

Chapter 167

1999 EDITION

Offenses Against Public Health, Decency and Animals

PROSTITUTION AND RELATED OFFENSES

- 167.002 Definitions for ORS 167.002 to 167.027
- 167.007 Prostitution
- 167.012 Promoting prostitution
- 167.017 Compelling prostitution
- 167.027 Evidence required to show place of prostitution

OBSCENITY AND RELATED OFFENSES

- 167.060 Definitions for ORS 167.060 to 167.095
- 167.062 Sadomasochistic abuse or sexual conduct in live show
- 167.065 Furnishing obscene materials to minors
- 167.070 Sending obscene materials to minors
- 167.075 Exhibiting an obscene performance to a minor
- 167.080 Displaying obscene materials to minors
- 167.085 Defenses in prosecutions under ORS 167.065 to 167.080
- 167.087 Disseminating obscene material
- 167.089 Exemption from prosecution under ORS 167.087
- 167.090 Publicly displaying nudity or sex for advertising purposes
- 167.095 Defenses in prosecutions under ORS 167.090
- 167.100 Application of ORS 167.060 to 167.100

GAMBLING OFFENSES

- 167.116 Rulemaking
- 167.117 Definitions for ORS 167.117 to 167.164 and 464.270 to 464.530
- 167.118 Bingo, lotto or raffle games or Monte Carlo events conducted by charitable, fraternal or religious organizations

- 167.121 Local regulation of social games
- 167.122 Unlawful gambling in the second degree
- 167.127 Unlawful gambling in the first degree
- 167.132 Possession of gambling records in the second degree
- 167.137 Possession of gambling records in the first degree
- 167.142 Defense to possession of gambling records
- 167.147 Possession of a gambling device; defense
- 167.153 Proving occurrence of sporting event in prosecutions of gambling offenses
- 167.158 Lottery prizes forfeited to county; exception; action by county to recover
- 167.162 Gambling device as public nuisance; defense; seizure and destruction
- 167.164 Possession of gray machine; penalty; defense
- 167.166 Removal of unauthorized video lottery game terminal
- 167.167 Cheating

OFFENSES INVOLVING CONTROLLED SUBSTANCES

- 167.203 Definitions for ORS 167.212 to 167.252
- 167.212 Tampering with drug records
- 167.222 Frequenting a place where controlled substances are used
- 167.238 Prima facie evidence permitted in prosecutions of drug offenses
- 167.243 Exemption contained in drug laws as defense to drug offenses
- 167.248 Search and seizure of conveyance in which drugs unlawfully transported or possessed
- 167.252 Acquittal or conviction under federal law as precluding state prosecution
- 167.262 Adult using minor in commission of controlled substance offense

OFFENSES AGAINST ANIMALS

- 167.310 Definitions for ORS 167.310 to 167.350
- 167.312 Research and animal interference
- 167.315 Animal abuse in the second degree
- 167.320 Animal abuse in the first degree

- 167.322 Aggravated animal abuse in the first degree
- 167.325 Animal neglect in the second degree
- 167.330 Animal neglect in the first degree
- 167.335 Exemption from ORS 167.315 to 167.330
- 167.340 Animal abandonment
- 167.345 Authority to enter premises; search warrant; notice of impoundment of animal
- 167.347 Forfeiture of animal to animal care agency prior to disposition of criminal charge
- 167.348 Placement of forfeited animal; preference
- 167.350 Forfeiture of rights in mistreated animal; costs; disposition of animal
- 167.352 Interfering with assistance, search and rescue or therapy animal
- 167.355 Involvement in animal fighting
- 167.360 Definitions for ORS 167.360 to 167.380
- 167.365 Dogfighting
- 167.370 Participation in dogfighting
- 167.375 Seizure of fighting dogs; procedure
- 167.380 Forfeiture of rights in fighting dogs or property; public nuisance; destruction of dogs
- 167.385 Unauthorized use of livestock animal
- 167.387 Definitions for ORS 167.387 and 167.388
- 167.388 Interference with livestock production
- 167.390 Commerce in fur of domestic cats and dogs prohibited; exception

OFFENSES INVOLVING TOBACCO

- 167.400 Tobacco possession by minors prohibited
- 167.401 Tobacco purchase by minors prohibited; exceptions
- 167.402 Locating tobacco vending machines where minors have access prohibited
- 167.404 Limitation on right of city or county to regulate tobacco vending machines

MISCELLANEOUS

- 167.808 Unlawful possession of inhalants

- 167.810 Creating a hazard
- 167.820 Concealing the birth of an infant
- 167.830 Employment of minors in place of public entertainment
- 167.840 Application of ORS 167.830 limited

CROSS-REFERENCES

- Alcoholic liquors, generally, Ch. 471
- Civil commitment of sexually dangerous persons, 426.510 to 426.670
- Controlled substances, using or being under influence of, local laws prohibited, 430.325
- Crimes relating to liquors, 471.620, 472.990
- Criminal Code, definitions, 161.015, 161.085
- Criminal offenses, classification, 161.505 to 161.585
- Gambling, civil liability, 30.740, 30.780
- Prevention of drug abuse; Mental Health and Developmental Disability Services Division functions; treatment and rehabilitation, 430.405, 430.415
- Teacher's license, revocation for sex offense, 342.175
- Tobacco use by minor, random inspection of sellers, 431.853
- Treatment of alcoholism and drug dependence, 430.260 to 430.375
- Uniform Controlled Substances Act, 475.005 to 475.285
- 167.117 to 167.164
- Oregon State Lottery, 461.040
- Racing handicap contests, 462.145
- 167.122
- Bookmaking prohibited, 462.140
- Leasing place for gambling, 91.240, 91.420
- 167.158
- Action for recovery of forfeiture, 30.410
- Private lotteries prohibited, Const. Art. XV, s.4
- 167.203 to 167.252

Controlled substances, penalties, 475.991 to 475.999

167.248

Disposition of conveyance seized for violation of liquor laws, 471.666

167.310 to 167.340

Justice courts, concurrent jurisdiction over offenses, 156.705

Livestock animals, crimes involving, forfeiture of weapons and revocation of hunting license, 137.138

167.352

Civil action for theft or attack on search and rescue animal or therapy animal, 30.822

PROSTITUTION AND RELATED OFFENSES

167.002 Definitions for ORS 167.002 to 167.027. As used in ORS 167.002 to 167.027, unless the context requires otherwise:

- (1) "Place of prostitution" means any place where prostitution is practiced.
- (2) "Prostitute" means a male or female person who engages in sexual conduct or sexual contact for a fee.
- (3) "Prostitution enterprise" means an arrangement whereby two or more prostitutes are organized to conduct prostitution activities.
- (4) "Sexual conduct" means sexual intercourse or deviate sexual intercourse.
- (5) "Sexual contact" means any touching of the sexual organs or other intimate parts of a person not married to the actor for the purpose of arousing or gratifying the sexual desire of either party. [1971 c.743 s.249; 1973 c.699 s.5]

167.005 [Repealed by 1971 c.743 s.432]

167.007 Prostitution. (1) A person commits the crime of prostitution if:

- (a) The person engages in or offers or agrees to engage in sexual conduct or sexual contact in return for a fee; or
 - (b) The person pays or offers or agrees to pay a fee to engage in sexual conduct or sexual contact.
- (2) Prostitution is a Class A misdemeanor. [1971 c.743 s.250; 1973 c.52 s.1; 1973 c.699 s.6]

167.010 [Repealed by 1971 c.743 s.432]

167.012 Promoting prostitution. (1) A person commits the crime of promoting prostitution if, with intent to promote prostitution, the person knowingly:

- (a) Owns, controls, manages, supervises or otherwise maintains a place of prostitution or a prostitution enterprise; or
 - (b) Induces or causes a person to engage in prostitution or to remain in a place of prostitution; or
 - (c) Receives or agrees to receive money or other property, other than as a prostitute being compensated for personally rendered prostitution services, pursuant to an agreement or understanding that the money or other property is derived from a prostitution activity; or
 - (d) Engages in any conduct that institutes, aids or facilitates an act or enterprise of prostitution.
- (2) Promoting prostitution is a Class C felony. [1971 c.743 s.251]

167.015 [Repealed by 1971 c.743 s.432]

167.017 Compelling prostitution. (1) A person commits the crime of compelling prostitution if the person knowingly:

- (a) Uses force or intimidation to compel another to engage in prostitution; or

- (b) Induces or causes a person under 18 years of age to engage in prostitution; or
 - (c) Induces or causes the spouse, child or stepchild of the person to engage in prostitution.
- (2) Compelling prostitution is a Class B felony. [1971 c.743 s.252]

167.020 [Repealed by 1971 c.743 s.432]

167.022 [1971 c.743 s.253; repealed by 1979 c.248 s.1]

167.025 [Repealed by 1971 c.743 s.432]

167.027 Evidence required to show place of prostitution. (1) On the issue of whether a place is a place of prostitution as defined in ORS 167.002, its general repute and repute of persons who reside in or frequent the place shall be competent evidence.

(2) Notwithstanding ORS 136.655, in any prosecution under ORS 167.012 and 167.017, spouses are competent and compellable witnesses for or against either party. [1971 c.743 s.254]

167.030 [Repealed by 1971 c.743 s.432]

167.035 [Repealed by 1971 c.743 s.432]

167.040 [Repealed by 1971 c.743 s.432]

167.045 [1953 c.641 ss.1, 7; 1955 c.636 s.6; repealed by 1971 c.743 s.432]

167.050 [1953 c.641 s.7; 1955 c.636 s.7; 1963 c.353 s.1; repealed by 1971 c.743 s.432]

167.055 [1955 c.636 s.9; 1963 c.513 s.1; repealed by 1971 c.743 s.432]

OBSCENITY AND RELATED OFFENSES

167.060 Definitions for ORS 167.060 to 167.095. As used in ORS 167.060 to 167.095, unless the context requires otherwise:

(1) “Advertising purposes” means purposes of propagandizing in connection with the commercial sale of a product or type of product, the commercial offering of a service, or the commercial exhibition of an entertainment.

(2) “Displays publicly” means the exposing, placing, posting, exhibiting, or in any fashion displaying in any location, whether public or private, an item in such a manner that it may be readily seen and its content or character distinguished by normal unaided vision viewing it from a public thoroughfare, depot or vehicle.

(3) “Furnishes” means to sell, give, rent, loan or otherwise provide.

(4) “Minor” means an unmarried person under 18 years of age.

(5) “Nudity” means uncovered, or less than opaquely covered, post-pubertal human genitals, pubic areas, the post-pubertal human female breast below a point immediately above the top of the areola, or the covered human male genitals in a discernibly turgid state. For purposes of this definition, a female breast is considered uncovered if the nipple only or the nipple and areola only are covered.

