

**Chapter 358 — Oregon Historical and Heritage Agencies, Programs and Tax Provisions;
Museums; Local Symphonies and Bands; Archaeological Objects and Sites**
https://www.oregonlegislature.gov/bills_laws/lawsstatutes/2013ors358.html
Downloaded October 7, 2014

2013 EDITION

OREGON HISTORY & HERITAGE; MUSEUMS; MUSIC

EDUCATION AND CULTURE

ORS 358. ARCHAEOLOGICAL OBJECTS AND SITES

358.905	Definitions for ORS 358.905 to 358.961; interpretation
358.910	Policy
358.915	Application
358.920	Prohibited conduct; exception; penalty
358.923	When collection may be held notwithstanding ORS 358.920 (3) and (4)
358.924	Objects held unlawfully considered contraband; seizure; procedure; disposition of seized objects
358.925	Seizure of instrumentalities and proceeds of certain violations; forfeiture; procedure
358.928	Alternative method for seizure and forfeiture of instrumentalities and proceeds of certain violations; procedure
358.935	Forfeiture of seized objects in criminal prosecution
358.940	Reinterment required; notice to appropriate Indian tribe or Commission on Indian Services
358.945	Notice required upon finding of object; exception
358.950	When notice to Indian tribe required; report; penalty
358.953	Compensation to property owner deprived of lawful use of property; expense of removal
358.955	Civil enforcement
358.958	Remedies not precluded
358.961	Time limitations on actions or proceedings; tolling of statute

ARCHAEOLOGICAL OBJECTS AND SITES

358.905 Definitions for ORS 358.905 to 358.961; interpretation. (1) As used in ORS 192.005, 192.501 to 192.505, 358.905 to 358.961 and 390.235:

(a) “Archaeological object” means an object that:

(A) Is at least 75 years old;

(B) Is part of the physical record of an indigenous or other culture found in the state or waters of the state; and

(C) Is material remains of past human life or activity that are of archaeological significance including, but not limited to, monuments, symbols, tools, facilities, technological by-products and dietary by-products.

(b) “Site of archaeological significance” means:

(A) Any archaeological site on, or eligible for inclusion on, the National Register of Historic Places as determined in writing by the State Historic Preservation Officer; or

(B) Any archaeological site that has been determined significant in writing by an Indian tribe.

(c)(A) “Archaeological site” means a geographic locality in Oregon, including but not limited to submerged and submersible lands and the bed of the sea within the state’s jurisdiction, that contains archaeological objects and the contextual associations of the archaeological objects with:

(i) Each other; or

(ii) Biotic or geological remains or deposits.

(B) Examples of archaeological sites described in subparagraph (A) of this paragraph include but are not limited to shipwrecks, lithic quarries, house pit villages, camps, burials, lithic scatters, homesteads and townsites.

(d) “Indian tribe” has the meaning given that term in ORS 97.740.

(e) “Burial” means any natural or prepared physical location whether originally below, on or above the surface of the earth, into which, as a part of a death rite or death ceremony of a culture, human remains were deposited.

(f) “Funerary objects” means any artifacts or objects that, as part of a death rite or ceremony of a culture, are reasonably believed to have been placed with individual human remains either at the time of death or later.

(g) “Human remains” means the physical remains of a human body, including, but not limited to, bones, teeth, hair, ashes or mummified or otherwise preserved soft tissues of an individual.

(h) “Object of cultural patrimony”:

(A) Means an object having ongoing historical, traditional or cultural importance central to the native Indian group or culture itself, rather than property owned by an individual native Indian, and which, therefore, cannot be alienated, appropriated or conveyed by an individual regardless of whether or not the individual is a member of the Indian tribe. The object shall have been considered inalienable by the native Indian group at the time the object was separated from such group.

(B) Does not mean unassociated arrowheads, baskets or stone tools or portions of arrowheads, baskets or stone tools.

(i) “Police officer” has the meaning given that term in ORS 181.610.

(j) “Public lands” means any lands owned by the State of Oregon, a city, county, district or municipal or public corporation in Oregon.

(k) “Sacred object” means an archaeological object or other object that:

(A) Is demonstrably revered by any ethnic group, religious group or Indian tribe as holy;

(B) Is used in connection with the religious or spiritual service or worship of a deity or spirit power; or

(C) Was or is needed by traditional native Indian religious leaders for the practice of traditional native Indian religion.

