

Enrolled
House Bill 4128

Sponsored by Representatives VEGA PEDERSON, GALLEGOS, Senator GELSER; Representative PILUSO (Pre-session filed.)

CHAPTER

AN ACT

Relating to notario fraud; creating new provisions; and amending ORS 131.125, 131.602, 162.235, 164.015, 164.025, 164.035, 164.075, 194.315, 194.340 and 701.098.

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

SECTION 1. ORS 162.235 is amended to read:

162.235. (1) A person commits the crime of obstructing governmental or judicial administration if the person:

(a) Intentionally obstructs, impairs or hinders the administration of law or other governmental or judicial function by means of intimidation, force, physical or economic interference or obstacle[.];

(b) **With intent to defraud, engages in the business of or acts in the capacity of a notary public as defined in ORS 194.215 without having received a commission as a notary public from the Secretary of State; or**

(c) **With intent to defraud, engages in the business of or acts in the capacity of an immigration consultant, as defined in ORS 9.280, in violation of ORS 9.160.**

(2) This section shall not apply to the obstruction of unlawful governmental or judicial action or interference with the making of an arrest.

(3) Obstructing governmental or judicial administration is a Class A misdemeanor.

SECTION 2. ORS 164.075 is amended to read:

164.075. (1) A person commits [*theft by*] **the crime of** extortion when the person compels or induces another **person** to **either** deliver property **or services** to the person or to a third person, **or refrain from reporting unlawful conduct to a law enforcement agency**, by instilling in the other **person** a fear that, if the property [*is*] **or services are** not so delivered **or if the unlawful conduct is reported**, the actor or a third person will in the future:

(a) **Unlawfully** cause physical injury to some person;

(b) **Unlawfully** cause damage to property;

(c) Engage in other conduct constituting a crime;

(d) Accuse some person of a crime or cause criminal charges to be instituted against the person;

(e) [*Expose a secret or publicize an asserted fact, whether true or false, tending to subject some person to hatred, contempt or ridicule*] **Report the immigration status, or suspected immigration status, of the other person, or some other person known to the other person, to a law enforcement agency;**

(f) Cause or continue a strike, boycott or other collective action injurious to some person's business, except that such conduct is not considered extortion when the property is demanded or received for the benefit of the group in whose interest the actor purports to act;

(g) Testify **falsely** or provide **false** information or withhold testimony or information with respect to another's legal claim or defense; **or**

(h) **Unlawfully** use or abuse the position as a public servant by performing some act within or related to official duties, or by failing or refusing to perform an official duty, in such manner as to affect some person adversely.[: or]

[(i) Inflict any other harm that would not benefit the actor.]

(2) *[Theft by]* Extortion is a Class B felony.

SECTION 3. ORS 194.315 is amended to read:

194.315. (1) An individual qualified under subsection (2) of this section may apply to the Secretary of State for a commission as a notary public. The applicant shall comply with and provide the information required under rules adopted by the secretary and pay the application fee described in ORS 194.365.

(2) An applicant for a commission as a notary public must:

(a) Be at least 18 years of age;

(b) Be a resident of this state or have a place of employment or practice in this state;

(c) Be able to read and write English;

(d) Not have been convicted of a felony or any crime involving fraud, dishonesty or deceit during the 10-year period preceding the date of application;

(e) **Not have been convicted of:**

(A) **Acting as or otherwise impersonating a notary public as described in ORS 194.990 (1)(b);**

(B) **Obstructing governmental or judicial administration under ORS 162.235 (1)(b); or**

(C) **Engaging in the unlawful practice of law as described in ORS 9.160;**

(f) **Not have been found by a court to have:**

(A) **Practiced law without a license in a suit under ORS 9.166; or**

(B) **Engaged in an unlawful trade practice described in ORS 646.608 (1)(vvv);**

(g) **Not have entered into an assurance of voluntary compliance, pursuant to ORS 646.632, based on an alleged violation of ORS 646.608 (1)(vvv);**

[(e)] (h) Not have had a commission as a notary public revoked during the 10-year period preceding the date of application;

[(f)] (i) Not be disqualified under ORS 194.340 to receive a commission;

[(g)] (j) Complete the course of study described in ORS 194.325; and

[(h)] (k) Have passed the examination required under ORS 194.325.