(6) “Obscene performance” means a play, motion picture, dance, show or other presentation, whether pictured, animated or live, performed before an audience and which in whole or in part depicts or reveals nudity, sexual conduct, sexual excitement or sadomasochistic abuse, or which includes obscenities or explicit verbal descriptions or narrative accounts of sexual conduct.

(7) “Obscenities” means those slang words currently generally rejected for regular use in mixed society, that are used to refer to genitals, female breasts, sexual conduct or excretory functions or products, either that have no other meaning or that in context are clearly used for their bodily, sexual or excretory meaning.

(8) “Public thoroughfare, depot or vehicle” means any street, highway, park, depot or transportation platform, or other place, whether indoors or out, or any vehicle for public transportation, owned or operated by government, either directly or through a public corporation or authority, or owned or operated by any agency of public transportation that is designed for the use, enjoyment or transportation of the general public.

(9) “Sadomasochistic abuse” means flagellation or torture by or upon a person who is nude or clad in undergarments or in revealing or bizarre costume, or the condition of being fettered, bound or otherwise physically restrained on the part of one so clothed.

(10) “Sexual conduct” means human masturbation, sexual intercourse, or any touching of the genitals, pubic areas or buttocks of the human male or female, or the breasts of the female, whether alone or between members of the same or opposite sex or between humans and animals in an act of apparent sexual stimulation or gratification.

(11) “Sexual excitement” means the condition of human male or female genitals or the breasts of the female when in a state of sexual stimulation, or the sensual experiences of humans engaging in or witnessing sexual conduct or nudity. [1971 c.743 s.255]

167.062 Sadomasochistic abuse or sexual conduct in live show. (1) It is unlawful for any person to knowingly engage in sadomasochistic abuse or sexual conduct in a live public show.

(2) Violation of subsection (1) of this section is a Class A misdemeanor.

(3) It is unlawful for any person to knowingly direct, manage, finance or present a live public show in which the participants engage in sadomasochistic abuse or sexual conduct.

(4) Violation of subsection (3) of this section is a Class C felony.

(5) As used in ORS 167.002, 167.007, 167.087 and this section unless the context requires otherwise:

(a) “Live public show” means a public show in which human beings, animals, or both appear bodily before spectators or customers.

(b) “Public show” means any entertainment or exhibition advertised or in some other fashion held out to be accessible to the public or member of a club, whether or not an admission or other charge is levied or collected and whether or not minors are admitted or excluded. [1973 c.699 ss.2,3]

167.065 Furnishing obscene materials to minors. (1) A person commits the crime of furnishing obscene materials to minors if, knowing or having good reason to know the character of the material furnished, the person furnishes to a minor:

(a) Any picture, photograph, drawing, sculpture, motion picture, film or other visual representation or image of a person or portion of the human body that depicts nudity, sadomasochistic abuse, sexual conduct or sexual excitement; or

(b) Any book, magazine, paperback, pamphlet or other written or printed matter, however reproduced, or any sound recording which contains matter of the nature described in paragraph (a) of this subsection, or obscenities, or explicit verbal descriptions or narrative accounts of sexual conduct, sexual excitement or sadomasochistic abuse.

(2) Furnishing obscene materials to minors is a Class A misdemeanor. Notwithstanding ORS 161.635 and 161.655, a person convicted under this section may be sentenced to pay a fine, fixed by the court, not exceeding \$10,000. [1971 c.743 s.256]

167.070 Sending obscene materials to minors. (1) A person commits the crime of sending obscene materials to minors if, within this state, the person knowingly arranges for or dispatches for delivery to a minor, whether the delivery is to be made within or outside this state, by mail, delivery service or any other means, any of the materials enumerated in ORS 167.065.

(2) Unless the defendant knows or has good reason to know that the person to whom the materials are sent is a minor, it is a defense to a prosecution under this section that the defendant caused to be printed on the outer package, wrapper or cover of the materials to be delivered, in words or substance, “This package (wrapper) (publication) contains material that, by Oregon law, cannot be furnished to a minor.”

(3) Sending obscene materials to minors is a Class A misdemeanor. Notwithstanding ORS 161.635 and 161.655, a person convicted under this section may be sentenced to pay a fine, fixed by the court, not exceeding \$10,000. [1971 c.743 s.257]

167.075 Exhibiting an obscene performance to a minor.

(1) A person commits the crime of exhibiting an obscene performance to a minor if the minor is unaccompanied by the parent or lawful guardian of the minor, and for a monetary consideration or other valuable commodity or service, the person knowingly or recklessly:

(a) Exhibits an obscene performance to the minor; or

(b) Sells an admission ticket or other means to gain entrance to an obscene performance to the minor; or

(c) Permits the admission of the minor to premises whereon there is exhibited an obscene performance.

(2) No employee is liable to prosecution under this section or under any city or home-rule county ordinance for exhibiting or possessing with intent to exhibit any obscene motion picture provided the employee is acting within the scope of regular employment at a showing open to the public.

(3) As used in this section, "employee" means any person regularly employed by the owner or operator of a motion picture theater if the person has no financial interest other than salary or wages in the ownership or operation of the motion picture theater, no financial interest in or control over the selection of the motion pictures shown in the theater, and is working within the motion picture theater where the person is regularly employed, but does not include a manager of the motion picture theater.

(4) Exhibiting an obscene performance to a minor is a Class A misdemeanor. Notwithstanding ORS 161.635 and 161.655, a person convicted under this section may be sentenced to pay a fine, fixed by the court, not exceeding \$10,000. [1971 c.743 s.258]

167.080 Displaying obscene materials to minors. (1) A person commits the crime of displaying obscene materials to minors if, being the owner, operator or manager of a business or acting in a managerial capacity, the person knowingly or recklessly permits a minor who is not accompanied by the parent or lawful guardian of the minor to enter or remain on the premises, if in that part of the premises where the minor is so permitted to be, there is visibly displayed:

(a) Any picture, photograph, drawing, sculpture or other visual representation or image of a person or portion of the human body that depicts nudity, sexual conduct, sexual excitement or sadomasochistic abuse; or

(b) Any book, magazine, paperback, pamphlet or other written or printed matter, however reproduced, that reveals a person or portion of the human body that depicts nudity, sexual conduct, sexual excitement or sadomasochistic abuse.

(2) Displaying obscene materials to minors is a Class A misdemeanor. Notwithstanding ORS 161.635 and 161.655, a person convicted under this section may be sentenced to pay a fine, fixed by the court, not exceeding \$10,000. [1971 c.743 s.259]

167.085 Defenses in prosecutions under ORS 167.065 to 167.080. In any prosecution under ORS 167.065 to 167.080, it is an affirmative defense for the defendant to prove:

(1) That the defendant was in a parental or guardianship relationship with the minor;

(2) That the defendant was a bona fide school, museum or public library, or was acting in the course of employment as an employee of such organization or of a retail outlet affiliated with and serving the educational purpose of such organization;

(3) That the defendant was charged with the sale, showing, exhibition or display of an item, those portions of which might otherwise be contraband forming merely an incidental part of an otherwise nonoffending whole, and serving some legitimate purpose therein other than titillation; or

(4) That the defendant had reasonable cause to believe that the person involved was not a minor. [1971 c.743 s.260; 1993 c.18 s.27]

167.087 Disseminating obscene material. (1) A person commits the crime of disseminating obscene material if the persons knowingly makes, exhibits, sells, delivers or provides, or offers or agrees to make, exhibit, sell, deliver or provide, or has in possession with intent to exhibit, sell, deliver or provide any obscene writing, picture, motion picture, films, slides, drawings or other visual reproduction.

(2) As used in subsection (1) of this section, matter is obscene if:

(a) It depicts or describes in a patently offensive manner sadomasochistic abuse or sexual conduct;

(b) The average person applying contemporary state standards would find the work, taken as a whole, appeals to the prurient interest in sex; and

(c) Taken as a whole, it lacks serious literary, artistic, political or scientific value.

(3) In any prosecution for a violation of this section, it shall be relevant on the issue of knowledge to prove the advertising, publicity, promotion, method of handling or labeling of the matter, including any statement on the cover or back of any book or magazine.

(4) No employee is liable to prosecution under this section or under any city or home-rule county ordinance for exhibiting or possessing with intent to exhibit any obscene motion picture provided the employee is acting within the scope of regular employment at a showing open to the public.

(5) As used in this section, "employee" means an employee as defined in ORS 167.075 (3).

(6) Disseminating obscene material is a Class A misdemeanor. [1973 c.699 s.4]

167.089 Exemption from prosecution under ORS 167.087.

No employee of a bona fide school, museum or public library, acting within the scope of regular employment, is liable to prosecution for violation of ORS 167.087 or any city or home-rule county ordinance for disseminating writings, films, slides, drawings, or other visual reproductions which are claimed to be obscene. [1975 c.272 s.2]

167.090 Publicly displaying nudity or sex for advertising purposes. (1) A person commits the crime of publicly displaying nudity or sex for advertising purposes if, for advertising purposes, the person knowingly:

(a) Displays publicly or causes to be displayed publicly a picture, photograph, drawing, sculpture or other visual representation or image of a person or portion of the human body that depicts nudity, sadomasochistic abuse, sexual conduct or sexual excitement, or any page, poster or other written or printed matter bearing such representation or a verbal description or narrative account of such items or activities, or any obscenities; or

(b) Permits any display described in this section on premises owned, rented or operated by the person.

(2) Publicly displaying nudity or sex for advertising purposes is a Class A misdemeanor. [1971 c.743 s.261]

167.095 Defenses in prosecutions under ORS 167.090. In any prosecution for violation of ORS 167.090, it shall be an affirmative defense for the defendant to prove:

(1) That the public display, even though in connection with a commercial venture, was primarily for artistic purposes or as a public service; or

(2) That the public display was of nudity, exhibited by a bona fide art, antique or similar gallery or exhibition, and visible in a normal display setting. [1971 c.743 s.262]

167.100 Application of ORS 167.060 to 167.100. ORS 167.060 to 167.100 shall be applicable and uniform throughout the state and all political subdivisions and municipalities therein, and no local authority shall enact any ordinances, rules or regulations in conflict with the provisions thereof. [1971 c.743 s.262a]

167.105 [Repealed by 1971 c.743 s.432]

167.110 [Repealed by 1971 c.743 s.432]

167.115 [Repealed by 1971 c.743 s.432]

GAMBLING OFFENSES

167.116 Rulemaking. (1) The Oregon State Lottery Commission shall adopt rules to carry out the provisions of ORS 167.117 (9)(c)(E) and (19)(b).

