

Liquor Control Laws and Administrative Rules

State of Oregon



2014

Compiled by
Oregon Liquor Control Commission

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About this book:

Oregon liquor control statutes and related laws are contained in ORS chapters 471, 473, 474 and 183 and the Miscellaneous Provisions section of this law book. Liquor control statutes are enacted by the Oregon Legislative Assembly and are designated by the abbreviation **ORS** (Oregon Revised Statutes).

Chapter 845 of Oregon Administrative Rules (designated by the abbreviation **OAR**) is divided into divisions. Administrative rules are adopted by the Oregon Liquor Control Commission. Related rules in Chapters 137 and 471 of Oregon Administrative Rules are included following Chapter 845, Division 3, in this publication.

2014 Special Session

Chapter 11, Oregon Laws 2014
(amending ORS 471.430)

Chapter 20, Oregon Laws 2014
(amending ORS 163.575, 431.840 and 471.410)

Chapter 119, Oregon Laws 2014
(double-amending ORS 181.010; section 2
amendments become operative on July 1, 2015)

CHAPTER 11

AN ACT

HB 4094

Relating to possession of alcohol by persons under 21 years of age; creating new provisions; and amending ORS 471.430.

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

SECTION 1. ORS 471.430 is amended to read:

471.430. (1) A person under 21 years of age may not attempt to purchase, purchase or acquire alcoholic beverages. Except when such minor is in a private residence accompanied by the parent or guardian of the minor and with such parent's or guardian's consent, a person under 21 years of age may not have personal possession of alcoholic beverages.

(2) For the purposes of this section, personal possession of alcoholic beverages includes the acceptance or consumption of a bottle of such beverages, or any portion thereof or a drink of such beverages. However, this section does not prohibit the acceptance or consumption by any person of sacramental wine as part of a religious rite or service.

(3) Except as authorized by rule or as necessitated in an emergency, a person under 21 years of age may not enter or attempt to enter any portion of a licensed premises that is posted or otherwise identified as being prohibited to the use of minors.

(4)(a) Except as provided in paragraph (b) of this subsection, a person who violates subsection (1) or (3) of this section commits a Class B violation.

(b) A person commits a Class A violation if the person violates subsection (1) of this section by reason of personal possession of alcoholic beverages while the person is operating a motor vehicle, as defined in ORS 801.360.

(5) In addition to and not in lieu of any other penalty established by law, a person under 21 years of age who violates subsection (1) of this section through misrepresentation of age may be required to perform community service 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 suspending driving privileges under this section, 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.

(6) If a person cited under this section is at least 13 years of age but less than 21 years of age at the

time the person is found in default under ORS 153.102 or 419C.472 for failure to appear, in addition to and not in lieu of any other penalty, the court shall issue notice under ORS 809.220 to the department for the department to suspend the person's driving privileges under ORS 809.280 (4).

(7) In addition to and not in lieu of any penalty established by law, the court may order a person who violates this section to undergo assessment and treatment as provided in ORS 471.432. The court shall order a person to undergo assessment and treatment as provided in ORS 471.432 if the person has previously been found to have violated this section.

(8) The prohibitions of this section do not apply to a person under 21 years of age who is acting under the direction of the Oregon Liquor Control Commission or under the direction of state or local law enforcement agencies for the purpose of investigating possible violations of laws prohibiting sales of alcoholic beverages to persons who are under 21 years of age.

(9) The prohibitions of this section do not apply to a person under 21 years of age who is acting under the direction of a licensee for the purpose of investigating possible violations by employees of the licensee of laws prohibiting sales of alcoholic beverages to persons who are under 21 years of age.

(10)(a) A person under 21 years of age is not in violation of, and is immune from prosecution under, this section if:

(A) The person contacted emergency medical services or a law enforcement agency in order to obtain medical assistance for another person who was in need of medical assistance due to alcohol consumption and the evidence of the violation of this section was obtained as a result of the person's having contacted emergency medical services or a law enforcement agency; or

(B) The person was in need of medical assistance due to alcohol consumption and the evidence of the violation of this section was obtained as a result of the person's having sought or obtained the medical assistance.

(b) Paragraph (a) of this subsection does not exclude the use of evidence obtained as a result of a person's having sought medical assistance in proceedings for crimes or offenses other than a violation of this section.

SECTION 2. The amendments to ORS 471.430 by section 1 of this 2014 Act apply to conduct occurring on or after the effective date of this 2014 Act.

Approved by the Governor March 3, 2014

Filed in the office of Secretary of State March 3, 2014

Effective date January 1, 2015

CHAPTER 20

AN ACT

SB 1546

Relating to allowing underage persons access to prohibited items; creating new provisions; amending ORS 163.575, 431.840 and 471.410; and declaring an emergency.

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

SECTION 1. ORS 163.575 is amended to read:

163.575. (1) A person commits the [crime] offense of endangering the welfare of a minor if the person knowingly:

(a) Induces, causes or permits an unmarried person under 18 years of age to witness an act of sexual conduct or sadomasochistic abuse as defined by ORS 167.060; [or]

(b) Permits a person under 18 years of age to enter or remain in a place where unlawful activity involving controlled substances is maintained or conducted; [or]

(c) Induces, causes or permits a person under 18 years of age to participate in gambling as defined by ORS 167.117; [or]

(d) Distributes, sells, or causes to be sold, tobacco in any form to a person under 18 years of age; or

(e) Sells to a person under 18 years of age any device in which tobacco, marijuana, cocaine or any controlled substance, as defined in ORS 475.005, is burned and the principal design and use of which is directly or indirectly to deliver tobacco smoke, marijuana smoke, cocaine smoke or smoke from any controlled substance into the human body including but not limited to:

(A) Pipes, water pipes, hookahs, wooden pipes, carburetor pipes, electric pipes, air driven pipes, corncob pipes, meerscham pipes and ceramic pipes, with or without screens, permanent screens, hashish heads or punctured metal bowls;

(B) Carburetion tubes and devices, including carburetion masks;

(C) Bonges;

(D) Chillums;

(E) Ice pipes or chillers;

(F) Cigarette rolling papers and rolling machines; and

(G) Cocaine free basing kits.

(2) Endangering the welfare of a minor by violation of subsection (1)(a), (b), [or] (c) [or (e)] of this section, **or by violation of subsection (1)(e) of this section** involving other than a device for smoking tobacco, is a Class A misdemeanor.

(3) Endangering the welfare of a minor by violation of subsection (1)(d) of this section [or by violation of subsection (1)(e) of this section, involving a device for smoking tobacco,] is a Class A violation.

(4) Endangering the welfare of a minor by violation of subsection (1)(e) of this section involving a device for smoking tobacco is a Class A violation.

SECTION 2. ORS 431.840 is amended to read:

431.840. (1) It shall be unlawful to do any of the following:

(a) To distribute free tobacco products to persons under 18 years of age as part of a marketing strategy to encourage the use of tobacco products.

(b) To fail as a retailer to post a notice substantially similar to that set forth in subsection (3) of this section in a location clearly visible to the seller and the purchaser that sale of tobacco products to persons under 18 years of age is prohibited.

(c) To sell cigarettes in any form other than a sealed package.

(2) As used in this section "tobacco products" means bidis, cigars, cheroots, stogies, periques, granulated, plug cut, crimp cut, ready rubbed and other smoking tobacco, snuff, snuff flour, cavendish, plug and twist tobacco, fine-cut and other chewing tobaccos, shorts, refuse scraps, clippings, cuttings and sweepings of tobacco and other kinds and forms of tobacco, prepared in such manner as to be suitable for chewing or smoking in a pipe or otherwise, or both for chewing and smoking, and shall include cigarettes as defined in ORS 323.010 (1).

(3) The notice shall be substantially as follows:

NOTICE

The sale of tobacco in any form to persons under 18 years of age is prohibited by law. Any person who knowingly sells, or causes to be sold, tobacco to a person under 18 years of age commits the [crime] offense of endangering the welfare of a minor, pursuant to ORS 163.575.

SECTION 3. ORS 471.410 is amended to read:

471.410. (1) A person may not sell, give or otherwise make available any alcoholic liquor to any person who is visibly intoxicated.

(2) No one other than the person's parent or guardian may sell, give or otherwise make available any alcoholic liquor to a person under the age of 21 years. A parent or guardian may give or otherwise make alcoholic liquor available to a person under the age of 21 years only if the person is in a private residence and is accompanied by the parent or guardian. A person violates this subsection who sells, gives or otherwise makes available alcoholic liquor to a person with the knowledge that the person to whom the liquor is made available will violate this subsection.

(3)(a) A person who exercises control over private real property may not knowingly allow any other person under the age of 21 years who is not a child or minor ward of the person to consume alcoholic liquor on the property, or allow any other person under the age of 21 years who is not a child or minor ward of the person to remain on the property if the person under the age of 21 years consumes alcoholic liquor on the property.

(b) This subsection:

(A) Applies only to a person who is present and in control of the location at the time the consumption occurs;

(B) Does not apply to the owner of rental property, or the agent of an owner of rental property, unless the consumption occurs in the individual unit in which the owner or agent resides; and

(C) Does not apply to a person who exercises control over a private residence if the liquor consumed by the person under the age of 21 years is supplied only by an accompanying parent or guardian.

(4) This section does not apply to sacramental wine given or provided as part of a religious rite or service.

(5) Except as provided in [subsection (6)] **subsections (6) and (7)** of this section, a person who violates subsection (1) or (2) of this section commits a Class A misdemeanor. Upon violation of subsection (2) of this section, the court shall impose at least a mandatory minimum sentence as follows:

(a) Upon a first conviction, a fine of at least \$500.

(b) Upon a second conviction, a fine of at least \$1,000.

(c) Upon a third or subsequent conviction, a fine of at least \$1,500 and not less than 30 days of imprisonment.

(6)(a) A person who violates subsection (2) of this section is subject to the provisions of this subsection if the person does not act knowingly or intentionally and:

(A) Is licensed or appointed under this chapter; or

(B) Is an employee of a person licensed or appointed under this chapter and holds a valid service permit or has attended a program approved by the Oregon Liquor Control Commission that provides training to avoid violations of this section.

(b) For a person described in paragraph (a) of this subsection:

(A) A first conviction is a Class A violation.

(B) A second conviction is a specific fine violation, and the presumptive fine for the violation is \$860.

(C) A third conviction is a Class A misdemeanor. The court shall impose a mandatory fine of not less than \$1,000.

(D) A fourth or subsequent conviction is a Class A misdemeanor. The court shall impose a mandatory fine of not less than \$1,000 and a mandatory sentence of not less than 30 days of imprisonment.

(7) For an employee of an off-premises sales licensee who violates subsection (2) of this section while operating a checkout device and does not act knowingly or intentionally, a first conviction is a Class A violation.

[(7)] **(8)** The court may waive an amount that is at least \$200 but not more than one-third of the fine imposed under subsection (5) of this section, if the violator performs at least 30 hours of community service.

[(8)] **(9)** Except as provided in subsection [(7)] **(8)** of this section, the court may not waive or suspend imposition or execution of the mandatory minimum sentence required by subsection (5) or (6) of this section. In addition to the mandatory sentence, the court may require the violator to make restitution for any damages to property where the alcoholic liquor was illegally consumed or may require participation in volunteer service to a community service agency.

[(9)(a)] **(10)(a)** Except as provided in paragraph (b) of this subsection, a person who violates subsection (3) of this section commits a Class A violation.

(b) A second or subsequent violation of subsection (3) of this section is a specific fine violation, and the presumptive fine for the violation is \$1,000.

[(10)] **(11)** Nothing in this section prohibits any licensee under this chapter from allowing a person who is visibly intoxicated from remaining on the licensed premises so long as the person is not sold or served any alcoholic liquor.

SECTION 4. The amendments to ORS 163.575 and 471.410 by sections 1 and 3 of this 2014 Act apply to conduct occurring on or after the effective date of this 2014 Act.

SECTION 5. The amendments to ORS 431.840 by section 2 of this 2014 Act do not require the replacement or alteration of any notice that is posted by a retailer prior to the effective date of this 2014 Act.

SECTION 6. This 2014 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2014 Act takes effect on its passage.

Approved by the Governor March 3, 2014
 Filed in the office of Secretary of State March 3, 2014
 Effective date March 3, 2014

CHAPTER 119

AN ACT

SB 1559

Relating to alcoholic beverages; amending ORS 181.010; and declaring an emergency.

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

SECTION 1. ORS 181.010 is amended to read: 181.010. As used in ORS 181.010 to 181.560 and 181.715 to 181.730, unless the context requires otherwise:

(1) "Criminal justice agency" means:

(a) The Governor;

(b) Courts of criminal jurisdiction;

(c) The Attorney General;

(d) District attorneys, city attorneys with criminal prosecutorial functions, attorney employees of the office of public defense services and nonprofit

public defender organizations established under contract with the Public Defense Services Commission;

- (e) Law enforcement agencies;
- (f) The Department of Corrections;
- (g) The Oregon Youth Authority;
- (h) The State Board of Parole and Post-Prison Supervision;
- (i) The Department of Public Safety Standards and Training;
- (j) The **enforcement division of the Oregon Liquor Control Commission**;
- (k) Regional information systems that share programs to track, identify and remove cross-jurisdictional criminal and terrorist conspiracies; and

(L) Any other state or local agency with law enforcement authority.

(2) "Criminal offender information" includes records and related data as to physical description and vital statistics, fingerprints received and compiled for purposes of identifying criminal offenders and alleged offenders, records of arrests and the nature and disposition of criminal charges, including sentencing, confinement, parole and release.

(3) "Department" means the Department of State Police established under ORS 181.020.

(4) "Deputy superintendent" means the Deputy Superintendent of State Police appointed under ORS 181.220.

(5) "Designated agency" means any state, county or municipal government agency where Oregon criminal offender information is required to implement a federal or state statute, executive order or administrative rule that expressly refers to criminal conduct and contains requirements or exclusions expressly based on such conduct or for agency employment purposes, licensing purposes or other demonstrated and legitimate needs when designated by order of the Governor.

(6) "Disposition report" means a form or process prescribed or furnished by the department, containing a description of the ultimate action taken subsequent to an arrest.

(7) "Law enforcement agency" means:

(a) County sheriffs, municipal police departments, police departments established by a university under ORS 352.383 or 353.125 and State Police;

(b) Other police officers of this state or another state, including humane special agents as defined in ORS 181.435;

(c) A tribal government as defined in section 1, chapter 644, Oregon Laws 2011, that employs authorized tribal police officers as defined in section 1, chapter 644, Oregon Laws 2011; and

(d) Law enforcement agencies of the federal government.

(8) "State police" means the sworn members of the state police force appointed under ORS 181.250.

(9) "Superintendent" means the Superintendent of State Police appointed under ORS 181.200.

SECTION 2. ORS 181.010, as amended by section 49, chapter 644, Oregon Laws 2011, section 19,

chapter 54, Oregon Laws 2012, section 12, chapter 67, Oregon Laws 2012, and section 30, chapter 180, Oregon Laws 2013, is amended to read:

181.010. As used in ORS 181.010 to 181.560 and 181.715 to 181.730, unless the context requires otherwise:

(1) "Criminal justice agency" means:

- (a) The Governor;
- (b) Courts of criminal jurisdiction;
- (c) The Attorney General;

(d) District attorneys, city attorneys with criminal prosecutorial functions, attorney employees of the office of public defense services and nonprofit public defender organizations established under contract with the Public Defense Services Commission;

- (e) Law enforcement agencies;
- (f) The Department of Corrections;
- (g) The Oregon Youth Authority;

(h) The State Board of Parole and Post-Prison Supervision;

(i) The Department of Public Safety Standards and Training;

(j) The **enforcement division of the Oregon Liquor Control Commission**;

(k) Regional information systems that share programs to track, identify and remove cross-jurisdictional criminal and terrorist conspiracies; and

(L) Any other state or local agency with law enforcement authority.

(2) "Criminal offender information" includes records and related data as to physical description and vital statistics, fingerprints received and compiled for purposes of identifying criminal offenders and alleged offenders, records of arrests and the nature and disposition of criminal charges, including sentencing, confinement, parole and release.

(3) "Department" means the Department of State Police established under ORS 181.020.

(4) "Deputy superintendent" means the Deputy Superintendent of State Police appointed under ORS 181.220.

(5) "Designated agency" means any state, county or municipal government agency where Oregon criminal offender information is required to implement a federal or state statute, executive order or administrative rule that expressly refers to criminal conduct and contains requirements or exclusions expressly based on such conduct or for agency employment purposes, licensing purposes or other demonstrated and legitimate needs when designated by order of the Governor.

(6) "Disposition report" means a form or process prescribed or furnished by the department, containing a description of the ultimate action taken subsequent to an arrest.

(7) "Law enforcement agency" means:

(a) County sheriffs, municipal police departments, police departments established by a university under ORS 352.383 or 353.125 and State Police;

(b) Other police officers of this state or another state, including humane special agents as defined in ORS 181.435; and

(c) Law enforcement agencies of the federal government.

(8) "State police" means the sworn members of the state police force appointed under ORS 181.250.

(9) "Superintendent" means the Superintendent of State Police appointed under ORS 181.200.

SECTION 3. This 2014 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2014 Act takes effect on its passage.

Approved by the Governor April 1, 2014
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Oregon Revised Statutes

Chapter 471

Alcoholic Liquors Generally

TITLE 37

ALCOHOLIC LIQUORS; CONTROLLED SUBSTANCES; DRUGS

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471.752	Agent participation in programs for state employees; preference of spouse or child of deceased agent or agent with disability	471.790	Commissioners not liable for official acts; commission funds entitled to priority
471.754	Commission to develop recycling education materials	471.795	Purchase and use of liquor by member or employee of commission
471.757	Statement of financial interest in business of licensee	471.800	Restrictions on out-of-state wine; imposition
471.760	Subpoena; oaths; depositions	471.805	Disposition of moneys; revolving fund
471.765	Procedure when person refuses to testify or produce books	471.810	Distribution of available moneys in Oregon Liquor Control Commission Account
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471.775	Service of subpoenas; authority of inspectors		PENALTIES
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GENERAL PROVISIONS

471.001 Definitions for ORS chapters 471 and 473. As used in this chapter and ORS chapter 473:

(1) "Alcoholic beverage" and "alcoholic liquor" mean any liquid or solid containing more than one-half of one percent alcohol by volume and capable of being consumed by a human being.

(2) "Commercial establishment" means a place of business:

(a) Where food is cooked and served;

(b) That has kitchen facilities adequate for the preparation and serving of meals;

(c) That has dining facilities adequate for the serving and consumption of meals; and

(d) That:

(A) If not a for-profit private club, serves meals to the general public; or

(B) If a for-profit private club, serves meals to the club's members and guests and complies with any minimum membership and food service requirements established by Oregon Liquor Control Commission rules.

(3) "Commission" means the Oregon Liquor Control Commission.

(4) "Distilled liquor" means any alcoholic beverage other than a wine, cider or malt beverage. "Distilled liquor" includes distilled spirits.

(5) "Licensee" means any person holding a license issued under this chapter.

(6) "Liquor enforcement inspector" means a full-time employee of the commission who is authorized to act as an agent of the commission in conducting inspections or investigations, making arrests and seizures, aiding in prosecutions for offenses, issuing citations for violations and otherwise enforcing this chapter, ORS 474.005 to 474.095 and 474.115, commission rules and any other statutes the commission considers related to alcoholic liquor.

(7)(a) "Malt beverage" means an alcoholic beverage obtained by the fermentation of grain that contains not more than 14 percent alcohol by volume.

(b) "Malt beverage" includes:

(A) Beer, ale, porter, stout and similar alcoholic beverages containing not more than 14 percent alcohol by volume;

(B) Malt beverages containing six percent or less alcohol by volume and that contain at least 51 percent alcohol by volume obtained by the fermentation of grain, as long as not more than 49 percent of the beverage's overall alcohol content is obtained

from flavors and other added nonbeverage ingredients containing alcohol; and

(C) Malt beverages containing more than six percent alcohol by volume that derive not more than 1.5 percent of the beverage's overall alcohol content by volume from flavors and other added nonbeverage ingredients containing alcohol.

(c) "Malt beverage" does not include cider or an alcoholic beverage obtained primarily by fermentation of rice, such as sake.

(8) "Manufacturer" means every person who produces, brews, ferments, manufactures or blends an alcoholic beverage within this state or who imports or causes to be imported into this state an alcoholic beverage for sale or distribution within the state.

(9) "Permittee" means a person holding a permit issued under ORS 471.360 to 471.390.

(10) "Premises" or "licensed premises" means a location licensed under this chapter and includes all enclosed areas at the location that are used in the business operated at the location, including offices, kitchens, rest rooms and storerooms, including all public and private areas where patrons are permitted to be present. "Premises" or "licensed premises" includes areas outside of a building that the commission has specifically designated as approved for alcoholic beverage service or consumption.

(11) "Wine" means any fermented vinous liquor or fruit juice, or other fermented beverage fit for beverage purposes that is not a malt beverage, containing more than one-half of one percent of alcohol by volume and not more than 21 percent of alcohol by volume. "Wine" includes fortified wine. "Wine" does not include cider. [1995 c.301 §2; 1999 c.351 §42; 2005 c.100 §1; 2010 c.33 §1; 2012 c.54 §1]

471.005 [Amended by 1965 c.280 §1; repealed by 1995 c.301 §33]

471.010 [Amended by 1979 c.236 §5; repealed by 1995 c.301 §33]

471.015 [Amended by 1975 c.207 §1; 1979 c.236 §6; repealed by 1995 c.301 §33]

471.017 [1975 c.207 §4; 1995 c.301 §53; repealed by 1999 c.351 §13 (471.159 enacted in lieu of 471.017)]

471.020 [Repealed by 1979 c.264 §14]

471.022 [1979 c.264 §3; 1995 c.301 §13; repealed by 1999 c.351 §41]

471.023 "Cider" defined. For the purposes of this chapter, "cider" means an alcoholic beverage made from the fermentation of the juice of apples or pears that contains not more than seven percent of alcohol by volume, including, but not limited to, flavored, sparkling or carbonated cider. [1999 c.351 §66; 2007 c.45 §1]

471.025 [Repealed by 1995 c.301 §7 (471.406 enacted in lieu of 471.025)]

471.027 Short title. This chapter and ORS 474.105 and 474.115 shall be known and may be cited as the "Liquor Control Act." [Amended by 1965 c.165 §1]

471.030 Purpose of Liquor Control Act.

(1) The Liquor Control Act shall be liberally construed so as:

(a) To prevent the recurrence of abuses associated with saloons or resorts for the consumption of alcoholic beverages.

(b) To eliminate the evils of unlicensed and unlawful manufacture, selling and disposing of such beverages and to promote temperance in the use and consumption of alcoholic beverages.

(c) To protect the safety, welfare, health, peace and morals of the people of the state.

(2) Consistent with subsection (1) of this section, it is the policy of this state to encourage the development of all Oregon industry.

471.035 Certain products excepted from liquor laws. No provision of the Liquor Control Act shall, by reason only that such product contains alcoholic liquor, prevent the sale of any perfume, lotion, tincture, varnish, dressing fluid, extracts, acid vinegar, or of any official medicinal or pharmaceutical preparations, or of any patent or proprietary medicine intended solely for medicinal purposes.

471.037 Homemade beer, wine and fermented fruit juice exemption from liquor laws. (1) As used in this section and ORS 471.268:

(a)(A) "Financial consideration," except as provided in subparagraph (B) of this paragraph, means value that is given or received directly or indirectly through sales, barter, trade, fees, charges, dues, contributions or donations.

(B) "Financial consideration" does not mean any of the following:

(i) A tax deduction or credit for donating beer, wine or fermented fruit juice to a non-profit organization.

(ii) An event admission charge or club or organization dues, if the amount of the admission charge or dues is independent of the amount of alcoholic beverages to be provided or consumed at the event or through club or organization activities.

(iii) A prize awarded at a state or county fair or other organized judging, tasting, exhibition, contest or competition at which consumption of a submitted beer, wine or fermented fruit juice is without charge and only by the entrants, submitters, judges, exhibitors, contestants or competitors.

(iv) Homemade beers, wines or fermented fruit juices made by other persons.

(v) Beer, wine or fermented fruit juice ingredients.

(vi) Wages and salaries paid by an educational organization for teaching brewing, winemaking, fermentation science or fermentation processes.

(b) "Homemade" means made for non-commercial purposes.

(c) "Noncommercial" means not dependent or conditioned upon the provision or receipt of financial consideration.

(2) Except as provided in subsection (3) of this section, the Liquor Control Act does not apply to the following:

(a) The making of homemade beer, wine or fermented fruit juice, if the total of beer, wine and fermented fruit juice produced during a calendar year does not exceed:

(A) One hundred gallons in a household having one person who is 21 years of age or older; or

(B) Two hundred gallons in a household having two or more persons who are 21 years of age or older.

(b) The keeping, storage or transportation of homemade beer, wine or fermented fruit juice.

(c) The possession of mash, wort or wash, for the purpose of making homemade beer, wine or fermented fruit juice.

(d) Except as provided in ORS 471.268, the noncommercial consumption at any location of homemade beer, wine or fermented fruit juice.

(3) Subsection (2) of this section does not exempt any person from ORS 471.410, 471.430 or 471.432. [2011 c.12 §2]

471.038 Nonbeverage food products. (1) Nonbeverage food products described in subsection (6) of this section may be sold at retail by any holder of a license issued by the Oregon Liquor Control Commission that authorizes the sale of alcoholic liquor at retail, or in any store operated by the commission under the provisions of ORS 471.750. Any nonbeverage food product containing more than one-half of one percent of alcohol by volume must be clearly labeled to reflect the alcohol content of the product and clearly labeled on the front of the package to indicate that the product may not be sold to persons under 21 years of age.

(2) Except as provided by this section, sales of nonbeverage food products described in subsection (6) of this section are subject to all provisions of this chapter, including the prohibitions on sales to persons under 21

years of age and the prohibitions on sales to persons who are visibly intoxicated.

(3) Nonbeverage food products described in subsection (6) of this section may be imported, stored and distributed in this state without a license issued by the commission. Nonbeverage food products described in subsection (6) of this section are not subject to the privilege taxes imposed by ORS chapter 473.

(4) Manufacturers of nonbeverage food products described in subsection (6) of this section are not subject to the provisions of ORS 471.392 to 471.400, 471.485, 471.490 or 471.495 or any other provision of this chapter relating to manufacturers of alcoholic liquor. A manufacturer of nonbeverage food products described in subsection (6) of this section may sell and deliver the product directly to a licensee authorized under this section to sell the product at retail.

(5) The holder of a distillery license issued under ORS 471.230 who is also a manufacturer of nonbeverage food products described in subsection (6) of this section may purchase distilled liquor directly from other distilleries.

(6) The provisions of this section apply only to nonbeverage food products that contain not more than five percent alcohol by weight or 10 percent alcohol by volume, whichever is greater. [1995 c.250 §2; 1997 c.249 §169; 1997 c.258 §1; 1999 c.351 §43]

471.039 Certain cruise ships exempt from liquor laws. (1) Notwithstanding any provision of this chapter, the Oregon Liquor Control Commission may not require the owners, operators and employees of a cruise ship to have a license or permit issued under the provisions of this chapter for the purpose of possessing, transporting, storing, selling or serving alcoholic beverages that are described in subsection (3) of this section.

(2) The provisions of ORS 471.740 do not apply to alcoholic beverages that are described in subsection (3) of this section.

(3) The provisions of this section apply only to alcoholic beverages that are served aboard a cruise ship and that are served solely for the purpose of onboard consumption by a cruise ship's passengers, guests, officers and employees.

(4) For the purposes of this section, "cruise ship" means a marine vessel used primarily for nonfishing purposes that is licensed to carry at least 500 passengers, provides overnight accommodations for those passengers and operates on the rivers or waterways within the boundaries of the State of Oregon, including docking and dry docking, fewer than 45 days during a calendar year. [1997 c.256 §2; 1999 c.351 §44]

471.040 General powers and duties of the commission; rules; delegation. (1) The Oregon Liquor Control Commission has the powers and duties specified in this chapter and ORS 474.105 and 474.115, and also the powers necessary or proper to enable it to carry out fully and effectually all the purposes of this chapter and ORS 474.105 and 474.115. It shall make such rules and regulations pertaining to natural and fortified wines as will prevent the importation and sale in Oregon of blended, rectified, adulterated or low-quality wines. The jurisdiction, supervision, powers and duties of the commission extend to any person who buys, sells, manufactures, imports or transports any alcoholic liquor within this state. The commission may sue and be sued.

(2) Except for the power to adopt rules, the commission may delegate any of the commission's powers or duties to the administrator appointed under ORS 471.720. [Amended by 2001 c.785 §10]

471.045 Liquor laws supersede and repeal inconsistent charters and ordinances. The Liquor Control Act, designed to operate uniformly throughout the state, shall be paramount and superior to and shall fully replace and supersede any and all municipal charter enactments or local ordinances inconsistent with it. Such charters and ordinances hereby are repealed.

PURCHASER'S QUALIFICATIONS AND IDENTIFICATION

471.105 Purchaser's qualifications. Before being qualified to purchase alcoholic liquor from the Oregon Liquor Control Commission, a person must be at least 21 years of age. [Amended by 1961 c.687 §5; 1967 c.577 §1; 1971 c.159 §1; 2005 c.22 §343]

471.110 [Amended by 1961 c.259 §3; repealed by 1967 c.577 §10]

471.115 Limitations on purchasing may be imposed. The Oregon Liquor Control Commission may limit the quantity of alcoholic liquor purchased at any one time by any person. It may limit the amount of purchases within any length of time so as effectually to prevent the resale of such liquors.

471.120 [Repealed by 1967 c.577 §10]

471.125 [Amended by 1967 c.577 §2; repealed by 1971 c.159 §9]

471.130 Requiring statement of age or identification from certain purchasers. (1) All licensees and permittees of the Oregon Liquor Control Commission, before selling or serving alcoholic liquor to any person about whom there is any reasonable doubt of the person's having reached 21 years of age, shall require such person to produce one of the following pieces of identification:

(a) The person's passport.

(b) The person's motor vehicle operator's license, whether issued in this state or by any other state, so long as the license has a picture of the person.

(c) An identification card issued under ORS 807.400.

(d) A United States military identification card.

(e) Any other identification card issued by a state that bears a picture of the person, the name of the person, the person's date of birth and a physical description of the person.

(2) If a person does not have identification as described in subsection (1) of this section, the permittee or licensee shall require such person to make a written statement of age and furnish evidence of the person's true age and identity. The written statement of age shall be on a form furnished or approved by the commission, including but not limited to the following information:

(2) If a written statement of age and the information pertaining to the evidence which was exhibited to the permittee or licensee at the time the statement was made that is entered in writing on the statement, are offered as evidence in any administrative or criminal prosecution for sale or service of alcoholic liquor to a person not having reached 21 years of age, the permittee or licensee shall be found to have committed no crime or other wrong unless it is demonstrated that a reasonable person would have determined that the identification exhibited was altered or did not accurately describe the person to whom the alcoholic liquor was sold or served. [Amended by 1955 c.525 §2; 1967 c.53 §1; 1979 c.313 §2]

471.140 [1961 c.687 §2; 1963 c.93 §3; 1971 c.433 §1; repealed by 1979 c.313 §10]

471.143 [1963 c.93 §2; 1967 c.569 §1; 1971 c.159 §2; 1979 c.313 §4; repealed by 1979 c.313 §11]

471.145 [1961 c.687 §§3,6; 1963 c.93 §4; repealed by 1979 c.313 §11]

471.150 [1961 c.687 §7; 1963 c.93 §5; 1967 c.569 §2; 1971 c.159 §3; repealed by 1979 c.313 §11]

LIQUOR LICENSES (Generally)

471.155 Commission's licensing duties; bonds. (1) The Oregon Liquor Control Commission shall provide for the licensing of persons and cities within the state to manufacture, distribute, take orders for and sell spirits, wines, beer and other alcoholic liquors. Except as provided in subsection (2) of this section, the holder of a brewery, winery, wholesale, warehouse, grower sales privilege or brewery-public house license or the holder of a wine self-distribution permit shall give, and at all times maintain on file with the commission, a bond with a corporate surety authorized to transact business in this state. The bond shall be in form and amount acceptable to the commission, shall be payable to the commission and conditioned that the licensee or permittee will pay any fine imposed for any violation of any provision of the Liquor Control Act and that the licensee or permittee will pay all license fees, privilege taxes, taxes imposed under ORS 473.045 and other taxes on alcoholic liquors, together with penalties and interest thereon, levied or assessed against the licensee or permittee under statutes relating to the importation, manufacture, distribution, sale or taxation of alcoholic liquors in the State of Oregon.

(2) Under such conditions as the commission may prescribe, the holder of a brewery, winery, wholesale, warehouse, grower sales privilege or brewery-public house license or the holder of a wine self-distribution permit may deposit, in lieu of the bond required by subsection (1) of this section, the equivalent value in cash, bank

Date _____
I am 21 years of age or over. _____
Signature
Description of evidence in support of age and identity:
_____ Identification No. (if any) _____
_____ Identification No. (if any) _____

(Fill in information pertaining to any two or more pieces of evidence submitted by the person.)

I hereby certify that I have accurately recorded identification of the evidence submitted to complete this form.

Signature of permittee or licensee
ORS 165.805 provides as follows:

165.805. (1) A person commits the crime of misrepresentation of age by a minor if:

(a) Being less than a certain, specified age, the person knowingly purports to be of any age other than the person's true age with the intent of securing a right, benefit or privilege which by law is denied to persons under that certain, specified age; or

(b) (Not applicable.)

(2) Misrepresentation of age by a minor is a Class C misdemeanor.

[Amended by 1955 c.525 §1; 1961 c.687 §4; 1967 c.171 §1; 1967 c.577 §7; 1979 c.313 §1; 1983 c.338 §939; 1995 c.44 §1; 1999 c.526 §1; 2001 c.785 §6; 2003 c.225 §1]

471.135 False statement of age; statement of age as defense. (1) No person shall make a written statement of age under ORS 471.130 that is false in whole or in part, or produce any evidence that would falsely indicate the person's age.

letters of credit recognized by the State Treasurer or negotiable securities of a character approved by the State Treasurer. The deposit is to be made in a bank or trust company for the benefit of the commission. Interest on deposited funds or securities shall accrue to the depositor. [Formerly 471.210; 2007 c.637 §1; 2007 c.651 §5a]

471.157 Licenses issuable. The licenses described in this chapter may be issued by the Oregon Liquor Control Commission, subject to its regulations and restrictions and the provisions of the Liquor Control Act. [Formerly 471.215; 2013 c.537 §1]

471.159 Enclosure of licensed premises. (1) The Oregon Liquor Control Commission may not license a location that does not have defined boundaries.

(2) A licensed premises need not be enclosed by a wall, fence or other structure, but the commission may require that any licensed premises be enclosed as a condition of issuing or renewing a license.

(3) Except as provided in ORS 471.182, the commission may not license premises that are mobile. [1999 c.351 §14 (enacted in lieu of 471.017)]

471.162 Exemptions from license requirement. (1) Hospitals, sanitariums, convalescent homes, rest homes, retirement homes and facilities for the care of the elderly that have been licensed or registered by the state may sell and serve alcoholic beverages to patients, inmates and residents, and to bona fide visitors and guests of patients, inmates and residents, without a license issued under this chapter. Facilities authorized to sell and serve alcoholic beverages without a license under this subsection may not sell or serve alcoholic beverages after 10 p.m. except upon a physician's prescription.

(2) A person who operates a private residence that is not a boarding house but that accommodates transient guests for a limited duration may sell and serve wine, malt beverages and cider to registered overnight guests without a license. Facilities authorized to sell and serve alcoholic beverages without a license under this subsection must have six or fewer guest units.

(3) A person who is an employee or agent of the holder of a license issued under this chapter that authorizes wholesale distribution of alcoholic beverages may, on behalf of the licensee, sell alcoholic beverages in factory-sealed containers to retail licensees and wholesalers.

(4) A pharmacist licensed under the laws of this state may sell alcoholic beverages without a license. Pharmacists may only sell alcoholic beverages under the provisions of

this section if the alcoholic beverages are drugs as defined in ORS 689.005. A pharmacist may sell alcoholic beverages under the provisions of this subsection pursuant to a prescription, in containers of not more than one quart capacity.

(5) A wine collector, or the agent of a wine collector, may sell wine in factory-sealed containers at auction without a license. Any wine sold under this subsection must have been held by the collector for at least a six-month period. A wine collector must receive written approval from the Oregon Liquor Control Commission before conducting a sale under this subsection. No more than one sale in a 12-month period may be conducted by a wine collector under the provisions of this subsection.

(6) A nonprofit or charitable organization registered in this state may sell wine, malt beverages and cider, and a total of not more than four liters of distilled liquor, in factory-sealed containers at an auction or through a raffle without a license. The organization must receive written approval from the commission before conducting an auction or raffle under this subsection. The organization may conduct no more than one auction or raffle under this subsection in a 12-month period. The auction or raffle may not have a duration of more than one day. The organization may sell under this subsection wine, malt beverages, cider and distilled liquor purchased by or donated to the organization. The purchased or donated wine, malt beverages, cider and distilled liquor must be imported into this state by the commission or be manufactured in or imported into this state under a brewery, brewery-public house, distillery, grower sales privilege, winery or wholesale malt beverage and wine license.

(7) A manufacturer may sell proprietary or patent medicines, perfumes, lotions, flavoring extracts, medicinal tinctures and other preparations unfit for beverage purposes without a license. [1999 c.351 §10; 2012 c.16 §1]

(Authority of Cities and Counties)

471.164 Authority of cities and counties over establishments that offer entertainment or serve alcoholic beverages. (1) Cities and counties may adopt reasonable time, place and manner regulations of the nuisance aspects of establishments that offer entertainment or serve alcoholic beverages if the city or county makes specific findings that the establishment would cause adverse effects to occur.

(2) The authority granted to cities and counties by this section is in addition to, and not in lieu of, the authority granted to a city or county under its charter and the statutes

and Constitution of this state. [Formerly 471.213]

471.166 Local government recommendations on license issuance and renewal; rules; fees. (1) The Oregon Liquor Control Commission may require that every applicant for issuance or renewal of a license under this chapter acquire a written recommendation from the governing body of the county if the place of business of the applicant is outside an incorporated city, and from the city council if the place of business of the applicant is within an incorporated city. The commission may take such written recommendation into consideration before granting or refusing the license.

(2) If the commission requires that an applicant for issuance of a new license acquire the written recommendation of a local government, the applicant must give notice to the local government when an application is made for issuance of the license. If the local government files a favorable recommendation with the commission within 45 days after the notice is given, the commission shall proceed with consideration of the application. The commission shall proceed with consideration of the application as though the local government had made a favorable recommendation unless, within 45 days after notice is given to the local government:

(a) The local government files an unfavorable recommendation with the commission with a statement of the grounds for the unfavorable recommendation; or

(b) The local government files a request for additional time with the commission that sets forth the reason additional time is needed by the local government, a statement that the local government is considering making an unfavorable recommendation on the application, and the specific grounds on which the local government is considering making an unfavorable recommendation.

(3) If the commission requires that an applicant for renewal of a license acquire the written recommendation of a local government under this section, the commission shall give notice to the local government when an application is due for renewal of the license. If the local government files a favorable recommendation with the commission within 60 days after the notice is given, the commission shall proceed with consideration of the application. The commission shall proceed with consideration of the application as though the local government had made a favorable recommendation unless within 60 days after notice is given to the local government:

(a) The local government files an unfavorable recommendation with the commis-

sion with a statement of the grounds for the unfavorable recommendation; or

(b) The local government files a request for additional time with the commission that sets forth the reason additional time is needed by the local government, a statement that the local government is considering making an unfavorable recommendation on the application, and the specific grounds on which the local government is considering making an unfavorable recommendation.

(4) The commission shall suspend consideration of an application subject to this section for a reasonable period of time if a local government requests additional time under subsection (2)(b) or (3)(b) of this section and the grounds given by the local government are valid grounds for an unfavorable determination under this chapter or rules adopted by the commission. The commission shall by rule establish the period of time that shall be granted to a local government pursuant to a request under subsections (2)(b) and (3)(b) of this section.

(5) The commission shall by rule establish valid grounds for unfavorable recommendations by local governments under this section. Valid grounds established by the commission under this section for an unfavorable recommendation by a local government must be limited to those grounds considered by the commission in making an unfavorable determination on a license application.

(6) A person filing an application for issuance or renewal of a license that is subject to this section must remit to the local government the fees established under subsections (7) and (8) of this section. The commission shall give notice to the applicant for license renewal of the amount of the fees and the name of the local government collecting the fees. The commission is not responsible for collecting the fees charged by the local government or for ensuring that the fees have been paid. An applicant for a license renewal shall certify in the application form filed with the commission that the applicant has paid any fees required under this section.

(7) An applicant required to seek a written recommendation from a local government must pay an application fee to the local government, in an amount determined by the governing body of the city or county, for each application for a license. The application fee established by a local government under this subsection may not exceed \$25.

(8) After public notice and hearing, the governing body of a city or county may adopt an ordinance, rule or resolution prescribing licensing guidelines to be followed in making recommendations on license applications un-

der this chapter and in allowing opportunity for public comment on applications. If the guidelines are approved by the commission as consistent with commission rules, after public notice and hearing the governing body may adopt an ordinance, rule or regulation establishing a system of fees that is reasonable and necessary to pay expenses of processing the written recommendation. Processing fees under this subsection are in lieu of fees under subsection (7) of this section. In no case shall the processing fee under this subsection be greater than \$100 for an original application, \$75 for a change in ownership, change in location or change in privilege application, and \$35 for a renewal or temporary application. [1999 c.351 §20; 2003 c.337 §1]

(Mandatory Liability Insurance)

471.168 Certain licensees required to maintain liquor liability insurance or bond; rules. (1) For the purpose of providing coverage for injuries suffered by persons by reason of the conduct of intoxicated persons who were served alcoholic beverages on licensed premises while visibly intoxicated, all persons holding a license described in this section must either:

(a) Maintain liquor liability insurance of not less than \$300,000; or

(b) Maintain a bond with a corporate surety authorized to transact business in this state in the amount of not less than \$300,000.

(2) The Oregon Liquor Control Commission may by rule require liquor liability insurance or bond in an amount larger than the minimum amount provided for in subsection (1) of this section.

(3) The requirements of this section apply to full on-premises sales licenses, limited on-premises sales licenses and brewery-public house licenses. The requirements of this section apply to temporary sales licenses, special events winery licenses, special events grower sales privilege licenses, special events brewery-public house licenses and special events distillery licenses if the event that is licensed is open to the public and attendance at the event is anticipated to exceed 300 individuals per day.

(4) The requirements of this section apply to winery licenses, brewery licenses and grower sales privilege licenses unless an applicant for issuance of the license or renewal of the license submits with the application for issuance or renewal of the license an affidavit that states that the licensee will not allow consumption of alcoholic beverages on the premises.

(5) All licensees subject to the requirements of this section must supply proof of

compliance at the time the license is issued or renewed. The commission by rule shall determine the manner in which proof of compliance may be made under the provisions of this subsection. The commission may require a licensee to present proof of compliance with liquor liability insurance and bond requirements at any time upon request of the commission.

(6) Failure of a licensee to comply with liquor liability insurance or bond requirements imposed under this section constitutes a serious threat to public health and safety. In addition to any action available to the commission under ORS 471.313 or 471.315, the commission may immediately suspend or refuse renewal of a license as provided under ORS 183.430 (2) if the licensee fails to comply with those insurance or bond requirements.

(7) If a licensee fails to provide proof of compliance with liquor liability insurance or bond requirements imposed under this section at the time of license renewal or when requested by the commission, the failure is sufficient reason for the commission to find for purposes of ORS 183.430 (2) that the licensee has failed to comply with the insurance or bond requirements. [Formerly 471.218; 2009 c.140 §1; 2009 c.237 §1; 2009 c.514 §1]

(Retail Licenses)

471.175 Full on-premises sales license.

(1) The holder of a full on-premises sales license may sell by the drink at retail wine, malt beverages, cider and distilled liquor. Except as provided in this section, all alcoholic beverages sold under a full on-premises sales license must be consumed on the licensed premises.

(2) A full on-premises sales license may be issued only to:

(a) A nonprofit private club, as described in subsection (8) of this section.

(b) A public passenger carrier as provided in ORS 471.182.

(c) A commercial establishment, as defined in ORS 471.001 (2).

(d) A public location that does not qualify for licensing under paragraphs (a) to (c) of this subsection if:

(A) Food is cooked and served at the location;

(B) The predominant business activity at the location is other than the preparation or serving of food or the serving of alcohol; and

(C) The location meets any minimum food service requirements established by Oregon Liquor Control Commission rule.

(e) A caterer, subject to the requirements of ORS 471.184.

(3) The holder of a full on-premises sales license shall allow a patron to remove a partially consumed bottle of wine from the licensed premises if the wine is served in conjunction with the patron's meal, the patron is not a minor and the patron is not visibly intoxicated.

(4) The holder of a full on-premises sales license is entitled to purchase any distilled liquor from an agent of the commission appointed pursuant to ORS 471.750 at a discount of not more than five percent off the regular listed price fixed by the commission, together with all taxes, in a manner prescribed by commission rule. For purposes of compensation by the commission, the appointed agent shall be credited with such sales at full retail cost. The commission may not require the licensee to purchase more than one container of distilled liquor at a time if the distilled liquor:

(a) Except as provided in subsection (9) of this section, has a retail sales price of \$30 or more per container;

(b) Is available through a distributor in the United States that does not require the commission to acquire more than one case of the distilled liquor in a single transaction;

(c) Is not regularly stocked by the commission; and

(d) Is ordered in a 750 milliliter container size if available in that size.

(5) The holder of a full on-premises sales license may purchase distilled liquor only from a retail sales agent of the commission or from another person licensed under this section who has purchased the distilled liquor from a retail sales agent of the commission.

(6) The holder of a full on-premises sales license may sell factory-sealed containers of wine to a person who organizes a private gathering on the licensee's premises if the wine was acquired as part of a larger purchase of wine by the licensee for the purpose of the gathering and only part of the larger purchase was consumed at the gathering. Wine sold under this subsection may be sold only for an amount adequate to compensate the licensee for the amounts paid by the licensee for the wine.

(7) The holder of a full on-premises sales license may sell for consumption off the licensed premises malt beverages, wines and cider in securely covered containers provided by the consumer and having capacities of not more than two gallons each.

(8) A nonprofit private club, including but not limited to a fraternal or veterans organization, may qualify for a full on-premises sales license under this section only if the

club meets any minimum membership, non-profit status and food service requirements established by commission rule.

(9) The commission may annually adjust the price threshold established in subsection (4)(a) of this section by a percentage equal to the percentage change in the Portland-Salem, OR-WA Consumer Price Index for All Urban Consumers for All Items as published by the Bureau of Labor Statistics of the United States Department of Labor. However, the commission may not adjust the price threshold to be less than \$30. [1999 c.351 §2; 2001 c.104 §213; 2001 c.154 §1; 2010 c.33 §2; 2011 c.180 §1; 2013 c.32 §1]

471.178 Limited on-premises sales license. (1) The holder of a limited on-premises sales license may sell by the drink at retail wine, malt beverages and cider. Except as provided in this section, all alcoholic beverages sold under a limited on-premises sales license must be consumed on the licensed premises.

(2) The holder of a limited on-premises sales license may sell malt beverages in factory-sealed containers for consumption off the licensed premises. Containers sold under this subsection may not hold less than seven gallons per container.

(3) The holder of a limited on-premises sales license may sell for consumption off the licensed premises malt beverages, wines and cider in securely covered containers provided by the consumer and having capacities of not more than two gallons each.

(4) The holder of a limited on-premises sales license shall allow a patron to remove a partially consumed bottle of wine from the licensed premises if the wine is served in conjunction with the patron's meal, the patron is not a minor and the patron is not visibly intoxicated.

(5) Sales of alcoholic beverages under a limited on-premises sales license must consist principally of sales by the drink for consumption on the licensed premises. [1999 c.351 §3; 2001 c.154 §2; 2013 c.32 §2]

471.180 In-room supply of alcoholic beverages by hotel or arena. A full or limited on-premises sales license issued to a hotel or arena under the provisions of this chapter authorizes the person to whom the license is issued to provide for in-room supplies of the alcoholic beverages otherwise authorized to be sold under the license. Any in-room supply of alcoholic beverages that are available for purchase by patrons of the hotel or arena shall be kept in a locked cabinet, and shall conform with any rules that the Oregon Liquor Control Commission may promulgate to ensure the enforcement of other provisions of this chapter. [Formerly 471.307]

471.182 Issuance of full or limited on-premises sales license to public passenger carrier. (1) The Oregon Liquor Control Commission may grant a full or limited on-premises sales license to the owner or operator of a licensed public passenger carrier only as specified in this section. A public passenger carrier licensed by the commission under this section must serve food as required by rules of the commission.

(2) The commission may issue a full on-premises sales license to:

(a) An airline for use in operating aircraft that are licensed to carry at least 40 passengers and that arrive at or depart from an airport in this state.

(b) A railroad corporation for use in operating passenger trains in this state.

(c) The owner or operator of one or more tour boats that are licensed to carry at least 40 passengers to or from any port of this state and that are primarily used for non-fishing purposes.

(3) The commission may issue a limited on-premises sales license to any of the persons specified in subsection (2) of this section. In addition, the commission may issue a limited on-premises sales license to the owner or operator of a licensed public passenger carrier not described in subsection (2) of this section if the carrier is a mobile vehicle that is licensed to carry at least 40 passengers. [1999 c.351 §4]

471.184 Catering and other temporary off-premises service under full or limited on-premises sales license; rules. (1) The holder of a full or limited on-premises sales license may cater a temporary event at a location other than the licensed premises if the event is not open to the general public. Catering of an event under this subsection must be pursuant to a contract with a client. The contract must provide that the licensee will furnish food and beverage services for no more than 100 patrons. The licensee must serve food as required by rules of the commission. The licensee may cater events under this subsection without giving advance notice to the Oregon Liquor Control Commission if, before the event occurs, the commission gives written approval to the licensee authorizing catering pursuant to this subsection. Events catered under the provisions of this subsection must meet all requirements of enclosure of premises that may be imposed by the commission for the purposes of this section. Notwithstanding ORS 471.175 (3) and (7) and 471.178 (2) to (4), the licensee may not permit patrons of the event to remove any alcoholic beverages from the premises of the event.