(3) Before the Secretary of State may issue a commission as a notary public, the applicant shall execute an oath of office and submit it to the secretary.

(4) Upon the applicant's compliance with this section, the Secretary of State shall issue a commission as a notary public to the applicant for a term of four years.

(5) A commission as a notary public authorizes the notary public to perform notarial acts. The commission does not provide the notary public any immunity or benefit conferred by law of this state on public officials or employees of this state.

(6) Each notary public may file with the Secretary of State a statement waiving the fees specified under ORS 194.400. If a notary public files the statement waiving the fees, the office of that notary public is not considered a lucrative office.

(7) The functions of a notary public are not considered official duties under Article III, section 1, of the Oregon Constitution.

(8) A commission as a notary public is not considered a commission under Article V, section 18, of the Oregon Constitution.

SECTION 4. ORS 194.340 is amended to read:

194.340. (1) The Secretary of State may deny, revoke, suspend or impose a condition on a commission as a notary public for:

(a) Failure of the applicant or notary public to comply with any provision of this chapter, any rule adopted by the Secretary of State under this chapter or any other state or federal law relating to any duty required of a notary public;

(b) A fraudulent, dishonest or deceitful misstatement or omission in the application for a commission as a notary public submitted to the secretary;

(c) A conviction of the applicant or notary public for any felony or for a crime involving fraud, dishonesty or deceit;

(d) A conviction of the applicant or notary public for:

(A) Acting as or otherwise impersonating a notary public as described in ORS 194.990 (1)(b);

(B) Obstructing governmental or judicial administration under ORS 162.235 (1)(b); or

(C) Engaging in the unlawful practice of law as described in ORS 9.160;

(e) A finding by a court that the applicant or notary public:

(A) Practiced law without a license in a suit under ORS 9.166; or

(B) Engaged in an unlawful trade practice described in ORS 646.608 (1)(vvv);

(f) Entering into an assurance of voluntary compliance, pursuant to ORS 646.632, based on an alleged violation of ORS 646.608 (1)(vvv);

[(d)] (g) A finding against, or admission of liability by, the applicant or notary public in any legal proceeding or disciplinary action based on the applicant's or notary public's fraud, dishonesty or deceit;

[(e)] (h) Use of false or misleading advertising or representation by the notary public representing that the notary public has powers, qualifications, rights or privileges that the notary public does not have, including the power to counsel on immigration matters;

[(f)] (i) Denial, revocation, suspension or conditioning of a commission as a notary public in another state; or

[(g)] (j) Execution of any certificate as a notary public containing a statement known to the notary public to be false.

(2) If the Secretary of State denies, revokes, suspends or imposes a condition on a commission as a notary public, opportunity for hearing shall be accorded as provided in ORS chapter 183 for a contested case.

(3) The authority of the Secretary of State to deny, revoke, suspend or impose a condition on a commission as a notary public does not prevent a person from seeking and obtaining other criminal or civil remedies provided by law.

SECTION 5. ORS 131.125 is amended to read:

131.125. (1) A prosecution for aggravated murder, murder, attempted murder or aggravated murder, conspiracy or solicitation to commit aggravated murder or murder or any degree of manslaughter may be commenced at any time after the commission of the attempt, conspiracy or solicitation to commit aggravated murder or murder, or the death of the person killed.

(2) A prosecution for any of the following felonies may be commenced within 12 years after the commission of the crime or, if the victim at the time of the crime was under 18 years of age, anytime before the victim attains 30 years of age:

(a) Rape in the first degree under ORS 163.375.

(b) Sodomy in the first degree under ORS 163.405.

(c) Unlawful sexual penetration in the first degree under ORS 163.411.

(d) Sexual abuse in the first degree under ORS 163.427.