(2) Devices authorized by the Oregon State Lottery Commission for the purposes described in ORS 167.117 (9)(c)(E) and (19)(b) are exempted from the provisions of 15 U.S.C. 1172. [1999 c.193 s.2]

Note: 167.116 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 167 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

167.117 Definitions for ORS 167.117 to 167.164 and 464.270 to 464.530. As used in ORS 167.117 to 167.164 and 464.270 to 464.530, unless the context requires otherwise:

(1) “Bingo or lotto” means a game, played with cards bearing lines of numbers, in which a player covers or uncovers a number selected from a container, and which is won by a player who is present during the game and who first covers or uncovers the selected numbers in a designated combination, sequence or pattern.

(2) “Bookmaker” means a person who unlawfully accepts a bet from a member of the public upon the outcome of a future contingent event and who charges or accepts a percentage, fee or vigorish on the wager.

(3) “Bookmaking” means promoting gambling by unlawfully accepting bets from members of the public as a business, rather than in a casual or personal fashion, upon the outcomes of future contingent events.

(4) “Casino game” means any of the traditional gambling-based games commonly known as dice, faro, monte, roulette, fan-tan, twenty-one, blackjack, Texas hold-'em, seven-and-a-half, big injun, klondike, craps, poker, chuck-a-

luck, Chinese chuck-a-luck (dai shu), wheel of fortune, chemin de fer, baccarat, pai gow, beat the banker, panquinqui, red dog, acey-deucey, or any other gambling-based game similar in form or content.

(5)(a) “Charitable, fraternal or religious organization” means any person that is:

(A) Organized and existing for charitable, benevolent, eleemosynary, humane, patriotic, religious, philanthropic, recreational, social, educational, civic, fraternal or other nonprofit purposes; and

(B) Exempt from payment of federal income taxes because of its charitable, fraternal or religious purposes.

(b) The fact that contributions to an organization profiting from a contest of chance do not qualify for a charitable deduction for tax purposes or that the organization is not otherwise exempt from payment of federal income taxes pursuant to the Internal Revenue Code of 1986, as amended, constitutes prima facie evidence that the organization is not a bona fide charitable, fraternal or religious organization.

(6) “Contest of chance” means any contest, game, gaming scheme or gaming device in which the outcome depends in a material degree upon an element of chance, notwithstanding that skill of the contestants may also be a factor therein.

(7) “Gambling” means that a person stakes or risks something of value upon the outcome of a contest of chance or a future contingent event not under the control or influence of the person, upon an agreement or understanding that the person or someone else will receive something of value in the event of a certain outcome. “Gambling” does not include:

(a) Bona fide business transactions valid under the law of contracts for the purchase or sale at a future date of securities or commodities, and agreements to compensate for loss caused by the happening of chance, including but not limited to contracts of indemnity or guaranty and life, health or accident insurance.

(b) Engaging in contests of chance under the following conditions:

(A) The contest is played for some token other than money;

(B) An individual contestant may not purchase more than \$100 worth of tokens for use in the contest during any 24-hour period;

(C) The tokens may be exchanged only for property other than money;

(D) Except when the tokens are exchanged for a beverage or merchandise to be consumed on the premises, the tokens are not redeemable on the premises where the contest is conducted or within 50 miles thereof; and

(E) Except for charitable, fraternal or religious organizations, no person who conducts the contest as owner, agent or employee profits in any manner from operation of the contest.

(c) Social games.

(d) Bingo, lotto or raffle games or Monte Carlo events operated in compliance with ORS 167.118, by a charitable, fraternal or religious organization licensed pursuant to ORS 167.118, 464.250 to 464.380 and 464.420 to 464.530 to operate such games.

(8) “Gambling device” means any device, machine, paraphernalia or equipment that is used or usable in the playing phases of unlawful gambling, whether it consists of gambling between persons or gambling by a person involving the playing of a machine. Lottery tickets, policy slips and other items used in the playing phases of lottery and policy schemes are not gambling devices within this definition. Amusement devices other than gray machines, that do not return to the operator or player thereof anything but free additional games or plays, shall not be considered to be gambling devices.

(9)(a) “Gray machine” means any electrical or electro-mechanical device, whether or not it is in working order or some act of manipulation, repair, adjustment or modification is required to render it operational, that:

(A) Awards credits or contains or is readily adaptable to contain, a circuit, meter or switch capable of removing or recording the removal of credits earned by a player, other than removal during the course of continuous play; or

(B) Plays, emulates or simulates a casino game, bingo or keno.

(b) A device is no less a gray machine because, apart from its use or adaptability as such, it may also sell or deliver something of value on the basis other than chance.

(c) “Gray machine” does not include:

(A) Any device commonly known as a personal computer, including any device designed and marketed solely for home entertainment, when used privately and not for a fee and not used to facilitate any form of gambling;

(B) Any device operated under the authority of the Oregon State Lottery;

(C) Any device manufactured or serviced but not operated in Oregon by a manufacturer who has been approved under rules adopted by the Oregon State Lottery Commission;

(D) A slot machine; or

(E) Any device authorized by the Oregon State Lottery Commission for:

- (i) Display and demonstration purposes only at trade shows; or
- (ii) Training and testing purposes by the Department of State Police.

(10) "Handle" means the total amount of money and other things of value bet on the bingo, lotto or raffle games, the value of raffle chances sold or the total amount collected from the sale of imitation money during Monte Carlo events.

(11) "Lottery" or "policy" means an unlawful gambling scheme in which:

(a) The players pay or agree to pay something of value for chances, represented and differentiated by numbers or by combinations of numbers or by some other medium, one or more of which chances are to be designated the winning ones; and

(b) The winning chances are to be determined by a drawing or by some other method; and

(c) The holders of the winning chances are to receive something of value.

(12) "Monte Carlo event" means a gambling event at which wagers are placed with imitation money upon contests of chance in which players compete against the house. As used in this subsection, "imitation money" includes imitation currency, chips or tokens.

(13) "Numbers scheme or enterprise" means a form of lottery in which the winning chances or plays are not determined upon the basis of a drawing or other act on the part of persons conducting or connected with the scheme, but upon the basis of the outcome of a future contingent event otherwise unrelated to the particular scheme.

(14) "Operating expenses" means those expenses incurred in the operation of a bingo, lotto or raffle game and related concessions, including only the following:

(a) Salaries, employee benefits, workers' compensation coverage and state and federal employee taxes;

(b) Security services;

(c) Legal and accounting services;

(d) Supplies and inventory;

(e) Rent, repairs, utilities, water, sewer and garbage;

(f) Insurance;

(g) Equipment;

(h) Printing and promotions;

(i) Postage and shipping;

(j) Janitorial services and supplies; and

(k) Leasehold improvements.

(15) "Player" means a person who engages in any form of gambling solely as a contestant or bettor, without receiving or becoming entitled to receive any profit therefrom other than personal gambling winnings, and without otherwise rendering any material assistance to the establishment, conduct or operation of the particular gambling activity. A person who gambles at a social game of chance on equal terms with the other participants therein is a person who does not otherwise render material assistance to the establishment, conduct or operation thereof by performing, without fee or remuneration, acts directed toward the arrangement or facilitation of the game, such as inviting persons to play, permitting the use of premises therefor and supplying cards or other equipment used therein. A person who engages in bookmaking is not a player.

(16) "Profits from unlawful gambling" means that a person, acting other than solely as a player, accepts or receives money or other property pursuant to an agreement or understanding with another person whereby the person participates or is to participate in the proceeds of unlawful gambling.

(17) "Promotes unlawful gambling" means that a person, acting other than solely as a player, engages in conduct that materially aids any form of unlawful gambling. Conduct of this nature includes, but is not limited to, conduct directed toward the creation or establishment of the particular game, contest, scheme, device or activity involved, toward the acquisition or maintenance of premises, paraphernalia, equipment or apparatus therefor, toward the solicitation or inducement of persons to participate therein, toward the conduct of the playing phases thereof, toward the arrangement of any of its financial or recording phases or toward any other phase of its operation. A person promotes unlawful gambling if, having control or right of control over premises being used with the knowledge of the person for purposes of unlawful gambling, the person permits the unlawful gambling to occur or continue or makes no effort to prevent its occurrence or continuation.

(18) "Raffle" means a lottery operated by a charitable, fraternal or religious organization wherein the players pay something of value for chances, represented by numbers or combinations thereof or by some other medium, one or more of which chances are to be designated the winning ones or determined by a drawing and the player holding the winning chance is to receive something of value.

(19)(a) "Slot machine" means a gambling device that as a result of the insertion of a coin or other object operates, either completely automatically, or with the aid of some physical act by the player, in such a manner that, depending upon elements of chance, it may eject something of value or otherwise entitle the player to something of value. A device so constructed or readily adaptable or convertible to such use is no less a slot machine because it is not in working order or because some mechanical act of manipulation or repair is required to accomplish its adaptation, conversion or workability. Nor is it any less a slot machine because apart from its use or adaptability as such it may also sell or deliver something of value on the basis other than chance.

(b) "Slot machine" does not include any device authorized by the Oregon State Lottery Commission for:

(A) Display and demonstration purposes only at trade shows; or

(B) Training and testing purposes by the Department of State Police.

(20) "Social game" means:

(a) A game, other than a lottery, between players in a private home where no house player, house bank or house odds exist and there is no house income from the operation of the social game; and

(b) If authorized pursuant to ORS 167.121, a game, other than a lottery, between players in a private business, private club or place of public accommodation where no house player, house bank or house odds exist and there is no house income from the operation of the social game.

(21) "Something of value" means any money or property, any token, object or article exchangeable for money or property, or any form of credit or promise directly or indirectly contemplating transfer of money or property or of any interest therein.

(22) "Trade show" means an exhibit of products and services that is:

(a) Not open to the public; and

(b) Of limited duration.

(23) "Unlawful" means not specifically authorized by law. [1971 c.669 s.3a; 1971 c.743 s.263; 1973 c.788 s.1; 1974 c.7 s.1; 1975 c.421 s.1; 1977 c.850 s.1; 1983 c.813 s.1; 1987 c.914 s.1; 1991 c.962 s.7; 1995 c.577 s.2; 1997 c.867 s.1; 1999 c.193 s.1]

167.118 Bingo, lotto or raffle games or Monte Carlo events conducted by charitable, fraternal or religious organizations. (1) When a charitable, fraternal or religious organization is licensed by the Department of Justice to conduct bingo, lotto or raffle games or Monte Carlo events, only the organization itself or an employee thereof authorized by the department shall receive money or property or otherwise directly profit from the operation of the games, except that:

(a) The organization operating the games may present a prize of money or other property to any player not involved in the administration or management of the games; and

(b) An organization licensed to conduct Monte Carlo events may contract with a licensed supplier of Monte Carlo event equipment to operate the event, including the provision of equipment, supplies and personnel, provided that the licensed supplier is paid a fixed fee to conduct the event and the imitation money is sold to players by employees or volunteers of the licensed charitable, fraternal or religious organization.

