

## CHAPTER THIRTEEN

### CREATING NEW LAW; AMENDMENTS; CONFLICTING AMENDMENTS; ALTERNATIVES TO AMENDMENTS; REPEALS

1. DRAFTING NEW SECTIONS
2. DRAFTING AMENDMENTS TO EXISTING LAW
3. CONFLICTING AMENDMENTS
4. AMENDMENT OR REPEAL OF UNCODIFIED SECTION
5. ALTERNATIVES TO AMENDMENTS
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A bill may do any one or more of the following:

- Create new law.
- Amend existing law.
- Repeal existing law.

This chapter gives detailed information on the techniques of drafting sections that create, change or repeal law. The discussion applies generally to any new section or any amendment or repeal.

This chapter also explains the need for finding whether a bill amends or repeals an ORS section that is amended or repealed by a bill introduced earlier during the same session, and explains how to amend or repeal session law sections that are not compiled in *Oregon Revised Statutes*.

#### **1. DRAFTING NEW SECTIONS.**

##### **a. Creating New Law.**

A clause creating or introducing a new section is not necessary so long as the bill itself has an enacting clause. The form of a section creating new law is as follows:

**SECTION \_\_\_\_\_. A district boundary board may not assign to any school district a number previously assigned to another school district that became nonexistent after January 1, 1979, because of dissolution, abandonment, consolidation or any other reason.**

**THE DRAFTER DOES NOT ASSIGN ORS NUMBERS TO NEW SECTIONS!**

The ORS editors assign ORS section numbers when compiling new Acts in *Oregon Revised Statutes*, following the end of the session.

## **b. Adding New Section to Existing ORS Series, Chapters or Codes.**

When drafting a new section, the drafter should consider where the section will be located in *Oregon Revised Statutes*. Even though a drafter cannot assign a specific ORS section number to a new section, the drafter may want to make a penalty, definition or other existing provision apply to a new section. This can be done by adding the new section to an **existing** ORS series of sections, chapter or code.

A new section might be added to and made a part of an existing series, chapter or code for the following reasons:

**A. Definitions.** The existing series, chapter or code contains definitions that the drafter intends to apply to the new section. See for example, ORS 742.500. “As used in ORS 742.500 to 742.506: (1) ‘Uninsured motorist coverage’ means . . . .” If the new section being drafted uses the term “uninsured motorist coverage” and the definition in ORS 742.500 is adequate for purposes of the draft, the new section can be “added to and made a part of ORS 742.500 to 742.506.”

**B. Penalties.** The existing series, chapter or code contains penalties that the drafter intends to apply to the new section. See ORS 731.988. “(1) Any person who violates any provision of the Insurance Code . . . shall forfeit and pay to the General Fund of the State Treasury a civil penalty . . . .” If the drafter has a new section that imposes a duty on an insurer, for example, and the drafter wants violation of the section to subject the insurer to a civil penalty, the drafter should provide in the draft that the new section is “added to and made a part of the Insurance Code.”

**C. Rulemaking authority.** The existing series, chapter or code gives someone rulemaking authority and the drafter wants that person to be able to make rules to implement the new section being drafted. See, for example, ORS 731.244. “In accordance with the applicable provisions of ORS chapter 183, the Director of the Department of Consumer and Business Services may make reasonable rules necessary for or as an aid to the effectuation of the Insurance Code.” If the new section is added to and made a part of the Insurance Code, the director may adopt rules to implement it without further authority.

**D. Miscellaneous.** There may be other reasons for adding to and making a part of. The situations in which it is appropriate will be like those mentioned above. There will be an existing series, chapter or code; there will be general provisions (usually definitional, penal or administrative) that apply to the individual statutes within the existing series, chapter or code; the new section will contain something to which the drafter wants the general provisions to apply.

### **c. How a Series, Chapter or Code Is Created.**

A basic requirement for adding a new section to an existing series is that the series, chapter or code must exist as more than an editorial convenience. A series is created by an enacted bill that has a provision that says, “sections \_\_\_ to \_\_\_ of this (year) Act.” For example, “As used in sections 2 to 6 of this (year) Act . . .”; “Violation of sections 1 to 8 of this (year) Act . . .”; “The director shall adopt rules to carry out the provisions of sections 3 to 5 of this (year) Act.” When the provision is put into ORS during editing, the words “sections \_\_\_ to \_\_\_” will be replaced by “ORS aaa.bbb to aaa.ccc” and a series will have been created.

The divisions in an ORS chapter outline do **not** create or constitute a series. If ORS 726.040 to 726.255 is in fact a series, it is because it was created as a series in an enactment of the legislature and not because the sections were placed together in ORS chapter 726 under the heading “Licensing.”