(3) A prosecution for any of the following felonies may be commenced within six years after the commission of the crime or, if the victim at the time of the crime was under 18 years of age, anytime before the victim attains 30 years of age or within 12 years after the offense is reported to a law enforcement agency or the Department of Human Services, whichever occurs first:

(a) Strangulation under ORS 163.187 (4).

- (b) Criminal mistreatment in the first degree under ORS 163.205.
- (c) Rape in the third degree under ORS 163.355.
- (d) Rape in the second degree under ORS 163.365.
- (e) Sodomy in the third degree under ORS 163.385.
- (f) Sodomy in the second degree under ORS 163.395.
- (g) Unlawful sexual penetration in the second degree under ORS 163.408.
- (h) Sexual abuse in the second degree under ORS 163.425.
- (i) Using a child in a display of sexual conduct under ORS 163.670.
- (j) Encouraging child sexual abuse in the first degree under ORS 163.684.
- (k) Incest under ORS 163.525.
- (L) Promoting prostitution under ORS 167.012.
- (m) Compelling prostitution under ORS 167.017.
- (n) Luring a minor under ORS 167.057.

(4) A prosecution for any of the following misdemeanors may be commenced within four years after the commission of the crime or, if the victim at the time of the crime was under 18 years of age, anytime before the victim attains 22 years of age or within four years after the offense is reported to a law enforcement agency or the Department of Human Services, whichever occurs first:

- (a) Strangulation under ORS 163.187 (3).
- (b) Sexual abuse in the third degree under ORS 163.415.
- (c) Exhibiting an obscene performance to a minor under ORS 167.075.
- (d) Displaying obscene materials to minors under ORS 167.080.

(5) In the case of crimes described in subsection (3)(i) of this section, the victim is the child engaged in sexual conduct. In the case of the crime described in subsection (3)(k) of this section, the victim is the party to the incest other than the party being prosecuted. In the case of crimes described in subsection (3)(L) and (m) of this section, the victim is the child whose acts of prostitution are promoted or compelled.

(6) A prosecution for arson in any degree may be commenced within six years after the commission of the crime.

(7) A prosecution for any of the following felonies may be commenced within six years after the commission of the crime if the victim at the time of the crime was 65 years of age or older:

- (a) Theft in the first degree under ORS 164.055.
- (b) Aggravated theft in the first degree under ORS 164.057.
- (c) [*Theft by*] Extortion under ORS 164.075.
- (d) Robbery in the third degree under ORS 164.395.
- (e) Robbery in the second degree under ORS 164.405.
- (f) Robbery in the first degree under ORS 164.415.
- (g) Forgery in the first degree under ORS 165.013.
- (h) Fraudulent use of a credit card under ORS 165.055 (4)(b).
- (i) Identity theft under ORS 165.800.

(8) Except as provided in subsection (9) of this section or as otherwise expressly provided by law, prosecutions for other offenses must be commenced within the following periods of limitations after their commission:

- (a) For any other felony, three years.
- (b) For any misdemeanor, two years.
- (c) For a violation, six months.

(9) If the period prescribed in subsection (8) of this section has expired, a prosecution nevertheless may be commenced as follows:

(a) If the offense has as a material element either fraud or the breach of a fiduciary obligation, prosecution may be commenced within one year after discovery of the offense by an aggrieved party or by a person who has a legal duty to represent an aggrieved party and who is not a party to the offense, but in no case shall the period of limitation otherwise applicable be extended by more than three years;

(b) If the offense is based upon misconduct in office by a public officer or employee, prosecution may be commenced at any time while the defendant is in public office or employment or within two years thereafter, but in no case shall the period of limitation otherwise applicable be extended by more than three years; or

(c) If the offense is an invasion of personal privacy under ORS 163.700 or 163.701, prosecution may be commenced within one year after discovery of the offense by the person aggrieved by the offense, by a person who has a legal duty to represent the person aggrieved by the offense or by a law enforcement agency, but in no case shall the period of limitation otherwise applicable be extended by more than three years.