(L) “State police” has the meaning given that term in ORS 181.010.

(2) The terms set forth in subsection (1)(e), (f), (g), (h) and (k) of this section shall be interpreted in the same manner as similar terms interpreted pursuant to 25 U.S.C. 3001 et seq. [1983 c.620 §1; 1993 c.459 §1; 1995 c.588 §1]

358.910 Policy. The Legislative Assembly hereby declares that:

(1) Archaeological sites are acknowledged to be a finite, irreplaceable and nonrenewable cultural resource, and are an intrinsic part of the cultural heritage of the people of Oregon. As such, archaeological sites and their contents located on public land are under the stewardship of the people of Oregon to be protected and managed in perpetuity by the state as a public trust.

(2) The State of Oregon shall preserve and protect the cultural heritage of this state embodied in objects and sites that are of archaeological significance. [1983 c.620 §2; 1993 c.459 §2]

358.915 Application. The provisions of ORS 192.005, 192.501 to 192.505, 273.990, 358.905 to 358.961 and 390.235 do not apply to a person who unintentionally discovers an archaeological object that has been exposed by the forces of nature on public land or private property and retains the object for personal use, except for sacred objects, human remains, funerary objects or objects of cultural patrimony. [1983 c.620 §15; 1993 c.459 §3]

358.920 Prohibited conduct; exception; penalty. (1)(a) A person may not excavate, injure, destroy or alter an archaeological site or object or remove an archaeological object located on public or private lands in Oregon unless that activity is authorized by a permit issued under ORS 390.235.

(b) Collection of an arrowhead from the surface of public or private land is permitted if collection can be accomplished without the use of any tool.

(c) It is prima facie evidence of a violation of this section if:

(A) A person possesses the objects described in paragraph (a) of this subsection;

(B) A person possesses any tool that could be used to remove such objects from the ground; and

(C) A person does not possess a permit required under ORS 390.235.

(2) A person may not sell, purchase, trade, barter or exchange or offer to sell, purchase, trade, barter or exchange any archaeological object that has been removed from an archaeological site on public land or obtained from private land within the State of Oregon without the written permission of the landowner.

(3)(a) A person may not sell, trade, barter or exchange or offer to sell, trade, barter or exchange any archaeological object unless the person furnishes the purchaser a certificate of origin to accompany the object that is being sold or offered. The certificate shall include:

(A) For objects obtained from public land:

(i) A statement that the object was originally acquired before October 15, 1983.

(ii) The location from which the object was obtained and a brief cumulative description of how the object had come into the possession of the current owner in accordance with the provisions of ORS 358.905 to 358.961 and 390.235.

(iii) A statement that the object is not human remains, a funerary object, sacred object or object of cultural patrimony.

(B) For objects obtained from private land:

(i) A statement that the object is not human remains, a funerary object, sacred object or object of cultural patrimony.

(ii) A copy of the written permission of the landowner to acquire the object.

(b) As used in this subsection, "certificate of origin" means a signed and notarized statement that meets the requirements of paragraph (a) of this subsection.

(4)(a) If the archaeological object was acquired after October 15, 1983, from public lands, any object not described in paragraph (b) of this subsection is under the stewardship of the state and shall be delivered to the Oregon State Museum of Anthropology. The museum shall work with the appropriate Indian tribe and other interested parties to develop appropriate curatorial facilities for artifacts and other material records, photographs and documents relating to the cultural or historic properties in this state. Generally, artifacts shall be curated as close to the community of their origin as their proper care allows. If it is not feasible to curate artifacts within this state, the museum may after consultation with the appropriate Indian tribe or tribes enter into agreements with organizations outside this state to provide curatorial services; and

(b) If the object is human remains, a funerary object, a sacred object or an object of cultural patrimony, it shall be dealt with according to ORS 97.740, 97.745 and 97.750.

(5) A person may not excavate an archaeological site on privately owned property unless that person has the property owner's written permission.

(6) If human remains are encountered during excavations of an archaeological site on privately owned property, the person shall stop all excavations and report the find to the landowner, the state police, the State Historic Preservation Officer and the Commission on Indian Services. All funerary objects relating to the burial shall be delivered as required by ORS 358.940.