(2) A charitable, fraternal or religious organization shall not operate bingo, lotto or raffle games or Monte Carlo events except at such locations and upon such days and for such periods of time as the department authorizes pursuant to this section and ORS 464.250 to 464.380, 464.420 and 464.450 to 464.530.

(3) An organization licensed by the department to operate bingo or lotto games shall not award a prize exceeding \$1,500 in value in any one game. An organization licensed by the department to operate a Monte Carlo event may not present any prize of money, or a cash equivalent, to any player.

(4) Each charitable, fraternal or religious organization that maintains, conducts or operates any bingo, lotto or raffle game or Monte Carlo event under license of the department must operate such games in accordance with rules adopted by the department.

(5) It is unlawful for a licensee to permit the operating expenses of the games to exceed 18 percent of the annual handle of its bingo, lotto and raffle operation.

(6) It is unlawful for a charitable, fraternal or religious organization licensed by the department to operate bingo, lotto or raffle games if:

(a) The handle of the games and events exceeds \$250,000 in a year; and

(b) The games and events do not generate for the organization's purposes, after the cost of prizes and operating expenses are deducted from the handle, an amount that equals or exceeds five percent of the handle. [1987 c.914 s.3; 1991 c.274 s.2; 1995 c.331 s.1; 1997 c.867 s.2; 1999 c.218 s.1]

167.119 [1973 c.788 s.3; repealed by 1974 c.7 s.2]

167.120 [Amended by 1955 c.514 s.1; 1969 c.404 s.1; repealed by 1971 c.743 s.432]

167.121 Local regulation of social games. Counties and cities may, by ordinance, authorize the playing or conducting of a social game in a private business, private club or in a place of public accommodation. Such ordinances may provide for regulation or licensing of the social games authorized. [1974 c.7 s.3]

Note: 167.121 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 167 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

167.122 Unlawful gambling in the second degree. (1) A person commits the crime of unlawful gambling in the second degree if the person knowingly:

(a) Places a bet with a bookmaker; or

(b) Participates or engages in unlawful gambling as a player.

(2) Unlawful gambling in the second degree is a Class A misdemeanor. [1971 c.743 s.264; 1997 c.867 s.21]

167.125 [Amended by 1969 c.404 s.2; repealed by 1971 c.743 s.432]

167.127 Unlawful gambling in the first degree. (1) A person commits the crime of unlawful gambling in the first degree if the person knowingly promotes or profits from unlawful gambling.

(2) Unlawful gambling in the first degree is a Class C felony. [1971 c.743 s.265; 1997 c.867 s.22]

167.130 [Repealed by 1971 c.743 s.432]

167.132 Possession of gambling records in the second degree. (1) A person commits the crime of possession of gambling records in the second degree if, with knowledge of the contents thereof, the person possesses any writing, paper, instrument or article:

(a) Of a kind commonly used in the operation or promotion of a bookmaking scheme or enterprise; or

(b) Of a kind commonly used in the operation, promotion or playing of a lottery or numbers scheme or enterprise.

(2) Possession of gambling records in the second degree is a Class A misdemeanor. [1971 c.743 s.266]

167.135 [Repealed by 1971 c.743 s.432]

167.137 Possession of gambling records in the first degree. (1) A person commits the crime of possession of gambling records in the first degree if, with knowledge of the contents thereof, the person possesses any writing, paper, instrument or article:

(a) Of a kind commonly used in the operation or promotion of a bookmaking scheme or enterprise, and constituting, reflecting or representing more than five bets totaling more than \$500; or

(b) Of a kind commonly used in the operation, promotion or playing of a lottery or numbers scheme or enterprise, and constituting, reflecting or representing more than 500 plays or chances therein.

(2) Possession of gambling records in the first degree is a Class C felony. [1971 c.743 s.267]

167.140 [Repealed by 1971 c.743 s.432]

167.142 Defense to possession of gambling records. In any prosecution under ORS 167.132 or 167.137 it is a defense if the writing, paper, instrument or article possessed by the defendant is neither used nor intended to be used in the operation or promotion of a bookmaking scheme or enterprise, or in the operation, promotion or playing of a lottery or numbers scheme or enterprise. [1971 c.743 s.268]

167.145 [Repealed by 1971 c.743 s.432]

167.147 Possession of a gambling device; defense. (1) A person commits the crime of possession of a gambling

device if, with knowledge of the character thereof, the person manufactures, sells, transports, places or possesses, or conducts or negotiates a transaction affecting or designed to affect ownership, custody or use of:

- (a) A slot machine; or
- (b) Any other gambling device, believing that the device is to be used in promoting unlawful gambling activity.

(2) Possession of a gambling device is a Class A misdemeanor.

(3) It is a defense to a charge of possession of a gambling device if the slot machine or gambling device that caused the charge to be brought was manufactured:

(a) Prior to 1900 and is not operated for purposes of unlawful gambling; or

(b) More than 25 years before the date on which the charge was brought and:

(A) Is located in a private residence;

(B) Is not operated for the purposes of unlawful gambling; and

(C) Has permanently affixed to it by the manufacturer, the manufacturer's name and either the date of manufacture or the serial number. [1971 c.743 s.269; 1977 c.264 s.1; 1983 c.403 s.1; 1993 c.781 s.1; 1995 c.577 s.1]

167.150 [Repealed by 1961 c.579 s.2]

167.151 [1961 c.579 s.1; 1963 c.480 s.1; repealed by 1971 c.743 s.432]

167.152 [1955 c.494 s.1; repealed by 1971 c.743 s.432]

167.153 Proving occurrence of sporting event in prosecutions of gambling offenses. In any prosecution under ORS 167.117 and 167.122 to 167.147 in which it is necessary to prove the occurrence of a sporting event, the following shall be admissible in evidence and shall be prima facie evidence of the occurrence of the event:

(1) A published report of its occurrence in a daily newspaper, magazine or other periodically printed publication of general circulation; or

(2) Evidence that a description of some aspect of the event was written, printed or otherwise noted at the place in which a violation of ORS 167.117 and 167.122 to 167.147 is alleged to have been committed. [1971 c.743 s.270]

167.155 [Repealed by 1961 c.503 s.3]

167.157 [1969 c.169 s.1; repealed by 1971 c.743 s.432]

167.158 Lottery prizes forfeited to county; exception; action by county to recover. (1) Except for bingo or lotto operated by a charitable, fraternal or religious organization, all sums of money and every other valuable thing drawn as a prize in any lottery or pretended lottery, by any person within this state, are forfeited to the use of the county in which it is found, and may be sued for and recovered by a civil action.

(2) Nothing contained in ORS 105.550 to 105.600 shall interfere with the duty of officers to take possession of property as provided by subsection (1) of this section. [1971 c.743 s.271; 1977 c.850 s.3; 1989 c.846 s.14]

167.160 [Repealed by 1961 c.503 s.3]

167.162 Gambling device as public nuisance; defense; seizure and destruction. (1) A gambling device is a public nuisance. Any peace officer shall summarily seize any such device that the peace officer finds and deliver it to the custody of the sheriff, who shall hold it subject to the order of the court having jurisdiction.

(2) Whenever it appears to the court that the gambling device has been possessed in violation of ORS 167.147, the court shall adjudge forfeiture thereof and shall order the sheriff to destroy the device and to deliver any coins taken therefrom to the county treasurer, who shall deposit them to the general fund of the county. However, when the defense provided by ORS 167.147 (3) is raised by the defendant, the gambling device or slot machine shall not be forfeited or destroyed until after a final judicial determination that the defense is not applicable. If the defense is applicable, the gambling device or slot machine shall be returned to its owner.

(3) The seizure of the gambling device or operating part thereof constitutes sufficient notice to the owner or person in possession thereof. The sheriff shall make return to the court showing that the sheriff has complied with the order.

(4) Whenever, in any proceeding in court for the forfeiture of any gambling device except a slot machine seized for a violation of ORS 167.147, and such forfeiture is decreed, the court shall have exclusive jurisdiction to remit or

mitigate the forfeiture.

(5) In any such proceeding the court shall not allow the claim of any claimant for remission or mitigation unless and until the claimant proves that the claimant:

(a) Has an interest in the gambling device, as owner or otherwise, which the claimant acquired in good faith.

(b) At no time had any knowledge or reason to believe that it was being or would be used in violation of law relating to gambling.

(6) In any proceeding in court for the forfeiture of any gambling device except a slot machine seized for a violation of law relating to gambling, the court may in its discretion order delivery thereof to any claimant who shall establish the right to the immediate possession thereof, and shall execute, with one or more sureties, or by a surety company, approved by the court, and deliver to the court, a bond in such sum as the court shall determine, running to the State of Oregon, and conditioned to return such gambling device at the time of trial, and conditioned further that, if the gambling device be not returned at the time of trial, the bond may in the discretion of the court stand in lieu of and be forfeited in the same manner as such gambling device. [1971 c.743 s.272; 1977 c.264 s.2; 1999 c.59 s.32]

167.164 Possession of gray machine; penalty; defense. (1) On and after December 1, 1991, a person commits the crime of possession of a gray machine if the person manufactures, sells, leases, transports, places, possesses or services a gray machine or conducts or negotiates a transaction affecting or designed to affect the ownership, custody or use of a gray machine.

(2) Possession of a gray machine is a Class C felony.

(3) Violation of, solicitation to violate, attempt to violate or conspiracy to violate subsection (1) of this section constitutes prohibited conduct for purposes of ORS chapter 475A, and shall give rise to civil in rem forfeiture as provided in ORS chapter 475A. A judgment providing for forfeiture may direct that the machine be destroyed.

(4) It is a defense to a charge of possession of a gray machine if the machine that caused the charge to be brought was manufactured prior to 1958 and was not operated for purposes of unlawful gambling. [1991 c.962 s.5; 1999 c.59 s.33]

167.165 [Repealed by 1963 c.340 s.1 (167.170 enacted in lieu of 167.165)]

167.166 Removal of unauthorized video lottery game terminal.

On and after December 1, 1991, any video lottery game terminal that is not authorized by the Oregon State Lottery Commission must be removed from the State of Oregon. [1991 c.962 s.8]

Note: 167.166 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 167 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

167.167 Cheating. (1) A person commits the crime of cheating if the person, while in the course of participating or attempting to participate in any legal or illegal gambling activity, directly or indirectly:

(a) Employs or attempts to employ any device, scheme or artifice to defraud any other participant or any operator;

(b) Engages in any act, practice or course of operation that operates or would operate as a fraud or deceit upon any other participant or any operator;

(c) Engages in any act, practice or course of operation with the intent of cheating any other participant or the operator to gain an advantage in the game over the other participant or operator; or

(d) Causes, aids, abets or conspires with another person to cause any other person to violate paragraphs (a) to (c) of this subsection.