(2) In addition to catered events under subsection (1) of this section, the commission may by rule allow the exercise of the privileges of a full or limited on-premises sales license at temporary events held at locations other than the licensed premises. The commission may:

(a) Require notice to the commission before the exercise of license privileges at temporary events under this subsection;

(b) Require that written approval by the commission be obtained before the exercise of license privileges at temporary events under this subsection;

(c) Establish eligibility criteria for the exercise of license privileges at temporary events under this subsection; and

(d) Establish fees reasonably calculated to cover administrative expenses incurred by the commission in administering this subsection. [1999 c.351 §5; 2001 c.154 §3]

471.186 Off-premises sales license; deliveries to retail customers. (1) The holder of an off-premises sales license may sell factory-sealed containers of wine, malt beverages and cider. Factory-sealed containers of malt beverages sold under the license may not hold more than two and one-quarter gallons.

(2) The holder of an off-premises sales license may sell for consumption off the licensed premises malt beverages, wines and cider in securely covered containers supplied by the consumer and having capacities of not more than two gallons each.

(3) The holder of an off-premises sales license may provide sample tasting of alcoholic beverages on the licensed premises if the licensee makes written application to the Oregon Liquor Control Commission and receives approval from the commission to conduct tastings on the premises. Tastings must be limited to the alcoholic beverages that may be sold under the privileges of the license.

(4) An off-premises sales license may not be issued for use at a premises that is mobile.

(5) Except as provided in ORS 471.402, a manufacturer or wholesaler may not provide or pay for sample tastings of alcoholic beverages for the public on premises licensed under an off-premises sales license.

(6) The holder of an off-premises sales license may deliver wine or cider that is sold under the privileges of the license to retail customers in this state without a direct shipper permit issued under ORS 471.282. Any deliveries by the holder of an off-premises sales license are subject to any rules adopted by the commission relating to

deliveries made under this subsection. Deliveries under this subsection:

(a) May be made only to a person who is at least 21 years of age;

(b) May be made only for personal use and not for the purpose of resale; and

(c) Must be made in containers that are conspicuously labeled with the words: "CONTAINS ALCOHOL: SIGNATURE OF PERSON AGE 21 YEARS OR OLDER REQUIRED FOR DELIVERY."

(7) The holder of an off-premises sales license that makes deliveries of wine or cider under subsection (6) of this section must take all actions necessary to ensure that a carrier used by the licensee does not deliver any wine or cider unless the carrier:

(a) Obtains the signature of the recipient of the wine or cider upon delivery;

(b) Verifies by inspecting government-issued photo identification that the recipient is at least 21 years of age; and

(c) Determines that the recipient is not visibly intoxicated at the time of delivery.

(8) Any person who knowingly or negligently delivers wine or cider under the provisions of this section to a person under 21 years of age, or who knowingly or negligently delivers wine or cider under the provisions of this section to a visibly intoxicated person, violates ORS 471.410.

(9) If a court determines that deliveries of wine or cider under subsection (6) of this section cannot be restricted to holders of off-premises sales licenses, and the decision is a final judgment that is no longer subject to appeal, the holder of an off-premises sales license may not make deliveries of wine or cider under the provisions of subsection (6) of this section after entry of the final judgment. [1999 c.351 §6; 2008 c.34 §1; 2013 c.32 §3]

471.190 Temporary sales license; rules.

(1) The holder of a temporary sales license may:

(a) Sell at retail by the drink wine, malt beverages, cider and distilled liquor.

(b) Sell for consumption off the licensed premises wine, malt beverages and cider in factory-sealed containers.

(c) Sell for consumption off the licensed premises wine, malt beverages and cider in securely covered containers supplied by the consumer and having capacities of not more than two gallons each.

(2) Distilled liquor served by the holder of a temporary sales license must be purchased from a retail sales agent of the Oregon Liquor Control Commission. The holder of a temporary sales license must provide food service as required by commission rule.

(3) A temporary sales license may be issued only to:

(a) Nonprofit or charitable organizations that are registered with the state.

(b) A political committee that has filed a statement of organization under ORS 260.039 or 260.042.

(c) State agencies.

(d) Local governments, and agencies and departments of local governments.

(e) Persons not otherwise described in this subsection, as long as the applicant submits a plan that is approved by the commission detailing how minors will be prevented from gaining access to alcoholic beverages and how minors will be prevented from gaining access to any portion of the licensed premises prohibited to minors under ORS 471.430 (3) or any rule adopted by the commission.

(4) The commission may by rule establish additional eligibility requirements for temporary sales licenses.

(5) Subject to such qualifications as the commission may establish by rule, persons who hold a full or limited on-premises sales license are eligible for temporary sales licenses.

(6) A person holding a temporary sales license is not required to obtain an intermittent temporary restaurant, seasonal temporary restaurant, single-event temporary restaurant license or mobile unit license under ORS chapter 624 if only wine, malt beverages and cider in single-service containers are served and only nonperishable food items that are exempted from licensure by the Oregon Health Authority are served.

(7) Employees and volunteers serving alcoholic beverages for a nonprofit or charitable organization licensed under this section are not required to have service permits or to complete an alcohol server education program and examination under ORS 471.542. The commission by rule may establish education requirements for servers described in this subsection.

(8) Notwithstanding ORS 471.392 to 471.400, a temporary sales license may be issued to a nonprofit trade association that has a membership primarily composed of persons that hold winery licenses issued under ORS 471.223 or grower sales privilege licenses issued under ORS 471.227. [1999 c.351 §7; 2001 c.263 §1; 2007 c.443 §2; 2009 c.595 §957; 2011 c.9 §63; 2011 c.664 §16; 2013 c.537 §2]

(Brewery-Public House License)

471.200 Brewery-public house license; rules. (1) A brewery-public house license allows the licensee:

(a) To manufacture on the licensed premises, store, transport, sell to wholesale malt beverage and wine licensees of the Oregon Liquor Control Commission and export malt beverages;

(b) To sell malt beverages manufactured on or off the licensed premises at retail for consumption on or off the premises;

(c) To sell malt beverages in brewery-sealed packages at retail directly to the consumer for consumption off the premises;

(d) To sell on the licensed premises at retail malt beverages manufactured on or off the licensed premises in unpasteurized or pasteurized form directly to the consumer for consumption off the premises, delivery of which may be made in a securely covered container supplied by the consumer;

(e) To sell wine and cider at retail for consumption on or off the premises;

(f) To sell for consumption off the premises wines and cider in securely covered containers supplied by the consumer and having capacities of not more than two gallons each;

(g) To conduct the activities, except manufacturing, described in paragraphs (a) to (f) of this subsection at one location other than the premises where the manufacturing occurs; and

(h) To obtain a special events brewery-public house license entitling the holder to conduct the activities allowed under paragraphs (b) to (f) of this subsection at a designated location other than the location set forth in the brewery-public house license for a period not exceeding five days.

(2) In addition to the privileges specified in subsection (1) of this section, in any calendar year a brewery-public house licensee may sell at wholesale to licensees of the commission malt beverages produced by the brewery-public house licensee if the brewery-public house licensee produced 5,000 barrels or less of malt beverages in the immediately preceding calendar year.

(3) A brewery-public house licensee, or any person having an interest in the licensee, is a retail licensee for the purposes of ORS 471.394 and, except as otherwise provided by this section and ORS 471.396, may not acquire or hold any right, title, lien, claim or other interest, financial or otherwise, in, upon or to the premises, equipment, business or merchandise of any manufacturer or wholesaler, as defined in ORS 471.392. A brewery-public house licensee, or any person having an interest in the licensee, is also a manufacturer for the purposes of ORS 471.398 and, except as otherwise provided by this section and ORS 471.400, may not acquire or hold any right, title, lien, claim or

other interest, financial or otherwise, in, upon or to the premises, equipment, business or merchandise of any other retail licensee, as defined in ORS 471.392.

(4) A brewery-public house licensee, or any person having an interest in the licensee, is a retail licensee for the purposes of ORS 471.398 and, except as otherwise provided by this section and ORS 471.400, may not accept directly or indirectly any financial assistance described in ORS 471.398 from any manufacturer or wholesaler, as defined in ORS 471.392. A brewery-public house licensee, or any person having an interest in the licensee, is also a manufacturer for the purposes of ORS 471.398 and, except as otherwise provided by this section and ORS 471.400, may not provide directly or indirectly any financial assistance described in ORS 471.398 to any retail licensee, as defined in ORS 471.392. The prohibitions on financial assistance in ORS 471.398 do not apply to financial assistance between manufacturing and retail businesses licensed to the same person under the provisions of this section.

(5) Notwithstanding subsection (3) of this section, a brewery-public house licensee, or any person having an interest in the licensee, may also hold a winery license authorized by ORS 471.223. A brewery-public house licensee, or any person having an interest in the licensee, may also hold a warehouse license authorized by ORS 471.242.

(6) Notwithstanding subsection (3) of this section, a brewery-public house licensee is eligible for limited on-premises sales licenses and temporary sales licenses.

(7)(a) Notwithstanding subsection (3) of this section, and except as provided in this subsection, a brewery-public house licensee, or any person having an interest in the licensee, may also hold a full on-premises sales license. If a person holds both a brewery-public house license and a full on-premises sales license, nothing in this chapter shall prevent the sale by the licensee of both distilled liquor and malt beverages manufactured under the brewery-public house license.

(b) The commission may not issue a full on-premises sales license to a brewery-public house licensee under the provisions of this subsection if the brewery-public house licensee, or any person having an interest in the licensee or exercising control over the licensee, is a brewery that brews more than 200,000 barrels of malt beverages annually or a winery that produces more than 200,000 gallons of wine annually.

(8) Notwithstanding any other provision of this chapter, a brewery-public house licensee, or any person having an interest in the licensee, may also hold a distillery li-

cense. No provision of this chapter prevents a brewery-public house licensee that also holds a distillery license from being appointed by the commission as the distillery's retail outlet agent for the purpose of selling distilled liquors under ORS 471.230.

(9) Notwithstanding subsection (3) of this section, the commission by rule may authorize a brewery-public house licensee to coproduce special events with other manufacturers.

(10)(a) Notwithstanding subsection (3) of this section, a brewery-public house licensee may hold, directly or indirectly, an interest in a manufacturer or wholesaler, provided that the interest does not result in exercise of control over, or participation in the management of, the manufacturer's or wholesaler's business or business decisions and does not result in exclusion of any competitor's brand of alcoholic liquor.

(b) Notwithstanding subsection (3) of this section, a manufacturer or wholesaler, and any officer, director or substantial stockholder of any corporate manufacturer or wholesaler, may hold, directly or indirectly, an interest in a brewery-public house licensee, provided that the interest does not result in exercise of control over, or participation in the management of, the licensee's business or business decisions and does not result in exclusion of any competitor's brand of alcoholic liquor.

(11) For purposes of ORS chapter 473, a brewery-public house licensee shall be considered to be a manufacturer. [Formerly 471.253; 2003 c.15 §1; 2005 c.22 §344; 2007 c.134 §4; 2009 c.38 §1; 2009 c.140 §2; 2009 c.143 §1; 2013 c.32 §4; 2013 c.537 §3]

471.205 [Amended by 1999 c.351 §15; renumbered 471.403 in 1999]

471.210 [Amended by 1967 c.359 §693; 1977 c.518 §3; 1979 c.45 §1; 1979 c.264 §5a; 1983 c.691 §1; 1983 c.740 §187; 1985 c.591 §1; 1987 c.511 §1; 1989 c.48 §1; 1995 c.301 §54; 1999 c.351 §21; renumbered 471.155 in 1999]

471.213 [1989 c.846 §16; renumbered 471.164 in 1999]

471.215 [Amended by 1957 c.223 §1; 1995 c.301 §55; 1999 c.351 §45; renumbered 471.157 in 1999]

471.217 [1967 c.173 §2; 1974 c.4 §1; 1977 c.332 §3; repealed by 1979 c.264 §14]

471.218 [1997 c.841 §4; 1999 c.351 §22; renumbered 471.168 in 1999]

(Manufacturing and Wholesale Licenses)

471.220 Brewery license. (1) A brewery license shall allow the manufacture, importation, storage, transportation, wholesale sale and distribution to licensees of the Oregon Liquor Control Commission, and the export of malt beverages. A brewery licensee may not sell within the State of Oregon any beer containing more than six percent alcohol by volume. Except as provided in subsection (2) of this section, a brewery licensee

may not sell malt beverages for consumption on the licensed premises.

(2) A brewery licensee may:

(a) Sell malt beverages brewed on the licensed premises for consumption on the licensed premises; and

(b) Sell malt beverages brewed on the licensed premises, in quantities of not less than four gallons, to an unlicensed organization, lodge, picnic party or private gathering. An unlicensed organization, lodge, picnic party or private gathering may not resell the malt beverages that a brewery licensee sells under this paragraph. [Amended by 1955 c.657 §1; 1977 c.332 §4; 1979 c.264 §4; 1987 c.608 §5; 1989 c.785 §11; 1991 c.545 §1; 1993 c.663 §1; 1995 c.301 §14; 1997 c.257 §1; 1999 c.351 §15b; 2011 c.123 §1]

471.223 Winery license. (1) As used in this section, "control" means that the licensee:

(a) Owns the brand under which the wine or cider is labeled; or

(b) Performs or has the legal right to perform all of the acts common to a brand owner under the terms of a trademark license or similar agreement that for the brand under which the wine or cider is labeled has a term of at least three years.

(2) A winery license shall allow the licensee:

(a) To import wine or cider in containers that have a capacity of more than four liters.

(b) To import wine or cider in containers that have a capacity of four liters or less if the brand of wine or cider is under the control of the licensee.

(c) To bottle, produce, blend, store, transport or export wines or cider.

(d) To sell wines or cider at wholesale to the Oregon Liquor Control Commission or to licensees of the commission.

(e) To sell wines or cider at retail directly to the consumer for consumption on or off the licensed premises.

(f) To sell malt beverages at retail for consumption on or off the licensed premises.

(g) To sell for consumption off the premises malt beverages, wines and cider in securely covered containers supplied by the consumer and having capacities of not more than two gallons each.

(h) To conduct any activities described in paragraphs (a) to (g) of this subsection at a second or third premises as may be designated by the commission.

(i) To purchase from or through the commission brandy or other distilled liquors for fortifying wines.

(j) To obtain a special events winery license that shall entitle the holder to conduct

the activities allowed under paragraphs (e) to (g) of this subsection at a designated location other than the one set forth in the winery license for a period not to exceed five days.

(3) A winery licensee shall allow a patron to remove a partially consumed bottle of wine from the licensed premises if the patron is not a minor and the patron is not visibly intoxicated.

(4) In order to hold a winery license the licensee shall:

(a) Possess at a bonded premises within Oregon a valid producer and blender basic permit issued by the federal Alcohol and Tobacco Tax and Trade Bureau; or

(b) Possess a valid wine blender or valid wholesaler basic permit issued by the federal Alcohol and Tobacco Tax and Trade Bureau and have a written contract with a winery licensed under paragraph (a) of this subsection that authorizes the winery to produce for the licensee a brand of wine or cider that is under the control of the licensee.

(5) A winery licensee may sell and ship wine or cider directly to a resident of this state only if the licensee has a direct shipper permit issued under ORS 471.282.

(6)(a) Except as provided in paragraph (b) of this subsection, a winery licensee, or any person having an interest in the licensee, may also hold a full on-premises sales license. If a person holds both a winery license and a full on-premises sales license, nothing in this chapter shall prevent the sale by the licensee of both distilled liquor and wine or cider bottled and produced under the winery license.

(b) The commission may not issue a full on-premises sales license to a winery licensee under the provisions of this subsection if the winery licensee, or any person having an interest in the licensee or exercising control over the licensee, is a brewery that brews more than 200,000 barrels of malt beverages annually or a winery that produces more than 200,000 gallons of wine or cider annually.

(7) More than one winery licensee may exercise the privileges of a winery license at a single location. The commission may not refuse to issue a winery license to a person for the production of wine or cider on specified premises based on the fact that other winery licensees also produce wine or cider on those premises.

(8) If a winery licensee does not possess at a bonded premises within Oregon a valid producer and blender basic permit issued by the federal Alcohol and Tobacco Tax and Trade Bureau, the licensee may exercise the privileges described in this section only for

wine and cider brands that are under the control of the licensee. [1979 c.264 §2; 1981 c.201 §1; 1989 c.511 §5; 1993 c.202 §1; 1993 c.663 §3; 1995 c.34 §1; 1995 c.188 §1; 1995 c.301 §15; 1999 c.431 §§1,3; 2003 c.44 §1; 2007 c.25 §1; 2007 c.854 §2; 2009 c.38 §2; 2011 c.364 §1; 2013 c.32 §§5,6; 2013 c.537 §§4,5]

471.225 [Amended by 1977 c.332 §5; repealed by 1979 c.264 §14]

471.227 Grower sales privilege license.

(1) A grower sales privilege license shall allow the licensee to perform the following activities only for fruit or grape wine or cider where all of the fruit or grapes used to make the wine or cider are grown in Oregon under the control of the licensee:

(a) To import, store, transport or export such wines or cider.

(b) To sell such wines or cider at wholesale to the Oregon Liquor Control Commission or licensees of the commission.

(c) To sell such wines or cider at retail directly to the consumer for consumption on or off the licensed premises.

(d) To sell at retail for consumption off the licensed premises malt beverages and such wines and cider in securely covered containers provided by the consumer and having capacities of not more than two gallons each.

(e) To conduct some or all of the activities allowed under paragraphs (a) to (d) of this subsection at a second or third premises as may be designated by the commission.

(f) To obtain a special events grower sales privilege license which shall entitle the holder to conduct the activities allowed under paragraphs (c) and (d) of this subsection at a designated location other than the one set forth in the grower sales privilege license for a period not to exceed five days.

(2) A grower sales privilege licensee shall allow a patron to remove a partially consumed bottle of wine from the licensed premises if the patron is not a minor and the patron is not visibly intoxicated.

(3) For purposes of ORS 471.392 to 471.400, a grower sales privilege licensee shall be considered a manufacturer.

(4) A person holding a winery license in another state is not eligible for a license under this section.

(5) A person licensed under this section is not eligible for a limited on-premises sales license or an off-premises sales license.

(6) As used in this section, "control" means the grower either owns the land upon which the fruit or grapes are grown or has a legal right to perform or does perform all of the acts common to fruit farming or viticulture under terms of a lease or similar agreement of at least three years' duration.

(7) For the purposes of tax reporting, payment and record keeping, the provisions of law that shall apply to a manufacturer under ORS chapter 473 shall apply to a grower sales privilege licensee, but such a licensee is not a manufacturer for purposes of ORS 473.050 (5). [1989 c.740 §2; 1995 c.58 §2; 1995 c.301 §82; 1999 c.351 §23a; 2013 c.32 §7; 2013 c.537 §6]

471.229 [1989 c.511 §2; 1995 c.188 §3; 1999 c.351 §24; 2003 c.44 §3; 2007 c.854 §1; renumbered 471.282 in 2007]

471.230 Distillery license. (1) A distillery license allows the licensee to import, manufacture, distill, rectify, blend, denature and store spirits of an alcoholic content greater than 17 percent alcohol by weight, to sell the spirits to the Oregon Liquor Control Commission and to transport the spirits out of this state for sale outside this state. Distillery licensees are permitted to purchase from and through the commission alcoholic beverages for blending and manufacturing purposes upon such terms and conditions as the commission may provide. A distillery licensee may not sell any alcoholic beverage within this state except to the commission or as provided in this section. However, any agricultural producer or association of agricultural producers or the legal agents of an agricultural producer or association of agricultural producers that manufactures and converts agricultural surpluses, by-products and wastes into denatured ethyl and industrial alcohol for use in the arts and industry are not required to obtain a license from the commission.

(2) A distillery licensee may:

(a) Permit tastings of the distilled liquor manufactured by the distillery licensee. The tastings may be conducted on the licensed premises of the distillery and at no more than five other premises owned or leased by the licensee. The licensee must purchase the distilled liquor from the commission.

(b) Obtain a special events distillery license.

(c) Apply for appointment by the commission as a distillery retail outlet agent for purposes of retailing only distilled liquor that the licensee manufactured in Oregon at locations where tastings are permitted under paragraph (a) of this subsection or subsection (4)(a) of this section.

(3) Notwithstanding ORS 471.392 to 471.400, a distillery licensee may also hold a full on-premises sales license for a location at the licensed premises of the distillery and a full on-premises sales license for one other location. All distilled spirits sold under the full on-premises sales license must be purchased from the commission.

(4)(a) A distillery licensee that holds a special events distillery license may conduct

an event on a premises at a designated location other than the location set forth in the distillery license for a period not exceeding five days. A distillery licensee conducting an event may:

(A) Permit tastings of distilled liquor manufactured by the distillery.

(B) Permit sales by the drink of distilled liquor manufactured by the distillery.

(C) If the distillery licensee has been appointed as a distillery retail outlet agent under subsection (2)(c) of this section, sell factory sealed containers of distilled liquor manufactured by the distillery for consumption off the licensed premises of the event.

(b) A distillery licensee that holds a special events distillery license:

(A) Must purchase distilled liquor that the licensee uses for conducting tastings at the event from the commission at the price set by the commission for distilled liquor removed from bond for tastings.

(B) Must purchase distilled liquor that the licensee uses for sales by the drink at the event at the retail price set by the commission for the month in which the distilled liquor is sold by the drink.

(C) Must purchase distilled liquor that the licensee sells in factory sealed containers at the event at the retail price set by the commission for the month in which the licensee makes the purchase.

(D) Must sell distilled liquor described in subparagraph (C) of this paragraph at the retail price set by the commission for the month in which the licensee makes the sale. [Amended by 1987 c.558 §1; 1995 c.301 §16; 1997 c.803 §1; 2007 c.134 §1; 2009 c.38 §3; 2009 c.237 §2; 2011 c.9 §64; 2012 c.20 §1; 2013 c.253 §1]

471.235 Wholesale malt beverage and wine license. (1) A wholesale malt beverage and wine license shall allow the importation, storage, transportation, wholesale sale and distribution to licensees of the Oregon Liquor Control Commission, and the export of wine, cider and malt beverages, and the importation and sale to the commission and the export of wine of alcoholic content in excess of 21 percent alcohol by volume. A wholesale malt beverage and wine licensee may not sell any alcoholic liquor for consumption upon the licensed premises. However, a wholesale malt beverage and wine licensee may sell naturally fermented wine or cider in quantities of not less than four gallons nor more than 55 gallons at any one time to consumers for consumption not on the licensed premises. Wholesale malt beverage and wine licensees may sell malt beverages containing not more than nine percent alcohol by volume in quantities not less than four gallons to any unlicensed organization, lodge, picnic

party or private gathering. The unlicensed organization, lodge, picnic party or private gathering may not sell the malt beverages. A wholesale malt beverage and wine license shall permit the licensee also to sell malt beverages at wholesale only, to persons holding licenses authorizing the persons to resell such beverages at retail. Employees of wholesale malt beverage and wine licensees may serve sample tastings of malt beverages, cider and wine at alcoholic beverage industry trade shows, seminars and conventions and at alcoholic beverage industry sample tastings for employees of retail licensees.

(2) Subsection (1) of this section does not prohibit the transportation or wholesale sale or distribution of malt beverage or wine by a wholesale malt beverage and wine licensee to any alcoholic treatment center licensed by the Oregon Health Authority.

(3) A wholesale malt beverage and wine licensee may impose an additional handling fee on any wine sold to any retailer in this state if the quantity of wine sold to the retailer is less than the smallest multiple-package case available to be sold and the handling fee is uniform for all licensees. [Amended by 1955 c.657 §2; 1973 c.395 §1; 1974 c.4 §2; 1975 c.123 §1; 1985 c.378 §1; 1987 c.608 §4; 1989 c.178 §8; 1995 c.301 §17; 1999 c.351 §25; 2009 c.595 §958; 2011 c.143 §1]

471.240 [Amended by 1955 c.657 §3; 1957 c.223 §2; repealed by 1973 c.395 §10]

471.242 Warehouse license. (1) A warehouse license shall allow the licensee to store, import, bottle, produce, blend, transport and export nontax paid, bonded wine or wine on which the tax is paid and to store, import and export nontax paid malt beverages and cider, or malt beverages and cider on which the tax is paid. Wine, cider and malt beverages may be removed from the licensed premises only for:

- (a) Sale for export;
- (b) Sale or shipment to a wholesale malt beverage and wine licensee;
- (c) Sale or shipment to another warehouse licensee;
- (d) Sale or shipment to a winery licensee;
- (e) Shipment of wine or cider produced by a winery licensee to a licensee of the Oregon Liquor Control Commission authorized to sell wine or cider at retail if the shipment is made pursuant to a sale to the retail licensee by the holder of a winery license issued under ORS 471.223, a grower sales privilege license issued under ORS 471.227 or a wholesale malt beverage and wine license issued under ORS 471.235; or
- (f) Shipment of wine or cider to a person for personal use, as described in subsection (7) of this section.

(2) A license applicant must hold an approved registration for a bonded wine cellar or winery under federal law.

(3) For the purposes of tax reporting, payment and record keeping, the provisions that shall apply to a manufacturer under ORS chapter 473 shall apply to a warehouse licensee.

(4) A warehouse must be physically secure in an area zoned for the intended use and be physically separated from any other use.

(5) For purposes of ORS 471.392 to 471.400, a warehouse licensee shall be considered a manufacturer.

(6) For purposes of ORS 473.045, a warehouse licensee shall be considered a winery licensee.

(7) Wine or cider may be removed from the premises licensed under this section for shipment pursuant to a sale under ORS 471.282. The warehouse licensee shall take reasonable steps to ensure that shipments are made in containers that are conspicuously labeled with the words: "CONTAINS ALCOHOL: SIGNATURE OF PERSON AGE 21 YEARS OR OLDER REQUIRED FOR DELIVERY." In addition, the warehouse licensee shall take reasonable steps to ensure that any carrier used by the licensee does not deliver any wine or cider unless the carrier:

- (a) Obtains the signature of the recipient of the wine or cider upon delivery;
- (b) Verifies by inspecting government-issued photo identification that the recipient is at least 21 years of age; and
- (c) Determines that the recipient is not visibly intoxicated at the time of delivery. [1985 c.628 §2; 1989 c.553 §1; 1995 c.35 §1; 1995 c.301 §83; 1999 c.351 §67; 2007 c.638 §1]

(Certificates of Approval)

471.244 Certificates of approval for malt beverages, cider or wine; special certificates of approval. (1) No licensee of the Oregon Liquor Control Commission shall manufacture, import into, or purchase in the State of Oregon for resale therein any malt beverages, cider or wine unless the manufacturer of such malt beverages, cider or wine has first obtained from the commission a certificate of approval, except that with respect to malt beverages, cider or wine manufactured outside the United States, the certificate of approval may be obtained by the person importing same into the United States. Such certificate of approval shall be granted only to manufacturers or importers who shall have entered into an agreement with the commission to furnish a report to the commission, on or before the 20th day of

each month, showing the quantity of malt beverages, cider or wine delivered to each licensee of the commission during the preceding calendar month, and to faithfully comply with all laws of the State of Oregon pertaining to traffic in malt beverages, cider or wine. If any holder of such certificate, or any officer, agent or employee of such holder, shall violate any term or provision of such agreement, or submit any false or fictitious report, the commission may, in its discretion, suspend or revoke such certificate.

(2) The commission may grant special certificates of approval to manufacturers and importers of malt beverages, cider or wine. A special certificate of approval has the effect of a certificate of approval granted under subsection (1) of this section, but is valid only for a period of 30 days. [Formerly 471.289]

471.245 [Amended by 1979 c.236 §7; 1981 c.199 §1; repealed by 1999 c.351 §11]

471.250 [Amended by 1965 c.280 §2; 1973 c.395 §2; 1977 c.332 §6; 1981 c.328 §1; 1987 c.608 §6; 1995 c.301 §17a; repealed by 1999 c.351 §8]

471.251 Certificates of approval for distilled liquor; rules. The Oregon Liquor Control Commission may issue a manufacturer or other person a certificate of approval authorizing the import of distilled liquor manufactured by a distillery not licensed under ORS 471.230. The commission may establish by rule:

(1) The conditions under which a manufacturer or other person may qualify for a certificate of approval;

(2) The products covered by the certificate of approval;

(3) Any conditions or limitations placed on imports under the certificate of approval; and

(4) The grounds for suspension or revocation of a certificate of approval. [2009 c.240 §2]

471.253 [1985 c.649 §4; 1987 c.608 §1; 1989 c.785 §10; 1991 c.545 §2; 1993 c.418 §1; 1993 c.663 §2; 1995 c.35 §2; 1995 c.301 §84; 1995 c.598 §1; 1995 c.599 §3; 1997 c.803 §2; 1999 c.59 §142; 1999 c.351 §26; renumbered 471.200 in 1999]

471.255 [Repealed by 1965 c.280 §5]

471.257 [1975 c.494 §2; 1987 c.608 §7; 1995 c.301 §17b; repealed by 1999 c.351 §11]

471.259 [1985 c.649 §1; 1987 c.608 §8; 1989 c.171 §65; 1995 c.301 §17c; repealed by 1999 c.351 §11]

471.260 [Amended by 1973 c.395 §3; 1974 c.4 §3; 1985 c.546 §1; 1987 c.608 §9; 1989 c.178 §1; 1993 c.663 §4; 1995 c.58 §1; 1995 c.103 §4; 1995 c.301 §18; 1995 c.791 §1; 1996 c.18 §1; repealed by 1999 c.351 §8]

471.262 [1979 c.172 §2; 1995 c.301 §56; 1999 c.351 §27; renumbered 471.302 in 1999]

471.264 [1981 c.200 §1; 1995 c.301 §38; repealed by 1999 c.351 §8]

471.265 [Amended by 1967 c.580 §1; 1967 c.614 §§1,2; 1971 c.324 §1; 1973 c.103 §1; 1973 c.395 §4; 1985 c.546 §2;

1987 c.558 §2; 1987 c.608 §2; 1995 c.301 §18a; 1997 c.803 §5; repealed by 1999 c.351 §8]

471.267 [1995 c.599 §2; repealed by 1999 c.351 §8]

(Use of Premises for Additional Activities)

471.268 Homemade malt beverages and wines at licensed premises. (1) In addition to any other privilege granted to a licensee under this chapter, a licensee may conduct an organized judging, tasting, exhibition, contest or competition of malt beverages and wines produced under ORS 471.403 (2) and (3) or homemade beers, wines and fermented fruit juices, or related events, at the premises described in a full or limited on-premises sales license, off-premises sales license, brewery-public house license, brewery license, winery license or warehouse license of the licensee. However, the Oregon Liquor Control Commission may restrict the portion of the licensed premises that may be used for the judging, tasting, exhibition, contest, competition or related events and may restrict or prohibit sales of alcoholic beverages on the portion of the premises that is being used for conducting the judging, tasting, exhibition, contest, competition or related events.

(2) In addition to any other privilege granted to a licensee under this chapter, a licensee may allow malt beverages and wines produced under ORS 471.403 (2) and (3) or homemade beers, wines and fermented fruit juices to be stored at the premises described in a full or limited on-premises sales license, off-premises sales license, brewery-public house license, brewery license, winery license or warehouse license of the licensee. The malt beverages or wines and the homemade beers, wines or fermented fruit juices must be clearly identified by owner and kept separate from the alcoholic beverage stock of the licensee.

(3) A licensee may not acquire any ownership interest in malt beverages and wines produced under ORS 471.403 (2) and (3) or homemade beers, wines or fermented fruit juices stored under this section. However, this subsection does not prohibit a licensee from using malt beverages and wines produced under ORS 471.403 (2) and (3) or homemade beers, wines or fermented fruit juices in conducting an organized judging, tasting, exhibition, contest or competition of the malt beverages and wines or homemade beers, wines or fermented fruit juices, or related events, if the malt beverages and wines or the homemade beers, wines or fermented fruit juices are stored with the licensee for that purpose. [2011 c.12 §3]

Note: Definitions for 471.268 are found in 471.037.

471.270 [Repealed by 1999 c.351 §11]

**SHIPMENT AND DISTRIBUTION
OF WINE AND CIDER**

(Distribution to Retail Licensees)

471.272 Manner of shipping or transporting wine or cider. (1) Wine or cider may be shipped or transported by a licensee or permit holder described in subsection (2) of this section only by employees of the licensee or permit holder, or by a common carrier using a commission-approved delivery plan. The holder of a wine self-distribution permit that uses a common carrier to ship or transport wine or cider shall take reasonable steps to ensure that the wine or cider is sold and transported only to licensees that are authorized to receive the wine or cider under ORS 471.274.

(2) The provisions of this section apply to persons holding wine self-distribution permits and the holders of winery licenses, grower sales privilege licenses, wholesale malt beverage and wine licenses and warehouse licenses issued by the commission. [2007 c.651 §2b]

471.274 Wine self-distribution permit.

(1) The Oregon Liquor Control Commission may issue a wine self-distribution permit to a United States manufacturer of wine or cider. The commission may issue a wine self-distribution permit only to a manufacturer of wine or cider that:

(a) Holds a license issued by another state that authorizes the manufacture of wine or cider; and

(b) Holds a certificate of approval issued under ORS 471.244.

(2) The holder of a wine self-distribution permit may sell at wholesale and transport wine or cider that the manufacturer produces directly to the commission, or to retail licensees in the manner provided by this section. A wine self-distribution permit allows the holder to sell wine or cider that the holder produces only to retail licensees who hold a valid endorsement issued by the commission authorizing receipt of wine or cider from the holder of a wine self-distribution permit.

(3) In addition to the information required by ORS 471.311 for licenses, an applicant for a wine self-distribution permit shall provide the commission with a copy of the license held by the applicant or with sufficient information to allow verification of the license by electronic means or other means acceptable to the commission. The applicant also shall provide the commission with any information required by the commission to establish that the license held by the applicant authorizes the manufacture of wine or cider.

(4) A person holding a wine self-distribution permit is responsible for paying all taxes imposed under ORS chapter 473, and for complying with all reporting requirements imposed by ORS chapter 473, for all wine and cider sold and transported to retail licensees in this state. The commission may revoke, or refuse to issue, a wine self-distribution permit if the holder of a permit fails to pay taxes or make reports as required by ORS chapter 473.

(5) A retail licensee may receive wine or cider from the holder of a wine self-distribution permit only if the licensee has received prior authorization from the commission. Prior authorization under this subsection must be made by an endorsement to the license for the premises where the wine or cider will be received. The commission may not charge or collect a fee for an endorsement under this subsection.

(6)(a) Except as provided in paragraph (b) of this subsection, a retail licensee that receives wine or cider from holders of wine self-distribution permits must make a monthly report to the commission, using a form prescribed by the commission, listing the amount of all wine or cider received from permit holders in the previous month, and the names of the permit holders from whom the wine or cider was received. Retail licensees shall retain such purchase records for products received from permit holders as may be required by the commission.

(b) The holder of a full or limited on-premises sales license is not required to file a report under this subsection for any month in which the licensee receives two or fewer cases of wine from holders of wine self-distribution permits.

(7) A manufacturer that is not licensed by the commission may sell and transport wine or cider directly to a retail licensee, and a retail licensee may receive wine or cider directly from a manufacturer that is not licensed by the commission, only if the manufacturer holds a wine self-distribution permit issued under this section.

(8) The holder of a wine self-distribution permit consents to the jurisdiction of the commission and the courts of this state for the purpose of enforcing the provisions of this chapter, ORS chapter 473 and any related laws or rules.

(9) The holder of a wine self-distribution permit must post a bond or other security, as described in ORS 471.155.

(10) The commission may revoke, or refuse to issue, a wine self-distribution permit if the holder of a permit fails to comply with any provision of this section. [2007 c.651 §2; 2011 c.219 §1]

471.275 [Amended by 1987 c.608 §10; 1995 c.301 §18b; repealed by 1999 c.351 §8]

471.280 [Repealed by 1999 c.351 §11]

(Direct Shipment of Wine and Cider to Consumer)

471.282 Direct shipper permit; fees. (1) Notwithstanding any other provision of this chapter and except as provided by ORS 471.186 (6), a person may sell and ship wine or cider directly to a resident of Oregon only if the person holds a direct shipper permit. The Oregon Liquor Control Commission shall issue a direct shipper permit only to:

(a) A person that holds a license issued by this state or another state that authorizes the manufacture of wine or cider;

(b) A person that holds a license issued by this state or another state that authorizes the sale of wine or cider produced only from grapes or other fruit grown under the control of the person;

(c) A person that holds a license authorizing the sale of wine or cider at retail; or

(d) A nonprofit trade association that holds a temporary sales license under ORS 471.190 and that has a membership primarily composed of persons holding winery licenses issued under ORS 471.223 or grower sales privilege licenses issued under ORS 471.227.

(2)(a) A person may apply for a direct shipper permit by filing an application with the commission. The application must be made in such form as may be prescribed by the commission.

(b) If the application is based on a license issued by this state, the person must include in the application the number of the license issued to the person.

(c) If the application is based on a license issued by another state, the person must include in the application a true copy of the license issued to the person by the other state or include sufficient information to allow verification of the license by electronic means or other means acceptable to the commission.

(d) If the application is based on a license issued by another state, or the application is by a nonprofit trade association described in subsection (1)(d) of this section, the person or association must pay a \$50 registration fee and maintain a bond or other security described in ORS 471.155 in the minimum amount of \$1,000.

(3) Sales and shipments under a direct shipper permit:

(a) May be made only to a person who is at least 21 years of age;

(b) May be made only for personal use and not for the purpose of resale; and

(c) May not exceed two cases, containing not more than nine liters per case, to any resident per month.

(4) Sales and shipments under a direct shipper permit must be made directly to a resident of this state in containers that are conspicuously labeled with the words: "CONTAINS ALCOHOL: SIGNATURE OF PERSON AGE 21 YEARS OR OLDER REQUIRED FOR DELIVERY."

(5) A person holding a direct shipper permit must take all actions necessary to ensure that a carrier used by the permit holder does not deliver any wine or cider unless the carrier:

(a) Obtains the signature of the recipient of the wine or cider upon delivery;

(b) Verifies by inspecting government-issued photo identification that the recipient is at least 21 years of age; and

(c) Determines that the recipient is not visibly intoxicated at the time of delivery.

(6)(a) A person holding a direct shipper permit must report to the commission all shipments of wine or cider made to Oregon residents under the permit as required by ORS chapter 473. The report must be made in a form prescribed by the commission.

(b) A person holding a direct shipper permit must allow the commission to audit the permit holder's records upon request and shall make those records available to the commission in this state.

(c) A person holding a direct shipper permit consents to the jurisdiction of the commission and the courts of this state for the purpose of enforcing the provisions of this section and any related laws or rules.

(7)(a) A person holding a direct shipper permit must timely pay to the commission all taxes imposed under ORS chapter 473 on wine and cider sold and shipped under the permit. For the purpose of the privilege tax imposed under ORS chapter 473, all wine or cider sold and shipped pursuant to a direct shipper permit is sold in this state.

(b) A person holding a direct shipper permit based on a license issued by another state must timely pay to the commission all taxes imposed under ORS chapter 473 on all wine or cider sold and shipped directly to Oregon residents under the permit. The permit holder, not the purchaser, is responsible for the tax.

(8) A direct shipper permit must be renewed annually. If the person holds the permit based on an annual license issued by another state, the person may renew the permit by paying a \$50 renewal fee and providing the commission with a true copy of a current license issued to the person by the

other state or with sufficient information to allow verification of the license by electronic means or other means acceptable to the commission. If the person holds the permit based on an annual license issued by this state, the person may renew the permit at the same time that the person renews the license.

(9) The commission may refuse to issue or may suspend or revoke a direct shipper permit if the permit holder fails to comply with the provisions of this section. A person may sell and ship wine or cider under a direct shipper permit only for as long as the person has the license issued by this state or another state that authorizes the person to hold a direct shipper permit.

(10) Any person who knowingly or negligently delivers wine or cider under the provisions of this section to a person under 21 years of age, or who knowingly or negligently delivers wine or cider under the provisions of this section to a visibly intoxicated person, violates ORS 471.410.

(11) A person may not make sales and shipments of wine or cider directly to Oregon residents unless the person holds a direct shipper permit issued under this section. Any person who knowingly makes, participates in, transports, imports or receives a shipment of wine or cider that is in violation of this section commits a misdemeanor as provided in ORS 471.990 (1). [Formerly 471.229; 2008 c.34 §2; 2011 c.219 §2; 2013 c.32 §8]

471.285 [Amended by 1955 c.657 §4; 1957 c.221 §1; 1989 c.178 §2; 1997 c.249 §170; repealed by 1999 c.351 §11]

471.287 [1955 c.657 §8; 1957 c.221 §2; 1975 c.470 §1; 1983 c.228 §1; 1987 c.511 §2; 1989 c.178 §3; 1995 c.301 §86; 1997 c.79 §1; repealed by 1999 c.351 §11]

471.289 [1955 c.657 §6; 1957 c.111 §1; 1973 c.131 §1; 1979 c.264 §6; 1995 c.103 §1; 1999 c.351 §68; renumbered 471.244 in 2007]

471.290 [Amended by 1955 c.657 §9; 1957 c.111 §2; 1965 c.280 §3; 1967 c.28 §1; 1967 c.448 §1; 1971 c.470 §1; 1973 c.313 §1; 1973 c.395 §5; 1975 c.494 §3; 1979 c.264 §7; 1981 c.598 §1; 1985 c.360 §1; 1985 c.591 §2; 1985 c.628 §3; 1985 c.649 §2; 1989 c.178 §4; 1989 c.553 §2; 1989 c.740 §3; 1995 c.58 §3; 1995 c.103 §2; 1995 c.301 §57; 1995 c.363 §3; 1997 c.249 §171; 1997 c.284 §3; 1999 c.351 §18; renumbered 471.311 in 1999]

LICENSING PROCEDURES

(Generally)

471.292 Characteristics of license. (1) A license granted under the Liquor Control Act or the Oregon Distilled Liquor Control Act shall:

- (a) Be a purely personal privilege.
- (b) Be valid for the period stated in the license.
- (c) Be renewable in the manner provided in ORS 471.311, except for a cause which would be grounds for refusal to issue such license under ORS 471.313.

(d) Be revocable or suspendible as provided in ORS 471.315.

(e) Be transferable from the place for which the license was originally issued to another location subject to the provisions of the Liquor Control Act, the Oregon Distilled Liquor Control Act, any rules of the Oregon Liquor Control Commission and any municipal ordinance or local regulation.

(f) Cease upon the death of the licensee, except as provided in subsection (2) of this section.

(g) Not constitute property.

(h) Not be alienable.

(i) Not be subject to attachment or execution.

(j) Not descend by the laws of testate or intestate devolution.

(2) The commission may, by order, provide for the manner and conditions under which:

(a) Alcoholic liquors left by any deceased, insolvent or bankrupt person or licensee, or subject to a security interest, may be foreclosed, sold under execution or otherwise disposed of.

(b) The business of any deceased, insolvent or bankrupt licensee may be operated for a reasonable period following the death, insolvency or bankruptcy.

(c) A business licensed pursuant to this chapter subject to a security interest may be continued in business by a secured party as defined in ORS 79.0102 for a reasonable period after default on the indebtedness by the debtor.

(d) A license granted under this chapter may be transferred from the place for which the license was originally issued to another location. [Formerly 471.301; 2001 c.445 §175]

471.294 License terms; licenses issued for less than year; determination of fees.

(1) Except as otherwise provided in this section, all licenses under this chapter and renewals thereof shall be issued for a period of one year which shall expire at 12 midnight on March 31, June 30, September 30 or December 31 of each year.

(2) Notwithstanding subsection (1) of this section, a license issued for the first time to an applicant may be issued for less than a year. The fee for a license issued for less than a year under this subsection is the annual license fee prescribed by ORS 471.311.

(3) The term of a temporary letter of authority or license issued under ORS 471.302 or any temporary sales license is the period fixed by the Oregon Liquor Control Commission when the letter or license is issued. [Formerly 471.355; 2007 c.269 §1]

471.295 [Amended by 1953 c.14 §2; 1979 c.744 §33a; 1979 c.881 §3; 1989 c.785 §8; 1995 c.301 §58; 1997 c.841 §5; 1999 c.351 §46; renumbered 471.313 in 1999]

471.297 Temporary letter of authority on change of ownership; revocation. (1) The Oregon Liquor Control Commission may grant a temporary letter of authority for a period not to exceed 90 days on change of ownership applications for licenses granted under this chapter if the applicant pays the fee prescribed by the commission for a temporary letter of authority. The administrator appointed by the commission under ORS 471.720 may extend a temporary letter of authority granted under the provisions of this section for a period not to exceed 30 days if the commission has not granted or denied the application at the end of the 90-day period. A temporary letter of authority issued under this section does not constitute a license for the purposes of ORS chapter 183.

(2) The commission summarily and without prior administrative proceedings may revoke a temporary letter of authority any time if the commission finds that any of the grounds for refusing a license under ORS 471.313 or canceling or suspending a license under ORS 471.315 exist.

(3) A person subject to subsection (2) of this section shall be given an interview under the direction of the commission if the person requests an interview prior to revocation of a temporary letter of authority. However, the proceedings are not a contested case under ORS chapter 183. [1987 c.511 §5; 1995 c.301 §59; 1999 c.351 §47; 2003 c.337 §3]

471.300 [Amended by 1953 c.130 §2; repealed by 1957 c.220 §1 (471.301 enacted in lieu of 471.300)]

471.301 [1957 c.220 §2 (enacted in lieu of 471.300); 1971 c.470 §2; 1973 c.311 §1; 1977 c.332 §1; 1977 c.360 §2; 1979 c.264 §9; 1995 c.301 §60; 1999 c.351 §48; renumbered 471.292 in 1999]

471.302 Temporary letter of authority for off-premises sales license applicant; revocation. (1) Upon receiving an application for an off-premises sales license, the Oregon Liquor Control Commission may grant a temporary letter of authority for a period not exceeding 90 days, if it finds:

(a) The applicant is located in an area presently zoned for commercial use and presents documentation of such zoning to the commission.

(b) The applicant pays the fee prescribed by the commission for a temporary letter of authority.

(2) The administrator appointed by the commission under ORS 471.720 may extend a temporary letter of authority granted under the provisions of this section for a period not to exceed 30 days if the commission has not granted or denied the application at the end

of the 90-day period provided for in subsection (1) of this section.

(3) A temporary letter of authority issued under this section does not constitute a license for the purposes of ORS chapter 183. The commission summarily and without prior administrative proceedings may revoke a temporary letter of authority at any time if:

(a) The commission finds that any of the grounds for refusing a license under ORS 471.313 exist; or

(b) The city or county in which the applicant is located provides evidence of reasonable grounds to the commission:

(A) That the temporary letter of authority should be revoked; or

(B) That an off-premises sales license should not be issued. [Formerly 471.262; 2003 c.337 §4]

471.305 Delivery of alcoholic beverages. A brewery or a wholesale malt beverage and wine licensee shall deliver malt beverages only to or on a licensed premises. The sale of alcoholic liquors under any license issued by the Oregon Liquor Control Commission authorizing retail sales by a licensee shall be restricted to the premises described in the license, but deliveries may be made by the licensee to customers pursuant to bona fide orders received on the licensed premises prior to delivery. [Amended by 1981 c.199 §2]

471.307 [1991 c.273 §2; 1993 c.663 §5; 1999 c.351 §28; renumbered 471.180 in 1999]

471.310 Cities as licensees. Any city may, without further charter authority, become a licensee under this chapter. [Amended by 1995 c.301 §61; 1999 c.351 §49]

(Application for License)

471.311 Application for license; rules; fees. (1) Any person desiring a license or renewal of a license under this chapter shall make application to the Oregon Liquor Control Commission upon forms to be furnished by the commission showing the name and address of the applicant, location of the place of business that is to be operated under the license, and such other pertinent information as the commission may require. No license shall be granted or renewed until the applicant has complied with the provisions of this chapter and the rules of the commission.

(2) The commission may reject any application that is not submitted in the form required by rule. The commission shall give applicants an opportunity to be heard if an application is rejected. A hearing under this subsection is not subject to the requirements for contested case proceedings under ORS chapter 183.

(3) Subject to subsection (4) of this section, the commission shall assess a nonrefundable fee for processing a renewal application for any license authorized by this chapter only if the renewal application is received by the commission less than 20 days before expiration of the license. If the renewal application is received prior to expiration of the license but less than 20 days prior to expiration, this fee shall be 25 percent of the annual license fee. If a renewal application is received by the commission after expiration of the license but no more than 30 days after expiration, this fee shall be 40 percent of the annual license fee. This subsection does not apply to a certificate of approval, a brewery-public house license or any license that is issued for a period of less than 30 days.

(4) The commission may waive the fee imposed under subsection (3) of this section if it finds that failure to submit a timely application was due to unforeseen circumstances or to a delay in processing the application by the local governing authority that is no fault of the licensee.