(7) This section does not apply to a person who disturbs an Indian cairn or burial. Any person who disturbs an Indian cairn or burial for any reason shall comply with the provisions of ORS 97.740 to 97.760.

(8) Violation of the provisions of this section is a Class B misdemeanor. [1983 c.620 §3; 1993 c.459 §4; 1995 c.543 §4; 1997 c.249 §115]

358.923 When collection may be held notwithstanding ORS 358.920 (3) and (4).

Notwithstanding the provisions of ORS 358.920 (3) and (4), any collection of objects described in those subsections may be held if the collection:

(1) Is kept within this state;

(2) Is curated under customary museum standards; and

(3) Is available for nondestructive study by museums and educational institutions located in this state. [1993 c.459 §16]

Note: 358.923 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 358 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

358.924 Objects held unlawfully considered contraband; seizure; procedure; disposition of seized objects. (1) Archaeological objects, funerary objects, human remains, sacred objects and objects of cultural patrimony that are held in violation of the provisions of ORS 358.920 or 390.235 are contraband. A police officer shall seize all items declared to be contraband under the provisions of this section if the police officer has reasonable cause to believe the items are held in violation of the provisions of ORS 358.920 or 390.235.

(2) A law enforcement agency employing a police officer who seizes contraband items under this section shall give notice of the seizure to the district attorney for the county in which the items are seized. The district attorney shall promptly investigate to determine whether any person claims the items seized.

(3) If any person claims items seized under this section, the district attorney shall file a petition with the circuit court for the county for an expedited hearing on the claim. The court shall conduct a hearing for the sole purposes of determining:

(a) Whether the items are archaeological objects, funerary objects, human remains, sacred objects or objects of cultural patrimony;

(b) Whether any arrowheads seized under this section were collected in compliance with ORS 358.920 (1)(b); and

(c) Whether a person claiming an item other than an arrowhead can lawfully possess the item under ORS 358.905 to 358.961.

(4) If items seized under this section are not claimed by any person, or the circuit court determines that the items may not be returned to the claimant under the provisions of subsection (3) of this section:

(a) Archaeological objects shall be delivered to the Oregon State Museum of Anthropology and curated as described in ORS 358.920 (4)(a).

(b) Funerary objects, human remains, sacred objects and objects of cultural patrimony shall be returned to the appropriate tribe for reinterment or other disposition as provided in ORS 358.940. [2001 c.739 §2]

Note: 358.924 and 358.928 were added to and made a part of 358.905 to 358.961 by legislative action but were not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

358.925 Seizure of instrumentalities and proceeds of certain violations; forfeiture;

procedure. (1) Violation of ORS 358.920 or 390.235 is prohibited conduct for the purposes of ORS chapter 131A. Proceeds and instrumentalities of a violation of ORS 358.920 or 390.235 may be seized and forfeited in the manner provided by ORS chapter 131A. An action for civil forfeiture under this section may be commenced by the Attorney General or by the district attorney for the county in which any of the property is seized.

(2) Property subject to forfeiture under this section may be seized by a police officer upon court process. Seizure without process may be made if:

(a) The seizure is incident to a lawful arrest or search or an inspection under an administrative inspection warrant; or

(b) The property subject to seizure has been the subject of a prior judgment in favor of the state.

(3) In the event of a seizure under subsection (1) of this section, a forfeiture proceeding shall be instituted promptly. Property taken or detained under this section shall not be subject to replevin,

but is deemed to be in the custody of the police officer making the seizure, subject only to the order of the court. When property is seized under this section, pending forfeiture and final disposition, the police officer may:

- (a) Place the property under seal;
 - (b) Remove the property to a place designated by the court; or
 - (c) Require another agency authorized by law to take custody of the property and remove it to an appropriate location.
- (4) In any action brought under this section, the circuit court shall give priority to the hearing and determination. Pending final determination, the circuit court may at any time enter such injunctions, prohibitions or restraining orders, or take such actions as the court may deem proper.
- (5) A judgment rendered in favor of the state in any criminal proceeding for a violation of ORS 358.920 or 390.235 shall estop the defendant in any subsequent civil action or proceeding brought by the state or any other person as to all matters as to which such judgment would be an estoppel as between the state and the defendant.
- (6) Notwithstanding any provision of ORS chapter 131A, after entry of a judgment of forfeiture in an action under this section, a forfeiting agency shall deliver the forfeited property and proceeds of the forfeited property to the Commission on Indian Services after making any deductions allowed for costs incurred by the forfeiting agency. The commission shall deliver the property and proceeds to the appropriate Indian tribe, as designated by the commission. If there is no appropriate Indian tribe, the commission shall use the property and proceeds for Indian historic preservation. [1983 c.620 §4; 1993 c.459 §5; 2001 c.739 §4; 2003 c.576 §437; 2009 c.78 §59]

