

WEST'S OREGON REVISED STATUTES ANNOTATED - BOON FOR PRACTITIONERS?

INTRODUCTION

In late September 2003, Thomson-West rolled out a brand new product of particular interest to Oregon attorneys and legal researchers - *West's Oregon Revised Statutes Annotated*. West's annotated code (*WORS*A, as it was apologetically referred to at a recent local unveiling) is the only proprietary publication of Oregon statutes to emerge since *Butterworth's Oregon Revised Statutes Annotated* ceased publication about four years ago. It joins the annotated state codes already being published by Thomson-West for approximately 30 other states. This article reviews *WORS*A in the context of the 2001 edition of the official *Oregon Revised Statutes* (*ORS*) published by the Legislative Counsel under the direction of the Legislative Counsel Committee. To distinguish the print publication *Oregon Revised Statutes* from the statutes themselves, "official *ORS*" is used for the former.

DESCRIPTIVE OVERVIEW - HOW *WORS*A AND *ORS* ARE THE SAME

West's Oregon Revised Statutes Annotated consists of 47 hardbound volumes plus a 2-volume softbound subject index. West also plans to release *WORS*A on the *Premise* platform. As in the official *ORS*, *WORS*A includes the Oregon Rules of Civil Procedure, as well as the Oregon and United States Constitutions. *WORS*A states, "Although unofficial, the text, section numbering, and hierarchical headings of this publication conform to the official Oregon Revised Statutes." *WORS*A exactly replicates the text of the statutes, which are not copyrighted; however, in *most instances*, the statute headings themselves differ. This is because *WORS*A's statute headings were editorially created independently of the official *ORS*. *WORS*A uses the classification and numbering system of the official *ORS*. The *WORS*A Titles numbered from 1 (Courts of Record; Court Officers; Juries) to 62 (Aviation) exactly reflect the Table of Titles set forth in volume 1 of the official *ORS*.

The Legislative Counsel, under the direction of the Legislative Counsel Committee, is charged with publishing and distributing the Oregon Revised Statutes, and making them available, not only to legislators and attorneys, but also to the general public.

Another of its charges is to compare and certify that any statute sections in a published edition conform to the enrolled bills. ORS 171.285 states, "No compilation of the statute laws of Oregon not bearing such certificate, or a similar certificate of the Reviser of Statutes, shall be admissible as evidence of the law in any court or proceeding." Of course this does not preclude practitioners from conducting their

research using *WORS*, and realistically, whether the code compilation is official or proprietary is not apparent as it would be when distinguishing between an official and privately-published court reporter. Thus, the official *ORS* and *WORS* could exist side by side for quite sometime, as do many state codes and versions published by West, Lexis and others.

DISTINCTIONS - HOW *WORS* AND *ORS* ARE DIFFERENT

The real worth and attraction of *WORS* (and what sets it apart from the official *ORS*) is the wealth of information following the text of the statutes, which is not found in the official *ORS*. Anyone familiar with West's other annotated codes will recognize the variety of annotations found as Library References, references to *Uniform Laws Annotated*, Notes of Decisions, Historical and Statutory Notes, Cross References to other statutes, and Law Review and Journal Commentaries. The annotations include references to the Oregon Administrative Rules (see *ORS* Chapter 656) and Opinions of the Oregon Attorney General (see *ORS* 419A.262, *ORS* 677.208); the latter are also included in the official *ORS*. Some *WORS* annotations include references to West's *United States Code Annotated* and to "leading relevant decisions of the United States Supreme Court interpretive of state statutes regardless of the geographical origins of the cases." See, for example *ORS* 163.095. In keeping with virtually every other state statute set (Montana is an exception), the *WORS* annotations follow the text of the statutes. In contrast, the official *ORS* annotations appear in a stand-alone volume. According to the Preface of the official *ORS*, annotations are published in a separate volume to "avoid the expense of reprinting the complete annotation material each time the statute text is brought up to date."

This initial *WORS* edition does not include a Tables volume. Included in the front of each *WORS* volume is the Westlaw Electronic Research Guide with tips for doing online research in Westlaw, including natural language searching, finding specific documents by citation, and updating research.

In *WORS*, Library References include relevant West's Topic and Key Numbers allowing for seamless research across jurisdictions within the *American Digest System*, and Westlaw Digest Topic Numbers for online research. There are also references to *American Law Reports*, to both *American Jurisprudence* and *Corpus Juris Secundum*, as well as to some practice sets such as *American Jurisprudence Pleading and Practice Forms*.

For those laws drafted by the National Conference of Commissioners on Uniform State Laws adopted in Oregon, there is the familiar Table of Jurisdictions from the *Uniform Laws Annotated, Master Edition* showing which other states have adopted some version of the Uniform Laws. See, for example the Determination of Death Act (*ORS* 432.300) and the Organ Donations Act (*ORS* 97.950 through 97.968). For Oregon's codification of the Uniform Commercial Code, the American Law Institute and NCCUSL drafters' commentary is included. See *ORS* Chapters 71 - 79.

From West's inception in the late 19th century, the company is best known for its comprehensive case reporting and synthesis of legal research into its *National Reporter System* and the *American Digest System*, including extensive annotations to statutes. *WORS*A continues this practice with copious Notes of Decisions organized in the typical West fashion with Descriptive Headings alphabetically arranged. This is probably the most important value-added feature of *WORS*A and it beats the official *ORS* on this score, hands down. For example, in the official *ORS*, Oregon Rule of Civil Procedure 32 contains 12 separate case annotations, whereas *WORS*A includes 40. Similarly, for ORS 163.095, the official *ORS* has 34 separate case annotations; *WORS*A has 150. In both *ORS* and *WORS*A, some cases are referred to more than once within the notes.