(2) As used in this section, “deceit,” “defraud” and “fraud” are not limited to common law deceit or fraud.

(3) Cheating is a Class C felony. [1997 c.867 s.20]

167.170 [1963 c.340 s.2 (enacted in lieu of 167.165); repealed by 1971 c.743 s.432]

OFFENSES INVOLVING CONTROLLED SUBSTANCES

167.202 [1971 c.743 s.273; 1974 s.s. c.67 s.1; repealed by 1977 c.745 s.3 (167.203 enacted in lieu of 167.202)]

167.203 Definitions for ORS 167.212 to 167.252. As used in ORS 167.212 to 167.252, unless the context requires otherwise:

(1) “Apothecary” means a pharmacist, as defined by ORS 689.005, and where the context so requires, the owner of a store or other place of business where controlled substances are compounded or dispensed by a licensed pharmacist.

(2) “Controlled substance” and “manufacture” have the meaning given those terms by ORS 475.005.

(3) “Official written order” means an order written on a form provided for that purpose by the United States Commissioner of Internal Revenue, under any laws of the United States making provision therefor, if such order form is not provided, then on an official form provided for that purpose by the State Board of Pharmacy.

(4) “Practitioner” has the meaning given that term by ORS 475.005.

(5) “Wholesaler” means a person who supplies controlled substances that the wholesaler has not produced or prepared, on official written orders, but not on prescriptions.

(6) “Unlawfully” means in violation of any provision of ORS 475.005 to 475.285 and 475.940 to 475.995. [1977 c.745 s.33 (enacted in lieu of 167.202); 1979 c.777 s.44; 1995 c.440 s.14]

167.205 [Amended by 1961 c.333 s.1; repealed by 1971 c.743 s.432]

167.207 [1971 c.743 s.274; 1973 c.680 s.1; 1974 c.67 s.2; repealed by 1977 c.745 s.54]

167.210 [Repealed by 1971 c.743 s.432]

167.212 Tampering with drug records. (1) A person commits the crime of tampering with drug records if the person knowingly:

(a) Alters, defaces or removes a controlled substance label affixed by a manufacturer, wholesaler or apothecary, except that it shall not be unlawful for an apothecary to remove or deface such a label for the purpose of filling prescriptions;

(b) Affixes a false or forged label to a package or receptacle containing controlled substances;

(c) Makes or utters a false or forged prescription or false or forged official written order for controlled substances;

or

(d) Makes a false statement in any controlled substance prescription, order, report or record required by ORS 475.005 to 475.285 and 475.940 to 475.995.

(2) Tampering with drug records is a Class C felony. [1971 c.743 s.275; 1977 c.745 s.34; 1995 c.440 s.15]

167.215 [Repealed by 1971 c.743 s.432]

167.217 [1971 c.743 s.276; 1973 c.680 s.2; 1974 c.67 s.3; repealed by 1977 c.745 s.54]

167.220 [Amended by 1957 c.403 s.8; 1961 c.261 s.2; repealed by 1971 c.743 s.432]

167.222 Frequenting a place where controlled substances are used. (1) A person commits the offense of frequenting a place where controlled substances are used if the person keeps, maintains, frequents, or remains at a place, while knowingly permitting persons to use controlled substances in such place or to keep or sell them in violation of ORS 475.005 to 475.285 and 475.940 to 475.995.

(2) Frequenting a place where controlled substances are used is a Class A misdemeanor.

(3) Notwithstanding subsection (2) of this section, if the conviction is for knowingly maintaining, frequenting or remaining at a place where less than one avoirdupois ounce of the dried leaves, stems, and flowers of the plant Cannabis family Moraceae is found at the time of the offense under this section, frequenting a place where controlled substances are used is a Class D violation.

(4) As used in this section, “frequents” means repeatedly or habitually visits, goes to or resorts to. [1971 c.743 s.277; 1974 c.43 s.1; 1977 c.745 s.35; 1979 c.641 s.1; 1991 c.67 s.41; 1993 c.469 s.3; 1995 c.440 s.16; 1999 c.1051 s.160]

167.225 [Repealed by 1971 c.743 s.432]

167.227 [1969 c.655 s.2; repealed by 1971 c.743 s.432]

167.228 [1971 c.743 s.278; repealed by 1977 c.745 s.54]

167.230 [Repealed by 1971 c.743 s.432]

167.232 [1971 c.743 s.278a; repealed by 1977 c.745 s.54]

167.235 [Amended by 1967 c.527 s.1; repealed by 1971 c.743 s.432]

167.237 [1967 c.527 s.2; repealed by 1971 c.743 s.432]

167.238 Prima facie evidence permitted in prosecutions of drug offenses. (1) Proof of unlawful manufacture, cultivation, transportation or possession of a controlled substance is prima facie evidence of knowledge of its character.

(2) Proof of possession of a controlled substance not in the container in which it was originally delivered, sold or dispensed, when a prescription or order of a practitioner is required under the provisions of ORS 475.005 to 475.285 and 475.940 to 475.995, is prima facie evidence that the possession is unlawful unless the possessor also has in possession a label prepared by the pharmacist for the drug dispensed or the possessor is authorized by ORS 475.005 to 475.285 and 475.940 to 475.995 to possess the controlled substance. [1971 c.743 s.279; 1977 c.745 s.36; 1995 c.440 s.17]

167.240 [Repealed by 1971 c.743 s.432]

167.242 [1971 c.743 s.280; 1977 c.745 s.37; 1995 c.440 s.18; repealed by 1997 c.592 s.6 (167.243 enacted in lieu of 167.242)]

167.243 Exemption contained in drug laws as defense to drug offenses. In any prosecution under ORS 167.212 and 167.222, any exception, excuse, proviso or exemption contained in ORS 475.005 to 475.285 and 475.940 to 475.995 shall be an affirmative defense. [1989 c.791 s.16; 1995 c.440 s.19; enacted in lieu of 167.242 in 1997]

167.245 [Amended by 1955 c.504 s.1; 1959 c.322 s.1; repealed by 1971 c.743 s.432]

167.247 [1971 c.743 s.281; 1977 c.745 s.38; 1995 c.440 s.20; repealed by 1997 c.592 s.6 (167.248 enacted in lieu of 167.247)]

167.248 Search and seizure of conveyance in which drugs unlawfully transported or possessed. A district attorney or peace officer charged with the enforcement of ORS 167.212 and 167.222, having personal knowledge or reasonable information that controlled substances are being unlawfully transported or possessed in any boat, vehicle or other conveyance, may search the same without warrant and without an affidavit being filed. If controlled substances are found in or upon such conveyance, the district attorney or peace officer may seize them, arrest any person in charge of the conveyance and as soon as possible take the arrested person and the seized controlled substances before any court in the county in which the seizure is made. The district attorney or peace officer shall also, without delay, make and file a complaint for any crime justified by the evidence obtained. [1989 c.791 s.17; enacted in lieu of 167.247 in 1997]

167.250 [Amended by 1959 c.322 s.2; repealed by 1971 c.743 s.432]

167.252 Acquittal or conviction under federal law as precluding state prosecution. No person shall be prosecuted under ORS 167.203 to 167.222 if the person has been acquitted or convicted under the federal narcotic laws of the same act or omission which it is alleged constitutes a violation of ORS 167.203 to 167.222. [1971 c.743 s.282]

167.255 [Repealed by 1959 c.322 s.3]

167.260 [Repealed by 1959 c.322 s.3]

167.262 Adult using minor in commission of controlled substance offense. (1) It is unlawful for an adult to knowingly use as an aider or abettor or to knowingly solicit, force, compel, coerce or employ a minor, with or without compensation to the minor:

(a) To manufacture a controlled substance; or

(b) To transport, carry, sell, give away, prepare for sale or otherwise distribute a controlled substance.

(2)(a) Except as otherwise provided in paragraph (b) of this subsection, violation of this section is a Class A felony.

(b) Violation of this section is a Class A misdemeanor if the violation involves delivery for no consideration of less than five grams of marijuana. [1991 c.834 s.1]

Note: 167.262 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 167 by legislative action. See Preface to Oregon Revised Statutes for further explanation.

167.265 [Repealed by 1959 c.322 s.3]

167.270 [Repealed by 1959 c.322 s.3]

167.275 [Repealed by 1959 c.322 s.3]

167.280 [Repealed by 1959 c.322 s.3]

167.285 [Repealed by 1959 c.322 s.3]

167.290 [Repealed by 1959 c.322 s.3]

167.295 [Amended by 1963 c.314 s.1; repealed by 1971 c.743 s.432]

167.300 [Repealed by 1971 c.743 s.432]

OFFENSES AGAINST ANIMALS

167.310 Definitions for ORS 167.310 to 167.350. As used in ORS 167.310 to 167.350:

(1) "Animal" means any nonhuman mammal, bird, reptile, amphibian or fish.

(2) "Good animal husbandry" includes, but is not limited to, the dehorning of cattle, the docking of horses, sheep or swine, and the castration or neutering of livestock, according to accepted practices of veterinary medicine or animal husbandry.

(3) "Livestock" has the meaning provided in ORS 609.125.

(4) "Pet or domestic animal" means any animal that is owned or possessed by a person, other than livestock or poultry.

(5) "Physical injury" has the meaning provided in ORS 161.015.

(6) "Possess" has the meaning provided in ORS 161.015.

(7) "Serious physical injury" has the meaning provided in ORS 161.015.

(8) As used in ORS 167.325 and 167.330, "Minimum care" means care sufficient to preserve the health and well-being of an animal and, except for emergencies or circumstances beyond the reasonable control of the owner, includes, but is not limited to, the following requirements:

(a) Food of sufficient quantity and quality to allow for normal growth or maintenance of body weight.

(b) Open or adequate access to potable water in sufficient quantity to satisfy the animal's needs. Snow or ice is not an adequate water source.

(c) In the case of pet or domestic animals, access to a barn, dog house or other enclosed structure sufficient to protect the animal from wind, rain, snow or sun and which has adequate bedding to protect against cold and dampness.

(d) Veterinary care deemed necessary by a reasonably prudent person to relieve distress from injury, neglect or disease.