Just as there are provisions that apply to a series, so, too, are there provisions that apply to an ORS chapter. ORS 734.014 begins “As used in this chapter:” and goes on to define several terms. If the drafter has a new section dealing with rehabilitation of insurers and the terms used in ORS 734.014 are used in the new section, the drafter can add the new section to and make it a part of ORS chapter 734. Like series references, chapter references are found in the series cards file.

ORS 731.056 et seq. are definitions that apply to the “Insurance Code.” “Insurance Code” is the short title given to ORS chapters 731, 732, 733, 734, 735, 737, 742, 743, 743A, 744, 746, 748 and 750. See ORS 731.004. When a new section of law is added to and made a part of the Insurance Code, there are preexisting definitions that apply, there is a requirement that people transacting insurance comply with the new section (ORS 731.022), there is authority for rulemaking regarding the new section (ORS 731.244) and there are provisions for penalties for violation of the section (ORS 731.988).

### **d. Determining the Appropriate Series, Chapter or Code.**

The drafter should perform a computer search or examine the series cards to determine series references that may include the proposed location of a new section. The office of Legislative Counsel maintains a card file containing what are known as the series cards. The file contains at least one card for each series in ORS. The card shows the series numbers in the upper left-hand corner and the sections of ORS that refer to the series along the right side of the card. The designation in parentheses following each number indicates the type of reference. For example, “19.230 (B)” indicates that the reference to the series is in the text (or “body”) of ORS 19.230. For purposes of identifying an appropriate series to which a new section may be legislatively added, the drafter must rely only on those references in the text or body of an ORS section that cites the series.

When the drafter drafts what would be a new section of ORS, and if the drafter has some idea of the ORS chapter that might be the most appropriate place for the section, the drafter should check the series cards for that chapter, if any. The drafter can look at the

series and determine if there is some substantive reason that the new section should be added to one of the series. If there is, add it; if not, do not.

A section should never be added to a series simply because the drafter wants to tell the ORS editor where to compile the section. An ORS editor can ignore a drafter's ill-advised command, but to do so often requires many technical adjustments.

For example, consider the placement of a new section prohibiting the driving of a vehicle on a highway while the passengers are not wearing crash helmets. On examination, it is found that the only place the section logically could be compiled in *Oregon Revised Statutes* is somewhere between ORS aaa.bbb and aaa.ppp. Another section imposes a penalty for violation of ORS aaa.hhh to aaa.ppp so that if the new section is added to that series, the penalty provision will apply. Still another section defines a term for purposes of ORS aaa.bbb to aaa.ppp. If it is decided that both the definition and the penalty should apply to the new section, what should be done? There are two different series.

The drafter must visualize two buckets, one larger than the other, the smaller inside the larger. If a pebble is targeted to drop only into the larger bucket, it will fall outside the smaller bucket; if a pebble is dropped into the smaller bucket, it will fall inside both. Similarly, if a smaller series is contained within a larger series, when a new section is added to the larger series the new section is not added to the smaller series. However, if the new section is added to the smaller series, the new section also is added to the larger series. In the example, since the new section is to be a part of **both** ORS aaa.hhh to aaa.ppp **and** ORS aaa.bbb to aaa.ppp, it should be added to and made a part of the smaller series. The "adding" provision will be in a separate section and the sections usually appear in the following form in this order: first the "add," second the substance: <spm added>

**SECTION 1. Section 2 of this (year) Act is added to and made a part of ORS 483.430 to 483.444.**

**SECTION 2. It is unlawful to operate a vehicle on a highway at any time unless the operator and all passengers in the vehicle are wearing crash helmets of a type approved by the Department of \_\_\_\_.**

Naturally, if the definition or penalty is not to apply to the new section, the new section should not be added to and made a part of either series. It should be simply drafted as any other new section. After the session, the ORS editors probably will compile the new section in the same location the drafter aimed for, but will write an appropriate note or adjust the series references in the definition and penalty provisions so that the new section is excluded from these references.

If the new section should be incorporated within the smaller series but not the larger, the drafter should use some technique other than "adding." The drafter may consider amending the definition or penalty section itself to include or exclude the new section from the series reference in question.