(5) The license fee is nonrefundable and shall be paid by each applicant upon the granting or committing of a license. Subject to ORS 471.155 and 473.065, the annual or daily license fee and the minimum bond required of each class of license under this chapter are as follows:

License	Fee	Minimum Bond
Brewery, including Certificate of Approval	\$ 500	\$ 1,000
Winery	\$ 250	\$ 1,000
Distillery	\$ 100	None
Wholesale Malt Beverage and Wine	\$ 275	\$ 1,000
Warehouse	\$ 100	\$ 1,000
Special events winery license	\$ 10 per day	
Brewery-Public House, including Certificate of Approval	\$ 250	\$ 1,000
Limited On-Premises Sales	\$ 200	None
Off-Premises Sales	\$ 100	None
Temporary Sales	\$ 50 per day	
Grower sales privilege license	\$ 250	\$ 1,000
Special events grower sales privilege license	\$ 10 per day	
Special events brewery-public house license	\$ 10 per day	
Special events distillery license	\$ 10 per day	

(6) The fee for a certificate of approval or special certificate of approval granted under ORS 471.244 is nonrefundable and must

be paid by each applicant upon the granting or committing of a certificate of approval or special certificate of approval. No bond is required for the granting of a certificate of approval or special certificate of approval. Certificates of approval are valid for a period commencing on the date of issuance and ending on December 31 of the fifth calendar year following the calendar year of issuance. The fee for a certificate of approval is \$175. Special certificates of approval are valid for a period of 30 days. The fee for a special certificate of approval is \$10.

(7) Except as provided in subsection (8) of this section, the annual license fee for a full on-premises sales license is \$400. No bond is required for any full on-premises sales license.

(8) The annual license fee for a full on-premises sales license held by a nonprofit private club as described in ORS 471.175 (8), or held by a nonprofit or charitable organization that is registered with the state, is \$200.

(9) The annual fee for a wine self-distribution permit is \$100, and the minimum bond is \$1,000. [Formerly 471.290; 2001 c.785 §2; 2005 c.22 §345; 2005 c.632 §3; 2007 c.443 §1; 2007 c.651 §3; 2009 c.140 §3; 2009 c.237 §3; 2010 c.33 §4]

471.312 [1989 c.785 §§6,7; 1991 c.734 §39; 1995 c.301 §62; 1999 c.351 §50; renumbered 471.331 in 1999]

471.313 Grounds for refusing to issue license. The Oregon Liquor Control Commission may refuse to license any applicant under the provisions of this chapter if the commission has reasonable ground to believe any of the following to be true:

(1) That there are sufficient licensed premises in the locality set out in the application, or that the granting of a license in the locality set out in the application is not demanded by public interest or convenience. In determining whether there are sufficient licensed premises in the locality, the commission shall consider seasonal fluctuations in the population of the locality and shall ensure that there are adequate licensed premises to serve the needs of the locality during the peak seasons.

(2) That the applicant has not furnished an acceptable bond as required by ORS 471.311 or is not maintaining the insurance or bond required by ORS 471.168.

(3) That, except as allowed by ORS 471.392 to 471.400, any applicant to sell at retail for consumption on the premises has been financed or furnished with money or property by, or has any connection with, or is a manufacturer of, or wholesale dealer in, alcoholic liquor.

(4) That the applicant:

(a) Is in the habit of using alcoholic beverages, habit-forming drugs or controlled substances to excess.

(b) Has made false statements to the commission.

(c) Is incompetent or physically unable to carry on the management of the establishment proposed to be licensed.

(d) Has been convicted of violating a general or local law of this state or another state, or of violating a federal law, if the conviction is substantially related to the fitness and ability of the applicant to lawfully carry out activities under the license.

(e) Has maintained an insanitary establishment.

(f) Is not of good repute and moral character.

(g) Did not have a good record of compliance with the alcoholic liquor laws of this state and the rules of the commission when previously licensed.

(h) Is not the legitimate owner of the business proposed to be licensed, or other persons have ownership interests in the business which have not been disclosed.

(i) Is not possessed of or has not demonstrated financial responsibility sufficient to adequately meet the requirements of the business proposed to be licensed.

(j) Is unable to read or write the English language or to understand the laws of Oregon relating to alcoholic liquor or the rules of the commission.

(5) That there is a history of serious and persistent problems involving disturbances, lewd or unlawful activities or noise either in the premises proposed to be licensed or involving patrons of the establishment in the immediate vicinity of the premises if the activities in the immediate vicinity of the premises are related to the sale or service of alcohol under the exercise of the license privilege. Behavior which is grounds for refusal of a license under this section, where so related to the sale or service of alcohol, includes, but is not limited to obtrusive or excessive noise, music or sound vibrations; public drunkenness; fights; altercations; harassment; unlawful drug sales; alcohol or related litter; trespassing on private property; and public urination. Histories from premises currently or previously operated by the applicant may be considered when reasonable inference may be made that similar activities will occur as to the premises proposed to be licensed. The applicant may overcome the history by showing that the problems are not serious or persistent or that the applicant demonstrates a willingness and ability to control adequately the premises

proposed to be licensed and patrons' behavior in the immediate vicinity of the premises which is related to the licensee's sale or service of alcohol under the licensee's exercise of the license privilege. [Formerly 471.295; 2001 c.785 §1; 2011 c.165 §1; 2013 c.149 §1]

(Suspension or Cancellation of License; Civil Penalties)

471.315 Grounds for cancellation or suspension of license or imposition of civil penalty. (1) The Oregon Liquor Control Commission may cancel or suspend any license issued under this chapter, or impose a civil penalty in lieu of or in addition to suspension as provided by ORS 471.322, if the commission finds or has reasonable ground to believe any of the following to be true:

(a) That the licensee:

(A) Has violated any provision of this chapter or ORS 474.115 or any rule of the commission adopted pursuant thereto.

(B) Has made any false representation or statement to the commission in order to induce or prevent action by the commission.

(C) Is not maintaining an acceptable bond as required by ORS 471.311 or is not maintaining the insurance or bond required by ORS 471.168.

(D) Has maintained an insanitary establishment.

(E) Is insolvent or incompetent or physically unable to carry on the management of the establishment of the licensee.

(F) Is in the habit of using alcoholic liquor, habit-forming drugs or controlled substances to excess.

(G) Has knowingly sold alcoholic liquor to persons under 21 years of age or to persons visibly intoxicated at the time of sale.

(H) Has allowed the consumption of alcoholic liquor on the licensed premises by a person who is visibly intoxicated at the time of consumption.

(I) Has misrepresented to a customer or the public any alcoholic liquor sold by the licensee.

(J) Since the granting of the license, has been convicted of a felony, of violating any of the liquor laws of this state, general or local, or of any misdemeanor or violation of any municipal ordinance committed on the licensed premises.

(b) That any person licensed to sell at retail for consumption on the premises is acting as an agent of, or is a manufacturer or wholesaler of alcoholic liquors, or has borrowed money or property, or has accepted gratuities or rebates, or has obtained the use of equipment from any manufacturer or

wholesaler of alcoholic liquor or any agent thereof.

(c) That there is a history of serious and persistent problems involving disturbances, lewd or unlawful activities or noise either in the premises or involving patrons of the establishment in the immediate vicinity of the premises if the activities in the immediate vicinity of the premises are related to the sale or service of alcohol under the exercise of the license privilege. Behavior that is grounds for cancellation or suspension of a license under this section, where so related to the sale or service of alcohol, includes but is not limited to obtrusive or excessive noise, music or sound vibrations; public drunkenness; fights; altercations; harassment or unlawful drug sales; alcohol or related litter; trespassing on private property; and public urination. Mitigating factors include a showing by the licensee that the problems are not serious or persistent or that the licensee has demonstrated a willingness and ability to control adequately the licensed premises and patrons' behavior in the immediate vicinity of the premises which is related to the licensee's sale or service of alcohol under the licensee's exercise of the license privilege.

(d) That there is any other reason that, in the opinion of the commission, based on public convenience or necessity, warrants canceling or suspending such license.

(2) Civil penalties under this section shall be imposed as provided in ORS 183.745. [Amended by 1953 c.107 §2; 1971 c.159 §4; 1979 c.744 §34; 1981 c.599 §1; 1989 c.785 §3; 1991 c.734 §40; 1995 c.301 §63; 1997 c.841 §6; 1999 c.351 §51; 2011 c.107 §1]

471.316 Mandatory suspension if licensee fails to prevent certain unlawful drug use or sales on premises; civil penalty. (1) Notwithstanding any other provision of this chapter, the Oregon Liquor Control Commission shall suspend the license of a licensed premises listed in subsection (4) of this section if the commission determines that:

(a) Unlawful drug use or sales are occurring on the licensed premises;

(b) The licensee is aware of the unlawful drug use or sales because of arrests for unlawful drug sales on the licensed premises or seizures of unlawful drugs on the licensed premises, or because the licensee or employees of the licensee have personally witnessed unlawful drug use or sales on the licensed premises; and

(c) The licensee fails to take immediate and effective action to prevent unlawful drug use or sales on the licensed premises.

(2) In addition to any suspension imposed under this section, the commission may im-

pose a civil penalty under the circumstances described in subsection (1) of this section not to exceed the maximum amount established under ORS 471.322 (2). Notwithstanding ORS 471.322 (1), the commission shall not allow payment of a civil penalty under this subsection in lieu of the suspension provided for in subsection (1) of this section. A civil penalty under this section shall be imposed in the manner provided by ORS 183.745.

(3) The commission may cancel a license listed in subsection (4) of this section if the license is suspended under the provisions of this section two or more times within a two-year period.

(4) This section applies only to premises licensed under:

(a) A full on-premises sales license.

(b) A limited on-premises sales license.

(c) A brewery-public house license. [1997 c.815 §2; 1999 c.351 §29]

471.317 [1975 c.373 §2; 1979 c.236 §8; 1995 c.301 §64; renumbered 471.333 in 1999]

471.320 [Amended by 1957 c.220 §3; repealed by 1971 c.734 §21]

471.322 Civil penalty in lieu of or in addition to short-term suspension of certain licenses and permits; limits on amount. (1) If a license issued under this chapter or a service permit issued under ORS 471.360 is suspended for a period of 30 days or less, the Oregon Liquor Control Commission may impose against the affected licensee or permittee in lieu of or in addition to the suspension a civil penalty fixed by the commission in accordance with subsection (2) of this section if the commission is satisfied that such a penalty in lieu of or in addition to suspension is consistent with the purposes of the Liquor Control Act and the Oregon Distilled Liquor Control Act. Upon payment of the penalty in lieu of suspension, the commission shall cancel the suspension.

(2) Except as provided in ORS 471.327, the penalty which the commission may impose pursuant to subsection (1) of this section against a licensee shall not be less than \$100 nor more than \$5,000. The penalty which the commission may impose pursuant to subsection (1) of this section against a service permittee shall not be less than \$25 nor more than \$500.

(3) Civil penalties under this section shall be imposed as provided in ORS 183.745. [1969 c.67 §§2,3; 1973 c.144 §1; 1975 c.735 §1; 1979 c.264 §10; 1981 c.599 §2; 1991 c.61 §1; 1991 c.734 §41; 1995 c.301 §65; 1999 c.351 §52; 1999 c.1062 §1]

471.325 [Amended by 1953 c.19 §2; 1957 c.220 §4; 1969 c.205 §1; repealed by 1971 c.734 §21]

471.326 Refund of civil penalty if suspension not sustained on judicial review. If the action of the Oregon Liquor Control

Commission in suspending a license or permit issued under this chapter is not sustained upon judicial review under ORS chapter 183, the commission shall promptly refund the amount paid pursuant to ORS 471.322 (1) by check or order drawn on the State Treasurer from the Oregon Liquor Control Commission Account. [1969 c.67 §4; 1973 c.144 §2; 1975 c.735 §2; 1979 c.264 §11; 1991 c.61 §2; 1995 c.301 §66; 1999 c.351 §53]

471.327 Civil penalty in addition to or in lieu of suspending certain other licenses or certificates. (1) The Oregon Liquor Control Commission, in suspending any brewery license, wholesale wine license, wholesale malt beverage license, or certificate of approval, may further impose against the licensee or the holder of the certificate of approval a civil penalty not to exceed \$5,000, or, in its discretion, may impose such civil penalty without suspending the license or the certificate of approval.

(2) Civil penalties under this section shall be imposed as provided in ORS 183.745. [1955 c.657 §7; 1973 c.311 §3; 1991 c.734 §42]

(Miscellaneous Provisions Relating to Denial, Suspension or Cancellation of License)

471.329 Serious and persistent problems involving noise as grounds for discipline of licensee or applicant. (1) For the purpose of determining whether there is a history of serious and persistent problems involving noise under the provisions of ORS 471.313 (5) and 471.315 (1)(c), or whether the licensee maintains a noisy establishment in violation of the provisions of ORS 471.425:

(a) Noise from the inside of a licensed premises located within the boundaries of a city or county that has an ordinance regulating excessive noise may be considered obtrusive or excessive only if the noise violates the ordinance;

(b) Noise caused by patrons outside a licensed premises located within the boundaries of a city or county that has an ordinance regulating excessive noise may be considered obtrusive or excessive only if the noise is of a type that a reasonable person would not expect to hear outside a premises licensed for the sale of alcoholic beverages; and

(c) Noise caused by patrons inside or outside a licensed premises located within the boundaries of a city or county that does not have an ordinance regulating excessive noise may be considered obtrusive or excessive only if the noise is of the type that a reasonable person would not expect to hear inside or outside a premises licensed for the sale of alcoholic beverages.

(2) For the purpose of determining whether noise is obtrusive under the provisions of ORS 471.313 (5) and 471.315 (1)(c), or whether the licensee maintains a noisy establishment in violation of the provisions of ORS 471.425, the Oregon Liquor Control Commission shall consider whether persons complaining about the noise have taken any action to mitigate the disturbance alleged to have been caused by the noise. [1999 c.646 §10; 2001 c.785 §4]

471.330 [Amended by 1977 c.215 §1; 1995 c.301 §67; 1999 c.351 §54; renumbered 471.351 in 1999]

471.331 Notice to licensee when refusal to renew or suspension or cancellation of license based on adverse neighborhood impact; no stay of order. (1) Whenever the Oregon Liquor Control Commission proposes to refuse to renew or to suspend or cancel any license issued under this chapter because of adverse neighborhood impact of the licensee's operation, notwithstanding ORS 183.435, the commission shall grant the affected licensee 20 days from notification of the proposed commission action to request a hearing.

(2) Notwithstanding ORS 183.482 (3), the Oregon Liquor Control Commission shall not stay any order refusing a license or suspending or canceling any license if the order was entered on grounds stated in ORS 471.313 (5) or 471.315 (1)(c). [Formerly 471.312]

471.333 Effect of sanitation violations. (1) Except as provided in subsections (2) and (3) of this section, the Oregon Liquor Control Commission shall not refuse to issue, cancel or suspend a license under ORS 471.313, 471.315 or 471.425 for maintaining an insanitary establishment.

(2) The commission may refuse to issue, cancel or suspend a license under ORS 471.313, 471.315 or 471.425 for maintaining an insanitary establishment in violation of a city ordinance relating to sanitation only if the licensee is convicted of violating the ordinance.

(3) The commission may refuse to issue, cancel or suspend a license under ORS 471.313, 471.315 or 471.425 for maintaining an insanitary establishment in violation of ORS 447.010 to 447.156 and 447.992 or the laws, orders or rules relating to public health of the Oregon Health Authority or the State Department of Agriculture only when the agency charged with enforcing those laws, orders or rules finds that the licensee is in violation of them and renders a final order adverse to the licensee. [Formerly 471.317; 2001 c.900 §204; 2009 c.595 §959]

471.335 [Amended by 1953 c.120 §6; 1974 c.4 §4; 1985 c.592 §3; renumbered 471.404 in 1999]

471.340 [Amended by 1983 c.316 §1; 1999 c.351 §69; renumbered 471.442 in 1999]

**(Sales of Alcoholic Beverages
to Minors by Licensees)**

471.341 Mandatory clerk training course for employees of off-premises sales licensees; rules; fees; civil penalty.

(1) An employee of an off-premises sales licensee who has been found by the Oregon Liquor Control Commission to have sold alcoholic beverages to a minor, or to have failed to properly verify identification of a person who purchased alcoholic beverages, must attend a clerk training course approved by the commission as a condition of making sales of alcoholic beverages to members of the public under an off-premises sales license.

(2) The commission shall by rule establish times for employees to complete a required clerk training course under this section. An employee required to complete a clerk training course under this section may continue to make sales of alcoholic beverages to members of the public until taking such training, but may not make any sales of alcoholic beverages after the expiration of the time allowed by commission rule if the employee has not completed the training before the expiration of that time.

(3) Except as provided in subsection (2) of this section, the holder of an off-premises sales license may not allow an employee who has been found by the Oregon Liquor Control Commission to have sold alcoholic beverages to a minor, or to have failed to properly verify identification of a person who purchased alcoholic beverages, to sell alcoholic beverages under the license unless the employee completes a clerk training course as required by this section.

(4) The Oregon Liquor Control Commission, as part of the Alcohol Education Program established under ORS 471.541, shall approve all clerk training courses offered for the purpose of this section. The holder of an off-premises sales license may establish a clerk training course for employees of the licensee, but the course must be approved by the commission to meet the requirements of this section. Clerk training courses approved under this section must address at least the following topics:

(a) The importance of not selling alcoholic beverages to minors and visibly intoxicated persons.

(b) Guidelines for recognizing minors and visibly intoxicated persons.

(c) Guidelines for checking and verifying identification, and for recognizing false or altered identification.

(d) Recommended approaches for refusing sales of alcoholic beverages to minors and visibly intoxicated persons.

(5) If an employee of an off-premises sales licensee is found to have sold alcoholic beverages to a minor, or to have failed to properly verify identification of a person who purchased alcoholic beverages, the commission shall notify the licensee that the employee must complete a clerk training course approved under this section and may not sell alcoholic beverages to members of the public after the time established by the commission unless the employee completes the training within the time allowed. If the off-premises sales licensee offers a clerk training course to new employees, and the employee has previously completed that course, the requirements of this section may be met by re-taking the clerk training course if the course has been approved by the commission for the purposes of this section.

(6) Upon completion of a clerk training course by an employee of an off-premises sales licensee pursuant to the requirements of this section, the off-premises sales licensee that employs the person must notify the commission in writing that the employee has successfully completed the training. The notification must include the name and address of the employee, the name of the clerk training course attended by the employee, and the date or dates on which the course was attended. The notification shall be kept by the commission in the licensee's file.

(7) The commission shall assess and collect a fee not to exceed \$13 from each person required to attend a clerk training course under this section. Amounts collected under this section shall be used for the administrative expenses incurred by the commission in the performance of the commission's duties under the Alcohol Education Program.

(8) In addition to any other penalty provided for by law, the commission may impose a civil penalty against any employee of an off-premises sales licensee who sells alcoholic beverages to members of the public and who is prohibited from making those sales under this section. A civil penalty under this subsection may not exceed \$500. Civil penalties under this subsection shall be imposed by the commission in the manner provided by ORS 183.745. [1999 c.1062 §§3,9; 2001 c.785 §15]

471.342 Acquisition and use of age verification equipment in lieu of other penalty. Upon finding that a retail licensee, as defined in ORS 471.392, or an employee of a retail licensee has sold alcoholic beverages to a minor, or has failed to properly verify identification of a person who purchased alcoholic beverages, the Oregon Liquor Control Commission may allow the licensee, in lieu of a civil penalty or denial, suspension or cancellation of the license, to acquire and

use equipment designed to prevent sales of alcoholic beverages to minors. [1999 c.1062 §5]

471.344 Responsible vendor program; rules. (1) The Oregon Liquor Control Commission shall by rule establish a responsible vendor program. The program shall include a list of positive measures that a licensee must take to avoid sales of alcoholic beverages to minors. Any person holding a liquor license that authorizes the person to sell alcoholic beverages at retail may participate in the program.

(2) If a licensee participates in the responsible vendor program and takes all measures specified by the program as necessary to prevent sales of alcoholic beverages to minors, the commission may not cancel the license of the licensee, or deny issuance of a license to the licensee, based on sales of alcoholic beverages to minors by employees of the licensee. [1999 c.1062 §7; 2011 c.102 §1]

471.345 [Amended by 1999 c.351 §70; renumbered 471.446 in 1999]

471.346 Uniform standards for minor decoy operations; rules. (1) The Oregon Liquor Control Commission shall by rule develop uniform standards for minor decoy operations used to investigate licensees and agents operating stores on behalf of the commission under ORS 471.750 for violations of the laws of this state prohibiting sales of alcoholic beverages to minors. Uniform standards established by the commission under this section apply to all investigations conducted by the commission that use minor decoys. The commission shall encourage all law enforcement agencies of this state to use the uniform standards established under this section for minor decoy operations conducted by the law enforcement agencies.

(2) To the greatest extent possible, the uniform standards established by the commission under this section:

(a) Shall be the same for minor decoy operations conducted by the commission and for minor decoy operations conducted by law enforcement agencies of this state; and

(b) Shall provide for coordination between the commission and law enforcement agencies of this state in conducting minor decoy operations.

(3) The uniform standards established by the commission under this section shall provide that minor decoy operations must be conducted on either a random or a targeted basis in cities with populations of 20,000 or more. Random minor decoy operations shall cover a range of retail outlets. Targeted minor decoy operations may be conducted for a single licensee or agent, but may be used only if there is a documented compliance

problem with the specific licensee or agent that is the target of the operation. For the purpose of implementing standards for random minor decoy operations under this subsection, the commission shall by rule adopt a methodology that produces, to the greatest extent possible, an equal chance that any licensee or agent will be subject to a minor decoy operation.

(4) Except as provided in subsection (5) of this section, the failure of the commission or of a law enforcement agency to follow uniform standards established by the commission under this section is not grounds for challenging any complaint, citation or conviction for violation of the laws prohibiting the sale of alcoholic beverages to minors.

(5) In determining whether to impose sanctions based on multiple violations of the laws of this state prohibiting sales of alcoholic beverages to minors, the commission may not consider any complaint filed against a licensee for selling alcoholic beverages to a minor, citation issued to a licensee for selling alcoholic beverages to a minor or conviction of a licensee for selling alcoholic beverages to a minor if the complaint, citation or conviction arose out of a minor decoy operation that was not conducted pursuant to the uniform standards established by the commission under this section.

(6) Notwithstanding any other provision of this chapter, the commission may not consider any sale of alcoholic beverages to a minor that results from a minor decoy operation that is not conducted in compliance with the standards established under this section for the purpose of imposing any civil penalty against a licensee, making a decision on the renewal, suspension or cancellation of a license issued under this chapter or otherwise sanctioning a licensee for the sale of alcoholic beverages to a minor.

(7) The commission shall give notice of the uniform standards established under this section to all law enforcement agencies of this state that conduct minor decoy operations. [2001 c.791 §2]

471.350 [Repealed by 1967 c.577 §10]

(Examination of Books and Premises of Licensees)

471.351 Examination of books and premises of licensees. (1) The Oregon Liquor Control Commission has the right after 72 hours' notice to the owner or the agent of the owner to make an examination of the books and may at any time make an examination of the premises of any person licensed under this chapter, or to check the alcoholic content of liquors carried by the licensee, for the purpose of determining

compliance with this chapter and the rules of the commission.

(2) The commission shall not require the books of any licensee to be maintained on the premises of the licensee. [Formerly 471.330]

471.355 [1971 c.470 §4; 1981 c.199 §3; 1989 c.178 §5; 1995 c.301 §68; 1997 c.79 §2; 1999 c.351 §30; renumbered 471.294 in 1999]

SERVICE PERMITS

471.360 Service permit required; waiver. (1) Except as otherwise provided in ORS 471.375:

(a) Any person employed by a licensee of the Oregon Liquor Control Commission must have a valid service permit issued by the commission if the person:

(A) Participates in any manner in the mixing, selling or service of alcoholic liquor for consumption on the premises where served or sold; or

(B) Participates in the dispensing of malt beverages, wines or cider sold in securely covered containers provided by the consumer.

(b) A licensee of the commission may not permit any person who lacks a service permit required of the person under paragraph (a) of this subsection:

(A) To mix, sell or serve any alcoholic liquor for consumption on licensed premises; or

(B) To dispense malt beverages, wines or cider sold in securely covered containers provided by the consumer.

(c) A permittee shall make the service permit available at any time while on duty for immediate inspection by any liquor enforcement inspector or by any other peace officer.

(2) The commission may waive the requirement for a service permit for an employee of a licensee whose primary function is not the sale of alcoholic liquor or food, including but not limited to public passenger carriers, hospitals, or convalescent, nursing or retirement homes. [1979 c.788 §2; 2012 c.54 §2; 2013 c.32 §9]

471.365 Characteristics of permit; verification of identity of permittee. (1) A service permit shall be a purely personal privilege, valid only upon licensed premises, for the period of time stated thereon, and may be suspended or revoked for any reason set forth in ORS 471.360 to 471.390.

(2) No service permit shall be used by any person other than the person to whom it is issued. Except as provided in ORS 471.375, the licensee shall verify the identification of the permittee and determine that the permittee has in possession a service

permit before allowing the permittee to mix, sell or serve alcoholic liquor for consumption on the licensed premises. [1979 c.788 §3]

471.370 Expiration. Unless sooner suspended or revoked, a service permit expires five years after the date on which the permittee completed the approved alcohol server education course under ORS 471.542 that qualified the permittee for the permit. [1979 c.788 §3a; 1981 c.599 §3; 2009 c.350 §3]

471.375 Application; requirements; fee.

(1) Any person who has not had a permit refused or revoked or whose permit is not under suspension may mix, sell or serve alcoholic beverages as provided under subsection (4) of this section if the person prepares in duplicate an application for a service permit prior to mixing, selling or serving any alcoholic beverage for consumption on licensed premises and the application is indorsed as required under subsection (2) of this section. A copy of the indorsed application must be kept on the licensed premises by any licensee for whom the person mixes, sells or serves alcoholic beverages and must be made available for immediate inspection by any liquor enforcement inspector or by any other peace officer until the applicant receives the service permit.

(2) An application for a service permit under subsection (1) of this section must be indorsed by one of the following persons:

(a) The licensee under whose license the applicant will mix, sell or serve alcoholic beverages. If a licensee indorses an application, the licensee must immediately transmit the application to the commission with the fee required by subsection (3) of this section.

(b) An officer or employee of a company that provides servers to licensees on a temporary basis. The commission must give a company written approval to indorse service permit applications before an application may be indorsed under this paragraph.

(c) An employee of the commission designated by the commission to accept and indorse applications under this section. The applicant must personally appear before the employee of the commission and provide identification as may be required by commission rule.

(d) An employee of an alcohol server education course provider that has been certified by the commission under ORS 471.542 (8). The employee must be specifically designated by the provider to indorse applications under this section.

(3) An applicant for a service permit must be 18 years of age or over. Application for a service permit shall be made on a form supplied by the commission. The applicant shall truly answer all questions, provide any

further information required, and pay a fee not to exceed \$10. The commission shall either set the fee to cover only the administrative costs of the service permit program, or apply any excess to the Alcohol Education Program established under ORS 471.541.

(4) An applicant for a service permit whose application has been indorsed as provided under this section may:

(a) Participate in the mixing, selling or service of alcoholic beverages for consumption on the premises where served or sold; and

(b) Participate in the dispensing of malt beverages, wine or cider sold in securely covered containers provided by the consumer. [1979 c.788 §4; 1981 c.610 §5; 1987 c.511 §6; 1989 c.271 §2; 2001 c.785 §7; 2009 c.39 §1; 2012 c.54 §3; 2013 c.537 §7]

471.380 Grounds for refusing to issue permit; request for hearing. (1) The Oregon Liquor Control Commission may refuse to grant a service permit if it has reasonable grounds to believe any of the following to be true:

(a) That the applicant is in the habit of using alcoholic beverages or controlled substances to excess.

(b) That the applicant has made false statements to the commission.

(c) That the applicant is incompetent or physically incapable of performing the duties of a permittee.

(d) That the applicant has been convicted of violating any of the alcoholic liquor laws of this state, general or local, or has been convicted at any time of a felony.

(e) That the application has not been indorsed as required by ORS 471.375.

(f) That the applicant has not completed the alcohol server education course and examination required by ORS 471.542.

(2) Notwithstanding ORS 183.435, an applicant who seeks review of the refusal of a service permit must request a hearing:

(a) Within 15 days after notification of the refusal, if the refusal is based on failure to complete the alcohol server education course and examination; or

(b) Within 30 days after notification of the refusal, if the refusal is based on any grounds other than failure to complete the alcohol server education course and examination. [1979 c.788 §5; 1997 c.79 §3; 2001 c.785 §8; 2005 c.12 §1; 2009 c.350 §1]

471.385 Grounds for revoking or suspending permit or imposing civil penalty; responsibility of licensee. (1) The Oregon Liquor Control Commission may revoke or

suspend a service permit, or impose a civil penalty in lieu of or in addition to suspension as provided by ORS 471.322, if it finds or has reasonable grounds to believe any of the following to be true:

(a) That the permittee has made false statements to the commission.

(b) That the permittee has been convicted of a felony, of violating any of the liquor laws of the state, general or local, or any misdemeanor or violation of any municipal ordinance committed on the licensed premises.

(c) That the permittee has performed or permitted any act which would constitute a violation of any provision of this chapter or any rule of the commission, if the act were performed or permitted by any licensee of the commission.

(2) The issuance, suspension or revocation of a permit under ORS 471.360 to 471.390 does not relieve a licensee from responsibility for any act of an employee on the licensee's premises.

(3) When there has been a violation of this chapter or any rule adopted thereunder upon any premises licensed by the commission, the commission may revoke or suspend either the service permit of the employee who violated the law or rule or the license of the licensee upon whose premises the violation occurred, or both the permit and the license.

(4) The commission may revoke or suspend any license issued by the commission if the licensee knowingly indorses a person's application for a permit when the person has been refused a permit or has had a permit suspended or revoked, or when the licensee fails to comply with any provision to be performed by the licensee under ORS 471.360 to 471.390.

(5) Civil penalties under this section shall be imposed as provided in ORS 183.745. [1979 c.788 §§6,8; 1981 c.599 §5; 1991 c.734 §43; 1995 c.301 §39; 1999 c.351 §55; 2009 c.350 §2]

471.390 Duplicate or new permit; fee.

(1) If a service permit issued under ORS 471.360 to 471.390 is lost, mutilated or destroyed, the permittee shall apply immediately for a duplicate permit on a form to be supplied by the Oregon Liquor Control Commission and submit a fee of \$5.

(2) If a permittee changes name by marriage or otherwise, the permittee shall apply immediately for a new service permit by forwarding the permit and evidence of the change of name to the commission with an application and a fee of \$5. [1979 c.788 §7]

“TIED HOUSE” PROHIBITIONS

471.392 Definitions for ORS 471.392 to 471.400. For the purposes of ORS 471.392 to 471.400:

(1) “Manufacturer or wholesaler” means:

(a) A person holding a brewery license issued under ORS 471.220, a winery license issued under ORS 471.223, a grower sales privilege license issued under ORS 471.227, a distillery license issued under ORS 471.230, a wholesale malt beverage and wine license issued under ORS 471.235 or a warehouse license issued under ORS 471.242.

(b) Any manufacturer of alcoholic liquors whose products are sold in the State of Oregon.

(2) “Retail licensee” means the holder of a full or limited on-premises sales license, an off-premises sales license or a temporary sales license. “Retail licensee” does not include a bona fide trade association that represents retail licensees and that is open to all persons licensed under at least one type of retail license. [1995 c.301 §76; 1997 c.249 §172; 1999 c.351 §31]

471.394 Prohibition on sales at both wholesale and retail; prohibition on financial connection between retailer and wholesaler. (1) Except as provided in ORS 471.396, a person licensed under the provisions of this chapter may not sell alcoholic liquor at both retail and wholesale.

(2) Except as provided in ORS 471.396, a manufacturer or wholesaler may not acquire or hold any right, title, lien, claim or other interest, financial or otherwise, in, upon or to the premises, equipment, business or merchandise of a retail licensee.

(3) Except as provided in ORS 471.396, a retail licensee may not acquire or hold any right, title, lien, claim or other interest, financial or otherwise, in, upon or to the premises, equipment, business or merchandise of any manufacturer or wholesaler. [1995 c.301 §77; 1999 c.351 §56]

471.396 Exceptions to prohibition on financial connection between wholesaler and retailer. (1) The prohibitions of ORS 471.394 (1) do not apply to persons holding winery licenses, grower sales privilege licenses, brewery-public house licenses, distillery licenses or brewery licenses, to the extent that retail sales are authorized by the statutes establishing the privileges of each license.

(2)(a) The prohibitions of ORS 471.394 (2) and (3) do not apply to a person who wholesales alcoholic liquor and who is not required to be licensed under the provisions of this chapter if the retail licensee does not sell any brand of alcoholic liquor sold or

distributed by the person and does not sell any brand of alcoholic liquor produced by any manufacturer doing business with the person selling at wholesale.

(b) The prohibitions of ORS 471.394 (2) and (3) do not apply to a manufacturer of alcoholic liquor if the retail licensee does not sell any brand of alcoholic liquor sold, distributed or produced by the manufacturer and does not sell any brand of alcoholic liquor sold, distributed or produced by any subsidiary or other business entity that the manufacturer owns or manages, or that the manufacturer exercises control over.

(3) The prohibitions of ORS 471.394 do not apply solely by reason of the family relationship of a spouse or family member to a manufacturer or wholesaler if:

(a) The manufacturer or wholesaler is licensed by the Oregon Liquor Control Commission to sell alcoholic liquor at wholesale;

(b) The license authorizing sale of alcoholic liquor at wholesale was first issued before January 1, 1965, and has been held continuously since that date;

(c) The spouse or family member holds or seeks a license that authorizes the retail sale of alcoholic liquor for off-premises consumption only; and

(d) The manufacturer or wholesaler does not directly or indirectly sell alcoholic liquor to the spouse or family member.

(4) The prohibitions of ORS 471.394 do not apply solely by reason of the family relationship of a spouse or family member to the retail licensee if the manufacturer or wholesaler is licensed by the commission to sell alcoholic liquor at wholesale and does not directly or indirectly sell alcoholic liquor to the spouse or family member.

(5) Notwithstanding ORS 471.394, a manufacturer or wholesaler, and any officer, director or substantial stockholder of any corporate manufacturer or wholesaler, may hold, directly or indirectly, an interest in a full or limited on-premises sales licensee, provided that the interest does not result in exercise of control over, or participation in the management of, the licensee’s business or business decisions, and does not result in exclusion of any competitor’s brand of alcoholic liquor.

(6) Notwithstanding ORS 471.394, a full or limited on-premises sales licensee, and any officer, director or substantial stockholder of any corporate full or limited on-premises sales licensee, may hold, directly or indirectly, an interest in a manufacturer or wholesaler, provided that the interest does not result in exercise of control over, or participation in the management of, the manufacturer’s or wholesaler’s business or

business decisions, and does not result in exclusion of any competitor's brand of alcoholic liquor.

(7) Notwithstanding ORS 471.394, an institutional investor with a financial interest in a wholesaler or manufacturer may hold, directly or indirectly, an interest in a retail licensee unless the institutional investor controls, is controlled by, or is under common control with, a wholesaler or manufacturer. Notwithstanding ORS 471.394, an institutional investor with a financial interest in a retail licensee may hold, directly or indirectly, an interest in a wholesaler or manufacturer unless the institutional investor controls, is controlled by, or is under common control with, a retail licensee. The provisions of this subsection apply only to an institutional investor that is a state or federally chartered bank, a state or federally chartered mutual savings bank, a mutual fund or pension fund, or a private investment firm. The principal business activity of the institutional investor must be the investment of capital provided by depositors, participants or investors. The institutional investor must maintain a diversified portfolio of investments. The majority of the institutional investor's investments may not be in businesses that manufacture, distribute or otherwise sell alcoholic beverages. The institutional investor, and the officers, directors, substantial shareholders, partners, employees and agents of the institutional investor, may not participate in management decisions relating to the sale or purchase of alcoholic beverages made by a licensee in which the institutional investor holds an interest.

(8) Notwithstanding ORS 471.394, a member of the board of directors of a parent company of a corporation that is a manufacturer may serve on the board of directors of a parent company of a corporation that is a retail licensee if:

(a) The manufacturer or parent company of a manufacturer is listed on a national security exchange;

(b) All purchases of alcoholic beverages by the retail licensee are made from holders of wholesale malt beverage and wine licenses, brewery licenses or winery licenses in this state;

(c) The interest of the member of the board of directors does not result in the exclusion of any competitor's brand of alcoholic beverages on the licensed premises of the retail licensee; and

(d) The sale of goods and services other than alcoholic beverages by the retail licensee exceeds 50 percent of the gross receipts of the business conducted by the retail licensee on the licensed premises. [1995 c.301

§78; 1997 c.257 §2; 1997 c.803 §4; 1999 c.351 §32; 1999 c.442 §1; 2007 c.134 §2]

471.398 Prohibition of financial assistance from wholesaler to retailer. Except as otherwise specifically provided by law, a person holding a retail license may not accept directly or indirectly from a manufacturer or wholesaler, and a manufacturer or wholesaler may not provide directly or indirectly to the retail licensee, any of the following:

(1) Any substantial gratuities;

(2) Any finances, money, credit, discounts or rebates;

(3) Any fixtures, furniture or furnishings;

(4) Any equipment other than advertising and point of sale material and other items of nominal value supplied to all retail licensees without discrimination; or

(5) Any services other than the inspection of equipment, the inspection and rotation of stock, the building of displays and other services of nominal value incidental to merchandising in the usual course of business furnished to all retail licensees without discrimination. [1995 c.301 §79; 1997 c.79 §4]

471.400 Exceptions to prohibition of financial assistance; rules. (1) Notwithstanding ORS 471.394 and 471.398, a manufacturer or wholesaler may lease or furnish picnic pumps, cold plates, tubs, refrigerated trailers, refrigerated vans and refrigerated draft systems to a retail licensee if the equipment is leased or furnished for a special event, if a reasonable rental or service fee is charged for the equipment and if the period that the equipment is leased or furnished does not exceed 10 days.

(2) Notwithstanding ORS 471.394 and 471.398, the Oregon Liquor Control Commission may specify by rule the manner and circumstances under which a manufacturer or wholesaler may provide products and services to a nonprofit special licensee.

(3)(a) Notwithstanding ORS 471.394 and 471.398, the commission shall allow the sale of nonalcoholic products in the manner in which the nonalcoholic product is sold by a manufacturer or wholesaler not licensed by the commission. The commission may limit merchandising practices involving nonalcoholic products if the commission finds that the limitations are necessary to prevent abuses of ORS 471.394 and 471.398 by the industry as a whole.

(b) Any fixtures, equipment or furnishings provided by a manufacturer or wholesaler in furtherance of the sale of nonalcoholic products may not be used by the retail licensee to store, service, display, advertise, furnish or sell, or aid in the sale of,

alcoholic products regulated by the commission. All such fixtures, equipment or furnishings must be identified by the retail licensee as being furnished by a licensed manufacturer or wholesaler. [1995 c.301 §80]

471.401 Purchase of alcoholic liquor advertising space or time from retail licensee. (1) Notwithstanding any other provision of this chapter, a manufacturer or wholesaler of alcoholic liquor may purchase advertising space or time from a licensee authorized to sell alcoholic liquors at retail if the retail licensee:

(a) Holds a full or limited on-premises sales license and has on the licensed premises at least one room or area for which the maximum occupancy approved by the State Fire Marshal or a governmental subdivision granted an exemption under ORS 476.030 is 3,000 or more persons;

(b) Holds a full or limited on-premises sales license and the licensed premises is owned by the United States Government or a public body as defined in ORS 174.109;

(c) Holds a full or limited on-premises sales license and is a foreign corporation or nonprofit corporation, both as defined in ORS 65.001, that possesses a certificate of authorization or certificate of existence issued under ORS 65.027; or

(d) Holds a temporary sales license and is an entity described in ORS 471.190 (3)(a), (c) or (d).

(2) A manufacturer or wholesaler may purchase advertising space or time under this section only in connection with events to be held on the licensed premises.

(3) A retail licensee that sells advertising space or time under this section must serve other brands of distilled liquors, malt beverages, cider or wine in addition to the brand manufactured or sold by the manufacturer or wholesaler purchasing advertising space or time.

(4) A purchase of advertising space or time under the provisions of this section must be made by written agreement. [1995 c.51 §2; 1999 c.351 §71; 2011 c.173 §1; 2013 c.537 §8]

471.402 Sample tastings authorized. The holder of a brewery license issued under ORS 471.220, a winery license issued under ORS 471.223, a grower sales privilege license issued under ORS 471.227, a brewery-public house license issued under ORS 471.200, a warehouse license issued under ORS 471.242 or a manufacturer certificate of approval issued under ORS 471.244 may provide or pay for sample tastings of wine, cider or malt beverages for the public on premises licensed under a full or limited on-premises sales license or under an off-premises sales license. [1995 c.58 §4; 1999 c.351 §33]

Note: 471.402 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 471 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

PROHIBITIONS RELATING TO LIQUOR

471.403 License required to produce alcoholic liquor; exception. (1) Except as provided in this section, a person may not brew, ferment, distill, blend or rectify any alcoholic liquor unless licensed so to do by the Oregon Liquor Control Commission.

(2) The holder of a brewery-public house license or a brewery license may allow patrons to brew malt beverages not to exceed 14 percent alcoholic content by volume if the brewing is conducted under the direct supervision of the licensee or employees of the licensee. Malt beverages produced under this subsection may not be sold by the patron.

(3) The holder of a winery license may allow patrons to make wine if the winemaking is conducted under the direct supervision of the licensee or employees of the licensee. Wine produced under this subsection may not be sold by the patron.

(4) A person may make homemade beer, wine and fermented fruit juice as authorized under ORS 471.037. A person may provide assistance to another in making the homemade beer, wine or fermented fruit juice, if the person does not receive financial consideration as defined in ORS 471.037 for providing the assistance. [Formerly 471.205; 2007 c.414 §1; 2011 c.12 §4]

471.404 Importing liquor without license prohibited; exceptions; fee. (1) Alcoholic liquor may not be imported into this state by any person other than a holder of a brewery, winery, distillery or wholesaler's license, except as follows:

(a) Alcoholic liquor ordered by and en route to the Oregon Liquor Control Commission, under a certificate of approval issued by the commission.

(b) Wines for sacramental purposes according to rules adopted by the commission.

(c) Alcoholic liquor that is in transit on a common carrier to a destination outside Oregon.

(d) Alcoholic liquor coming into Oregon on a common carrier according to orders placed by a licensed brewery, winery or wholesaler.

(e) Grain and ethyl alcohol for scientific, pharmaceutical, manufacturing, mechanical or industrial use, under a certificate of approval issued by the commission.

(f) Wine or cider that is sold and transported by the holder of a wine self-

distribution permit to a retail licensee that has the endorsement described in ORS 471.274 (5).

(g) Wine or cider shipped directly to a resident of this state under a direct shipper permit issued pursuant to ORS 471.282.

(2) The commission may require importers of alcoholic liquor to pay a reasonable handling fee based on the quantity and type of alcoholic liquor being imported. [Formerly 471.335; 2007 c.651 §6; 2007 c.854 §3; 2009 c.240 §3]

471.405 Prohibited sales, purchases, possession, transportation, importation or solicitation in general; forfeiture upon conviction. (1) No person shall peddle or deliver alcoholic beverages to or at any place, where, without a license, alcoholic beverages are sold or offered for sale. No licensee shall sell or offer for sale any alcoholic beverage in a manner, or to a person, other than the license permits the licensee to sell.

(2) No person shall purchase, possess, transport or import, except for sacramental purposes, an alcoholic beverage unless it is procured from or through the Oregon Liquor Control Commission, except as provided otherwise in the Liquor Control Act.

(3) No person not licensed under the Liquor Control Act shall sell, solicit, take orders for or peddle alcoholic beverages.

(4) Notwithstanding the provisions of subsection (2) of this section, an individual entering the state may have in possession an amount not to exceed four liters (135.2 fluid ounces) of distilled liquor, two cases of wine or cider (620 fluid ounces) and two cases of malt beverages (576 fluid ounces). These quantities of alcoholic beverages are exempt from fees collected by the commission.

(5) Upon conviction for unlawfully purchasing or importing alcoholic beverages into this state, the person convicted shall forfeit to the commission the alcoholic beverage so purchased or imported. The commission shall thereupon seize the forfeited beverage and it shall then become the commission's property. [Amended by 1953 c.120 §6; 1974 c.4 §5; 1981 c.600 §1; 1985 c.592 §2; 1987 c.608 §11; 1995 c.301 §19; 1999 c.351 §72]

471.406 Activities covered by prohibitions on sale of alcoholic beverages. Any prohibition on the sale of alcoholic beverages provided for in this chapter includes:

(1) Soliciting orders for alcoholic beverages or receiving orders for alcoholic beverages.

(2) Keeping alcoholic beverages for sale or exposing alcoholic beverages for sale.

(3) Delivering alcoholic beverages for value or in any way other than purely gratuitously.

(4) Peddling alcoholic beverages.

(5) Keeping alcoholic beverages with intent to sell.

(6) Trafficking in alcoholic beverages.

(7) For any consideration, promised or obtained, directly or indirectly, or under any pretext or by any means, procuring alcoholic beverages, or allowing alcoholic beverages to be procured, for any other person. [1995 c.301 §8 (enacted in lieu of 471.025); 1999 c.351 §57]

471.407 Offer of alcoholic beverages as inducement to make purchases. Except as specifically provided in this chapter, a person who owns, operates or controls a business establishment that sells food or beverages for consumption at the establishment or that offers entertainment to the public for consideration may not provide alcoholic beverages to members of the public for consumption at the establishment, without regard to whether the beverages are offered on a purely gratuitous basis, if:

(1) The alcoholic beverages are offered for the purpose of inducing members of the public to purchase food or beverages or to pay for entertainment; and

(2) The person providing the alcoholic beverages does not hold a license issued under this chapter that authorizes the retail sale of alcoholic beverages. [1999 c.646 §8; 2001 c.104 §214]

471.408 Alcoholic liquor may not be given as prize; exception. (1) Except as otherwise provided in this section, alcoholic liquor may not be given as a prize, premium or consideration for a lottery, contest, game of chance or skill, or competition of any kind.

(2) A nonprofit or charitable organization registered in this state may auction or raffle alcoholic liquor as provided under ORS 471.162 (6) and may deliver or arrange for delivery of the alcoholic liquor to the residence of the successful bidder or raffle winner.

(3) A charitable, fraternal or religious organization may offer alcoholic liquor as a prize, premium or consideration in a contest of chance described in ORS 167.117 (7)(b) or conducted as part of a Monte Carlo event as defined in ORS 167.117.

(4) An auction is not a lottery, contest, game of chance or skill or competition for purposes of this section. [1995 c.363 §2; 1997 c.191 §1; 1997 c.867 §25; 2013 c.150 §1]

471.410 Providing liquor to person under 21 or to intoxicated person; allowing consumption by minor on property; mandatory minimum penalties. (1) A person may not sell, give or otherwise make

available any alcoholic liquor to any person who is visibly intoxicated.

(2) No one other than the person's parent or guardian may sell, give or otherwise make available any alcoholic liquor to a person under the age of 21 years. A parent or guardian may give or otherwise make alcoholic liquor available to a person under the age of 21 years only if the person is in a private residence and is accompanied by the parent or guardian. A person violates this subsection who sells, gives or otherwise makes available alcoholic liquor to a person with the knowledge that the person to whom the liquor is made available will violate this subsection.

(3)(a) A person who exercises control over private real property may not knowingly allow any other person under the age of 21 years who is not a child or minor ward of the person to consume alcoholic liquor on the property, or allow any other person under the age of 21 years who is not a child or minor ward of the person to remain on the property if the person under the age of 21 years consumes alcoholic liquor on the property.

(b) This subsection:

(A) Applies only to a person who is present and in control of the location at the time the consumption occurs;

(B) Does not apply to the owner of rental property, or the agent of an owner of rental property, unless the consumption occurs in the individual unit in which the owner or agent resides; and

(C) Does not apply to a person who exercises control over a private residence if the liquor consumed by the person under the age of 21 years is supplied only by an accompanying parent or guardian.

(4) This section does not apply to sacramental wine given or provided as part of a religious rite or service.

(5) Except as provided in subsection (6) of this section, a person who violates subsection (1) or (2) of this section commits a Class A misdemeanor. Upon violation of subsection (2) of this section, the court shall impose at least a mandatory minimum sentence as follows:

(a) Upon a first conviction, a fine of at least \$500.

(b) Upon a second conviction, a fine of at least \$1,000.

(c) Upon a third or subsequent conviction, a fine of at least \$1,500 and not less than 30 days of imprisonment.

(6)(a) A person who violates subsection (2) of this section is subject to the provisions of this subsection if the person does not act knowingly or intentionally and:

(A) Is licensed or appointed under this chapter; or

(B) Is an employee of a person licensed or appointed under this chapter and holds a valid service permit or has attended a program approved by the Oregon Liquor Control Commission that provides training to avoid violations of this section.

(b) For a person described in paragraph (a) of this subsection:

(A) A first conviction is a Class A violation.

(B) A second conviction is a specific fine violation, and the presumptive fine for the violation is \$860.

(C) A third conviction is a Class A misdemeanor. The court shall impose a mandatory fine of not less than \$1,000.

(D) A fourth or subsequent conviction is a Class A misdemeanor. The court shall impose a mandatory fine of not less than \$1,000 and a mandatory sentence of not less than 30 days of imprisonment.

(7) The court may waive an amount that is at least \$200 but not more than one-third of the fine imposed under subsection (5) of this section, if the violator performs at least 30 hours of community service.

(8) Except as provided in subsection (7) of this section, the court may not waive or suspend imposition or execution of the mandatory minimum sentence required by subsection (5) or (6) of this section. In addition to the mandatory sentence, the court may require the violator to make restitution for any damages to property where the alcoholic liquor was illegally consumed or may require participation in volunteer service to a community service agency.

(9)(a) Except as provided in paragraph (b) of this subsection, a person who violates subsection (3) of this section commits a Class A violation.

(b) A second or subsequent violation of subsection (3) of this section is a specific fine violation, and the presumptive fine for the violation is \$1,000.