(e) Pet or domestic animals shall not be confined to an area without adequate space for exercise necessary for the health of the animal or which does not allow access to a dry place for the animal to rest. The air temperature in a confinement area must be suitable for the animal involved. Confinement areas must be kept reasonably clean and free from excess waste or other contaminants which could affect the animal's health. [1985 c.662 s.1; 1995 c.663 s.3; 1999 c.756 s.13]

167.312 Research and animal interference. (1) A person commits the crime of research and animal interference if the person knowingly does any of the following:

(a) Releases, steals or otherwise causes the death, injury or loss of any animal at or from an animal research facility, other than death, injury or loss incurred during or as the result of legitimate animal medical research and experimentation.

(b) Damages, vandalizes or steals any property in or on an animal research facility for the purpose of damaging, destroying or delaying animal medical research or experimentation.

(c) Obtains access to an animal research facility by misrepresentation for the purpose of performing acts not authorized by that facility.

(d) Enters an animal research facility to destroy, alter, duplicate or obtain unauthorized possession of records, data, materials, equipment or animals.

(e) Obtains or exerts unauthorized control over records, data, materials, equipment or animals of any animal research facility for the purpose of using, concealing, abandoning or destroying such records, data, materials, equipment or animals.

(f) Possesses or uses equipment or animals that the person reasonably believes have been obtained by theft or deception from an animal research facility or without the authorization of an animal research facility.

(2) For the purposes of this section, "animal research facility" means any facility engaging in legal scientific or agricultural research or teaching involving the use of animals.

(3) Research and animal interference is a Class C felony.

(4) In addition to any other penalty imposed for violation of this section, a person convicted of such violation is liable:

(a) To the owner of the animal for damages, including the costs of restoring the animal to confinement and to its health condition prior to commission of the acts constituting the violation;

(b) For damages to real and personal property caused by acts constituting the violation; and

(c) The costs of repeating an experiment, including the replacement of the animals, labor and materials, if acts constituting the violation cause the failure of an experiment. [1991 c.843 s.2]

167.315 Animal abuse in the second degree. (1) A person commits the crime of animal abuse in the second degree if, except as otherwise authorized by law, the person intentionally, knowingly or recklessly causes physical injury to an animal.

(2) Any practice of good animal husbandry is not a violation of this section.

(3) Animal abuse in the second degree is a Class B misdemeanor. [1985 c.662 s.2]

167.320 Animal abuse in the first degree. (1) A person commits the crime of animal abuse in the first degree if, except as otherwise authorized by law, the person intentionally, knowingly or recklessly:

(a) Causes serious physical injury to an animal; or

(b) Cruelly causes the death of an animal.

(2) Any practice of good animal husbandry is not a violation of this section.

(3) Animal abuse in the first degree is a Class A misdemeanor. [1985 c.662 s.3]

167.322 Aggravated animal abuse in the first degree. (1) A person commits the crime of aggravated animal abuse in the first degree if the person:

(a) Maliciously kills an animal; or

(b) Intentionally or knowingly tortures an animal.

(2) Aggravated animal abuse in the first degree is a Class C felony.

(3) As used in this section, "maliciously" means intentionally acting with a depravity of mind and reckless and wanton disregard of life. [1995 c.663 s.2]

167.325 Animal neglect in the second degree. (1) A person commits the crime of animal neglect in the second degree if, except as otherwise authorized by law, the person intentionally, knowingly, recklessly or with criminal negligence fails to provide minimum care for an animal in such person's custody or control.

(2) Animal neglect in the second degree is a Class B misdemeanor. [1985 c.662 s.4]

167.330 Animal neglect in the first degree. (1) A person commits the crime of animal neglect in the first degree if, except as otherwise authorized by law, the person intentionally, knowingly, recklessly or with criminal negligence:

(a) Fails to provide minimum care for an animal in such person's custody or control; and

(b) Such failure to provide care results in serious physical injury or death to the animal.

(2) Animal neglect in the first degree is a Class A misdemeanor. [1985 c.662 s.5]

167.335 Exemption from ORS 167.315 to 167.330. Unless gross negligence can be shown, the provisions of ORS 167.315 to 167.330 shall not apply to:

(1) The treatment of livestock being transported by owner or common carrier;

(2) Animals involved in rodeos or similar exhibitions;

(3) Commercially grown poultry;

(4) Animals subject to good animal husbandry practices;

(5) The killing of livestock according to the provisions of ORS 603.065;

(6) Animals subject to good veterinary practices as described in ORS 686.030;

(7) Lawful fishing, hunting and trapping activities;

(8) Wildlife management practices under color of law; and

(9) Lawful scientific or agricultural research or teaching that involves the use of animals. [1985 c.662 s.6; 1995 c.663 s.4]

167.340 Animal abandonment. (1) A person commits the crime of animal abandonment if the person intentionally, knowingly, recklessly or with criminal negligence leaves a domesticated animal at a location without providing for the animal's continued care.

(2) It is no defense to the crime defined in subsection (1) of this section that the defendant abandoned the animal at or near an animal shelter, veterinary clinic or other place of shelter if the defendant did not make reasonable arrangements for the care of the animal.

(3) Animal abandonment is a Class C misdemeanor. [1985 c.662 s.8]

167.345 Authority to enter premises; search warrant; notice of impoundment of animal. (1) If there are exigent circumstances and probable cause to believe that any animal is being impounded or confined without minimum care for more than 24 consecutive hours, without medical cause, a peace officer, as defined in ORS 161.015, may enter the premises where the animal is being held and provide the animal with water, food or emergency on-site first aid treatment. The peace officer shall not be liable for any damages for such entry, unless the damages were caused by the unnecessary actions of the peace officer that were intentional or reckless.

(2) If there is probable cause to believe that any animal is being subjected to treatment in violation of ORS 167.315 to 167.340, a peace officer, after obtaining a search warrant in the manner authorized by law, may enter the premises where the animal is being held, provide food and water and impound such animal. If after reasonable search the owner or person having custody of such animal cannot be found and notified of the impoundment, such notice shall be conspicuously posted on such premises and within 72 hours after the impoundment such notice shall be sent by certified mail to the address, if any, at which the animal was impounded.

(3) A court may order an animal impounded under subsection (2) of this section to be held at any animal care facility in the state. A facility receiving the animal shall provide adequate food and water and may provide veterinary care. [Formerly 167.860; 1993 c.519 s.1; 1995 c.663 s.5]

167.347 Forfeiture of animal to animal care agency prior to disposition of criminal charge. (1) If any animal is impounded pursuant to ORS 167.345 (2) and is being held by a county animal shelter or other animal care agency pending outcome of criminal action charging a violation of ORS 167.310 to 167.340, prior to final disposition of the criminal charge, the county or other animal care agency may file a petition in the criminal action requesting that the court issue an order forfeiting the animal to the county or other animal care agency prior to final disposition of the criminal charge. The petitioner shall serve a true copy of the petition upon the defendant and the district attorney.

(2) Upon receipt of a petition pursuant to subsection (1) of this section, the court shall set a hearing on the petition. The hearing shall be conducted within 14 days of the filing of the petition, or as soon as practicable.

(3)(a) At a hearing conducted pursuant to subsection (2) of this section, the petitioner shall have the burden of establishing probable cause to believe that the animal was subjected to abuse, neglect or abandonment in violation of ORS 167.310 to 167.340. If the court finds that probable cause exists, the court shall order immediate forfeiture of the animal to the petitioner, unless the defendant, within 72 hours of the hearing, posts a security deposit or bond with the court clerk in an amount determined by the court to be sufficient to repay all reasonable costs incurred, and anticipated to be incurred, by the petitioner in caring for the animal from the date of initial impoundment to the date of trial.

(b) Notwithstanding paragraph (a) of this subsection, a court may waive for good cause shown the requirement that the defendant post a security deposit or bond.

(4) If a security deposit or bond has been posted in accordance with subsection (3) of this section, and the trial in the action is continued at a later date, any order of continuance shall require the defendant to post an additional security deposit or bond in an amount determined by the court that shall be sufficient to repay all additional reasonable costs anticipated to be incurred by the petitioner in caring for the animal until the new date of trial.

(5) If a security deposit or bond has been posted in accordance with subsection (4) of this section, the petitioner may draw from that security deposit or bond the actual reasonable costs incurred by the petitioner in caring for the impounded animal from the date of initial impoundment to the date of final disposition of the animal in the criminal action.

(6) The provisions of this section are in addition to, and not in lieu of, the provisions of ORS 167.350. [1995 c.369 s.2]

Note: 167.347 and 167.348 were added to and made a part of ORS chapter 167 by legislative action but were not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

167.348 Placement of forfeited animal; preference. If an animal is forfeited according to the provisions of ORS 167.347 or 167.350, in placing the animal with a new owner, the agency to which the animal was forfeited shall give placement preference to any person or persons who had prior contact with the animal, including but not limited to family members and friends of the former owner whom the agency determines are capable of providing necessary, adequate and appropriate levels of care for the animal. [1995 c.369 s.3]

Note: See note under 167.347.

167.350 Forfeiture of rights in mistreated animal; costs; disposition of animal. (1) In addition to and not in lieu of any other sentence it may impose, a court may require a defendant convicted under ORS 167.315 to 167.330 and 167.340 to forfeit any rights of the defendant in the animal subjected to abuse, neglect or abandonment, and to repay the reasonable costs incurred by any person or agency prior to judgment in caring for each animal subjected to abuse, neglect or abandonment.

(2) When the court orders the defendant's rights in the animal to be forfeited, the court may further order that those rights be given over to an appropriate person or agency demonstrating a willingness to accept and care for the animal or to the county or an appropriate animal care agency for further disposition in accordance with accepted practices for humane treatment of animals. This subsection shall not constitute or authorize any limitation upon the right of the person or agency to whom rights are granted to resell or otherwise make disposition of the animal. A transfer of rights under this subsection constitutes a transfer of ownership.

(3) In addition to and not in lieu of any other sentence it may impose, a court may order the owner or person having custody of an animal to repay the reasonable costs incurred by any person or agency in providing water, food or first aid treatment under ORS 167.345 (1).

(4) A court may order a person convicted under ORS 167.315 to 167.330 and 167.340 to participate in available animal cruelty prevention programs or education programs, or both, or to obtain psychological counseling for treatment of mental health disorders that, in the court's judgment, contributed to the commission of the crime. The person shall bear any costs incurred by the person for participation in counseling or treatment programs under this subsection. [Formerly 167.862; 1993 c.519 s.2; 1995 c.663 s.6]

167.352 Interfering with assistance, search and rescue or therapy animal. (1) A person commits the crime of interfering with an assistance, a search and rescue or a therapy animal if the person intentionally or knowingly:

(a) Injures or attempts to injure an animal the person knows or reasonably should know is an assistance animal, a search and rescue animal or a therapy animal;

(b) Interferes with an assistance animal while the assistance animal is being used to provide assistance to a physically impaired person; or

(c) Interferes with a search and rescue animal or a therapy animal while the animal is being used for search and rescue or therapy purposes.