To add **one new section to an ORS chapter**, rather than an ORS series, use the following form: <spm added>

**SECTION 1. Section 2 of this (year) Act is added to and made a part of ORS chapter 483.**

**SECTION 2. If the \_\_\_\_\_ Department finds . . . .**

To add **one new section to an ORS code**, rather than an ORS series or chapter, use the following form:

**SECTION 1. Section 2 of this (year) Act is added to and made a part of the Oregon Vehicle Code.**

**SECTION 2. If the \_\_\_\_\_ Department finds . . . .**

If adding **more than one new section to an ORS series, chapter or code**, only one “adding” section is needed to do the job. This is true whether the section adds a consecutive group of sections or adds sections found throughout the bill. <spm adds>

**SECTION 1. Sections 2 to 4 of this (year) Act are added to and made a part of ORS 480.315 to 480.385.**

**OR**

**SECTION 1. Sections 2 to 4, 9, 11 and 14 of this (year) Act are added to and made a part of ORS 480.315 to 480.385.**

The drafter should always check the series cards or do a computer search when adding one or more new sections to an ORS chapter or series. The effect of adding the section to the chapter or series must be determined.

An ORS code, chapter or series is not being “amended” when a new section is added to it. Section 22, Article IV, Oregon Constitution, provides that an Act revised or sections amended must be set forth at length; but this provision does not apply if a bill merely adds new sections to an existing ORS chapter or series, even though that chapter or series originally was created as an Act. Brown v. City of Silverton, 97 Or. 441 (1920); Martin v. Gilliam County, 89 Or. 394 (1918); Ebbert v. First Nat’l Bank, 131 Or. 57 (1929).

If adding a new section to an ORS code, chapter or series, the drafter should take care in using the phrase “this Act” in the new section. Such a reference may be construed as directed to the original Act that created the chapter or series; State v. Davis, 207 Or. 525 (1956). The drafter should indicate specifically whether the reference is to:

(a) The Act that added the new section to the ORS chapter or series (for example, “this (year) Act”); **or**

(b) The Act that created the ORS chapter or series to which the new section is added (for example “this chapter” or specific ORS section numbers, not the session law Act).

References to “this Act” should be avoided when the measure contains amended sections. Legislative Counsel must translate the reference to “this Act” to include all sections in the bill, including the ORS numbers in the measure, a practice roundly criticized by the Court of Appeals in State v. Rothman, 69 Or. App. 614 (1984).

## **2. DRAFTING AMENDMENTS TO EXISTING LAW.**

### **a. Setting Forth Amended Sections at Length.**

Section 22, Article IV, Oregon Constitution, provides in part that any section amended “shall be set forth, and published at full length.” This means that the section must be set out in full as amended, with all changes. City of Portland v. Stock, 2 Or. 69 (1863); Dolan v. Barnard, 5 Or. 390 (1875). This is done by the drafter by bracketing deleted material and bolding new material. The typed version and the printed bill show the same instructions by using boldfaced and italicized type.

In setting forth an amended section at length, anything omitted on purpose or inadvertently is automatically deleted. For example, if a draft changes only one paragraph of a statute section and only that one paragraph in amended form is set out, the remainder of the section is deleted. The result of this, inconvenient as it appears, is that a subsection, paragraph or other subordinate part of a section cannot be separately amended. No matter how small the change being made and no matter how lengthy the unchanged part of the section being amended, the whole section must be set forth at length. **This is one of the few rules in bill drafting to which there are no exceptions.**

Neither the title nor an amending clause in the body of a bill should recite that less than an entire section is being amended. In other words, the title cannot provide “amending ORS 316.010 (2),” even though the only change being made to ORS 316.010 happens to be in subsection (2).

### **b. Cases Interpreting Section 22, Article IV, Oregon Constitution.**

Section 22, Article IV, Oregon Constitution, reads as follows:

No Act shall ever be revised or amended by mere reference to its title, but the Act revised or section amended shall be set forth and published at full length. . . .

In Northern Counties Investment Trust Co. v. Sears, 30 Or. 388 (1895), the Oregon Supreme Court said that the constitutional provision prevents the amendment or revision of an existing statute by a method that conveys no meaning standing alone, but depends for its operation and effect on a proper interpolation, substitution or elimination in comparison with the original statute.

In Warren v. Crosby, 24 Or. 558 (1893), quoted in the Northern Counties case, the rule stated was that statutes not amendatory or revisionary in character, but original in form, and complete within themselves, exhibiting on their face their purpose and scope, do not come within the scope of section 22, Article IV, even though they may amend or modify existing laws on the same subject by implication. To the same effect is Gilbertson v. Culinary Alliance and Bartenders Union, Local No. 643, A.F. of L., 204 Or. 326 (1955). Also, the constitutional provision does not apply when new sections are merely being added to an existing Act without modifying or altering the provisions of the original Act. Brown v. City

of Silverton, 97 Or. 441 (1920). However, an Act “subjecting all tax levying districts . . . to the budget laws provided for counties” (quoted from title) was declared invalid as the Act was construed to be an amendment of the county budget law that required the setting forth in full of the affected section of the county budget law as amended. Martin v. Gilliam County, 89 Or. 394 (1918). The application of this ruling should be considered in connection with cases holding, in similar situations, that a supplemental Act or Act amending by implication does not come within the scope of section 22, Article IV. Ebbert v. First Nat’l Bank, 131 Or. 57 (1929).