(10) Nothing in this section prohibits any licensee under this chapter from allowing a person who is visibly intoxicated from remaining on the licensed premises so long as the person is not sold or served any alcoholic liquor. [Amended by 1963 c.243 §1; 1971 c.159 §5; 1977 c.458 §1; 1977 c.814 §1; 1983 cor. c.736 §1; 1995 c.301 §40; 1995 c.599 §5; 1995 c.756 §1; 1999 c.351 §58; 2009 c.412 §1; 2009 c.587 §4; 2009 c.608 §3; 2011 c.597 §87]

471.412 Allowing visibly intoxicated person to consume alcoholic beverages; good faith effort; effect on other liability; letters of reprimand. (1) A licensee or permittee may not allow a person to consume or to continue to consume alcoholic beverages on the licensed premises after observing that the person is visibly intoxicated.

(2) A licensee or permittee is not in violation of subsection (1) of this section if the licensee or permittee makes a good faith effort to remove any unconsumed alcoholic beverages from the person's possession when the licensee or permittee observes that the person is visibly intoxicated.

(3) Nothing in this section applies to determining liability under ORS 471.565.

(4) Notwithstanding any other provision of law, the Oregon Liquor Control Commission shall only impose letters of reprimand for the first three violations of this section within a two-year period. For license renewal purposes, the first three violations of this section in a two-year period do not apply in determining the past record of compliance under ORS 471.313 (4)(g). [1989 c.785 §2; 1995 c.301 §69; 2011 c.107 §2]

471.415 [Amended by 1955 c.657 §10; 1957 c.297 §1; repealed by 1995 c.301 §81]

471.417 [1985 c.306 §2; 1989 c.471 §1; repealed by 1995 c.301 §81]

471.420 [Amended by 1959 c.399 §1; 1971 c.680 §2; repealed by 1979 c.43 §1 and by 1979 c.190 §431]

471.425 Misrepresentations by licensee and others; maintenance of disorderly establishment. (1) No person shall make false representations or statements to the Oregon Liquor Control Commission in order to induce or prevent action by the commission.

(2) No licensee of the commission shall maintain a noisy, lewd, disorderly or insanitary establishment or supply impure or otherwise deleterious alcoholic beverages.

(3) No licensee of the commission shall misrepresent to a customer or to the public any alcoholic liquor sold by such licensee.

471.430 Purchase or possession of alcoholic beverages by person under 21; entry of licensed premises by person under 21; penalty; suspension of driving privileges; assessment and treatment. (1) A person under 21 years of age may not attempt to purchase, purchase or acquire alcoholic beverages. Except when such minor is in a private residence accompanied by the parent or guardian of the minor and with such parent's or guardian's consent, a person under 21 years of age may not have personal possession of alcoholic beverages.

(2) For the purposes of this section, personal possession of alcoholic beverages in-

cludes the acceptance or consumption of a bottle of such beverages, or any portion thereof or a drink of such beverages. However, this section does not prohibit the acceptance or consumption by any person of sacramental wine as part of a religious rite or service.

(3) Except as authorized by rule or as necessitated in an emergency, a person under 21 years of age may not enter or attempt to enter any portion of a licensed premises that is posted or otherwise identified as being prohibited to the use of minors.

(4)(a) Except as provided in paragraph (b) of this subsection, a person who violates subsection (1) or (3) of this section commits a Class B violation.

(b) A person commits a Class A violation if the person violates subsection (1) of this section by reason of personal possession of alcoholic beverages while the person is operating a motor vehicle, as defined in ORS 801.360.

(5) In addition to and not in lieu of any other penalty established by law, a person under 21 years of age who violates subsection (1) of this section through misrepresentation of age may be required to perform community service 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 suspending driving privileges under this section, 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.

(6) If a person cited under this section is at least 13 years of age but less than 21 years of age at the time the person is found in default under ORS 153.102 or 419C.472 for failure to appear, in addition to and not in lieu of any other penalty, the court shall issue notice under ORS 809.220 to the department for the department to suspend the person's driving privileges under ORS 809.280 (4).

(7) In addition to and not in lieu of any penalty established by law, the court may order a person who violates this section to undergo assessment and treatment as provided in ORS 471.432. The court shall order a person to undergo assessment and treatment as provided in ORS 471.432 if the person has previously been found to have violated this section.

(8) The prohibitions of this section do not apply to a person under 21 years of age who is acting under the direction of the Oregon Liquor Control Commission or under the direction of state or local law enforcement agencies for the purpose of investigating possible violations of laws prohibiting sales of alcoholic beverages to persons who are under 21 years of age.

(9) The prohibitions of this section do not apply to a person under 21 years of age who is acting under the direction of a licensee for the purpose of investigating possible violations by employees of the licensee of laws prohibiting sales of alcoholic beverages to persons who are under 21 years of age. [Amended by 1963 c.243 §2; 1965 c.166 §1; 1971 c.159 §6; 1975 c.493 §1; 1979 c.313 §8; 1991 c.860 §2; 1999 c.646 §1; 1999 c.1051 §186; 2001 c.791 §4; 2007 c.41 §1; 2007 c.298 §1; 2009 c.228 §1; 2011 c.355 §21]

471.432 Examination for problem condition involving alcohol upon conviction; treatment program. When a person is ordered to undergo assessment and treatment as provided in ORS 471.430, the court shall require the person to do all of the following:

(1) Pay to the court the fee described under ORS 813.030 in addition to any fine imposed under ORS 471.430.

(2) Complete an examination by an agency or organization designated by the court to determine whether the person has a problem condition involving alcohol as described in ORS 813.040. The designated agencies or organizations must meet minimum standards established under ORS 430.357 to perform the diagnostic assessment and treatment of problem drinking and alcoholism and must be certified by the Director of the Oregon Health Authority.

(3) Complete a treatment program, paid at the expense of the person convicted, as follows:

(a) If the examination required under this section shows that the person has a problem condition involving alcohol, a program for rehabilitation for alcoholism approved by the director.

(b) If the examination required by this section shows that the person does not have a problem condition involving alcohol, an alcohol information program approved by the director. [1999 c.646 §2; 2009 c.595 §960; 2011 c.673 §39]

Note: 471.432 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 471 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

471.435 [Repealed by 1953 c.120 §6]

471.440 Manufacture, fermentation or possession of mash, wort or wash; establishment or operation of distillery without license; prima facie evidence. (1)

Except as provided in ORS 471.037 and 471.403, mash, wort or wash fit for distillation or for the manufacture of spirituous alcoholic liquors may not be made, fermented or possessed within this state by any person that does not at the time own a distillery license under the Liquor Control Act.

(2) A distillery may not be set up or operated in this state for the purpose of manufacturing alcoholic liquor for beverage purposes except by a person duly licensed under the Liquor Control Act to operate a distillery. Any device or process that separates alcoholic spirits from any fermented substance shall be regarded as a distillery. A distillery is set up if the still is in position over a furnace, or is connected with a boiler, so that heat may be applied, although the worm or worm tank is not in position.

(3) The finding of any mash, wort, wash or distillery in any house, on any premises or within any enclosure, is prima facie evidence that it was made and fermented by, or set up by, and the property of, the person who is in possession of the house, premises or enclosure. [Amended by 1999 c.351 §73; 2011 c.12 §5]

471.442 Wine compliance with standards. (1) No wine or cider shall be sold or offered for sale within this state unless it complies with the minimum standards fixed pursuant to law.

(2) The Oregon Liquor Control Commission may require a manufacturer, importer or wholesaler to provide samples of a particular wine or cider, and to provide a laboratory analysis demonstrating to the satisfaction of the commission that the particular wine or cider complies with the minimum standards in this state.

(3) No wine or cider offered for sale within this state may be altered or tampered with in any way by any person not licensed to do so by the commission.

(4) The commission may prohibit the sale of any wine or cider for a reasonable period of time while it is determining whether the wine or cider complies with minimum standards in this state. [Formerly 471.340]

471.445 Use of misleading mark or label on container; mixing liquors. (1) No licensee shall use or allow the use of any mark or label on the container of alcoholic liquor which is kept for sale, if the container does not precisely and clearly indicate the nature of its contents or in any way might deceive any customer as to the nature, composition, quantity, age or quality of such liquor.

(2) No licensee other than a winery licensee may mix or permit the mixing of any

alcoholic liquor which the licensee is authorized to sell with any other alcoholic liquor which the licensee is not authorized by license to sell.

471.446 Seals on wine and cider containers; improper labeling; injurious or adulterated ingredients. (1) No retail licensee shall purchase any wine or cider for resale except in sealed containers, the seals of which shall remain unbroken when it is sold for consumption off the premises.

(2) The Oregon Liquor Control Commission may refuse to sell, or may prohibit any licensee from selling, any brand of alcoholic liquor which in its judgment is deceptively labeled or branded as to content, or contains injurious or adulterated ingredients. [Formerly 471.345]

471.448 Sale of malt beverage as beer. Malt beverages may not be labeled or otherwise designated as beer for purposes of retail sale in this state unless the malt beverage contains six percent or less alcohol by volume. [1995 c.301 §12; 1999 c.351 §15a]

471.450 [Repealed by 1971 c.116 §1]

471.452 [Amended by 1979 c.264 §8; 1989 c.178 §6; 1989 c.740 §4; 1989 c.785 §12; repealed by 1995 c.301 §81]

471.455 [Amended by 1957 c.297 §2; 1979 c.881 §4; 1981 c.80 §1; repealed by 1995 c.301 §81]

471.456 [1979 c.881 §7; 1987 c.511 §3; repealed by 1995 c.301 §81]

471.457 [1965 c.277 §1; repealed by 1995 c.301 §81]

471.460 [Amended by 1981 c.80 §2; repealed by 1995 c.301 §81]

471.463 [1965 c.277 §2; repealed by 1995 c.301 §81]

471.465 [Amended by 1955 c.657 §11; 1957 c.297 §3; 1981 c.435 §1; 1987 c.501 §1; repealed by 1995 c.301 §81]

471.470 [Amended by 1957 c.297 §4; repealed by 1995 c.301 §81]

471.475 Mixing, storing or serving of liquor without license. No person who owns, operates or conducts a private or public club or place and who is not in possession of a license issued by the Oregon Liquor Control Commission permitting the mixing, storing and serving of alcoholic liquor at said premises, and no agent, servant or employee of such person, for a financial consideration by way of a charge for service, membership fee, admission fee, initiation fee, club dues, contributions, or other fee or charge, shall serve or permit to be served, or use or permit to be used, any room, place, bar, glasses, mixers, locker, storage place, chairs, tables, cash registers, music devices, furniture, furnishings, equipment or facilities, for the mixing, storing, serving or drinking of alcoholic liquor.

471.478 Sale of kegs of malt beverages; rules; penalty. On and after January 1, 1978:

(1) The Oregon Liquor Control Commission by rule shall require the identification of kegs of malt beverages sold directly to consumers who are not licensees of the commission and the signing of a receipt therefor by the purchaser in order to allow the kegs to be traced if the contents are consumed in violation of the Liquor Control Act. The keg identification shall be in the form of a numbered label prescribed and supplied by the commission which identifies the seller and which is removable or obliterated when the keg is processed for refilling. The receipt shall be on a form prescribed and supplied by the commission and shall include the name and address of the purchaser; motor vehicle operator's license number, if any; the automobile registration of the motor vehicle in which the keg was removed from the seller's premises, if any; and such other identification as the commission by rule may require. The receipt shall contain a statement that must be signed by the purchaser that, under penalty of false swearing, the purchaser will not allow consumption of any malt beverage in the keg in violation of ORS 471.410. A copy of the receipt shall be given to the purchaser and the seller shall retain the original receipt for such period as the commission by rule may require.

(2) Possession of a keg containing malt beverages which is not identified as required by subsection (1) of this section is a Class A misdemeanor.

(3) A person who signs a receipt described in subsection (1) of this section in order to obtain a keg, knowing the receipt to be false, or who falsifies any information required on the receipt, is guilty of false swearing as prescribed by ORS 162.075.

(4) As used in this section, "keg" means any brewery-sealed, individual container of malt beverage having a liquid capacity of more than seven gallons. [1977 c.551 §2; 1997 c.249 §173]

471.480 Sale of liquor by certain employees 18 years of age or older; minimum age requirements. (1) Any employee 18 years of age or older of a person who holds an off-premises sales license from the Oregon Liquor Control Commission may sell any alcoholic liquor authorized by such license on the licensed premises.

(2) Any employee 18 years of age or older of a person who holds a wholesale malt beverage and wine license from the Oregon Liquor Control Commission may assist the licensee in the delivery of any alcoholic liquor authorized by such license.

(3) During any inspection of a licensed premises, the commission may require proof that a person performing work at the premises meets any applicable minimum age re-

quirement created under this chapter or under commission rules. If the person does not provide the commission with acceptable proof of age upon request, the commission may require the person to immediately cease any activity that is subject to a minimum age requirement until the commission receives acceptable proof of age. If the activity is the sole lawful basis for the person to be present on the premises, the commission may require that the person leave the premises. This subsection does not apply to a person temporarily at the premises to make a service, maintenance or repair call, to make a delivery or for other purposes independent of the premises operations.

(4) If a person performing work that is subject to a minimum age requirement has not provided proof of age requested by the commission under subsection (3) of this section, the commission may request that the licensee or a manager of the premises provide proof that the person meets any applicable minimum age requirement created under this chapter or under commission rules. Failure of the licensee or manager to respond to a request made under this subsection by providing acceptable proof of age for a person is prima facie evidence that the licensee has allowed the person to perform work at the licensed premises in violation of a minimum age requirement. [1971 c.490 §1; 1985 c.378 §2; 1999 c.351 §34; 2011 c.92 §1]

471.482 Sale or service of liquor by employees 18 years of age or older generally; rules; minimum age requirements.

(1) The holder of a license issued under this chapter may employ persons 18, 19 and 20 years of age who may take orders for, serve and sell alcoholic liquor in any part of the licensed premises when that activity is incidental to the serving of food except in those areas classified by the Oregon Liquor Control Commission as being prohibited to the use of minors. However, no person who is 18, 19 or 20 years of age shall be permitted to mix, pour or draw alcoholic liquor except when pouring is done as a service to the patron at the patron's table or drawing is done in a portion of the premises not prohibited to minors.

(2) A person who is 18, 19 or 20 years of age may enter areas classified by the commission as being prohibited to the use of minors only for the purpose of ordering and picking up alcoholic liquor for service in other parts of the premises. However, the person shall not remain in the areas longer than is necessary to perform those duties.

(3) The commission by rule may permit access to prohibited areas by any minor for nonalcoholic liquor employment purposes as

long as the minor does not remain longer than is necessary to perform the duties.

(4) During any inspection of a licensed premises, the commission may require proof that a person performing work at the premises meets any applicable minimum age requirement created under this chapter or under commission rules. If the person does not provide the commission with acceptable proof of age upon request, the commission may require the person to immediately cease any activity that is subject to a minimum age requirement until the commission receives acceptable proof of age. If the activity is the sole lawful basis for the person to be present on the premises, the commission may require that the person leave the premises. This subsection does not apply to a person temporarily at the premises to make a service, maintenance or repair call, make a delivery or for other purposes independent of the premises operations.

(5) If a person performing work that is subject to a minimum age requirement has not provided proof of age requested by the commission under subsection (4) of this section, the commission may request that the licensee or a manager of the premises provide proof that the person meets any applicable minimum age requirement created under this chapter or under commission rules. Failure of the licensee or manager to respond to a request made under this subsection by providing acceptable proof of age for a person is prima facie evidence that the licensee has allowed the person to perform work at the licensed premises in violation of a minimum age requirement. [1981 c.610 §2; 1993 c.128 §2; 1995 c.301 §70; 1999 c.351 §59; 2011 c.92 §2]

471.485 Payment required on or before delivery of liquor. No wholesale licensee or agent or employee thereof shall sell or deliver, nor shall any retail licensee purchase or receive any malt beverages, cider or wine for currency on delivery, but such malt beverages, cider or wine shall be paid for prior to delivery thereof, by electronic fund transfer initiated on or before the date of delivery, or by valid check, order, negotiable instrument or voucher payable on the date of delivery. The wholesale licensee may accept cash at the time of delivery if such acceptance does not create or increase the licensee's, or the agents' or employees' of the licensee, exposure to or risk of being victimized by criminal activity. [1971 c.694 §2; 1995 c.525 §1; 1999 c.351 §74]

471.490 Delivery or acceptance of instrument drawn upon insufficient funds or not payable according to terms; use of credit. No retail licensee shall deliver any check, order, negotiable instrument or voucher in payment for malt beverages, cider

or wine, knowing at the time of such delivery that the maker or drawer has not sufficient funds in the bank or depository to pay the instrument on presentation, nor shall any wholesale licensee accept any such instrument knowing that said instrument is not payable according to its terms, or that there are not sufficient funds to pay such instrument on presentation. Any extension or acceptance of credit under this section shall constitute a violation of ORS 471.398. [1971 c.694 §3; 1995 c.301 §85; 1999 c.351 §75]

471.495 Report by wholesaler of instruments not paid on presentment required. Any wholesale licensee who receives a check, order, negotiable instrument or voucher in payment for malt beverages, cider or wine, who receives an instrument from a retail licensee which, upon presentation, is not paid by the party on whom it is drawn, shall report such fact forthwith to the Oregon Liquor Control Commission. [1971 c.694 §4; 1999 c.351 §76]

471.500 Application of ORS 471.485 to 471.495. The provisions of ORS 471.485, 471.490 and 471.495 shall not apply to any common carrier licensed by the Oregon Liquor Control Commission. [1971 c.694 §5; 1995 c.301 §41]

471.501 Malt beverage container refunds. Nothing in this chapter prevents a brewery licensed under ORS 471.220 or a brewery-public house licensed under ORS 471.200 from establishing a refund value for malt beverage containers under the provisions of ORS 459A.705 that is in excess of five cents, or in excess of 10 cents as described in ORS 459A.705 (2), per container for the purpose of encouraging purchasers to return the containers directly to the brewery or brewery-public house. A refund value in excess of five cents, or in excess of 10 cents as described in ORS 459A.705 (2), per container may be paid under this section only to persons who are not licensed under this chapter and who return the containers directly to the brewery or brewery-public house. [1997 c.803 §10; 1999 c.351 §60; 2011 c.277 §4]

471.502 [1981 c.917 §2; renumbered 474.105 in 1989]

471.503 [1981 c.917 §3; renumbered 474.115 in 1989]

471.505 [Repealed by 1983 c.350 §276 (471.506 enacted in lieu of 471.505)]

LOCAL OPTION

471.506 Petition and election for local option. (1) The governing body of a city or a county, when a petition is filed as provided in this section, shall order an election on the question whether the sale, for beverage purposes, of alcoholic liquors of any of the classes described in this section shall be prohibited in the city or county. The classes

of alcoholic liquor to which this section applies are:

(a) Alcoholic liquors containing more than five percent alcohol by volume;

(b) Alcoholic liquors containing more than 14 percent alcohol by volume; and

(c) All alcoholic liquors.

(2) Except as provided in subsections (3), (4) and (5) of this section, the requirements for preparing, circulating and filing a petition under this section:

(a) In the case of a city, shall be as provided for an initiative petition under ORS 250.265 to 250.346.

(b) In the case of a county, shall be as provided for an initiative petition under ORS 250.165 to 250.235.

(3) A petition under subsection (2) of this section:

(a) Must be filed not less than 60 days before the day of the election;

(b) Must specify whether the prohibition would apply to the sale of all alcoholic liquors or only to alcoholic liquors containing more than five percent alcohol by volume or more than 14 percent alcohol by volume; and

(c) Must be signed by not less than 10 percent of the electors registered in the city or county.

(4) If ORS 250.155 makes ORS 250.165 to 250.235 inapplicable to a county or if ORS 250.255 makes ORS 250.265 to 250.346 inapplicable to a city, the requirements for preparing, circulating and filing a petition under this section shall be as provided for an initiative petition under the county or city charter or an ordinance adopted under the county or city charter.

(5) No signature is valid unless signed within 180 days before the petition is filed.

(6) An election under this section shall be held at the time of the next statewide general election.

(7) An election under this section shall be conducted under ORS chapters 246 to 260. [1983 c.350 §277 (471.506 enacted in lieu of 471.505); 1995 c.301 §87]

471.510 Sales not affected by local option laws. ORS 471.506 shall not prohibit the sale of pure alcohol for scientific or manufacturing purposes, or of wines to church officials for sacramental purposes, nor shall it prevent any person residing in the county or city from ordering and having delivered to the home of the person, for the personal use of self and family, alcoholic liquors purchased from the Oregon Liquor Control Commission or from persons duly licensed to sell them under the Liquor Control Act. [Amended by 1999 c.351 §35]

471.515 Effective date of local option.

In each county or city that returns a majority vote for or against prohibition, as to any classes of alcoholic liquor, the law shall take effect on January 1 following the day of election. [Amended by 1983 c.350 §278]

471.520 [Amended by 1979 c.190 §422; repealed by 1983 c.350 §331a]

471.525 [Repealed by 1983 c.350 §331a]

471.530 [Amended by 1957 c.231 §1; repealed by 1983 c.350 §331a]

471.535 [Repealed by 1983 c.350 §331a]

471.540 [Amended by 1983 c.83 §93; repealed by 1983 c.350 §331a]

ALCOHOL EDUCATION PROGRAM**471.541 Alcohol Education Program.**

The Oregon Liquor Control Commission shall establish an Alcohol Education Program. The Alcohol Education Program shall consist of all the duties of the commission in administering clerk training courses under ORS 471.341 and alcohol server education courses under ORS 471.542. [2001 c.785 §14]

471.542 Alcohol server education course and examination; exemption; fees; rules. (1) Except as provided in subsection (2) of this section, the Oregon Liquor Control Commission shall require a person applying for issuance or renewal of a service permit or any license that authorizes the sale or service of alcoholic beverages for consumption on the premises to complete an approved alcohol server education course and examination as a condition of the issuance or renewal of the permit or license.

(2) A person applying for issuance or renewal of a license that authorizes the sale or service of alcoholic beverages for consumption on the premises need not complete an approved alcohol server education course and examination as a condition of the issuance or renewal of the license if:

(a) The license has been restricted by the commission to prohibit sale or service of alcoholic beverages for consumption on the premises; or

(b) The person applying for issuance or renewal of the license submits a sworn statement to the commission stating that the person will not engage in sale or service of alcoholic beverages for consumption on the premises, will not directly supervise or manage persons who sell or serve alcoholic beverages on the premises, and will not participate in establishing policies governing the sale or service of alcoholic beverages on the premises.

(3) The commission by rule shall establish requirements that licensees and permittees must comply with as a condition of requalifying for a license or permit. The

licensee or permittee must comply with those requirements once every five years after completing the initial alcohol server education course and examination. The requirements established by the commission to requalify for a license may include retaking the alcohol server education course and examination. The requirements established by the commission to requalify for a service permit shall include retaking the alcohol server education course and examination.

(4) The commission may extend the time periods established by this section upon a showing of hardship. The commission by rule may exempt a licensee from the requirements of this section if the licensee does not participate in the management of the business.

(5) The standards and curriculum of alcohol server education courses shall include but not be limited to the following:

(a) Alcohol as a drug and its effects on the body and behavior, especially driving ability.

(b) Effects of alcohol in combination with commonly used legal, prescription or nonprescription drugs and illegal drugs.

(c) Recognizing the problem drinker and community treatment programs and agencies.

(d) State alcohol beverage laws such as prohibition of sale to minors and sale to intoxicated persons, sale for on-premises or off-premises consumption, hours of operation and penalties for violation of the laws.

(e) Drunk driving laws and liquor liability statutes.

(f) Intervention with the problem customer, including ways to cut off service, ways to deal with the belligerent customer and alternative means of transportation to get the customer safely home.

(g) Advertising and marketing for safe and responsible drinking patterns and standard operating procedures for dealing with customers.

(6) The commission shall impose a fee not to exceed \$2.60 a year for each license subject to the alcohol server education requirement, and a fee not to exceed \$13 for each service permit application. These fees shall be used for administrative costs of the Alcohol Education Program established under ORS 471.541 and shall be in addition to any other license or permit fees required by law or rule.

(7) The commission shall adopt rules to impose reasonable fees for administrative costs on alcohol server education course instructors and providers.

(8) The commission shall provide alcohol server education courses and examinations through independent contractors, private

persons or private or public schools certified by the commission. The commission shall adopt rules governing the manner in which alcohol server education courses and examinations are made available to persons required to take the course. In adopting rules under this subsection, the commission shall consider alternative means of providing courses, including but not limited to providing courses through audiotapes, videotapes, the Internet and other electronic media. [1985 c.658 §§2,3; 1987 c.851 §3; 1989 c.120 §6; 1989 c.178 §7; 1989 c.271 §1; 1997 c.803 §7; 1999 c.351 §36; 1999 c.1062 §8; 2001 c.785 §16; 2009 c.350 §4; 2011 c.9 §65]

471.545 [Repealed by 1983 c.350 §331a]

471.547 Alcohol Server Education Advisory Committee; members; purpose. (1) The Oregon Liquor Control Commission shall establish an Alcohol Server Education Advisory Committee. The advisory committee shall consist of the following members:

(a) One person who represents the commission.

(b) One person who represents the Oregon State Police.

(c) One person who represents the Oregon District Attorneys Association.

(d) One person who represents the Oregon Health Authority.

(e) One person who represents the Department of Transportation.

(f) One person who represents a nonprofit organization the purpose of which is to reduce the incidence of drunk driving.

(g) One person who has general expertise in education.

(h) One person who has expertise in health education.

(i) One person who represents classroom alcohol server education providers.

(j) One person who represents online alcohol server education providers.

(k) At least one person who is a service permittee under ORS 471.360.

(L) Not more than two persons who represent insurance companies.

(m) Not more than three persons who represent retail licensees.

(2) The purpose of the advisory committee is to assist in the development of:

(a) The standards, curriculum and materials for the alcohol server education courses required under ORS 471.542;

(b) The examination required by ORS 471.542, and procedures for administering that examination;

(c) The certification procedures, enforcement policies and penalties for alcohol server

education course instructors and providers; and

(d) The time requirements for completion of an alcohol server education course and examination and the conditions for probationary extension. [1985 c.658 §1; 1987 c.679 §1; 1991 c.67 §143; 1991 c.453 §3; 2001 c.785 §17; 2009 c.595 §961; 2013 c.58 §1]

471.549 Civil penalty. In addition to such other sanctions as may be authorized by law, the Oregon Liquor Control Commission may impose a civil penalty not to exceed \$1,000 against any alcohol server education course instructor or provider who violates a rule promulgated by the commission pursuant to ORS 471.542. The civil penalty may be in addition to or in lieu of any suspension, revocation or cancellation of the certification of an alcohol server education course instructor or provider. [1991 c.61 §4; 2001 c.785 §18]

471.550 [Repealed by 1983 c.350 §331a]

WARNING SIGNS RELATED TO ALCOHOL AND PREGNANCY

471.551 Warning signs required; contents; size; display. (1) Any person in possession of a valid retail liquor license, who sells liquor by the drink for consumption on the premises or sells for consumption off the premises, shall post a sign informing the public of the effects of alcohol consumption during pregnancy.

(2) The sign shall:

(a) Contain the message: "Pregnancy and alcohol do not mix. Drinking alcoholic beverages, including wine, coolers and beer, during pregnancy can cause birth defects."

(b) Be either:

(A) A large sign, no smaller than eight and one-half inches by 11 inches in size with lettering no smaller than five-eighths of an inch in height; or

(B) A reduced sign, five by seven inches in size with lettering of the same proportion as the large sign described in paragraph (a) of this subsection.

(c) Contain a graphic depiction of the message to assist nonreaders in understanding the message. The depiction of a pregnant female shall be universal and shall not reflect a specific race or culture.

(d) Be in English unless a significant number of the patrons of the retail premises use a language other than English as a primary language. In such cases, the sign shall be worded in both English and the primary language or languages of the patrons.

(e) Be displayed on the premises of all licensed retail liquor premises as either a large sign at the point of entry, or a reduced sized sign at points of sale.

(3) The person described in subsection (1) of this section shall be encouraged to also post signs of any size at places where alcoholic beverages are displayed.

(4) Notwithstanding ORS 471.561, the holder of a retail liquor license may produce the sign required by this section insofar as the sign is consistent with the standards established pursuant to this section, ORS 616.286 and 624.060 and the Oregon Liquor Control Commission, and is displayed in accordance with subsection (2)(e) of this section. [1991 c.324 §2; 1995 c.301 §42]

471.553 Consultation with certain groups on production and posting of signs. The Oregon Liquor Control Commission shall consult with representatives of business and industry as well as interested citizens groups, including the March of Dimes and the Junior League, to determine the most cost-effective, convenient method to produce and post the sign described in ORS 471.551, which shall be distributed by the commission. [1991 c.324 §3]

471.555 [Repealed by 1957 c.231 §2 (471.556 enacted in lieu of 471.555)]

471.556 [1957 c.231 §3 (enacted in lieu of 471.555); 1979 c.190 §423; repealed by 1983 c.350 §331a]

471.557 Solicitation of private funds. The Oregon Liquor Control Commission may solicit private funds, if necessary, to produce and distribute the signs. [1991 c.324 §4]

471.559 Violations; penalty. (1) If no warning sign is posted:

(a) The Oregon Liquor Control Commission shall furnish a warning sign.

(b) The retailer shall have five days from the receipt of the warning sign to post it appropriately.

(2) If there is a violation of this section or of ORS 471.551, the violator shall be subject to:

(a) A written warning from the commission for the first violation accompanied by a copy of the sign.

(b) A civil penalty of not to exceed \$25 payable to the commission for a second violation.

(c) A civil penalty of not to exceed \$25 for the third and subsequent violations for each day the sign is not posted.

(3) The civil penalty imposed under subsection (2) of this section shall be separate from any other sanction or penalty imposed by the commission and shall not be used in any progressive violation schedule.

(4) The penalty provided by this section shall be the sole penalty for violation of this section or ORS 471.551 or the rules adopted under section 1, chapter 324, Oregon Laws 1991.

(5) Violation of this section or ORS 471.551 or the rules adopted under section 1, chapter 324, Oregon Laws 1991, shall not be grounds for refusal to issue a license, cancellation of a license or suspension of a license issued under this chapter.

(6) Nothing in this section or ORS 471.551 or the rules adopted under section 1, chapter 324, Oregon Laws 1991, creates any new cause of action or any private right of any person. [1991 c.324 §5; 2011 c.597 §213]

471.560 [Repealed by 1983 c.350 §331a]

471.561 Production and distribution of signs. By June 30, 1992, the Oregon Liquor Control Commission shall produce and complete distribution of the warning signs, free of charge, to all holders of retail liquor licenses. The commission shall produce and distribute additional signs as liquor licenses are granted. [1991 c.324 §9]

LIABILITY FOR PROVIDING OR SERVING ALCOHOLIC BEVERAGES TO INTOXICATED PERSON OR MINOR

471.565 Liability for providing or serving alcoholic beverages to intoxicated person; notice of claim. (1) A patron or guest who voluntarily consumes alcoholic beverages served by a person licensed by the Oregon Liquor Control Commission, a person holding a permit issued by the commission or a social host does not have a cause of action, based on statute or common law, against the person serving the alcoholic beverages, even though the alcoholic beverages are served to the patron or guest while the patron or guest is visibly intoxicated. The provisions of this subsection apply only to claims for relief based on injury, death or damages caused by intoxication and do not apply to claims for relief based on injury, death or damages caused by negligent or intentional acts other than the service of alcoholic beverages to a visibly intoxicated patron or guest.

(2) A person licensed by the Oregon Liquor Control Commission, person holding a permit issued by the commission or social host is not liable for damages caused by intoxicated patrons or guests unless the plaintiff proves by clear and convincing evidence that:

(a) The licensee, permittee or social host served or provided alcoholic beverages to the patron or guest while the patron or guest was visibly intoxicated; and

(b) The plaintiff did not substantially contribute to the intoxication of the patron or guest by:

(A) Providing or furnishing alcoholic beverages to the patron or guest;

(B) Encouraging the patron or guest to consume or purchase alcoholic beverages or in any other manner; or

(C) Facilitating the consumption of alcoholic beverages by the patron or guest in any manner.

(3) Except as provided in subsection (4) of this section, an action for damages caused by intoxicated patrons or guests off the premises of a person licensed by the Oregon Liquor Control Commission, a person holding a permit issued by the commission or a social host may be brought only if the person asserting the claim has given the licensee, permittee or social host the notice required by subsection (5) of this section within the following time periods:

(a) If a claim is made for damages arising out of wrongful death, notice must be given within one year after the date of death, or within one year after the date that the person asserting the claim discovers or reasonably should have discovered the existence of a claim under this section, whichever is later.

(b) If a claim is made for damages for injuries other than wrongful death, notice must be given within 180 days after the injury occurs, or within 180 days after the person asserting the claim discovers or reasonably should have discovered the existence of a claim under this section, whichever is later.

(4) The time provided for the giving of notice under subsection (3) of this section does not include any period during which:

(a) The claimant is under 18 years of age;

(b) The claimant is unable to give notice by reason of the injury or by reason of being financially incapable, as defined in ORS 125.005, or is incapacitated, as defined in ORS 125.005; or

(c) The claimant is unable to determine that the licensee, permittee or social host is liable because the patron or guest who caused the damages asserts a right against self-incrimination and cannot be compelled to reveal the identity of the licensee, permittee or social host, or cannot be compelled to reveal facts that would establish the liability of the licensee, permittee or social host.

(5) A licensee, permittee or social host shall be considered to have been given notice for the purposes of this section if:

(a) The licensee, permittee or social host is given formal notice in the manner specified in subsection (6) of this section;

(b) The licensee, permittee or social host receives actual notice as described in subsection (7) of this section;

(c) An action is commenced by or on behalf of the claimant within the period of time specified by subsections (3) and (4) of this section; or

(d) Any payment on the claim is made to the claimant by or on behalf of the licensee, permittee or social host.

(6) Formal notice of a claim subject to this section must be in writing, must be mailed to the licensee, permittee or social host, or personally served on the licensee, permittee or social host, and must contain all of the following:

(a) A statement that a claim for damages is made against the licensee, permittee or social host.

(b) A description of the time, place and circumstances giving rise to the claim, so far as known to the claimant.

(c) The name of the claimant and mailing address for the claimant to which correspondence regarding the claim may be mailed.

(7) For the purposes of this section, "actual notice" means any communication to a licensee, permittee or social host that gives the licensee, permittee or social host actual knowledge of the time, place and circumstances of the claim, if the communication is such that a reasonable person would conclude that a particular person intends to assert a claim against the licensee, permittee or social host. [Formerly 30.950]

Note: 471.565 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 471 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

471.567 Liability for providing alcoholic beverages to minor; liability of minor for misrepresentation of age. (1) Notwithstanding ORS 471.130 and 471.565, no licensee, permittee or social host shall be liable to third persons injured by or through persons under the age of 21 years who obtained alcoholic beverages from the licensee, permittee or social host unless it is demonstrated that a reasonable person would have determined that identification should have been requested or that the identification exhibited was altered or did not accurately describe the person to whom the alcoholic liquor was sold or served.

(2) A person who is under 21 but at least 18 years of age and who through misrepresentation of age causes an Oregon Liquor Control Commission licensee to be fined or have a license suspended or revoked shall be civilly liable for damages sustained by the licensee. The court may award reasonable attorney fees to the prevailing party in an action under this subsection.

(3) Subsection (2) of this section does not apply to a person under the age of 21 years who is acting under the direction of the Oregon Liquor Control Commission or under the direction of state or local law enforcement agencies for the purpose of investigating possible violations of laws prohibiting sales of alcoholic beverages to persons who are under the age of 21 years.

(4) Subsection (2) of this section does not apply to a person under the age of 21 years who is acting under the direction of a licensee for the purpose of investigating possible violations by employees of the licensee of laws prohibiting sales of alcoholic beverages to persons who are under the age of 21 years. [Formerly 30.960]

Note: 471.567 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 471 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

USE OF ALCOHOLIC BEVERAGES IN CAREER EDUCATION OF MINOR

471.575 School district culinary arts classes. (1) Notwithstanding ORS 471.410, an employee of a school district may make alcoholic beverages available to a student in a culinary arts class for use in the culinary arts class if the alcoholic beverages are provided in compliance with a policy adopted under ORS 336.441.

(2) Notwithstanding ORS 471.430, a student of a culinary arts class may have personal possession of alcoholic beverages for use in the culinary arts class if the student has possession of the alcoholic beverages in compliance with a policy adopted under ORS 336.441. [2011 c.367 §3]

471.580 Education provider food or beverage career programs. (1) As used in this section:

(a) "Alcohol equivalence" means the amount of ethanol that would be expected to be present in a beverage based on the standard drink measurement used by the Centers for Disease Control and Prevention.

(b) "Education provider" means:

(A) A community college, as defined in ORS 341.005, offering a food or beverage career program approved by the Higher Education Coordinating Commission;

(B) A career school, as defined in ORS 345.010, offering a food or beverage career program approved by the Higher Education Coordinating Commission;

(C) A public university offering a food or beverage career program approved by the Higher Education Coordinating Commission

or by the governing board of a public university with a governing board listed in ORS 352.054; or

(D) A private and independent institution of higher education, as defined in ORS 352.720, offering a food or beverage career program that qualifies for payment under ORS 352.740.

(c) "Food or beverage career program" means a course of study designed to qualify a person for a career in the food service industry or alcoholic beverage industry, including but not limited to a course of study in culinary arts, viticulture, winemaking, enology, brewing or restaurant management.

(2) The charging or payment of tuition or a special fee for enrollment in a class that is part of a food or beverage career program or in a workshop or seminar concerning matters related to food or beverage industry workforce training, offered by an education provider, that includes the consumption of alcoholic beverages for educational purposes, is not a sale or purchase of, or other exchange of consideration for, alcoholic beverages.

(3) Notwithstanding ORS 471.130, 471.406, 471.410 and 471.475, an education provider may serve alcoholic beverages to a person who is 18, 19 or 20 years of age and may allow the person to possess and consume alcoholic beverages on a licensed or unlicensed premises that the education provider uses for educational purposes if:

(a) The person is enrolled as a student in a required or elective class that is part of a food or beverage career program offered by the education provider;

(b) The alcoholic beverages are served to, and possessed and consumed by, the person for educational purposes as part of the class curriculum or a workshop or seminar concerning food or beverage workforce training;

(c) The service, possession and consumption of the alcoholic beverages are supervised by a faculty or staff member of the education provider who is 21 years of age or older;

(d) The person does not purchase the alcoholic beverages; and

(e) The amount served to the person for consumption purposes during any two-hour class, workshop or seminar period does not exceed two ounces of alcohol equivalence.

(4) Notwithstanding ORS 471.130 or 471.410, a person may serve alcoholic beverages to another person who is 18, 19 or 20 years of age on premises that an education provider uses for educational purposes if:

(a) The person served is enrolled as a student in a required or elective class that

is part of a food or beverage career program offered by the education provider;

(b) The alcoholic beverages are served to, and consumed by, the person for educational purposes as part of the class curriculum or, with the approval of the education provider, as part of a workshop or seminar concerning food or beverage workforce training;

(c) The service and consumption of the alcoholic beverages are supervised by a faculty or staff member of the education provider who is 21 years of age or older;

(d) The person served does not purchase the alcoholic beverages; and

(e) The amount served to the person for consumption purposes during any two-hour class period does not exceed two ounces of alcohol equivalence.

(5) Notwithstanding ORS 471.130 or 471.410 or the prohibitions in ORS 471.430, a person who is 18, 19 or 20 years of age may possess and consume alcoholic beverages on a licensed or unlicensed premises that an education provider uses for educational purposes if:

(a) The person is enrolled as a student in a required or elective class that is part of a food or beverage career program offered by the education provider;

(b) The person possesses and consumes the alcoholic beverages for educational purposes as part of the class curriculum or, with the approval of the education provider, as part of a workshop or seminar concerning food or beverage workforce training;

(c) The person possesses and consumes the alcoholic beverages under the supervision of a faculty or staff member of the education provider who is 21 years of age or older;

(d) The person does not purchase the alcoholic beverages; and

(e) The amount consumed by the person during any two-hour class, workshop or seminar period does not exceed two ounces of alcohol equivalence.

(6) Notwithstanding ORS 471.410, a person who exercises control over private real property may allow a person who is 18, 19 or 20 years of age to remain on the property after the person who is 18, 19 or 20 years of age consumes an alcoholic beverage on the property in accordance with this section.

(7) Subsections (3) to (5) of this section do not affect the ability of an education provider, a licensee or a permittee to make alcoholic beverages available to a person 21 years of age or older in accordance with this chapter or the ability of a person 21 years of age or older to possess or consume alco-

holic beverages in accordance with this chapter. [2011 c.378 §2; 2012 c.104 §44; 2013 c.1 §§73,74; 2013 c.747 §§166,167; 2013 c.768 §§144,145]

Note: The amendments to 471.580 by section 167, chapter 747, Oregon Laws 2013, and section 145, chapter 768, Oregon Laws 2013, become operative July 1, 2014. See section 204, chapter 747, Oregon Laws 2013, and section 171, chapter 768, Oregon Laws 2013. The text that is operative until July 1, 2014, including amendments by section 44, chapter 104, Oregon Laws 2012, and section 74, chapter 1, Oregon Laws 2013, is set forth for the user's convenience.

471.580. (1) As used in this section:

(a) "Alcohol equivalence" means the amount of ethanol that would be expected to be present in a beverage based on the standard drink measurement used by the Centers for Disease Control and Prevention.

(b) "Education provider" means:

(A) A community college, as defined in ORS 341.005, offering a food or beverage career program approved by the State Board of Education;

(B) A career school, as defined in ORS 345.010, offering a food or beverage career program approved by the Oregon Student Assistance Commission or the Higher Education Coordinating Commission;

(C) A public university listed in ORS 352.002 offering a food or beverage career program approved by the State Board of Higher Education; or

(D) A private and independent institution of higher education, as defined in ORS 352.720, offering a food or beverage career program that qualifies for payment under ORS 352.740.

(c) "Food or beverage career program" means a course of study designed to qualify a person for a career in the food service industry or alcoholic beverage industry, including but not limited to a course of study in culinary arts, viticulture, winemaking, enology, brewing or restaurant management.

(2) The charging or payment of tuition or a special fee for enrollment in a class that is part of a food or beverage career program or in a workshop or seminar concerning matters related to food or beverage industry workforce training, offered by an education provider, that includes the consumption of alcoholic beverages for educational purposes, is not a sale or purchase of, or other exchange of consideration for, alcoholic beverages.

(3) Notwithstanding ORS 471.130, 471.406, 471.410 and 471.475, an education provider may serve alcoholic beverages to a person who is 18, 19 or 20 years of age and may allow the person to possess and consume alcoholic beverages on a licensed or unlicensed premises that the education provider uses for educational purposes if:

(a) The person is enrolled as a student in a required or elective class that is part of a food or beverage career program offered by the education provider;

(b) The alcoholic beverages are served to, and possessed and consumed by, the person for educational purposes as part of the class curriculum or a workshop or seminar concerning food or beverage workforce training;

(c) The service, possession and consumption of the alcoholic beverages are supervised by a faculty or staff member of the education provider who is 21 years of age or older;

(d) The person does not purchase the alcoholic beverages; and

(e) The amount served to the person for consumption purposes during any two-hour class, workshop or seminar period does not exceed two ounces of alcohol equivalence.

(4) Notwithstanding ORS 471.130 or 471.410, a person may serve alcoholic beverages to another person who is 18, 19 or 20 years of age on premises that an education provider uses for educational purposes if:

(a) The person served is enrolled as a student in a required or elective class that is part of a food or beverage career program offered by the education provider;

(b) The alcoholic beverages are served to, and consumed by, the person for educational purposes as part of the class curriculum or, with the approval of the education provider, as part of a workshop or seminar concerning food or beverage workforce training;

(c) The service and consumption of the alcoholic beverages are supervised by a faculty or staff member of the education provider who is 21 years of age or older;

(d) The person served does not purchase the alcoholic beverages; and

(e) The amount served to the person for consumption purposes during any two-hour class period does not exceed two ounces of alcohol equivalence.

(5) Notwithstanding ORS 471.130 or 471.410 or the prohibitions in ORS 471.430, a person who is 18, 19 or 20 years of age may possess and consume alcoholic beverages on a licensed or unlicensed premises that an education provider uses for educational purposes if:

(a) The person is enrolled as a student in a required or elective class that is part of a food or beverage career program offered by the education provider;

(b) The person possesses and consumes the alcoholic beverages for educational purposes as part of the class curriculum or, with the approval of the education provider, as part of a workshop or seminar concerning food or beverage workforce training;

(c) The person possesses and consumes the alcoholic beverages under the supervision of a faculty or staff member of the education provider who is 21 years of age or older;

(d) The person does not purchase the alcoholic beverages; and

(e) The amount consumed by the person during any two-hour class, workshop or seminar period does not exceed two ounces of alcohol equivalence.

(6) Notwithstanding ORS 471.410, a person who exercises control over private real property may allow a person who is 18, 19 or 20 years of age to remain on the property after the person who is 18, 19 or 20 years of age consumes an alcoholic beverage on the property in accordance with this section.

(7) Subsections (3) to (5) of this section do not affect the ability of an education provider, a licensee or a permittee to make alcoholic beverages available to a person 21 years of age or older in accordance with this chapter or the ability of a person 21 years of age or older to possess or consume alcoholic beverages in accordance with this chapter.

ENFORCEMENT OF LIQUOR LAWS

471.605 Duty of officers to enforce and to inform district attorney. The state police, sheriffs, constables and all police officers within the State of Oregon shall enforce all provisions of the Liquor Control Act and assist the Oregon Liquor Control Commission in detecting violations of that statute and apprehending offenders. Each such enforcing officer having notice, knowledge or reasonable ground of suspicion of any violation of that statute shall immediately notify the district attorney, and furnish the

district attorney with names and addresses of any witnesses, or other information within the officer's knowledge, of such violation.

471.610 Confiscation of liquor and property by commission. Whenever any officer arrests any person for violation of the Liquor Control Act, the officer may take into possession all alcoholic liquor and other property which the person so arrested has in possession, or on the premises, which is apparently being used in violation of that statute. If the person so arrested is convicted, and it is found that the liquor and other property has been used in violation of the law, the same shall be forfeited to the Oregon Liquor Control Commission, and shall be delivered by the court or officer to the commission. The commission is authorized to destroy or make such other disposition thereof as it considers to be in the public interest. In any such case, all alcoholic liquor purchased or acquired from any source, and all property, including bars, glasses, mixers, lockers, chairs, tables, cash registers, music devices, gambling devices, furniture, furnishings, equipment and facilities for the mixing, storing, serving or drinking of alcoholic liquor shall be confiscated and forfeited to the state, and the clear proceeds shall be deposited with the State Treasury in the Common School Fund in the manner provided in this section. [Amended by 1981 c.601 §1; 1987 c.858 §5]

471.615 Duty to notify commission of conviction of licensee. The county courts, district attorneys and municipal authorities, immediately upon the conviction of any licensee of the Oregon Liquor Control Commission of a violation of any provision of the Liquor Control Act or the violation of any other law of this state or ordinance of any municipality therein, in which violation alcoholic liquor had any part, shall notify the commission thereof. Such officials shall notify the commission of any acts, practices or other conduct of any such licensee which may be subversive of the general welfare or contrary to the spirit of the Liquor Control Act and shall recommend such action on the part of the commission as will remove the evil.

471.620 Property and places as common nuisances. Any room, house, building, boat, structure or place of any kind where alcoholic liquor is sold, manufactured, bartered or given away in violation of the law, or where persons are permitted to resort for the purpose of drinking alcoholic beverages in violation of the law, or any place where such beverages are kept for sale, barter or gift in violation of the law, and all liquor or property subject to confiscation under ORS 471.610 kept and used in such

place is a common nuisance. Any person who maintains or assists in maintaining such common nuisance or knowingly suffers or permits such nuisance to exist in any place of which the person is the owner, manager or lessor, shall be guilty of a violation of the Liquor Control Act.

471.625 Lien on place used to unlawfully handle liquor. If it is proved that the owner of any building or premises knowingly has suffered the same to be used or occupied for the manufacture, sale or possession of alcoholic beverages, contrary to the provisions of the Liquor Control Act, such building or premises are subject to a lien for, and may be sold to pay all fines and costs assessed against their occupants for any violation of that statute. The lien shall be enforced immediately by civil action in any court having jurisdiction, by the district attorney of the county wherein the building or premises are located.

471.630 Authority to abate nuisance. The Attorney General, the Oregon Liquor Control Commission or its administrators, or the district attorney of the county wherein a nuisance as defined in ORS 471.620 exists, or where it has existed but has temporarily ceased and there is good and sufficient cause to believe that it will be maintained in the future, may institute an action in the circuit court for such county in the name of the state to abate, and to temporarily and permanently enjoin, such nuisance. The court has the right to make temporary and final orders as in other injunction proceedings. The plaintiff shall not be required to give bond in such action. [Amended by 1979 c.284 §155]

471.635 Issuance of restraining order. (1) After a suit is commenced under ORS 471.630, application for a temporary injunction may be made to the court, which shall grant a hearing thereon within 10 days. Where such application has been made, the court, on application of the plaintiff, may issue an ex parte order restraining the defendants and all other persons from removing or in any manner interfering with the personal property and the contents of the room, house, building, boat, structure or place of any kind where the nuisance is alleged to exist, until the decision of the court granting or refusing such temporary injunction and until the further order of the court.

(2) This section and ORS 471.640 to 471.655 shall not interfere with the duties of officers as provided in ORS 471.605 and 471.610.

471.640 Service of restraining order. The restraining order may be served by delivering a copy to any person in charge of such place or residing therein, or by posting

a copy thereof in a conspicuous place at or upon one or more of the principal doors or entrances to such place. The officer serving the order may enter such place and forthwith shall make and return to the court an inventory of the personal property and contents situated in and used in conducting or maintaining such nuisance. Any violation, of the order or mutilation or removal of the order so posted shall be a contempt of court, if the posted order contains a notice to that effect.

