, affirm, modify or reverse its order. If the petitioner is dissatisfied with the agency action after withdrawal for purposes of

reconsideration, the petitioner may refile the petition for review and the review shall proceed upon the revised order. An amended petition for review shall not be required if the agency, on reconsideration, affirms the order or modifies the order with only minor changes. If an agency withdraws an order for purposes of reconsideration and modifies or reverses the order in favor of the petitioner, the court shall allow the petitioner costs, but not attorney fees, to be paid from funds available to the agency.

(7) Review of a contested case shall be confined to the record, the court shall not substitute its judgment for that of the agency as to any issue of fact or agency discretion. In the case of disputed allegations of irregularities in procedure before the agency not shown in the record which, if proved, would warrant reversal or remand, the Court of Appeals may refer the allegations to a Master appointed by the court to take evidence and make findings of fact upon them. The court shall remand the order for further agency action if it finds that either the fairness of the proceedings or the correctness of the action may have been impaired by a material error in procedure or a failure to follow prescribed procedure.

(8)(a) The court may affirm, reverse or remand the order. If the court finds that the agency has erroneously interpreted a provision of law and that a correct interpretation compels a particular action, it shall:

(A) Set aside or modify the order; or

(B) Remand the case to the agency for further action under a correct interpretation of the provision of law.

(b) The court shall remand the order to the agency if it finds the agency's exercise of discretion to be:

(A) Outside the range of discretion delegated to the agency by law;

(B) Inconsistent with an agency rule, an officially stated agency position, or a prior agency practice, if the inconsistency is not explained by the agency; or

(C) Otherwise in violation of a constitutional or statutory provision.

(c) The court shall set aside or remand the order if it finds that the order is not supported by substantial evidence in the record. Substantial evidence exists to support a finding of fact when the record, viewed as a whole, would permit a reasonable person to make that finding.

SECTION 45. ORS 198.220 is amended to read:

198.220. The governing body of a district shall require bond or an irrevocable letter of credit of any member of the governing body or any officer or employee of the district who is charged with possession and control of district funds and properties. **The letter of credit shall be issued by a commercial bank as defined in ORS 706.005.** The amount of the bond or letter of credit shall be fixed by the governing body of the district. The premium

for the bond or the fee for the letter of credit shall be paid from district funds.

SECTION 46. ORS 204.020 is amended to read:

204.020. (1) The term of office of each officer mentioned in ORS 204.005 shall commence on the first Monday of January next following election to office.

(2) Before entering upon any office listed in ORS 204.005, the person elected must qualify by filing with the county clerk of the county in which the person is elected the person's certificate of election, with an oath of office indorsed thereon, and subscribed by the elected person, to the effect that the person will support the Constitution of the United States and of this state, and faithfully carry out the office being assumed. The person shall also give and file the undertaking provided for under subsection (3) of this section.

(3) A county governing body may require, by ordinance, for the filing by each officer under ORS 204.005, **prior to that officer assuming office**, of an official undertaking [*in a reasonable amount with the county governing body,*] with such surety as the governing body determines necessary, *prior to that officer assuming office* or of an irrevocable letter of credit issued by a commercial bank as defined in ORS 706.005, in either case in a reasonable amount with the county governing body.

SECTION 47. ORS 210.120 is amended to read:

210.120. The person appointed to the office of county accountant shall qualify within 30 days from the time of the appointment by taking and filing with the clerk of the county an oath to faithfully perform the duties of office, and by executing an official bond, with sureties to be approved by the board of county commissioners, or an irrevocable letter of credit, in either case in the sum of \$20,000. The bond or letter of credit shall contain a condition that the principal will faithfully perform the official duties then or which may thereafter be imposed upon or be required of the principal by law, and that at the expiration of the term of office the principal will surrender to any successor all property, books, papers and documents that may come into the possession of the principal. *[The]* Any bond shall be executed by a lawfully authorized surety company, or by two sureties who shall each justify in the amount required by the bond; **and any letter of credit shall be issued by a commercial bank as defined in ORS 706.005.** When there are more than two sureties, or more than two letter of credit issuers, they shall justify in an amount which the aggregate shall equal double the amount of the bond or letter of credit. Every surety upon such official bond other than lawfully authorized surety companies must make an affidavit, which shall be indorsed upon the bond, that the surety is a resident and freeholder in the county in which the bond is filed, and worth in property situated in the county, exclusive of encumbrances thereon, double the amount of the undertaking over and above all

sums for which the surety is already liable or in any manner bound, whether as principal, indorser or surety, and whether such prior obligation or liability is conditional or absolute, liquidated or unliquidated, due or to become due. All persons offered as sureties on official bonds may be examined on oath as to their qualifications by the officers whose duty it is to approve the bond.

SECTION 48. ORS 210.130 is amended to read:

210.130. Whenever, in the opinion of the board of county commissioners, the county accountant's letter of credit, bond or any surety thereon becomes insufficient, they shall require an additional bond or letter of credit. An additional bond or letter of credit shall also be required when a surety to a bond dies or ceases to be a resident of the county. The county accountant or any of the deputies of the accountant, who are required by law to give bonds or letters of credit, may present as surety any lawfully authorized surety company, to be approved by the county commissioners, and the commissioners may pay the premium thereon.

SECTION 49. ORS 210.150 is amended to read:

210.150. A county accountant may require the deputies, clerks, assistants and employees of the accountant to give bonds of indemnity, with sufficient sureties, or to give an irrevocable letter of credit issued by a commercial bank as defined in ORS 706.005, for the faithful performance of their duties.

SECTION 50. ORS 258.046 is amended to read:

258.046. (1) Before any proceeding on a petition of contest, the contestant shall furnish a bond or an irrevocable letter of credit, conditioned upon the payment of all costs, disbursements and attorney fees that may be awarded against the contestant. [The] Any bond shall have not less than two sureties, who shall justify in the manner required of sureties on bail bonds. Any letter of credit shall be issued by a commercial bank as defined in ORS 706.005. The circuit court shall determine the amount of and approve the bond or letter of credit. The amount of the bond or letter of credit shall not exceed \$2,000. If judgment is rendered against the contestant, it also shall be rendered against the sureties on the bond or the letter of credit issuer.

(2) The prevailing party in the contest proceeding shall recover costs, disbursements and reasonable attorney fees at trial and on appeal against the losing party. However, if the cause of the contest is a mistake in the canvass of votes and the contestant prevails, the cost of any recanvass of votes shall be paid by:

(a) The county for a contest of a state or county nomination, office or measure;

(b) The city for a contest of a city nomination, office or measure; or

(c) Any other political subdivision or public corporation for a contest of such a subdivision or corporation nomination, office or measure.

SECTION 51. ORS 262.065 is amended to read: 262.065. (1) Except as permitted in ORS 262.085, the treasurer shall be custodian of all funds of the joint operating agency and shall pay them out only by order of the board, except as provided in subsection (2) of this section.

(2) The board may delegate to the treasurer standing authority to make payments of routine expenses as defined by the board.

(3) Before the treasurer enters upon the treasurer's duties, the treasurer shall give bond or an irrevocable letter of credit to the joint operating agency in an amount which the board finds by resolution will protect the agency against loss, conditioned for the faithful discharge of duties and further conditioned that all funds which the treasurer receives as treasurer will be faithfully kept and accounted for. Any letter of credit shall be issued by a commercial bank as defined in ORS 706.005. The amount of the treasurer's bond may be increased or decreased from time to time as the board may by resolution direct. The surety on any such bond shall be a corporate surety authorized to do business in this state. The premiums on the bond or the fee for issuing the letter of credit of the treasurer shall be paid by the joint operating agency.

(4) All moneys of the joint operating agency shall be deposited by the treasurer in depositories designated by the board of directors, with such security as may be prescribed by the board. The treasurer shall establish a general fund and such special funds as may be created by the board, to which the treasurer shall credit all funds of the joint operating agency as the board by motion or resolution may direct.

(5) (a) The board shall adopt the uniform system of accounts prescribed from time to time by the Federal Power Commission and require that accounting for receipts and disbursements for the joint operating agency be accomplished in accordance with the uniform system of accounts.

(b) The board shall file with the Director of the Department of Energy an annual report in the form required by the Federal Power Commission.

(c) An annual audit shall be made in the manner provided in ORS 297.405 to 297.555. A copy of such audit shall be filed in the office of the Secretary of State and in the office of the Director of the Department of Energy.

(6) (a) The board of each joint operating agency may appoint a manager. The manager shall be appointed for such term and receive such salary as the board shall fix by resolution. Appointments and removals of the manager shall be by resolutions adopted by a majority vote.

(b) In case of absence or temporary disability of the manager, the board shall designate an acting manager.

(c) The manager shall be chief administrative officer of the joint operating agency, shall have control of the administrative functions of the joint operating agency and shall be responsible to the

board for efficient administration of all affairs of the joint operating agency placed in the manager's charge. The manager may attend meetings of the board and its committees and take part in discussion of any matters pertaining to the manager's duties, but shall have no vote. The manager shall:

(A) Carry out orders of the board and see that all laws of this state pertaining to matters within the functions of the joint operating agency are duly enforced;

(B) Keep the board advised as to the financial condition and needs of the joint operating agency;

(C) Prepare an annual estimate for the ensuing fiscal year of the probable expenses of the joint operating agency, and recommend to the board what development work should be undertaken, and any extensions and additions which should be made during the ensuing fiscal year, with an estimate of the costs of such development work, extensions and additions;

(D) Certify to the board all bills, allowances and payrolls, including claims due contractors of public works;

(E) Recommend to the board appropriate salaries of the employees of the office, and scale of salaries or wages to be paid for different classes of service required by the joint operating agency;

(F) Hire and discharge clerks, laborers and other employees under the manager's direction; and

(G) Perform such other duties as may be imposed by the board.

SECTION 52. ORS 275.314 is amended to read:

275.314. Each application presented to the county court under ORS 275.312 must be accompanied by evidence satisfactory to the county court showing that the applicant is the owner of the surface rights to the lands described in the application, and also by a cash deposit or an irrevocable letter of credit issued by a commercial bank as defined in ORS 706.005 in an amount sufficient to reimburse the county for all costs of such transfer, including but not limited to the costs of investigation and legal work, which shall be paid by the applicant. The county court then shall cause an investigation to be made by qualified geologists or mining engineers in regard to the probable value of such mineral rights. If the county court finds that such rights are of little or doubtful value and that it would be in the best interests of the county to transfer such rights to the owner of the surface rights, the county court may make and enter an order declaring its intention to make such transfer and setting a time and place for hearing objections thereto. The time for the hearing shall be set not earlier than six weeks after the date of the order.

SECTION 53. ORS 305.140 is amended to read:

305.140. (1) Any person having an interest in or lien upon any real property may request the Department of Revenue in writing to release such real property from a cloud on the title of or lien on such

property existing, created or continued under any one or more of the following:

(a) A warrant provided for in ORS 314.430, 321.570 or 323.610; or

(b) The provisions of ORS 311.673, 311.679, 311.689, 311.711 or 311.771.

(2) If, upon a request under subsection (1) of this section, the department finds that a sale of such real property would not result in satisfaction in whole or in part of the taxes due, it shall execute a release of such cloud or lien upon such property, and such release shall be conclusive evidence of the removal and extinguishment of such cloud or lien in respect of such real property.

(3) In addition to the release of cloud or lien provided for in subsection (1) of this section, the department may execute releases on part or all of any real property in the following cases, which releases shall be conclusive evidence of the removal and extinguishment of such cloud or lien:

(a) If the department finds that liability for the amount assessed, together with all interest thereon and penalties and costs in respect thereof, has been satisfied;

(b) If the department finds that the fair market value of that part of the property remaining subject to the cloud or lien is at least double the amount of the liability remaining unsatisfied in respect of such tax and the amount of all prior liens upon the property;

(c) If there is supplied to the department either an irrevocable letter of credit issued by a commercial bank as defined in ORS 706.005 or a bond, in such form and with such surety as the department considers sufficient, conditioned upon the payment of the amount of the warrant, together with all interest in respect thereof, within 60 days after the issuance of the release; or

(d) If there is paid to the department in partial satisfaction of the amount of the warrant provided for in ORS 314.430, 321.570 or 323.610 or the amount of any lien under ORS 311.673, 311.679, 311.689, 311.711 or 311.771, an amount not less than the value, as determined by the department, of the lien of the State of Oregon upon the part of the property so to be released. In determining such value the department shall give consideration to the fair market value of the part of the property so to be released and to such liens thereon as have priority to the lien of the State of Oregon.

SECTION 54. ORS 323.120 is amended to read:

323.120. In lieu of a bond or bonds a distributor, under such conditions as the department may prescribe, may deposit with the State Treasurer an amount of lawful money equivalent to the amount of the bond or bonds otherwise required, or the distributor may deposit an irrevocable letter of credit issued by a commercial bank as defined in ORS 706.005, or readily saleable bonds or other obligations of the United States, the State of Oregon, or any county of this state of an actual market value of not less than the amount of the bond or bonds

otherwise required by ORS 323.005 to 323.455 and 323.990. The State Treasurer shall immediately notify the department as to the time of receipt and the amount of money or value of the irrevocable letter of credit or of bonds received by the State Treasurer.

SECTION 55. ORS 324.200 is amended to read:

324.200. (1) Any person having a lien upon or any interest in real estate against which the amount of the warrant provided for in ORS 324.190 has become a lien, notice of which has been recorded in accordance with the laws of the state prior to the filing of the warrant, may request the department in writing to release the real estate from the lien of the warrant. If, upon such request the department finds that a sale of the property would not result in satisfaction of the taxes due in whole or in part, the department shall execute a release of the lien as to such property and such release shall be conclusive evidence of the extinguishment of the lien as to that property. If the department fails to act upon a request for release of a lien under this subsection within 60 days from the date of the request, any person having a lien upon or interest in the property against which the warrant has become a lien may make the department a party to any proceeding brought to enforce any interest in or lien upon such real property, and the determination of the court in such proceeding shall be conclusive and binding upon the department and the State of Oregon.

(2) In addition to the release of the lien provided for in subsection (1) of this section, the department may execute releases in the following cases, which releases shall be conclusive evidence of the extinguishment of the lien:

(a) If the department finds that the liability for the amount of the warrant, together with all interest, penalties and costs in respect thereto has been satisfied.

(b) If the department finds that the fair market value of that part of the property remaining subject to the lien is at least double the amount of the liability remaining unsatisfied in respect of such tax and the amount of all prior liens upon the property.

(c) If there is furnished to the department a bond, in such form and with the security the department considers sufficient, or an irrevocable letter of credit issued by a commercial bank as defined in ORS 706.005, in either case conditioned upon the payment of the amount of the warrant, together with all interest in respect thereof, within 60 days after the issuance of the release.

(d) If there is paid to the department in partial satisfaction of the amount of the warrant an amount not less than the value, as determined by the department, of the interest of the State of Oregon in the part of the property to be so discharged. In determining such value the department shall give consideration to the fair market value of the part of the property to be so discharged and to such liens thereon as have priority to the lien of the State of Oregon.

SECTION 56. ORS 334.225 is amended to read:

334.225. (1) The education service district board shall employ a superintendent who must hold an administrative certificate as a superintendent. The superintendent shall serve as the board's executive officer, give an official bond or an irrevocable letter of credit issued by a commercial bank as defined in ORS 706.005, and have the duties prescribed by the board and the laws of this state. The board shall fix the term and compensation of the superintendent, provide office room for the superintendent and allow all of the superintendent's necessary traveling expenses.

(2) The education service district board shall designate the superintendent as the district clerk. The board may appoint qualified persons as deputies to the superintendent to perform the duties required of the district clerk by law or by the board.

SECTION 57. ORS 337.090 is amended to read:

337.090. (1) On receiving the report of the State Textbook Commission, and after taking the action required by ORS 337.055, the State Board of Education, as soon as practicable, shall enter into a written contract with each publisher the textbook of which has been selected by the commission when that selection has been ratified by the state board. The contract shall require the publisher to maintain at least one depository to be designated by the State Board of Education, where such textbooks may be purchased and to furnish such textbooks according to law and the conditions named in the proposal.

(2) The State Board of Education shall take from each publisher entering into a contract a good and sufficient bond, or an irrevocable letter of credit issued by a commercial bank as defined in ORS 706.005, in such sum as stipulated damages as the board may determine, payable to the State of Oregon for the benefit of the Common School Fund, executed by the publisher as obligor together with a surety company authorized to do business in this state as surety and approved by the State Board of Education, for the full and faithful performance of the contract.

(3) If any publisher fails to carry out the provisions of the contract on the part of the publisher, or, with intent to evade the provisions of the contract, sells any of the textbooks in this state at prices higher than specified in the contract of the publisher, the State Board of Education may, on behalf of the state, rescind the contract and notify the publisher thereof, or bring the appropriate action or suit to enforce the provisions of the publisher's bond or letter of credit.

SECTION 58. ORS 366.470 is amended to read:

366.470. (1) The department may enter into agreements with a railroad company for the removal of snow from highway and railroad whenever a state highway is in close proximity to a railroad track and by reason thereof and in order to remove from the highway snow and ice which has blocked or threat-

ens to block the highway to traffic it becomes necessary to cast such snow and ice upon the railroad tracks, thereby impairing or interfering with train movement and tending to block train operations. The agreement may be made during or in anticipation of any such contingency, shall be in writing and shall fix the terms and conditions under which and the extent to and manner in which the state may, in removing the snow and ice from the highway, cast it upon the railroad tracks.

(2) The department may procure or cause to be executed by a corporation authorized to do such business in the state, a liability policy of insurance, **an irrevocable letter of credit issued by a commercial bank as defined in ORS 706.005**, or an undertaking running in favor of the state, the department, the railroad company and their officers and such employees of such parties as the contracting parties may designate.

(3) The insurance, letter of credit or undertaking:

(a) Shall be acceptable to the contracting parties.

(b) Shall in any event indemnify, protect and hold harmless the railroad company, its officers and employees designated, the state, the department, its officers and employees designated, from all claims for damage occasioned by or in connection with the removal of snow from the highway and the casting of the snow upon the railroad tracks.

(c) May, if so provided, reimburse either or both of the contracting parties for loss, cost and expense incurred in connection with or resulting from such work.

(4) The department may pay out of the highway fund the premium for the insurance or for the fee for the letter of credit and the cost and expense incurred or sustained by the railroad company and the state incident to the snow removal.

SECTION 59. ORS 374.310 is amended to read:

374.310. (1) The Department of Transportation with respect to state highways and the county court or board of county commissioners with respect to county roads shall adopt reasonable rules and regulations and may issue permits, not inconsistent with law, for the use of the rights of way of such highways and roads for the purposes described in ORS 374.305. However, the department shall issue no permit for the construction of any approach road at a location where no rights of access exist between the highway and abutting real property.

(2) Such rules and regulations and such permits shall include such provisions, terms and conditions as in the judgment of the granting authority may be in the best interest of the public for the protection of the highway or road and the traveling public and may include, but need not be limited to:

(a) Provisions for construction of culverts under approaches, requirements as to depth of fills over culverts and requirements for drainage facilities, curbs, islands and other facilities for traffic channelization as may be deemed necessary.

(b) With respect to private road crossings, additional provisions for the angle of intersection, crossing at grade or other than grade, sight distances, safety measures including flagmen, crossing signs and signals, reinforcement for protection of the highway, maintenance of the crossing and for payment by the applicant of the costs of any of the foregoing.

(c) With respect to private road crossings, the granting authority may also require the applicant to furnish public liability and property damage insurance in a sum fixed by the granting authority, which insurance shall also indemnify the members, officers, employees and agents of such authority from any claim that might arise on account of the granting of the permit and the crossing of the highway or road by vehicles operating under the permit; and the granting authority may also require the applicant to furnish indemnity insurance, [or] an indemnity bond or **an irrevocable letter of credit issued by a commercial bank as defined in ORS 706.005** in a sum fixed by the granting authority, indemnifying such authority for any damage to the highways or roads that may be caused by the use of the crossing.

(3) The powers granted by this section and ORS 374.315 shall not be exercised so as to deny any property adjoining the road or highway reasonable access.