An Act that does not revise a previous Act, but simply amends a section of that Act, need only set forth the amended section. Delay v. Chapman, 2 Or. 242 (1867).

For an example of one section increasing a fee specified by another section that is questionable because it resembles an amendment not set forth at length, see ORS 583.004 (2). Because of section 22, Article IV, a drafter should avoid any language that **even might appear** to be amendatory of other sections if such other sections are not set out in full in the bill. However, a distinction can more easily be made where the new material is temporary.

#### **c. Indicating Inserted or Deleted Matter.**

When amending an existing statute, the draft must show every difference, **except capitalization**, between the original version and the amended version. This practice is required by the rules of the Oregon House and Senate. Even changes in punctuation must be indicated. Deleted matter must be set forth in brackets and italicized type. If deleting two or more successive subsections or paragraphs, **each** of them must be enclosed entirely in brackets and italicized. All new matter in an amended section must be in boldface type.

In a draft, printed bill and in the session law volumes, deleted matter is bracketed and set in italics, while new matter in an amended section is set in boldface type.

Some judgment is necessary in determining how much of existing law can be saved. Sometimes there are so many deletions and insertions in part of an existing ORS section that it is better to put that entire part in brackets and set out the new matter in its entirety.

However, a drafter should consider whether a provision really needs to be changed to accomplish the requester’s purpose or is being rewritten because the drafter thinks that the section could stand improvement. The latter is not a good enough reason and may even jeopardize the requester’s purpose if changes are so extensive as to appear to do **more** than the requester wants. The title may limit some such changes. The important thing is to write the bill so that the effect of an amendment is intelligible.

#### **d. Amendments Directed to Oregon Revised Statutes.**

In amending a statute that is published in *Oregon Revised Statutes*, the amendment should be directed to the ORS section and not to the original session law section. Since a reference to an ORS section means the section as most recently amended (ORS 174.060), there is no need generally to refer to any session laws that have amended a particular ORS

section when drafting an amendment to that ORS section. An exception is made if the amended version has not yet been published in ORS, such as during a special session or later in the same session when the amendment is made.

**SECTION 1.** ORS 112.449 is amended to read:

**OR**

(Special Session)

**SECTION 1.** ORS 112.449, as amended by section 7, chapter 9, Oregon Laws 2010, is amended to read:

**OR**

**SECTION 1.** ORS 112.449, as amended by section 7, chapter \_\_\_\_\_, Oregon Laws 2010 (Enrolled Senate Bill 7), is amended to read:

**e. Form of Amendment.**

There must be a separate amending clause for each statute section that is amended by a bill. The amending clause immediately follows the section number of the section in the bill that provides for the amendment. For example, the amending clauses of a bill amending two ORS sections should be in the following form:

**SECTION 1.** ORS 171.030 is amended to read:  
171.030. . . .

**SECTION 2.** ORS 171.040 is amended to read:  
171.040. . . .

**f. Use of “this (year) Act” in Amended Section.**

The term “this Act,” as used in an amended section, has been held to mean the Act by which the section first was enacted, and not the amendatory Act. *State v. Davis*, 207 Or. 525 (1956). Therefore, in an amendatory section when referring to a new section created by the same new bill, the drafter should **not** refer to “section 2 of this Act”; the reference should be to “section 2 of this 2011 Act,” or whatever may be the current year. Conversely, if a new section refers to an ORS section amended by the same bill, the drafter does not refer to “section 1 of this (year) Act,” but to “ORS such-and-such.”

**g. Bill Already Introduced Amending Same Section.**

A bill already introduced at the same session may amend the ORS section that is to be amended in the draft. If that bill has passed, then in a later bill the text should set forth at length the latest version of the ORS section, which means the ORS section as amended by the earlier bill. However, if time does not permit that step, the drafter should verify that the subsequent amendment does not conflict in purpose with the earlier amendment. If it does, the earlier amendment needs to be repealed. If the other bill has not yet been passed, and

there is any conflict, it may have to be dealt with in a conflict amendment as described later in this chapter.

#### **h. Order of Amended Sections.**

Sections in a bill that amend existing sections usually are arranged in the order of their ORS numbers, with the lowest section number first. However, departing from this practice to present the subject matter in a logical sequence is preferable. The title always presents the amended sections in numerical order, then the repealed sections in numerical order.