471.645 Temporary injunction. If a temporary injunction is granted, the court may issue further restraining orders as described in ORS 471.635; and forthwith may issue an order closing such place against its use for any purpose until the final decision, or the court may allow such place to be occupied or used during the pendency of the injunction proceedings by requiring the defendants to furnish an irrevocable letter of credit issued by an insured institution as defined in ORS 706.008 or a bond with sufficient surety, to be approved by the court, in the penal sum of not less than \$2,500, payable to the state. The bond or letter of credit shall be conditioned that alcoholic liquor will not be manufactured, possessed, sold, served, bartered, or given away, or furnished, or otherwise disposed of thereon or therein, or kept thereon or therein with the intent to sell, barter, serve, or give away, or otherwise dispose of alcoholic liquor contrary to law, and that the defendants will pay all fines, costs and damages assessed against them for any violation of such conditions. The State of Oregon in an action brought by the Attorney General, the Oregon Liquor Control Commission or its administrators, or the district attorney, may take whatever steps necessary to recover the whole amount as a penalty for the use of the county wherein the premises are situated. [Amended by 1991 c.331 §69; 1997 c.631 §481]

471.650 Nature of permanent injunction. If a judgment against the defendants is granted, the court shall order that the place constituting the nuisance be closed for a period not exceeding two years, or closed for a part of said time, and until the owner, lessee, tenant or occupant thereof gives a bond or letter of credit identical to the bond or letter of credit required under ORS 471.645. If any condition of the bond or letter of credit is violated, the whole amount may be recovered as a penalty for the use of the county wherein the premises are situated. In any such suit process to nonresident defendants may be served by publication in a newspaper of general circulation in the county having jurisdiction of the injunction proceedings. Notice shall be published once each week for two consecutive weeks or for such time as

the court, by order, may prescribe. [Amended by 1991 c.331 §70; 2003 c.576 §462]

471.655 Owner may defend; evidence concerning nuisance. (1) The owner of any property closed or restrained, or to be closed or restrained, may appear at any time between the filing of the complaint and the trial and show cause why the court should cancel or refrain from issuing any judgment orders as against the owner. In order to obtain such relief, the owner must prove to the satisfaction of the court that the owner is the lawful owner of the property and, further, that with reasonable care and diligence the owner could not have known of the illegal use of the owner's property.

(2) Evidence of the general reputation of the premises upon which a nuisance is alleged to exist is admissible in evidence for the purpose of proving the existence of the nuisance, and of knowledge of, and of acquiescence and participation therein, on the part of persons charged with maintaining or assisting in the maintenance of a nuisance. [Amended by 2003 c.576 §463]

471.657 Confiscation and forfeiture for violation of ORS 471.475. Upon conviction for violation of ORS 471.475, the premises upon which the violation has occurred shall be declared to be a common nuisance and subject to abatement proceedings as provided by ORS 471.605 to 471.655. Any person who knowingly suffers or permits such nuisance to exist or be kept or maintained in a private or public club or place of which the person is the owner, manager or lessor, may be a party defendant to such abatement proceedings. In any such case, upon conviction, all alcoholic liquor, whether purchased or acquired from any other source, and all property, including bars, glasses, mixers, lockers, chairs, tables, cash registers, music devices, gambling devices, and all facilities for the mixing, storing, serving or drinking of alcoholic liquor shall be declared to be a common nuisance and shall be subject to confiscation and forfeiture as provided for by ORS 471.610. No claim of ownership or of any right, title, or interest in or to any of the personal property enumerated in this section or ORS 471.475 shall be held valid unless claimant shows to the satisfaction of the court that claimant is in good faith the owner of the claim and had no knowledge that the personal property was used in violation of ORS 471.475.

471.660 Seizure of conveyance transporting liquor and liquor therein; notice to owner; return of conveyance; costs. (1) When any peace officer discovers any person in the act of transporting alcoholic liquors in violation of law, in or upon any vehicle, boat or aircraft, or conveyance of any kind, the

officer may seize any alcoholic liquor found therein, take possession of the vehicle or conveyance and arrest any person in charge thereof.

(2) The officer shall at once proceed against the person arrested, under the Liquor Control Act, in any court having competent jurisdiction, and shall deliver the vehicle or conveyance to the sheriff of the county in which such seizure was made.

(3) If the person arrested is the owner of the vehicle or conveyance seized, it shall be returned to the owner upon execution by the owner of a good and valid bond, with sufficient sureties in a sum double the value of the property, approved by the court and conditioned to return the property to the custody of the sheriff at a time to be specified by the court.

(4) If the person arrested is not the owner of the vehicle or conveyance seized, the sheriff shall make reasonable effort to determine the name and address of the owner. If the sheriff is able to determine the name and address of the owner, the sheriff shall immediately notify the owner by registered or certified mail of the seizure and of the owner's rights and duties under this section and ORS 471.666.

(5) A person notified under subsection (4) of this section, or any other person asserting a claim to rightful possession of the vehicle or conveyance seized, except the defendant, may move the court having ultimate trial jurisdiction over any crime charged in connection with the seizure to return the vehicle or conveyance to the movant.

(6) The movant shall serve a copy of the motion upon the district attorney of the county in which the vehicle or conveyance is in custody. The court shall order the vehicle or conveyance returned to the movant, unless the court is satisfied by clear and convincing evidence that the movant knowingly consented to the unlawful use that resulted in the seizure. If the court does not order the return of the vehicle or conveyance, the movant shall obtain the return only as provided in subsection (3) of this section.

(7) If the court orders the return of the vehicle or conveyance to the movant, the movant shall not be liable for any towing or storage costs incurred as a result of the seizure.

(8) If the court does not order the return of the vehicle or conveyance under subsection (6) of this section, and the arrested person is convicted for any offense in connection with the seizure, the vehicle or conveyance shall be subject to forfeiture as provided in ORS 471.666. [Amended by 1973 c.836 §351; 1981 c.601 §2]

471.665 [Amended by 1971 c.743 §374a; 1973 c.836 §352; 1977 c.745 §40; 1993 c.741 §66; repealed by 1997 c.592 §6 (471.666 enacted in lieu of 471.665)]

471.666 Disposal of seized liquor and of vehicle or other conveyance. (1) The court, upon conviction of the person arrested under ORS 471.660, shall order the alcoholic liquor delivered to the Oregon Liquor Control Commission, and shall, subject to the ownership rights of innocent third parties, order a sale at public auction by the sheriff of the county of the property seized. The sheriff, after deducting the expense of keeping the property and the cost of sale, shall pay all the liens, according to their priorities, which are established by intervention or otherwise at such hearing or in other proceedings brought for that purpose, and shall pay the balance of the proceeds into the general fund of the county. No claim of ownership or of any right, title or interest in or to such vehicle that is otherwise valid shall be held invalid unless the state shows to the satisfaction of the court, by clear and convincing evidence, that the claimant had knowledge that the vehicle was used or to be used in violation of law. All liens against property sold under this section shall be transferred from the property to the proceeds of the sale.

(2) If no person claims the vehicle or conveyance, the taking of the same and the description thereof shall be advertised in some daily newspaper published in the city or county where taken, or if no daily newspaper is published in such city or county, in a newspaper having weekly circulation in the city or county, once a week for two weeks and by handbills posted in three public places near the place of seizure, and shall likewise notify by mail the legal owner, in the case of an automobile, if licensed by the State of Oregon, as shown by the name and address in the vehicle registration records of the Department of Transportation. If no claimant appears within 10 days after the last publication of the advertisement, the property shall be sold and the proceeds, after deducting the expenses and costs, shall be paid into the general fund of the county. [1989 c.791 §18; 1993 c.741 §67; enacted in lieu of 471.665 in 1997]

471.670 [Amended by 1995 c.301 §71; 1999 c.788 §57; repealed by 2011 c.597 §118]

471.675 Resisting arrest or interfering with enforcement. A person may not forcibly resist lawful arrest, or by physical contact recklessly interfere with an investigation of any infringement of the Liquor Control Act or with any lawful search or seizure being made by a peace officer or a liquor enforcement inspector if the person knows or should know that the investigation,

search or seizure is being performed by a peace officer or liquor enforcement inspector. [Amended by 1981 c.370 §1; 1997 c.249 §174; 2012 c.54 §4]

471.680 Allegation and proof in prosecutions. In any prosecution for the sale of alcoholic liquor it is not necessary to prove the exact variety, or to mention the quantity of alcoholic liquor sold, except in the case where the variety or quantity is essential to establish the offense. As regards quantity it is sufficient to allege the sale of a quantity, the sale of which quantity is unlawful. The description of any offense, alleged to be a violation of the Liquor Control Act, in the words of that statute or in any words of like effect, is sufficient in law. Any exceptions, exemptions, provisions, excuse or qualification may be proved by the defendant, but need not be specified or negated in the complaint, information or indictment. If it is so specified or negated, no proof in relation to the matter so specified or negated is required on the part of the plaintiff, informant or complainant.

471.685 Governor authorized to suspend license. In case of invasion, disaster, insurrection, riot, or imminent danger thereof, the Governor may, for the duration of such invasion, disaster, insurrection, riot, or imminent danger thereof, immediately suspend without notice any license in the area involved granted under the provisions of this chapter. [1963 c.91 §2; 1995 c.301 §43; 1999 c.351 §61]

471.695 Fingerprinting of license applicants and certain commission employees; criminal records check. (1) The Oregon Liquor Control Commission may require each applicant for a full or limited on-premises sales license to submit to fingerprinting. If the applicant is a corporation, the fingerprints of each officer, director and major stockholder of the corporation may be required by the commission. Prior to approving any change in officers, directors or major stockholders, the commission may require the fingerprints of the new officials.

(2) The commission shall require that all employees of the commission who work in the licensing or enforcement divisions or who have access to criminal background information be fingerprinted.

(3) Fingerprints acquired under this section may be used for the purpose of requesting state or nationwide criminal records checks under ORS 181.534.

(4) As used in this section, "major stockholder" means any person who owns, directly or indirectly, more than 10 percent of any class of any equity security of the corporation. [1979 c.634 §2; 1999 c.351 §37; 2003 c.166 §3; 2005 c.730 §27]

471.700 Revocation of license on gambling conviction. In carrying out its duties under ORS 471.315, the Oregon Liquor Control Commission shall not suspend or cancel a license on grounds of any violation of ORS 167.108 to 167.164 until:

(1) The licensee has been convicted thereof in a court of competent jurisdiction; or

(2) An employee of the licensee has been convicted thereof in a court of competent jurisdiction and the violation occurred on the licensed premises. [1979 c.171 §2; 1995 c.301 §72]

471.703 Police notice to commission or social host when certain persons involved in motor vehicle accidents; content; commission duty. (1) The police shall notify the Oregon Liquor Control Commission of the name of the alleged provider of alcoholic liquor when:

(a) The police investigate any motor vehicle accident where someone other than the operator is injured or incurs property damage;

(b) The operator appears to have consumed alcoholic liquor;

(c) A citation is issued against the operator that is related to the consumption of alcoholic liquor or could have been issued if the operator had survived; and

(d) The provider of the alcoholic liquor is alleged to be a licensee or permittee of the commission.

(2) The notice shall include the name and address of the operator involved and the name and address of the person who named the alleged provider, if the person is other than the operator.

(3) Upon receipt of the notice described in subsection (1) of this section, the commission shall cause the licensee or permittee named as the alleged provider to be notified of receipt of the notice and of its content. A copy of the notice shall be retained in the files of the commission and shall be open to inspection by the person injured or damaged by the motor vehicle operator or a representative of the person.

(4) The police shall notify the alleged social host when the circumstances described in subsection (1) of this section occur and the alleged social host is named as the provider of the alcoholic liquor. The notice shall include the information described in subsection (2) of this section. [1987 c.774 §15]

ORGANIZATION, POWERS AND DUTIES OF LIQUOR COMMISSION

471.705 Oregon Liquor Control Commission; qualifications; compensation; term; confirmation. (1) There is created the Oregon Liquor Control Commission, consisting of five persons appointed by the Governor. One member shall be from among the bona fide residents of each congressional district of the state. One member shall be from the food and alcoholic beverage retail industry. Not more than three commissioners shall be of the same political party and one shall be designated by the Governor to be chairperson of the commission. The commissioners are entitled to compensation and expenses as provided in ORS 292.495. Each commissioner at the time of appointment and qualification shall be a resident of this state and shall have resided in this state for at least five years next preceding appointment and qualification. The commissioner shall be an elector therein and not less than 30 years of age. A commissioner shall cease to hold office if the commissioner ceases to possess the residency or industry qualification for appointment and the Governor shall appoint a qualified individual to complete the unexpired term.

(2) The term of office of a commissioner shall be four years from the time of appointment and qualification and until a successor qualifies. The terms of the commissioners shall commence April 1. In case any commissioner is allowed to hold over after the expiration of the term, the successor shall be appointed for the balance of the unexpired term. Vacancies in the commission shall be filled by the Governor for the unexpired term. Each commissioner is eligible for reappointment but no person shall be eligible to serve for more than two full terms.

(3) All appointments of commissioners by the Governor are subject to confirmation by the Senate pursuant to section 4, Article III, Oregon Constitution. [Amended by 1967 c.577 §11; 1969 c.314 §50; 1973 c.792 §17; 1979 c.251 §1; 1981 c.545 §9]

471.710 Removal; prohibited interests of commissioner and employee; rules. (1) The Governor may remove any commissioner for inefficiency, neglect of duty, or misconduct in office, giving to the commissioner a copy of the charges made and an opportunity of being publicly heard in person or by counsel, in the commissioner's own defense, upon not less than 10 days' notice. If such commissioner is removed, the Governor shall file in the office of the Secretary of State a complete statement of all charges made against such commissioner, the findings thereon, and a complete record of the proceedings.

(2) No person, other than the member appointed in accordance with ORS 471.705 who is designated from the food and alcoholic beverage retail industry, is eligible to hold the office of commissioner, or to be employed by the Oregon Liquor Control Commission if:

(a) The person has any financial interest in any business licensed by the commission or in any business which manufactures alcoholic beverages sold in Oregon;

(b) Anyone in the person's household or immediate family has a financial interest described in paragraph (a) of this subsection;

(c) Anyone in the person's household or immediate family is employed by a business licensed by the commission, unless the person is not in a position to take action or make decisions which could affect the licensed business; or

(d) The person or anyone in the person's household or immediate family has a business connection with any business licensed by the commission, unless the person is not in a position to take action or make decisions which could affect the licensed business.

(3)(a) A retail sales agent appointed by the commission, or a person in the household or immediate family of a retail sales agent, may not have any financial interest in or business connection with:

(A) A person or business that is licensed as a distillery;

(B) A person or business that holds a full on-premises sales license; or

(C) A distillery whose products are sold in Oregon.

(b) Paragraph (a) of this subsection does not apply to a distillery retail outlet agent appointed by the commission under ORS 471.230.

(4) Nothing in this section prohibits a person from having a financial interest resulting from investments made by the Public Employees Retirement System or through mutual funds, blind trusts or similar investments where the person does not exercise control over the nature, amount or timing of the investment.

(5) The commission by rule may establish additional restrictions to prohibit potential conflicts of interest. The commission by rule shall define "immediate family" and "business connection" as used in this section. [Amended by 1979 c.251 §2; 1983 c.168 §1; 1987 c.511 §7; 2009 c.38 §4]

471.715 Chairperson; meetings; quorum. (1) The member from the food and alcoholic beverage retail industry shall not serve as chairperson. The chairperson shall

preside at all meetings of the Oregon Liquor Control Commission or, in the chairperson's absence, some other member may serve as chairperson.

(2) The commission shall meet at such times and places within this state as it determines. A majority of the commissioners constitutes a quorum for the transaction of any business, for the performance of any duty or for the exercise of any power of the commission. [Amended by 1979 c.251 §3; 1983 c.168 §2]

471.720 Administrator; other personnel. The Oregon Liquor Control Commission shall appoint an administrator who shall serve at its discretion. The administrator shall be subject to policy direction by the commissioners, and shall be the secretary of the commission and custodian of commission records. The administrator shall manage the commission, administer the laws, and appoint, assign and coordinate personnel of the commission within budget limitations and the State Personnel Relations Law. [Amended by 1967 c.630 §4; 1975 c.605 §24; 1985 c.592 §1]

471.725 Buying, leasing, contracting and borrowing powers of commission. The function, duties and powers of the Oregon Liquor Control Commission include the following:

(1) To buy, have in its possession, bottle, blend, rectify, transport and sell, for present or future delivery, in its own name, alcoholic liquor in the manner set forth in this chapter.

(2) To purchase, acquire, rent, lease or occupy any building, rooms, stores or land and acquire, own, lease and sell equipment and fixtures required for its operations.

(3) To lease or sublet to others property which it acquires or owns and which is not immediately required for its operations. However, no real property shall be purchased without the consent and approval of the Governor.

(4) To borrow money, guarantee the payment thereof and of the interest thereon, by the transfer or pledge of goods or in any other manner required or permitted by law.

(5) To issue, sign, indorse and accept checks, promissory notes, bills of exchange and other negotiable instruments.

(6) In the event the United States Government provides any plan or method whereby the taxes upon alcoholic liquors are collected at the source, to enter into any and all contracts and comply with all regulations, even to the extent of partially or wholly abrogating any statutory provisions which might be in conflict with federal law or regulations, to the end that the commission receives the portion thereof allocated to this

state, to be distributed as provided by statute.

(7) To secure and pay for such policies of insurance as may be necessary to adequately protect it from loss by fire, theft or other casualty. [Amended by 1995 c.301 §44]

471.730 Regulatory powers of commission. The function, duties and powers of the Oregon Liquor Control Commission include the following:

(1) To control the manufacture, possession, sale, purchase, transportation, importation and delivery of alcoholic liquor in accordance with the provisions of this chapter and ORS 474.105 and 474.115.

(2) To grant, refuse, suspend or cancel licenses and permits for the sale or manufacture of alcoholic liquor, or other licenses and permits in regard thereto, and to permit, in its discretion, the transfer of a license of any person.

(3) To collect the taxes and duties imposed by statutes relating to alcoholic liquors, and to issue, and provide for cancellation, stamps and other devices as evidence of payment of such taxes or duties.

(4) To investigate and aid in the prosecution of every violation of statutes relating to alcoholic liquors, to seize alcoholic liquor manufactured, sold, kept, imported or transported in contravention of this chapter and ORS 474.105 and 474.115, and apply for the confiscation thereof, whenever required by statute, and cooperate in the prosecution of offenders before any court of competent jurisdiction.

(5) To adopt such regulations as are necessary and feasible for carrying out the provisions of this chapter and ORS 474.105 and 474.115 and to amend or repeal such regulations. When such regulations are adopted they shall have the full force and effect of law.

(6) To exercise all powers incidental, convenient or necessary to enable it to administer or carry out any of the provisions of this chapter and ORS 474.105 and 474.115.

(7) To control, regulate and prohibit any advertising by manufacturers, wholesalers or retailers of alcoholic liquor by the medium of newspapers, letters, billboards, radio or otherwise.

(8) To sell, license, regulate and control the use of alcohol for scientific, pharmaceutical, manufacturing, mechanical, industrial and other purposes, and to provide by regulation for the sale thereof for such uses.

471.732 Policy relating to sanitation in licensed premises. (1) The Legislative Assembly finds and declares that the regulation of health and sanitation matters in premises

licensed by the Oregon Liquor Control Commission under this chapter can best be performed by the Oregon Health Authority and the State Department of Agriculture.

(2) It is the policy of the Legislative Assembly and the intent of ORS 471.333 and 624.010 and this section that premises licensed by the Oregon Liquor Control Commission under this chapter shall be subject to the laws governing health and sanitation matters, including any applicable licensing requirements, and to the rules adopted thereunder by the authority and the department. [1979 c.236 §2; 1995 c.301 §20; 1999 c.351 §62; 2009 c.595 §962]

471.735 Testing and seizure of wines. The Oregon Liquor Control Commission shall have the power to investigate by sample or chemical analysis, the quality of all wines manufactured, imported, sold or offered for sale within this state, and to seize, confiscate and destroy all wines sold or offered for sale within this state which do not conform in all respects to the minimum standards provided for by the laws of this state.

471.740 Exclusive right of commission to handle certain liquors. Except as provided in this chapter, the Oregon Liquor Control Commission is vested with the exclusive right to purchase, sell, have in possession for sale, import or transport alcoholic beverages. [Amended by 1953 c.120 §6; 1974 c.4 §6; 1999 c.351 §77]

471.745 Fixing prices and selling liquor. The Oregon Liquor Control Commission shall fix the prices at which alcoholic liquors containing over five percent alcohol by volume may be purchased from it, and has power to bottle, blend, rectify, manufacture or sell alcoholic liquors for itself, or for or to any person or commission within or without this state. [Amended by 1995 c.301 §88]

471.750 Liquor stores and warehouses; operation; sales; advertising; rules. (1) The Oregon Liquor Control Commission shall establish such stores and warehouses in such places in the state as in its judgment are required by public convenience or necessity, for the sale of spirituous liquors, wines and other alcoholic liquors containing over five percent alcohol by volume, in sealed containers for consumption off the premises. The commission shall keep on hand in such stores or warehouses such quantities and kinds of alcoholic liquors as are reasonably required to supply the public demand.

(2) Any person qualified to purchase such liquors from the commission has the right to present to the commission, or at any of its stores, an application for any kind or brand of alcoholic liquor that the person may desire and that may be manufactured or obtainable in any place in the United States,

and the commission shall obtain such liquor and sell it to the applicant. The commission may not require that an application for a kind or brand of alcoholic liquor include a commitment to purchase a minimum amount of the liquor or require that a purchase be for more than one container of a kind or brand of alcoholic liquor if the liquor:

(a) Except as provided in subsection (5) of this section, has a retail sales price of \$30 or more per container;

(b) Is available through a distributor in the United States that does not require the commission to acquire more than one case of the distilled liquor in a single transaction;

(c) Is not regularly stocked by the commission; and

(d) Is ordered in a 750 milliliter container size if available in that size.

(3) The commission may not establish a store in any county or incorporated city of this state where a local prohibitory law is in effect. The commission shall adopt rules governing advertising by stores operated by the commission. The commission may appoint agents in the sale of said liquor under such agreement as the commission may negotiate with said agents or their representative.

(4) Rules relating to advertising adopted by the commission under subsection (3) of this section shall allow signs and displays within its stores for the purpose of supplying consumer information to customers, including but not limited to discounts, sales and other specials. Commission discretion with respect to those signs and displays shall be limited to regulation of the content, size, number per brand, type and duration of the sign or display. Signs and displays may be supplied by manufacturers, wholesalers or distributors, and may bear the name of a particular distillery, supplier or brand of liquor. The use of signs and displays shall be optional with the agent appointed by the commission. Signs or displays authorized by the commission may not be placed in positions within the store where the sign or display would be readily visible from outside of the store.

(5) The commission may annually adjust the price threshold established in subsection (2)(a) of this section by a percentage equal to the percentage change in the Portland-Salem, OR-WA Consumer Price Index for All Urban Consumers for All Items as published by the Bureau of Labor Statistics of the United States Department of Labor. However, the commission may not adjust the price threshold to be less than \$30. [Amended by 1977 c.321 §3; 1977 c.608 §2; 1991 c.379 §1; 1995 c.301 §89; 2001 c.785 §11; amendments by 2002 s.s.1 c.11 §1 repealed by 2002 s.s.2 c.1 §3; 2002 s.s.2 c.1 §1; 2011 c.180 §2]

471.752 Agent participation in programs for state employees; preference of spouse or child of deceased agent or agent with disability. (1) An agent appointed under ORS 471.750 may participate in a health benefit plan available to state employees pursuant to ORS 243.105 to 243.285 at the expense of the agent and may participate in the state deferred compensation plan established under ORS 243.401 to 243.507. For such purposes, agents shall be considered eligible state employees.

(2) A person who is the surviving spouse or child of a deceased agent or the spouse or child of an agent of the Oregon Liquor Control Commission who has a disability shall be given preference in the appointment of a successor agent, if otherwise qualified, the spouse having greater preference. The experience of such applicant in the business operation of the deceased agent or the agent who has a disability shall be the primary consideration in determining the qualifications of the applicant. [1979 c.203 §3; 1983 c.624 §1; 1985 c.645 §4; 1997 c.179 §30; 1997 c.222 §53; 2007 c.70 §270]

471.754 Commission to develop recycling education materials. The Oregon Liquor Control Commission shall develop recycling education materials for distribution through stores established by the commission under ORS 471.750 that encourage the patrons of the store to recycle bottles sold through the stores. [1997 c.552 §34]

471.755 [Amended by 1971 c.734 §67; repealed by 1973 c.311 §6]

471.757 Statement of financial interest in business of licensee. (1) At such times as the Oregon Liquor Control Commission may prescribe and upon forms furnished by the commission, any license applicant or licensee of the commission may be required to submit a sworn statement to the commission showing the name, address and the nature and extent of the financial interest of each person, individual and corporate, having a financial interest in the business operated under the license.

(2) The commission shall review the statement and may refuse to issue a license to any license applicant, or may suspend, cancel or refuse to renew the license of any licensee, when conditions exist in relation to any person having a financial interest in the business or in the place of business which would constitute grounds for refusing to issue a license or for cancellation or suspension of a license if such person were the license applicant or licensee. However, in cases where the financial interest is held by a corporation, only the officers and directors of the corporation, any individual or combination of individuals who own a controlling

financial interest in the business and any manager of the business shall be considered persons having a financial interest within the meaning of this subsection. [1963 c.369 §1; 1995 c.301 §45; 1999 c.351 §63; 2001 c.785 §9]

471.760 Subpoena; oaths; depositions.

Each member of the Oregon Liquor Control Commission, or any of its authorized agents, shall, for the purposes contemplated by this chapter and ORS 474.105 and 474.115, have power to issue subpoenas, compel the attendance of witnesses, administer oaths, certify to official acts, take depositions within or without this state, as provided by law, and compel the production of pertinent books, payrolls, accounts, papers, records, documents and testimony. [Amended by 1953 c.101 §2]

471.765 Procedure when person refuses to testify or produce books. If a person in attendance before the Oregon Liquor Control Commission or a commissioner refuses, without reasonable cause, to be examined or to answer a legal and pertinent question, or to produce a book or paper when ordered so to do by the commission, the commission may apply to the judge of the circuit court of any county where such person is in attendance, upon proof by affidavit of the fact, for a rule or order returnable in not less than two nor more than five days, directing such person to show cause before the judge who made the order, or any other judge of such county, why the person should not be punished for contempt. Upon the return of such order, the judge shall examine such person under oath and the person shall be given an opportunity to be heard. If the judge determines that such person has refused, without reasonable cause or legal excuse, to be examined or to answer a legal or pertinent question, or to produce a book or paper which the person was ordered to bring or produce, the judge may forthwith punish the offender for contempt of court.

471.770 Self-incrimination as a basis for refusing to testify or produce books. No person shall be excused from testifying or from producing any books, papers or documents in any investigation or inquiry by or upon any hearing before the Oregon Liquor Control Commission or any commissioner when ordered so to do by the commission or any of its authorized agents, upon the ground that the testimony, evidence, books, papers or documents required of the person may tend to incriminate the person or subject the person to penalty or forfeiture. No person shall be prosecuted, punished or subjected to any penalty or forfeiture for or on account of any act, transaction, matter or thing concerning which the person shall, under oath, have, by order of the commission, or a com-

missioner, or any of its authorized agents, testified to or produced documentary evidence of; but no person so testifying shall be exempt from prosecution or punishment for any perjury committed by the person in testimony. [Amended by 1953 c.101 §2]

471.775 Service of subpoenas; authority of inspectors. (1) The provisions of ORS 183.440 shall apply to subpoenas issued by each member of the Oregon Liquor Control Commission or any of its authorized agents.

(2) Liquor enforcement inspectors have authority as provided under this chapter, ORS chapter 153, ORS 133.005 to 133.400, 133.450, 133.525 to 133.703, 133.721 to 133.739, 161.235, 161.239 and 161.245 and chapter 743, Oregon Laws 1971, to conduct inspections or investigations, make arrests and seizures, aid in prosecutions for offenses, issue criminal citations and citations for violations and otherwise enforce this chapter, ORS 474.005 to 474.095 and 474.115, commission rules and any other laws of this state that the commission considers related to alcoholic liquor, including but not limited to laws regarding the manufacture, importation, transportation, possession, distribution, sale or consumption of alcoholic beverages, the manufacture or use of false identification or the entry of premises licensed to sell alcoholic liquor. [Amended by 1953 c.101 §2; 1971 c.734 §68; 2012 c.54 §5]

471.780 [Amended by 1953 c.13 §2; 1969 c.145 §1; repealed by 2001 c.785 §12]

471.785 [Amended by 1961 c.160 §23; 1967 c.577 §3; repealed by 1973 c.794 §34]

471.790 Commissioners not liable for official acts; commission funds entitled to priority. No member of the Oregon Liquor Control Commission may be sued for doing or omitting to do any act in the performance of duties as prescribed in the Liquor Control Act. No member of the commission personally shall be liable for any loss caused by the default or failure of the depository of funds of the commission. All funds of the commission deposited in any bank or trust company are entitled to priority of payment as public funds of the state, if the commission funds are only kept in depositories designated by the State Treasurer and under security of the same character required by law for depositories of state funds.

471.795 Purchase and use of liquor by member or employee of commission. No provision of the Liquor Control Act prevents any member or employee of the Oregon Liquor Control Commission from purchasing and keeping in possession, for the personal use of self or members of the family of the member or employee, any alcoholic liquor in the same manner as it may be purchased or kept by any other person under that statute.

471.800 Restrictions on out-of-state wine; imposition. If by the laws of another state or by the rules and regulations of any administrative body or authorized agency thereof or therein, market restrictions are imposed that prevent or tend to prevent the sale of wine manufactured in Oregon in free and unrestricted competition with like kinds of wine manufactured in such other state, the Oregon Liquor Control Commission is authorized and directed to impose similar restrictions in Oregon upon such wine manufactured in such other state and offered for sale in Oregon.

471.805 Disposition of moneys; revolving fund. (1) Except as otherwise provided in ORS 471.810 (2), all money collected by the Oregon Liquor Control Commission under this chapter and ORS chapter 473 and privilege taxes shall be remitted to the State Treasurer who shall credit it to a suspense account of the commission. Whenever the commission determines that moneys have been received by it in excess of the amount legally due and payable to the commission or that it has received money to which it has no legal interest, or that any license fee or deposit is properly refundable, the commission is authorized and directed to refund such money by check drawn upon the State Treasurer and charged to the suspense account of the commission. After withholding refundable license fees and such sum, not to exceed \$250,000, as it considers necessary as a revolving fund for a working cash balance for the purpose of paying travel expenses, advances, other miscellaneous bills and extraordinary items which are payable in cash immediately upon presentation, the commission shall direct the State Treasurer to transfer the money remaining in the suspense account to the Oregon Liquor Control Commission Account in the General Fund. Moneys in the Oregon Liquor Control Commission Account are continuously appropriated to the commission to be distributed and used as required or allowed by law.

(2) All necessary expenditures of the commission incurred in carrying out the purposes required of the commission by law, including the salaries of its employees, purchases made by the commission and such sums necessary to reimburse the \$250,000 revolving fund, shall be audited and paid from the Oregon Liquor Control Commission Account in the General Fund, upon warrants drawn by the Oregon Department of Administrative Services, pursuant to claims duly approved by the commission. [Amended by 1955 c.26 §1; 1967 c.577 §4; 1975 c.424 §2; 1979 c.367 §3; 1995 c.301 §46; 1999 c.351 §64; 2005 c.755 §45]

471.810 Distribution of available moneys in Oregon Liquor Control Commission Account. (1) At the end of each month, the Oregon Liquor Control Commission shall certify the amount of moneys available for distribution in the Oregon Liquor Control Commission Account and, after withholding such moneys as it may deem necessary to pay its outstanding obligations, shall within 35 days of the month for which a distribution is made direct the State Treasurer to pay the amounts due, upon warrants drawn by the Oregon Department of Administrative Services, as follows:

(a) Fifty-six percent, or the amount remaining after the distribution under subsection (4) of this section, credited to the General Fund available for general governmental purposes wherein it shall be considered as revenue during the quarter immediately preceding receipt;

(b) Twenty percent to the cities of the state in such shares as the population of each city bears to the population of the cities of the state, as determined by Portland State University last preceding such apportionment, under ORS 190.510 to 190.610;

(c) Ten percent to counties in such shares as their respective populations bear to the total population of the state, as estimated from time to time by Portland State University; and

(d) Fourteen percent to the cities of the state to be distributed as provided in ORS 221.770 and this section.

(2) The commission shall direct the Oregon Department of Administrative Services to transfer 50 percent of the revenues from the taxes imposed by ORS 473.030 and 473.035 to the Mental Health Alcoholism and Drug Services Account in the General Fund to be paid monthly as provided in ORS 430.380.

(3) If the amount of revenues received from the taxes imposed by ORS 473.030 for the preceding month was reduced as a result of credits claimed under ORS 473.047, the commission shall compute the difference between the amounts paid or transferred as described in subsections (1)(b), (c) and (d) and (2) of this section and the amounts that would have been paid or transferred under subsections (1)(b), (c) and (d) and (2) of this section if no credits had been claimed. The commission shall direct the Oregon Department of Administrative Services to pay or transfer amounts equal to the differences computed for subsections (1)(b), (c) and (d) and (2) of this section from the General Fund to the recipients or accounts described in subsections (1)(b), (c) and (d) and (2) of this section.

(4) Notwithstanding subsection (1) of this section, no city or county shall receive for any fiscal year an amount less than the amount distributed to the city or county in accordance with ORS 471.350 (1965 Replacement Part), 471.810, 473.190 and 473.210 (1965 Replacement Part) during the 1966-1967 fiscal year unless the city or county had a decline in population as shown by its census. If the population declined, the per capita distribution to the city or county shall be not less than the total per capita distribution during the 1966-1967 fiscal year. Any additional funds required to maintain the level of distribution under this subsection shall be paid from funds credited under subsection (1)(a) of this section. [Amended by 1955 c.475 §11; 1957 c.222 §1; 1957 c.445 §1; 1961 c.78 §1; 1961 c.635 §1; 1967 c.577 §5; 1969 c.499 §1; 1975 c.424 §4; 1975 c.527 §4a; 1977 c.831 §3a; 1977 c.856 §18; 1987 c.406 §2; 1997 c.348 §15; 2001 c.971 §4; 2007 c.71 §153; 2007 c.854 §4; 2013 c.768 §106j]

Note: The amendments to 471.810 by section 106j, chapter 768, Oregon Laws 2013, become operative July 1, 2014. See section 171, chapter 768, Oregon Laws 2013. The text that is operative until July 1, 2014, is set forth for the user's convenience.

471.810. (1) At the end of each month, the Oregon Liquor Control Commission shall certify the amount of moneys available for distribution in the Oregon Liquor Control Commission Account and, after withholding such moneys as it may deem necessary to pay its outstanding obligations, shall within 35 days of the month for which a distribution is made direct the State Treasurer to pay the amounts due, upon warrants drawn by the Oregon Department of Administrative Services, as follows:

(a) Fifty-six percent, or the amount remaining after the distribution under subsection (4) of this section, credited to the General Fund available for general governmental purposes wherein it shall be considered as revenue during the quarter immediately preceding receipt;

(b) Twenty percent to the cities of the state in such shares as the population of each city bears to the population of the cities of the state, as determined by the State Board of Higher Education last preceding such apportionment, under ORS 190.510 to 190.610;

(c) Ten percent to counties in such shares as their respective populations bear to the total population of the state, as estimated from time to time by the State Board of Higher Education; and

(d) Fourteen percent to the cities of the state to be distributed as provided in ORS 221.770 and this section.

(2) The commission shall direct the Oregon Department of Administrative Services to transfer 50 percent of the revenues from the taxes imposed by ORS 473.030 and 473.035 to the Mental Health Alcoholism and Drug Services Account in the General Fund to be paid monthly as provided in ORS 430.380.

(3) If the amount of revenues received from the taxes imposed by ORS 473.030 for the preceding month was reduced as a result of credits claimed under ORS 473.047, the commission shall compute the difference between the amounts paid or transferred as described in subsections (1)(b), (c) and (d) and (2) of this section and the amounts that would have been paid or trans-

ferred under subsections (1)(b), (c) and (d) and (2) of this section if no credits had been claimed. The commission shall direct the Oregon Department of Administrative Services to pay or transfer amounts equal to the differences computed for subsections (1)(b), (c) and (d) and (2) of this section from the General Fund to the recipients or accounts described in subsections (1)(b), (c) and (d) and (2) of this section.

(4) Notwithstanding subsection (1) of this section, no city or county shall receive for any fiscal year an amount less than the amount distributed to the city or county in accordance with ORS 471.350 (1965 Replacement Part), 471.810, 473.190 and 473.210 (1965 Replacement Part) during the 1966-1967 fiscal year unless the city or county had a decline in population as shown by its census. If the population declined, the per capita distribution to the city or county shall be not less than the total per capita distribution during the 1966-1967 fiscal year. Any additional funds required to maintain the level of distribution under this subsection shall be paid from funds credited under subsection (1)(a) of this section.

Note: Section 29, chapter 722, Oregon Laws 2013, provides:

Sec. 29. For the biennium beginning July 1, 2013, notwithstanding ORS 471.810, amounts to be distributed from the Oregon Liquor Control Commission Account that are attributable to a per bottle surcharge imposed by the Oregon Liquor Control Commission on June 6, 2013, shall be credited to the General Fund. [2013 c.722 §29]

471.815 [Repealed by 1961 c.706 §45]

471.817 Alternative transportation organization to report annually. Each non-profit organization formed by licensees to provide alternative transportation for patrons of the licensees shall report annually to the Oregon Liquor Control Commission. The commission may acknowledge receipt of the notice and shall keep a list of such organizations that have given notice. The commission shall provide information to the Department of Revenue on request for purposes of sections 2 and 4, chapter 700, Oregon Laws 1985. [1985 c.700 §6]

471.820 [Repealed by 1961 c.706 §45]

471.825 [Repealed by 1961 c.706 §45]

471.830 [Repealed by 1961 c.706 §45]

PENALTIES

471.990 Penalties. (1) Except where other punishment is specifically provided for, violation of any provision of this chapter and ORS 474.105 and 474.115 is a Class A misdemeanor.

(2) A second or subsequent violation of ORS 471.440 is a Class C felony.

(3) Subject to ORS 153.022, violation of any regulation promulgated under ORS 471.730 (5) is a Class C violation. [Amended by 1953 c.120 §6; 1963 c.93 §6; 1987 c.320 §236; 1999 c.1051 §187; 2011 c.597 §214]

LIQUOR; DRUGS

Oregon Revised Statutes

Chapter 473

Wine, Cider and Malt Beverage Privilege Tax

Chapter 473

2013 EDITION

Wine, Cider and Malt Beverage Privilege Tax

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473.030	Tax on wines and malt beverages	473.130	Estimate by commission as prima facie evidence
473.035	Tax on cider	473.140	Records to be kept by manufacturers and purchasers
473.045	Tax on sale or use of agricultural products used by wineries; penalty for non-payment	473.150	Inspection of manufacturer's records; records to be kept for prescribed period
473.047	Marketing activity tax credit; rules	473.160	Records to be kept by persons transporting wine, cider or malt beverage
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473.060	Payment of taxes; refunds; interest or penalty; appeal	473.180	Applicability to interstate and foreign commerce
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473.090	Lien created by the tax		

LIQUOR; DRUGS

473.005 Definitions for chapter. The definitions provided by ORS 471.001 apply to this chapter. [1995 c.301 §6]

473.010 [Amended by 1953 c.120 §6; 1974 c.4 §8; repealed by 1995 c.301 §33]

473.015 Definition of “cider.” For the purposes of this chapter, “cider” means an alcoholic beverage made from the fermentation of the juice of apples or pears that contains not less than one-half of one percent and not more than seven percent of alcohol by volume, including, but not limited to, flavored, sparkling or carbonated cider. [1995 c.301 §10; 1997 c.348 §1; 1999 c.351 §78]

473.020 Administration of chapter by commission. The Oregon Liquor Control Commission shall administer this chapter, and shall prescribe forms and make such rules and regulations as it deems necessary to enforce its provisions.

473.030 Tax on wines and malt beverages. (1) A tax is imposed upon the privilege of engaging in business as a manufacturer or as an importing distributor of malt beverages at the rate of \$2.60 per barrel of 31 gallons on all such beverages.

(2) A tax is imposed upon the privilege of engaging in business as a manufacturer or as an importing distributor of wines at the rate of 65 cents per gallon on all such beverages.

(3) In addition to the tax imposed by subsection (2) of this section, a manufacturer or an importing distributor of wines containing more than 14 percent alcohol by volume shall be taxed at the rate of 10 cents per gallon.

(4) In addition to the taxes imposed by subsections (2) and (3) of this section, a manufacturer or an importing distributor of wines shall be taxed at the rate of two cents per gallon. Notwithstanding any other provision of law, all moneys collected by the Oregon Liquor Control Commission pursuant to this subsection shall be paid into the account established by the Oregon Wine Board under ORS 182.470.

(5) The rates of tax imposed by this section upon malt beverages apply proportionately to quantities in containers of less capacity than those quantities specified in this section.

(6) The taxes imposed by this section shall be measured by the volume of wine or malt beverages produced, purchased or received by any manufacturer. If the wine or malt beverage remains unsold and in the possession of the producer at the plant where it was produced, no tax imposed or levied by this section is required to be paid until the wine or malt beverage has become sufficiently aged for marketing at retail, but this

subsection shall not be construed so as to alter or affect any provision of this chapter relating to tax liens or the filing of statements. [Amended by 1974 c.4 §9; 1975 c.424 §3; 1977 c.856 §19; 1983 c.651 §9; 1987 c.608 §3; 1995 c.301 §23; 1997 c.249 §176; 1999 c.351 §79; 2003 c.797 §22]

473.035 Tax on cider. (1) A tax is imposed upon the privilege of engaging in business as a manufacturer or as an importing distributor of cider at the rate of \$2.60 per barrel of 31 gallons on all such beverages.

(2) Notwithstanding subsection (1) of this section or any other provision of law, the taxation of the manufacturing or distribution of cider shall be at a rate that is not less than the rate imposed for the privilege of manufacturing or distributing malt beverages under ORS 473.030 (1).

(3) The rate of tax imposed by this section shall apply proportionately to quantities in containers of less capacity than those quantities specified in this section.

(4) The tax imposed by this section shall be measured by the volume of cider produced, purchased or received by any manufacturer. If the cider remains unsold and in the possession of the producer at the plant where it was produced, no tax imposed or levied by this section is required to be paid until the cider has become sufficiently aged for marketing at retail, but this subsection shall not be construed so as to alter or affect any provision of this chapter relating to tax liens or the filing of statements. [1997 c.348 §3]

473.040 [Amended by 1997 c.348 §4; repealed by 2007 c.854 §10]

473.045 Tax on sale or use of agricultural products used by wineries; penalty for nonpayment. (1) A tax is hereby imposed upon the sale or use of all agricultural products used in a winery for making wine.

(2) The amount of the tax shall be \$25 per ton of grapes of the vinifera varieties, whether true or hybrid.

(3) An equivalent tax is imposed upon the sale or use of vinifera or hybrid grape products imported for use in a winery licensed under ORS chapter 471 for making wine. Such tax shall be \$25 per ton of grapes used to produce the imported grape product. The tax shall be determined on the basis of one ton of grapes for each 150 gallons of wine made from such vinifera or hybrid grape products.

(4) A tax on the sale or use of products that are not subject to subsection (2) or (3) of this section that are used to make wine in this state shall be imposed at a rate of \$.021 per gallon of wine made from those products.

(5) In the case of vinifera or hybrid grape products harvested in this state, \$12.50 of

such tax shall be levied and assessed against the person selling or providing such grape products to the winery. If the purchasing winery is licensed under ORS chapter 471, that winery shall deduct the tax levied under this subsection from the price paid to the seller. If the purchasing winery is not licensed under ORS chapter 471, the seller shall report all sales on forms provided by the Oregon Liquor Control Commission and pay \$12.50 per ton as a tax directly to the commission.

(6) Taxes paid by sellers under subsection (5) of this section shall be collected by the Oregon Liquor Control Commission on behalf of the Oregon Wine Board. The commission may retain an amount sufficient to cover the cost of collecting the taxes paid under subsection (5) of this section and shall transfer the remainder of those taxes to the board for deposit as provided in ORS 576.775. Failure to pay a tax imposed under subsection (5) of this section subjects the violator to the penalty provided in ORS 473.992.

(7) Except for the tax specified in subsection (4) of this section the taxes specified under this section shall be levied and assessed to the licensed winery at the time of purchase of the product by the winery or of importation of the product, whichever is later. The tax specified in subsection (4) of this section shall be levied and assessed to the licensed winery at the time the wine is made.

(8) The taxes imposed by this section shall be paid by the licensed winery and collected by the commission subject to the same powers as taxes imposed and collected under ORS chapter 473. The tax obligation for a calendar year shall be paid in two installments. Half shall be due on December 31 of the current calendar year. The remaining half shall be due the following June 30. [1977 c.690 §5; 1983 c.651 §6; 1987 c.804 §1; 1991 c.459 §415c; 1995 c.301 §47; 2003 c.604 §101; 2003 c.797 §23]

Note: 473.045 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 473 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

473.047 Marketing activity tax credit; rules. (1) As used in this section, "qualified marketing activity" means marketing activity:

(a) That promotes the sale of wine or wine products;

(b) That does not promote specific brands of wine or wine products or exclusively promote the products of any particular winery; and

(c) That has been approved by the Oregon Wine Board.

(2) A credit against the privilege tax otherwise due under ORS 473.030 (2) is allowed to a manufacturer or importing distributor of wine for the qualified marketing activity expenditures made by the manufacturer or importing distributor in the calendar year prior to the year for which the credit is claimed.

(3) The credit allowed under this section shall be 28 percent of the sum of the following:

(a) One hundred percent of the cost of qualified marketing activity to the extent that the cost of the activity does not exceed the amount of taxes the manufacturer or importing distributor of wine owed under ORS 473.030 (2) on the first 40,000 gallons, or 151,000 liters, of wine sold annually in Oregon; and

(b) Twenty-five percent of the tax owed under ORS 473.030 (2) for qualified marketing activity on wine sales above 40,000 gallons, or 151,000 liters, of wine sold annually in Oregon.

(4) The credit allowed under this section may not exceed the tax liability of the manufacturer or importing distributor of wine under ORS 473.030 (2) for the calendar year following the year in which qualified marketing activity occurred.

(5) A manufacturer or importing distributor of wine that wishes to claim the credit allowed under this section shall submit with the manufacturer's or importing distributor's tax return form a certificate issued by the board verifying that the marketing activity was a qualified marketing activity. The credit shall be claimed on the form and include the information required by the Oregon Liquor Control Commission by rule.

(6) The credit shall be claimed against the taxes reported on the return filed under ORS 473.060 for each month in the calendar year following the year in which the qualified marketing activity occurred, until the credit is completely used or the year ends, whichever occurs first.

(7) The board shall by rule further define, consistent with the definition in subsection (1) of this section, the marketing activities that constitute qualified marketing activity. [2001 c.971 §2; 2003 c.797 §24]

473.050 When privilege tax not imposed. In computing any privilege tax imposed by ORS 473.030 or 473.035:

(1) No malt beverage, cider or wine is subject to tax more than once.

(2) No tax shall be levied, collected or imposed upon any malt beverage, cider or wine sold to the Oregon Liquor Control Commission or exported from the state.

(3) No tax shall be levied, collected or imposed upon any malt beverage given away and consumed on the licensed premises of a brewery licensee, or sold to or by a voluntary nonincorporated organization of army, air corps or navy personnel operating a place for the sale of goods pursuant to regulations promulgated by the proper authority of each such service.

(4) No tax shall be levied, collected or imposed upon any malt beverage, cider or wine determined by the commission to be unfit for human consumption or unsalable.

(5) No tax shall be levied, collected or imposed upon the first 40,000 gallons, or 151,000 liters, of wine sold annually in Oregon from a United States manufacturer of wines producing less than 100,000 gallons, or 379,000 liters, annually. [Amended by 1971 c.158 §1; 1977 c.856 §20; 1981 c.199 §4; 1983 c.651 §7; 1995 c.301 §24; 1997 c.348 §5; 2007 c.854 §5]

473.057 [1989 c.511 §4; 2003 c.44 §4; repealed by 2007 c.854 §10]

473.060 Payment of taxes; refunds; interest or penalty; appeal. (1) The privilege taxes imposed by ORS 473.030 and 473.035 shall be paid to the Oregon Liquor Control Commission. The taxes covering the periods for which statements are required to be rendered by ORS 473.070 shall be paid before the time for filing such statements expires or, as concerns wines, on or before the 20th day of the month after such wines have been withdrawn from federal bond. If not so paid, a penalty of 10 percent and interest at the rate of one percent a month or fraction of a month shall be added and collected. The commission may refund any tax payment imposed upon or paid in error by any licensee, and may waive the collection or refund the payment of any tax imposed and collected on wine, cider or malt beverages subsequently exported from this state, sold to a federal instrumentality or to the commission, or determined by the commission to be unfit for human consumption or unsalable.

(2) The commission may waive any interest or penalty assessed to a manufacturer subject to the tax imposed under ORS 473.030 or 473.035 if the commission, in its discretion, determines that the manufacturer has made a good faith attempt to comply with the requirements of this chapter.

(3) Except in the case of fraud, the commission may not assess any interest or penalty on any tax due under ORS 473.030 or 473.035 following the expiration of 36 months from the date on which was filed the statement required under ORS 473.070 reporting the quantity of wine, cider or malt beverages upon which the tax is due.