(10) Notwithstanding subsections (2) and (3) of this section, if the defendant is identified after the period described in subsection (2) or (3) of this section on the basis of DNA (deoxyribonucleic acid) sample comparisons, a prosecution for:

(a) Rape in the first degree, sodomy in the first degree, unlawful sexual penetration in the first degree or sexual abuse in the first degree may be commenced at any time after the commission of the crime.

(b) Rape in the second degree, sodomy in the second degree or unlawful sexual penetration in the second degree may be commenced within 25 years after the commission of the crime.

(11) Notwithstanding subsection (10) of this section, if a prosecution for a felony listed in subsection (10) of this section would otherwise be barred by subsection (2) or (3) of this section, the prosecution must be commenced within two years of the DNA-based identification of the defendant.

SECTION 6. ORS 131.602 is amended to read:

131.602. The crimes to which ORS 131.550 (12)(b) applies are:

- (1) Bribe giving, as defined in ORS 162.015.
- (2) Bribe receiving, as defined in ORS 162.025.
- (3) Public investment fraud, as defined in ORS 162.117.
- (4) Bribing a witness, as defined in ORS 162.265.
- (5) Bribe receiving by a witness, as defined in ORS 162.275.
- (6) Simulating legal process, as defined in ORS 162.355.
- (7) Official misconduct in the first degree, as defined in ORS 162.415.
- (8) Assisting another person to commit suicide, as defined in ORS 163.193.
- (9) Custodial interference in the second degree, as defined in ORS 163.245.
- (10) Custodial interference in the first degree, as defined in ORS 163.257.
- (11) Buying or selling a person under 18 years of age, as defined in ORS 163.537.
- (12) Using a child in a display of sexually explicit conduct, as defined in ORS 163.670.
- (13) Encouraging child sexual abuse in the first degree, as defined in ORS 163.684.
- (14) Encouraging child sexual abuse in the second degree, as defined in ORS 163.686.
- (15) Encouraging child sexual abuse in the third degree, as defined in ORS 163.687.
- (16) Possession of materials depicting sexually explicit conduct of a child in the first degree, as defined in ORS 163.688.
- (17) Possession of materials depicting sexually explicit conduct of a child in the second degree, as defined in ORS 163.689.
- (18) Theft in the second degree, as defined in ORS 164.045.
- (19) Theft in the first degree, as defined in ORS 164.055.
- (20) Aggravated theft in the first degree, as defined in ORS 164.057.
- (21) [*Theft by*] Extortion, as defined in ORS 164.075.
- (22) Theft by deception, as defined in ORS 164.085, if it is a felony or a Class A misdemeanor.
- (23) Theft by receiving, as defined in ORS 164.095, if it is a felony or a Class A misdemeanor.
- (24) Theft of services, as defined in ORS 164.125, if it is a felony or a Class A misdemeanor.
- (25) Unauthorized use of a vehicle, as defined in ORS 164.135.
- (26) Mail theft or receipt of stolen mail, as defined in ORS 164.162.
- (27) Laundering a monetary instrument, as defined in ORS 164.170.