(2) As used in this section, “assistance animal” and “physically impaired person” have the meanings given those terms in ORS 346.680.

(3) As used in this section and ORS 30.822:

(a) “Search and rescue animal” means that the animal has been professionally trained for, and is actively used for, search and rescue purposes.

(b) “Therapy animal” means that the animal has been professionally trained for, and is actively used for, therapy purposes.

(4) Interfering with an assistance, a search and rescue or a therapy animal is a Class A misdemeanor. [1993 c.312 s.3]

Note: 167.352 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 167 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

167.355 Involvement in animal fighting. (1) A person commits the crime of involvement in animal fighting if the person:

(a) Owns or trains an animal with the intention that the animal engage in an exhibition of fighting; or

(b) Promotes, conducts, participates in or is present as a spectator at an exhibition of fighting or preparations thereto; or

(c) Keeps or uses, or in any way is connected with or interested in the management of, or receives money for the admission of any person to any place kept or used for the purpose of an exhibition of fighting; or

(d) Knowingly suffers or permits any place over which the person has possession or control to be occupied, kept or used for the purpose of an exhibition of fighting.

(2) For purposes of this section:

(a) “Animal” means any bird, reptile, amphibian, fish or nonhuman mammal, other than a dog.

(b) “Exhibition of fighting” means a public or private display of combat between two or more animals in which the fighting, killing, maiming or injuring of animals is a significant feature. “Exhibition of fighting” does not include demonstrations of the hunting or tracking skills of an animal or the lawful use of animals for hunting, tracking or self-protection.

(3) Nothing in this section applies to or prohibits any customary practice of breeding or rearing game cocks even though those cocks may be subsequently used in cock fighting exhibitions outside the State of Oregon.

(4) Involvement in animal fighting is a Class A misdemeanor. [Formerly 167.865; 1987 c.249 s.6]

167.360 Definitions for ORS 167.360 to 167.380. As used in ORS 167.360 to 167.380:

(1) “Dogfight” means a fight, arranged by any person, between two or more dogs the purpose or probable result of which fight is the infliction of injury by one dog upon another.

(2) “Fighting dog” means a dog that is intentionally bred or trained to be used in, or that is actually used in, a dogfight.

A dog does not constitute a fighting dog solely on account of its breed. [1987 c.249 s.1]

Note: 167.360 to 167.380 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 167 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

167.365 Dogfighting. (1) A person commits the crime of dogfighting if the person knowingly does any of the following:

(a) Owns, possesses, keeps, breeds, trains, buys, sells or offers to sell a fighting dog, including but not limited to any advertisement by the person to sell such a dog.

(b) Promotes, conducts or participates in, or performs any service in the furtherance of, an exhibition of

dogfighting, including but not limited to refereeing of a dogfight, handling of dogs at a dogfight, transportation of spectators to a dogfight, organizing a dogfight, advertising a dogfight, providing or serving as a stakes holder for any money wagered on a fight.

(c) Keeps, uses or manages, or accepts payment of admission to, any place kept or used for the purpose of dogfighting.

(d) Suffers or permits any place over which the person has possession or control to be occupied, kept or used for the purpose of an exhibition of dogfighting.

(2) Dogfighting is a Class C felony. [1987 c.249 s.2]

Note: See note under 167.360.

167.370 Participation in dogfighting. (1) A person commits the crime of participation in dogfighting if the person knowingly:

(a) Attends or has paid admission at any place for the purpose of viewing or betting upon a dogfight.

(b) Advertises or otherwise offers to sell equipment for the training and handling of a fighting dog.

(2) Participation in dogfighting is a Class A misdemeanor. [1987 c.249 s.3]

Note: See note under 167.360.

167.375 Seizure of fighting dogs; procedure. (1) Pursuant to ORS 133.525 to 133.703, a judge may order the seizure of alleged fighting dogs owned, possessed or kept by any person.

(2) The judge issuing an order for the seizure of a dog as provided in subsection (1) of this section may require the dog to be impounded at an animal shelter if the judge believes it to be in the best interest of the animal and the public to so order. The governmental unit, the agency of which executes the seizure of the dog, shall be responsible for the costs of impoundment at the animal shelter, but the governmental unit is entitled to receive reimbursement of those costs from the owner, possessor or keeper of the impounded dog. If the owner, possessor or keeper of the dog is subsequently convicted of dogfighting under ORS 167.365, the court may order the defendant to pay the costs of animal shelter as restitution in the case.

(3) In lieu of ordering such dogs seized under subsection (1) of this section to be impounded at an animal shelter, the court may order the dogs impounded on the property of their owner, possessor or keeper. If dogs are ordered impounded on the property of their owner, possessor or keeper, the court shall order such person to provide all necessary care for the dogs and to allow regular and continuing inspection of the dogs by any persons designated by the court, or the agents of such persons. The court shall further order the person not to sell or otherwise dispose of any of the dogs unless the court authorizes such sale or disposition, or until the seized dogs are released as evidence by the law enforcement agency that seized them, or restored to the person by the court pursuant to an order under ORS 133.643. [1987 c.249 s.4]

Note: See note under 167.360.

167.380 Forfeiture of rights in fighting dogs or property; public nuisance; destruction of dogs. (1) In addition to and not in lieu of any other penalty it may impose upon a person convicted of dogfighting under ORS 167.365 or participating in dogfighting under ORS 167.370, the court shall, as a part of the judgment, order to be forfeited to the city or county wherein the crime occurred, as the case may be, the person's rights in any fighting dogs or property proved to have been used by the defendant as an instrumentality in the commission of the crime.

(2) A fighting dog is a public nuisance, regardless of whether or not a person has been convicted of animal fighting with respect to the dog, and a dog proved by a preponderance of the evidence to be a fighting dog in a forfeiture proceeding shall be forfeited to the county in which the dog was found, to be destroyed as provided in this section.

(3) When a court orders a fighting dog to be forfeited, the dog shall be destroyed by a method consistent with such state law regulating methods to be used for destruction of animals. No forfeited fighting dog shall be released or given to any person or agency other than for purposes of destruction in accordance with this subsection. [1987 c.249 s.5]

Note: See note under 137.360.

167.385 Unauthorized use of livestock animal. (1) A person commits the crime of unauthorized use of a

livestock animal when the person knowingly:

(a) Takes, appropriates, obtains or withholds a livestock animal from the owner thereof or derives benefit from a livestock animal without the consent of the owner of the animal; or

(b) Takes or holds a livestock animal and thereby obtains the use of the animal to breed, bear or raise offspring without the consent of the owner of the animal.

(2) Except as otherwise provided by law, offspring born to a female livestock animal or hatched from the egg of a female livestock animal belong to the owner of the female livestock animal until the owner transfers ownership of the offspring.

(3) As used in this section, "livestock animal" has the same meaning given that term in ORS 164.055.

(4) Unauthorized use of a livestock animal is a Class A misdemeanor.

(5) In addition to any criminal sanctions, if a defendant is convicted of the crime of unauthorized use of a livestock animal under this section, the court shall order the defendant to pay restitution to the owner of the animal. [1993 c.252 s.1]

Note: 167.385 to 167.388 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 167 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

167.387 Definitions for ORS 167.387 and 167.388. As used in this section and ORS 167.388:

(1) "Livestock" has the meaning given in ORS 609.125.

(2) "Livestock production facility" means:

(a) Any facility or organization engaged in animal breeding, production or processing; or

(b) Any facility or institution whose primary purpose is to impound estray animals, as that term is defined in ORS 607.007. [1993 c.252 s.4; 1999 c.756 s.14]

Note: See note under 167.385.

167.388 Interference with livestock production. (1) A person commits the crime of interference with livestock production when the person:

(a) Knowingly or intentionally takes, appropriates, obtains or withholds livestock from the owner thereof, or causes the loss, death or injury of any livestock maintained at a livestock production facility;

(b) Damages, vandalizes or steals any property located on a livestock production facility;

(c) Enters a livestock production facility with an intent to destroy, alter, duplicate or obtain unauthorized possession of records, data, materials or equipment and substances used in the breeding and production of livestock; or

(d) Obtains access to a livestock production facility under false pretenses for the purpose of performing any act contained in this subsection or any other act not authorized by the livestock production facility.

(2) The crime of interference with livestock production is:

(a) A Class C felony if damage to the facility is greater than \$2,500; and

(b) A Class A misdemeanor if there is no damage to the facility or if damage to the facility is less than \$2,500.

(3) Determination of damages to a livestock production facility shall be made by the court. In making its determination, the court shall consider the reasonable costs of:

(a) Replacing lost, injured or destroyed livestock;

(b) Restoring the livestock production facility to the approximate condition of the facility before the damage occurred; and

(c) Replacing damaged or missing records, data, material, equipment or substances used in the breeding and production of livestock.

(4) In addition to any criminal sanctions, if a defendant is convicted of the crime of interference with livestock production under subsection (1) of this section, the court shall order the defendant to pay restitution to the owner of the animal or the owner of the livestock production facility. [1993 c.252 ss.2,3]

Note: See note under 167.385.

167.390 Commerce in fur of domestic cats and dogs prohibited; exception. (1) A person may not take, buy, sell, barter or otherwise exchange for commerce in fur purposes the raw fur or products that include the fur of a

domestic cat or dog if the fur is obtained through a process that kills or maims the cat or dog. As used in this section, "domestic cat or dog" does not include coyote, fox, lynx, bobcat or any other wild or commercially raised wild feline or wild canine species or a hybrid thereof that is not recognized as an endangered species by the United States Fish and Wildlife Service.

(2) Violation of subsection (1) of this section, or any rule promulgated pursuant thereto, is a Class A misdemeanor when the offense is committed with a culpable mental state as defined in ORS 161.085. [1999 c.995 ss.1,2]

Note: 167.390 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 167 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

OFFENSES INVOLVING TOBACCO

167.400 Tobacco possession by minors prohibited. (1) It is unlawful for any person under 18 years of age to possess tobacco products, as defined in ORS 431.840.

(2) Any person who violates subsection (1) of this section commits a Class D violation. [1991 c.970 s.1; 1999 c.1051 s.161]

Note: 167.400, 167.402 and 167.404 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 167 by legislative action. See Preface to Oregon Revised Statutes for further explanation.