(4) A manufacturer may appeal a tax imposed under ORS 473.030 or 473.035 in the

manner of a contested case under ORS chapter 183. [Amended by 1955 c.241 §1; 1971 c.158 §2; 1981 c.199 §5; 1995 c.301 §25; 1997 c.348 §6; 1999 c.145 §1; 2007 c.854 §6]

473.065 Deposit in lieu of bond; requirements; refund of excess amounts; waiver of bond. (1) If a manufacturer's total tax liability under ORS 473.030 (1) in the previous calendar year was less than \$1,000, the manufacturer may deposit with the Oregon Liquor Control Commission an amount in cash equal to the manufacturer's total tax liability under ORS 473.030 (1) for the previous calendar year in lieu of the bond required by ORS 471.155 (1).

(2) If a manufacturer's actual tax liability under ORS 473.030 (1) is less than the amount deposited under subsection (1) of this section, the manufacturer may request that the commission refund the excess funds or may apply those funds toward the manufacturer's tax liability under ORS 473.030 (1) for the next calendar year.

(3) If a manufacturer's actual tax liability under ORS 473.030 (1) is greater than the amount deposited under subsection (1) of this section, the manufacturer shall pay to the commission the additional amount owed in the manner required under ORS 473.060.

(4) Unless the commission determines that a winery, grower sales privilege or warehouse licensee or direct shipper or wine self-distribution permit holder presents an unusual risk for nonpayment of any license fees, privilege taxes, agricultural products taxes or other tax, penalty or interest imposed under this chapter or ORS chapter 471, the commission shall waive the bond required under ORS 471.155 (1) for the licensee or permit holder if:

(a) The licensee or permit holder was not liable for a privilege tax under this chapter in the immediately preceding calendar year and does not expect to be liable for a privilege tax under this chapter in the current calendar year; or

(b) The licensee or permit holder of a business established during the current calendar year does not expect to be liable for a privilege tax under this chapter in the current calendar year. As used in this paragraph, "business" means:

(A) A winery.

(B) A business operated pursuant to a license issued under ORS 471.227.

(C) A warehouse.

(D) A business operated pursuant to a permit issued under ORS 471.274.

(E) A business operated pursuant to a permit issued under ORS 471.282. [2005 c.632 §2; 2007 c.637 §2; 2009 c.330 §1]

473.070 Statements by manufacturers as to quantities produced; circumstances when annual reporting allowed. (1) On or before the 20th day of each month, every manufacturer shall file with the Oregon Liquor Control Commission a statement of the quantity of wine, cider and malt beverages produced, purchased or received by the manufacturer during the preceding calendar month.

(2) Notwithstanding subsection (1) of this section, a manufacturer of wine that was not liable for a privilege tax under this chapter in the prior calendar year and that does not expect to be liable for a privilege tax under this chapter in the current calendar year, or a manufacturer of wine that is newly established during the current calendar year and that does not expect to be liable for a privilege tax under this chapter in the current calendar year, may file a single annual statement of the quantity of wine produced, purchased or received by the manufacturer during the current calendar year. The annual statement shall be filed with the commission on or before January 20 of the following year. [Amended by 1967 c.52 §1; 1981 c.199 §6; 1995 c.301 §26; 1997 c.348 §7; 2005 c.177 §1]

473.080 Estimate by commission when statement not filed or false statement filed. If any manufacturer fails, neglects or refuses to file a statement required by ORS 473.070 or files a false statement, the Oregon Liquor Control Commission shall estimate the amount of wine, cider and malt beverages produced, purchased or received by the manufacturer and assess the privilege tax thereon. The manufacturer shall be estopped from complaining of the amount so estimated. [Amended by 1967 c.52 §2; 1995 c.301 §27; 1997 c.348 §8]

473.090 Lien created by the tax. The privilege tax required to be paid by ORS 473.030 and 473.035 constitutes a lien upon, and has the effect of an execution duly levied against, any and all property of the manufacturer, attaching at the time the beverages subject to the tax were produced, purchased or received, as the case may be, and remaining until the tax is paid or the property sold in payment thereof. The lien created by this section is paramount to all private liens or encumbrances. [Amended by 1997 c.348 §9; 2007 c.854 §7]

473.100 Seizure of property; notice of sale. (1) Whenever any manufacturer is delinquent in the payment of the privilege tax provided for in ORS 473.030 and 473.035, the Oregon Liquor Control Commission or its duly authorized representative shall seize any property subject to the tax and sell, at public auction, property so seized, or a sufficient portion thereof to pay the privilege tax

due, together with any penalties imposed under ORS 473.060 for such delinquency and all costs incurred on account of the seizure and sale.

(2) Written notice of the intended sale and the time and place thereof, shall be given to such delinquent manufacturer and to all persons appearing of record to have an interest in the property, at least 10 days before the date set for the sale. The notice shall be enclosed in an envelope addressed to the manufacturer at the last-known residence or place of business of the manufacturer in this state, if any; and in the case of any person appearing of record to have an interest in such property, addressed to such person at the last-known place of residence of the person, if any. The envelope shall be deposited in the United States mail, postage prepaid. In addition, notice shall be published for at least 10 days before the date set for such sale, in a newspaper of general circulation published in the county in which the property seized is to be sold. If there is no newspaper of general circulation in such county, the notice shall be posted in three public places in such county for the 10-day period. The notice shall contain a description of the property to be sold, a statement of the amount of the privilege taxes, penalties and costs, the name of the manufacturer and the further statement that, unless the privilege taxes, penalties and costs are paid on or before the time fixed in the notice for the sale, the property, or so much thereof as may be necessary, will be sold in accordance with law and the notice. [Amended by 1997 c.348 §10; 2007 c.854 §8]

473.110 Sale of property; disposal of proceeds. At the sale, the property shall be sold by the Oregon Liquor Control Commission or by its duly authorized agent in accordance with law and the notice. The commission shall deliver to the purchaser a bill of sale for the personal property, and a deed for any real property so sold. The bill of sale or deed vests title in the purchaser. The unsold portion of any property seized under ORS 473.100 may be left at the place of sale at the risk of the manufacturer. If upon any such sale, the money received exceeds the amount of all privilege taxes, penalties and costs due the state from the manufacturer, the excess shall be returned to the manufacturer, and a receipt therefor obtained. However, if any person having an interest in or lien upon the property has filed with the commission, prior to the sale, notice of interest or lien, the commission shall withhold any such excess pending a determination of the rights of the respective parties thereto by a court of competent jurisdiction. If the receipt of the manufacturer is not available, the commission shall deposit such

excess money with the State Treasurer, as trustee for the owner, subject to the order of the manufacturer, the heirs, successors or assigns of the manufacturer.

473.120 Collection of sums due state; remedies cumulative. (1) The Oregon Liquor Control Commission shall immediately transmit notice of the delinquency mentioned in ORS 473.100 to the Attorney General. The Attorney General shall at once proceed to collect all sums due to the state from the manufacturer under this chapter by bringing suit against the necessary parties to effect forfeiture of the bonds of the manufacturer, reducing any deficiency to judgment against the manufacturer.

(2) The remedies of the state provided in ORS 473.090 to 473.120 are cumulative and no action taken by the commission or Attorney General constitutes an election on the part of the state or any of its officers to pursue one remedy to the exclusion of any other remedy provided in this chapter.

473.130 Estimate by commission as prima facie evidence. In any suit brought to enforce the rights of the state, the assessment made by the Oregon Liquor Control Commission under ORS 473.080, or a copy of so much thereof as is applicable in such suit, duly certified by the commission and showing unpaid privilege taxes assessed against any manufacturer, is prima facie evidence:

(1) Of the assessment of the privilege tax and the delinquency thereof.

(2) Of the amount of the privilege tax, interest, penalties and costs due and unpaid to the state.

(3) That the manufacturer is indebted to this state in the amount of such privilege tax, interest and penalties therein appearing unpaid.

(4) That the law relating to assessment and levy of such privilege tax has been fully complied with by all persons required to perform administrative duties under this chapter.

473.140 Records to be kept by manufacturers and purchasers. Every manufacturer shall keep a complete and accurate record of all sales of wine, cider and malt beverages, a complete and accurate record of the number of gallons imported, produced, purchased, manufactured, brewed or fermented, and the date of importation, production, purchase, manufacturing, brewing or fermentation. The records shall be in such form and contain such other information as the Oregon Liquor Control Commission may prescribe. The commission, by rule or regulation, may require the delivery of statements by distributors to purchasers, with

wine, cider and malt beverages, and prescribe the matters to be contained therein. Such records and statements shall be preserved by the distributor and the purchaser respectively, for a period of two years, and shall be offered for inspection at any time upon oral or written demand by the commission or its duly authorized agents. [Amended by 1995 c.301 §28; 1997 c.348 §11]

473.150 Inspection of manufacturer's records; records to be kept for prescribed period. (1) The Oregon Liquor Control Commission may, at any time, examine the books and records of a holder of a wine self-distribution permit or of any manufacturer of wine, cider or malt beverages, and may appoint auditors, investigators and other employees that the commission considers necessary to enforce its powers and perform its duties under this section.

(2) Every holder of a wine self-distribution permit and every manufacturer shall maintain and keep for two years all records, books and accounts required by this chapter and shall provide copies of those records, books and accounts to the commission when requested by the commission. [Amended by 1995 c.301 §29; 1997 c.348 §14; 2007 c.651 §4]

473.160 Records to be kept by persons transporting wine, cider or malt beverage. Every person transporting wine, cider or malt beverages within this state, whether such transportation originates within or without this state, shall keep a true and accurate record of wine, cider or malt beverages transported. The record shall include ingredients which may be used in the manufacture, production, brewing or fermentation of the wine, cider or malt beverages, showing such facts with relation to those beverages, their ingredients and their transportation, as the Oregon Liquor Control Commission may require. The records shall be open to inspection by the representative of the commission at any time. The commission may require from any such person sworn returns of all or any part of the information shown by the records. [Amended by 1995 c.301 §30; 1997 c.348 §12]

473.170 Failure to pay tax or to maintain records. (1) No manufacturer shall:

(a) Fail to pay the privilege tax prescribed in ORS 473.030 and 473.035 when it is due; or

(b) Falsify the statement required by ORS 473.070.

(2) No person shall:

(a) Refuse to permit the Oregon Liquor Control Commission or any of its representatives to make an inspection of the books and records authorized by ORS 473.140 to 473.160;

(b) Fail to keep books of account prescribed by the commission or required by this chapter;

(c) Fail to preserve the books for two years for inspection of the commission; or

(d) Alter, cancel or obliterate entries in the books of account for the purpose of falsifying any record required by this chapter to be made, maintained or preserved. [Amended by 1967 c.52 §3; 1997 c.348 §13; 2007 c.854 §9]

473.180 Applicability to interstate and foreign commerce. None of the provisions of this chapter apply to commerce with foreign nations or commerce with the several states, except in so far as the same may be permitted under the Constitution and laws of the United States.

473.190 State has exclusive right to tax liquor. No county or city of this state shall impose any fee or tax, including occupation taxes, privilege taxes and inspection

fees, in connection with the production, sale, mixing, serving, transporting, delivering or handling of malt or other alcoholic liquors. [Amended by 1961 c.259 §4; 1967 c.577 §8]

473.200 [Repealed by 1967 c.577 §10]

473.210 [Amended by 1957 c.445 §2; 1965 c.141 §1; repealed by 1967 c.577 §10]

473.220 [Repealed by 1967 c.577 §10]

473.990 Penalties. (1) Violation of ORS 473.170 (1) is a Class B misdemeanor.

(2) Violation of ORS 473.170 (2) is a Class A misdemeanor. [Amended by 2011 c.597 §215]

473.992 Penalty upon failure to pay agricultural products tax. Failure to pay a tax under ORS 473.045 (5) is a Class C misdemeanor. [2003 c.797 §9; 2011 c.597 §216]

Note: 473.992 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 473 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

Oregon Revised Statutes

Chapter 474

Trade Practices Relating to Malt Beverages

Chapter 474

2013 EDITION

Trade Practices Relating to Malt Beverages

474.005	Definitions	474.055	Supplier prohibited from requiring wholesaler to assent to certain changes in agreement; provisions in violation of ORS 474.005 to 474.095 void
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474.045	Supplier prohibited from interfering with transfer by wholesaler	474.115	Wholesale sale of malt beverage subject to agreement designating territory of sale

LIQUOR; DRUGS

474.005 Definitions. As used in ORS 474.005 to 474.095, unless the context requires otherwise:

(1) "Importer" means any wholesale distributor importing malt beverages into this state for sale to retailer accounts or for sale to other wholesalers designated as subjobbers for resale.

(2) "Malt beverage manufacturer" means any manufacturer, brewer, importer or master distributor of malt beverages located within or outside this state, or any other person, whether located within or outside this state who enters into an agreement of distributorship for the resale of malt beverages in this state with any wholesale distributor doing business in the State of Oregon.

(3) "Person" means any natural person, corporation, partnership, trust, agency or other entity, as well as any individual officers, directors or other persons in active control of the activities of such entity.

(4) "Supplier" means any malt beverage manufacturer, agent of a malt beverage manufacturer, importer or holder of a certificate under ORS 471.244 who enters into or is a party to any wholesale distribution agreement with a wholesale distributor.

(5) "Wholesale distribution agreement" means any contract, agreement, commercial relationship, license, association or any other arrangement for a definite or indefinite period between a supplier and wholesale distributor.

(6) "Wholesale distributor" means any person importing or causing to be imported into this state, or purchasing or causing to be purchased within this state, any malt beverage for sale or resale to retailers licensed under the laws of this state, regardless of whether the business of such person is conducted under the terms of any agreement with a malt beverage manufacturer. [1989 c.529 §1]

474.007 Wholesale distribution agreements to be in writing. All wholesale distribution agreements between a supplier and a wholesaler shall be in writing, signed by the parties or their authorized agents. [1989 c.529 §2]

474.010 [Amended by 1953 c.342 §3; 1963 c.137 §1; 1974 c.67 §4; repealed by 1977 c.745 §54]

474.011 Good cause required for termination, cancellation or failure to renew agreement. (1) No supplier shall terminate, cancel or fail to renew a distribution agreement upon expiration of its term or refuse to continue under the agreement without good cause. Good cause exists when a wholesaler fails to comply with a provision of the written agreement that is both reasonable and of

material significance to the business relationship between the supplier and the wholesaler and all of the following occur:

(a) The supplier gave written notice to the wholesaler of the failure to comply within two years of acquiring knowledge of the breach;

(b) The written notice alerted the wholesaler of the failure to comply with the agreement, the intent to terminate and the reasons therefor, and the date the termination would occur, which shall be not less than 90 days after the wholesaler's receipt of the notice;

(c) The wholesaler has been given 30 days in which to submit a plan of corrective action to comply with the agreement and not less than an additional 60 days to correct the noncompliance; and

(d) The supplier acted in good faith.

(2) In the event that a wholesale distribution agreement is terminated by a supplier, the wholesaler shall be entitled to reasonable compensation from the supplier for the laid-in cost to the wholesaler of the inventory of the supplier's products, including any taxes paid on the inventory by the wholesaler, together with a reasonable charge for handling of the products.

(3) In the event that a wholesaler is terminated by a supplier in bad faith or for other than good cause, the wholesaler shall be entitled to additional compensation from the supplier for:

(a) The fair market value of any and all assets, including ancillary businesses of the wholesaler used in distributing the supplier's products.

(b) The goodwill of the business.

(4) The total compensation to be paid by the supplier to the wholesaler shall be reduced by any sum received by the wholesaler from sale of assets of the business used in distribution of the supplier's products as well as by whatever value such assets may have to the wholesaler that are unrelated to the supplier's products.

(5) As used in subsection (3) of this section, "fair market value" means the highest dollar amount at which a seller would be willing to sell and a buyer willing to buy when each possesses all information relevant to the transaction. [1989 c.529 §3]

474.014 [1961 c.572 §2; repealed by 1977 c.745 §54]

474.015 Grounds for termination, cancellation, failure to renew or refusal to continue agreement. (1) A supplier may terminate or cancel an agreement immediately, fail to renew an agreement upon expiration of its term or refuse to continue under the agreement if:

(a) The state or federal license of the wholesaler has been revoked or suspended for a period of more than 31 days;

(b) The wholesaler is insolvent within the definition of section 101, title 11, United States Code, or there has been a liquidation, dissolution or assignment for the benefit of creditors of substantially all of the assets of the wholesaler's business, or an order for relief under chapter 7, title 11, United States Code, has been entered with respect to the wholesaler;

(c) The wholesaler, or any individual who holds or owns 10 percent or more of the stock or value of the wholesaler, has been convicted of, or pleads guilty to, a felony;

(d) The wholesaler has committed a fraud in its dealings with the supplier or the supplier's products;

(e) The wholesaler makes a substantial misrepresentation to the supplier which the wholesaler knew to be false and which the supplier relied upon to its detriment;

(f) An assignment of the wholesaler's rights under a distribution agreement, or a change of a controlling ownership interest, other than that caused by the death or legal incapacity of the wholesaler, has been made without written notice as provided in the written distribution agreement, and the supplier has given written notice to the wholesaler of the supplier's intention to terminate on the grounds of transfer without notice unless the transfer was reversed within 30 days from receipt of the notice; or

(g) An assignment of wholesaler's rights is made despite timely and proper notice of disapproval.

(2) In the event of a termination pursuant to this section, the termination shall become effective upon the wholesaler's receipt of written notice thereof. [1989 c.529 §4]

474.016 [1961 c.572 §3; repealed by 1977 c.745 §54]

474.020 [Amended by 1957 c.587 §1; repealed by 1971 c.743 §432]

474.025 Successor bound by agreement. A successor to a supplier or wholesaler, whether by way of merger, purchase of corporate shares, purchase of assets or otherwise, shall be bound by each distribution agreement the predecessor was a party to at the time of transfer with respect to each brand the successor continues to make available for sale in this state. [1989 c.529 §5]

474.030 [Repealed by 1977 c.745 §54]

474.035 Transfer by wholesaler; when conditions may be imposed by supplier.

(1) A wholesaler may transfer, bequeath or devise the wholesaler's business or share in any wholesale business to the deceased wholesaler's spouse, parent, siblings or issue

to succeed the decedent in ownership of the business.

(2) A supplier may provide in writing for prior approval of any other individual designed or designated to succeed a wholesaler in ownership of the business. Conditions of approval by the supplier shall be reasonable with respect to both the supplier's and the wholesaler's interest. [1989 c.529 §6]

474.040 [Repealed by 1977 c.745 §54]

474.045 Supplier prohibited from interfering with transfer by wholesaler. No supplier shall interfere with, prevent or unreasonably delay the transfer of the wholesaler's business or any interest therein if the wholesaler has provided the supplier with written notice of the intent to transfer and the transferee meets reasonable standards and qualifications required by the supplier which are nondiscriminatory and are applied uniformly to all wholesalers similarly situated. [1989 c.529 §7]

474.050 [Amended by 1957 c.587 §2; repealed by 1977 c.745 §54]

474.055 Supplier prohibited from requiring wholesaler to assent to certain changes in agreement; provisions in violation of ORS 474.005 to 474.095 void. (1) No supplier shall require a wholesaler to assent to any condition or amendment to a wholesale distribution agreement that impairs any right guaranteed under ORS 474.005 to 474.095, or that was not made in good faith or that is unreasonable. Nothing in this section shall be construed to limit or prohibit good faith dispute settlements voluntarily entered into by the parties.

(2) Any terms or conditions of any wholesale distribution agreement contrary to the provisions of ORS 474.005 to 474.095 are void. [1989 c.529 §8]

474.060 [Amended by 1955 c.60 §1; repealed by 1977 c.745 §54]

474.065 Limit on authority of supplier to prohibit change in manager of wholesaler. No supplier shall prohibit any change in the manager or successor manager of a wholesaler unless the manager or successor manager fails to meet reasonable standards for such position which are nondiscriminatory and are applied uniformly to all wholesalers similarly situated. [1989 c.529 §9]

474.070 [Repealed by 1977 c.745 §54]

474.075 Supplier's duty to show it acted reasonably. For each dispute arising out of an allegation of bad faith termination or for termination for other than good cause, the supplier shall have the burden of proving that it acted reasonably and in good faith, that good cause existed for any termination, cancellation, discontinuance or nonrenewal and that the supplier complied with the ap-

plicable requirements of the law. [1989 c.529 §10]

474.080 [Amended by 1957 c.587 §3; 1967 c.117 §1; 1971 c.477 §1; repealed by 1977 c.745 §54]

474.085 Remedies of party aggrieved by violation of ORS 474.005 to 474.095. (1) Any party to a wholesale distribution agreement aggrieved by a violation of any provision of ORS 474.005 to 474.095 shall be entitled to:

(a) Injunctive relief enjoining the violation; and

(b) Recovery for damages caused by the violation.

(2) Except as provided in subsection (3) of this section, the court may award reasonable attorney fees to the prevailing party in an action under this section.

(3) The court may not award attorney fees to a prevailing defendant under the provisions of subsection (2) of this section if the action under this section is maintained as a class action pursuant to ORCP 32.

(4) If the violation consists of a termination, cancellation, refusal to renew or refusal to permit a transfer of the wholesaler's business in contravention of ORS 474.005 to 474.095, damages shall include the decrease in the value of the wholesaler's business caused by the violation, including any decrease attributable to the loss of goodwill, less any mitigation. [1989 c.529 §11; 1995 c.696 §23]

474.090 [Repealed by 1977 c.745 §54]

474.095 Prohibited conduct of supplier. No supplier shall:

(1) Coerce or induce, or attempt to coerce or induce, any distributor to engage in any illegal act or course of conduct;

(2) Require a wholesaler to assent to any unreasonable requirement, condition, understanding or term of an agreement which prohibits a wholesaler from selling the product of any other supplier or suppliers;

(3) Require a wholesale distributor to accept delivery of any product or any other item or commodity that was not ordered by the wholesale distributor;

(4) Fail or refuse to enter into a wholesale distribution agreement with a wholesale distributor that handles the supplier's products; or

(5) Take any action that is intended to circumvent the provisions of ORS 474.005 to 474.095. [1989 c.529 §12]

474.100 [Amended by 1971 c.743 §375; repealed by 1977 c.745 §54]

474.105 Legislative finding on ORS 474.115. The Legislative Assembly finds that in addition to the purposes specified in ORS 471.030, ORS 474.115 is necessary to main-

tain and to promote the continued availability of good quality malt beverages for the consumers of Oregon, to promote the orderly marketing of malt beverages, to promote vigorous interbrand malt beverage competition, to encourage competition by the entry of new competitors, to implement the required record-keeping provisions and to facilitate collection of the revenue. [Formerly 471.502]

Note: 474.105 and 474.115 were enacted into law by the Legislative Assembly and were added to and made a part of ORS chapter 471 but were not added to or made a part of ORS chapter 474 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

474.110 [Repealed by 1971 c.743 §432]

474.115 Wholesale sale of malt beverage subject to agreement designating territory of sale. (1) It shall be unlawful for any wholesaler to sell any brand of malt beverage in this state except in the territory described in an agreement with the manufacturer or importer authorizing sale by the wholesaler of the brand within a designated territory. Within the designated territory the wholesaler must service as provided in subsection (2) of this section all of the customers without discrimination. The territorial agreement must be in writing and must specify the brand or brands it covers. Where a manufacturer or importer sells several brands, the agreement need not apply to all brands sold by the manufacturer or importer and may apply only to one brand. No manufacturer or importer shall provide by the written agreement for the distribution of a brand to more than one distributor for all or any part of the designated territory. All such agreements shall be filed with the Oregon Liquor Control Commission.

(2) Every malt beverage wholesaler licensed shall service for the purpose of quality control all of the malt beverages it sells to its customers. Each wholesaler shall provide quality control services and comply with quality control standards as are specified in writing from time to time by the owner of the trademark of the brand or brands of malt beverage if:

(a) These services or standards are reasonable and are reasonably related to the maintenance of quality control; and

(b) The wholesaler has received written notice of them.

(3) An exclusive territorial designation in any agreement shall be changed only upon the written notice of the manufacturer and shall be filed pursuant to this section and ORS 474.105. The commission shall require the manufacturer to verify that the level of service within the designated territory will not be affected by the change. The notice shall only be given after recognizing all

rights of the wholesaler and duties of the manufacturer contained in any written agreement between them. However, if a wholesaler is prevented from servicing the territory due to fire, flood, labor disputes or other causes beyond reasonable control, and if first given permission by the duly licensed exclusive wholesaler of that area and approved by the manufacturer and the commission, another licensed wholesaler not within the designated area may sell the specified brands of malt beverage in that designated area.

(4)(a) It shall be unlawful for any wholesaler, either directly or indirectly, to grant or to afford a quantity discount in connection with the sale of malt beverages to any retailer in this state.

(b) No provision of any agreement between any manufacturer and importer shall expressly or by implication, or in its opera-

tion, establish or maintain the resale price of any brand or brands of malt beverage by the wholesaler. [Formerly 471.503]

Note: See note under 474.105.

474.120 [Repealed by 1977 c.745 §54]

474.130 [Amended by 1957 c.587 §4; 1971 c.743 §376; repealed by 1977 c.745 §54]

474.140 [Repealed by 1977 c.745 §54]

474.150 [Repealed by 1977 c.745 §54]

474.160 [Repealed by 1977 c.745 §54]

474.170 [Repealed by 1971 c.743 §432]

474.180 [Repealed by 1971 c.743 §432]

474.190 [Repealed by 1977 c.745 §54]

474.200 [Repealed by 1977 c.745 §54]

474.210 [Repealed by 1971 c.743 §432]

474.220 [Repealed by 1977 c.745 §54]

474.990 [Amended by 1955 c.330 §1; 1957 c.587 §5; 1961 c.648 §11; 1969 c.310 §1; 1971 c.743 §377; repealed by 1977 c.745 §54]

Oregon Revised Statutes

Chapter 183

**Administrative Procedures Act;
Legislative Review of Rules;
Civil Penalties**

Chapter 183

2013 EDITION

Administrative Procedures Act; Legislative Review of Rules; Civil Penalties

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183.010 [Repealed by 1971 c.734 §21]

183.020 [Repealed by 1971 c.734 §21]

183.025 [Formerly 182.065; 1993 c.729 §4; 2003 c.749 §8; renumbered 183.750 in 2003]

183.030 [Repealed by 1971 c.734 §21]

183.040 [Repealed by 1971 c.734 §21]

183.050 [Repealed by 1971 c.734 §21]

183.060 [1957 c.147 §1; repealed by 1969 c.292 §3]

183.090 [1991 c.734 §2; 1997 c.387 §3; 2001 c.621 §71; renumbered 183.745 in 2003]

ADMINISTRATIVE PROCEDURES ACT (General Provisions)

183.310 Definitions for chapter. As used in this chapter:

(1) "Agency" means any state board, commission, department, or division thereof, or officer authorized by law to make rules or to issue orders, except those in the legislative and judicial branches.

(2)(a) "Contested case" means a proceeding before an agency:

(A) In which the individual legal rights, duties or privileges of specific parties are required by statute or Constitution to be determined only after an agency hearing at which such specific parties are entitled to appear and be heard;

(B) Where the agency has discretion to suspend or revoke a right or privilege of a person;

(C) For the suspension, revocation or refusal to renew or issue a license where the licensee or applicant for a license demands such hearing; or

(D) Where the agency by rule or order provides for hearings substantially of the character required by ORS 183.415, 183.417, 183.425, 183.450, 183.460 and 183.470.

(b) "Contested case" does not include proceedings in which an agency decision rests solely on the result of a test.

(3) "Economic effect" means the economic impact on affected businesses by and the costs of compliance, if any, with a rule for businesses, including but not limited to the costs of equipment, supplies, labor and administration.

(4) "Hearing officer" includes an administrative law judge.

(5) "License" includes the whole or part of any agency permit, certificate, approval, registration or similar form of permission required by law to pursue any commercial activity, trade, occupation or profession.

(6)(a) "Order" means any agency action expressed orally or in writing directed to a named person or named persons, other than employees, officers or members of an agency.

"Order" includes any agency determination or decision issued in connection with a contested case proceeding. "Order" includes:

(A) Agency action under ORS chapter 657 making determination for purposes of unemployment compensation of employees of the state;

(B) Agency action under ORS chapter 240 which grants, denies, modifies, suspends or revokes any right or privilege of an employee of the state; and

(C) Agency action under ORS 468B.050 to issue a permit.

(b) "Final order" means final agency action expressed in writing. "Final order" does not include any tentative or preliminary agency declaration or statement that:

(A) Precedes final agency action; or

(B) Does not preclude further agency consideration of the subject matter of the statement or declaration.

(7) "Party" means:

(a) Each person or agency entitled as of right to a hearing before the agency;

(b) Each person or agency named by the agency to be a party; or

(c) Any person requesting to participate before the agency as a party or in a limited party status which the agency determines either has an interest in the outcome of the agency's proceeding or represents a public interest in such result. The agency's determination is subject to judicial review in the manner provided by ORS 183.482 after the agency has issued its final order in the proceedings.

(8) "Person" means any individual, partnership, corporation, association, governmental subdivision or public or private organization of any character other than an agency.

(9) "Rule" means any agency directive, standard, regulation or statement of general applicability that implements, interprets or prescribes law or policy, or describes the procedure or practice requirements of any agency. The term includes the amendment or repeal of a prior rule, but does not include:

(a) Unless a hearing is required by statute, internal management directives, regulations or statements which do not substantially affect the interests of the public:

(A) Between agencies, or their officers or their employees; or

(B) Within an agency, between its officers or between employees.

(b) Action by agencies directed to other agencies or other units of government which

do not substantially affect the interests of the public.

(c) Declaratory rulings issued pursuant to ORS 183.410 or 305.105.

(d) Intra-agency memoranda.

(e) Executive orders of the Governor.

(f) Rules of conduct for persons committed to the physical and legal custody of the Department of Corrections, the violation of which will not result in:

(A) Placement in segregation or isolation status in excess of seven days.

(B) Institutional transfer or other transfer to secure confinement status for disciplinary reasons.

(C) Disciplinary procedures adopted pursuant to ORS 421.180.

(10) "Small business" means a corporation, partnership, sole proprietorship or other legal entity formed for the purpose of making a profit, which is independently owned and operated from all other businesses and which has 50 or fewer employees. [1957 c.717 §1; 1965 c.285 §78a; 1967 c.419 §32; 1969 c.80 §37a; 1971 c.734 §1; 1973 c.386 §4; 1973 c.621 §1a; 1977 c.374 §1; 1977 c.798 §1; 1979 c.593 §6; 1981 c.755 §1; 1987 c.320 §141; 1987 c.861 §1; 2003 c.75 §71; 2005 c.523 §8; 2007 c.288 §9]

183.315 Application of provisions of chapter to certain agencies. (1) The provisions of ORS 183.410, 183.415, 183.417, 183.425, 183.440, 183.450, 183.452, 183.458, 183.460, 183.470 and 183.480 do not apply to local government boundary commissions created pursuant to ORS 199.430, the Department of Revenue, State Accident Insurance Fund Corporation, Department of Consumer and Business Services with respect to its functions under ORS chapters 654 and 656, State Board of Parole and Post-Prison Supervision, Psychiatric Security Review Board or Oregon Health Authority with respect to its functions under ORS 161.315 to 161.351.

(2) This chapter does not apply with respect to actions of the Governor authorized under ORS chapter 240 and ORS 396.125 or actions of the Adjutant General authorized under ORS 396.160 (14).

(3) The provisions of ORS 183.410, 183.415, 183.417, 183.425, 183.440, 183.450, 183.452, 183.458 and 183.460 do not apply to the Employment Appeals Board or the Employment Department.

(4) The Employment Department shall be exempt from the provisions of this chapter to the extent that a formal finding of the United States Secretary of Labor is made that such provision conflicts with the terms of the federal law, acceptance of which by

the state is a condition precedent to continued certification by the United States Secretary of Labor of the state's law.

(5) The provisions of ORS 183.415 to 183.430, 183.440 to 183.460, 183.470 to 183.485 and 183.490 to 183.500 do not apply to orders issued to persons who:

(a) Have been committed pursuant to ORS 137.124 to the custody of the Department of Corrections or are otherwise confined in a Department of Corrections facility; or

(b) Seek to visit an inmate confined in a Department of Corrections facility.

(6) ORS 183.410, 183.415, 183.417, 183.425, 183.440, 183.450, 183.460, 183.470 and 183.482 (3) do not apply to the Public Utility Commission. Notwithstanding ORS 183.480 and except as provided in ORS 757.495 and 759.390, only a party to a hearing before the Public Utility Commission is entitled to seek judicial review of an order of the commission.

(7) The provisions of this chapter do not apply to the suspension, cancellation or termination of an apprenticeship or training agreement under ORS 660.060.

(8) The provisions of ORS 183.413 to 183.497 do not apply to administrative proceedings conducted under rules adopted by the Secretary of State under ORS 246.190. [1971 c.734 §19; 1973 c.612 §3; 1973 c.621 §2; 1973 c.694 §1; 1975 c.759 §1; 1977 c.804 §45; 1979 c.593 §7; 1981 c.711 §16; 1987 c.320 §142; 1987 c.373 §21; 1989 c.90 §1; 1997 c.26 §1; 1999 c.448 §6; 1999 c.679 §1; 2003 c.64 §8; 2005 c.512 §30; 2005 c.638 §1; 2007 c.239 §8; 2007 c.288 §10; 2011 c.708 §24]

183.317 [1971 c.734 §187; repealed by 1979 c.593 §34]

183.320 [1957 c.717 §15; repealed by 1971 c.734 §21]

(Adoption of Rules)

183.325 Delegation of rulemaking authority to named officer or employee. Unless otherwise provided by law, an agency may delegate its rulemaking authority to an officer or employee within the agency. A delegation of authority under this section must be made in writing and filed with the Secretary of State before the filing of any rule adopted pursuant to the delegation. A delegation under this section may be made only to one or more named individuals. The delegation of authority shall reflect the name of the authorized individual or individuals, and be signed in acknowledgment by the named individuals. Any officer or employee to whom rulemaking authority is delegated under this section is an "agency" for the purposes of the rulemaking requirements of this chapter. [1979 c.593 §10; 1993 c.729 §1]

183.330 Description of organization; service of order; rules coordinator; effect of not putting order in writing. (1) In addition to other rulemaking requirements imposed by law, each agency shall publish a description of its organization and the methods whereby the public may obtain information or make submissions or requests.

(2) Each state agency that adopts rules shall appoint a rules coordinator and file a copy of that appointment with the Secretary of State. The rules coordinator shall:

(a) Maintain copies of all rules adopted by the agency and be able to provide information to the public about the status of those rules;

(b) Provide information to the public on all rulemaking proceedings of the agency; and

(c) Keep and make available the mailing list required by ORS 183.335 (8).

(3) An order shall not be effective as to any person or party unless it is served upon the person or party either personally or by mail. This subsection is not applicable in favor of any person or party who has actual knowledge of the order.

(4) An order is not final until it is reduced to writing. [1957 c.717 §2; 1971 c.734 §4; 1975 c.759 §3; 1979 c.593 §8; 1993 c.729 §2; 2001 c.220 §3]

183.332 Policy statement; conformity of state rules with equivalent federal laws and rules. It is the policy of this state that agencies shall seek to retain and promote the unique identity of Oregon by considering local conditions when an agency adopts policies and rules. However, since there are many federal laws and regulations that apply to activities that are also regulated by the state, it is also the policy of this state that agencies attempt to adopt rules that correspond with equivalent federal laws and rules unless:

(1) There is specific statutory direction to the agency that authorizes the adoption of the rule;

(2) A federal waiver has been granted that authorizes the adoption of the rule;

(3) Local or special conditions exist in this state that warrant a different rule;

(4) The state rule has the effect of clarifying the federal rules, standards, procedures or requirements;

(5) The state rule achieves the goals of the federal and state law with the least impact on public and private resources; or

(6) There is no corresponding federal regulation. [1997 c.602 §2]

183.333 Policy statement; public involvement in development of policy and drafting of rules; advisory committees. (1) The Legislative Assembly finds and declares that it is the policy of this state that whenever possible the public be involved in the development of public policy by agencies and in the drafting of rules. The Legislative Assembly encourages agencies to seek public input to the maximum extent possible before giving notice of intent to adopt a rule. The agency may appoint an advisory committee that will represent the interests of persons likely to be affected by the rule, or use any other means of obtaining public views that will assist the agency in drafting the rule.

(2) Any agency in its discretion may develop a list of interested parties and inform those parties of any issue that may be the subject of rulemaking and invite the parties to make comments on the issue.

(3) If an agency appoints an advisory committee for consideration of a rule under subsection (1) of this section, the agency shall seek the committee's recommendations on whether the rule will have a fiscal impact, what the extent of that impact will be and whether the rule will have a significant adverse impact on small businesses. If the committee indicates that the rule will have a significant adverse impact on small businesses, the agency shall seek the committee's recommendations on compliance with ORS 183.540.

(4) An agency shall consider an advisory committee's recommendations provided under subsection (3) of this section in preparing the statement of fiscal impact required by ORS 183.335 (2)(b)(E).

(5) If an agency does not appoint an advisory committee for consideration of a permanent rule under subsection (1) of this section and 10 or more persons likely to be affected by the rule object to the agency's statement of fiscal impact as required by ORS 183.335 (2)(b)(E) or an association with at least 10 members likely to be affected by the rule objects to the statement, the agency shall appoint a fiscal impact advisory committee to provide recommendations on whether the rule will have a fiscal impact and what the extent of that impact will be. An objection under this subsection must be made not later than 14 days after the notice required by ORS 183.335 (1) is given. If the agency determines that the statement does not adequately reflect the rule's fiscal impact, the agency shall extend the period for submission of data or views under ORS 183.335 (3)(a) by at least 20 days. The agency shall include any recommendations from the committee in the record maintained by the agency for the rule.

(6) Subsection (5) of this section does not apply to any rule adopted by an agency to comply with a judgment or a settlement of a judicial proceeding.

(7) If an agency is required by law to appoint an advisory committee under this section, the agency may not appoint an officer, employee or other agent of the agency to serve as a member of the advisory committee. [2003 c.749 §4; 2005 c.807 §4; 2013 c.273 §1]

Note: Section 2, chapter 273, Oregon Laws 2013, provides:

Sec. 2. The amendments to ORS 183.333 by section 1 of this 2013 Act apply to advisory committees appointed for proposed rules for which notice is given under ORS 183.335 (1) on or after the effective date of this 2013 Act [January 1, 2014]. [2013 c.273 §2]

183.335 Notice; content; public comment; temporary rule adoption, amendment or suspension; substantial compliance required. (1) Prior to the adoption, amendment or repeal of any rule, the agency shall give notice of its intended action:

(a) In the manner established by rule adopted by the agency under ORS 183.341 (4), which provides a reasonable opportunity for interested persons to be notified of the agency's proposed action;

(b) In the bulletin referred to in ORS 183.360 at least 21 days prior to the effective date;

(c) At least 28 days before the effective date, to persons who have requested notice pursuant to subsection (8) of this section; and

(d) Delivered only by electronic mail, at least 49 days before the effective date, to the persons specified in subsection (15) of this section.

(2)(a) The notice required by subsection (1) of this section must include:

(A) A caption of not more than 15 words that reasonably identifies the subject matter of the agency's intended action. The agency shall include the caption on each separate notice, statement, certificate or other similar document related to the intended action.

(B) An objective, simple and understandable statement summarizing the subject matter and purpose of the intended action in sufficient detail to inform a person that the person's interests may be affected, and the time, place and manner in which interested persons may present their views on the intended action.

(b) The agency shall include with the notice of intended action given under subsection (1) of this section:

(A) A citation of the statutory or other legal authority relied upon and bearing upon the promulgation of the rule;

(B) A citation of the statute or other law the rule is intended to implement;

(C) A statement of the need for the rule and a statement of how the rule is intended to meet the need;

(D) A list of the principal documents, reports or studies, if any, prepared by or relied upon by the agency in considering the need for and in preparing the rule, and a statement of the location at which those documents are available for public inspection. The list may be abbreviated if necessary, and if so abbreviated there shall be identified the location of a complete list;

(E) A statement of fiscal impact identifying state agencies, units of local government and the public that may be economically affected by the adoption, amendment or repeal of the rule and an estimate of that economic impact on state agencies, units of local government and the public. In considering the economic effect of the proposed action on the public, the agency shall utilize available information to project any significant economic effect of that action on businesses which shall include a cost of compliance effect on small businesses affected. For an agency specified in ORS 183.530, the statement of fiscal impact shall also include a housing cost impact statement as described in ORS 183.534;

(F) If an advisory committee is not appointed under the provisions of ORS 183.333, an explanation as to why no advisory committee was used to assist the agency in drafting the rule; and

(G) A request for public comment on whether other options should be considered for achieving the rule's substantive goals while reducing the negative economic impact of the rule on business.

(c) The Secretary of State may omit the information submitted under paragraph (b) of this subsection from publication in the bulletin referred to in ORS 183.360.

(d) When providing notice of an intended action under subsection (1)(c) of this section, the agency shall provide a copy of the rule that the agency proposes to adopt, amend or repeal, or an explanation of how the person may acquire a copy of the rule. The copy of an amended rule shall show all changes to the rule by striking through material to be deleted and underlining all new material, or by any other method that clearly shows all new and deleted material.

(3)(a) When an agency proposes to adopt, amend or repeal a rule, it shall give interested persons reasonable opportunity to submit data or views. Opportunity for oral hearing shall be granted upon request received from 10 persons or from an associ-

ation having not less than 10 members before the earliest date that the rule could become effective after the giving of notice pursuant to subsection (1) of this section. An agency holding a hearing upon a request made under this subsection shall give notice of the hearing at least 21 days before the hearing to the person who has requested the hearing, to persons who have requested notice pursuant to subsection (8) of this section and to the persons specified in subsection (15) of this section. The agency shall publish notice of the hearing in the bulletin referred to in ORS 183.360 at least 14 days before the hearing. The agency shall consider fully any written or oral submission.

(b) If an agency is required to conduct an oral hearing under paragraph (a) of this subsection, and the rule for which the hearing is to be conducted applies only to a limited geographical area within this state, or affects only a limited geographical area within this state, the hearing shall be conducted within the geographical area at the place most convenient for the majority of the residents within the geographical area. At least 14 days before a hearing conducted under this paragraph, the agency shall publish notice of the hearing in the bulletin referred to in ORS 183.360 and in a newspaper of general circulation published within the geographical area that is affected by the rule or to which the rule applies. If a newspaper of general circulation is not published within the geographical area that is affected by the rule or to which the rule applies, the publication shall be made in the newspaper of general circulation published closest to the geographical area.

(c) Notwithstanding paragraph (a) of this subsection, the Department of Corrections and the State Board of Parole and Post-Prison Supervision may adopt rules limiting participation by inmates in the proposed adoption, amendment or repeal of any rule to written submissions.

(d) If requested by at least five persons before the earliest date that the rule could become effective after the agency gives notice pursuant to subsection (1) of this section, the agency shall provide a statement that identifies the objective of the rule and a statement of how the agency will subsequently determine whether the rule is in fact accomplishing that objective.

(e) An agency that receives data or views concerning proposed rules from interested persons shall maintain a record of the data or views submitted. The record shall contain:

(A) All written materials submitted to an agency in response to a notice of intent to adopt, amend or repeal a rule.

(B) A recording or summary of oral submissions received at hearings held for the purpose of receiving those submissions.

(C) Any public comment received in response to the request made under subsection (2)(b)(G) of this section and the agency's response to that comment.

(D) Any statements provided by the agency under paragraph (d) of this subsection.

(4) Upon request of an interested person received before the earliest date that the rule could become effective after the giving of notice pursuant to subsection (1) of this section, the agency shall postpone the date of its intended action no less than 21 nor more than 90 days in order to allow the requesting person an opportunity to submit data, views or arguments concerning the proposed action. Nothing in this subsection shall preclude an agency from adopting a temporary rule pursuant to subsection (5) of this section.

(5) Notwithstanding subsections (1) to (4) of this section, an agency may adopt, amend or suspend a rule without prior notice or hearing or upon any abbreviated notice and hearing that it finds practicable, if the agency prepares:

(a) A statement of its findings that its failure to act promptly will result in serious prejudice to the public interest or the interest of the parties concerned and the specific reasons for its findings of prejudice;

(b) A citation of the statutory or other legal authority relied upon and bearing upon the promulgation of the rule;

(c) A statement of the need for the rule and a statement of how the rule is intended to meet the need;

(d) A list of the principal documents, reports or studies, if any, prepared by or relied upon by the agency in considering the need for and in preparing the rule, and a statement of the location at which those documents are available for public inspection; and

(e) For an agency specified in ORS 183.530, a housing cost impact statement as defined in ORS 183.534.

(6)(a) A rule adopted, amended or suspended under subsection (5) of this section is temporary and may be effective for a period of not longer than 180 days. The adoption of a rule under this subsection does not preclude the subsequent adoption of an identical rule under subsections (1) to (4) of this section.

(b) A rule temporarily suspended shall regain effectiveness upon expiration of the temporary period of suspension unless the

rule is repealed under subsections (1) to (4) of this section.

(7) Notwithstanding subsections (1) to (4) of this section, an agency may amend a rule without prior notice or hearing if the amendment is solely for the purpose of:

(a) Changing the name of an agency by reason of a name change prescribed by law;

(b) Changing the name of a program, office or division within an agency as long as the change in name does not have a substantive effect on the functions of the program, office or division;

(c) Correcting spelling;

(d) Correcting grammatical mistakes in a manner that does not alter the scope, application or meaning of the rule;

(e) Correcting statutory or rule references; or

(f) Correcting addresses or telephone numbers referred to in the rules.

(8)(a) Any person may request in writing that an agency send to the person copies of the agency's notices of intended action issued under subsection (1) of this section. The person must provide an address where the person elects to receive notices. The address provided may be a postal mailing address or, if the agency provides notice by electronic mail, may be an electronic mailing address.

(b) A request under this subsection must indicate that the person requests one of the following:

(A) The person may request that the agency mail paper copies of the proposed rule and other information required by subsection (2) of this section to the postal mailing address.

(B) If the agency posts notices of intended action on a website, the person may request that the agency mail the information required by subsection (2)(a) of this section to the postal mailing address with a reference to the website where electronic copies of the proposed rule and other information required by subsection (2) of this section are posted.

(C) The person may request that the agency electronically mail the information required by subsection (2)(a) of this section to the electronic mailing address, and either provide electronic copies of the proposed rule and other information required by subsection (2) of this section or provide a reference to a website where electronic copies of the proposed rule and other information required by subsection (2) of this section are posted.

(c) Upon receipt of any request under this subsection, the agency shall acknowledge the request, establish a mailing list and

maintain a record of all mailings made pursuant to the request. Agencies may establish procedures for establishing the mailing lists and keeping the mailing lists current. Agencies by rule may establish fees necessary to defray the costs of mailings and maintenance of the lists.

(d) Members of the Legislative Assembly who receive notices under subsection (15) of this section may request that an agency furnish paper copies of the notices.

(9) This section does not apply to rules establishing an effective date for a previously effective rule or establishing a period during which a provision of a previously effective rule will apply.

(10) This section does not apply to ORS 279.835 to 279.855, 279A.140 to 279A.155, 279A.250 to 279A.290, 279A.990, 279B.050 to 279B.085, 279B.200 to 279B.240, 279B.270, 279B.275, 279B.280, 279C.360, 279C.365, 279C.370, 279C.375, 279C.380, 279C.385, 279C.500 to 279C.530, 279C.540, 279C.545, 279C.550 to 279C.570, 279C.580, 279C.585, 279C.590, 279C.600 to 279C.625, 279C.650 to 279C.670 and 279C.800 to 279C.870 relating to public contracts and purchasing.

(11)(a) Except as provided in paragraph (c) of this subsection, a rule is not valid unless adopted in substantial compliance with the provisions of this section in effect on the date that the notice required under subsection (1) of this section is delivered to the Secretary of State for the purpose of publication in the bulletin referred to in ORS 183.360.

(b) In addition to all other requirements with which rule adoptions must comply, a rule is not valid if the rule has not been submitted to the Legislative Counsel in the manner required by ORS 183.715.

(c) A rule is not subject to judicial review or other challenge by reason of failing to comply with subsection (2)(a)(A) of this section.

(12)(a) Notwithstanding the provisions of subsection (11) of this section, but subject to paragraph (b) of this subsection, an agency may correct its failure to substantially comply with the requirements of subsections (2) and (5) of this section in adoption of a rule by an amended filing, as long as the non-compliance did not substantially prejudice the interests of persons to be affected by the rule.

(b) An agency may use an amended filing to correct a failure to include a fiscal impact statement in a notice of intended action, as required by subsection (2)(b)(E) of this section, or to correct an inaccurate fiscal impact statement, only if the agency developed the fiscal impact statement with the assist-

ance of an advisory committee or fiscal impact advisory committee appointed under ORS 183.333.

(13) Unless otherwise provided by statute, the adoption, amendment or repeal of a rule by an agency need not be based upon or supported by an evidentiary record.

(14) When an agency has established a deadline for comment on a proposed rule under the provisions of subsection (3)(a) of this section, the agency may not extend that deadline for another agency or person unless the extension applies equally to all interested agencies and persons. An agency shall not consider any submission made by another agency after the final deadline has passed.

(15) The notices required under subsections (1) and (3) of this section must be given by the agency to the following persons:

(a) If the proposed adoption, amendment or repeal results from legislation that was passed within two years before notice is given under subsection (1) of this section, notice shall be given to the legislator who introduced the bill that subsequently was enacted into law, and to the chair or cochair of all committees that reported the bill out, except for those committees whose sole action on the bill was referral to another committee.

(b) If the proposed adoption, amendment or repeal does not result from legislation that was passed within two years before notice is given under subsection (1) of this section, notice shall be given to the chair or cochair of any interim or session committee with authority over the subject matter of the rule.