SECTION 60. ORS 381.270 is amended to read:

381.270. Competitive bids shall be invited for the construction of any bridge mentioned in ORS 381.260 in conformity with the plans, specifications and design. The call for bids shall require that each bidder accompany the bid with a certified check or a bidder's bond or **an irrevocable letter of credit issued by a commercial bank as defined in ORS 706.005** in the amount of not less than five percent of the amount of the bid. The contract, if awarded, shall be awarded to the bidder adjudged to be the lowest and best, responsible bidder. Any and all bids may be rejected and refused if it appears to be the best interest of the general public.

SECTION 61. ORS 384.140 is amended to read:

384.140. Persons licensed by the Department of Transportation to maintain and operate a ferry under ORS 384.105 to 384.150 shall be required to furnish a bond or **an irrevocable letter of credit issued by a commercial bank as defined in ORS 706.005** in such amount as the department requires. The bond or letter of credit shall be conditioned upon the faithful compliance with and performance of all the conditions, requirements and provisions contained in the license, and shall be in such form as the department may prescribe. The bond or letter of credit shall be made payable to the state.

SECTION 62. ORS 447.118 is amended to read:

447.118. (1) Nothing in ORS 447.010 to 447.160 shall prohibit the installation of a compost toilet for a dwelling by the occupant of the dwelling if the

compost toilet complies with the minimum requirements established under this section.

(2) Rules adopted under ORS 447.020 shall provide minimum requirements for the design, construction, installation and maintenance of compost toilets.

(3) The Building Codes Agency with approval of the State Plumbing Board may require by rule that, in addition to any other requirements provided by law, any manufacturer or distributor of a compost toilet and any person other than the owner of the dwelling in which the compost toilet is to be installed who proposes to install a compost toilet file with the agency a satisfactory bond, irrevocable letter of credit issued by a commercial bank as defined in ORS 706.005 or other security in an amount to be fixed by the agency with approval of the board but not to exceed \$5,000, conditioned that such bond, letter of credit or security shall be forfeited in whole or in part to the agency for the purpose of carrying out the provisions of ORS 447.124 by failure of such manufacturer, distributor or person to comply with the rules adopted under this section.

SECTION 63. ORS 452.550 is amended to read:

452.550. The department shall detect, control and destroy ragweed in the ragweed control area and as otherwise provided for in ORS 452.510 to 452.590, and may:

(1) Use herbicides or any other process, procedure or operation.

(2) Purchase and use equipment and materials.

(3) Employ additional necessary personnel.

(4) Enter into a written contract with any person whereby the person will detect, control or destroy ragweed. The department is authorized to pay for services, materials or labor as provided in the contract.

(5) Enter into a written contract with any public body including but not limited to federal or state agencies, county courts, board of county commissioners or municipalities, whereby they will detect, control and destroy ragweed on property other than that owned by them. The department is authorized to pay for services, materials and labor as provided for in such contract. If the contractor or other party is a public body then its officers and employees, subject to approval by the department, shall have the same authority, concurrent with but not superseding the authority of the department, in carrying out the terms of the contract and where the terms are not inconsistent with the provisions of ORS 452.510 to 452.590.

(6) Require a contractor or person to furnish a bond, irrevocable letter of credit issued by a commercial bank as defined in ORS 706.005 or liability policy for the protection of persons or property that could be subjected to damages as a result of the operations or work performed under the contract. Nothing in ORS 452.510 to 452.590 shall be construed as a waiver by the State of Oregon of any immunity against suit.

SECTION 64. ORS 453.065 is amended to read:

453.065. (1) Whenever the Assistant Director for Health or a designated representative finds or has probable cause to believe that any hazardous household substance is misbranded, or is a banned hazardous substance, the assistant director or designated representative shall affix to such article a tag or other appropriate marking, giving notice that such article is or is suspected of being misbranded or is a banned hazardous substance, and has been detained or embargoed, and warning all persons not to remove or dispose of such article by sale or otherwise until permission for removal or disposal is given by such agent or the court.

(2) When an article detained or embargoed under subsection (1) of this section has been found to be misbranded or a banned hazardous substance, the Assistant Director for Health shall petition the circuit court of the county within which the article is detained or embargoed for a label of condemnation of such article. However, if the Assistant Director for Health or a designated representative finds that an article so detained or embargoed is not misbranded or a banned hazardous substance, the assistant director or designated representative shall remove the tag or other marking.

(3) If the court finds that a detained or embargoed article is misbranded or a banned hazardous substance, after entry of the decree, the article shall be destroyed at the expense of the owner or claimant thereof, under supervision of the Assistant Director for Health or a designated representative, and all court costs and fees, and storage and other proper expenses, shall be taxed against the owner or claimant of such article or the owner or claimant agent. However, when the misbranding can be corrected by proper labeling of the article, after entry of the decree and after such costs, fees, and expenses have been paid and a good and sufficient bond or irrevocable letter of credit issued by a commercial bank as defined in ORS 706.005, conditioned that such article shall be so labeled, has been executed, the court may order that such article be delivered to the owner or claimant thereof for such labeling under the supervision of an agent of the Assistant Director for Health. The expense of such supervision shall be paid by claimant. The article shall be returned to the claimant on the representation to the court by the Assistant Director for Health that the article is no longer in violation of ORS 453.005 to 453.135 and 453.990 (2), and that the expenses of such supervision have been paid.

SECTION 65. ORS 459.235 is amended to read:

459.235. (1) Applications for permits shall be on forms prescribed by the department. An application shall contain a description of the existing and proposed operation and the existing and proposed facilities at the site, with detailed plans and specifications for any facilities to be constructed. The application shall include a recommendation by the local government unit or units having jurisdic-

tion and such other information the department deems necessary in order to determine whether the site and solid waste disposal facilities located thereon and the operation will comply with applicable requirements.

(2) Subject to the review of the Executive Department and the prior approval of the appropriate legislative review agency, the commission may establish a schedule of fees for disposal site permits. The permit fees contained in the schedule shall be based on the anticipated cost of filing and investigating the application, of issuing or denying the requested permit and of an inspection program to determine compliance or noncompliance with the permit. The permit fee shall accompany the application for the permit.

(3) If the application is for a regional disposal facility, the applicant shall file with the department a surety bond or an irrevocable letter of credit issued by a commercial bank as defined in ORS 706.005, in either case, in the form and amount established by rule by the commission. The bond, letter of credit or financial assurance shall be executed in favor of the State of Oregon and shall be in an amount as determined by the department to be reasonably necessary to protect the environment, and the health, safety and welfare of the people of the state. The commission may allow the applicant to substitute other financial assurance for the bond or letter of credit, in the form and amount the commission considers satisfactory.

SECTION 66. ORS 461.330 is amended to read:

461.330. (1) No lottery tickets or shares shall be sold by a lottery game retailer unless the lottery game retailer has on display on the premises a certificate of authority signed by the director to sell lottery tickets or shares.

(2) The director may require a bond or an irrevocable letter of credit issued by a commercial bank as defined in ORS 706.005 from any lottery game retailer in an amount specified in the state lottery rules adopted by the commission or may purchase a blanket bond or a blanket letter of credit issued by a commercial bank as defined in ORS 706.005 covering the activities of all or a selected group of lottery game retailers.

(3) No payment by lottery game retailers to the lottery for tickets or shares shall be in cash. All such payments shall be in the form of a check, bank draft, electronic fund transfer or other recorded financial instrument as determined by the director.

SECTION 67. ORS 462.065 is amended to read:

462.065. (1) The commission may require any horsemen's association, that receives payments pursuant to ORS 462.057 and 462.062, to submit a bond or an irrevocable letter of credit submitted by a commercial bank as defined in ORS 706.005 in an amount not to exceed the sum of the estimated payments to be received by the association. The bond or letter of credit shall be conditioned upon the proper distribution of such payments to owners of

Oregon bred horses. In addition to the [bond] requirement for a bond or letter of credit, the commission may prescribe such conditions on the receipt, handling and disbursement of the payments as the commission determines necessary to insure security of the funds.

(2) Notwithstanding any other provision of this chapter, any horsemen's association that receives payments pursuant to ORS 462.140, prior to issuing breeder awards or stallion awards, may assess the recipient a fee for the receipt, handling and payment of those funds. The fee shall not exceed the current annual dues of the association or five percent of the award, whichever amount is less.

SECTION 68. ORS 468.400 is amended to read:

468.400. (1) Any person licensed to issue certificates of compliance pursuant to ORS 468.390 shall file with the department a surety bond or an irrevocable letter of credit issued by a commercial bank as defined in ORS 706.005. The bond or letter of credit shall be executed to the State of Oregon in the sum of \$1,000. It shall be approved as to form by the Attorney General, and shall be conditioned that inspections and certifications will be made only by persons who meet the qualifications fixed by the commission and will be made without fraud or fraudulent representations and without violating any of the provisions of ORS 468.360 to 468.405, 815.295, 815.300, 815.310, 815.320 and 815.325.

(2) In addition to any other remedy that a person may have, if any person suffers any loss or damage by reason of the fraud, fraudulent representations or violation of any of the provisions of ORS 468.360 to 468.405, 815.295, 815.300, 815.310, 815.320 and 815.325 by a person licensed pursuant to ORS 468.390, the injured person has the right of action against the business employing such licensed person and a right of action in the person's own name against the surety upon the bond or the letter of credit issuer.

(3) The license issued pursuant to ORS 468.390 of any person whose bond is canceled by legal notice shall be canceled immediately by the department. If the license is not renewed or is voluntarily or involuntarily canceled, the sureties of the bond or the letter of credit issuers shall be relieved from liability accruing subsequent to such cancellation by the department.

SECTION 69. ORS 471.645 is amended to read:

471.645. If a temporary injunction is granted, the court may issue further restraining orders as described in ORS 471.635; and forthwith may issue an order closing such place against its use for any purpose until the final decision, or the court may allow such place to be occupied or used during the pendency of the injunction proceedings by requiring the defendants to furnish an irrevocable letter of credit issued by a commercial bank as defined in ORS 706.005 or a bond with sufficient surety, to be approved by the court, in the penal sum of not less than \$2,500, payable to the state. The bond or

letter of credit shall be conditioned that alcoholic liquor will not be manufactured, possessed, sold, served, bartered, or given away, or furnished, or otherwise disposed of thereon or therein, or kept thereon or therein with the intent to sell, barter, serve, or give away, or otherwise dispose of alcoholic liquor contrary to law, and that the defendants will pay all fines, costs and damages assessed against them for any violation of such conditions. The State of Oregon in an action brought by the Attorney General, the commission or its administrators, or the district attorney, may take whatever steps necessary to recover the whole amount as a penalty for the use of the county wherein the premises are situated.

SECTION 70. ORS 471.650 is amended to read:

471.650. If a final decree against the defendants is granted, the court shall order that the place constituting the nuisance be closed for a period not exceeding two years, or closed for a part of said time, and until the owner, lessee, tenant or occupant thereof gives a bond or letter of credit identical to the bond or letter of credit required under ORS 471.645. If any condition of the bond or letter of credit is violated, the whole amount may be recovered as a penalty for the use of the county wherein the premises are situated. In any such suit process to nonresident defendants may be served by publication in a newspaper of general circulation in the county having jurisdiction of the injunction proceedings. Notice shall be published once each week for two consecutive weeks or for such time as the court, by order, may prescribe.

SECTION 71. ORS 479.840 is amended to read:

479.840. Upon receipt of the following fee, the agency shall issue or renew a license or permit applied for under ORS 479.510 to 479.860:

- (1) \$125 for an electrical contractor license for each place of business operated by the applicant.
- (2) \$125 for a limited energy contractor or limited sign contractor license.
- (3) \$25 for a pump specialty contractor or limited maintenance specialty contractor license.
- (4) \$150 for an elevator contractor license.
- (5) \$100 for a license for a:
 - (a) General journeyman electrician;
 - (b) General supervising electrician;
 - (c) Limited supervising industrial electrician;
 - (d) Limited supervising manufacturing plant electrician;
 - (e) Limited journeyman industrial electrician;
 - (f) Limited maintenance industrial electrician;
 - (g) Limited maintenance manufactured dwelling or recreational vehicle electrician;
 - (h) Limited journeyman manufacturing plant electrician; or
 - (i) Limited journeyman railroad electrician.
- (6) \$50 for a license for a:
 - (a) Limited journeyman elevator electrician;
 - (b) Limited journeyman elevator service electrician;

(c) Limited journeyman limited energy electrician;

(d) Limited journeyman sign electrician;

(e) Limited journeyman sign service electrician; and

(f) Limited journeyman stage electrician.

(7) The board shall set uniform permit fees, by rule, not to exceed the cost of administration.

(8) \$10 for the right to take the written qualification examination.

(9) The fees provided for in this section shall not apply to persons paying inspection fees under the terms of ORS 479.560 (3) or 479.630 (10).

(10) Each electrical contractor may furnish to the agency a corporate surety bond to be approved by the agency, an irrevocable letter of credit issued by a commercial bank as defined in ORS 706.005 or a cash bond under procedures approved by the agency, in the sum of \$2,000 guaranteeing the payment of all fees provided for under ORS 479.510 to 479.860. Before commencing any electrical job an electrical contractor who has a current bond or letter of credit under this subsection may apply to the agency for a working permit which shall cost an amount established by the agency by rule. The working permit shall authorize the electrical contractor to commence work. The total of all fees due for permits for each job, and the time such fees are payable, shall be determined by the agency by administrative rule under ORS 479.730. The contractor shall keep the bond or letter of credit in force at all times. Any cancellation or revocation of the bond or letter of credit shall revoke and suspend the license issued to the principal until such time as a new bond or letter of credit shall be filed and approved. The agency may bring an action against the surety named in the bond or the letter of credit issuer with or without joining in such action the principal named in the bond or letter of credit.

SECTION 72. ORS 480.150 is amended to read:

480.150. (1) The State Fire Marshal may adopt reasonable rules for granting permits for supervised public displays or sales of fireworks or items described in ORS 480.127 (4) by municipalities, fair associations, amusement parks, and other persons, organizations or groups of individuals. The governing body of any municipality, or of any county, may require liability insurance, of an irrevocable letter of credit issued by a commercial bank as defined in ORS 706.005 or other form of indemnity deemed adequate by the municipality, or the county, from any person, in a sum not less than \$500, conditioned for payment of all damages which may be caused either to a person or property by reason of the authorized display or sale and arising from any acts of any person or agents, employees or subcontractors of the person. At the time a permit is revoked, the State Fire Marshal or approving authority may include in the revocation order a provision prohibiting the holder of the revoked permit from applying for or obtaining another such permit, for a period not to exceed three years from the revocation date, if

the State Fire Marshal or approving authority finds that the circumstances of the permit holder's failure to comply with applicable sale or display statutes and regulations presented a significant fire hazard or other public safety danger.

(2) The State Fire Marshal or the approving authority of any governmental subdivision may revoke permits for display or sale of fireworks or items described in ORS 480.127 when in the opinion of the State Fire Marshal or the approving authority the sale or display of fireworks or items described in ORS 480.127 (4) is not in compliance with applicable statutes and regulations governing such sale or displays.

(3) Permit fees required by ORS 480.130 shall not be refunded in the event such permits are revoked.

SECTION 73. ORS 508.415 is amended to read:

508.415. (1) In case of license applications by canners or wholesalers, the director, in addition to license fees provided by law, may exact from the applicant a bond from a corporate surety, authorized to do business in this state, guaranteeing the payment of poundage fees, if the director considers such action is necessary to insure compliance with ORS 508.505 to 508.540.

(2) In lieu of any bond that may be required under subsection (1) of this section, any applicant may deposit with the commission, under such terms and conditions as the director may prescribe, a like amount of lawful money of the United States or an irrevocable letter of credit issued by a commercial bank as defined in ORS 706.005. The commission shall turn over to the State Treasurer for safekeeping all such deposits so received.

SECTION 74. ORS 516.130 is amended to read:

516.130. (1) The State Geologist shall take and subscribe to the same oath of office as other state officers. The State Geologist shall receive necessary traveling expenses when traveling on the business of the department. The State Geologist shall give a good and sufficient bond or irrevocable letter of credit for the faithful performance of the duties of the State Geologist, in the sum of \$10,000, premium of or fee for which is to be paid by the department. The irrevocable letter of credit shall be issued by a commercial bank as defined in ORS 706.005. Neither the State Geologist nor any member of the staff of the State Geologist shall acquire a pecuniary interest nor deal in any producing or prospective mineral property of any kind in this state, including oil and gas, nor act as agent or broker for any purchaser, owner, or an agent of a purchaser or owner, of any mineral property, nor accept a commission for any service rendered during the period of employment with the department, if such service is concerned with mining, geology or any mineral industry in this state; nor make any investigation or report of any individual property in this state for purposes of evaluation.

(2) The State Geologist may employ qualified assistants, specialists, laborers and office employees

when necessary in the execution of the plans of the State Geologist and the operations of the department, and fix their compensation, with the approval of the governing board. The employees shall be allowed their necessary traveling expenses incurred in the performance of their duties for the department. They shall be employed at the pleasure of the State Geologist, subject, however, to any applicable provisions of the State Personnel Relations Law.

(3) The State Geologist shall place before the governing board at each stated meeting, plans and budgets for future projects, with the scope and estimated costs thereof, together with a statement setting forth conditions, progress and estimated cost to that date, of all investigations previously authorized and being conducted. The State Geologist shall make every effort to complete promptly for publication all notes, charts and maps covering mineral and geological investigations of the department, so that public distribution of same may take place as closely as possible after the completion of field investigations.

(4) The State Geologist shall have charge of, organize and supervise the work of the department in field and office; the State Geologist shall have charge of the necessary field and office supplies and equipment; and the State Geologist shall perform such other duties as may be necessary to carry out the work of the department. The State Geologist shall maintain a current inventory of all physical properties of the department and make an annual report thereof to the board.

SECTION 75. ORS 523.120 is amended to read:

523.120. Any district may require a reasonable cash deposit or an irrevocable letter of credit to insure payment for the use or rent of geothermal heat to be furnished by the district.

SECTION 76. ORS 527.510 is amended to read:

527.510. (1) Any contract for the aerial spraying of forest lands with insecticides entered into under the provisions of ORS 527.400 shall not be executed until and unless the contractor files with the State Forester proof of financial responsibility which may consist of a deposit of money, irrevocable letter of credit, certified check, liability insurance or surety bond, corporate or otherwise, in the sum of \$10,000 to indemnify any landowner for damages to lands or crops of the landowner caused by the willful or negligent operation of aircraft of the contractor while engaged in such spraying. Any person whose lands or crops are so damaged shall have a right of action against such contractor and the underwriter of liability insurance or the surety upon such bond or security. The action shall be commenced within two years of the date on which the willful or negligent operation occurred, and if no action is filed within that time the contractor shall be relieved of liability and the policy of insurance canceled or the surety bond or security withdrawn.

(2) Before entering into any cooperative agreement with any agency of the United States under

which the agency undertakes the spraying of forest lands, the State Forester and the State Board of Forestry shall urgently request the federal agency to provide for similar protection from damages in any aerial spraying contracts entered into by it.

SECTION 77. ORS 532.530 is amended to read:

532.530. Any person desiring to act as a log patrol shall obtain a license from the State Forester. The applicant shall apply to the State Forester on a form to be prescribed by the State Forester. The application shall be verified and shall contain the name and address of the applicant, the name, type and size of floating equipment to be used, the mailing address of the applicant's principal place of business and such other information as the State Forester may require. The applicant shall execute and file with the State Forester a surety bond or an irrevocable letter of credit issued by a commercial bank as defined in ORS 706.005 to be approved by the State Forester running to the state in the penal sum of \$10,000. The bond or letter of credit shall be conditioned upon the applicant's complying with all the requirements of the laws of this state governing log patrols and accounting for all stray logs taken into possession. Each application shall be accompanied by a remittance of \$250 for each boat or other floating equipment to be used or operated by the licensee or agent. Licenses shall be issued for one year, and may be renewed upon payment of \$250 for each boat or other floating equipment to be used or operated by the licensee or agent. The State Forester shall issue a license to applicants complying with this section. The State Forester shall also issue with each original license or renewal two distinctive stickers or other suitable devices for each boat listed in the application.