#### **i. Effect of Amendment.**

ORS 161.035 (4) prescribes the effect of amendment of a criminal statute as affecting prosecution or punishment for violation. Section 22, Article IV of the Oregon Constitution, relates to conflicts between two or more Acts amending the same section at the same session and is discussed in detail later in this chapter. The effect of amendment of a statute adopted by reference is covered by ORS 174.060, which is discussed in chapter 14 of this manual.

### **3. CONFLICTING AMENDMENTS.**

Section 22, Article IV of the Oregon Constitution, provides in part:

However, if, at any session of the Legislative Assembly, there are enacted two or more acts amending the same section, each of the acts shall be given effect to the extent that the amendments do not conflict in purpose. If the amendments conflict in purpose, the act last signed by the Governor shall control.

The same ORS section may be amended by two or more bills at the same session, or may be amended by one bill and repealed by another. The 1976 amendment to section 22, Article IV, authorizes giving full effect to two or more amendments to the same code section at the same session so long as the amendments do not conflict in purpose. If there is no conflict in purpose and if one bill already has been enacted into law, the later bill amending or repealing the same ORS section need not be adjusted to the amendment made by the earlier law. However, it should be so adjusted whenever possible. When the two are inconsistent, the draft must make plain that one is intended to supersede the other.

Simply put, there are two types of conflicts: those easily tracked and those not so easily tracked. In the first type of conflict, two bills amend the same ORS section in a textually inconsistent fashion (e.g., the first bill amends a section to indicate that a person shall perform a certain act; the second bill amends the same language in the section to indicate that a person may perform the act). This is the clearest type of conflict, and will be detected by the conflicts team in Publication Services. When a bill is in the second house and has emerged from committee to be filed at the desk, committee staff “check off” on the bill by requesting that the conflicts team review the ORS sections amended and repealed in that bill in light of other bills amending or repealing the same sections. If a true conflict is discovered, the conflicts team notifies the committee and the drafter so that a conflict

amendment can be prepared. See “CONFLICT AMENDMENTS,” chapter 18 of this manual.

The second type of conflict is less discernible, and its detection depends heavily on the attentiveness of the drafter or the committee. Sometimes referred to as a “conflict in purpose,” this type of conflict does not reveal itself within the amended section as a textual inconsistency resulting from nonparallel language. Instead, two or more bills include provisions that, if enacted, would result in laws that are mutually inconsistent. This may occur when the bills amend the same section but not the same language, or when the creation of a new section conflicts with the provisions of a previously passed bill.

Because a conflict in purpose cannot be tracked by Publication Services, the only way that this type of conflict can be corrected is upon the fortuitous discovery of the problem by the drafter or by the committee. If a drafter is aware of a potential problem, the drafter may request that the Publication Services conflicts team track bills that conflict in purpose and alert the drafter if the second bill is reported out of committee in the second house.

The Legislative Counsel’s staff makes a compilation during each session of all amendments and repeals of ORS sections, and publishes this compilation as a “Table of ORS Sections Amended, Repealed or ‘Added To’” in the Weekly Cumulative Index to Legislative Measures. Conflicts appear in this table somewhat as follows:

<b>ORS §</b>	<b>Amend Repeal</b>	<b>Section#</b>	<b>Bill#</b>
8.020	A	§1	S 104
	A	§1	H 2394
8.030	R	§8	H 2138
	A	§2	H 2486

From left to right, the columns show the number of the ORS section affected; an “A” or “R” indicating amendment or repeal of the section; and the citation to the bill by which the section is amended or repealed. In the preceding example, ORS 8.020 is amended by section 1 of Senate Bill 104 and by section 1 of House Bill 2394; ORS 8.030 is repealed by section 8 of House Bill 2138 and amended by section 2 of House Bill 2486.

Before the 1976 amendments to section 22, Article IV, when two or more Acts were enacted amending the same section of the statutes at the same session of the Legislative Assembly, the Attorney General was of the opinion that the Act last filed in the office of the Secretary of State controlled (26 Op. Att’y Gen. 161 (1953)). Others were of the view that the Act last signed by the Governor controlled, basing their view on Skinner v. Davis, 156 Or. 174 (1937), which holds that the amendment of a statute operates as the entire obliteration of the former version, and on the assumption that signature by the Governor is the last action required to give effect to a legislative enactment. Whatever the answer may have been, the Legislative Counsel now relies on section 22, Article IV, and will compile both bills if no conflict is found. It is still better to amend the section each time to reflect legislative intent and to avoid any controversy as to when amendments conflict in purpose.

A drafter who is contacted about a conflict amendment should consult with the conflicts team in Publication Services.