358.928 Alternative method for seizure and forfeiture of instrumentalities and proceeds of certain violations; procedure. (1) All instrumentalities or proceeds from the violation of the provisions of ORS 358.920 to 358.955 or 390.235 are subject to civil forfeiture to the appropriate Indian tribe, as designated by the Commission on Indian Services. All forfeitures under this section shall be made with due provision for the rights of innocent persons.

(2) Property subject to forfeiture under this section may be seized by a police officer upon court process. Seizure without process may be made if:

- (a) The seizure is incident to a lawful arrest or search or an inspection under an administrative inspection warrant; or
- (b) The property subject to seizure has been the subject of a prior judgment in favor of the state.

(3) Any police officer seizing property under this section shall promptly contact the Commission on Indian Services. The commission shall designate the appropriate tribe, and give notice to the tribe of the seizure. A civil forfeiture proceeding under ORS 358.925 may not be commenced if the tribe gives written notice that the tribe intends to seek forfeiture under this section. Notice by the tribe must be given within 30 days after the commission gives notice to the tribe of the seizure.

(4) Property seized under this section shall be held by the police agency that employs the police officer pending judgment in an action under this section. The property shall not be subject to replevin. Pending judgment in the action, the police agency may:

- (a) Place the property under seal;
- (b) Remove the property to a place designated by the court; or

(c) Require another agency authorized by law to take custody of the property and remove it to an appropriate location.

(5) In any action brought under this section, the circuit court shall give priority to the hearing and determination. Pending final determination, the circuit court may at any time enter such injunctions, prohibitions or restraining orders, or take such actions, including the acceptance of satisfactory performance bonds, as the court may deem proper.

(6) The defendant or the tribe may demand a trial by jury in any civil action brought under this section.

(7) A judgment rendered in favor of the state in any criminal proceeding for a violation of ORS 358.920 to 358.955 or 390.235 shall estop the defendant in any action under this section as to all matters as to which such judgment would be an estoppel as between the state and the defendant. [2001 c.739 §3; 2003 c.576 §438]

Note: See note under 358.924.

358.930 [1983 c.620 §5; 1993 c.459 §6; repealed by 2001 c.739 §10]

358.935 Forfeiture of seized objects in criminal prosecution. Any instrumentality or proceeds seized under the provisions of ORS 358.925 shall be preserved and retained. If any instrumentality or proceeds are not forfeited under ORS 358.925 or 358.928, at the time the court sentences the defendant in the criminal prosecution for violation of the archaeology laws the court may order that any instrumentality or proceeds from a violation of ORS 358.920 or 390.235 be forfeited. [1983 c.620 §6; 1995 c.543 §9; 1999 c.1051 §269; 2001 c.104 §123; 2001 c.739 §5]

358.940 Reinterment required; notice to appropriate Indian tribe or Commission on Indian Services. (1) A person who disturbs native Indian remains or a funerary object at or associated with an archaeological site shall reinter at the person's expense those remains or funerary objects under the supervision of an Indian tribe as provided in ORS 97.750.

(2) Any native Indian sacred object, object of cultural patrimony or native Indian funerary object shall be reported to the appropriate Indian tribe and the Commission on Indian Services. The appropriate Indian tribe, with the assistance of the State Historic Preservation Officer, shall arrange for the return of any objects to the appropriate Indian tribe. [1983 c.620 §7; 1993 c.459 §7]

358.945 Notice required upon finding of object; exception. (1) If a person who is conducting an archaeological investigation on public lands according to the provisions of ORS 390.235 or on private land with the owner's written permission finds a sacred object or object of cultural patrimony, the person conducting the archaeological investigation shall notify in writing:

(a) The State Historic Preservation Officer; and

(b) The appropriate ethnic group, religious group or Indian tribe with which the object is associated.

(2) If a sacred object or object of cultural patrimony is recovered on any land, the State Historic Preservation Officer shall assist the appropriate group to repossess the object.