SECTION 78. ORS 537.753 is amended to read:

537.753. (1) Any person who contracts or offers services to contract for the construction or alteration of water wells shall have in effect a surety bond or an irrevocable letter of credit issued by a commercial bank as defined in ORS 706.005, running to the State of Oregon in the sum of \$4,000. The bond or letter of credit shall be filed with the Water Resources Commission in accordance with the following conditions: In the construction or alteration of wells, the principal shall comply with all the provisions of ORS 537.505 to 537.795 that are applicable to such construction or alteration and to the rules and standards of well construction, alteration and well abandonment that have been prescribed by the Water Resources Commission.

(2) The Water Resources Commission or any person injured by failure of a water well constructor to comply with the provisions of the bond or letter of credit has a right of action on the bond or letter of credit in the name of the injured person. However, the aggregate liability of the surety or letter of credit issuer to all such persons shall in no event exceed the sum of the bond or letter of credit.

(3) In no event shall a proceeding against the bond or letter of credit under subsection (2) of this section be commenced unless the commission notifies the water well constructor of the alleged violation within three years after the date the water well report is filed with the commission.

(4) If a well is to be constructed or altered by a person on property owned by that person, by means of a well drilling machine, the person shall obtain a permit from the commission before beginning construction. Application for the permit shall be in the form prescribed by the commission and must be accompanied by a fee of \$25. At the time the permit is obtained the applicant also shall file with the commission, a bond or an irrevocable letter of credit issued by a commercial bank as defined in ORS 706.005 running to the State of Oregon in the sum of \$2,000, insuring that in the construction or alteration of the well the landowner shall comply with all the provisions of ORS 537.505 to 537.795 that are applicable to the construction or alteration of wells and to the rules and standards of well construction, alteration, and well abandonment that have been prescribed by the commission. Before the person who constructs or alters a well referred to in this subsection seals the well, the person must give 10 days' written notice of the construction or alteration to the commission. After expiration of the notice period, the well may be sealed even if the commission has not caused the well to be inspected.

SECTION 79. ORS 539.180 is amended to read:

539.180. At any time after the determination of the Water Resources Director has been entered of record, the operation thereof may be stayed in whole or in part by any party by filing a bond or an irrevocable letter of credit issued by a commercial bank as defined in ORS 706.005 in the circuit court wherein the determination is pending, in such amount as the judge may prescribe, conditioned that the party will pay all damages that may accrue by reason of the determination not being enforced. Immediately upon the filing and approval of the bond or letter of credit, the clerk of the circuit court shall transmit to the director a certified copy of the bond or letter of credit, which shall be recorded in the records by the director, and the director shall immediately give notice thereof to the watermaster of the proper district.

SECTION 80. ORS 543.560 is amended to read:

543.560. Before entering upon the work of construction or acquisition of any project, the licensee shall execute to the state a bond, with good and sufficient sureties or an irrevocable letter of credit issued by a commercial bank as defined in ORS 706.005, in either case, to be approved by the Water Resources Commission, to the effect that the licensee shall promptly make payment to all persons supplying labor, services, material, machinery or equipment for the prosecution of the work, and all amounts due the State Industrial Accident Fund from the licensee. Any person supplying the

licensee with any labor, services, material, machinery or equipment for prosecution of the work who has not been paid therefor within 60 days after the same has been supplied, or when payment is due according to any special agreement, may, within one year after any payment has become due, bring an action against the licensee, and the sureties upon the bond, or the letter of credit issuer for payment of the amount due to the person, and prosecute the same to final judgment and execution. The action shall be brought in the name of the state upon the relation of the person to whom payment is due. The state, at the request of the State Accident Insurance Fund Corporation may prosecute an action to judgment and execution against the licensee and the sureties upon the bond or letter of credit for all sums due the State Industrial Accident Fund.

SECTION 81. ORS 552.428 is amended to read:

552.428. After advertising for bids, the board shall let a contract for construction of the whole or any part of the project to the lowest responsible bidder; or the board may reject any or all bids and readvertise; or it may construct the project under its own superintendence. Good and sufficient bond, or an irrevocable letter of credit issued by a commercial bank as defined in ORS 706.005 running in favor of the district, shall be required of each contractor, conditioned that the contractor will well and truly comply with all the provisions of the contract and perform all work in accordance with the terms thereof.

SECTION 82. ORS 558.050 is amended to read:

558.050. (1) No license shall be issued to any person until the person has filed with the department proof of ability to respond in damages for liability on account of accidents arising out of the weather modification operations to be conducted by the person in the amount of \$100,000 because of bodily injury to or death of one person resulting from any one accident, and, subject to said limit for one person, in the amount of \$300,000 because of bodily injury to or death of two or more persons resulting from any one accident, and in the amount of \$300,000 because of injury to or destruction of property of others resulting from any one accident.

(2) Proof of financial responsibility may be given by filing with the department a certificate of insurance or a bond, an irrevocable letter of credit issued by a commercial bank as defined in ORS 706.005 or a certificate of deposit of money in the same manner and with the same effect as provided by ORS 806.080 to 806.120 and 806.270.

SECTION 83. ORS 565.070 is amended to read:

565.070. All persons authorized to receive or disburse money in connection with the administration of the center shall be required to give a good and sufficient bond or letter of credit issued by a commercial bank as defined in ORS 706.005 in such form and amount as the Executive Department may prescribe.

SECTION 84. ORS 565.210 is amended to read:
565.210. (1) Any county may hold county and industrial fairs; but only one county fair shall be held in each county.

(2) In counties holding county fairs, the county court or board of county commissioners of such county shall appoint a board consisting of not less than three nor more than five residents of the county, to be known as the county fair board. When the first members of the board are appointed under this section, one member shall be appointed for a term to expire the January next following appointment, one for a term to expire one year from the January next following appointment, and one for a term to expire two years from the January next following appointment. In addition to the three members, the county court or board of county commissioners may, at any time, appoint not more than two additional members, the fourth member to be appointed for a term to expire one year from the January next following appointment and the fifth member, if any, for a term to expire two years from the January next following appointment. Annually thereafter, at the first meeting in January, upon the expiration of the term of a member, a successor shall be appointed to serve for three years.

(3) The court shall require each member of the board to furnish a good and sufficient bond or an irrevocable letter of credit issued by a commercial bank as defined in ORS 706.005 in favor of the county, conditioned upon the faithful performance of the duties of the office. The bond or letter of credit for each member shall be in a sum equal to \$10,000 or 20 percent of the total revenues received by the fair in the last fiscal year ending prior to the appointment of such member, whichever is the lesser amount. The bond or letter of credit when approved by the county court shall be filed with the county clerk. The premium on the bond or the fee for the letter of credit shall be paid for by the county fair board as an expense of the board.

(4) In all counties over 400,000 population according to the last decennial census the county commissioners thereof may be ex officio members of the fair board and may act as such in lieu of appointing a board as otherwise provided in this section.

(5) In counties under 400,000 population according to the last decennial census, no more than one member of the county court or board of county commissioners may serve as a member of the county fair board.

SECTION 85. ORS 565.220 is amended to read:

565.220. (1) The members of a county fair board shall, as soon as their bonds have been filed and approved, meet and organize by electing a president and selecting a secretary.

(2) A majority of the members of the board shall constitute a quorum for the transaction of all business at meetings. In the absence of the president

another member of the board shall perform the duties of the president.

(3) The secretary provided for in subsection (1) of this section is not required to be a member of the board. The secretary shall execute a bond or furnish an irrevocable letter of credit, as required of board members by ORS 565.210.

SECTION 86. ORS 576.385 is amended to read:

576.385. Any person authorized by the commission to receive or disburse moneys as provided in ORS 576.375 shall file with the commission a fidelity bond executed by a surety company authorized to do business in this state, or an irrevocable letter of credit issued by a commercial bank as defined in ORS 706.005, in either case in favor of the commission and the State of Oregon, in such amount equal to the maximum amount of moneys the commission determines such person will have subject to control at any one time and upon such conditions as the commission shall prescribe. The cost of the bond or letter of credit shall be paid by the commission.

SECTION 87. ORS 578.110 is amended to read:

578.110. The administrator and any other person authorized to receive or disburse moneys received by the commission shall file with the commission a fidelity bond executed by a surety company authorized to do business in this state, or an irrevocable letter of credit issued by a commercial bank defined in ORS 706.005, in either case in favor of the commission and the State of Oregon, in such amount equal to the maximum amount of moneys the commission determines such person will have subject to the control of the person at any one time and upon such conditions as the commission shall prescribe. The cost of the bond or letter of credit shall be paid by the commission.

SECTION 88. ORS 579.130 is amended to read:

579.130. The administrator and any person authorized to receive or disburse moneys received by the commission shall file with the commission a fidelity bond executed by a surety company authorized to do business in this state, or an irrevocable letter of credit issued by a commercial bank as defined in ORS 706.005, in either case in favor of the commission and the State of Oregon, in such amount equal to the maximum amount of moneys the commission determines such person will have subject to the control of the person at any one time and upon such conditions as the commission shall prescribe. The cost of the bond or letter of credit shall be paid by the commission.

SECTION 89. ORS 585.045 is amended to read:

585.045. (1) Before any original license or renewal license to operate as a wholesale produce dealer is furnished, the applicant shall make and deliver to the department a surety bond of a company authorized to do business in this state, or an irrevocable letter of credit issued by a commer-

cial bank as defined in ORS 706.005, in the amount of \$15,000. The department shall prescribe the form for and approve the bond, which shall be payable to this state for the benefit of growers and conditioned upon the faithful performance of all obligations to growers by the wholesale produce dealer.

(2) The surety company may cancel the bond or the letter of credit issuer may cancel the letter of credit by sending a written notice by registered or certified mail to the department and to the wholesale produce dealer. The effective date of the cancellation is 60 days after the notice is received by the department.

(3) The department shall suspend the license of any wholesale produce dealer as of the effective date of the cancellation of the bond or letter of credit of the dealer. The department shall withdraw such suspension of license upon its receiving a bond or letter of credit as authorized by subsection (1) of this section.

(4) A cash buyer is not required to furnish a bond or letter of credit to the department.

(5) Notwithstanding subsection (1) of this section, a person is required to make and deliver only one bond or letter of credit for any business operated under one entity or one ownership, regardless of the number of separate locations or places of business in this state.

SECTION 90. ORS 585.047 is amended to read:

585.047. (1) Upon default of a wholesale produce dealer under any condition of the bond or letter of credit required by ORS 585.045, the department shall:

(a) Give reasonable notice to growers to file claims with the department.

(b) Fix a reasonable time within which such filing shall be done.

(c) Investigate each claim filed and reasonably verify the circumstances under which the claims accrued and the good faith of the claimants.

(2) With the approval of the claimants who filed claims, the department may settle such claims with the surety or letter of credit issuer, without filing legal action. Such settlement, unless appealed to the circuit court within 30 days as provided by law, is final between the surety or letter of credit issuer and all claimants covered by the bond or letter of credit.

(3) If any claimant does not agree with the findings of the department, the department shall file a declaratory judgment action without right to jury trial in the circuit court in the name of the State of Oregon for the benefit of the claimants as authorized by ORS chapter 28. Unless appealed as prescribed by law, the order of the court shall be final between the surety or letter of credit issuer and all claimants covered by the bond or letter of credit.

SECTION 91. ORS 599.610 is amended to read:

599.610. (1) Notwithstanding other laws to the contrary, any person desiring to conduct a temporary horse sale to which the public may consign horses for sale by auction open to public bidding and where such sale shall not exceed one calendar day may make application to the department for a temporary horse sale license.

(2) A temporary horse sale license shall be issued when the department finds:

(a) That an application as approved by the department has been received.

(b) That the applicant has filed with the department a bond as required by ORS 599.245, an irrevocable letter of credit issued by a commercial bank as defined in ORS 706.005 or a cash deposit with the department in lieu thereof, except that such bond, letter of credit or deposit may be limited to the period of operation of the temporary horse sale as approved by the department, and except that the bond, letter of credit or deposit shall be at least \$25,000.

(c) That a license fee of \$25 has been paid.

(d) That the requirements of ORS 599.610 to 599.640 and the rules promulgated thereunder are complied with.

(3) A separate application, license fee and adequate bond, letter of credit or deposit as required by subsection (2) of this section, is necessary for each day upon which horses are sold.

(4) A license shall not be required for the sale of horses by nonprofit breed or livestock associations or clubs, Future Farmer and 4-H groups, auction sales conducted in conjunction with county, state or private fairs or auction sales conducted by or for a person at which horses of such person's ownership are sold on premises of the person or by a person licensed pursuant to the provisions of ORS 599.235 and 599.401.

SECTION 92. ORS 603.025 is amended to read:

603.025. (1) No person shall engage in any activity described or identified in subsection (4) of this section without first obtaining and maintaining a license therefor from the department, nor shall such person sell, offer for sale or expose for sale meat products without such license. All such licenses shall expire on June 30 next succeeding their date of issuance. Renewal applications must be post-marked prior to June 30 to be a timely application.

(2) Application for a license required by this section shall be made to the department, on forms prescribed by the department, which shall contain such information as the department deems necessary. The license is personal and nontransferable, with a separate license required for each establishment location. A new license is required at any time there is a change in ownership, legal entity or establishment location.

(3) In addition to other license requirements of this section, an applicant for a license, whose average weekly dollar value of meat animal purchases exceeds \$10,000, for which the fee is prescribed by paragraph (c) of subsection (4) of this section shall

submit with the application a surety bond with one or more corporate sureties authorized to do business in this state, or an irrevocable letter of credit issued by a commercial bank as defined in ORS 706.005, in either case in an amount equal to twice the average daily value of meat animal purchases during the preceding calendar year, or the amount of \$20,000, whichever amount is greater. The department shall prescribe the form for and approve the bond or letter of credit, which shall be conditioned upon faithful performance by the licensee of all obligations to the producers of meat animals arising from the sale of meat animals by producers to the licensee.

(4) Each of the following activities shall be licensed, and the fee established by the department paid with the application therefor:

(a) Operation of a meat seller establishment, which shall only allow the meat products preparation described in ORS 603.010 (8).

(b) Operation of a nonslaughtering processing establishment, which shall allow selling meat products at the same location without obtaining the license described in paragraph (a) of this subsection.

(c) Operation of a slaughterhouse, which shall allow selling meat products at the same location without obtaining the license described in paragraph (a) of this subsection.

(d) Operation of a custom slaughtering establishment or custom processing establishment, which shall not allow selling meat products without first obtaining and maintaining the license described in paragraph (a) of this subsection.

(e) Operation of a slaughterhouse, custom slaughtering establishment or custom processing establishment wherein only poultry or rabbits are slaughtered or prepared, which shall allow selling only poultry or rabbit products at the same location without obtaining the license described in paragraph (a) of this subsection.

(5) The license required by this section shall be displayed at all times in a conspicuous manner at the address shown on the license.

(6) The license fees shall be established by the department in accordance with ORS 183.310 to 183.550, and shall not be less than \$25 nor more than \$250 for each establishment. A license fee may be established at a specified amount for each category of activities described in subsection (4) of this section, or may be established on the basis of the annual gross dollar volume of sales or services of each establishment in each of the categories. The license fees may be different for each category. In establishing the basis and amounts for the license fees the department shall consider, among other things, the number of establishments in each category of activities described in subsection (4) of this section, the various annual gross dollar volumes of business of the establishments, the differences in activities carried on at the establishments in each category described in subsection (4) of this section, and the costs of administration and enforcement of the laws set forth in ORS 603.095.

SECTION 93. ORS 603.034 is amended to read: 603.034. (1) In accordance with the provisions of ORS 183.310 to 183.550, the department may suspend, revoke, or refuse to issue a license to any applicant or licensee whose establishment construction, equipment or sanitation does not meet the requirements of the State Meat Inspection Act as defined in ORS chapter 619, or of ORS 599.205 and this chapter, or of the rules promulgated thereunder.

(2) Notwithstanding the provisions of ORS 183.310 to 183.550, upon conviction of a licensee of any violation of the State Meat Inspection Act, as defined in ORS chapter 619, or of any provisions of ORS 599.205 and this chapter, or of the rules promulgated thereunder, or upon determination by the department that a licensee has failed to maintain the surety bond or letter of credit required by ORS 603.025 (3), the department is authorized to forthwith suspend or revoke such license. The department shall, by certified mail addressed to such licensee at the address shown on the license, render notice that such license has been revoked or suspended.

(3) Subject to ORS 603.025, authority to carry on more than one type of activity at the same establishment shall only be approved by the department if there is compliance by the licensee with the laws and rules applicable to each separate activity.

(4) ORS 599.205 and this chapter shall not require a person to obtain a license to slaughter on the person's own premises a meat animal, owned by the person, for the person's consumption or for consumption by members of the person's household, nonpaying guests or employees.

SECTION 94. ORS 652.325 is amended to read: 652.325. (1) Except as provided in subsection (4) of this section, any producer-promoter intending to do business in this state shall first obtain a permit from the commissioner. An application for such permit shall contain the following information:

(a) The applicant's name and address;

(b) A description of the financing for the production;

(c) The type of production, the number of artists and technical personnel to be employed and the time and place of the production; and

(d) Such other information as the commissioner may deem necessary for the protection of persons employed in the production.

(2) A permit shall not be issued unless the applicant has posted a bond or letter of credit with the commissioner as required by ORS 652.340 (2).

(3) The commissioner may fix permit fees not to exceed \$20 to provide for the cost of processing the applications.

(4) A permit shall not be required of any producer-promoter who:

(a) Has been a producer-promoter in this state for the three-year period immediately preceding the time when a permit application would otherwise be required and has had no successful wage claims allowed against the producer-promoter during such period; or

(b) Has sufficient assets in this state which, if executed upon, would equal the amount of bond required by ORS 652.340 (2).

SECTION 95. ORS 652.340 is amended to read: 652.340. (1) If upon investigation by the commissioner, after taking assignments of any wage claims under ORS 652.330, it appears to the commissioner that the employer is representing to employees that the employer is able to pay wages for their services and that the employees are not being paid for their services, the commissioner may require the employer to give a bond in such sum as the commissioner deems reasonable and adequate in the circumstances, with sufficient surety, conditioned that the employer will for a definite future period not exceeding six months conduct business and pay employees in accordance with the laws of Oregon.

(2) Upon receipt of a permit application filed by a producer-promoter who is required to obtain a permit under ORS 652.325, the commissioner shall require the producer-promoter to give a bond or an irrevocable letter of credit issued by a commercial bank as defined in ORS 706.005, in an amount not less than the sum of the wages to be paid to all musicians and supporting technical personnel to be employed in the production. Such bond shall be conditioned on the payment of any wages due any musicians and supporting technical personnel upon the cessation of such production or upon the subrogation of another for the liability of such producer-promoter, if such subrogation is satisfactory to the commissioner.

(3) If within 10 days after demand for such bond the employer fails to provide the same, the commissioner may commence a suit against the employer in the circuit court of appropriate jurisdiction to compel the employer to furnish such bond or cease doing business until the employer has done so. The employer shall have the burden of proving the amount thereof to be excessive.

(4) If the court finds that there is just cause for requiring such bond and that the same is reasonably necessary or appropriate to secure the prompt payment of the wages of the employees of such employer and the employer's compliance with ORS 652.310 to 652.405, the court shall enjoin such employer from doing business in this state until the requirement is met, or shall make other, and may make further, orders appropriate to compel compliance with the requirement.

SECTION 96. ORS 657.505 is amended to read: 657.505. (1) On and after January 1, 1936, taxes shall be payable by each employer then subject to this chapter. Taxes shall become payable by any other employer on and after the date on which the employer becomes subject to this chapter.

(2) An employer shall be liable for taxes on all wages paid for services performed on or after the first day of a calendar quarter.

(3) Taxes of an employer shall not become payable until this chapter has been approved by the Sec-

retary of Labor, and notice of such approval has been given to the Governor as provided in section 3304 of the Federal Unemployment Tax Act.

(4) All taxes shall be paid to and collected by the assistant director at such times and in such manner as the assistant director may prescribe and upon collection, shall be deposited in the Unemployment Compensation Trust Fund.

(5) In lieu of taxes required of all other employers subject to this chapter, the state shall pay into the fund an amount equivalent to the amount of all regular benefits and all extended benefits paid out to claimants who during the applicable base year were paid wages by the state. Payments required under this section shall be payable from the General Fund of the state except that if a claimant was paid wages by the state during the base year from a special or administrative fund provided for by law, the payment into the fund shall be made from such special or administrative fund with the approval of the Executive Department.