167.401 Tobacco purchase by minors prohibited; exceptions. (1) Except as provided in subsection (4) of this section, no person under 18 years of age shall purchase, attempt to purchase or acquire tobacco products as defined in ORS 431.840. Except when such minor is in a private residence accompanied by the parent or guardian of the minor and with the consent of such parent or guardian, no person under 18 years of age shall have personal possession of tobacco products.

(2) Any person who violates subsection (1) of this section commits a violation.

(3)(a) In lieu of any other penalty established by law, a person who is convicted for the first time of a violation of subsection (1) of this section may be ordered to participate in a tobacco education program or a tobacco use cessation program or to perform community service related to diseases associated with consumption of tobacco products. A person may be ordered to participate in such a program only once.

(b) In addition to and not in lieu of any other penalty established by law, a person who is convicted of a second violation of subsection (1) of this section through misrepresentation of age may be required to participate in a tobacco education or a tobacco use cessation program or to perform community service related to diseases associated with the consumption of tobacco products, and the court shall order that the person's driving privileges and right to apply for driving privileges be suspended for a period not to exceed one year. If a court has issued an order denying driving privileges under this subsection, the court, upon petition of the person, may withdraw the order at any time the court deems appropriate. The court notification to the Department of Transportation under this subsection may include a recommendation that the person be granted a hardship permit under ORS 807.240 if the person is otherwise eligible for the permit.

(4) A minor acting under the supervision of an adult may purchase, attempt to purchase or acquire tobacco products for the purpose of testing compliance with a federal law, state statute, local law or retailer management policy limiting or regulating the delivery of tobacco products to minors. [1999 c.1077 s.8]

Note: Section 8a, chapter 1077, Oregon Laws 1999, provides:

Sec. 8a. Suspensions of driving privileges ordered under section 8 (3)(b) of this 1999 Act [167.401 (3)(b)] shall take effect on or after April 1, 2000. [1999 c.1077 s.8a]

Note: 167.401 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 167 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

167.402 Locating tobacco vending machines where minors have access prohibited. (1) No person having authority over such placement shall locate a vending machine from which tobacco products, as defined in ORS 431.840, in any form are dispensed in any place legally accessible to persons under 18 years of age except taverns and

cocktail lounges, industrial plants, as defined in ORS 308.408, hotels and motels.

(2) Violation of subsection (1) of this section is a Class B violation. Each day of violation constitutes a separate offense. [1991 c.970 s.2; 1999 c.1051 s.162]

Note: See note under 167.400.

167.404 Limitation on right of city or county to regulate tobacco vending machines. Cities and counties by ordinance or resolution shall not regulate vending machines that dispense tobacco products, as defined in ORS 431.840, in any form and that are in any manner accessible to minors. [1991 c.970 s.3]

Note: See note under 167.400.

167.405 [Repealed by 1971 c.743 s.432]

167.410 [Repealed by 1971 c.743 s.432]

167.415 [Repealed by 1971 c.743 s.432]

167.420 [Repealed by 1971 c.743 s.432]

167.425 [Repealed by 1971 c.743 s.432]

167.430 [Amended by 1961 c.648 s.8; repealed by 1971 c.743 s.432]

167.505 [Amended by 1959 c.530 s.3; repealed by 1971 c.743 s.432]

167.510 [Amended by 1959 c.530 s.4; repealed by 1971 c.743 s.432]

167.515 [Repealed by 1971 c.743 s.432]

167.520 [Repealed by 1971 c.743 s.432]

167.525 [Repealed by 1971 c.743 s.432]

167.530 [Repealed by 1971 c.743 s.432]

167.535 [Amended by 1959 c.530 s.5; repealed by 1971 c.743 s.432]

167.540 [Repealed by 1971 c.743 s.432]

167.545 [Repealed by 1971 c.743 s.432]

167.550 [Amended by 1959 c.426 s.8; repealed by 1971 c.743 s.432]

167.555 [Repealed by 1971 c.743 s.432]

167.605 [Amended by 1963 c.201 s.1; repealed by 1971 c.743 s.432]

167.610 [Repealed by 1971 c.743 s.432]

167.615 [Repealed by 1971 c.743 s.432]

167.620 [Repealed by 1971 c.743 s.432]

167.625 [Repealed by 1971 c.743 s.432]

167.630 [Repealed by 1971 c.743 s.432]

167.635 [Repealed by 1971 c.743 s.432]

167.640 [Repealed by 1971 c.743 s.432]

167.645 [Repealed by 1971 c.743 s.432]

167.705 [Amended by 1959 c.503 s.6; repealed by 1971 c.743 s.432]

167.710 [Repealed by 1971 c.743 s.432]

167.715 [Repealed by 1971 c.743 s.432]

167.720 [Repealed by 1971 c.743 s.432]

167.725 [Repealed by 1971 c.743 s.432]

167.730 [Repealed by 1971 c.743 s.432]

167.735 [Repealed by 1971 c.743 s.432]

167.740 [Amended by 1965 c.370 s.1; repealed by 1971 c.743 s.432]

167.745 [1959 c.200 s.1; repealed by 1971 c.743 s.432]

MISCELLANEOUS

167.808 Unlawful possession of inhalants. (1) For the purposes of this section:

(a) "Inhalant" means any glue, cement or other substance that is capable of causing intoxication and that contains one or more of the following chemical compounds:

- (A) Acetone;
- (B) Amyl acetate;
- (C) Benzol or benzene;
- (D) Butane;
- (E) Butyl acetate;
- (F) Butyl alcohol;
- (G) Carbon tetrachloride;
- (H) Chloroform;
- (I) Cyclohexanone;
- (J) Difluoroethane;
- (K) Ethanol or ethyl alcohol;
- (L) Ethyl acetate;
- (M) Hexane;
- (N) Isopropanol or isopropyl alcohol;
- (O) Isopropyl acetate;
- (P) Methyl cellosolve acetate;
- (Q) Methyl ethyl ketone;
- (R) Methyl isobutyl ketone;
- (S) Nitrous oxide;
- (T) Toluol or toluene;
- (U) Trichloroethylene;

(V) Tricresyl phosphate;
(W) Xylol or xylene; or
(X) Any other solvent, material, substance, chemical or combination thereof having the property of releasing toxic vapors or fumes.

(b) "Intoxication" means any mental or physical impairment or incapacity.

(2) It is unlawful for a person to possess any inhalant if the person intends to use the inhalant for the purpose of inducing intoxication in the person who possesses the inhalant or for the purpose of inducing intoxication in any other person.

(3) A person may not use any inhalant for the purpose of inducing intoxication in the person using the inhalant or for the purpose of inducing intoxication in any other person.

(4) The prohibitions of this section do not apply to any substance that:

(a) Has been prescribed by a health practitioner, as described in ORS 18.550, and that is used in the manner prescribed by the health practitioner; or

(b) Is administered or used under the supervision of a health practitioner, as described in ORS 18.550.

(5)(a) Any person who violates this section commits a violation. Violation of this section is punishable by a fine of not more than \$300. In addition to or in lieu of a fine, a juvenile court may require that a minor who engages in conduct prohibited by this section be provided with treatment and counseling.

(b) Notwithstanding paragraph (a) of this subsection, a second or subsequent violation of this section by a person is a Class B misdemeanor. If a juvenile court finds that a minor has engaged in conduct prohibited by this section on a second or subsequent occasion, the court shall require that the minor receive treatment and counseling. [1999 c.229 s.1; 1999 c.1051 s.322f]

Note: 167.808 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 167 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

167.810 Creating a hazard. (1) A person commits the crime of creating a hazard if:

(a) The person intentionally maintains or leaves in a place accessible to children a container with a compartment of more than one and one-half cubic feet capacity and a door or lid which locks or fastens automatically when closed and which cannot easily be opened from the inside; or

(b) Being the owner or otherwise having possession of property upon which there is a well, cistern, cesspool, excavation or other hole of a depth of four feet or more and a top width of 12 inches or more, the owner intentionally fails or refuses to cover or fence it with a suitable protective construction.

(2) Creating a hazard is a Class B misdemeanor. [1971 c.743 s.284]

167.820 Concealing the birth of an infant. (1) A person commits the crime of concealing the birth of an infant if the person conceals the corpse of a newborn child with intent to conceal the fact of its birth or to prevent a determination of whether it was born dead or alive.

(2) Concealing the birth of an infant is a Class A misdemeanor. [1971 c.743 s.286]

167.830 Employment of minors in place of public entertainment. Except as provided in ORS 167.840, any person operating or conducting a place of public amusement or entertainment, who employs or allows a child under the age of 18 years to conduct or assist in conducting any public dance, including but not limited to dancing by the child as a public performance, or to assist in or furnish music for public dancing, commits a Class D violation. [1971 c.743 s.292; 1987 c.905 s.18; 1999 c.1051 s.163]

Note: 167.830 and 167.840 were enacted into law by the Legislative Assembly but were not added to or made a part of the Oregon Criminal Code of 1971 by legislative action. See Preface to Oregon Revised Statutes for further explanation.

167.840 Application of ORS 167.830 limited. (1) ORS 167.830 does not apply if:

(a) Alcoholic beverages are not permitted to be dispensed or consumed in the place of public amusement or entertainment open to the individuals attending the public dance;

(b) Alcoholic beverages are not permitted to be dispensed or consumed in any place connected by an entrance to the place of public amusement or entertainment;

(c) Applicable laws, regulations and ordinances for the protection of children under the age of 18 years are observed in the conduct of the dance; and

(d) At least one responsible adult is present at all times during the public dance to see that applicable laws, regulations and ordinances for the protection of children under 18 years of age are observed.

(2) ORS 167.830 does not apply if the child has the written permission of the judge of the juvenile court, for the county in which the child resides, to conduct or assist in conducting the public dance. The judge of the juvenile court shall grant such permission only if:

(a) The parents or legal guardians of the child have consented to the child's participation in such activity; and

(b) The judge has found that participation in such activity will not be inconsistent with the health, safety and morals of the child.

(3) This section is not intended to make lawful any activity that is prohibited within a political subdivision of this state by ordinance or other regulation of the political subdivision.

(4) The requirements of this section are in addition to, and not in lieu of, the requirements of ORS 653.315. [1971 c.743 s.293]

Note: See note under 167.830.

167.850 [1971 c.743 s.226; repealed by 1985 c.662 s.15]

167.860 [1971 c.596 s.1; 1973 c.836 s.345; 1985 c.662 s.7; renumbered 167.345]

167.862 [1983 c.648 s.1; 1985 c.662 s.9; renumbered 167.350]

167.865 [1977 c.539 s.2; renumbered 167.355]

167.870 [1973 c.316 s.1; repealed by 1999 c.729 s.1]