(3) This section does not apply to the contents of an Indian cairn or burial regulated under ORS 97.740 to 97.760.

(4) Failure to notify the appropriate Indian tribe as required by subsection (1)(b) of this section is a Class B misdemeanor. [1983 c.620 §8; 1993 c.459 §8; 1995 c.543 §5; 1997 c.249 §116; 2001 c.104 §124]

358.950 When notice to Indian tribe required; report; penalty. (1) Any person who conducts an archaeological excavation associated with a prehistoric or historic American Indian archaeological site shall notify the most appropriate Indian tribe. The notification shall include, but not be limited to:

(a) The location and schedule of the forthcoming excavation;

(b) A description of the nature of the investigation; and

(c) The expected results of the investigation.

(2) After notifying the appropriate Indian tribe under subsection (1) of this section, the person conducting the archaeological excavation shall consult a representative of the tribe to establish a procedure for handling sacred objects recovered during the archaeological excavation.

(3) A delegate from the appropriate Indian tribe may be present during the excavation.

(4) If requested, the Commission on Indian Services shall assist a person in locating the appropriate Indian tribe.

(5) At the conclusion of the investigation, the person conducting the excavation shall prepare and forward a copy of a report on excavation findings to the Commission on Indian Services and to the appropriate Indian tribe.

(6) Failure to notify the appropriate Indian tribe as required by subsection (1) of this section is a Class B misdemeanor. [1983 c.620 §9; 1985 c.198 §4; 1995 c.543 §6]

358.953 Compensation to property owner deprived of lawful use of property; expense of removal. (1) Under the provisions of ORS 358.905 to 358.961, if a property owner is deprived of an otherwise lawful use of private property, the state shall compensate the property owner for the loss in value under the procedures set forth in ORS chapter 35.

(2) Notwithstanding any other provision of law, if human remains, funerary objects, sacred objects or objects of cultural patrimony are removed from private property at a tribe's request, the tribe shall pay the expenses of removal and, at its expense, restore the private property to its condition prior to the removal. [1993 c.459 §18]

358.955 Civil enforcement. (1) Any person or the Attorney General, on behalf of the state, may institute a civil proceeding against a person who violates the provisions of ORS 358.920, 358.945, 358.950 or 390.235. In the proceeding, relief shall be granted in conformity with the principles that govern the granting of injunctive relief in other civil cases, except that a showing of special or irreparable damage to the person is not required. Upon the execution of the proper bond against damages for an injunction improvidently granted and a showing of immediate danger of significant loss or damage, a temporary restraining order or a preliminary injunction may be issued in any such action before a final determination on the merits.

(2) In any proceeding brought under this section, the court may allow the prevailing party to recover costs, expert witness fees, and reasonable attorney fees at trial and upon appeal. Any moneys recovered by the Attorney General under this subsection shall be deposited in the fund established in ORS 358.664.

(3) The Attorney General may, upon timely application, intervene in any civil action or proceeding brought under subsection (1) of this section if the Attorney General certifies that in the opinion of the Attorney General, the action or proceeding is of general public importance. In such action or proceeding, the state shall be entitled to the same relief as if the Attorney General instituted the action or proceeding. [1983 c.620 §10; 2001 c.739 §6; 2009 c.89 §3]

358.958 Remedies not precluded. The application of one civil remedy under any provision of ORS 358.905 to 358.961 does not preclude the application of any other remedy under ORS 358.905 to 358.961 or under any other provision of statutory or common law. [2001 c.739 §8]

358.961 Time limitations on actions or proceedings; tolling of statute. Notwithstanding any other provision of law, a criminal or civil action or proceeding for a violation of ORS 358.920 to 358.955 and 390.235 may be commenced at any time within five years after the conduct in violation of a provision of ORS 358.920 to 358.955 and 390.235 terminates or the cause of action accrues. If a criminal prosecution, civil action or other proceeding is brought to punish, prevent or restrain any violation of the provisions of ORS 358.920 to 358.955 or 390.235, the running of the period of limitations prescribed by this section with respect to any cause of action arising under ORS 358.955 that is based in whole or in part upon any matter complained of in any such prosecution, action or proceeding shall be suspended during the pendency of such prosecution, action or proceeding and for two years following its termination. [2001 c.739 §9]