(6) Any political subdivision subject to this chapter shall in lieu of taxes required of other employers subject to this chapter, pay into the fund an amount equivalent to the amount of all regular benefits and all extended benefits paid out to claimants who during the applicable base year were paid wages by the political subdivision.

(7)(a) Any nonprofit employing unit as defined in ORS 657.072 (2), subject to or electing coverage under this chapter shall pay taxes under the provisions of ORS 657.475 and 657.480. However, such nonprofit employing unit may elect to make reimbursement payments into the Unemployment Compensation Trust Fund in an amount equivalent to the amount of regular benefits and one-half of extended benefits paid out to claimants who during the applicable base period were paid wages by such nonprofit employing unit. Such reimbursement payments shall be deemed to be taxes for all purposes of this chapter.

(b) A nonprofit employing unit may elect to make reimbursement payments by filing with the assistant director a written notice to this effect within the 30-day period following the close of the calendar quarter in which the employing unit became an employer, or may make a timely election within 30 days after the assistant director finds the nonprofit employing unit in default with respect to payment of taxes if the assistant director has not found the default to be due to an intent to postpone or avoid either payment of taxes due the Unemployment Compensation Trust Fund or the election to make reimbursement payments pursuant to this paragraph. A nonprofit employing unit failing to submit a timely notice of election of reimbursement shall be liable for taxes on any wages paid for services performed for such employing unit for two calendar years. Such employing unit will remain liable for taxes for any calendar year thereafter unless a written notice of election of reimbursement is filed with the assistant director by January 31 of such calendar year. The assistant director shall for good cause extend the period within which a notice of

election of reimbursement must be filed for an additional 30 days.

(c) Elections of reimbursement shall continue until canceled but shall be for a period of not less than two calendar years. Any nonprofit employing unit may cancel such election, and pay taxes as any other employer, by filing with the assistant director a written notice of its intention to cancel such election by January 31 of the year in which the cancellation is to be effective. The assistant director may for good cause extend the period within which a notice of cancellation may be filed for an additional 30 days. Once a cancellation is effective the nonprofit employing unit must pay taxes for two calendar years before it is again eligible for election of reimbursement. An employer whose election of reimbursement has been canceled shall thereafter be liable for taxes at the rate assigned an employer in accordance with ORS 657.435 until such employer is eligible for a rate based on the experience of the employer in accordance with the provisions of ORS 657.475 and 657.480.

(d) Each nonprofit employing unit that elects to reimburse the fund shall, within 30 days after the effective date of its election, either execute and file with the assistant director a surety bond or deposit with the assistant director money, an irrevocable letter of credit issued by a commercial bank as defined in ORS 706.005 or other security as approved by the assistant director. The amount of the bond or deposit shall be determined as a percentage of the employing unit's total wages paid for employment covered by this chapter for the four calendar quarters immediately preceding the effective date of the election. The following schedule shall apply in determining the amount of bond or deposit:

Four Quarter Payroll	Percent
Under \$100,000	2.0
\$ 100,000 to \$499,999	1.5
500,000 to 999,999	1.0
1,000,000 and over	0.5

If the nonprofit employing unit did not pay wages in each of such four calendar quarters, the amount of the bond or deposit shall be as determined by the assistant director. The amount of the bond or deposit as determined by the schedule in this subsection shall not exceed the amount of taxes the employing unit would have been assessed at the maximum tax rate for the same period had not the employing unit elected to make reimbursement payments. However, no surety bond or deposit shall be required of an institution of higher education, unless in the discretion of the assistant director the assistant director determines that a surety bond or deposit shall be required of such an institution.

(A) Any bond or letter of credit deposited under this paragraph shall be in force for a period of not less than two calendar years and shall be renewed with the approval of the assistant director, at such

times as the assistant director may prescribe, but not less frequently than at two year intervals as long as the employing unit continues to be liable for reimbursement payments. The assistant director shall require adjustments to be made in a previously filed bond or letter of credit as the assistant director deems appropriate. If the bond or letter of credit is to be increased, the bond or letter of credit shall be filed by the employing unit within 30 days of the date notice of the required adjustment was mailed or otherwise delivered to it. Failure by any employing unit covered by such bond or letter of credit to pay the full amount of reimbursements when due, together with any applicable interest and penalties, shall render the surety liable on said bond or the issuer liable on the letter of credit to the extent of the amount thereof including interest and penalties assessed pursuant to this chapter.

(B) Any deposit of money or security in accordance with this paragraph shall be retained by the assistant director. Money shall be deposited in the Employment Tax Guarantee Fund. When liability under the election is terminated the deposit shall be returned to the employing unit, less any deductions as hereinafter provided. The assistant director may transfer moneys from the Employment Tax Guarantee Fund or sell securities deposited as necessary to satisfy any due and unpaid reimbursements and any applicable interest and penalties. The assistant director shall require the employing unit within 30 days following transfer of a money deposit or sale of securities to deposit sufficient additional money or securities to restore the original deposit in full. The assistant director may, at any time, review the adequacy of the deposit made by any employing unit. If, as a result of such review, the assistant director determines that an adjustment is necessary, the assistant director shall require the employing unit to make an additional deposit within 30 days of written notice of the determination or shall return to it such portion of the deposit as the assistant director no longer considers necessary, whichever action is appropriate.

(C) If any nonprofit employing unit fails to file a bond or make a deposit, or to file a bond in an increased amount or to increase or make whole the amount of a previously made deposit, as provided in this section, the assistant director may terminate such employing unit's election to make reimbursement payments. The assistant director may extend for good cause the applicable filing, deposit or adjustment period by not more than 30 days. An employing unit having its election terminated under this section shall pay taxes for a period of two calendar years before it is again eligible for election to reimburse.

(8)(a) At the end of each calendar quarter, or at the end of any other period as prescribed by the assistant director, the assistant director shall determine the amount of payments in lieu of taxes or reimbursement payments required, under subsections (5), (6) and (7) of this section, and shall bill each employer for such amount. If a claimant during a

base year was employed by an employer liable for payments in lieu of taxes or reimbursement payments and other employers subject to the tax rate provisions of this chapter, the amount to be paid into the fund by employers liable for payments in lieu of taxes or reimbursement payments shall be an amount which is in the same proportion that the wages paid by each employer to the individual during the base year bear to the wages paid by all employers to that individual during that year.

(b) In determining the amount of payments in lieu of taxes or reimbursement payments, benefits paid for any reason shall be included if such benefits or any portion thereof were paid as a result of wages earned in the employ of an employer required to make reimbursing payments or payments in lieu of taxes. Such benefits paid includes but is not limited to payments made as a result of a determination or payments erroneously or incorrectly paid or paid as a result of a determination of eligibility which is subsequently reversed. Any benefit payments described in this paragraph that are subsequently recovered by the division will be credited on a pro rata basis to the account of the employer that reimbursed the fund for such benefits.

(c) Payment of any bill rendered under paragraph (a) of this subsection shall be made not later than the last day of the month immediately following the month in which such bill was mailed to the last-known address of the employer or was otherwise delivered to it. The assistant director may assess a nonprofit employing unit for past due taxes and such assessment shall be subject to the same interest, penalties, enforcement, appeal and any other provisions of this chapter that apply to taxes assessed pursuant to ORS 657.681.

(d) If a nonprofit employing unit is delinquent in making reimbursement payments as required under this section, the assistant director may terminate such employing unit's election and such employing unit must pay taxes for two calendar years before it is again eligible for election of reimbursement. Any employer whose election is terminated under provisions of this section shall remain liable for reimbursement payments for any benefits paid based on wages received prior to the effective date of termination of the election.

(9) Notwithstanding the provisions of subsections (5), (6), (7) and (8) of this section, each employing unit that is required to make payments in lieu of taxes or has elected to make reimbursement payments may request permission to make advance or budget payments in accordance with rules adopted by the assistant director.

(10) Two or more employers that have become liable for payments in lieu of taxes or reimbursement payments, in accordance with the provisions of subsections (5), (6) and (7) of this section, may file a joint application to the assistant director for the establishment of a group account for the purpose of sharing the cost of benefits paid that are attributable to service in the employ of such employers. Each application shall identify and authorize a group

representative to act as the group's agent for the purpose of this subsection. Upon the approval of the assistant director of the application, the assistant director shall establish a group account for such employers effective as of the beginning of the calendar quarter in which the assistant director receives the application and shall notify the group's agent of the effective date of the account. Such account shall remain in effect for not less than two years and thereafter until terminated at the discretion of the assistant director or upon application by the group. Upon establishment of the account, each member of the group shall be liable for payments with respect to each calendar quarter in the amount that bears the same ratio to the total benefits paid in such quarter that are attributable to service performed in the employ of all members of the group. The assistant director shall prescribe such regulations as the assistant director deems necessary with respect to application for establishment, maintenance and termination of group accounts. This subsection shall not be construed to make such agent the employer of such workers, or relieve any employer of the obligations of the employer to comply with the terms of this chapter, except to the extent that such obligations are discharged by such agent as provided thereunder.

SECTION 97. ORS 657.507 is amended to read:

657.507. (1) If upon satisfactory evidence the assistant director finds it necessary for the protection of the Unemployment Compensation Trust Fund, the assistant director may require any employer subject to this chapter, except the state, including every state officer, board, commission, department, institution, branch, agency or political subdivision, to deposit and keep on deposit, with the assistant director, a sum equal to the contributions due the assistant director upon the employer's payroll or estimated payroll covering a period of three calendar quarters.

(2) The assistant director may, in the discretion of the assistant director and in lieu of such deposit, accept a bond or an irrevocable letter of credit issued by a commercial bank as defined in ORS 706.005 in a form acceptable to the assistant director to secure payment of contributions to become due the fund. The deposit or posting of the bond or letter of credit shall not relieve the employer from making contributions to the fund based on the payroll of the employer as provided by this chapter. The assistant director may, in the discretion of the assistant director, at any time apply such deposit or bond or letter of credit or part thereof to the delinquencies or indebtedness of the employer arising under any provision of this chapter.

(3) Any deposit [or bond], letter of credit or bond shall be deemed for all purposes to become the sole property of the assistant director and shall be deposited in the Employment Tax Guarantee Fund and held for the sole benefit of the Unemployment Compensation Trust Fund and the Employment Division Special Administrative Fund, subject only to

subsection (4) of this section. The deposit [or bond], letter of credit or bond shall be prior to all other liens, claims or encumbrances and shall be exempt from any process, attachment, garnishment or execution whatsoever and shall be for the sole benefit of the Unemployment Compensation Trust Fund and the Employment Division Special Administrative Fund except as provided in subsection (4) of this section.

(4) If an employer ceases to be an employer subject to this chapter, the assistant director shall, upon receipt of all payments due the fund based on the employer's payroll, refund to the employer all deposits remaining to the employer's credit and shall cancel any bond or letter of credit given under this section. Such sums as are on deposit in the Employment Tax Guarantee Fund or bonds held for the benefit of the Unemployment Compensation Trust Fund shall first be applied to any indebtedness or deficiencies due from the employer to the Unemployment Compensation Trust Fund and the Employment Division Special Administrative Fund under any provisions of this chapter before any return is made to the employer. The employer shall have no interest in such deposit [or bond], letter of credit or bond prior to full compliance with this section and all provisions of this chapter.

SECTION 98. ORS 657.545 is amended to read:

657.545. (1) The employer against whose property a lien has been filed under ORS 657.540 may cause the property to be released by filing with the county clerk of the county wherein such lien is recorded a bond or an irrevocable letter of credit in a sum double the amount claimed in said lien, executed by a surety company licensed to do business in Oregon or by two freeholders of this state, having the qualifications of bail upon arrest or in the case of a letter of credit issued by a commercial bank as defined in ORS 706.005, to be approved by the circuit judge of the district in which said lien is filed, or, in the event of the absence of the circuit judge from the county in which said lien is filed, then by the county judge of said county, running to the assistant director and conditioned for the payment of all damages, costs, charges and disbursements that may be recovered by the assistant director against such employer or that may be found to be a lien upon or against the property of such employer.

(2) The clerk shall issue to such employer a certificate stating that the bond or letter of credit is substituted in lieu of the property of said employer and that the lien on said property is forever released and discharged. A marginal entry of said release and bond or letter of credit shall be made in the lien docket containing the original record of statement of claim.

(3) If the assistant director establishes the validity of the lien by a suit to foreclose the same, the assistant director is entitled to judgment or decree against the sureties upon said bond or against the issuer of the letter of credit.

SECTION 99. ORS 658.407 is amended to read: 658.407. The Commissioner of the Bureau of Labor and Industries shall administer and enforce ORS 658.405 to 658.503 and 658.830, and in so doing shall:

(1) Investigate and attempt to adjust equitably controversies between farm labor contractors and their workers with respect to claims arising under ORS 658.415 (3).

(2) Take appropriate action to establish the liability or lack thereof of the farm labor contractor for wages of the employees of the farm labor contractor and if appropriate proof exists of liability for wages the commissioner shall pay the same or such part thereof as the commissioner has funds on deposit or cause the surety company or letter of credit issuer to forthwith pay the entire liability or such part thereof as the sums due under the bond or letter of credit will permit.

(3) Adopt appropriate rules to administer ORS 658.405 to 658.503 and 658.830.

SECTION 100. ORS 658.415 is amended to read: 658.415. (1) No person shall act as a farm labor contractor unless the person has first been licensed by the commissioner pursuant to ORS 658.405 to 658.503 and 658.830. Any person may file an application for a license to act as a farm labor contractor at any office of the Bureau of Labor and Industries. The application shall be sworn to by the applicant and shall be written on a form prescribed by the Commissioner of the Bureau of Labor and Industries. The form shall include, but not be limited to, questions asking:

(a) The applicant's name, Oregon address and all other temporary and permanent addresses the applicant uses or knows will be used in the future.

(b) Information on all motor vehicles to be used by the applicant in operations as a farm labor contractor including license number and state of licensure, vehicle number and the name and address of vehicle owner for all vehicles used.

(c) Whether or not the applicant was ever denied a license under ORS 658.405 to 658.503 and 658.830 within the preceding three years, or in this or any other jurisdiction had such a license denied, revoked or suspended within the preceding three years.

(d) The names and addresses of all persons financially interested, whether as partners, shareholders, associates or profit-sharers, in the applicant's proposed operations as a farm labor contractor, together with the amount of their respective interests, and whether or not, to the best of the applicant's knowledge, any of these persons was ever denied a license under ORS 658.405 to 658.503 and 658.830 within the preceding three years, or had such a license denied, revoked or suspended within the preceding three years in this or any other jurisdiction.

(2) Each applicant shall furnish satisfactory proof with the application of the existence of a policy of insurance in an amount adequate under rules issued by the Bureau of Labor and Industries for

vehicles to be used to transport workers. For the purpose of this subsection the certificate of an insurance agent licensed in Oregon is satisfactory evidence of adequate insurance.

(3) Each applicant shall submit with the application and shall continually maintain thereafter, until excused, proof of financial ability to promptly pay the wages of employees and other obligations specified in this section. The proof required in this subsection shall be in the form of a corporate surety bond of a company licensed to do such business in Oregon, an irrevocable letter of credit issued by a commercial bank as defined in ORS 706.005, a cash deposit or a deposit the equivalent of cash. For the purposes of this subsection it shall be deemed sufficient compliance if the farm labor contractor procures a savings account at a bank or savings and loan institution in the name of the commissioner as trustee for the employees of the farm labor contractor and others as their interests may appear and delivers the evidence of the account and the ability to withdraw the funds to the commissioner under the terms of a bond approved by the commissioner.

(4) The amount of the bond and the security behind the bond, or of the letter of credit shall be \$10,000. In the event that a single business entity licensed as a farm labor contractor has more than one natural person who, as an owner or employee of the business entity, engages in activities which require the persons to be licensed individually as farm labor contractors, and each such person engages in such activities solely for that business entity, the Bureau of Labor and Industries may provide by rule for lower aggregate bonding requirements for the business entity and its owners and employees. If there is an unsatisfied final judgment of a court or decision of an administrative agency against a license applicant, the subject of which is any matter which would be covered by the bond, letter of credit or deposit referred to in subsection (3) of this section, the commissioner shall not issue a license to the applicant until the judgment or decision is satisfied. As a condition of licensing any such applicant, the commissioner may require the applicant to submit proof of financial ability required by subsection (3) of this section in an amount up to three times that ordinarily required of a license applicant.

(5) All corporate surety bonds and letters of credit filed under this section shall be executed to cover liability for the period for which the license is issued. During the period for which executed no bond or letter of credit can be canceled or otherwise terminated.

(6) Each application must be accompanied by a fee of \$20.

(7) Any person who uses the services of a farm labor contractor shall be liable as follows if the farm labor contractor has failed to comply with any of the provisions of this section:

(a) Be personally and jointly and severally liable to any employee so far as such employee has not been paid wages in full.

(b) Be personally liable for all penalty wages which have occurred under ORS 652.150 for the wages due under this section.

(c) Be personally liable for court costs and disbursements and a reasonable attorney fee at trial and on appeal to be set by the court or judge if suit or action is commenced to enforce any of the provisions of this section and the plaintiff prevails.

(8) Any person who suffers any loss of wages from the employer of the person or any other loss specified in subsection (16) of this section the person shall have a right of action in the name of the person against the surety upon the bond, **against the letter of credit issuer** or against the deposit with the commissioner:

(a) The right of action is assignable and must be included with an assignment of a wage claim, any other appropriate claim, or of a judgment thereon.

(b) The right of action shall not be included in any suit or action against the farm labor contractor but must be exercised independently after first procuring a judgment, decree, or other form of adequate proof of liability established by rule and procedure under subsection (14) of this section establishing the farm labor contractor's liability for the claim.

(9) The surety company or the commissioner shall make prompt and periodic payments on the farm labor contractor's liability up to the extent of the total sum of the bond, **letter of credit** or deposit. Payments shall be made in the following manner:

(a) Payment shall be made based upon priority of wage claims over advances made by the grower or producer of agricultural commodities or the owner or lessee of land intended to be used for the production of timber, for advances made to or on behalf of the farm labor contractor.

(b) Payment in full of all sums due to each person who presents adequate proof of the claim.

(c) If there are insufficient funds to pay in full the person next entitled to payment in full such person will be paid in part.

(10) No person shall bring any suit or action against the surety company, **the letter of credit issuer** or the commissioner on the bonding or **letter of credit** obligation or as trustee for the beneficiaries of the farm labor contractor under any deposit made pursuant to this section unless the person has first exhausted the procedures contained in subsections (8) and (12) of this section and contends that the surety company, **the letter of credit issuer** or the commissioner still has funds which are applicable to the person's judgment or acknowledgment.

(11) The commissioner shall not be prevented from accepting assignments of wage claims and enforcing liability against the surety on the bond or **the letter of credit issuer** or from applying the deposit to just wage claims filed with the commissioner.

(12) All claims against the bond, **letter of credit** or deposit shall be unenforceable unless request for payment of a judgment or other form of adequate proof of liability or a notice of the claim has been

made by certified mail to the surety or the commissioner within six months from the end of the period for which the bond, **letter of credit** or deposit was executed and made.

(13) If the commissioner has received no notice as provided in subsection (12) of this section within six months after a farm labor contractor is no longer required to provide and maintain a surety bond, **letter of credit** or deposit the commissioner shall terminate and surrender any bond or any deposit under the control of the commissioner to the person who is entitled thereto upon receiving appropriate proof of such entitlement.

(14) The commissioner shall adopt rules reasonably necessary for administration and enforcement of the provisions of this section.

(15) Every farm labor contractor required by this section to furnish a surety bond or a **letter of credit**, or make a deposit in lieu thereof, shall keep conspicuously posted upon the premises where employees working under the contractor are employed, a notice in both English and any other language used by the farm labor contractor to communicate with workers specifying the contractor's compliance with the requirements of this section and specifying the name and Oregon address of the surety on the bond or **the name and address of the letter of credit issuer** or a notice that a deposit in lieu of the bond has been made with the commissioner together with the address of the commissioner.

(16) The bond, **letter of credit** or deposit referred to in subsection (3) of this section shall be payable to the commissioner and shall be conditioned upon:

(a) Payment in full of all sums due on wage claims of employees.

(b) Payment by the labor contractor of all sums due to the grower or producer of agricultural commodities or the owner or lessee of land intended to be used for the production of timber for advances made to or on behalf of the farm labor contractor.