- (28) Engaging in a financial transaction in property derived from unlawful activity, as defined in ORS 164.172.
- (29) Burglary in the second degree, as defined in ORS 164.215.
- (30) Burglary in the first degree, as defined in ORS 164.225.
- (31) Possession of a burglary tool or theft device, as defined in ORS 164.235.
- (32) Unlawful entry into a motor vehicle, as defined in ORS 164.272.
- (33) Arson in the second degree, as defined in ORS 164.315.
- (34) Arson in the first degree, as defined in ORS 164.325.
- (35) Computer crime, as defined in ORS 164.377.
- (36) Robbery in the third degree, as defined in ORS 164.395.
- (37) Robbery in the second degree, as defined in ORS 164.405.
- (38) Robbery in the first degree, as defined in ORS 164.415.
- (39) Unlawful labeling of a sound recording, as defined in ORS 164.868.
- (40) Unlawful recording of a live performance, as defined in ORS 164.869.
- (41) Unlawful labeling of a videotape recording, as defined in ORS 164.872.
- (42) A violation of ORS 164.886.
- (43)(a) Endangering aircraft in the first degree, as defined in ORS 164.885.
- (b) Endangering aircraft in the second degree, as defined in ORS 164.885.
- (44) Interference with agricultural operations, as defined in ORS 164.887.
- (45) Forgery in the second degree, as defined in ORS 165.007.
- (46) Forgery in the first degree, as defined in ORS 165.013.
- (47) Criminal possession of a forged instrument in the second degree, as defined in ORS 165.017.
- (48) Criminal possession of a forged instrument in the first degree, as defined in ORS 165.022.
- (49) Criminal possession of a forgery device, as defined in ORS 165.032.
- (50) Criminal simulation, as defined in ORS 165.037.
- (51) Fraudulently obtaining a signature, as defined in ORS 165.042.
- (52) Fraudulent use of a credit card, as defined in ORS 165.055.
- (53) Negotiating a bad check, as defined in ORS 165.065.
- (54) Possessing a fraudulent communications device, as defined in ORS 165.070.
- (55) Unlawful factoring of a payment card transaction, as defined in ORS 165.074.
- (56) Falsifying business records, as defined in ORS 165.080.
- (57) Sports bribery, as defined in ORS 165.085.
- (58) Sports bribe receiving, as defined in ORS 165.090.
- (59) Misapplication of entrusted property, as defined in ORS 165.095.
- (60) Issuing a false financial statement, as defined in ORS 165.100.
- (61) Obtaining execution of documents by deception, as defined in ORS 165.102.
- (62) A violation of ORS 165.543.
- (63) Cellular counterfeiting in the third degree, as defined in ORS 165.577.
- (64) Cellular counterfeiting in the second degree, as defined in ORS 165.579.
- (65) Cellular counterfeiting in the first degree, as defined in ORS 165.581.
- (66) Identity theft, as defined in ORS 165.800.
- (67) A violation of ORS 166.190.
- (68) Unlawful use of a weapon, as defined in ORS 166.220.
- (69) A violation of ORS 166.240.
- (70) Unlawful possession of a firearm, as defined in ORS 166.250.
- (71) A violation of ORS 166.270.
- (72) Unlawful possession of a machine gun, short-barreled rifle, short-barreled shotgun or firearms silencer, as defined in ORS 166.272.
- (73) A violation of ORS 166.275.
- (74) Unlawful possession of armor piercing ammunition, as defined in ORS 166.350.
- (75) A violation of ORS 166.370.
- (76) Unlawful possession of a destructive device, as defined in ORS 166.382.