(c) If notice cannot be given under paragraph (a) or (b) of this subsection, notice shall be given to the Speaker of the House of Representatives and to the President of the Senate who are in office on the date the notice is given.

(16)(a) Upon the request of a member of the Legislative Assembly or of a person who would be affected by a proposed adoption, amendment or repeal, the committees receiving notice under subsection (15) of this section shall review the proposed adoption, amendment or repeal for compliance with the legislation from which the proposed adoption, amendment or repeal results.

(b) The committees shall submit their comments on the proposed adoption, amendment or repeal to the agency proposing the adoption, amendment or repeal. [1971 c.734 §3; 1973 c.612 §1; 1975 c.136 §11; 1975 c.759 §4; 1977 c.161 §1; 1977 c.344 §6; 1977 c.394 §1a; 1977 c.798 §2; 1979 c.593 §11; 1981 c.755 §2; 1987 c.861 §2; 1993 c.729 §3; 1995 c.652 §5; 1997 c.602 §3; 1999 c.123 §1; 1999 c.334 §1; 2001 c.220 §1;

2001 c.563 §1; 2003 c.749 §5; 2003 c.794 §206; 2005 c.17 §1; 2005 c.18 §1; 2005 c.382 §1; 2005 c.807 §5; 2007 c.115 §1; 2007 c.768 §58; 2011 c.380 §2]

183.336 Cost of compliance effect on small businesses. (1) The statement of cost of compliance effect on small businesses required by ORS 183.335 (2)(b)(E) must include:

(a) An estimate of the number of small businesses subject to the proposed rule and identification of the types of businesses and industries with small businesses subject to the proposed rule;

(b) A brief description of the projected reporting, recordkeeping and other administrative activities required for compliance with the proposed rule, including costs of professional services;

(c) An identification of equipment, supplies, labor and increased administration required for compliance with the proposed rule; and

(d) A description of the manner in which the agency proposing the rule involved small businesses in the development of the rule.

(2) An agency shall utilize available information in complying with the requirements of this section. [2005 c.807 §2]

183.337 Procedure for agency adoption of federal rules. (1) Notwithstanding ORS 183.335, when an agency is required to adopt rules or regulations promulgated by an agency of the federal government and the agency has no authority to alter or amend the content or language of those rules or regulations prior to their adoption, the agency may adopt those rules or regulations under the procedure prescribed in this section.

(2) Prior to the adoption of a federal rule or regulation under subsection (1) of this section, the agency shall give notice of the adoption of the rule or regulation, the effective date of the rule or regulation in this state and the subject matter of the rule or regulation in the manner established in ORS 183.335 (1).

(3) After giving notice the agency may adopt the rule or regulation by filing a copy with the Secretary of State in compliance with ORS 183.355. The agency is not required to conduct a public hearing concerning the adoption of the rule or regulation.

(4) Nothing in this section authorizes an agency to amend federal rules or regulations or adopt rules in accordance with federal requirements without giving an opportunity for hearing as required by ORS 183.335. [1979 c.593 §15]

183.340 [1957 c.717 §3 (3); 1971 c.734 §6; repealed by 1975 c.759 §5 (183.341 enacted in lieu of 183.340)]

183.341 Model rules of procedure; establishment; compilation; publication; agencies required to adopt procedural rules. (1) The Attorney General shall prepare model rules of procedure appropriate for use by as many agencies as possible. Except as provided in ORS 183.630, any agency may adopt all or part of the model rules by reference without complying with the rulemaking procedures under ORS 183.335. Notice of such adoption shall be filed with the Secretary of State in the manner provided by ORS 183.355 for the filing of rules. The model rules may be amended from time to time by an adopting agency or the Attorney General after notice and opportunity for hearing as required by rulemaking procedures under this chapter.

(2) Except as provided in ORS 183.630, all agencies shall adopt rules of procedure to be utilized in the adoption of rules and conduct of proceedings in contested cases or, if exempt from the contested case provisions of this chapter, for the conduct of proceedings.

(3) The Secretary of State shall publish in the Oregon Administrative Rules:

(a) The Attorney General's model rules adopted under subsection (1) of this section;

(b) The procedural rules of all agencies that have not adopted the Attorney General's model rules; and

(c) The notice procedures required by ORS 183.335 (1).

(4) Agencies shall adopt rules of procedure which will provide a reasonable opportunity for interested persons to be notified of the agency's intention to adopt, amend or repeal a rule.

(5) No rule adopted after September 13, 1975, is valid unless adopted in substantial compliance with the rules adopted pursuant to subsection (4) of this section. [1975 c.759 §6 (enacted in lieu of 183.340); 1979 c.593 §12; 1997 c.837 §1; 1999 c.849 §§24,25; 2003 c.75 §28]

183.350 [1957 c.717 §3 (1), (2); repealed by 1971 c.734 §21]

183.355 Filing and taking effect of rules; filing of executive orders; copies; fees. (1)(a) Each agency shall file in the office of the Secretary of State a certified copy of each rule adopted by it.

(b) Notwithstanding the provisions of paragraph (a) of this subsection, an agency adopting a rule incorporating published standards by reference is not required to file a copy of those standards with the Secretary of State if:

(A) The standards adopted are unusually voluminous and costly to reproduce; and

(B) The rule filed with the Secretary of State identifies the location of the standards

so incorporated and the conditions of their availability to the public.

(2) Each rule is effective upon filing as required by subsection (1) of this section, except that:

(a) If a later effective date is required by statute or specified in the rule, the later date is the effective date.

(b) A temporary rule becomes effective upon filing with the Secretary of State, or at a designated later date, only if the statement required by ORS 183.335 (5) is filed with the rule. The agency shall take appropriate measures to make temporary rules known to the persons who may be affected by them.

(3) When a rule is amended or repealed by an agency, the agency shall file a certified copy of the amendment or notice of repeal with the Secretary of State who shall appropriately amend the compilation required by ORS 183.360 (1).

(4) A certified copy of each executive order issued, prescribed or promulgated by the Governor shall be filed in the office of the Secretary of State.

(5) No rule of which a certified copy is required to be filed shall be valid or effective against any person or party until a certified copy is filed in accordance with this section. However, if an agency, in disposing of a contested case, announces in its decision the adoption of a general policy applicable to such case and subsequent cases of like nature the agency may rely upon such decision in disposition of later cases.

(6) The Secretary of State shall, upon request, supply copies of rules, or orders or designated parts of rules or orders, making and collecting therefor fees prescribed by ORS 177.130. All receipts from the sale of copies shall be deposited in the State Treasury to the credit of the Secretary of State Miscellaneous Receipts Account established under ORS 279A.290.

(7) The Secretary of State shall establish and collect fees from agencies filing rules under this section. The fees shall be established in amounts calculated to be necessary to generate revenues adequate to pay costs incurred by the Secretary of State in performing the following duties that are not paid for by subscriber fees or other fees prescribed by law:

(a) Publication of the compilation referred to in ORS 183.360 (1);

(b) Publication of the bulletin referred to in ORS 183.360 (3); and

(c) Electronic publication of rules and other information relating to rules under ORS 183.365.

(8) All fees collected under subsection (7) of this section shall be deposited in the State Treasury to the credit of the Secretary of State Miscellaneous Receipts Account established under ORS 279A.290. [1971 c.734 §5; 1973 c.612 §2; 1975 c.759 §7; 1977 c.798 §2b; 1979 c.593 §13; 1991 c.169 §2; 2003 c.794 §207; 2009 c.289 §1]

183.360 Publication of rules and orders; exceptions; requirements; bulletin; judicial notice; citation. (1) The Secretary of State shall compile, index and publish all rules adopted by each agency. The compilation shall be supplemented or revised as often as necessary and at least once every six months. Such compilation supersedes any other rules. The Secretary of State may make such compilations of other material published in the bulletin as are desirable. The Secretary of State may copyright the compilations prepared under this subsection, and may establish policies for the revision, clarification, classification, arrangement, indexing, printing, binding, publication, sale and distribution of the compilations.

(2)(a) The Secretary of State has discretion to omit from the compilation rules the publication of which would be unduly cumbersome or expensive if the rule in printed or processed form is made available on application to the adopting agency, and if the compilation contains a notice summarizing the omitted rule and stating how a copy thereof may be obtained. In preparing the compilation the Secretary of State shall not alter the sense, meaning, effect or substance of any rule, but may renumber sections and parts of sections of the rules, change the wording of headnotes, rearrange sections, change reference numbers to agree with renumbered chapters, sections or other parts, substitute the proper subsection, section or chapter or other division numbers, change capitalization for the purpose of uniformity, and correct manifest clerical or typographical errors.

(b) The Secretary of State may by rule prescribe requirements, not inconsistent with law, for the manner and form for filing of rules adopted or amended by agencies. The Secretary of State may refuse to accept for filing any rules which do not comply with those requirements.

(3) The Secretary of State shall publish at least at monthly intervals a bulletin which:

(a) Briefly indicates the agencies that are proposing to adopt, amend or repeal a rule, the subject matter of the rule and the name, address and telephone number of an agency officer or employee from whom information and a copy of any proposed rule may be obtained;

(b) Contains the text or a brief description of all rules filed under ORS 183.355 since the last bulletin indicating the effective date of the rule;

(c) Contains executive orders of the Governor; and

(d) Contains orders issued by the Director of the Department of Revenue under ORS 305.157 extending tax statutes of limitation.

(4) Courts shall take judicial notice of rules and executive orders filed with the Secretary of State.

(5) The compilation required by subsection (1) of this section shall be titled Oregon Administrative Rules and may be cited as "OAR" with appropriate numerical indications.

(6) The Secretary of State may publish the compilation and bulletin required by this section in print, or by placing the compilation and bulletin on the Internet. [1957 c.717 §4 (1),(2),(3); 1961 c.464 §1; 1971 c.734 §7; 1973 c.612 §4; 1975 c.759 §7a; 1977 c.394 §2; 1979 c.593 §16; 1993 c.729 §13; 1995 c.79 §62; 2001 c.104 §63; 2003 c.168 §3; 2009 c.289 §2]

183.362 Program for biennial publication of Oregon Administrative Rules. (1) Notwithstanding ORS 183.360, the Secretary of State may implement a program for the publication of the Oregon Administrative Rules not less than once every two years with annual supplements. The Secretary of State may implement a program under this section only if the Secretary of State publishes the full text of proposed administrative rules in the manner specified by this section.

(2) Except as provided in subsection (3) of this section, upon implementing a program under this section the Secretary of State shall require that an agency submit the full text of the proposed rule in addition to information required to be published under the provisions of ORS 183.335 (1). Except as provided in subsection (3) of this section, the Secretary of State shall publish the full text of the proposed rule in the bulletin referred to in ORS 183.360.

(3) The Secretary of State may waive the submission of the full text of a proposed administrative rule and decline to publish the full text of the proposed rule in the bulletin referred to in ORS 183.360 if:

(a) The proposed rule is unusually voluminous; and

(b) In addition to the information provided by the agency under the provisions of ORS 183.335 (2) the agency identifies a location where the rule is available for inspection and copying.

(4) If the adopted rule submitted to the Secretary of State under the provisions of ORS 183.355 is different from the proposed

rule submitted to the Secretary of State under a program implemented under this section, the Secretary of State shall publish in the bulletin referred to in ORS 183.360 either the full text of the rule as adopted or a list of the changes made in the proposed rule before the agency adopted the rule. [1993 c.729 §12]

Note: 183.362 was added to and made a part of ORS chapter 183 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

183.365 Publication of administrative rules in electronic form. (1) Pursuant to ORS 183.360, the Secretary of State shall publish in electronic form administrative rules adopted or amended by state agencies and make the information available to the public and members of the Legislative Assembly.

(2) The Secretary of State shall determine the most cost-effective format and procedures for the timely release of the information described in subsection (1) of this section in electronic form.

(3) Pursuant to ORS 183.360 (2)(b), the Secretary of State shall establish requirements for filing administrative rules adopted or amended by state agencies for entry into computer networks for the purpose of subsection (1) of this section.

(4) Although each state agency is responsible for its information resources, centralized information resource management must also exist to:

(a) Provide public access to the information described in subsection (1) of this section;

(b) Provide technical assistance to state agencies; and

(c) Ensure that the information resources needed to implement subsection (1) of this section are addressed along with the needs of the individual agencies.

(5) Personal information concerning a person who accesses the information identified in subsection (1) of this section may be maintained only for the purpose of providing service to the person.

(6) No fee or other charge may be imposed by the Secretary of State as a condition of accessing the information identified in subsection (1) of this section.

(7) No action taken pursuant to this section shall be deemed to alter or relinquish any copyright or other proprietary interest or entitlement of the State of Oregon relative to any of the information made available pursuant to subsection (1) of this section. [1995 c.614 §5]

Note: 183.365 was enacted into law by the Legislative Assembly but was not added to or made a part of

ORS chapter 183 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

183.370 Distribution of published rules.

The bulletins and compilations may be distributed by the Secretary of State free of charge as provided for the distribution of legislative materials referred to in ORS 171.236. Other copies of the bulletins and compilations shall be distributed by the Secretary of State at a cost determined by the Secretary of State. Any agency may compile and publish its rules or all or part of its rules for purpose of distribution outside of the agency only after it proves to the satisfaction of the Secretary of State that agency publication is necessary. [1957 c.717 §4(4); 1959 c.260 §1; 1969 c.174 §4; 1975 c.759 §8; 1977 c.394 §3]

183.380 [1957 c.717 §4 (5); repealed by 1971 c.734 §21]

183.390 Petitions requesting adoption of rules. (1) An interested person may petition an agency requesting the promulgation, amendment or repeal of a rule. The Attorney General shall prescribe by rule the form for such petitions and the procedure for their submission, consideration and disposition. Not later than 90 days after the date of submission of a petition, the agency either shall deny the petition in writing or shall initiate rulemaking proceedings in accordance with ORS 183.335.

(2) If a petition requesting the amendment or repeal of a rule is submitted to an agency under this section, the agency shall invite public comment upon the rule, and shall specifically request public comment on whether options exist for achieving the rule's substantive goals in a way that reduces the negative economic impact on businesses.

(3) In reviewing a petition subject to subsection (2) of this section, the agency shall consider:

(a) The continued need for the rule;

(b) The nature of complaints or comments received concerning the rule from the public;

(c) The complexity of the rule;

(d) The extent to which the rule overlaps, duplicates or conflicts with other state rules or federal regulations and, to the extent feasible, with local government regulations;

(e) The degree to which technology, economic conditions or other factors have changed in the subject area affected by the rule; and

(f) The statutory citation or legal basis for the rule. [1957 c.717 §5; 1971 c.734 §8; 2003 c.749 §6]

183.400 Judicial determination of validity of rule. (1) The validity of any rule may be determined upon a petition by any person to the Court of Appeals in the man-

ner provided for review of orders in contested cases. The court shall have jurisdiction to review the validity of the rule whether or not the petitioner has first requested the agency to pass upon the validity of the rule in question, but not when the petitioner is a party to an order or a contested case in which the validity of the rule may be determined by a court.

(2) The validity of any applicable rule may also be determined by a court, upon review of an order in any manner provided by law or pursuant to ORS 183.480 or upon enforcement of such rule or order in the manner provided by law.

(3) Judicial review of a rule shall be limited to an examination of:

- (a) The rule under review;
- (b) The statutory provisions authorizing the rule; and
- (c) Copies of all documents necessary to demonstrate compliance with applicable rulemaking procedures.

(4) The court shall declare the rule invalid only if it finds that the rule:

- (a) Violates constitutional provisions;
- (b) Exceeds the statutory authority of the agency; or
- (c) Was adopted without compliance with applicable rulemaking procedures.

(5) In the case of disputed allegations of irregularities in procedure which, if proved, would warrant reversal or remand, the Court of Appeals may refer the allegations to a master appointed by the court to take evidence and make findings of fact. The court's review of the master's findings of fact shall be de novo on the evidence.

(6) The court shall not declare a rule invalid solely because it was adopted without compliance with applicable rulemaking procedures after a period of two years after the date the rule was filed in the office of the Secretary of State, if the agency attempted to comply with those procedures and its failure to do so did not substantially prejudice the interests of the parties. [1957 c.717 §6; 1971 c.734 §9; 1975 c.759 §9; 1979 c.593 §17; 1987 c.861 §3]

183.405 Agency review of rules. (1) Not later than five years after adopting a rule, an agency shall review the rule for the purpose of determining:

- (a) Whether the rule has had the intended effect;
- (b) Whether the anticipated fiscal impact of the rule was underestimated or overestimated;
- (c) Whether subsequent changes in the law require that the rule be repealed or amended; and

(d) Whether there is continued need for the rule.

(2) An agency shall utilize available information in complying with the requirements of subsection (1) of this section.

(3) If an agency appoints an advisory committee pursuant to ORS 183.333 for consideration of a rule subject to the requirements of this section, the agency shall provide the advisory committee with a report on a review of the rule conducted under this section.

(4) The provisions of this section do not apply to the amendment or repeal of a rule.

(5) The provisions of this section do not apply to:

- (a) Rules adopted to implement court orders or the settlement of civil proceedings;
- (b) Rules that adopt federal laws or rules by reference;
- (c) Rules adopted to implement legislatively approved fee changes; or
- (d) Rules adopted to correct errors or omissions. [2005 c.807 §3]

Note: 183.405 was added to and made a part of 183.325 to 183.410 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

183.410 Agency determination of applicability of rule or statute to petitioner; effect; judicial review. On petition of any interested person, any agency may in its discretion issue a declaratory ruling with respect to the applicability to any person, property, or state of facts of any rule or statute enforceable by it. A declaratory ruling is binding between the agency and the petitioner on the state of facts alleged, unless it is altered or set aside by a court. However, the agency may, where the ruling is adverse to the petitioner, review the ruling and alter it if requested by the petitioner. Binding rulings provided by this section are subject to review in the Court of Appeals in the manner provided in ORS 183.480 for the review of orders in contested cases. The Attorney General shall prescribe by rule the form for such petitions and the procedure for their submission, consideration and disposition. The petitioner shall have the right to submit briefs and present oral argument at any declaratory ruling proceeding held pursuant to this section. [1957 c.717 §7; 1971 c.734 §10; 1973 c.612 §5]

(Contested Cases)

183.411 Delegation of final order authority. Unless otherwise provided by law, an agency may delegate authority to enter a final order in a proceeding or class of proceedings to an officer or employee of the agency, or to a class of officers or employees

of the agency. A delegation of authority under this section must be made in writing before the issuance of any order pursuant to the delegation and must be retained in the agency's records. [2007 c.116 §2]

Note: 183.411 was added to and made a part of ORS chapter 183 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

183.413 Notice to parties before hearing of rights and procedure; failure to provide notice. (1) The Legislative Assembly finds that parties to a contested case hearing have a right to be informed as to the procedures by which contested cases are heard by state agencies, their rights in hearings before state agencies, the import and effect of hearings before state agencies and their rights and remedies with respect to actions taken by state agencies. Accordingly, it is the purpose of subsections (2) and (3) of this section to set forth certain requirements of state agencies so that parties to contested case hearings shall be fully informed as to these matters when exercising their rights before state agencies.

(2) Prior to the commencement of a contested case hearing before any agency including those agencies identified in ORS 183.315, the agency shall serve personally or by mail a written notice to each party to the hearing that includes the following:

(a) The time and place of the hearing.

(b) A statement of the authority and jurisdiction under which the hearing is to be held.

(c) A statement that generally identifies the issues to be considered at the hearing.

(d) A statement indicating that the party may be represented by counsel and that legal aid organizations may be able to assist a party with limited financial resources.

(e) A statement that the party has the right to respond to all issues properly before the presiding officer and present evidence and witnesses on those issues.

(f) A statement indicating whether discovery is permitted and, if so, how discovery may be requested.

(g) A general description of the hearing procedure including the order of presentation of evidence, what kinds of evidence are admissible, whether objections may be made to the introduction of evidence and what kind of objections may be made and an explanation of the burdens of proof or burdens of going forward with the evidence.

(h) Whether a record will be made of the proceedings and the manner of making the record and its availability to the parties.

(i) The function of the record-making with respect to the perpetuation of the testimony and evidence and with respect to any appeal from the determination or order of the agency.

(j) Whether an attorney will represent the agency in the matters to be heard and whether the parties ordinarily and customarily are represented by an attorney.

(k) The title and function of the person presiding at the hearing with respect to the decision process, including, but not limited to, the manner in which the testimony and evidence taken by the person presiding at the hearing are reviewed, the effect of that person's determination, who makes the final determination on behalf of the agency, whether the person presiding at the hearing is or is not an employee, officer or other representative of the agency and whether that person has the authority to make a final independent determination.

(L) In the event a party is not represented by an attorney, whether the party may during the course of proceedings request a recess if at that point the party determines that representation by an attorney is necessary to the protection of the party's rights.

(m) Whether there exists an opportunity for an adjournment at the end of the hearing if the party then determines that additional evidence should be brought to the attention of the agency and the hearing reopened.

(n) Whether there exists an opportunity after the hearing and prior to the final determination or order of the agency to review and object to any proposed findings of fact, conclusions of law, summary of evidence or recommendations of the officer presiding at the hearing.

(o) A description of the appeal process from the determination or order of the agency.

(p) A statement that active duty servicemembers have a right to stay proceedings under the federal Servicemembers Civil Relief Act and may contact the Oregon State Bar or the Oregon Military Department for more information. The statement must include the toll-free telephone numbers for the Oregon State Bar and the Oregon Military Department and the Internet address for the United States Armed Forces Legal Assistance Legal Services Locator website.

(3) The failure of an agency to give notice of any item specified in subsection (2) of this section does not invalidate any determination or order of the agency unless upon an appeal from or review of the determination or order a court finds that the failure affects the substantial rights of the complaining party. In the event of such a finding, the

court shall remand the matter to the agency for a reopening of the hearing and shall direct the agency as to what steps it shall take to remedy the prejudice to the rights of the complaining party. [1979 c.593 §§37,38,39; 1995 c.79 §63; 2007 c.288 §1; 2013 c.295 §1]

Note: Section 2, chapter 295, Oregon Laws 2013, provides:

Sec. 2. (1) An agency that, prior to the effective date of this 2013 Act [September 1, 2013], provided notice of rights under the federal Servicemembers Civil Relief Act to each party to a contested case under ORS 183.413 is not required to provide the specific information described in ORS 183.413 (2)(p) in the notice so long as the agency continues to provide notice in the same manner as it was previously provided.

(2) An agency that, prior to the effective date of this 2013 Act, had preprinted forms used for providing notice under ORS 183.413 (2) is not required to provide the specific information required in ORS 183.413 (2)(p) until the supply of preprinted forms has been exhausted. [2013 c.295 §2]

183.415 Notice of right to hearing. (1) The Legislative Assembly finds that persons affected by actions taken by state agencies have a right to be informed of their rights and remedies with respect to the actions.

(2) In a contested case, all parties shall be afforded an opportunity for hearing after reasonable notice, served personally or by registered or certified mail.

(3) Notice under this section must include:

(a) A statement of the party's right to hearing, with a description of the procedure and time to request a hearing, or a statement of the time and place of the hearing;

(b) A statement of the authority and jurisdiction under which the hearing is to be held;

(c) A reference to the particular sections of the statutes and rules involved;

(d) A short and plain statement of the matters asserted or charged;

(e) A statement indicating whether and under what circumstances an order by default may be entered; and

(f) A statement that active duty servicemembers have a right to stay proceedings under the federal Servicemembers Civil Relief Act and may contact the Oregon State Bar or the Oregon Military Department for more information. The statement must include the toll-free telephone numbers for the Oregon State Bar and the Oregon Military Department and the Internet address for the United States Armed Forces Legal Assistance Legal Services Locator website. [1971 c.734 §13; 1979 c.593 §18; 1985 c.757 §1; 1997 c.837 §2; 1999 c.849 §§27,28; 2003 c.75 §29; 2007 c.288 §2; 2013 c.295 §3]

Note: Section 4, chapter 295, Oregon Laws 2013, provides:

Sec. 4. (1) An agency that, prior to the effective date of this 2013 Act [September 1, 2013], provided notice

of rights under the federal Servicemembers Civil Relief Act to each party to a contested case under ORS 183.415 is not required to provide the specific information described in ORS 183.415 (2)(f) in the notice so long as the agency continues to provide notice in the same manner as it was previously provided.

(2) An agency that, prior to the effective date of this 2013 Act, had preprinted forms used for providing notice under ORS 183.415 (2) is not required to provide the specific information required in ORS 183.415 (2)(f) until the supply of preprinted forms has been exhausted. [2013 c.295 §4]

183.417 Procedure in contested case hearing. (1) In a contested case proceeding, the parties may elect to be represented by counsel and to respond and present evidence and argument on all issues properly before the presiding officer in the proceeding.

(2) Agencies may adopt rules of procedure governing participation in contested case proceedings by persons appearing as limited parties.

(3)(a) Unless prohibited by law, informal disposition may be made of any contested case by stipulation, agreed settlement, consent order or default. Informal settlement may be made in license revocation proceedings by written agreement of the parties and the agency consenting to a suspension, fine or other form of intermediate sanction.

(b) Any informal disposition of a contested case, other than an informal disposition by default, must be in writing and signed by the party or parties to the contested case. The agency shall incorporate that disposition into a final order. An order under this paragraph is not subject to ORS 183.470. The agency shall deliver or mail a copy of the order to each party and to the attorney of record if the party is represented. An order that incorporates the informal disposition is a final order in a contested case, but is not subject to judicial review. A party may petition the agency to set aside a final order that incorporates the informal disposition on the ground that the informal disposition was obtained by fraud or duress.

(4) An order adverse to a party may be issued upon default only if a prima facie case is made on the record. The record on a default order includes all materials submitted by the party. The record on a default order may be made at the time of issuance of the order. If the record on the default order consists solely of an application and other materials submitted by the party, the agency shall so note in the order.

(5) At the commencement of a contested case hearing, the officer presiding at the hearing shall explain the issues involved in the hearing and the matters that the parties must either prove or disprove.

(6) Testimony at a contested case hearing shall be taken upon oath or affirmation of

the witness. The officer presiding at the hearing shall administer oaths or affirmations to witnesses.

(7) The officer presiding at the hearing shall place on the record a statement of the substance of any written or oral ex parte communication on a fact in issue made to the officer during the pendency of the proceeding and notify the parties of the communication and of their right to rebut the communication. If an ex parte communication is made to an administrative law judge assigned from the Office of Administrative Hearings established under ORS 183.605, the administrative law judge must comply with ORS 183.685.

(8) The officer presiding at the hearing shall ensure that the record developed at the hearing shows a full and fair inquiry into the facts necessary for consideration of all issues properly before the presiding officer in the case and the correct application of the law to those facts.

(9) The record in a contested case shall include:

- (a) All pleadings, motions and intermediate rulings.
- (b) Evidence received or considered.
- (c) Stipulations.
- (d) A statement of matters officially noticed.
- (e) Questions and offers of proof, objections and rulings thereon.
- (f) A statement of any ex parte communication that must be disclosed under subsection (7) of this section and that was made to the officer presiding at the hearing.
- (g) Proposed findings and exceptions.
- (h) Any proposed, intermediate or final order prepared by the agency or an administrative law judge.

(10) A verbatim oral, written or mechanical record shall be made of all motions, rulings and testimony in a contested case proceeding. The record need not be transcribed unless requested for purposes of rehearing or court review. The agency may charge the party requesting transcription the cost of a copy of transcription, unless the party files an appropriate affidavit of indigency. Upon petition, a court having jurisdiction to review under ORS 183.480 may reduce or eliminate the charge upon finding that it is equitable to do so, or that matters of general interest would be determined by review of the order of the agency. [2007 c.288 §4]

183.418 [1973 c.386 §6; 1989 c.224 §11; 1991 c.750 §5; repealed by 1999 c.1041 §9]

183.420 [1957 c.717 §8 (1); repealed by 1971 c.734 §21]

183.421 [1991 c.750 §4; repealed by 1999 c.1041 §9]

183.425 Depositions or subpoena of material witness; discovery. (1) On petition of any party to a contested case, or upon the agency's own motion, the agency may order that the testimony of any material witness may be taken by deposition in the manner prescribed by law for depositions in civil actions. Depositions may also be taken by the use of audio or audio-visual recordings. The petition shall set forth the name and address of the witness whose testimony is desired, a showing of the materiality of the testimony of the witness, and a request for an order that the testimony of such witness be taken before an officer named in the petition for that purpose. If the witness resides in this state and is unwilling to appear, the agency may issue a subpoena as provided in ORS 183.440, requiring the appearance of the witness before such officer.

(2) An agency may, by rule, prescribe other methods of discovery which may be used in proceedings before the agency. [1971 c.734 §14; 1975 c.759 §11; 1979 c.593 §19; 1997 c.837 §6]

183.430 Hearing on refusal to renew license; exceptions. (1) In the case of any license which must be periodically renewed, where the licensee has made timely application for renewal in accordance with the rules of the agency, such license shall not be deemed to expire, despite any stated expiration date thereon, until the agency concerned has issued a formal order of grant or denial of such renewal. In case an agency proposes to refuse to renew such license, upon demand of the licensee, the agency must grant hearing as provided by this chapter before issuance of order of refusal to renew. This subsection does not apply to any emergency or temporary permit or license.

(2) In any case where the agency finds a serious danger to the public health or safety and sets forth specific reasons for such findings, the agency may suspend or refuse to renew a license without hearing, but if the licensee demands a hearing within 90 days after the date of notice to the licensee of such suspension or refusal to renew, then a hearing must be granted to the licensee as soon as practicable after such demand, and the agency shall issue an order pursuant to such hearing as required by this chapter confirming, altering or revoking its earlier order. Such a hearing need not be held where the order of suspension or refusal to renew is accompanied by or is pursuant to, a citation for violation which is subject to judicial determination in any court of this state, and the order by its terms will terminate in case of final judgment in favor of the licensee. [1957 c.717 §8 (3), (4); 1965 c.212 §1; 1971 c.734 §11]

183.435 Period allowed to request hearing for license refusal on grounds other than test or inspection results.

When an agency refuses to issue a license required to pursue any commercial activity, trade, occupation or profession if the refusal is based on grounds other than the results of a test or inspection that agency shall grant the person requesting the license 60 days from notification of the refusal to request a hearing. [Formerly 670.285]

183.440 Subpoenas in contested cases.

(1) An agency may issue subpoenas on its own motion in a contested case. In addition, an agency or hearing officer in a contested case may issue subpoenas upon the request of a party to a contested case upon a showing of general relevance and reasonable scope of the evidence sought. A party entitled to have witnesses on behalf of the party may have subpoenas issued by an attorney of record of the party, subscribed by the signature of the attorney. Witnesses appearing pursuant to subpoena, other than the parties or officers or employees of the agency, shall receive fees and mileage as prescribed by law for witnesses in ORS 44.415 (2).

(2) If any person fails to comply with any subpoena so issued or any party or witness refuses to testify on any matters on which the party or witness may be lawfully interrogated, the judge of the circuit court of any county, on the application of the hearing officer, the agency or the party requesting the issuance of or issuing the subpoena, shall compel obedience by proceedings for contempt as in the case of disobedience of the requirements of a subpoena issued from such court or a refusal to testify therein. [1957 c.717 §8 (2); 1971 c.734 §12; 1979 c.593 §20; 1981 c.174 §4; 1989 c.980 §10a; 1997 c.837 §3; 1999 c.849 §30]

183.445 Subpoena by agency or attorney of record of party when agency not subject to ORS 183.440.

(1) In any proceeding before an agency not subject to ORS 183.440 in which a party is entitled to have subpoenas issued for the appearance of witnesses on behalf of the party, a subpoena may be issued by an attorney of record of the party, subscribed by the signature of the attorney. A subpoena issued by an attorney of record may be enforced in the same manner as a subpoena issued by the agency.

(2) In any proceeding before an agency not subject to ORS 183.440 in which a party is entitled to have subpoenas issued by the agency to compel the appearance of witnesses on behalf of the party, the agency may issue subpoenas on its own motion. [1981 c.174 §6; 1997 c.837 §4; 1999 c.849 §32]

183.450 Evidence in contested cases. In contested cases:

(1) Irrelevant, immaterial or unduly repetitious evidence shall be excluded but erroneous rulings on evidence shall not preclude agency action on the record unless shown to have substantially prejudiced the rights of a party. All other evidence of a type commonly relied upon by reasonably prudent persons in conduct of their serious affairs shall be admissible. Agencies and hearing officers shall give effect to the rules of privilege recognized by law. Objections to evidentiary offers may be made and shall be noted in the record. Any part of the evidence may be received in written form.

(2) All evidence shall be offered and made a part of the record in the case, and except for matters stipulated to and except as provided in subsection (4) of this section no other factual information or evidence shall be considered in the determination of the case. Documentary evidence may be received in the form of copies or excerpts, or by incorporation by reference. The burden of presenting evidence to support a fact or position in a contested case rests on the proponent of the fact or position.

(3) Every party shall have the right of cross-examination of witnesses who testify and shall have the right to submit rebuttal evidence. Persons appearing in a limited party status shall participate in the manner and to the extent prescribed by rule of the agency.

(4) The hearing officer and agency may take notice of judicially cognizable facts, and may take official notice of general, technical or scientific facts within the specialized knowledge of the hearing officer or agency. Parties shall be notified at any time during the proceeding but in any event prior to the final decision of material officially noticed and they shall be afforded an opportunity to contest the facts so noticed. The hearing officer and agency may utilize the hearing officer's or agency's experience, technical competence and specialized knowledge in the evaluation of the evidence presented.

(5) No sanction shall be imposed or order be issued except upon consideration of the whole record or such portions thereof as may be cited by any party, and as supported by, and in accordance with, reliable, probative and substantial evidence. [1957 c.717 §9; 1971 c.734 §15; 1975 c.759 §12; 1977 c.798 §3; 1979 c.593 §21; 1987 c.833 §1; 1995 c.272 §5; 1997 c.391 §1; 1997 c.801 §76; 1999 c.448 §5; 1999 c.849 §34]

183.452 Representation of agencies at contested case hearings.

(1) Agencies may, at their discretion, be represented at contested case hearings by the Attorney General.

(2) Notwithstanding ORS 9.160, 9.320 and ORS chapter 180, and unless otherwise au-

thorized by another law, an agency may be represented at contested case hearings by an officer or employee of the agency if:

(a) The Attorney General has consented to the representation of the agency by an agency representative in the particular hearing or in the class of hearings that includes the particular hearing; and

(b) The agency, by rule, has authorized an agency representative to appear on its behalf in the particular type of hearing being conducted.

(3) An agency representative acting under the provisions of this section may not give legal advice to an agency, and may not present legal argument in contested case hearings, except to the extent authorized by subsection (4) of this section.

(4) The officer presiding at a contested case hearing in which an agency representative appears under the provisions of this section may allow the agency representative to present evidence, examine and cross-examine witnesses, and make arguments relating to the:

(a) Application of statutes and rules to the facts in the contested case;

(b) Actions taken by the agency in the past in similar situations;

(c) Literal meaning of the statutes or rules at issue in the contested case;

(d) Admissibility of evidence; and

(e) Proper procedures to be used in the contested case hearing.

(5) Upon judicial review, no limitation imposed under this section on an agency representative is the basis for reversal or remand of agency action unless the limitation resulted in substantial prejudice to a party.

(6) The Attorney General may prepare model rules for agency representatives authorized under this section. [1999 c.448 §3]

Note: 183.452 was added to and made a part of 183.413 to 183.470 by legislative action but was not added to any other series. See Preface to Oregon Revised Statutes for further explanation.

183.453 Representation of Oregon Health Authority and Department of Human Services at contested case hearings. The Oregon Health Authority and the Department of Human Services may be represented at contested case hearings by an officer or employee of either the authority or the department, subject to the requirements of ORS 183.452. [2013 c.14 §1]

Note: 183.453 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 183 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

183.455 [1987 c.259 §3; repealed by 1999 c.448 §10]

183.457 Representation of persons other than agencies participating in contested case hearings. (1) Notwithstanding ORS 8.690, 9.160 and 9.320, and unless otherwise authorized by another law, a person participating in a contested case hearing conducted by an agency described in this subsection may be represented by an attorney or by an authorized representative subject to the provisions of subsection (2) of this section. The Attorney General shall prepare model rules for proceedings with lay representation that do not have the effect of precluding lay representation. No rule adopted by a state agency shall have the effect of precluding lay representation. The agencies before which an authorized representative may appear are:

(a) The State Landscape Contractors Board in the administration of the Landscape Contractors Law.

(b) The State Department of Energy and the Energy Facility Siting Council.

(c) The Environmental Quality Commission and the Department of Environmental Quality.

(d) The Department of Consumer and Business Services for proceedings in which an insured appears pursuant to ORS 737.505.

(e) The Department of Consumer and Business Services and any other agency for the purpose of proceedings to enforce the state building code, as defined by ORS 455.010.

(f) The State Fire Marshal in the Department of State Police.

(g) The Department of State Lands for proceedings regarding the issuance or denial of fill or removal permits under ORS 196.800 to 196.825.

(h) The Public Utility Commission.

(i) The Water Resources Commission and the Water Resources Department.

(j) The Land Conservation and Development Commission and the Department of Land Conservation and Development.

(k) The State Department of Agriculture, for purposes of hearings under ORS 215.705.

(L) The Bureau of Labor and Industries.

(2) A person participating in a contested case hearing as provided in subsection (1) of this section may appear by an authorized representative if:

(a) The agency conducting the contested case hearing has determined that appearance of such a person by an authorized representative will not hinder the orderly and timely development of the record in the type of contested case hearing being conducted;

(b) The agency conducting the contested case hearing allows, by rule, authorized representatives to appear on behalf of such participants in the type of contested case hearing being conducted; and

(c) The officer presiding at the contested case hearing may exercise discretion to limit an authorized representative's presentation of evidence, examination and cross-examination of witnesses, or presentation of factual arguments to ensure the orderly and timely development of the hearing record, and shall not allow an authorized representative to present legal arguments except to the extent authorized under subsection (3) of this section.

(3) The officer presiding at a contested case hearing in which an authorized representative appears under the provisions of this section may allow the authorized representative to present evidence, examine and cross-examine witnesses, and make arguments relating to the:

(a) Application of statutes and rules to the facts in the contested case;

(b) Actions taken by the agency in the past in similar situations;

(c) Literal meaning of the statutes or rules at issue in the contested case;

(d) Admissibility of evidence; and

(e) Proper procedures to be used in the contested case hearing.

(4) Upon judicial review, no limitation imposed by an agency presiding officer on the participation of an authorized representative shall be the basis for reversal or remand of agency action unless the limitation resulted in substantial prejudice to a person entitled to judicial review of the agency action.

(5) For the purposes of this section, "authorized representative" means a member of a participating partnership, an authorized officer or regular employee of a participating corporation, association or organized group, or an authorized officer or employee of a participating governmental authority other than a state agency. [1987 c.833 §3; 1989 c.453 §2; 1993 c.186 §4; 1995 c.102 §1; 1999 c.448 §1; 1999 c.599 §1]

Note: 183.457 was added to and made a part of 183.413 to 183.470 by legislative action but was not added to any other series. See Preface to Oregon Revised Statutes for further explanation.

183.458 Nonattorney and out-of-state attorney representation of parties in certain contested case hearings. (1) Notwithstanding any other provision of law, in any contested case hearing before a state agency involving child support, public assistance as defined in ORS 411.010, medical assistance as defined in ORS 414.025 or the right to be free from potentially unusual or hazardous

treatment procedures under ORS 426.385 (3), a party may be represented by any of the following persons:

(a) An attorney licensed to practice law in any state who is an employee of or contracts with a nonprofit legal services program that receives funding pursuant to ORS 9.572.

(b) An authorized representative who is an employee of a nonprofit legal services program that receives funding pursuant to ORS 9.572. The authorized representative must be supervised by an attorney also employed by a legal services program.

(c) An authorized representative who is an employee of the system described in ORS 192.517 (1). The authorized representative must be supervised by an attorney also employed by the system.

(2) In any contested case hearing before a state agency involving child support, a party may be represented by a law student who is:

(a) Handling the child support matter as part of a law school clinical program in which the student is enrolled; and

(b) Supervised by an attorney employed by the program.

(3) In any contested case hearing before a state agency involving an applicant for or recipient of medical assistance, the claimant may be represented by a relative, friend or any other person of the claimant's choosing.

(4) A person authorized to represent a party under this section may present evidence in the proceeding, examine and cross-examine witnesses and present factual and legal arguments in the proceeding. [1999 c.448 §4; 2003 c.14 §86; 2005 c.498 §6; 2009 c.49 §1; 2013 c.688 §25]

Note: 183.458 was added to and made a part of 183.413 to 183.470 by legislative action but was not added to any other series. See Preface to Oregon Revised Statutes for further explanation.

183.459 Representation of home care worker by labor union representative. (1) Notwithstanding ORS 8.690, 9.160 and 9.320, a home care worker, as defined in ORS 410.600, who is a party in a contested case hearing conducted by the Department of Human Services may be represented in the hearing by a labor union representative.

(2) The hearing officer at a contested case hearing in which a labor union representative appears under the provisions of this section shall allow the representative to present evidence, examine and cross-examine witnesses and make arguments relating to the:

(a) Application of statutes and rules to the facts in the contested case;

(b) Actions taken by the agency in the past in similar situations;

(c) Literal meaning of the statutes or rules at issue in the contested case;

(d) Admissibility of evidence; and

(e) Proper procedures to be used in the contested case hearing. [2009 c.424 §2]

Note: 183.459 was added to and made a part of 183.413 to 183.470 by legislative action but was not added to any other series therein. See Preface to Oregon Revised Statutes for further explanation.

183.460 Examination of evidence by agency. Whenever in a contested case a majority of the officials of the agency who are to render the final order have not heard the case or considered the record, the order, if adverse to a party other than the agency itself, shall not be made until a proposed order, including findings of fact and conclusions of law, has been served upon the parties and an opportunity has been afforded to each party adversely affected to file exceptions and present argument to the officials who are to render the decision. [1957 c.717 §10; 1971 c.734 §16; 1975 c.759 §13]

183.462 Agency statement of ex parte communications; notice. The agency shall place on the record a statement of the substance of any written or oral ex parte communications on a fact in issue made to the agency during its review of a contested case. The agency shall notify all parties of such communications and of their right to rebut the substance of the ex parte communications on the record. [1979 c.593 §36c]

183.464 Proposed order by hearing officer; amendment by agency; exemptions. (1) Except as otherwise provided in subsections (1) to (4) of this section, unless a hearing officer is authorized or required by law or agency rule to issue a final order, the hearing officer shall prepare and serve on the agency and all parties to a contested case hearing a proposed order, including recommended findings of fact and conclusions of law. The proposed order shall become final after the 30th day following the date of service of the proposed order, unless the agency within that period issues an amended order.

(2) An agency may by rule specify a period of time after which a proposed order will become final that is different from that specified in subsection (1) of this section.

(3) If an agency determines that additional time will be necessary to allow the agency adequately to review a proposed order in a contested case, the agency may extend the time after which the proposed order will become final by a specified period of time. The agency shall notify the parties to the hearing of the period of extension.

(4) Subsections (1) to (4) of this section do not apply to the Public Utility Commission or the Energy Facility Siting Council.

(5) The Governor may exempt any agency or any class of contested case hearings before an agency from the requirements in whole or part of subsections (1) to (4) of this section by executive order. The executive order shall contain a statement of the reasons for the exemption. [1979 c.593 §§36,36b; 1995 c.79 §64; 2001 c.104 §64]

183.470 Orders in contested cases. In a contested case:

(1) Every order adverse to a party to the proceeding shall be in writing or stated in the record and may be accompanied by an opinion.

(2) A final order shall be accompanied by findings of fact and conclusions of law. The findings of fact shall consist of a concise statement of the underlying facts supporting the findings as to each contested issue of fact and as to each ultimate fact required to support the agency's order.

(3) The agency shall notify the parties to a proceeding of a final order by delivering or mailing a copy of the order and any accompanying findings and conclusions to each party or, if applicable, the party's attorney of record.

(4) Every final order shall include a citation of the statutes under which the order may be appealed. [1957 c.717 §11; 1971 c.734 §17; 1979 c.593 §22]

183.471 Preservation of orders in electronic format; fees. (1) When an agency issues a final order in a contested case, the agency shall maintain the final order in a digital format that:

(a) Identifies the final order by the date it was issued;

(b) Is suitable for indexing and searching; and

(c) Preserves the textual attributes of the document, including the manner in which the document is paginated and any boldfaced, italicized or underlined writing in the document.

(2) The Oregon State Bar may request that an agency provide the Oregon State Bar, or its designee, with electronic copies of final orders issued by the agency in contested cases. The request must be in writing. No later than 30 days after receiving the request, the agency, subject to ORS 192.501 to 192.505, shall provide the Oregon State Bar, or its designee, with an electronic copy of all final orders identified in the request.

(3) Notwithstanding ORS 192.440, an agency may not charge a fee for the first two requests submitted under this section in a

calendar year. For any subsequent request, an agency may impose a fee in accordance with ORS 192.440 to reimburse the agency for the actual costs of complying with the request.

(4) For purposes of this section, a final order entered in a contested case by an administrative law judge under ORS 183.625 (3) is a final order issued by the agency that authorized the administrative law judge to conduct the hearing.

(5) This section does not apply to final orders by default issued under ORS 183.417 (3) or to final orders issued in contested cases by:

- (a) The Department of Revenue;
- (b) The State Board of Parole and Post-Prison Supervision;
- (c) The Department of Corrections;
- (d) The Employment Relations Board;
- (e) The Public Utility Commission of Oregon;
- (f) The Oregon Health Authority;
- (g) The Land Conservation and Development Commission;
- (h) The Land Use Board of Appeals;
- (i) The Division of Child Support of the Department of Justice;
- (j) The Department of Transportation, if the final order relates to the suspension, revocation or cancellation of identification cards, vehicle registrations, vehicle titles or driving privileges or to the assessment of taxes or stipulated settlements in the regulation of vehicle related businesses;
- (k) The Employment Department or the Employment Appeals Board, if the final order relates to benefits as defined in ORS 657.010;
- (L) The Employment Department, if the final order relates to an assessment of unemployment tax for which a hearing was not held; or
- (m) The Department of Human Services, if the final order was not related to licensing or certification. [2013 c.156 §2]

Note: 183.471 was added to and made a part of ORS chapter 183 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

(Judicial Review)

183.480 Judicial review of agency orders. (1) Except as provided in ORS 183.417 (3)(b), any person adversely affected or aggrieved by an order or any party to an agency proceeding is entitled to judicial review of a final order, whether such order is affirmative or negative in form. A petition for rehearing or reconsideration need not be filed as a condition of judicial review unless

specifically otherwise provided by statute or agency rule.

(2) Judicial review of final orders of agencies shall be solely as provided by ORS 183.482, 183.484, 183.490 and 183.500.

(3) No action or suit shall be maintained as to the validity of any agency order except a final order as provided in this section and ORS 183.482, 183.484, 183.490 and 183.500 or except upon showing that the agency is proceeding without probable cause, or that the party will suffer substantial and irreparable harm if interlocutory relief is not granted.

(4) Judicial review of orders issued pursuant to ORS 813.410 shall be as provided by ORS 813.410. [1957 c.717 §12; 1963 c.449 §1; 1971 c.734 §18; 1975 c.759 §14; 1979 c.593 §23; 1983 c.338 §901; 1985 c.757 §4; 1997 c.837 §5; 2007 c.288 §11]

183.482 Jurisdiction for review of contested cases; procedure; scope of court authority. (1) Jurisdiction for judicial review of contested cases is conferred upon the Court of Appeals. Proceedings for review shall be instituted by filing a petition in the Court of Appeals. The petition shall be filed within 60 days only following the date the order upon which the petition is based is served unless otherwise provided by statute. If a petition for rehearing has been filed, then the petition for review shall be filed within 60 days only following the date the order denying the petition for rehearing is served. If the agency does not otherwise act, a petition for rehearing or reconsideration shall be deemed denied the 60th day following the date the petition was filed, and in such cases, petition for judicial review shall be filed within 60 days only following such date. Date of service shall be the date on which the agency delivered or mailed its order in accordance with ORS 183.470.

(2) The petition shall state the nature of the order the petitioner desires reviewed, and shall state whether the petitioner was a party to the administrative proceeding, was denied status as a party or is seeking judicial review as a person adversely affected or aggrieved by the agency order. In the latter case, the petitioner shall, by supporting affidavit, state the facts showing how the petitioner is adversely affected or aggrieved by the agency order. Before deciding the issues raised by the petition for review, the Court of Appeals shall decide, from facts set forth in the affidavit, whether or not the petitioner is entitled to petition as an adversely affected or an aggrieved person. Copies of the petition shall be served by registered or certified mail upon the agency, and all other parties of record in the agency proceeding.

(3)(a) The filing of the petition shall not stay enforcement of the agency order, but the agency may do so upon a showing of:

(A) Irreparable injury to the petitioner; and

(B) A colorable claim of error in the order.

(b) When a petitioner makes the showing required by paragraph (a) of this subsection, the agency shall grant the stay unless the agency determines that substantial public harm will result if the order is stayed. If the agency denies the stay, the denial shall be in writing and shall specifically state the substantial public harm that would result from the granting of the stay.

(c) When the agency grants a stay, the agency may impose such reasonable conditions as the giving of a bond, irrevocable letter of credit or other undertaking and that the petitioner file all documents necessary to bring the matter to issue before the Court of Appeals within specified reasonable periods of time.

(d) Agency denial of a motion for stay is subject to review by the Court of Appeals under such rules as the court may establish.

(4) Within 30 days after service of the petition, or within such further time as the court may allow, the agency shall transmit to the reviewing court the original or a certified copy of the entire record of the proceeding under review, but, by stipulation of all parties to the review proceeding, the record may be shortened. Any party unreasonably refusing to stipulate to limit the record may be taxed by the court for the additional costs. The court may require or permit subsequent corrections or additions to the record when deemed desirable. Except as specifically provided in this subsection, the cost of the record shall not be taxed to the petitioner or any intervening party. However, the court may tax such costs and the cost of agency transcription of record to a party filing a frivolous petition for review.