(17) No license shall be issued until the applicant executes a written statement which shall be subscribed and sworn to and which shall contain the following declaration:

With regards to any action filed against me concerning my activities as a farm labor contractor, I appoint the Commissioner of the Oregon Bureau of Labor and Industries as my lawful agent to accept service of summons when I am not present in the jurisdiction in which such action is commenced or have in any other way become unavailable to accept service.

SECTION 101. ORS 658.075 is amended to read: 658.075. (1) Before a license is issued or renewed for any employment agency, each applicant shall file with the commissioner the applicant's surety bond or irrevocable **letter of credit** issued by a commercial bank as defined in ORS 706.005 of \$5,000,

payable to the people of the State of Oregon, conditioned that the applicant will comply with ORS 658.005 to 658.245 and will pay:

(a) All sums legally owing to any person when the employment agency or its agents have received such sums;

(b) All damages occasioned to any person by reason of any willful misrepresentation, fraud, deceit or other unlawful act or omission by the employment agency, or its agents or employees acting within the scope of their employment; and

(c) All sums legally owing to any employee of the employment agency.

(2) For the purposes of this section, each general partner shall furnish the required bond or letter of credit. When a corporation is operated by a licensee, the bond or letter of credit shall be in the name of the licensee and the corporation.

(3) The commissioner may reduce the amount of the required bond or letter of credit upon application for reduction and proof submitted to the commissioner that the employment agency has operated for at least three years without a claim having been filed against a bond or letter of credit of the agency.

(4) In lieu of the surety bond required under subsection (1) of this section, each applicant may file with the commissioner, under the same terms and conditions as when a bond or letter of credit is filed, a deposit in cash or negotiable securities acceptable to the commissioner.

(5) This section does not apply to employment agencies which do not charge or collect a fee for services from individuals seeking or obtaining employment.

SECTION 102. ORS 658.076 is amended to read:

658.076. (1) Upon the sale of an employment agency or in case of the death of an individual licensee who leaves an employment agency business as part of the licensee's estate the commissioner may, upon proper application, and if the commissioner believes sufficient trained and experienced personnel will be available to operate the agency in conformity with law, issue an interim employment agency license to the purchaser or to the personal representative, or the nominee of the personal representative, of the deceased licensee. In the case of the dissolution by death of a licensed partnership, the commissioner may, upon proper application, issue to the surviving partner or partners an interim employment agency license.

(2) The application shall be in writing and subscribed and sworn to by the person to whom the interim employment agency license is to be issued. The application shall be accompanied by the bond or irrevocable letter of credit and the fee required for an interim employment agency license.

(3) An interim employment agency license shall be effective for a period of one year and shall not thereafter be renewed or continued.

SECTION 103. ORS 671.690 is amended to read:

671.690. (1) An applicant for a license as a landscaping business shall file with the board a surety bond with one or more corporate sureties authorized to do business in this state, or an irrevocable letter of credit issued by a commercial bank as defined in ORS 706.005. The amount of the bond or letter of credit shall be \$3,000.

(2) The bond or letter of credit required under subsection (1) of this section shall be conditioned that the applicant pays:

(a) All taxes and contributions due to the State of Oregon;

(b) All persons furnishing labor or material, or renting or supplying equipment to the business;

(c) All amounts that may be adjudged against the business by reason of negligent or improper work or breach of contract in performing any work subject to ORS 671.510 to 671.710; and

(d) All amounts from the bond or deposit the board orders paid under ORS 671.703.

(3) In lieu of the surety bond or letter of credit required under subsection (1) of this section, the landscaping business may file with the board, under the same terms and conditions as when a bond is filed, a deposit in cash or negotiable securities acceptable to the board.

(4) The deposit or bond or letter of credit required by this section shall be continuously on file with the board in the amount required by this section. Upon termination or cancellation of the bond, withdrawal of the deposit or reduction of the bond, letter of credit or deposit to less than the required amount, the licensee shall immediately:

(a) File a replacement bond, letter of credit or deposit; or

(b) Surrender the license to the board and cease operating as a landscaping business.

(5) The landscaping business is responsible for all landscape work performed.

SECTION 104. ORS 696.375 is amended to read:

696.375. (1) The Real Estate Agency is established.

(2) The Real Estate Agency shall be under the supervision and control of an administrator who shall be known as the Real Estate Commissioner. The Governor shall appoint the Real Estate Commissioner who shall have been, before the date of appointment, for five years a real estate broker actively engaged in business as such in this state or a person who has been actively connected with the administration of the Real Estate Agency, or a predecessor thereof, for at least one year. The commissioner shall hold office at the pleasure of the Governor and shall be responsible for the performance of the duties imposed upon the agency. The Real Estate Commissioner shall receive such salary as may be provided by law.

(3) Before entering upon the duties of office the commissioner shall give to the state a fidelity bond with one or more corporate sureties authorized to do business in this state, or an irrevocable letter of credit issued by a commercial bank as defined

in ORS 706.005, in either case in the sum fixed by the Governor. The premium for the bond or the fee for the letter of credit shall be paid by the agency.

SECTION 105. ORS 696.395 is amended to read: 696.395. The Real Estate Commissioner shall have the power to:

(1) For the purpose of administration, organize and reorganize, as necessary, the agency in the manner that the commissioner deems necessary to properly conduct the work of the agency.

(2) Appoint all subordinate officers and employees of the agency, or such other agents or representatives, and prescribe their duties and fix their compensation, subject to the applicable provisions of the State Personnel Relations Law. Subject to any other applicable law regulating travel expenses, the officers, employees, agents or representatives of the agency shall be allowed such reasonable and necessary travel and other expenses as may be incurred in the performance of their duties.

(3) Require a fidelity bond or an irrevocable letter of credit issued by a commercial bank as defined in ORS 706.005 of any officer or employee of the agency who has charge of, handles or has access to any state money or property, and who is not otherwise required by law to give a bond or letter of credit. The amounts of the bonds or letters of credit shall be fixed by the commissioner, except as otherwise provided by law, and the sureties or letter of credit issuers shall be approved by the commissioner. The agency shall pay the premium on the bonds and the fees for the letters of credit.

NOTE: Sections 106 and 107 were deleted by amendment. Subsequent sections were not renumbered.

SECTION 108. ORS 705.105 is amended to read: 705.105. (1) The Department of Insurance and Finance is created.

(2) The department shall be under the supervision and control of a director who shall be responsible for the functions of the department.

(3) Subject to confirmation by the Senate in the manner provided in ORS 171.562 and 171.565, the Governor shall appoint the director, who shall hold office at the pleasure of the Governor. The person appointed as director shall be well qualified by training and experience to perform the functions of the office.

(4) The director shall receive such salary as is provided by law or, if not so provided, as is fixed by the Governor.

(5) With respect to the duties, functions and powers imposed upon the director under the insurance and workers' compensation laws, the director may be designated by the title of Insurance Commissioner.

(6) Before entering upon the functions of office, the director shall give to the state a fidelity bond with one or more corporate sureties authorized to do business in this state, or an irrevocable letter

of credit issued by a commercial bank as defined in ORS 706.005, in either case in the penal sum fixed by the Governor.

(7) The department shall have an official seal. Any certificate or other document or paper executed by the department pursuant to its authority and sealed with its seal, and all copies of papers certified by it and authenticated by the seal, shall in all cases be evidence equally and in like manner as the original and shall have the same force and effect as would the original in any suit or proceeding in any court in this state.

SECTION 109. ORS 706.005 is amended to read: 706.005. As used in the Bank Act, unless the context requires otherwise:

(1) "Action" includes suits and legal proceedings.

(2) "Bank" means a corporation with capital stock that is organized under the laws of this state and is authorized to engage in a banking business. "Bank" includes the banking department of a trust company authorized to do a banking business.

(3) "Bank Act" means ORS chapters 706 to 716.

(4) "Banking business" means the business of soliciting, receiving or accepting money or its equivalent on deposit as a regular business whether the deposit is made subject to check or is evidenced by a certificate of deposit, a pass book or other writing, but does not include:

(a) Depositing money or its equivalent in escrow or with an agent, pending investments in real estate or securities for or on account of a principal; or

(b) The business of a savings and loan association or a building and loan association.

(5) "Banking day" means a day a banking institution is required to be open for the normal conduct of its business but does not include Saturday or any day the bank is closed under ORS 707.430.

(6) "Banking institution" means a bank, a trust company, a savings bank or a stock savings bank.

(7) "Board" means the State Banking Board.

(8) "Branch" means an office or other place, except a principal place of business, at which:

(a) A bank receives money or its equivalent from the public for deposit and conducts a general banking business.

(b) A trust company engages in the business of acting as a fiduciary.

(c) CBCT facilities are installed and operated off the premises of the principal place of business and branches of institutions described in paragraphs (a) and (b) of this subsection, and of national banks in accordance with ORS 714.210 to 714.992.

(9) "Capital" means the aggregate par value of all classes of outstanding stock of an institution.

(10) "Demand deposits" means all deposits payable on demand.

(11) "Department" means the Department of Insurance and Finance.

(12) "Director" means the Director of the Department of Insurance and Finance.

(13) "Extranational institution" includes:

(a) A corporation organized under the laws of a nation other than the United States and doing a banking or trust business within this state;

(b) An unincorporated company, partnership or association of two or more individuals organized under the laws of a nation other than the United States and doing a banking or trust business within this state;

(c) An incorporated company, partnership or association of two or more individuals doing a banking or trust business if persons who are not citizens of the United States and not residents of this state own a majority interest of the business and are entitled to more than half the profits of the business, or who would, if it were dissolved, be entitled to more than one-half the net assets of the business; or

(d) An individual who is not a citizen of the United States and not a resident of this state doing a banking or trust business in the name and right of the individual.

(14) "Fiduciary" means a personal representative, conservator, receiver, trustee, assignee for the benefit of creditors or one acting in a court appointed position of trust or any other position of trust.

(15) "Federal Reserve Act" means the Act of Congress approved December 23, 1913, (38 Stat. 251) as amended.

(16) "Foreign institution" includes:

(a) A corporation organized under the laws of another state doing a banking or trust business within this state, except a national bank whose principal office as designated in its articles of incorporation is located in the State of Oregon;

(b) An unincorporated company, partnership or association of two or more individuals organized under the laws of another state doing a banking or trust business;

(c) An incorporated company, partnership or association of two or more individuals doing a banking or trust business if persons who are citizens of the United States but not residents of this state own a majority interest of the business and are entitled to more than half the profits of the business, or who would, if it were dissolved, be entitled to more than one-half the net assets of the business; or

(d) Every citizen of the United States but non-resident of this state doing a banking or trust business in the name and right of the citizen.

"Foreign institution" does not include a national bank that has its principal office, as designated in its articles of incorporation, outside the State of Oregon, and that maintains a branch in the State of Oregon on January 1, 1974.

(17) "Institution" means a bank or a trust company.

(18) "National bank" means a national bank authorized to do business in this state.

(19) "Officer" of a banking institution means a chief executive officer, president, vice president, secretary, treasurer or cashier.

(20) "Personal representative" means a personal representative as defined in ORS 111.005 (26).

(21) "Principal place of business" means the location in Oregon of the principal office or main office of a banking institution.

(22) "Savings bank" means a corporation without capital stock which is organized under the laws of this state and is authorized to engage in a banking business.

(23) "Surplus" represents the cumulative total of amounts transferred from undivided profits, any capital contributed for shares in excess of their par value, capital contributed other than for shares, and reduced by amounts converted into capital stock.

(24) "Time deposits" comprise all deposits, however evidenced, which may be restricted as to time of withdrawal.

(25) "Trust company" means any corporation which is authorized to engage in the business of acting as a fiduciary and includes the trust department of a bank or savings bank, but does not include a corporation appointed by a United States Bankruptcy Court to serve as a bankruptcy trustee under Title 11, United States Code, when the corporation is acting in its capacity as a bankruptcy trustee.

(26) "Unimpaired capital" is capital of an institution which has not become impaired as provided in ORS 711.305.

(27) "Customer Bank Communication Terminal" or "CBCT" means an electronic or other automated device through which a customer of a banking institution or national bank, or someone specifically authorized by the customer, may communicate to the banking institution or national bank:

(a) A request to withdraw money from an account or a previously authorized line of credit;

(b) An instruction to receive or transfer funds for the customer's benefit; and

(c) A request for information concerning the existence and condition of the customer's account and lines of credit with the banking institution.

(28) "Stock savings bank" means a corporation with capital stock organized under the laws of this state, authorized to engage in a banking business, and which has converted from a savings bank under provisions of ORS chapter 716, from a stock savings association chartered under the provisions of ORS chapter 722, from a federally chartered stock savings and loan association or a federally chartered stock savings bank or which was converted to a federal stock savings bank under the provisions of the Garn-St. Germain Depository Institutions Act of 1982 (P.L. 97-320).

(29) "Out-of-state banking institution" means any bank organized under the laws of any state other than Oregon, or any national bank that has its principal place of business in one of such states or bank holding company that has its principal place of business in one of such states.

(30) "Bank holding company" means any company that is a bank holding company under the federal Bank Holding Company Act of 1956, as amended, 12 U.S.C. 1841, et seq.

(31) "Principal place of business" of a national bank or bank holding company means that state in which the deposits of the national bank or the total deposits of all the bank holding company's banking subsidiaries are the largest.

(32) "In-state banking institution" means a banking institution, a national bank having its principal place of business in Oregon or a bank holding company having its principal place of business in Oregon.

(33) "Financial institution" means banking institutions, national banks, extranational institutions, foreign institutions, federal associations as defined in ORS 722.004, savings associations as defined in ORS 722.004, credit unions as defined in ORS 723.006, out-of-state credit unions doing business in this state under ORS 723.042 and federal credit unions.

(34) "Commercial bank" means a bank, a savings bank, a stock savings bank, a national bank, a foreign institution or an extranational institution.

SECTION 110. ORS 707.700 is amended to read: 707.700. (1) After a charter has been issued to an institution, the board of directors shall elect a chief executive officer who shall also be a director, a president who also may be the chief executive officer, and at least one vice president and may appoint a cashier, a treasurer and all necessary officers and employees.

(2) The board of directors may define the duties, fix the compensation, dismiss, fill vacancies and require bonds or irrevocable letters of credit for the faithful performance of the duties of the employees and officers of the institution.

(3) In the event the board dismisses the chief executive officer, the chief executive officer shall no longer serve as a director.

(4) Any officer or agent elected or appointed by the board of directors may be removed by the board of directors whenever, in its judgment, the best interests of the institution will be served thereby, but such removal shall be without prejudice to the contract rights, if any, of the person so removed. Election or appointment of an officer or agent shall not of itself create contract rights.

SECTION 111. ORS 708.230 is amended to read: 708.230. (1) An institution may secure any of the funds deposited with the institution by giving a surety bond, or an irrevocable letter of credit issued by a commercial bank as defined in ORS 706.005 or a policy of insurance under which some person other than the institution becomes liable for deposits except the aggregate amount of the bonds, letters of credit or policies of insurance shall not exceed 20 percent of the capital of the institution.

(2) A depositor may insure any deposit if the institution is not a party to the insurance and does not pay any premium or other charges.

SECTION 112. ORS 708.235 is amended to read:

708.235. If trust funds or public funds are secured by the assets of an institution and a bond of a surety company, or an irrevocable letter of credit, the assets and bond or letter of credit shall be held as security for a ratable proportion of the deposit on the basis of the market value of the assets and of the total amount of the surety bonds or letters of credit.

SECTION 113. ORS 708.525 is amended to read: 708.525. (1) A bank or national bank shall recognize an adverse claim to a deposit it holds if the adverse claimant gives notice to the bank or national bank of its claim and:

(a) Procures a restraining order, injunction or other appropriate process against the bank or national bank in an action wherein the person to whose credit the deposit stands is made a party and served with summons; or

(b) Executes to the bank or national bank, in a form and with sureties acceptable to the bank or national bank, a bond or an irrevocable letter of credit issued by a commercial bank as defined in ORS 706.005, indemnifying the bank or national bank from any liability, damage and expenses on account of the payment of the adverse claim or the dishonor of the check or other order of the person to whose credit the deposit stands.

(2) This section does not apply where the person to whose credit the deposit stands is a fiduciary for the adverse claimant, and the affidavit of the adverse claimant states the facts constituting the relationship and the facts showing reasonable cause of belief on the part of the claimant that the fiduciary is about to misappropriate the deposit.

SECTION 114. ORS 709.030 is amended to read: 709.030. (1) Before a trust company or a national bank authorized to conduct a trust business transacts any trust business it shall deposit with the director, as security and as a pledge for the faithful performance of its fiduciary duties:

(a) Cash or interest-bearing securities, which securities shall have a ready market value;

(b) A surety bond issued by a surety company authorized to transact business in this state and in a form approved by the director, under which the principal and surety indemnify the several owners of the fund held in trust against loss due to the failure of the trust company or the national bank; [or]

(c) An irrevocable letter of credit issued by a commercial bank as defined in ORS 706.005; or [(c)] (d) Any combination of cash, letters of credit, interest-bearing securities and surety bond.

(2) If the cash and securities held in trust amount to less than \$1,000,000, the deposit, bond, letters of credit or combination thereof shall be \$50,000. If the cash and securities held in trust amount to \$1,000,000 but do not exceed \$1,500,000, the deposit, bond, letters of credit or combination thereof shall be \$100,000. For each \$500,000 or fraction thereof in excess of \$1,500,000 held in trust, the

deposit, bond, or letters of credit or combination thereof shall be increased an additional \$25,000; except a trust company or national bank shall not be required to increase the deposit, bond, letters of credit or combination thereof to an amount in excess of:

- (a) \$600,000, prior to January 1, 1986;
- (b) \$700,000, prior to January 1, 1987;
- (c) \$800,000, prior to January 1, 1988;
- (d) \$900,000, prior to January 1, 1989; and
- (e) \$1,000,000, prior to January 1, 1990.

(3) The securities shall be deposited with the director and held by the director as trustee for the beneficiaries of the trust funds held by the trust company or the national bank.

SECTION 115. ORS 709.220 is amended to read:

709.220. (1) Funds placed or held in trust by a trust company or by the trust department of a national bank awaiting investment or distribution shall not be held uninvested or undistributed for a longer period than is reasonable for the proper management of the account, shall be carried in a separate account and shall not be used by the trust company, bank or national bank in the conduct of its business or in the conduct of the business of any of its affiliates, except that such funds may be deposited in the commercial or savings or other department of the trust company, bank or national bank if the trust company, bank or national bank first obtains and sets aside in its trust department:

- (a) Bonds or other securities eligible for the investment of trust funds;
- (b) A surety bond; [or]
- (c) An irrevocable letter of credit issued by a commercial bank as defined in ORS 706.005; or
- [(c) Both] (d) A combination of the securities, letters of credit and surety bond.

(2) The surety bond shall be issued by a surety company authorized to transact business in this state and approved by the director[, and]. The bond or letter of credit shall provide that the principal and surety or letter of credit issuer shall indemnify the several owners of the funds held in trust against loss due to the failure of the trust company, bank or national bank.

(3) Notwithstanding the provisions of ORS 708.230, the securities, the surety bond, the letter of credit or the securities, [and] the surety bond and the letters of credit together shall be in an amount equal to the portion of the trust funds not insured by the United States Government or any agency or instrumentality of the United States.

(4) If the trust company, bank or national bank fails, the owners of the funds held in trust for investment or distribution have a lien on the bonds or other securities set apart, or a right of action on the surety bond and upon the letter of credit, in addition to their claim against the estate of the trust company, bank or national bank.

SECTION 116. ORS 711.585 is amended to read:

711.585. (1) When the director has paid to each depositor and creditor of the institution whose claim as a depositor or creditor has been proved and allowed, the full amount of the claim and has made proper provision for unclaimed or unpaid deposits or dividends and has paid all the expenses of the liquidation, the director shall call a meeting of the stockholders of the institution by giving notice of the meeting for 30 days in one or more newspapers circulated in the county in which the principal office of the institution is located. At the meeting the stockholders shall select, by ballot, one or more agents to administer the assets and wind up the affairs of the institution. A majority of the stock present and voting in person or by proxy is necessary to select an agent.