- (77) Unlawful manufacture of a destructive device, as defined in ORS 166.384.
- (78) Possession of a hoax destructive device, as defined in ORS 166.385.
- (79) A violation of ORS 166.410.
- (80) Providing false information in connection with a transfer of a firearm, as defined in ORS 166.416.
- (81) Improperly transferring a firearm, as defined in ORS 166.418.
- (82) Unlawfully purchasing a firearm, as defined in ORS 166.425.
- (83) A violation of ORS 166.429.
- (84) A violation of ORS 166.470.
- (85) A violation of ORS 166.480.
- (86) A violation of ORS 166.635.
- (87) A violation of ORS 166.638.
- (88) Unlawful paramilitary activity, as defined in ORS 166.660.
- (89) A violation of ORS 166.720.
- (90) Prostitution, as defined in ORS 167.007.
- (91) Commercial sexual solicitation, as defined in ORS 167.008.
- (92) Promoting prostitution, as defined in ORS 167.012.
- (93) Compelling prostitution, as defined in ORS 167.017.
- (94) Exhibiting an obscene performance to a minor, as defined in ORS 167.075.
- (95) Unlawful gambling in the second degree, as defined in ORS 167.122.
- (96) Unlawful gambling in the first degree, as defined in ORS 167.127.
- (97) Possession of gambling records in the second degree, as defined in ORS 167.132.
- (98) Possession of gambling records in the first degree, as defined in ORS 167.137.
- (99) Possession of a gambling device, as defined in ORS 167.147.
- (100) Possession of a gray machine, as defined in ORS 167.164.
- (101) Cheating, as defined in ORS 167.167.
- (102) Tampering with drug records, as defined in ORS 167.212.
- (103) A violation of ORS 167.262.
- (104) Research and animal interference, as defined in ORS 167.312.
- (105) Animal abuse in the first degree, as defined in ORS 167.320.
- (106) Aggravated animal abuse in the first degree, as defined in ORS 167.322.
- (107) Animal neglect in the first degree, as defined in ORS 167.330.
- (108) Interfering with an assistance, a search and rescue or a therapy animal, as defined in ORS 167.352.
- (109) Involvement in animal fighting, as defined in ORS 167.355.
- (110) Dogfighting, as defined in ORS 167.365.
- (111) Participation in dogfighting, as defined in ORS 167.370.
- (112) Unauthorized use of a livestock animal, as defined in ORS 167.385.
- (113) Interference with livestock production, as defined in ORS 167.388.
- (114) A violation of ORS 167.390.
- (115) Participation in cockfighting, as defined in ORS 167.431.
- (116) A violation of ORS 471.410.
- (117) Failure to report missing precursor substances, as defined in ORS 475.955.
- (118) Illegally selling drug equipment, as defined in ORS 475.960.
- (119) Providing false information on a precursor substances report, as defined in ORS 475.965.
- (120) Unlawful delivery of an imitation controlled substance, as defined in ORS 475.912.
- (121) A violation of ORS 475.752, if it is a felony or a Class A misdemeanor.
- (122) A violation of ORS 475.914, if it is a felony or a Class A misdemeanor.
- (123) A violation of ORS 475.916.
- (124) A violation of ORS 475.906, if it is a felony or a Class A misdemeanor.
- (125) A violation of ORS 475.904.
- (126) Misuse of an identification card, as defined in ORS 807.430.

(127) Unlawful production of identification cards, licenses, permits, forms or camera cards, as defined in ORS 807.500.

(128) Transfer of documents for the purposes of misrepresentation, as defined in ORS 807.510.

(129) Using an invalid license, as defined in ORS 807.580.

(130) Permitting misuse of a license, as defined in ORS 807.590.

(131) Using another's license, as defined in ORS 807.600.

(132) Criminal driving while suspended or revoked, as defined in ORS 811.182.

(133) Aggravated driving while suspended or revoked, as defined in ORS 163.196.

(134) Driving while under the influence of intoxicants, as defined in ORS 813.010, when it is a felony.

(135) Unlawful distribution of cigarettes, as defined in ORS 323.482.

(136) Unlawful distribution of tobacco products, as defined in ORS 323.632.

(137) A violation of ORS 180.440 (2) or 180.486 (2).

(138) A violation described in ORS 475.806 to 475.894, if it is a felony.

(139) Subjecting another person to involuntary servitude in the first degree, as defined in ORS 163.264.

(140) Subjecting another person to involuntary servitude in the second degree, as defined in ORS 163.263.

(141) Trafficking in persons, as defined in ORS 163.266.

(142) Luring a minor, as defined in ORS 167.057.

(143) Online sexual corruption of a child in the second degree, as defined in ORS 163.432.

(144) Online sexual corruption of a child in the first degree, as defined in ORS 163.433.

(145) An attempt, conspiracy or solicitation to commit a crime in subsections (1) to (144) of this section if the attempt, conspiracy or solicitation is a felony or a Class A misdemeanor.

SECTION 7. ORS 164.015 is amended to read:

164.015. A person commits theft when, with intent to deprive another of property or to appropriate property to the person or to a third person, the person:

(1) Takes, appropriates, obtains or withholds such property from an owner thereof;

(2) Commits theft of property lost, mislaid or delivered by mistake as provided in ORS 164.065;

(3) Commits [*theft by*] extortion as provided in ORS 164.075 **by compelling or inducing another person to deliver property;**

(4) Commits theft by deception as provided in ORS 164.085; or

(5) Commits theft by receiving as provided in ORS 164.095.

SECTION 8. ORS 164.025 is amended to read:

164.025. (1) Except for the crime of [*theft by*] extortion, conduct denominated theft under ORS 164.015 constitutes a single offense.

