

House Bill 2981

Sponsored by Representative WINGARD (at the request of Deputy Emile Burley of Clackamas County Sheriff's Office) (Presession filed.)

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**.

Redesignates crime of offensive littering as offensive littering in second degree. Punishes by maximum of \$360 fine. Creates offense of offensive littering in first degree when cleanup cost is more than \$50. Authorizes court to order community service, which must include cleanup of litter.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to offensive littering; creating new provisions; amending ORS 161.005, 164.805, 459.108 and
3 477.305; and declaring an emergency.

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

5 **SECTION 1.** ORS 164.805 is amended to read:

6 164.805. (1) A person commits the [*crime*] **offense** of offensive littering **in the second degree**
7 if:

8 (a) The person creates an objectionable stench or degrades the beauty or appearance of prop-
9 erty or detracts from the natural cleanliness or safety of property by intentionally:

10 [(a)] (A) Discarding or depositing [*any*] rubbish, trash, garbage, debris or other refuse upon the
11 land of another without permission of the owner, or upon [*any*] a public way or in or upon [*any*] a
12 public transportation facility;

13 [(b)] (B) Draining, or causing or permitting to be drained, sewage or the drainage from a
14 cesspool, septic tank, recreational or camping vehicle waste holding tank or other contaminated
15 source, upon the land of another without permission of the owner, or upon [*any*] a public way; or

16 [(c)] (C) Permitting [*any*] rubbish, trash, garbage, debris or other refuse to be thrown from a
17 vehicle that the person is operating[. *This subsection does not apply to a person operating a vehicle*
18 *transporting passengers for hire subject to regulation by the Interstate Commerce Commission or the*
19 *Department of Transportation or a person operating a school bus described under ORS 801.460]; and*

20 (b) **The cost of cleanup is \$50 or less.**

21 (2) **Subsection (1)(a)(C) of this section does not apply to a person operating a vehicle**
22 **transporting passengers for hire subject to regulation by the Interstate Commerce Commis-**
23 **sion or the Department of Transportation or a person operating a school bus described under**
24 **ORS 801.460.**

25 [(2)] (3) As used in this section:

26 (a) "Public transportation facility" has the meaning given that term in ORS 164.365.

27 (b) "Public way" includes, but is not limited to, roads, streets, alleys, lanes, trails, beaches, parks
28 and [*all*] recreational facilities operated by the state, a county or a local municipality for use by the
29 general public.

30 [(3)] (4)(a) **Offensive littering [*is a Class C misdemeanor.*] in the second degree is a Class B**

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted.
New sections are in **boldfaced** type.

1 violation. Upon a conviction for offensive littering in the second degree, a court may order
 2 the offender to perform community service pursuant to ORS 137.128 and 137.129. The com-
 3 munity service must include cleanup of litter.

4 (b) If the court orders community service, the community service must be completed
 5 within six months after entry of the order unless the offender shows good cause why com-
 6 munity service cannot be completed within the six-month time period.

7 **SECTION 2.** Section 3 of this 2011 Act is added to and made a part of ORS chapter 164.

8 **SECTION 3.** (1) A person commits the crime of offensive littering in the first degree if
 9 the person violates ORS 164.805 and the cost of cleanup is more than \$50.

10 (2) Offensive littering in the first degree is a Class C misdemeanor.

11 **SECTION 4.** ORS 161.005 is amended to read:

12 161.005. ORS 161.005 to 161.055, 161.085 to 161.125, 161.150 to 161.175, 161.190 to 161.275, 161.290
 13 to 161.370, 161.405 to 161.485, 161.505 to 161.585, 161.605, 161.615 to 161.685, 161.705 to 161.737,
 14 162.005, 162.015 to 162.035, 162.055 to 162.115, 162.135 to 162.205, 162.225 to 162.375, 162.405 to
 15 162.425, 162.465, 163.005, 163.115, 163.125 to 163.145, 163.149, 163.160 to 163.208, 163.196, 163.215 to
 16 163.257, 163.261, 163.263, 163.264, 163.266, 163.275, 163.285, 163.305 to 163.467, 163.432, 163.433,
 17 163.505 to 163.575, 163.665 to 163.693, 164.005, 164.015 to 164.135, 164.138, 164.140, 164.205 to 164.270,
 18 164.305 to 164.377, 164.395 to 164.415, 164.805, 164.857, 164.886, 165.002 to 165.102, 165.109, 165.118,
 19 165.805, 166.005 to 166.095, 166.350, 166.382, 166.384, 166.660, 167.002 to 167.027, 167.054, 167.057,
 20 167.060 to 167.100, 167.117, 167.122 to 167.162, 167.203 to 167.252, 167.310 to 167.340 and 167.350,
 21 167.810 and 167.820 **and section 3 of this 2011 Act** shall be known and may be cited as Oregon
 22 Criminal Code of 1971.

23 **SECTION 4.** ORS 459.108 is amended to read:

24 459.108. (1) A city or county may impose a civil penalty to enforce the requirements of an or-
 25 dinance that prohibits any action or conduct described in ORS 164.775, 164.785 or 164.805 **or section**
 26 **3 of this 2011 Act.**

27 (2) An ordinance described in subsection (1) of this section may establish a maximum or mini-
 28 mum amount for the civil penalty imposed under the ordinance for each violation. The total amount
 29 of the civil penalty may be increased to include all of the costs incurred by the city or county in
 30 removing the refuse or offensive substance unlawfully placed on property and in eliminating the ef-
 31 fects of such unlawful placement.

32 (3) A civil penalty imposed for violation of an ordinance prohibiting any action or conduct de-
 33 scribed in ORS 164.775, 164.785 or 164.805 **or section 3 of this 2011 Act** shall be an alternative to
 34 criminal enforcement of the ordinance. A city or county that commences and maintains a civil action
 35 to collect such a civil penalty from any person shall not cause a criminal prosecution to be com-
 36 menced or maintained against that person for the same violation of the ordinance.

37 (4) When a city or county ordinance prohibits any action or conduct that is described in ORS
 38 164.775, 164.785 or 164.805 **or section 3 of this 2011 Act**, a name found on various items in a deposit
 39 of rubbish or other solid waste placed on land or in water in violation of the ordinance constitutes
 40 rebuttable evidence that the person whose name appears on the items has violated the ordinance.
 41 However, the rebuttable presumption created by this subsection exists only when a name on items
 42 denotes ownership of the items, such as the name of an addressee on an envelope.

43 **SECTION 5.** ORS 477.305 is amended to read:

44 477.305. The forester is authorized to enforce the provisions of ORS 164.805 **and section 3 of**
 45 **this 2011 Act** insofar as [*such affects*] **the provisions affect** forestland within forest protection

1 districts established under this chapter.

2 **SECTION 6. Section 3 of this 2011 Act and the amendments to ORS 164.805 by section 1**
3 **of this 2011 Act apply to conduct occurring on or after the effective date of this 2011 Act.**

4 **SECTION 7. This 2011 Act being necessary for the immediate preservation of the public**
5 **peace, health and safety, an emergency is declared to exist, and this 2011 Act takes effect**
6 **on its passage.**

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