(2) The agent shall file with the director a bond or an irrevocable letter of credit to the State of Oregon in an amount not less than 20 percent of the book value of the assets to be surrendered to the agent, but in no case shall the bond or letter of credit be less than \$1,000. The bond or letter of credit shall be executed by the agent as principal. [and] The bond shall be executed by a surety company authorized to do business in this state as surety, and any letter of credit shall be issued by a commercial bank as defined in ORS 706.005. The bond or letter of credit shall be conditioned for the faithful performance of all the duties of the agent's trust.

(3) When the agent files the required bond or letter of credit, the director shall transfer to the agent all the assets of the institution remaining in the hands of the director. Upon the transfer and delivery the director is discharged from all further liability to the institution and its creditors. The agent shall complete the liquidation of the affairs of the institution, and, after paying the expenses of the liquidation, shall distribute the proceeds among the stockholders in proportion to the several holdings of stock.

(4) If the stockholders fail to meet on the date advertised for the stockholders' meeting or within 15 days after the advertised date or fail to appoint an agent, or if the agent fails to qualify as required in this section within 30 days after the date of their selection, the director may appoint an agent. This agent shall file a bond or letter of credit and liquidate the affairs of the institution as though the agent had been selected by the stockholders. Upon the transfer and delivery to the agent appointed by the director of all the remaining assets in the hands of the director, the director is discharged from all further liability to the institution and its creditors.

SECTION 117. ORS 716.070 is amended to read:

716.070. (1) The incorporators shall create an expense fund by depositing to the credit of the savings bank in cash not less than the sum of \$5,000. They shall also enter into an agreement or undertaking with the director as trustee for the depositors with the savings bank to make further contributions in cash to the expense fund of the savings bank as

may be necessary to pay the operating expenses until the savings bank can pay them from its earnings, in addition to the dividends as declared and credited to its depositors. The agreement or undertaking shall fix the liability of the incorporators jointly and severally for a reasonable amount as approved or determined by the director. In addition to the undertaking of the incorporators, the director may require a surety bond executed by a corporation authorized to transact, within this state, the business of surety, or an irrevocable letter of credit issued by a commercial bank as defined in ORS 706.005. The agreement or undertaking or letter of credit and security shall be filed in the office of the director.

(2) The amounts contributed to the expense fund of the savings bank by the incorporators is not a liability of the savings bank except as provided in ORS 716.800.

SECTION 118. ORS 717.080 is amended to read:

717.080. (1) In lieu of a surety bond or of any portion of the principal sum of the surety bond, the applicant may deposit with the director or with a bank, trust company or national bank in this state that has been designated by the applicant and approved by the director, an irrevocable letter of credit issued by a commercial bank as defined in ORS 706.005, or stocks, bonds, notes, debentures or other obligations of the United States, any agency or instrumentality of the United States, this state or a city, county, school district or instrumentality of this state, or guaranteed by the United States or this state. The letter of credit or securities deposited as provided in this subsection shall be in an aggregate amount, based upon principal amount or market value, whichever is lower, of not less than the amount of the required surety bond or portion of the surety bond and shall be held to secure the same obligations as would the required surety bond.

(2) Securities deposited with the director shall be deposited with the State Treasurer. The depositor may receive all interest and dividends on the deposited securities. With the approval of the director, the depositor may substitute other securities for those deposited.

SECTION 119. ORS 717.086 is amended to read:

717.086. If the director determines that the bond, or letter of credit or securities filed or deposited under ORS 717.070, 717.075 and 717.080 are insecure, deficient in amount or exhausted in whole or in part, the director may by written order require the filing of a new or supplemental bond or the deposit of new or additional letters of credit or securities. A licensee shall comply with the order of the director within 10 days following service of the order upon the licensee.

SECTION 120. ORS 717.090 is amended to read:

717.090. (1) When an application for a license to sell checks has been filed with the director and is accompanied by the fee and documents required by

ORS 717.070, 717.075 and 717.080, the director shall investigate the qualifications of the applicant and determine if the financial responsibility, financial condition, business experience, character and general fitness of the applicant indicate that the applicant's business will be conducted honestly, carefully and efficiently. If the director determines that such qualifications have been met, that the applicant has a net worth of \$100,000 and that the bond or deposit of a letter of credit or of securities is in the prescribed amount, the director shall issue to the applicant a license to engage in the business of selling checks in this state.

(2) In conducting the investigation of an applicant, the director may investigate and consider the qualifications of officers and directors of an applicant.

SECTION 121. ORS 722.032 is amended to read: 722.032. (1) After the organizational meeting, the initial board of directors of an association shall:

(a) File with the director a corporate surety bond or letter of credit, in the form and amount required by ORS 722.034;

(b) Collect subscriptions to capital or the expense fund in the amounts required under ORS 722.042, but only after the surety bond required by paragraph (a) of this subsection has been filed with the director;

(c) Obtain subscriptions to savings accounts pledged, in the amount required under ORS 722.042, to be paid in to the association upon issuance to it of a certificate of authority;

(d) Take such other action as may be necessary to complete the organization of the association; and

(e) Report the completion of the organization to the director.

(2) The report shall be filed with the director within six months after the date the certificate of incorporation is issued. However, the director, upon good cause shown prior to the expiration of the six-month period, may extend the time for filing the report for an additional period not to exceed six months.

SECTION 122. ORS 722.034 is amended to read: 722.034. (1) [The] Any corporate surety bond or

letter of credit filed with the director as provided by ORS 722.032 shall be executed to the State of Oregon and shall be in a form and amount, not less than \$100,000, approved by the director. The bond or letter of credit shall assure the safekeeping of the funds subscribed and collected and their delivery, plus earnings, to the association after the association has met all conditions and requirements of organization and doing business in this state, and has commenced public operation. In case the certificate of authority is not issued, or is revoked pursuant to ORS 722.052 (2), the bond or letter of credit shall assure the return, to the respective subscribers or their assigns, of the amounts collected, plus earnings, less organizational expenses incurred and within the amount authorized. ORS 742.358 applies

to cancellation of such a bond or letter of credit. Any letter of credit filed with the director under this section shall be an irrevocable letter of credit issued by a commercial bank as defined in ORS 706.005.

(2) Actual organizational expenses of the kind described by ORS 57.116 (1985 Replacement Part) may be paid as incurred from the funds collected under ORS 722.042. However, such payments in the aggregate shall not exceed an amount authorized by the director as reasonable for organizational expenses.

(3) The initial board of directors of an association shall, subject to the approval of the director, designate an escrow agent for the safekeeping and delivery of funds in accordance with this section.

SECTION 123. ORS 723.102 is amended to read:

723.102. (1) In accordance with ORS 183.310 to 183.550, the director may adopt rules for the purpose of carrying out this chapter.

(2) The director shall adopt rules prescribing the minimum amount of surety bond or letter of credit coverage and casualty, liability and fire insurance required of credit unions in relation to their assets or to the money and other personal property involved, or to their exposure to risk.

(3) In addition to the notice requirements of ORS 183.310 to 183.550, before the director adopts a rule, the director shall submit a copy of the rule to each credit union.

SECTION 124. ORS 723.122 is amended to read:

723.122. (1) Each credit union shall obtain and maintain a fidelity bond or irrevocable letter of credit issued by a commercial bank as defined in ORS 706.005, which includes coverage in accordance with any rules of the director, to protect the credit union against losses caused by occurrences covered therein such as fraud, dishonesty, forgery, embezzlement, misappropriation, misapplication of duty and all acts of its agents, directors, officers, committee members, employees or attorneys in an amount not less than 100 percent of its assets up to \$2 million. Such bond or letter of credit shall include a faithful performance clause to cover the chief financial officer. Such bond or letter of credit shall be approved by the director who may require such additional amounts as the director deems necessary for credit unions with assets in excess of \$2 million.

(2) All bond claims or claims upon a letter of credit shall be reported to the director.

SECTION 125. ORS 726.070 is amended to read:

726.070. (1) A bond in the sum of \$25,000 executed by the applicant as obligor, together with a surety company authorized to do business in this state as surety shall accompany the application and be maintained by the pawnbroker licensee with the director. This bond shall be executed to the State of Oregon and for the use of the state and of any person who may have a cause of action against the

obligor of the bond or the letter of credit issuer under this chapter. The bond or letter of credit shall be conditioned that the obligor will faithfully conform to and abide by the provisions of this chapter and of all rules and regulations lawfully made by the director under this chapter, and will pay to the state and to any such person any and all moneys that may become due or owing to the state or to such person from the obligor under and by virtue of the provisions of this chapter. Before the bond or letter of credit is finally accepted by the director it shall be approved by the Attorney General.

(2) If any person is aggrieved by the misconduct of a pawnbroker or by the pawnbroker's violation of any law and recovers judgment therefor, such person may, after the return unsatisfied either in whole or in part of any execution issued upon such judgment, maintain an action for the person's own use upon the bond or letter of credit of the pawnbroker in any court having jurisdiction of the amount claimed. The director shall furnish to anyone applying therefor, a certified copy of any such bond filed with the director upon the payment of a fee of \$5 and the certified copy shall be prima facie evidence in any court that the bond or letter of credit was duly executed and delivered by each pawnbroker whose name appears thereon.

SECTION 126. ORS 731.328 is amended to read:

731.328. (1) Before an unauthorized insurer files or causes to be filed any pleading in any court action or any notice, order, pleading, or process in an administrative proceeding before the director instituted against such person or insurer, by services made as provided in ORS 731.324, such insurer shall deposit with the clerk of the court in which such action is pending, or with the director in administrative proceedings before the director, cash or securities. The insurer may also file with such clerk or director a bond with good and sufficient sureties, to be approved by the clerk or director, or an irrevocable letter of credit issued by a commercial bank as defined in ORS 706.005, in an amount to be fixed by the court or director sufficient to secure the payment of any final judgment which may be rendered in such action or administrative proceeding.

(2) The director, in any administrative proceeding in which service is made as provided in ORS 731.324, may order such postponement as may be necessary to afford the defendant reasonable opportunity to comply with the provisions of subsection (1) of this section and to defend such action.

(3) Nothing in subsection (1) of this section shall be construed to prevent an unauthorized insurer from filing a motion to quash a writ or to set aside service thereof made in the manner provided in ORS 731.324.

SECTION 127. ORS 732.105 is amended to read:

732.105. The incorporators shall file with the director within six months of the issuance of the organization permit under ORS 732.055:

(1) Duplicate originals of the articles of incorporation signed by all of the incorporators.

(2) A corporate surety bond payable to the director and the director's successors, as trustee, in the sum of \$25,000, or, in lieu thereof, a like amount in an irrevocable letter of credit issued by a commercial bank as defined in ORS 706.005 or in approved securities or cash, conditioned upon the faithful accounting to the insurer upon completion of its organization and the receipt of its certificate of authority from the director, or to the shareholders, members, applicants for policies and creditors, or to the trustee, receiver or assignee of the insurer, duly appointed in any proceeding in any court or department of competent jurisdiction in this state, in accordance with their respective rights in case the organization of the insurer is not completed and the certificate of authority is not procured from the director. Such bond, letter of credit or deposit shall be in the form prescribed by the director.

SECTION 128. ORS 732.115 is amended to read:

732.115. (1) If the director finds that the articles of incorporation and the bond, letter of credit or securities filed with the director conform to law and the sureties on [the] any bond are acceptable, the director shall, when all fees established by the director have been paid:

(a) Indorse on each of such duplicate originals of the articles the word "filed," and the month, day and year of the filing thereof.

(b) File one of such duplicate originals in the director's office.

(c) Issue a certificate of incorporation to which the director shall affix the other duplicate original.

(d) Return to the incorporators or their representative the certificate of incorporation with the duplicate original.

(2) Upon the issuance of the certificate of incorporation, the insurer's corporate existence shall begin and the insurer shall have all authority and power, subject to the limitations prescribed in the Insurance Code, as may be necessary and proper to complete its organization, obtain its initial capital and otherwise complete the requirements to qualify for a certificate of authority to transact the class or classes of insurance proposed in its articles of incorporation. In the case of an insurer without capital stock, the authority and power shall include the solicitation of applications for insurance and receipt in advance of premium payments for any insurance for which the proposed form of application, policies, literature and advertisements pertaining thereto have been filed with and approved by the director. An insurer shall not otherwise transact any business or incur any indebtedness until its certificate of authority to transact insurance has been granted.

(3) The issuance of the certificate of incorporation shall be conclusive evidence that all conditions precedent required to be performed by the incorporators have been complied with and that the insurer has been incorporated under the laws of this state, except as against this state in a proceeding to

cancel or revoke the certification of incorporation or any certificate of authority to transact insurance or for involuntary dissolution of the insurer.

SECTION 129. ORS 742.352 is amended to read: 742.352. Any receiver, assignee, guardian, conservator, trustee, executor, administrator or other fiduciary, required by law or the order of any court or judge to give a bond, letter of credit or other obligation as such, may include as a part of the lawful expense of executing the trust, such reasonable sum paid an insurer for becoming surety on the bond or an issuer of a letter of credit as may be allowed by the court in which, or judge before whom, the person is required to account. Such sum shall not exceed one percent per annum of the amount of the bond or letter of credit.

SECTION 130. ORS 742.354 is amended to read: 742.354. Any state, county or municipal officer or officer of any school district, public board or public commission within this state, or any deputy employed in the office of any such official, who is required by law, ordinance, regulation or public policy to give a bond or letter of credit for the faithful performance of duties, shall be allowed a reasonable sum paid a surety insurer for becoming surety on the bond, or paid to a letter of credit issuer for issuing a letter of credit. Such sum shall not exceed one-half of one percent per annum of the amount of the bond or letter or credit. Such premium or fee shall be paid out of the proper state, county, municipal, district, board or commission funds.

SECTION 131. ORS 744.635 is amended to read: 744.635. (1) Before receiving a license to act as an insurance consultant:

(a) An applicant shall execute and deliver to the director a bond or an irrevocable letter of credit of \$5,000 that is in the form and issued by a surety or sureties, or in the case of a letter of credit, by a commercial bank as defined in ORS 706.005, approved by the director.

(b) An applicant shall file with the director a current certificate of errors and omissions insurance with limits of not less than \$1 million per occurrence from an insurer authorized to do business in this state.

(2) The director may decrease or eliminate either or both of the requirements of subsection (1) of this section if the director determines that conditions in the market place for such bonds, letters of credit or insurance would, in the sole opinion of the director, prevent qualified individuals from obtaining a license to act as an insurance consultant.

SECTION 132. ORS 750.045 is amended to read: 750.045. (1) A health care service contractor which is a for-profit or not for-profit corporation shall possess and thereafter maintain capital or surplus, or any combination thereof, of not less than \$250,000 or an amount equal to 50 percent of the

average claims as defined in ORS 750.005 (5) for the preceding 12-month period, whichever is greater, but in no case shall the required amount be more than \$500,000.

(2) A health care service contractor which is a for-profit or not-for-profit corporation shall file a surety bond or such other bond or securities in the sum of \$250,000 as are authorized by the Insurance Code as a guarantee of the due execution of the policies to be entered into by such contractor in accordance with ORS 750.005 to 750.095. In lieu of such bond or securities, a health care service contractor may file an irrevocable letter of credit issued by a commercial bank as defined in ORS 706.005 in the sum of \$250,000. This subsection does not apply to a health care service contractor that has at least 75 percent of its assets invested in health care service facilities pursuant to ORS 733.700.

(3) Subsections (1) and (2) of this section do not apply to ambulance service, emergency medical service, dental service or optometrical service operated on a for-profit or not-for-profit basis if:

(a) The services referred to in this subsection maintain capital or surplus, or any combination thereof, of not less than \$50,000 or an amount equal to 50 percent of the average claims as defined in ORS 750.005 (5) for the preceding 12-month period whichever is greater, but in no case shall the required amount be more than \$500,000.

(b) The services referred to in this subsection file a surety bond or other such bond or securities in the sum of \$50,000 as are authorized by the Insurance Code as a guarantee of the due execution of the policies to be entered into by such contractor in accordance with ORS 750.005 to 750.095.

SECTION 133. ORS 751.065 is amended to read:

751.065. A certificate of authority shall be issued by the director to a person authorized to act as a motorist service club when the club:

(1) Has filed with the director the following:

(a) An application therefor in such form and detail as the director may require, executed under oath by its president or other principal officer;

(b) A copy of the forms of its service contracts;

(c) If it is a corporation, a certified copy of its charter or articles of incorporation and its bylaws;

(d) A financial statement in such form and detail as the director may require, executed under oath by its president or other principal officer; and

(e) If it is a corporation, a certificate of existence from the Secretary of State of this state.

(2) Has paid to the director the pro rata portion of the fee as established by the director for the portion of a year from the date of the application to the next following April 1.

(3) Has satisfied the director by such examination as the director may make and such evidence as the director may require that such club has complied with the laws of this state and that its management is trustworthy and competent. The cost of any such examination shall be paid by the club examined.

(4) Has deposited with the State Treasurer \$25,000 or in lieu thereof, an irrevocable letter of credit issued by a commercial bank as defined in ORS 706.005 in the amount of \$25,000, which shall be held for the faithful performance by the club of its service contracts.

SECTION 134. ORS 767.062 is amended to read: 767.062. The commission may appoint agents to issue temporary passes provided in ORS 767.805 (2) and to collect any fees and taxes required by this chapter. The commission shall prescribe the duties and compensation of such agents and may require them to give bonds or irrevocable letters of credit issued by a commercial bank as defined in ORS 706.005, in such amount as the commission determines appropriate, conditioned upon the faithful performance of their duties.

SECTION 135. ORS 767.120 is amended to read:

767.120. (1) No person shall act as a broker unless the person holds a broker's license, issued by the commission, to engage in such transactions.

(2) A brokerage license shall be issued to any qualified applicant therefor, authorizing the whole or any part of the operations covered by the application, if it is found that:

(a) The applicant is fit, willing and able properly to perform the service proposed and to conform to the provisions of this chapter and the requirements and rules of the commission thereunder; and

(b) The proposed service, to the extent to be authorized by the license, is or will be consistent with the public interest.

(3) No such license shall be issued or remain in force unless the applicant furnishes a bond, an irrevocable letter or credit issued by a commercial bank as defined in ORS 706.005 or other security approved by the commission, in such form and amount as will insure financial responsibility and the supplying of authorized transportation in accordance with contracts, agreements or arrangements therefor.

(4) The commission shall prescribe reasonable rules for the protection of travelers or shippers by motor vehicle, to be observed by any person holding a brokerage license.

SECTION 136. ORS 767.210 is amended to read:

767.210. (1) In lieu of the insurance policy or surety bond, the holder of any certificate or permit may file with the commission an irrevocable letter of credit issued by a commercial bank as defined in ORS 706.005, or money, bank or savings and loan savings certificates, or bonds, negotiable by delivery, of the State of Oregon, school districts therein, or of any county therein, or obligations of the United States, or obligations for which the faith of the United States is pledged for the payment of both the principal and interest, equal in amount to the amount of the insurance policy or bond required by the commission.

(2) So long as the deposit remains unencumbered the depositor is entitled to collect the interest upon such securities.

(3) The commission shall hold the securities or letter of credit upon such terms as the commission shall designate and approve pursuant to the provisions of this chapter, and shall deliver such securities or letter of credit to the State Treasurer, who shall receive and hold them subject to the lawful orders of the commission. The State Treasurer and the surety or letter of credit issuer of the treasurer shall be liable upon the official bond or letter of credit for their safekeeping. The depositors shall reimburse the State Treasurer for any expenses incurred by the treasurer in the mailing, insuring, shipping or delivering of any such securities or letter of credit, or of the interest coupons attached thereto as they mature.

(4) Such substituted security or letter of credit shall be subject to the liabilities imposed by the terms of the policy of insurance or surety bond or letter of credit then currently used by the commission.

(5) If the securities or letter of credit provided for in this section are furnished in lieu of an insurance policy or bond, they shall not be subject to withdrawal or assignment by the holder of the certificate or permit, either voluntarily or by operation of law, until the expiration of one year after the holder of the certificate or permit, in connection with which they are furnished has:

(a) Substituted therefor a policy of insurance or surety bond as provided in ORS 767.195 and 767.200;

(b) The certificate or permit canceled; or

(c) Surrendered such certificate or permit to the commission for cancellation and has ceased operation thereunder.

(6) If any such securities become impaired in value, the commission shall require additional protection by insurance, bond, letter of credit or substitute security to the extent that the value of the securities may have become impaired.