#### **4. AMENDMENT OR REPEAL OF UNCODIFIED SECTION.**

Only statutes of a general, public and permanent nature are compiled in *Oregon Revised Statutes*. Special, private, temporary, appropriation or similar Acts are not compiled. Sometimes one of the session law sections not compiled in ORS will need to be amended or repealed. The proper form for such an amendment is as follows:

**SECTION \_\_\_\_\_**, Section 100, chapter 1000, Oregon Laws 2003, is amended to read:

**Sec. 100.** [*This 2003 Act*] **Chapter 1000, Oregon Laws 2003**, takes effect on July 1, [2006] **2010**.

In setting forth in full section 100, chapter 1000, Oregon Laws 2003, the word “Section” is abbreviated to “**Sec.**” This is to avoid confusion between the designation of the section being amended and the amendatory section.

When amending a session law section not compiled in ORS, the drafter should check for later amendments or repeals of the session law section. This is done by referring to the table of “Amendments and Repeals of Session Laws” found in the back of each edition of session laws. The table in the edition in which the session law section itself is contained must be checked and also all subsequent editions. During a legislative session, the table in the current Weekly Cumulative Index to Legislative Measures will show any amendments.

If the section being amended or repealed was amended previously, the previous amendment is indicated in the amendatory or repealing clause of the bill. For example, the section is referred to as “section 100, chapter 1000, Oregon Laws 2003, as amended by section 1, chapter 1001, Oregon Laws 2003.” It is not necessary, however, to identify these additional amendments in the **title** or **text** of the bill; a reference to “section 100, chapter 1000, Oregon Laws 2003” is sufficient.

The amendment should be directed to the text of the section **as most recently amended**.

In preparing an amendment or repeal of a session law section, the drafter should check for incorporations by reference of the session law section in *Oregon Revised Statutes* and also for references to the session law section in ORS cross-references. A computer search will produce a list of the internal references and cross-references.

If *Oregon Revised Statutes* is affected by the session law section amendment or repeal, an appropriate “Note to ORS Editor” should be made on the form provided so that the ORS editor will be reminded of the need for adjustment to any note or cross-references based on the section if the bill is enacted.

To add a new section to an Act not compiled in *Oregon Revised Statutes*, the following form is used:

**SECTION 1.** Section 2 of this (year) Act is added to and made a part of sections \_\_\_ to \_\_\_, chapter 67, Oregon Laws 1987.

**SECTION 2.** . . . .

If the session laws sections are in an early Oregon Act that does not have a session law chapter number, use the following forms:

**SECTION \_\_\_\_\_.** Section 8 of the (year) Act entitled “An Act to establish an Institution of Learning in Washington County” passed by the Legislative Assembly of the Territory of Oregon on January 13, 1854, is amended to read:

**Sec. 8.** . . . .

To add a new section, the drafter may consider this form:

**SECTION 1.** A new section is added to and made a part of the (year) Act entitled “An Act to establish an Institution of Learning in Washington County” passed by the Legislative Assembly of the Territory of Oregon on January 13, 1854, as amended, to read:

**SECTION 2.** On the effective date of this (year) Act, the name of the corporation and of the institution of learning is changed to “The University of Humanities.”

For a repeal:

**SECTION 3.** Section 15 of the (year) Act entitled “An Act to establish an Institution of Learning in Washington County” passed by the Legislative Assembly of the Territory of Oregon on January 13, 1854, is repealed.

## **5. ALTERNATIVES TO AMENDMENTS.**

### **a. Repeal and Enactment in Lieu.**

Sometimes, in amending a statute, the changes are so numerous that it is impracticable to indicate deletions and insertions. However, if the new legislation is to have the same continuing effect as an amendment to the section would have, or to occupy the same status with respect to other statutes and court interpretations as was occupied by the original section, the original statute is repealed and the new legislation is enacted “in lieu thereof.” Inland Navigation Co. v. Chambers, 202 Or. 339 (1954).

If drafting a bill to enact only **one new section**, the following form is used:

**SECTION 1.** ORS 483.214 is repealed and section 2 of this (year) Act is enacted in lieu thereof.

**SECTION 2.** . . . .

If the bill proposes to enact **more than one new section** in lieu of **one repealed section**, the following form is used:

**SECTION 1. ORS 483.210 is repealed and sections 2 and 3 of this (year) Act are enacted in lieu thereof.**

**SECTION 2. . . . .**

**SECTION 3. . . . .**

More than one new section should never be enacted in lieu of more than one repealed section. Uncertainty can be created when references are made in unaffected statute sections to only one of the repealed sections. For example, if “ORS 168.010, 168.020 and 168.030 are repealed and sections 2 to 4 of this (year) Act are enacted in lieu thereof,” which, if any, of the new sections is intended to be substituted for a reference to “ORS 168.020” found in another, unaffected section?