Both *ORS* and *WORS*A are comparable in their treatment of session law history. The first official edition of the *Oregon Revised Statutes* was published in 1953. Session Law History appears in brackets immediately following the text of the statute in the official *ORS*; the same information appears in *WORS*A but without brackets. If a statute predates the 1953 edition of the official *ORS* and has not since been amended or repealed, neither the official *ORS* nor *WORS*A contains Session Law History following the text of the statute.

INDEXING

The official *ORS* has a 2-volume General Index, which includes separate entries for Popular Name Laws, Words and Phrases, Quick Search, Uniform Laws, Forms (Statutory). Separate indexes for the Oregon Constitution and the United States Constitution follow the text of each constitution in volume 15 of the 2001 edition. *WORS*A also has a 2-volume General Index. This too includes separate entries for Popular Name Laws (as well as a separate Popular Name Table with no apparent difference), Words and Phrases, Uniform Laws, and Forms. The Popular Name Laws entry in the official *ORS* appears more extensive and user-friendly than that in *WORS*A. For instance, Oregon's Bottle Bill is listed as "Bottle Refund Law, Oregon" in the official *ORS* Popular Name Laws. I never located it in *WORS*A except as a general entry within the main index under "RECYCLING - Beverage Containers - Definitions."

Occasionally researchers complain that the official *ORS* General Index is difficult to use and not very intuitive. The indexing system and overall structure were developed in 1953, so it is not very flexible for new concepts or subjects, and some believe it is time to completely rework the indexing. West brings longstanding indexing experience to *WORS*A. It has "occupied the legal publishing field" for so long with its system of integrated legal research - codes, digests, reporter system - and *WORS*A reflects this. However, from my assessment of the two General Indexes, I see no big advantage of one over the other.

However, *WORS*A is glaring in its lack of any indexing to the United States Constitution! The Oregon and United States Constitutions together occupy volumes 46 and 47, and at the end of each of these volumes the researcher is directed to consult the General Index. The General Index contains entries under the main heading Constitution of Oregon, but no entries for the federal constitution. Searches using Bill of Rights, Constitution, United States, United States Constitution, turned up no references to federal constitutional provisions. Even when searching the entries for such ubiquitous constitutional terms as "freedom of press," "freedom of religion," or "freedom of speech," the only pointer is to statutes or provisions of the Oregon Constitution. This appears to be an oversight.

CURRENCY AND UPDATING

*WORS*A was released in September 2003, on the heels of the 2003 Legislative Session which ended on August 27. The statement in the Preface that *WORS*A is current through the 2001 Regular Session signifies that it misses not only the 2003 Regular Session, but the five 2002 Special Sessions as well, making it out of date at publication. Of course, the official *ORS* is no more current than *WORS*A. For updating either code, the only options are to consult the Oregon State Legislature's web site (<http://www.leg.state.or.us/billsset.htm>) or the *Oregon Laws Advance Sheets* for current statutes. *WORS*A must immediately produce advance sheets or pocket parts as soon as the new codifications are available from the Office of the Legislative Counsel. The free update period for West's other annotated state codes is one year, so subscribers should have a completely current version within the next few months. Typically the official *ORS* comes out shortly after the first of the year following each Regular Session. With West making its annotated code available before the official code comes out, with the assurance of free updates for the first year, those purchasers who buy only one version of the Oregon statutes may choose either *WORS*A or the official *ORS* with no disadvantage.

West's typical replacement pattern for its bound volumes of annotated codes is on an as-needed basis. Until replaced, volumes are kept up to date with pocket parts and cumulative supplements. This can create problems for anyone committed to retaining archival sets of the code because, at any given time, *WORS*A will be a "work in progress," necessitating retention of replaced volumes and pocket parts. The Legislative Counsel publishes a complete set of the official *ORS* every other year after the Legislature has met, kept up to date by *Oregon Laws Advance Sheets*; a new annotation volume is published each year. Thus it is easy to retain a complete, historical set of the official *ORS*.

COST OF *WORS*A AND CONCERNS

The introductory subscription cost for *WORS*A is \$425 with free updating for the first year; a single subscription for the official *ORS* (2001 edition) is \$319. The per-

volume cost of the official *ORS* is \$39. Individual volumes of *WORS*A are priced at \$60. Practitioners and others sometimes choose to selectively purchase only a few volumes in their subject areas and this could prove costly for a subscriber to *WORS*A. For instance, the Penal Code occupies Chapters 131 through 170 and can be purchased in a single volume of the official *ORS*. The annotations would be a separate volume to purchase. However, in *WORS*A, the Penal Code occupies 5 volumes. At a per-volume cost of \$60, it would cost someone \$300 to purchase the Penal Code in *WORS*A. West anticipates publishing an unannotated softbound set to be priced competitively with the official *ORS*. Thus a law office wishing to purchase *WORS*A for its library would be able to provide individual codes to its practitioners at a price competitive with the per-volume cost of the official *ORS*.

Simultaneously with the release of *WORS*A, Thomson-West released *Oregon Law and Practice*, a new practitioners' tool. Currently this consists of a 3-volume set. Volumes 1 and 2 comprise Oregon Business Associations and sells for \$205 and volume 3 is Oregon Evidence and sells for \$110. In this first iteration of *WORS*A, there are no annotations to *Oregon Law and Practice* titles, although it is presaged in the front matter of each volume as part of West's Coordinated Research in Oregon from West.

CONCLUSION

Oregon attorneys must decide how important to their practice are abundant and sweeping case annotations, West's Key Numbers, and cross references to a coordinated research system. If they are crucial, then *WORS*A could be worth the added cost, maintenance of archive volumes etc. In any case, *WORS*A is an additional resource in the legal toolkit for practitioners and researchers of Oregon law.

ABOUT THE AUTHOR

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