SECTION 137. ORS 773.030 is amended to read: 773.030. Within the limits of powers reserved to the state for the regulation of air carriers and air commerce, the commission may:

(1) Fix reasonable rates and routes of air carriers;

(2) Require any air carrier to procure and maintain insurance and performance bonds or irrevocable letters of credit in any amount; and

(3) Authorize such through routes, joint rates and divisions of revenue for persons engaged in air commerce as the commission determines to be in the public interest.

SECTION 138. ORS 776.540 is amended to read: 776.540. (1) Each pilot shall procure and furnish to the board a security in the sum of \$250 as a surety bond or an irrevocable letter of credit, in a form approved by the board and underwritten by a surety company authorized to engage in business

in the State of Oregon or issued by a commercial bank as defined in ORS 706.005, or as a cash deposit in a form approved by the board. The cash deposit, letter of credit or bond shall be conditioned so as to pay the sum to any person, firm, corporation or other legal entity who or which shall suffer any loss or damage by reason of any negligent act or omission of the pilot which relate, directly or indirectly, to pilotage of the vessel. No pilot shall be liable for any such act or omission beyond the amount of the security. However, this limitation of liability shall not apply:

(a) To willful misconduct on the part of the pilot;

(b) To the extent to which insurance is procured pursuant to the option granted by ORS 776.510 and 776.520; or

(c) To acts or omissions relating to the ownership and operation of pilot boats or the transportation of pilots to and from the vessel being piloted.

(2) When any suit or action is brought in any court against a pilot for any such act or omission in respect of which liability is limited as provided by this section and other claims are made or anticipated in respect of the same act or omission, upon payment by the pilot of the amount of the security into the court in which such suit or action is brought, the court shall distribute that amount rateably among the several claimants and shall dismiss the proceedings as to the pilot.

SECTION 139. ORS 822.110 is amended to read: 822.110. The division shall issue a wrecker certificate to any person if the person meets all of the following requirements:

(1) The person must establish that the area approved under the wrecker certificate for use in the wrecking business meets one of the following criteria:

(a) The area is more than 1,100 feet from the nearest edge of the right of way of any state highway.

(b) The business conducted within the area is hidden or adequately screened by the terrain or other natural objects or by plantings, fences or other appropriate means, so as not to be visible from the main traveled way of the highway, in accordance with rules adopted by the State Highway Engineer or a duly authorized representative of the highway engineer.

(c) The area and the business thereon are located in an area zoned for industrial use under authority of the laws of this state.

(2) The person must pay the fee required under ORS 822.700 for issuance of a wrecker certificate.

(3) The person must complete the application for a wrecker certificate described under ORS 822.115.

(4) The person must deliver to the division any approvals by local governments required under ORS 822.140.

(5) The person must deliver to the division a bond or letter of credit that meets the requirements of ORS 822.120.

SECTION 140. ORS 822.120 is amended to read: 822.120. (1) A bond or letter of credit required to qualify for a wrecker certificate under ORS 822.110 or renewal of a certificate under ORS 822.125 must be:

(a) With a corporate surety licensed to transact business within this state, or as to a letter of credit, an irrevocable letter of credit issued by a commercial bank as defined in ORS 706.005;

(b) Executed to the State of Oregon;

(c) In the sum of \$2,000;

(d) Approved as to form by the Attorney General;

(e) Conditioned that the person issued the wrecker certificate will conduct business without violation of this section, ORS 819.010, 819.020, 819.040, 822.140 or 822.150; and

(f) Conditioned that the bond or letter of credit is subject to an action under this section.

(2) Any person shall have a right of action against the holder of a wrecker certificate and the surety on the holder's bond or the wrecker's letter of credit issuer if the person suffers any loss or damage by reason of the certificate holder's violation of this section, ORS 819.010, 819.020, 819.040, 822.140 or 822.150.

SECTION 141. ORS 823.100 is amended to read:

823.100. (1) In order to secure and retain a license under this chapter, the owner of an ambulance, other than a governmental unit, shall file and maintain with the division proof of ability to respond in damages for liability arising from the ownership, operation, use or maintenance of the ambulance in the amount of:

(a) \$100,000 because of bodily injury to or death of one person in any one accident;

(b) Subject to that limit for one person, \$300,000 because of bodily injury to or death of two or more persons in any one accident; and

(c) \$20,000 because of injury to or destruction of the property of others in any one accident.

(2) Proof of financial responsibility under subsection (1) of this section may be given by filing with the division for the benefit of the owner:

(a) A certificate of insurance issued by an insurance carrier licensed to transact insurance in this state showing that the owner has procured and that there is in effect a motor vehicle liability policy for the limits of financial responsibility mentioned in subsection (1) of this section designating by explicit description all motor vehicles with respect to which coverage is granted thereby and insuring the named insured and all other persons using any such motor vehicle with insured's consent against loss from the liabilities imposed by law for damages arising out of the ownership, operation, use or maintenance of any such motor vehicle; or

(b) A bond conditioned for the paying in behalf of the principal, the limits of financial responsibility mentioned in subsection (1) of this section; or

(c) A certificate of the State Treasurer that such owner has deposited with the State Treasurer the sum of \$320,000 in cash, in the form of an irrev-

ocable letter of credit issued by a commercial bank as defined in ORS 706.005 or in securities such as may legally be purchased by fiduciaries or for trust funds of a market value of \$320,000.

SECTION 142. ORS 823.120 is amended to read:

823.120. When a bond, letter of credit or certificate of deposit with the State Treasurer is the method chosen to prove financial responsibility, the provisions of ORS 806.090 to 806.120 shall be deemed to refer to bonds, letters of credit, certificates, deposits and rights and remedies accruing thereunder under this chapter except that the dollar amounts required for the bonds, letters of credit or deposits and subject to the provisions shall be \$320,000 each respectively.

SECTION 143. ORS 316.164 is amended to read:

316.164. (1) Except as provided in subsection (3) of this section, if the department makes the findings required under subsection (2) of this section, the department may require any employer subject to ORS 316.162 to 316.212, except the state or its political subdivisions, to post a surety bond, or irrevocable letter of credit issued by a commercial bank as defined in ORS 706.005, with the department, to secure future payment of amounts required to be withheld and paid over to the department under ORS 316.162 to 316.212. The bond or letter of credit shall be in an amount equal to the amounts required to be withheld upon the wages paid or estimated to be paid by the employer for a period of four calendar quarters. The bond or letter of credit shall be in a form acceptable to the department. Posting of the bond or letter of credit shall not relieve the employer from withholding and paying over amounts based on wages paid by the employer under any provision of ORS 316.162 to 316.212. The department may, in its discretion, at any time apply such bond or letter of credit or part thereof to the delinquencies or indebtedness of the employer arising under any provision of ORS 316.162 to 316.212 and accruing after the date the bond or letter of credit was posted. Appeal of an action of the department under this section shall not relieve an employer of the requirement during the pendency of the appeal.

(2) Before requiring an employer to post a bond or irrevocable letter of credit under subsection (1) of this section, the department shall determine that the employer has failed to make payment to the department of amounts required to be withheld and paid over under any provision of ORS 316.162 to 316.212 for at least three calendar quarters, and the total amount of delinquent payments exceeds \$2,500, exclusive of interest or penalties. For purposes of this subsection, a payment shall not be considered delinquent if the employer's liability to withhold is subject to appeal to the director.

(3) The department shall not require a bond or irrevocable letter of credit to be posted under this section if the employer elects to notify the department of the times of payment of wages to the employees of the employer, and, notwithstanding ORS

316.197, to pay over amounts withheld within three banking days after the dates the wages were paid.

(4) Before requiring an employer to post a bond or irrevocable letter of credit or make payment of amounts required to be withheld in the manner prescribed in subsection (3) of this section, the department shall attempt to obtain payment of delinquent amounts through other methods of collection, however, the department is not required to seize or sell real or personal property in order to comply with the requirements of this subsection.

(5) Any bond or irrevocable letter of credit required under subsection (1) of this section shall become the sole property of the department and shall be held by the department to guarantee payment of withholding taxes by the employer. The bond or letter of credit shall be held for the benefit of the State of Oregon, subject only to the provisions of subsection (6) of this section. The bond or letter of credit shall be prior to all other liens, claims or encumbrances and shall be exempt from any process, attachment, garnishment or execution.

(6) If an employer ceases to be an employer subject to ORS 316.162 to 316.212, the department shall, upon receipt of all payments due from the employer for withheld amounts, cancel any bond or irrevocable letter of credit given under this section. Such bonds or letters of credit held for the benefit of the State of Oregon shall first be applied to any indebtedness or deficiencies due from the employer under ORS 316.162 to 316.212 and accruing after the date the bond or letter of credit was posted before any return is made to the employer. The employer shall have no interest in such bond or letter of credit prior to full compliance with this section and all provisions of ORS 316.162 to 316.212.

(7) If an employer required to post a bond or irrevocable letter of credit or make payment of amounts withheld in the manner prescribed under this section makes full payment of all delinquent amounts due and owing at the time the bond, letter of credit or accelerated payment schedule was required and makes payment of amounts due under ORS 316.162 to 316.212 and files returns required in connection with those payments in a timely manner for the succeeding four calendar quarters, the department shall release the employer from the requirement to post the bond or letter of credit or make accelerated payments of amounts withheld.

(8) If any employer fails to comply with subsections (1) to (7) of this section, the Oregon Tax Court, upon commencement of an action by the department for that purpose, may order the employer to post the required bond or irrevocable letter of credit or make accelerated payments of amounts withheld. The employer's failure to obey an order of the court is punishable by contempt. If the Oregon Tax Court determines that an order of compliance enforceable by contempt proceedings will not assure the payment of withheld taxes by the employer, the court may enjoin the employer from further employing individuals in this state or continuing in busi-

ness therein until the employer has complied with subsection (1) to (7) of this section.

SECTION 144. ORS 822.020 is amended to read: 822.020. The division shall issue a vehicle dealer certificate to any person if the person meets all of the following requirements:

(1) The person must complete the application for a dealer certificate described under ORS 822.025.

(2) The person must deliver to the division a bond or letter of credit that meets the requirements under ORS 822.030.

(3) The person must deliver to the division a certificate of insurance that meets the requirements established by ORS 822.033.

(4) The person must pay the fee required under ORS 822.700 for issuance of a vehicle dealer certificate.

SECTION 145. ORS 822.030 is amended to read: 822.030. (1) A bond or letter of credit required to qualify for a vehicle dealer certificate under ORS 822.020 or to qualify for renewal of a certificate under ORS 822.040 must comply with all of the following:

(a) The bond shall have a corporate surety licensed to do business within this state. A letter of credit shall be an irrevocable letter of credit issued by a commercial bank as defined in ORS 706.005. The surety or bank shall notify the division if the bond or letter of credit is canceled for any reason. The surety or bank shall continue to be liable under the bond or letter of credit until the division receives the notice required by this paragraph, or until the cancellation date specified in the notice, whichever is later.

(b) The bond or letter of credit shall be executed to the State of Oregon.

(c) Except as otherwise provided in this paragraph, the bond or letter of credit shall be in the following sum:

(A) If the applicant is seeking a certificate to be a dealer exclusively in motorcycles, mopeds, Class I all-terrain vehicles or snowmobiles or any combination of those vehicles, the bond or letter of credit shall be for \$2,000.

(B) Except as provided in subparagraph (A) of this paragraph, if the applicant is seeking a certificate to be a vehicle dealer, the bond or letter of credit shall be for \$15,000.

(d) The bond or letter of credit described in this subsection shall be approved as to form by the Attorney General.

(e) The bond or letter of credit must be conditioned that the person issued the certificate shall conduct business as a vehicle dealer without fraud or fraudulent representation and without violating any provisions of the vehicle code relating to vehicle registration, vehicle permits, the transfer or alteration of vehicles or the regulation of vehicle dealers.

(f) The bond or letter of credit must be filed and held in the office of the division.

(2) Any person shall have a right of action against a vehicle dealer [and], against the surety on the vehicle dealer's bond and against the letter of credit in the person's own name if the person suffers any loss or damage by reason of the vehicle dealer's fraud, fraudulent representations or violations of provisions of the vehicle code relating to:

- (a) Vehicle registration;
- (b) Vehicle permits;
- (c) The transfer or alteration of vehicles; or
- (d) The regulation of vehicle dealers.

(3) If the certificate of a vehicle dealer is not renewed or is voluntarily or involuntarily canceled, the sureties on the bond and the issuer of the letter of credit are relieved from liability that accrues after the division cancels the certificate.

Approved by the Governor June 25, 1991

Filed in the office of Secretary of State June 25, 1991

CHAPTER 332

AN ACT

SB 1001

Relating to economic development.

Be It Enacted by the People of the State of Oregon:

SECTION 1. When moneys are received by a county upon condition or with the intent of the receiving county that the moneys be used for a public purpose revolving loan fund, the county may dedicate the moneys for the purposes of the revolving loan fund and payment of the expenses of administering the fund by enacting an ordinance that:

- (1) Establishes a separate fund into which all moneys to be used for economic development revolving loans or grants may be deposited together with proceeds, including loan fees and interest, received from processing and repayment of such loans;
- (2) Specifies the public purpose and the scope and limitation of uses of moneys in the fund; and
- (3) Provides for distribution of fund assets if the governing body of the county determines, after a public hearing, that dissolution of the fund is in the best interests of the public.

Approved by the Governor June 25, 1991

Filed in the office of Secretary of State June 25, 1991

CHAPTER 333

AN ACT

SB 789

Relating to the medical insurance pool; amending ORS 735.614.

Be It Enacted by the People of the State of Oregon:

SECTION 1. ORS 735.614 is amended to read: 735.614. (1) If the Oregon Medical Insurance Pool Board determines at any time that funds in the Oregon Medical Insurance Pool Account are or will

become insufficient for payment of expenses of the pool in a timely manner, the board shall determine the amount of funds needed and shall impose and collect assessments against insurers, as provided in this section, in the amount of the funds determined to be needed.

(2) Each insurer's assessment shall be determined by multiplying the total amount to be assessed by a fraction, the numerator of which equals the number of Oregon insureds and certificate holders insured or reinsured by each insurer, and the denominator of which equals the total of all Oregon insureds and certificate holders insured or reinsured by all insurers, all determined as of the end of the prior calendar year.

(3) The board shall insure that each insured and certificate holder is counted only once with respect to any assessment. For that purpose, the board shall require each insurer that obtains reinsurance for its insureds and certificate holders to include in its count of insureds and certificate holders all insureds and certificate holders whose coverage is reinsured in whole or part. The board shall allow an insurer who is a reinsurer to exclude from its number of insureds those that have been counted by the primary insurer or the primary reinsurer for the purpose of determining its assessment under this subsection.

(4) Each insurer shall pay its assessment as required by the board.

(5) If assessments exceed the amounts actually needed, the excess shall be held and invested and, with the earnings and interest, used by the board to offset future net losses or to reduce pool premiums. For purposes of this subsection, future net losses include reserves for incurred but not reported claims.

(6) Each insurer's proportion of participation in the pool shall be determined by the board based on annual statements and other reports deemed necessary by the board and filed by the insurer with the board. The board may use any reasonable method of estimating the number of insureds and certificate holders of an insurer if the specific number is unknown. With respect to insurers that are reinsurers, the board may use any reasonable method of estimating the number of persons insured by each reinsurer.

(7) The board may abate or defer, in whole or in part, the assessment of an insurer if, in the opinion of the board, payment of the assessment would endanger the ability of the insurer to fulfill the insurer's contractual obligations. In the event an assessment against an insurer is abated or deferred in whole or in part, the amount by which the assessment is abated or deferred may be assessed against the other insurers in a manner consistent with the basis for assessments set forth in this section. The insurer receiving the abatement or deferment shall remain liable to the board for the deficiency for four years.

(8) The board shall abate or defer assessments authorized by this section if [the board determines] a court orders that assessments cannot be made

However, in no case shall the total payment be more than the total of the individual pressure vessel fees fixed by ORS 480.510 to 480.665.

(2) The owner or user of any vessel which is to be inspected during the inspection period under the provisions of ORS 480.570 (3) shall pay to the Building Codes Agency a special permit fee of ~~[\$15]~~ \$25, except that the Building Codes Agency may require payment of a permit fee as provided in ORS 480.595 where it finds the vessel to be in violation of the minimum safety standards during the inspection period. In addition, for a quantity of pressure vessels inspected at the same location, the board may establish a different special permit fee which recognizes the lower costs of handling, but in no such case shall the total payment be more than the total of individual pressure vessel fees fixed by ORS 480.510 to 480.665.

(3) If there is a lengthened inspection interval under ORS 480.560 (2), the permit fee interval shall be lengthened correspondingly.

(4) Whenever an insurance company notifies its insured that it will no longer insure a boiler or pressure vessel, or that insurance on a boiler or pressure vessel is no longer in force, the insurance company shall also notify the chief boiler inspector, in a form and manner prescribed by the chief boiler inspector, of the description and vessel registration numbers of the boilers or pressure vessels for which insurance is canceled or suspended or is not to be renewed.

(5) Whenever an owner or user of a boiler or pressure vessel fails to pay any fee required by this chapter within 60 days after the date of depositing written notification in the United States mail, postage prepaid, and addressed to the last-known address of the owner or user, the fee shall be considered delinquent and the fee shall be doubled. If court action is taken the Building Codes Agency shall be awarded by the court or judge a reasonable attorney fee at trial and on appeal, in addition to its costs and disbursements, if it prevails.

SECTION 5. ORS 480.630 is amended to read:

480.630. (1) No person shall engage in the business of installing, repairing or altering boilers or pressure vessels unless the person first obtains a license therefor from the agency.

(2) No person shall install, repair or alter boilers or pressure vessels as an employee of a business engaged in the installing, repairing or altering of boilers or pressure vessels unless the person first obtains certification therefor from the agency.

(3) The chief inspector may conduct examinations for certification of an employee or agent of a business to establish the competency of the applicant.

(4) Licenses and certification shall be issued by the agency upon recommendation of the board and upon payment of a fee of ~~[\$10]~~ \$25 for each application for an employee or agent's certification and ~~[\$100]~~ \$150 for each application for a business license.

(5) The licenses and certifications shall be renewed annually without reexamination upon payment of the fees in subsection (4) of this section.

(6) No person shall install, alter or repair a boiler or pressure vessel without first securing a permit therefor from the agency unless the person is not subject to licensure or certification. Permits shall be issued only to the persons licensed. A permit fee of ~~[\$10]~~ \$15 shall be paid directly to the agency.

(7) In the case of an emergency, a permit is not required in advance for boiler or pressure vessel installations, or repair, as required under subsection (6) of this section, if an application accompanied by the appropriate fee for a permit is submitted to the agency within five days after the commencing of the boiler or pressure vessel work.

(8) The certification and examination requirements of this section do not apply when a person is brought in from out of state to repair or alter a boiler or pressure vessel utilizing special tools or a special process for which that person is uniquely qualified. The activity shall be limited solely to the special process and the person performing the work shall have qualifications which meet or exceed the state's certification standards as determined by the chief boiler inspector. The chief boiler inspector shall be notified prior to performance of any work under this subsection.

SECTION 6. This Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this Act takes effect on its passage.

Approved by the Governor June 10, 1991

Filed in the office of Secretary of State June 10, 1991

CHAPTER 202

AN ACT

SB 401

Relating to foreign-money claims; creating new provisions; amending ORS 73.1070 and ORCP 70 A.; and prescribing an effective date.

Be It Enacted by the People of the State of Oregon:

SECTION 1. Sections 2 to 17 of this Act are added to and made a part of ORS chapter 24.

SECTION 2. Definitions. For the purposes of sections 2 to 17 of this 1991 Act:

(1) "Action" means a judicial proceeding or arbitration in which a payment in money may be awarded or enforced with respect to a foreign-money claim.

(2) "Bank-offered spot rate" means the spot rate of exchange at which a bank will sell foreign money at a spot rate.

(3) "Conversion date" means the banking day next preceding the date on which money, in accordance with sections 2 to 17 of this 1991 Act, is:

(a) Paid to a claimant in an action or distribution proceeding;

(b) Paid to the official designated by law to enforce a judgment or award on behalf of a claimant; or

(c) Used to recoup, setoff or counterclaim in different moneys in an action or distribution proceeding.