When enacting a new section in lieu of a repealed section, the phrase “this Act” must not be used in the new section. As in the case of an amended section, confusion will result as to whether “this Act” means the Act that created the repealed section or the Act creating the new section. Reference to the Act creating the new section must be “this (year) Act.”

When a new section is enacted in lieu of a repealed section, the ORS editors are authorized to substitute the ORS number assigned to the new section for the ORS number of the repealed section in any other statute sections that make reference to the repealed section. Under ordinary circumstances, therefore, it is not necessary to amend sections that make reference to the repealed section when a new section is enacted in lieu thereof merely to adjust references to the repealed section. However, ORS 174.060 provides:

174.060. When one statute refers to another, either by general or by specific references or designation, the reference shall extend to and include, in addition to the statute to which reference was made, amendments thereto and statutes enacted expressly in lieu thereof unless a contrary intent is expressed specifically or unless the amendment to, or statute enacted in lieu of, the statute referred to is substantially different in the nature of its essential provisions from what the statute to which reference was made was when the statute making the reference was enacted.

When repealing a section and enacting a new section in lieu thereof, if there is a possibility that the new section might be considered “substantially different in the nature of its essential provision” from the repealed section, the drafter must adjust any references made in other statute sections to the section that is to be repealed to a more appropriate current reference. The ORS editors cannot substitute the ORS number of the new section for the number of the repealed section in unaffected statute sections if there is real uncertainty as to whether the new section is “substantially different in the nature of its essential provisions.”

**b. Editorial Substitutions.**

Authorizing Legislative Counsel to substitute words in sections compiled in *Oregon Revised Statutes* is merely a means of avoiding numerous amendments to adjust sections affected by a transfer of functions or a change in terminology. **It is not a means of avoiding a section-by-section check of all parts of the statutes affected by a bill.** In each case, the drafter must determine whether Legislative Counsel will be able to make the substitution.

The note under ORS 184.140 (1965 Replacement Part) provides an example of poor drafting that resulted in Legislative Counsel's being unable to make a substitution that was authorized. If there is any doubt at all in this respect, the section should be amended.

When using a section directing the Legislative Counsel to make a substitution, the drafter should try to be specific. For example, enumerating the sections involved, if possible, limits the authority to the ORS chapter or series enumerated.

A complete list of authorized editorial substitutions is contained in the Preface in Volume 1 of ORS. Examples can be found in the sections listed there of the form of sections authorizing the Legislative Counsel to make editorial substitutions.

If transferring a function from one agency to another and a great number of statutes would have to be amended to redesignate the agency to which the function is transferred, sometimes one general section transferring the function from one agency to the other can be drafted. Then a provision authorizing Legislative Counsel to substitute words designating the new agency for words designating the old agency in other statute sections can be added.

However, the provision authorizing the substitution does not **accomplish** the transfer. A provision that "the duties, functions and powers of Old Agency under ORS chapter 500 with respect to the regulation of framistans are transferred to New Agency" will accomplish the transfer. The substitution authorization may be inserted to clean up existing statutes.

Appendix A of this manual discusses the form of provisions transferring a function from one agency to another. Assuming that appropriate provisions have been drafted accomplishing the transfer in a constitutional manner, a provision somewhat as follows may be used for the "cleanup":

**SECTION \_\_\_\_.** (1) Any reference in ORS chapter 500 to the (Old Agency) \_\_\_\_\_ shall be considered a reference to the (New Agency) \_\_\_\_\_, with respect to regulation of framistans.  
(2) For the purpose of harmonizing and clarifying statutory law, the Legislative Counsel may substitute for words designating the (Old Agency) \_\_\_\_\_ in ORS chapter 500, words designating the (New Agency) \_\_\_\_\_.

**OR**

**SECTION \_\_\_\_.** (1) The amendment to ORS \_\_\_\_ by section \_\_\_\_ of this (year) Act is intended to change the name of the \_\_\_\_\_ Account to the \_\_\_\_\_ Account.

(2) For the purpose of harmonizing and clarifying statutory law, the Legislative Counsel may substitute for words designating the \_\_\_\_\_ Account, wherever they occur in statutory law, words designating the \_\_\_\_\_ Account.

Note that the above examples are variations on standard phrases provided in DW370.

<spm name-change> says:

**SECTION \_\_\_\_.** (1) The amendments to ORS \_\_\_\_\_ by section \_\_\_\_ of this 2011 Act are intended to change the name of the <<Old Agency>> to the <<New Agency.>>

(2) For the purpose of harmonizing and clarifying statutory law, the Legislative Counsel may substitute for words designating the <<Old Agency,>> wherever they occur in statutory law, other words designating the <<New Agency.>>

<spm name-change2> says:

**SECTION \_\_\_\_.** For the purpose of harmonizing and clarifying statutory law, the Legislative Counsel may substitute for words designating the <<Transferring Agency>> or its officers, wherever they occur in ORS chapter \_\_\_\_, other words designating the <<Receiving Agency>> or its officers.