(2) If it is an element of the crime charged that property was taken by extortion, an accusation of theft must so specify. In all other cases an accusation of theft is sufficient if it alleges that the defendant committed theft of property of the nature or value required for the commission of the crime charged without designating the particular way or manner in which the theft was committed.

(3) Proof that the defendant engaged in conduct constituting theft as defined in ORS 164.015 is sufficient to support any indictment, information or complaint for theft other than one charging [*theft by*] extortion. An accusation of [*theft by*] extortion must be supported by proof establishing [*theft by*] extortion.

SECTION 9. ORS 164.035 is amended to read:

164.035. (1) In a prosecution for theft it is a defense that the defendant acted under an honest claim of right, in that:

(a) The defendant was unaware that the property was that of another; or

(b) The defendant reasonably believed that the defendant was entitled to the property involved or had a right to acquire or dispose of it as the defendant did.

(2) In a prosecution for [*theft by*] extortion committed by instilling in the victim a fear that the victim or another person would be charged with a crime, it is a defense that the defendant reason-

ably believed the threatened charge to be true and that the sole purpose of the defendant was to compel or induce the victim to take reasonable action to make good the wrong which was the subject of the threatened charge.

(3) In a prosecution for theft by receiving, it is a defense that the defendant received, retained, concealed or disposed of the property with the intent of restoring it to the owner.

(4) It is a defense that the property involved was that of the defendant's spouse, unless the parties were not living together as spouses in a marriage and were living in separate abodes at the time of the alleged theft.

SECTION 10. ORS 701.098 is amended to read:

701.098. (1) The Construction Contractors Board may revoke, suspend or refuse to issue or re-issue a license and the board may assess a civil penalty as provided in ORS 701.992 if the board determines after notice and opportunity for hearing:

(a) That the licensee or applicant has violated a provision of this chapter.

(b) That the licensee has violated a rule or order of the board.

(c) That the licensee has knowingly assisted an unlicensed person to act in violation of this chapter.

(d) That the licensee has knowingly assisted a licensed contractor to perform work for which the contractor is not properly endorsed.

(e) That a lien was filed on a structure under ORS 87.010 to 87.060 and 87.075 to 87.093 because the licensee or applicant wrongfully failed to perform a contractual duty to pay money to the person claiming the lien.

(f) That the licensee has knowingly provided false information to the board.

(g) That the licensee has worked without a construction permit where a permit is required and the work resulted in a complaint being filed with the board under ORS 701.139. For purposes of this paragraph, "construction permit" includes a building permit, electrical permit, mechanical permit or plumbing permit.

(h) That the number of licensed contractors working together on the same task on the same job site, where one of the contractors is classed as exempt under ORS 701.035 (2)(b), exceeded the following:

(A) Two sole proprietors;

(B) One partnership;

(C) One corporation; or

(D) One limited liability company.

(i) Consistent with the provisions of ORS 670.280, that the licensee or applicant, or an owner or officer of the licensee or applicant has been convicted of one of the following crimes in this state or an equivalent crime in another state:

(A) Murder;

(B) Assault in the first degree;

(C) Kidnapping;

(D) Rape, sodomy or unlawful sexual penetration;

(E) Sexual abuse;

(F) Arson in the first degree;

(G) Robbery in the first degree;

(H) Theft in the first degree; or

(I) [*Theft by*] Extortion.

(j) That the licensee or applicant has not, within 90 days after the date when payment was received from the public contracting agency, or contractor in the case of a subcontractor, made payment to any person for supplying labor or materials contracted for with a public contract for a public improvement plus the amount of interest due.

(k) That the licensee or applicant has repeatedly reported bad faith or false complaints of non-payment against contractors or subcontractors.

(L) That the licensee or applicant has engaged in conduct as a contractor that is dishonest or fraudulent and that the board finds injurious to the welfare of the public.

(m) That the contractor has hired employees while licensed as exempt under ORS 701.035.

(n) That the contractor has utilized one or more workers supplied by a worker leasing company while licensed as exempt under ORS 701.035.