(4) "Distribution proceeding" means a judicial or nonjudicial proceeding for the distribution of a fund in which one or more foreign-money claims is asserted and includes an accounting, an assignment for the benefit of creditors, a foreclosure, the liquidation or rehabilitation of a corporation or other entity, and the distribution of an estate, trust or other fund.

(5) "Foreign money" means money other than money of the United States of America.

(6) "Foreign-money claim" means a claim upon an obligation to pay, or a claim for recovery of a loss, expressed in or measured by a foreign money.

(7) "Money" means a medium of exchange for the payment of obligations or a store of value authorized or adopted by a government or by intergovernmental agreement.

(8) "Money of the claim" means the money determined as proper pursuant to section 5 of this 1991 Act.

(9) "Person" means an individual, a corporation, government or governmental subdivision or agency, business trust, estate, trust, joint venture, partnership, association, two or more persons having a joint or common interest or any other legal or commercial entity.

(10) "Rate of exchange" means the rate at which money of one country may be converted into money of another country in a free financial market convenient to or reasonably usable by a person obligated to pay or to state a rate of conversion. If separate rates of exchange apply to different kinds of transactions, the term means the rate applicable to the particular transaction giving rise to the foreign-money claim.

(11) "Spot rate" means the rate of exchange at which foreign money is sold by a bank or other dealer in foreign exchange for immediate or next day availability or for settlement by immediate payment in cash or equivalent, by charge to an account, or by an agreed delayed settlement not exceeding two days.

(12) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico or a territory or insular possession subject to the jurisdiction of the United States.

SECTION 3. Scope. (1) Sections 2 to 17 of this 1991 Act apply only to a foreign-money claim in an action or distribution proceeding.

(2) Sections 2 to 17 of this 1991 Act apply to foreign-money issues even if other law under the conflict of laws rules of this state applies to other issues in the action or distribution proceeding.

SECTION 4. Variation by agreement. (1) The effect of sections 2 to 17 of this 1991 Act may be varied by agreement of the parties made before or after commencement of an action or distribution proceeding or the entry of judgment. The right of the parties to vary the effect of sections 2 to 17 of this 1991 Act includes, but is not limited to, the selection of the date and time for conversion or of a specified rate of exchange to be applied to a particular transaction or a portion thereof and, after the entry of judgment, any agreement as to how the judgment is to be satisfied.

(2) Parties to a transaction may agree upon the money to be used in a transaction giving rise to a foreign-money claim and may agree to use different moneys for different aspects of the transaction. Stating the price in a foreign money for one aspect of a transaction does not alone require the use of that money for other aspects of the transaction.

SECTION 5. Determining money of the claim.

(1) The money in which the parties to a transaction have agreed that payment is to be made is the proper money of the claim for payment.

(2) If the parties to a transaction have not otherwise agreed, the money of the claim, as in each case may be appropriate, is the money:

(a) Regularly used between the parties as a matter of usage or course of dealing;

(b) Used at the time of a transaction in international trade, by trade usage or common practice, for valuing or settling transactions in the particular commodity or service involved; or

(c) In which the loss was ultimately felt or will be incurred by the party claimant.

SECTION 6. Determining amount of the money of certain contract claims. (1) If an amount contracted to be paid in a foreign money is measured by a specified amount of a different money, the amount to be paid is determined on the conversion date.

(2) If an amount contracted to be paid in a foreign money is to be measured by a different money at the rate of exchange prevailing on a date before default, that rate of exchange applies only to payments made within a reasonable time after default, not exceeding 30 days. Thereafter, conversion is made at the bank-offered spot rate on the conversion date.

(3) A monetary claim is neither usurious nor unconscionable because the agreement on which it is based provides that the amount of the debtor's obligation to be paid in the debtor's money, when received by the creditor, must equal a specified amount of the foreign money of the country of the creditor. If, because of unexcused delay in payment of a judgment or award, the amount received by the creditor does not equal the amount of the foreign money specified in the agreement, the court or arbitrator shall, upon the motion of any party, amend the judgment or award accordingly.

SECTION 7. Asserting and defending foreign-money claim. (1) A person may assert a claim in a specified foreign money. If a foreign-money claim is not asserted, the claimant makes the claim in United States dollars.

(2) An opposing party may allege and prove that a claim, in whole or in part, is in a different money than that asserted by the claimant.

(3) A person may assert a defense, setoff, recoupment or counterclaim in any money without regard to the money of other claims.

(4) The determination of the proper money of the claim is a question of law.

SECTION 8. Judgments and awards on foreign-money claims; times of money conversion; form of judgment; post-judgment enforcement. (1) Except as provided in subsection (3) of this section, a judgment or award on a foreign-money claim must be stated in an amount of the money of the claim.

(2) A judgment or award on a foreign-money claim is payable in that foreign money or, at the option of the debtor, in the amount of United States dollars which will purchase that foreign money on the conversion date at a bank-offered spot rate, except that any payment made through a court pursuant to ORS 18.410 must be made in United States dollars. When a payment is made to the court, the judgment debtor shall simultaneously file with the court an affidavit or certificate executed in good faith by its counsel or a bank officer stating the rate of exchange used and how it was obtained and setting forth the calculation and the amount of the money of the claim that will be satisfied by the payment. Affected court officials incur no liability, after a filing of the affidavit or certificate, for acting as if the judgment were in the amount of United States dollars stated in the affidavit or certificate. The court clerk shall record every payment that is made pursuant to ORS 18.410 in the appropriate court records and shall pay the money over to the person entitled thereto.

(3) Assessed costs, disbursements and attorney fees must be entered in United States dollars.

(4) Each payment in United States dollars must be accepted and credited on a judgment or award on a foreign-money claim in the amount of the foreign money that could be purchased by the dollars at a bank-offered spot rate of exchange at or near the close of business on the conversion date for that payment.

(5) A judgment or award made in an action or distribution proceeding on both a defense, setoff, recoupment or counterclaim and the adverse party's claim, must be netted by converting the money of the smaller into the money of the larger, and by subtracting the smaller from the larger, and specify the rates of exchange used.

(6) A judgment or award substantially complies with subsection (1) of this section when it is plainly titled as a judgment, it complies with the requirements of ORCP 70 A.(1) and it includes all of the following:

(a) The names of the judgment creditor, the judgment creditor's attorney and the judgment debtor.

(b) The amount of the judgment in the foreign money of the claim, the type of foreign money and the foreign state, as defined by ORS 24.200 (1), utilizing the money that the claim is denominated in.

(c) The interest owed to the date of the judgment, either as a specific amount in the foreign money or as accrual information, including the rate or rates of interest as determined by section 10 of this 1991 Act, the balance or balances upon which the interest accrues, the date or dates from which interest at each rate on each balance runs, and whether interest is simple or compounded and, if compounded, at what intervals.

(d) Post-judgment interest accrual information, including the rate or rates of interest as determined by section 10 of this 1991 Act, the balance or balances upon which interest accrues, the date or dates from which interest at each rate on each balance runs, and whether interest is simple or compounded and, if compounded, at what intervals.

(e) For judgments that accrued on a periodic basis, any accrued arrearages, required further payments per period in the foreign money and accrual dates.

(f) A statement that the judgment debtor has the option to pay the judgment or award, including the interest owed on the date of judgment and the post-judgment interest, unless the parties have agreed otherwise as according to section 4 of this 1991 Act, in the amount of United States dollars that will purchase that foreign money on the conversion date at a bank-offered spot rate at or near the close of business on the banking day before the day of payment.

(g) A statement that, if the judgment debtor pays the judgment through a court pursuant to ORS 18.410, then the payment must be in United States dollars as provided in subsection (2) of this section.

(h) The amount of assessed costs, disbursements and attorney fees in United States dollars, if they are awarded, and any specific amounts awarded. This paragraph does not require inclusion of specific amounts where such will be determined later under ORCP 68 C.

(i) The terms of any agreement made by the parties, before the entry of the judgment, to vary the effect of this 1991 Act.

(7) If a contract claim is of the type covered by section 6 (1) or (2) of this 1991 Act, the judgment or award must be entered for the amount of money stated to measure the obligation to be paid in the money specified for payment or, at the option of the debtor, the number of United States dollars which will purchase the computed amount of the money of payment on the conversion date at a bank-offered spot rate.

(8) When a judgment is given on a foreign-money claim, the clerk shall comply with the following:

(a) If the judgment is given by the circuit court, the clerk shall enter the judgment in the register

and shall docket the money judgment portion of the judgment in the judgment docket. The judgment shall have the same force and effect as any other judgment obtained in the circuit court.

(b) If the judgment is given by the district court, the clerk shall enter the judgment in the register and may docket the money judgment portion of the judgment in the judgment docket. The judgment shall have the same force and effect as any other judgment obtained in the district court.

(9) A judgment or award may be discharged by payment.

(10) A party seeking enforcement of a judgment entered as provided in this section shall file with each request or application an affidavit or certificate executed in good faith by its counsel or a bank officer, stating the rate of exchange used and how it was obtained and setting forth the calculation and the amount of United States dollars that would satisfy the judgment on the date of the affidavit or certificate by applying said rate of exchange. Affected court officials incur no liability, after a filing of the affidavit or certificate, for acting as if the judgment were in the amount of United States dollars stated in the affidavit or certificate. The computation contained in the affidavit or certificate shall remain in effect for 60 days following the filing of the affidavit or certificate and may be recomputed before the expiration of 60 days by the filing of additional affidavits or certificates provided that recomputation shall not affect any payment obtained before the filing of the recomputation.

SECTION 9. Conversions of foreign money in distribution proceeding. The rate of exchange prevailing at or near the close of business on the day the distribution proceeding is initiated governs all exchanges of foreign money in a distribution proceeding. A foreign-money claimant in a distribution proceeding shall assert its claim in the named foreign money and show the amount of United States dollars resulting from a conversion as of the date the proceeding was initiated.

SECTION 10. Prejudgment and judgment interest. (1) With respect to a foreign-money claim, recovery of prejudgment or preaward interest and the rate of interest to be applied in the action or distribution proceeding, except as provided in subsection (2) of this section, are matters of the substantive law governing the right to recovery under the conflict of laws rules of this state.

(2) The court or arbitrator shall increase or decrease the amount of prejudgment or preaward interest otherwise payable in a judgment or award in foreign money to the extent required by the law of this state governing a failure to make or accept an offer of settlement or offer of judgment, or conduct by a party or its attorney causing undue delay or expense.

(3) A judgment or award on a foreign-money claim bears interest at the rate applicable to judgments of this state.

SECTION 11. Enforcement of foreign judgments.

(1) If an action is brought to enforce a judgment of another jurisdiction expressed in a foreign money and the judgment is recognized in this state as enforceable, the enforcing judgment must be entered as provided in section 8 of this 1991 Act, whether or not the foreign judgment confers an option to pay in an equivalent amount of United States dollars.

(2) A foreign judgment may be entered in the register and docketed in the judgment docket in accordance with any rule or statute of this state providing a procedure for its recognition and enforcement.

(3) A satisfaction or partial payment made upon the foreign judgment, on proof thereof, shall operate to the same extent as a satisfaction of the judgment in this state, except as to costs authorized by ORS 24.140, notwithstanding the entry of judgment in this state.

(4) A judgment entered on a foreign-money claim only in United States dollars in another state must be enforced in this state in United States dollars only.

SECTION 12. Determining United States dollar value of foreign-money claims for limited purposes.

(1) Computations under this section are for the limited purposes of the section and do not affect computation of the United States dollar equivalent of the money of the judgment for the purpose of payment.

(2) For the limited purpose of facilitating the enforcement of provisional remedies in an action, the value in United States dollars of assets to be seized or restrained pursuant to a writ of attachment, garnishment, execution or other legal process, the amount of the United States dollars at issue for assessing costs or the amount of United States dollars involved for a surety bond or other court-required undertaking, must be ascertained as provided in subsections (3) and (4) of this section.

(3) A party seeking process, costs, bond or other undertaking under subsection (2) of this section shall compute in United States dollars the amount of the foreign money claimed from a bank-offered spot rate prevailing at or near the close of business on the banking day next preceding the filing of a request or application for the issuance of process or for the determination of costs, or an application for a bond or other court-required undertaking.

(4) A party seeking the process, costs, bond or other undertaking under subsection (2) of this section shall file with each request or application an affidavit or certificate executed in good faith by its counsel or a bank officer, stating the market quotation used and how it was obtained and setting forth the calculation. Affected court officials incur no liability, after a filing of the affidavit or certificate, for acting as if the judgment were in the amount of United States dollars stated in the affidavit or certificate.

SECTION 13. Effect of currency revalorization.

(1) If, after an obligation is expressed or a loss is incurred in a foreign money, the country issuing or adopting that money substitutes a new money in place of that money, the obligation or the loss is treated as if expressed or incurred in the new money at the rate of conversion the issuing country establishes for the payment of like obligations or losses denominated in the former money.

(2) If substitution under subsection (1) of this section occurs after a judgment or award is entered on a foreign-money claim, the court or arbitrator shall amend, upon the motion of any party, the judgment or award by a like conversion of the former money.

SECTION 14. Supplementary general principles of law. Unless displaced by particular provisions of sections 2 to 17 of this 1991 Act, the principles of law and equity, including the law merchant, and the law relative to capacity to contract, principal and agent, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy or other validating or invalidating causes supplement its provisions.

SECTION 15. Uniformity of application and construction. Sections 2 to 17 of this 1991 Act shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of sections 2 to 17 of this 1991 Act among states enacting it.

SECTION 16. Short title. Sections 2 to 17 of this 1991 Act may be cited as the Uniform Foreign-Money Claims Act.

SECTION 17. Severability clause. If any provision of sections 2 to 17 of this 1991 Act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of sections 2 to 17 of this 1991 Act which can be given effect without the invalid provision or application, and to this end the provisions of sections 2 to 17 of this 1991 Act are severable.

SECTION 18. This Act applies to actions and distribution proceedings commenced on or after its effective date.

SECTION 19. ORS 73.1070 is amended to read:

73.1070. (1) An instrument is payable in money if the medium of exchange in which it is payable is money at the time the instrument is made. An instrument payable in "currency" or "current funds" is payable in money.

(2) A promise or order to pay a sum stated in a foreign currency is for a sum certain in money and, unless a different medium of payment is specified in the instrument, may be satisfied by payment in the manner provided by sections 2 to 17 of this 1991 Act [of that number of dollars which the stated foreign currency will purchase at the buying sight rate for that currency on the day on which the instrument

is payable or, if payable on demand, on the day of demand. If such an instrument specifies a foreign currency as the medium of payment the instrument is payable in that currency].

SECTION 20. ORCP 70 A. is amended to read:

A. Form. Every judgment shall be in writing plainly titled as a judgment and set forth in a separate document. A default or stipulated judgment may have appended or subjoined thereto such affidavits, certificates, motions, stipulations, and exhibits as may be necessary or proper in support of the entry thereof.

A.(1) Content. No particular form of words is required, but every judgment shall:

A.(1)(a) Specify clearly the party or parties in whose favor it is given and against whom it is given and the relief granted or other determination of the action.

A.(1)(b) Be signed by the court or judge rendering such judgment or, in the case of judgment entered pursuant to Rule 69 B.(1), by the clerk.

A.(2)(a) Money judgment; contents. Money judgments are judgments that require the payment of money, including judgments for the payment of costs or attorney fees. The requirements of this subsection are not jurisdictional for purposes of appellate review. Money judgments shall include all of the following:

A.(2)(a)(i) The names of the judgment creditor and the creditor's attorney.

A.(2)(a)(ii) The name of the judgment debtor.

A.(2)(a)(iii) The amount of the judgment.

A.(2)(a)(iv) The interest owed to the date of the judgment, either as a specific amount or as accrual information, including the rate or rates of interest, the balance or balances upon which interest accrues, the date or dates from which interest at each rate on each balance runs, and whether interest is simple or compounded and, if compounded, at what intervals.

A.(2)(a)(v) Post-judgment interest accrual information, including the rate or rates of interest, the balance or balances upon which interest accrues, the date or dates from which interest at each rate on each balance runs, and whether interest is simple or compounded and, if compounded, at what intervals.

A.(2)(a)(vi) For judgments that accrue on a periodic basis, any accrued arrearages, required further payments per period and accrual dates.

A.(2)(a)(vii) If the judgment awards costs and disbursements or attorney fees, that they are awarded and any specific amounts awarded. This subparagraph does not require inclusion of specific amounts where such will be determined later under Rule 68 C.

A.(2)(b) Form. To comply with the requirements of paragraph A.(2)(a) of this rule, the requirements in that paragraph must be presented in a manner that complies with all of the following:

A.(2)(b)(i) The requirements must be presented in a separate, discrete section immediately above the judge's signature if the judgment contains more pro-

visions than just the requirements of paragraph A.(2)(a) of this rule.

A.(2)(b)(ii) The separate section must be clearly labeled at its beginning as a money judgment.

A.(2)(b)(iii) The separate section must contain no other provisions except what is specifically required by this rule for judgments and, if applicable, by section 8 of this 1991 Act for the payment of money.

A.(2)(b)(iv) The requirements under paragraph A.(2)(a) of this rule must be presented in the same order as set forth in that paragraph.

A.(3) If the proposed judgment does not comply with the requirements in subsections A.(1) and (2) of this rule, it shall not be signed by the judge. If the judge signs the judgment, it shall be entered in the register whether or not it complies with the requirements in subsections A.(1) and (2) of this rule.

SECTION 21. The unit and section captions used in this Act are provided only for convenience in locating provisions in this Act and do not become part of the statutory law of this state or express any legislative intent in the enactment of this Act.

SECTION 22. This Act takes effect January 1, 1992.

Approved by the Governor June 10, 1991
Filed in the office of Secretary of State June 10, 1991

CHAPTER 203

AN ACT SB 570

Relating to crime; amending ORS 137.307.
Be It Enacted by the People of the State of Oregon:

SECTION 1. ORS 137.307 is amended to read:
137.307. (1) Except as provided in subsection (4) of this section, within 60 days after receipt of such assessment by the clerk of a circuit, district or municipal court or by a justice of a justice's court, the assessment shall be paid to the county treasurer of the county in which the court is located.

(2) When any bail is deposited with a court for an offense, the person making such deposit shall include with the bail the amount of the assessment.

(3) If bail for an offense is forfeited, the assessment included therewith shall be paid to the county treasurer as provided in subsection (1) of this section. If the bail is returned, the assessment included therewith shall also be returned.

(4) Prior to making payment to the county treasurer as provided in this section, the clerk of a circuit, district or municipal court may withhold an amount equal to the reasonable costs incurred by the clerk in collection and distribution of the assessment.

(5) A city that lies in more than one county shall pay the assessments it collects to each county in proportion to the percent of the population of the city that resides in each county. **Notwithstanding the provisions of this subsection, for any month in which the amount due the county through use of the proportion formula is less than \$10, the city is not required to distribute the assessment to the county.**

Approved by the Governor June 10, 1991
Filed in the office of Secretary of State June 10, 1991

CHAPTER 204

AN ACT SB 458

Relating to acupuncturists; amending ORS 677.755; and repealing ORS 677.750.
Be It Enacted by the People of the State of Oregon:

SECTION 1. ORS 677.755 is amended to read:
677.755. (1) The performance of acupuncture for the purposes of demonstration, therapy, or the induction of analgesia by a person who is not a physician licensed under this chapter is not a violation of this chapter if the acupuncture is performed by a person registered by the board and in accordance with [ORS 677.750 and] the rules of the board.

(2) The Board of Medical Examiners for the State of Oregon shall examine the qualifications of an applicant and determine who shall be authorized to perform acupuncture under subsection (1) of this section.

(3) As used in this section, "acupuncture" means the selective stimulation of the body's neurological and defense mechanisms by the insertion of needles in an effort to correct neuromuscular and organic disorders or to induce analgesia.

SECTION 2. ORS 677.750 is repealed.
Approved by the Governor June 10, 1991
Filed in the office of Secretary of State June 10, 1991

CHAPTER 205

AN ACT SB 25C

Relating to Building Codes Agency fees.
Be It Enacted by the People of the State of Oregon:

SECTION 1. Notwithstanding ORS 479.840 (7), the Building Codes Agency may retain the full amount of all fees collected for electrical permits during the period between July 1, 1989, and May 11, 1990.

Approved by the Governor June 11, 1991
Filed in the office of Secretary of State June 11, 1991