It is the drafter's job to ensure that the language accomplishes the purpose of the draft. Boilerplate or suggested language gives a drafter a starting place, but not always a stopping place.

## **6. REPEALS.**

If a bill is intended to repeal an existing statute section, the body of the bill must so provide. A careful search for inconsistent provisions is required. If a bill conflicts with or supersedes existing statutes, the drafter must expressly repeal the inconsistent statutes. This prevents confusion and difficulty that might arise later in construing and applying the bill.

Ordinarily a single section is sufficient to repeal a number of statutes, as follows:

**SECTION \_\_\_\_.** ORS 171.031, 171.032 and 171.033 are repealed.

The text or subject matter of the law being repealed does not need to be stated, but the section numbers should be rechecked carefully for accuracy. The repeal is directed to the ORS number if the statute is compiled in ORS. A statute is not repealed by reference to its session law section number unless it is a section that is not compiled in ORS.

A repeal cannot be directed to an ORS chapter or series of sections. Each section in the chapter or series must be enumerated individually.

A draft should NEVER include a "general repeal clause" for the reasons indicated in the discussion of general repeal clauses in chapter 10 of this manual. The problem of repeal by implication is considered in that chapter, as well as a specific provision to protect existing law from possible implied repeal.

Several statutes relate to the effect of a repeal. ORS 161.035 prescribes the effect of repeal of a criminal statute as affecting prosecutions or punishment for violation of criminal statutes. ORS 174.080 provides that prior law is not revived when the law that expressly or impliedly repealed it is itself repealed, unless expressly so provided. ORS 174.070 provides that the repeal of a validating or curative Act does not affect any validation or cure theretofore accomplished. ORS 182.080 relates to the effect of repeal of a statute authorizing a state agency to collect, receive and expend money. The effect of repeal of a repealing constitutional provision is covered by ORS 174.090.

If a section being repealed is referred to in another statute section, the latter section may have to be amended to adjust the reference. Such an amendment is not necessary if the adjustment can be made by the ORS editors. They can delete a repealed section if it is the first or last number in a series. However, if the reference to the repealed section is in a string cite, the reference must be removed by amendment. So: ORS xxx.yyy is repealed. ORS aaa.bbb refers to ORS xxx.yyy to xxx.zzz. You may leave ORS aaa.bbb alone. ORS bbb.ccc has a string cite: ORS xxx.hhh, xxx.kkk and xxx.yyy. Amend ORS bbb.ccc to delete “xxx.yyy.”

## **7. SERIES CARD PROCEDURES.**

References to the series cards and to computer searches have been made in this manual. These tools are particularly important in amending ORS sections and their use is imperative in repealing sections or adding to existing series and chapters.

It is much easier to demonstrate the use of the series card file, which includes current references only to ORS series and chapters, than to describe it, but the following paragraphs should be useful for reference purposes.

For example, the card appears as follows:

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34.010 to 34.100	19.230 (B)
	<b>or</b>
	20.120 (C)

---

The number on the left-hand corner of the card is the ORS series **referred to**; the numbers on the right-hand side of the card indicate ORS sections that contain references to ORS 34.010 to 34.100. The designation in parentheses following each number on the right-hand side of the card indicates the **type** of reference. In this example, “ORS 19.230 (B)” means that there is a reference to ORS 34.010 to 34.100 in the text, or body, of ORS 19.230. The entry “20.120 (C)” means that there is an editorial cross-reference from ORS 20.120 to ORS 34.010 to 34.100.

The series card file is useful in determining whether to add a section to and make it a part of an ORS series or chapter. When creating a new section, the drafter should check for any series references that would require adding the new section to and making it a part of such a series.

If reference is made in an ORS section to an entire ORS chapter, a series card is made; in this case, a number such as “Ch. 138” would appear in the left-hand corner of the card. Chapter reference cards for each ORS chapter are filed in front of the series reference cards for that chapter and are particularly helpful in locating references to “this chapter.”

It sometimes happens that one finds a series card for a “body” or “cross” reference but, upon checking the place where the reference should be, none can be found. The drafter should consult the Chief Editor.

Another source of information for series references is the computer system. By keying the section number, a list of all ORS sections where that number appears will show on the screen. The list can be printed if the drafter so desires. See also “NUMBERS-REFERRED-TO SEARCH” in chapter 2 of this manual.