(2) The board may revoke, suspend or refuse to issue or reissue a license if the board determines after notice and opportunity for hearing that an applicant or licensee is unfit for licensure based upon information submitted to the board under ORS 701.046, submitted in a registration of securities described in ORS 701.046 (2) or discovered by a board investigation under ORS 701.225.

(3) The board may assess a civil penalty as provided in ORS 701.992 if the board determines after notice and opportunity for hearing that any person has violated ORS 701.021.

(4)(a) The administrator of the board, in accordance with administrative rules adopted by the board and after setting forth specific reasons for the findings, may suspend or refuse to renew a license without hearing in any case where the administrator finds a serious danger to the public welfare, including but not limited to:

(A) Lack of a surety bond required by ORS 701.068;

(B) Lack of liability insurance required by ORS 701.073;

(C) Hiring employees while classed as exempt under ORS 701.035;

(D) Utilizing one or more workers supplied by a worker leasing company while classed as exempt under ORS 701.035;

(E) Conduct as a construction contractor that is dishonest or fraudulent; or

(F) Failure to pay a construction debt.

(b) If the licensee or applicant demands a hearing within 90 days after the date of notice to the licensee or applicant of the suspension or refusal to renew, then a hearing must be granted to the licensee or applicant as soon as practicable after the demand, and the administrator shall issue, pursuant to the hearing as required by ORS chapter 183, an order confirming, altering or revoking the administrator's earlier order. Notwithstanding ORS 670.325, a hearing need not be held where the order of suspension or refusal to renew is accompanied by or is pursuant to a citation for violation that is subject to judicial determination in any court of this state, and the order by its terms will terminate in case of final judgment in favor of the licensee or applicant.

(5)(a) In addition to all other remedies, if the board has reason to believe that a person is engaging in an act, practice or transaction that violates this chapter or a board rule, the board may issue an order directing the person to cease the act or to take corrective action.

(b) The board shall mail a copy of an order issued under this subsection to the person by first class mail with certificate of mailing. The board shall include with the order a notice informing the person of the right to request a hearing concerning the order. The notice shall inform the person that any hearing request must be received by the board no later than 21 days after the date the order was mailed by the board.

(c) If the board receives a timely request for a hearing concerning an order issued under this subsection, the board shall schedule the hearing no later than 30 days after receiving the request. The board shall mail written notice of the hearing to the person by first class mail with certificate of mailing no later than seven days before the scheduled hearing date.

(d) An order described in this subsection becomes final if the person does not file a timely request for a hearing concerning the order or fails to appear at the requested hearing as scheduled.

(e) The issuance of a board order under this subsection is subject to ORS 183.413 to 183.497.

(6) In addition to all other remedies, if it appears to the board that a person has engaged in, or is engaging in, any act, practice or transaction that violates the provisions of this chapter, the board may direct the Attorney General or the district attorney of the county in which the act, practice or transaction occurs, to apply to the court for an injunction restraining the person from violating the provisions of this chapter. An injunction may not issue for failure to maintain the list provided for in ORS 701.345, unless the court determines that the failure is intentional.

(7) A certified copy of the record of conviction shall be conclusive evidence of a conviction under subsection (1)(i) of this section.

(8) If the board suspends or revokes the license of an individual contractor or contractor business for a violation of subsection (1)(h) of this section, the board may not restore or reissue the license unless the individual contractor or a responsible managing individual for the contractor business has successfully completed the training and testing described in ORS 701.122.

SECTION 11. The amendments to ORS 194.315 and 194.340 by sections 3 and 4 of this 2016 Act apply to applications for commission as a notary public made on or after the effective date of this 2016 Act.

Passed by House February 11, 2016

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Timothy G. Sekerak, Chief Clerk of House

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Tina Kotek, Speaker of House

Passed by Senate February 25, 2016

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Peter Courtney, President of Senate

Received by Governor:

.....M,....., 2016

Approved:

.....M,....., 2016

.....
Kate Brown, Governor

Filed in Office of Secretary of State:

.....M,....., 2016

.....
Jeanne P. Atkins, Secretary of State