(5) If, on review of a contested case, before the date set for hearing, application is made to the court for leave to present additional evidence, and it is shown to the satisfaction of the court that the additional evidence is material and that there were good and substantial reasons for failure to present it in the proceeding before the agency, the court may order that the additional evidence be taken before the agency upon such conditions as the court deems proper. The agency may modify its findings and order by reason of the additional evidence and shall, within a time to be fixed by the court, file with the reviewing court, to become a part of the record, the additional evidence, together with any modifications or new findings or orders, or its certificate that the agency elects to stand on its original findings and order, as the case may be.

(6) At any time subsequent to the filing of the petition for review and prior to the date set for hearing the agency may withdraw its order for purposes of reconsideration. If an agency withdraws an order for purposes of reconsideration, the agency shall, within such time as the court may allow, affirm, modify or reverse its order. If the petitioner is dissatisfied with the agency action after withdrawal for purposes of reconsideration, the petitioner may refile the petition for review and the review shall proceed upon the revised order. An amended petition for review shall not be required if the agency, on reconsideration, affirms the order or modifies the order with only minor changes. If an agency withdraws an order for purposes of reconsideration and modifies or reverses the order in favor of the petitioner, the court shall allow the petitioner costs, but not attorney fees, to be paid from funds available to the agency.

(7) Review of a contested case shall be confined to the record, and the court shall not substitute its judgment for that of the agency as to any issue of fact or agency discretion. In the case of disputed allegations of irregularities in procedure before the agency not shown in the record which, if proved, would warrant reversal or remand, the Court of Appeals may refer the allegations to a master appointed by the court to take evidence and make findings of fact upon them. The court shall remand the order for further agency action if the court finds that either the fairness of the proceedings or the correctness of the action may have been impaired by a material error in procedure or a failure to follow prescribed procedure, including a failure by the presiding officer to comply with the requirements of ORS 183.417 (8).

(8)(a) The court may affirm, reverse or remand the order. If the court finds that the agency has erroneously interpreted a provision of law and that a correct interpretation compels a particular action, the court shall:

(A) Set aside or modify the order; or

(B) Remand the case to the agency for further action under a correct interpretation of the provision of law.

(b) The court shall remand the order to the agency if the court finds the agency's exercise of discretion to be:

(A) Outside the range of discretion delegated to the agency by law;

(B) Inconsistent with an agency rule, an officially stated agency position, or a prior agency practice, if the inconsistency is not explained by the agency; or

(C) Otherwise in violation of a constitutional or statutory provision.

(c) The court shall set aside or remand the order if the court finds that the order is not supported by substantial evidence in the record. Substantial evidence exists to support a finding of fact when the record, viewed as a whole, would permit a reasonable person to make that finding. [1975 c.759 §15; 1977 c.798 §4; 1979 c.593 §24; 1985 c.757 §2; 1989 c.453 §1; 1991 c.331 §44; 2007 c.659 §§2,5]

183.484 Jurisdiction for review of orders other than contested cases; procedure; scope of court authority. (1) Jurisdiction for judicial review of orders other than contested cases is conferred upon the Circuit Court for Marion County and upon the circuit court for the county in which the petitioner resides or has a principal business office. Proceedings for review under this section shall be instituted by filing a petition in the Circuit Court for Marion County or the circuit court for the county in which the petitioner resides or has a principal business office.

(2) Petitions for review shall be filed within 60 days only following the date the order is served, or if a petition for reconsideration or rehearing has been filed, then within 60 days only following the date the order denying such petition is served. If the agency does not otherwise act, a petition for rehearing or reconsideration shall be deemed denied the 60th day following the date the petition was filed, and in such case petition for judicial review shall be filed within 60 days only following such date. Date of service shall be the date on which the agency delivered or mailed its order in accordance with ORS 183.470.

(3) The petition shall state the nature of the petitioner's interest, the facts showing how the petitioner is adversely affected or aggrieved by the agency order and the ground or grounds upon which the petitioner contends the order should be reversed or remanded. The review shall proceed and be conducted by the court without a jury.

(4) At any time subsequent to the filing of the petition for review and prior to the date set for hearing, the agency may withdraw its order for purposes of reconsideration. If an agency withdraws an order for purposes of reconsideration, it shall, within such time as the court may allow, affirm, modify or reverse its order. If the petitioner is dissatisfied with the agency action after withdrawal for purposes of reconsideration, the petitioner may refile the petition for review and the review shall proceed upon the revised order. An amended petition for review shall not be required if the agency, on reconsideration, affirms the order or modifies

the order with only minor changes. If an agency withdraws an order for purposes of reconsideration and modifies or reverses the order in favor of the petitioner, the court shall allow the petitioner costs, but not attorney fees, to be paid from funds available to the agency.

(5)(a) The court may affirm, reverse or remand the order. If the court finds that the agency has erroneously interpreted a provision of law and that a correct interpretation compels a particular action, it shall:

(A) Set aside or modify the order; or

(B) Remand the case to the agency for further action under a correct interpretation of the provision of law.

(b) The court shall remand the order to the agency if it finds the agency's exercise of discretion to be:

(A) Outside the range of discretion delegated to the agency by law;

(B) Inconsistent with an agency rule, an officially stated agency position, or a prior agency practice, if the inconsistency is not explained by the agency; or

(C) Otherwise in violation of a constitutional or statutory provision.

(c) The court shall set aside or remand the order if it finds that the order is not supported by substantial evidence in the record. Substantial evidence exists to support a finding of fact when the record, viewed as a whole, would permit a reasonable person to make that finding.

(6) In the case of reversal the court shall make special findings of fact based upon the evidence in the record and conclusions of law indicating clearly all aspects in which the agency's order is erroneous. [1975 c.759 §16; 1979 c.284 §121; 1979 c.593 §25a; 1985 c.757 §3; 1999 c.113 §1]

183.485 Decision of court on review of contested case. (1) The court having jurisdiction for judicial review of contested cases shall direct its decision, including its judgment, to the agency issuing the order being reviewed and may direct that its judgment be delivered to the circuit court for any county designated by the prevailing party for entry in the circuit court's register.

(2) Upon receipt of the court's decision, including the judgment, the clerk of the circuit court shall enter a judgment in the register of the court pursuant to the direction of the court to which the appeal is made. [1973 c.612 §7; 1981 c.178 §11; 1985 c.540 §39; 2003 c.576 §193]

183.486 Form and scope of decision of reviewing court. (1) The reviewing court's decision under ORS 183.482 or 183.484 may be mandatory, prohibitory, or declaratory in

form, and it shall provide whatever relief is appropriate irrespective of the original form of the petition. The court may:

(a) Order agency action required by law, order agency exercise of discretion when required by law, set aside agency action, remand the case for further agency proceedings or decide the rights, privileges, obligations, requirements or procedures at issue between the parties; and

(b) Order such ancillary relief as the court finds necessary to redress the effects of official action wrongfully taken or withheld.

(2) If the court sets aside agency action or remands the case to the agency for further proceedings, it may make such interlocutory order as the court finds necessary to preserve the interests of any party and the public pending further proceedings or agency action.

(3) Unless the court finds a ground for setting aside, modifying, remanding, or ordering agency action or ancillary relief under a specified provision of this section, it shall affirm the agency action. [1979 c.593 §27]

183.490 Agency may be compelled to act. The court may, upon petition as described in ORS 183.484, compel an agency to act where it has unlawfully refused to act or make a decision or unreasonably delayed taking action or making a decision. [1957 c.717 §13; 1979 c.593 §28]

183.495 [1975 c.759 §16a; repealed by 1985 c.757 §7]

183.497 Awarding costs and attorney fees when finding for petitioner. (1) In a judicial proceeding designated under subsection (2) of this section the court:

(a) May, in its discretion, allow a petitioner reasonable attorney fees and costs if the court finds in favor of the petitioner.

(b) Shall allow a petitioner reasonable attorney fees and costs if the court finds in favor of the petitioner and determines that the state agency acted without a reasonable basis in fact or in law; but the court may withhold all or part of the attorney fees from any allowance to a petitioner if the court finds that the state agency has proved that its action was substantially justified or that special circumstances exist that make the allowance of all or part of the attorney fees unjust.

(2) The provisions of subsection (1) of this section apply to an administrative or judicial proceeding brought by a petitioner against a state agency, as defined in ORS 291.002, for:

(a) Judicial review of a final order as provided in ORS 183.480 to 183.484;

(b) Judicial review of a declaratory ruling provided in ORS 183.410; or

(c) A judicial determination of the validity of a rule as provided in ORS 183.400.

(3) Amounts allowed under this section for reasonable attorney fees and costs shall be paid from funds available to the state agency whose final order, declaratory ruling or rule was reviewed by the court. [1981 c.871 §1; 1985 c.757 §5]

Note: 183.497 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 183 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

(Appeals From Circuit Courts)

183.500 Appeals. Any party to the proceedings before the circuit court may appeal from the judgment of that court to the Court of Appeals. Such appeal shall be taken in the manner provided by law for appeals from the circuit court in suits in equity. [1957 c.717 §14; 1969 c.198 §76; 2003 c.576 §394]

(Alternative Dispute Resolution)

183.502 Authority of agencies to use alternative means of dispute resolution; model rules; amendment of agreements and forms; agency alternative dispute resolution programs. (1) Unless otherwise prohibited by law, agencies may use alternative means of dispute resolution in rulemaking proceedings, contested case proceedings, judicial proceedings in which the agency is a party, and any other decision-making process in which conflicts may arise. The alternative means of dispute resolution may be arbitration, mediation or any other collaborative problem-solving process designed to encourage parties to work together to develop mutually agreeable solutions to disputes. Use of alternative means of dispute resolution by an agency does not affect the application of ORS 192.410 to 192.505 to the agency, or the application of ORS 192.610 to 192.690 to the agency.

(2) An agency that elects to utilize alternative means of dispute resolution shall inform and may consult with the Mark O. Hatfield School of Government, the Department of Justice and the Oregon Department of Administrative Services in developing a policy or program for implementation of alternative means of dispute resolution.

(3) The Attorney General, in consultation with the Mark O. Hatfield School of Government and the Oregon Department of Administrative Services, may develop for agencies model rules for the implementation of alternative means of dispute resolution. An agency may adopt all or part of the model rules by reference without complying with

the rulemaking procedures of ORS 183.325 to 183.410. Notice of the adoption of all or part of the model rules must be filed by the agency with the Secretary of State in the manner provided by ORS 183.355 for the filing of rules.

(4) When an agency reviews the standard agreements, forms for contracts and forms for applying for grants or other assistance used by the agency, the agency shall determine whether the agreements and forms should be amended to authorize and encourage the use of alternative means of dispute resolution in disputes that arise under the agreement, contract or application.

(5) The Department of Justice, the Mark O. Hatfield School of Government, the Oregon Department of Administrative Services and the Governor shall collaborate to increase the use of alternative dispute resolution to resolve disputes involving the State of Oregon by:

(a) Assisting agencies to develop a policy for alternative means of dispute resolution;

(b) Assisting agencies to develop or expand flexible and diverse agency programs that provide alternative means of dispute resolution; and

(c) Providing assistance in the efficient and effective selection of mediators or facilitators.

(6)(a) The Mark O. Hatfield School of Government, the Oregon Department of Administrative Services and the Department of Justice shall work cooperatively in designing the program under ORS 36.179 that is intended to provide services to, apply to or involve any state agency.

(b) The Mark O. Hatfield School of Government, the Oregon Department of Administrative Services and the Department of Justice shall enter into an interagency agreement that includes, but is not limited to, provisions on appropriate roles, reporting requirements and coordination of services provided to state agencies by the Mark O. Hatfield School of Government pursuant to ORS 36.179.

(c) Before providing dispute resolution services in a specific matter to a state agency under ORS 36.179, the Mark O. Hatfield School of Government shall notify the Department of Justice of any proposal to provide such services.

(7) Agencies with alternative dispute resolution programs shall seek to identify cases appropriate for mediation and other means of alternative dispute resolution and to design systems and procedures to resolve those cases.

(8) The purpose of the agency alternative dispute resolution programs is to:

(a) Increase agency efficiency;

(b) Increase public and agency satisfaction with the process and results of dispute resolution; and

(c) Decrease the cost of resolving disputes.

(9) An agency may use the services of an employee of another agency or of the federal government to serve as a mediator or facilitator, and may provide the services of an agency employee to another agency or to the federal government to serve as a mediator or facilitator. An agency may enter into an agreement with another agency or with the federal government to determine reimbursement for services of an employee acting as a mediator or facilitator under the provisions of this subsection. This subsection does not apply to mediation under ORS 243.650 to 243.782. [1993 c.647 §2; 1995 c.515 §2; 1997 c.706 §5; 1997 c.801 §42; 1997 c.837 §7; 2001 c.581 §2; 2003 c.791 §§27,27a; 2005 c.334 §§1,2; 2005 c.817 §6]

Note: 183.502 was added to and made a part of ORS chapter 183 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

183.510 [1957 c.717 §16; repealed by 1971 c.734 §21]

(Housing Cost Impact Statement)

183.530 Housing cost impact statement required for certain proposed rules. A housing cost impact statement shall be prepared upon the proposal for adoption or repeal of any rule or any amendment to an existing rule by:

(1) The State Housing Council;

(2) A building codes division of the Department of Consumer and Business Services or any board associated with the department with regard to rules adopted under ORS 455.610 to 455.630;

(3) The Land Conservation and Development Commission;

(4) The Environmental Quality Commission;

(5) The Construction Contractors Board;

(6) The Occupational Safety and Health Division of the Department of Consumer and Business Services; or

(7) The State Department of Energy. [1995 c.652 §2]

Note: 183.530 to 183.538 were added to and made a part of ORS chapter 183 by legislative action but were not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

183.534 Housing cost impact statement described; rules. (1) A housing cost impact statement is an estimate of the effect of a proposed rule or ordinance on the cost

of development of a 6,000 square foot parcel and the construction of a 1,200 square foot detached single family dwelling on that parcel. The State Housing Council shall adopt rules prescribing the form to be used when preparing the estimate and other such rules necessary to the implementation of this section and ORS 183.530 and 183.538.

(2) A housing cost impact statement:

(a) For an agency listed in ORS 183.530 shall be incorporated in the:

(A) Fiscal impact statement required by ORS 183.335 (2)(b)(E) for permanent rule adoption; or

(B) Statements required by ORS 183.335 (5) for temporary rule adoption.

(b) Shall not be required for the adoption of any procedural rule by an agency listed in ORS 183.530. [1995 c.652 §3; 1997 c.249 §54]

Note: See note under 183.530.

183.538 Effect of failure to prepare housing cost impact statement; judicial review. (1) Notwithstanding ORS 183.335 (12), 183.400 (4) or any other provision of law, the failure to prepare a housing cost impact statement shall not affect the validity or effective date of any rule or ordinance or any amendment to a rule or ordinance.

(2) If a rule or ordinance or any amendment to a rule or ordinance is challenged based on the failure to prepare a housing cost impact statement, the court or other reviewing authority shall remand the proposed rule or ordinance or any amendment to a rule or ordinance to the adopting or repealing entity if it determines that a housing cost impact statement is required.

(3) The court or other reviewing authority shall determine only whether a housing cost impact statement was prepared and shall not make any determination as to the sufficiency of the housing cost impact statement. [1995 c.652 §4; 2001 c.220 §4]

Note: See note under 183.530.

(Effects of Rules on Small Business)

183.540 Reduction of economic impact on small business. If the statement of cost of compliance effect on small businesses required by ORS 183.335 (2)(b)(E) shows that a rule has a significant adverse effect upon small business, to the extent consistent with the public health and safety purpose of the rule, the agency shall reduce the economic impact of the rule on small business by:

(1) Establishing differing compliance or reporting requirements or time tables for small business;

(2) Clarifying, consolidating or simplifying the compliance and reporting requirements under the rule for small business;

(3) Utilizing objective criteria for standards;

(4) Exempting small businesses from any or all requirements of the rule; or

(5) Otherwise establishing less intrusive or less costly alternatives applicable to small business. [1981 c.755 §4; 2003 c.749 §7; 2005 c.807 §6]

183.545 [1981 c.755 §5; repealed by 2003 c.749 §17]

183.550 [1981 c.755 §6; repealed by 2003 c.749 §17]

183.560 [2001 c.374 §1; 2003 c.740 §1; renumbered 183.700 in 2003]

183.562 [2001 c.374 §2; renumbered 183.702 in 2003]

183.600 [1999 c.849 §2; 2003 c.75 §1; repealed by 2009 c.866 §4]

(Office of Administrative Hearings)

183.605 Office of Administrative Hearings. (1) The Office of Administrative Hearings is established within the Employment Department. The office shall be managed by the chief administrative law judge appointed under ORS 183.610. The office shall make administrative law judges available to agencies under ORS 183.605 to 183.690. Administrative law judges assigned from the office under ORS 183.605 to 183.690 may:

(a) Conduct contested case proceedings on behalf of agencies in the manner provided by ORS 183.605 to 183.690;

(b) Perform such other services, as may be requested by an agency, that are appropriate for the resolution of disputes arising out of the conduct of agency business; and

(c) Perform such other duties as may be authorized under ORS 183.605 to 183.690.

(2) All persons serving as administrative law judges in the office must meet the standards and training requirements of ORS 183.680.

(3) The Employment Department shall provide administrative services to the Office of Administrative Hearings, including budget services, accounting services, procurement services, contracting services, human resources services and information technology services. The services must be provided in a manner that is consistent with law, rules and state policies. The Office of Administrative Hearings shall reimburse the Employment Department for the costs of the services provided. [1999 c.849 §3; 2003 c.75 §2; 2009 c.866 §5]

183.610 Chief administrative law judge.

(1) The Governor shall appoint a person to serve as chief administrative law judge for the Office of Administrative Hearings. The Governor shall consider recommendations by the Office of Administrative Hearings Oversight Committee in appointing a chief administrative law judge. The person appointed to serve as chief administrative law judge must be an active member of the Oregon

State Bar. The chief administrative law judge has all the powers necessary and convenient to organize and manage the office. Subject to the State Personnel Relations Law, the chief administrative law judge shall employ all persons necessary for the administration of the office, prescribe the duties of those employees and fix their compensation. The chief administrative law judge shall serve for a term of four years. Notwithstanding ORS 236.140, the Governor may remove the chief administrative law judge only for cause.

(2) The chief administrative law judge shall employ administrative law judges. The chief administrative law judge shall ensure that administrative law judges employed for the office receive all training necessary to meet the standards required under the program created under ORS 183.680.

(3) The chief administrative law judge shall take all actions necessary to protect and ensure the independence of each administrative law judge assigned from the office. [1999 c.849 §4; 2003 c.75 §3; 2009 c.866 §1]

183.615 Administrative law judges; duties; qualifications; rules. (1) An administrative law judge employed by or contracting with the chief administrative law judge shall conduct hearings on behalf of agencies as assigned by the chief administrative law judge. An administrative law judge shall be impartial in the performance of the administrative law judge's duties and shall remain fair in all hearings conducted by the administrative law judge. An administrative law judge shall develop the record in contested case proceedings in the manner provided by ORS 183.417 (8).

(2) Only persons who have a knowledge of administrative law and procedure may be employed by the chief administrative law judge as administrative law judges. The chief administrative law judge by rule may establish additional qualifications for administrative law judges employed for the office. [1999 c.849 §5; 2003 c.75 §4; 2007 c.659 §§3,6]

183.620 Contract administrative law judges. (1) The chief administrative law judge for the Office of Administrative Hearings may contract for the services of persons to act as administrative law judges.

(2) Contract administrative law judges shall meet the same qualifications as administrative law judges regularly employed by the chief administrative law judge and shall be paid at an hourly rate comparable to the per hour cost of salary and benefits for administrative law judges regularly employed by the chief administrative law judge and conducting similar hearings. [1999 c.849 §6; 2003 c.75 §5]

183.625 Assignment of administrative law judges; conduct of hearings. (1) In assigning an administrative law judge to conduct hearings on behalf of an agency, the chief administrative law judge shall, whenever practicable, assign an administrative law judge that has expertise in the legal issues or general subject matter of the proceeding.

(2) Notwithstanding any other provision of state law, any agency that is required to use administrative law judges assigned from the Office of Administrative Hearings to conduct hearings must delegate responsibility for the conduct of the hearing to an administrative law judge assigned from the Office of Administrative Hearings, and the hearing may not be conducted by the administrator, director, board, commission or other person or body charged with administering the agency.

(3) Any agency may authorize an administrative law judge assigned to conduct a hearing on behalf of the agency under this section to enter a final order for the agency.

(4) An agency that is not required to use administrative law judges assigned from the office may contract with the chief administrative law judge for the assignment of an administrative law judge from the office for the purpose of conducting one or more contested cases on behalf of the agency. [1999 c.849 §7; 2003 c.75 §6]

183.630 Model rules of procedure; exemptions; depositions. (1) Except as provided in subsection (2) of this section, all contested case hearings conducted by administrative law judges assigned from the Office of Administrative Hearings must be conducted pursuant to the model rules of procedure prepared by the Attorney General under ORS 183.341 if the hearing is subject to the procedural requirements for contested case proceedings.

(2) The Attorney General, after consulting with the chief administrative law judge, may exempt an agency or a category of cases from the requirements of subsection (1) of this section. The exemption may be from all or part of the model rules adopted by the Attorney General. Any exemption granted under this subsection must be made in writing.

(3) The Attorney General shall consult with an advisory group when adopting model rules of procedure for the purpose of contested case hearings conducted by administrative law judges assigned from the Office of Administrative Hearings. The advisory group shall consist of:

(a) The chief administrative law judge;

(b) An officer or employee of a state agency, appointed by the Governor;

(c) An attorney who practices administrative law, appointed by the Oregon State Bar;

(d) A deputy or assistant attorney general appointed by the Attorney General; and

(e) A public member, appointed by the Governor, who is not an attorney or an officer or employee of a state agency.

(4) Except as may be expressly granted by the agency to an administrative law judge assigned from the office, or as may be expressly provided for by law, an administrative law judge conducting a hearing for an agency under ORS 183.605 to 183.690 may not authorize a party to take a deposition that is to be paid for by the agency. [1999 c.849 §8; 2003 c.75 §7; 2009 c.866 §6]

183.635 Agencies required to use administrative law judges from Office of Administrative Hearings; exceptions. (1) Except as provided in this section, all agencies must use administrative law judges assigned from the Office of Administrative Hearings established under ORS 183.605 to conduct contested case hearings, without regard to whether those hearings are subject to the procedural requirements for contested case hearings.

(2) The following agencies need not use administrative law judges assigned from the office:

(a) Attorney General.

(b) Boards of stewards appointed by the Oregon Racing Commission.

(c) Bureau of Labor and Industries and the Commissioner of the Bureau of Labor and Industries.

(d) Department of Corrections.

(e) Department of Education, State Board of Education and Superintendent of Public Instruction.

(f) Department of Human Services for vocational rehabilitation services cases under 29 U.S.C. 722(c) and disability determination cases under 42 U.S.C. 405.

(g) Department of Revenue.

(h) Department of State Police.

(i) Employment Appeals Board.

(j) Employment Relations Board.

(k) Energy Facility Siting Council.

(L) Fair Dismissal Appeals Board.

(m) Governor.

(n) Land Conservation and Development Commission.

(o) Land Use Board of Appeals.

(p) Local government boundary commissions created pursuant to ORS 199.430.

(q) Oregon University System and public universities listed in ORS 352.002.

(r) Oregon Youth Authority.

(s) Psychiatric Security Review Board.

(t) The Oregon Health Authority for hearings conducted under ORS 161.315 to 161.351.

(u) Public Utility Commission.

(v) State Accident Insurance Fund Corporation.

(w) State Apprenticeship and Training Council.

(x) State Board of Parole and Post-Prison Supervision.

(y) State Land Board.

(z) State Treasurer.

(3) The Workers' Compensation Board is exempt from using administrative law judges assigned from the office for any hearing conducted by the board under ORS chapters 147, 654 and 656. Except as specifically provided in this subsection, the Department of Consumer and Business Services must use administrative law judges assigned from the office only for contested cases arising out of the department's powers and duties under:

(a) ORS 86A.095 to 86A.198, 86A.990 and 86A.992 and ORS chapter 59;

(b) ORS chapter 455;

(c) ORS chapter 674;

(d) ORS chapters 706 to 716;

(e) ORS chapter 717;

(f) ORS chapters 723, 725 and 726; and

(g) ORS chapters 731, 732, 733, 734, 735, 737, 742, 743, 743A, 744, 746, 748 and 750.

(4) Notwithstanding any other provision of law, in any proceeding in which an agency is required to use an administrative law judge assigned from the office, an officer or employee of the agency may not conduct the hearing on behalf of the agency.

(5) Notwithstanding any other provision of ORS 183.605 to 183.690, an agency is not required to use an administrative law judge assigned from the office if:

(a) Federal law requires that a different administrative law judge or hearing officer be used; or

(b) Use of an administrative law judge from the office could result in a loss of federal funds.

(6) Notwithstanding any other provision of this section, the Department of Environmental Quality must use administrative law judges assigned from the office only for con-

tested case hearings conducted under the provisions of ORS 183.413 to 183.470. [1999 c.849 §9; 2001 c.900 §46; 2003 c.75 §8; 2005 c.22 §131; 2005 c.26 §18; 2007 c.239 §9; 2009 c.541 §6; 2009 c.762 §46; 2009 c.830 §147; 2009 c.866 §10; 2011 c.637 §64; 2011 c.708 §25; 2013 c.296 §19]

183.640 Use of Office of Administrative Hearings by exempt agencies and by political subdivisions. (1) Upon request of an agency, the chief administrative law judge for the Office of Administrative Hearings may assign administrative law judges from the office to conduct contested case proceedings on behalf of agencies that are exempted from mandatory use of administrative law judges assigned from the office under ORS 183.635.

(2) The chief administrative law judge may contract with any political subdivision of this state to provide the services of administrative law judges to the political subdivision for the purpose of conducting quasi-judicial hearings on behalf of the political subdivision. [1999 c. 849 §10; 2003 c.75 §9]

183.645 Request for change of administrative law judge; rules. (1) After assignment of an administrative law judge from the Office of Administrative Hearings to conduct a hearing on behalf of an agency, the chief administrative law judge shall assign a different administrative law judge for the hearing upon receiving a written request from any party in the contested case or from the agency. The chief administrative law judge may by rule establish time limitations and procedures for requests under this section.

(2) Only one request for a change of assignment of administrative law judge under subsection (1) of this section may be granted by the chief administrative law judge without a showing of good cause. If a party or agency fails to make a request under subsection (1) of this section within the time allowed, or if a party or agency objects to an administrative law judge assigned after a request for a different administrative law judge has been granted under subsection (1) of this section, the chief administrative law judge shall assign a different administrative law judge only upon a showing of good cause.

(3) Notwithstanding subsection (1) of this section, a different administrative law judge may not be assigned for a hearing provided under ORS 813.410 or 813.440 on suspension of driving privileges, except upon a showing of good cause. [1999 c.849 §11; 2001 c.294 §8; 2003 c.75 §10]

183.650 Form of order; modification of form of order by agency; finding of historical fact. (1) In any contested case hearing conducted by an administrative law judge assigned from the Office of Administrative Hearings, the administrative law judge shall

prepare and serve on the agency and all parties to the hearing a form of order, including recommended findings of fact and conclusions of law. The administrative law judge shall also prepare and serve a proposed order in the manner provided by ORS 183.464 unless the agency or hearing is exempt from the requirements of ORS 183.464.

(2) If the administrative law judge assigned from the office will not enter the final order in a contested case proceeding, and the agency modifies the form of order issued by the administrative law judge in any substantial manner, the agency must identify the modifications and provide an explanation to the parties to the hearing as to why the agency made the modifications.

(3) An agency conducting a contested case hearing may modify a finding of historical fact made by the administrative law judge assigned from the Office of Administrative Hearings only if the agency determines that there is clear and convincing evidence in the record that the finding was wrong. For the purposes of this section, an administrative law judge makes a finding of historical fact if the administrative law judge determines that an event did or did not occur in the past or that a circumstance or status did or did not exist either before the hearing or at the time of the hearing.

(4) Notwithstanding ORS 19.415 (3), if a party seeks judicial review of an agency's modification of a finding of historical fact under subsection (3) of this section, the court shall make an independent finding of the fact in dispute by conducting a review de novo of the record viewed as a whole. If the court decides that the agency erred in modifying the finding of historical fact made by the administrative law judge, the court shall remand the matter to the agency for entry of an order consistent with the court's judgment. [1999 c.849 §12; 2003 c.75 §11; 2009 c.231 §5; 2009 c.866 §7]

183.655 Fees. The chief administrative law judge for the Office of Administrative Hearings shall establish a schedule of fees for services rendered by administrative law judges assigned from the office. The fee charged shall be in an amount calculated to recover the cost of providing the administrative law judge, the cost of conducting the hearing and all associated administrative costs. All fees collected by the chief administrative law judge under this section shall be paid into the Office of Administrative Hearings Operating Account created under ORS 183.660. [1999 c.849 §13; 2003 c.75 §12]

183.660 Office of Administrative Hearings Operating Account. (1) The Office of Administrative Hearings Operating Account is created within the General Fund. The ac-

count shall consist of moneys paid into the account under ORS 183.655. Moneys credited to the account are continuously appropriated to the chief administrative law judge for the Office of Administrative Hearings created under ORS 183.605 for the purpose of paying expenses incurred in the administration of the office.

(2) At the discretion of the chief administrative law judge, petty cash funds may be established and maintained for the purpose of administering the duties of the office. [1999 c.849 §14; 2003 c.75 §13]

183.665 Estimates of office expenses. The chief administrative law judge for the Office of Administrative Hearings shall estimate in advance the expenses that the office will incur during each biennium and shall notify each agency required to use the office's services of the agency's share of the anticipated expenses for periods within the biennium. [1999 c.849 §15; 2003 c.75 §14]

183.670 Rules. Subject to the provisions of the State Personnel Relations Law, the chief administrative law judge for the Office of Administrative Hearings may adopt rules to:

(1) Organize and manage the Office of Administrative Hearings established under ORS 183.605.

(2) Facilitate the performance of the duties of administrative law judges assigned from the office.

(3) Establish qualifications for persons employed as administrative law judges by the office.

(4) Establish standards and procedures for the evaluation and training of administrative law judges employed by the office, consistent with standards and training requirements established under ORS 183.680. [1999 c.849 §16; 2003 c.75 §15]

183.675 Alternative dispute resolution. ORS 183.605 to 183.690 do not limit in any way the ability of any agency to use alternative dispute resolution, including mediation or arbitration, to resolve disputes without conducting a contested case hearing or without requesting assignment of an administrative law judge from the Office of Administrative Hearings. [1999 c.849 §16a; 2003 c.75 §16]

183.680 Standards and training program. (1) The chief administrative law judge for the Office of Administrative Hearings, working in coordination with the Attorney General, shall design and implement a standards and training program for administrative law judges employed by the office and for persons seeking to be employed as administrative law judges by the office. The program shall include:

(a) The establishment of an ethical code for persons employed as administrative law judges by the office.

(b) Training for administrative law judges employed by the office that is designed to assist in identifying cases that are appropriate for the use of alternative dispute resolution processes.

(2) The program established by the chief administrative law judge under this section may include:

(a) The conducting of courses on administrative law, evidence, hearing procedures and other issues that arise in presiding over administrative hearings, including courses designed to provide any training required by the chief administrative law judge for administrative law judges employed by the office.

(b) The certification of courses offered by other persons for the purpose of any training required by the chief administrative law judge for administrative law judges employed by the office.

(c) The provision of specialized training for administrative law judges in subject matter areas affecting particular agencies required to use administrative law judges assigned from the office.

(3) The chief administrative law judge is bound by the ethical code established under this section and must satisfactorily complete training required of administrative law judges employed by the office other than specialized training in subject matter areas affecting particular agencies. [1999 c.849 §19; 2003 c.75 §17]

183.685 Ex parte communications. (1) An administrative law judge assigned from the Office of Administrative Hearings who is presiding in a contested case proceeding and who receives an ex parte communication described in subsections (3) and (4) of this section shall place in the record of the pending matter:

(a) The name of each person from whom the administrative law judge received an ex parte communication;

(b) A copy of any ex parte written communication received by the administrative law judge;

(c) A copy of any written response to the communication made by the administrative law judge;

(d) A memorandum reflecting the substance of any ex parte oral communication made to the administrative law judge; and

(e) A memorandum reflecting the substance of any oral response made by the ad-

ministrative law judge to an ex parte oral communication.

(2) Upon making a record of an ex parte communication under subsection (1) of this section, an administrative law judge shall advise the agency and all parties in the proceeding that an ex parte communication has been made a part of the record. The administrative law judge shall allow the agency and parties an opportunity to respond to the ex parte communication.

(3) Except as otherwise provided in this section, the provisions of this section apply to communications that:

(a) Relate to a legal or factual issue in a contested case proceeding;

(b) Are made directly or indirectly to an administrative law judge while the proceeding is pending; and

(c) Are made without notice and opportunity for the agency and all parties to participate in the communication.

(4) The provisions of this section apply to any ex parte communication made directly or indirectly to an administrative law judge, or to any agent of an administrative law judge, by:

(a) A party;

(b) A party's representative or legal adviser;

(c) Any other person who has a direct or indirect interest in the outcome of the proceeding;

(d) Any other person with personal knowledge of the facts relevant to the proceeding; or

(e) Any officer, employee or agent of an agency.

(5) The provisions of this section do not apply to:

(a) Communications made to an administrative law judge by other administrative law judges; or

(b) Communications made to an administrative law judge by any person employed by the office to assist the administrative law judge. [1999 c.849 §20; 2003 c.75 §18; 2009 c.866 §9]

183.690 Office of Administrative Hearings Oversight Committee. (1) The Office of Administrative Hearings Oversight Committee is created. The committee consists of nine members, as follows:

(a) The President of the Senate and the Speaker of the House of Representatives shall appoint four legislators to the committee. Two shall be Senators appointed by the President. Two shall be Representatives appointed by the Speaker.

(b) The Governor shall appoint two members to the committee. At least one of the members appointed by the Governor shall be an active member of the Oregon State Bar with experience in representing parties who are not agencies in contested case hearings.

(c) The Attorney General shall appoint two members to the committee.

(d) The chief administrative law judge for the Office of Administrative Hearings shall serve as an ex officio member of the committee. The chief administrative law judge may cast a vote on a matter before the committee if the votes of the other members are equally divided on the matter.

(2) The term of a legislative member of the committee shall be two years. If a person appointed by the President of the Senate or by the Speaker of the House ceases to be a Senator or Representative during the person's term on the committee, the person may continue to serve as a member of the committee for the balance of the member's term on the committee. The term of all other appointed members shall be four years. Appointed members of the committee may be reappointed. If a vacancy occurs in one of the appointed positions for any reason during the term of membership, the official who appointed the member to the vacated position shall appoint a new member to serve the remainder of the term. An appointed member of the committee may be removed from the committee at any time by the official who appointed the member.

(3)(a) The members of the committee shall select from among themselves a chairperson and a vice chairperson.

(b) The committee shall meet at such times and places as determined by the chairperson.

(4) Legislative members shall be entitled to payment of per diem and expense reimbursement under ORS 171.072, payable from funds appropriated to the Legislative Assembly.

(5) The committee shall:

(a) Study the operations of the Office of Administrative Hearings;

(b) Make any recommendations to the Governor and the Legislative Assembly that the committee deems necessary to increase the effectiveness, fairness and efficiency of the operations of the Office of Administrative Hearings;

(c) Make any recommendations for additional legislation governing the operations of the Office of Administrative Hearings; and

(d) Conduct such other studies as necessary to accomplish the purposes of this subsection.

(6) The Employment Department shall provide the committee with staff, subject to availability of funding for that purpose. [1999 c.849 §21; 2003 c.75 §19; 2005 c.22 §132; 2009 c.866 §3]

PERMITS AND LICENSES

183.700 Permits subject to ORS 183.702. (1) As used in this section and ORS 183.702, "permit" means an individual and particularized license, permit, certificate, approval, registration or similar form of permission required by law to pursue any activity specified in this section, for which an agency must weigh information, make specific findings and make determinations on a case-by-case basis for each applicant.

(2) The requirements of this section and ORS 183.702 apply to the following permits granted by:

(a) The Department of Environmental Quality under ORS 448.415, 454.655, 454.695, 454.790, 454.800, 459.205, 465.315, 465.325, 466.140, 466.145, 466.706 to 466.882, 468A.040, 468A.310, 468B.035, 468B.040, 468B.045, 468B.050 and 468B.095.

(b) The Department of State Lands under ORS 196.800 to 196.900 and 390.805 to 390.925.

(c) The Water Resources Department under ORS chapters 537 and 540, except those permits issued under ORS 537.747 to 537.765.

(d) The State Department of Agriculture pursuant to ORS 468B.200 to 468B.230 and 622.250.

(e) The State Department of Fish and Wildlife pursuant to ORS 497.142, 497.218, 497.228, 497.238, 497.248, 497.252, 497.298, 497.308, 498.019, 498.279, 508.106, 508.300, 508.760, 508.775, 508.801, 508.840, 508.880, 508.926 and 509.140.

(f) The Department of Transportation pursuant to ORS 374.312. [Formerly 183.560]

Note: 183.700 and 183.702 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 183 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

183.702 Statement of criteria and procedures for evaluating permit application; documentation of decision on application; required signature. (1) At the time a person applies for a permit specified in ORS 183.700, the issuing agency shall offer a document to that applicant that specifies the criteria and procedures for evaluating a permit application.

(2) The agencies specified in ORS 183.700 must document in writing the basis for all decisions to deny a permit specified in ORS 183.700, including citation to the criteria applied by the agency and the manner in which agency standards were utilized in applying

the criteria. The documentation required under this section shall be made part of the record for the decision on the permit application.

(3) At least one officer or employee of the issuing agency who has authority to sign orders on behalf of the agency, or the officer or employee responsible for the decision to deny a permit specified in ORS 183.700, shall sign the documentation required under subsection (2) of this section.

(4) The issuing agency shall provide to the applicant a copy of the documentation required under subsection (2) of this section. [Formerly 183.562]

Note: See note under 183.700.

183.705 Extended term for renewed licenses; fees; continuing education; rules.

(1) Notwithstanding any other provision of law, an agency that issues licenses that must be renewed on an annual basis under the laws administered by the agency also may offer those licenses with terms of two, three, four or five years. Notwithstanding any other provision of law, an agency that issues licenses that must be renewed on a biennial basis under the laws administered by the agency also may offer those licenses with terms of three, four or five years. Extended terms may be offered only for renewed licenses and may not be offered for initial applications for licenses.

(2) An agency may offer an extended term under this section for a license issued by the agency only after adopting a rule authorizing the extended term. An agency may adopt a rule authorizing an extended term only if the agency finds that the extended term is consistent with public safety and with the objectives of the licensing requirement. An agency by rule may prohibit extended terms based on prior license discipline of an applicant.

(3) An applicant must meet all qualifications established by the agency to be granted an extended term.

(4) An agency may not offer an extended term under this section if:

(a) Another agency or a local government, as defined by ORS 174.116, is authorized by statute to make a recommendation on the issuance of the license;

(b) The agency or the local government, as defined by ORS 174.116, that has authority to make a recommendation on the issuance of the license has recommended against the issuance of the license; and

(c) The recommendation of the agency or the local government, as defined by ORS 174.116, is based on licensing criteria established by statute or by rule.

(5) An extended term granted under this section may be revoked by an agency if the agency determines that the licensee is subject to discipline under the licensing criteria applicable to the licensee. An agency offering extended terms under this section by rule may establish other grounds for revoking an extended term under this section.

(6) Notwithstanding any other provision of law, an agency that offers an extended term under this section for a license issued by the agency shall increase the annual or biennial license fee established by statute by a percentage no greater than necessary to ensure that there is no revenue loss by reason of the extended term.

(7) Notwithstanding any other provision of law, an agency that offers an extended term under this section for a license issued by the agency shall increase any annual or biennial continuing education requirement established by statute as necessary to ensure that there is no reduction in the continuing education requirement for licensees by reason of the extended term. [2005 c.76 §2; 2007 c.768 §1]

LEGISLATIVE REVIEW OF RULES

183.710 Definitions for ORS 183.710 to 183.725. As used in ORS 183.710 to 183.725, unless the context requires otherwise:

(1) "Interim committee" means a committee of the Legislative Assembly that is scheduled to meet when the Legislative Assembly is not in session and that has subject-matter jurisdiction over the state agency that has adopted a rule, as set forth in the subject-matter jurisdiction list developed under ORS 183.724.

(2) "Rule" has the meaning given that term in ORS 183.310.

(3) "State agency" means an agency as defined in ORS 183.310. [Formerly 171.705; 2009 c.81 §1]

Note: 183.710 to 183.725 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 183 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

183.715 Submission of adopted rule to Legislative Counsel required; exception.

(1) A state agency that adopts a rule shall submit a copy of the adopted rule to the Legislative Counsel within 10 days after the agency files a certified copy of the rule in the office of the Secretary of State as provided in ORS 183.355 (1). The copy of an amended rule that is submitted to the Legislative Counsel must show all changes to the rule by striking through material to be deleted and underlining all new material, or by any other method that clearly shows all new and deleted material.

(2) Notwithstanding subsection (1) of this section, an agency adopting a rule incorporating published standards or a specialty code by reference is not required to file a copy of those standards with the Legislative Counsel if:

(a) The standards or a specialty code adopted are unusually voluminous and costly to reproduce; and

(b) The rule filed with the Legislative Counsel identifies the location of the standards or a specialty code so incorporated and makes them available to the Legislative Counsel on the request of the Legislative Counsel. [Formerly 171.707; 1991 c.94 §1; 1999 c.167 §1; 2005 c.18 §2]

Note: See note under 183.710.

183.720 Procedure for review of agency rule; reports on rules claimed to be duplicative or conflicting. (1) The Legislative Counsel may review, or shall review at the direction of the Legislative Counsel Committee, a proposed rule or an adopted rule of a state agency.

(2) The Legislative Counsel may review an adopted rule of a state agency upon the written request of any person affected by the rule. The Legislative Counsel shall review a proposed or adopted rule of a state agency upon the written request of any member of the Legislative Assembly. The written request for review must identify the specific objection or problem with the rule.

(3) When reviewing a rule of a state agency pursuant to subsection (1) or (2) of this section, the Legislative Counsel shall:

(a) Determine whether the rule appears to be within the intent and scope of the enabling legislation purporting to authorize its adoption; and

(b) Determine whether the rule raises any constitutional issue other than described in paragraph (a) of this subsection, and if so, the nature of the issue.

(4) In making a determination under subsection (3)(a) of this section, the Legislative Counsel shall, wherever possible, follow generally accepted principles of statutory construction.

(5) The Legislative Counsel shall prepare written findings on a rule reviewed, setting forth the determinations made under subsection (3) of this section.

(6) When a review of a rule is made by the Legislative Counsel, the Legislative Counsel shall send a copy of the determinations made under subsection (3) of this section to the appropriate interim committee or, if the review was requested by a member of the Legislative Assembly or by a person affected by the rule, to the person requesting

the review. If the Legislative Council determines that a rule is not within the intent and scope of the enabling legislation purporting to authorize the state agency's adoption of the rule, or that the rule raises a constitutional issue, the Legislative Council shall also send a copy of the determination to the agency. The Legislative Council may request that the state agency respond in writing to the determinations or appear at the meeting of the interim committee at which the committee will consider the determinations. The interim committee may direct the Legislative Council to send a copy of the determinations to the presiding officer of a house of the Legislative Assembly, who may refer the determinations to any legislative committee concerned.

(7)(a) A member of the Legislative Assembly may request that Legislative Council prepare a report on a rule adopted by a state agency that the member asserts is duplicative of or conflicts with another rule. A person affected by a rule adopted by a state agency may request that Legislative Council prepare a report on the rule if the person asserts that the rule is duplicative of or conflicts with another rule. A request for a report must be in writing and contain copies of the two rules that are claimed to be duplicative or conflicting. The second rule may be either a rule adopted by a state agency or a rule or regulation adopted by a federal agency.

(b)(A) Upon receipt of a written request by a member of the Legislative Assembly, the Legislative Council shall prepare a report to the interim committee that contains:

(i) A copy of the request, including copies of the two rules that the member asserts are conflicting or duplicative; and

(ii) Legislative Council's analysis of the requirements of the two rules.

(B) Upon receipt of a written request by a person affected by a rule adopted by a state agency, the Legislative Council may prepare a written report to the person and each state agency concerned that contains the Legislative Council's analysis of the requirements of the two rules.

(8) Upon receipt of a report under subsection (7)(b)(A) of this section, the interim committee may issue a determination that a rule is duplicative of or conflicts with the other cited rule.

(9) When a report on a rule is made by the Legislative Council under subsection (7)(b)(A) of this section, the Legislative Council shall send a copy of the report and any determinations made under subsection (8) of this section to each state agency concerned. The interim committee may direct

the Legislative Council to send a copy of the determinations to the presiding officer of a house of the Legislative Assembly, who may refer the determinations to any legislative committee concerned. [Formerly 171.709; 1993 c.729 §7; 1997 c.602 §4; 2001 c.156 §1; 2009 c.81 §4]

Note: See note under 183.710.

183.722 Required agency response to Legislative Council determination; consideration of determination by interim committee. (1)(a) If the Legislative Council determines under ORS 183.720 (3) that a proposed or adopted rule is not within the intent and scope of the enabling legislation purporting to authorize the rule's adoption, or that the rule is not constitutional, and the Legislative Council has provided a copy of that determination to the state agency pursuant to 183.720 (6), the agency shall either make a written response to the determination or appear at the meeting of the interim committee at which the committee will consider the determinations. The response of the state agency shall indicate if the agency intends to repeal, amend or take other action with respect to the rule.

(b) The interim committee shall consider the Legislative Council determination described in paragraph (a) of this subsection and any state agency response to the determination. If the interim committee adopts the Legislative Council determination, the Legislative Council shall post the determination on the Legislative Council website. Adopted determinations that are posted on the website shall be organized by OAR number and shall remain on the website until the earlier of the date that:

(A) The rule is modified and the Legislative Council determines that the modified rule is within the intent and scope of the enabling legislation;

(B) A court makes a final determination that the rule is within the intent and scope of the enabling legislation and is otherwise constitutional, all appeals of the court's determination are exhausted and the state agency notifies the Legislative Council of the determination; or

(C) The Legislative Assembly modifies the enabling legislation so as to bring the rule within the intent and scope of the enabling legislation, any other constitutional defect in the rule is cured and the state agency notifies the Legislative Council of the modification or cure.

(2) If the Legislative Council determines under ORS 183.720 (3) that a proposed or adopted rule is not within the intent and scope of the enabling legislation purporting to authorize the rule's adoption, or that the rule is not constitutional, and the interim

committee is not satisfied with the response to those issues made by the state agency, the committee may request that one or more representatives of the agency appear at a subsequent meeting of the committee along with a representative of the Oregon Department of Administrative Services for the purpose of further explaining the position of the agency.

(3) If a state agency is requested under subsection (2) of this section to appear at a subsequent meeting of the interim committee along with a representative of the Oregon Department of Administrative Services, the agency shall promptly notify the department of the request. The notification to the department must be in writing, and must include a copy of the determinations made by the Legislative Counsel and a copy of any written response made by the state agency to the determinations. [1997 c.602 §7; 1999 c.31 §2; 2009 c.81 §5]

Note: See note under 183.710.

183.724 Designation of interim committees for purposes of considering rule reports. (1) As soon as is practicable after the end of each odd-numbered year regular legislative session, the Legislative Counsel shall develop a list of state agencies with areas of responsibility that are primarily within the subject-matter jurisdiction of interim committees of the Legislative Assembly. The Legislative Counsel shall assign all state agencies to at least one interim committee. The Legislative Counsel may modify the list to reflect changes in interim committees. The Legislative Counsel shall distribute the list to all state agencies whenever the list is developed or modified.

(2) If an interim committee of one house of the Legislative Assembly has overlapping subject-matter jurisdiction with an interim committee of the other house, the Legislative Counsel may assign a state agency to either committee or to both committees. The Legislative Counsel shall strive to assign state agencies so as to ensure that the rule review workload is approximately equally distributed between the interim committees of both houses of the Legislative Assembly.

(3) The consideration of the written findings prepared by the Legislative Counsel on a rule by any one interim committee of either house of the Legislative Assembly satisfies the requirements of ORS 183.710 to 183.725. [2009 c.81 §3; 2011 c.545 §13]

Note: See note under 183.710.

183.725 Other authorized rule review by Legislative Counsel Committee. The Legislative Counsel Committee, at any time, may review any proposed or adopted rule of a state agency, and may report its recommendations in respect to the rule to the

agency. [Formerly 171.713; 1993 c.729 §8; 1997 c.602 §5; 1999 c.31 §1; 2009 c.81 §6]

Note: See note under 183.710.

CIVIL PENALTIES

183.745 Civil penalty procedures; notice; hearing; judicial review; exemptions; recording; enforcement. (1) Except as otherwise provided by law, an agency may only impose a civil penalty as provided in this section.

(2) A civil penalty imposed under this section shall become due and payable 10 days after the order imposing the civil penalty becomes final by operation of law or on appeal. A person against whom a civil penalty is to be imposed shall be served with a notice in the form provided in ORS 183.415. Service of the notice shall be accomplished in the manner provided by ORS 183.415.

(3) The person to whom the notice is addressed shall have 20 days from the date of service of the notice provided for in subsection (2) of this section in which to make written application for a hearing. The agency may by rule provide for a longer period of time in which application for a hearing may be made. If no application for a hearing is made within the time allowed, the agency may make a final order imposing the penalty. A final order entered under this subsection need not be delivered or mailed to the person against whom the civil penalty is imposed.

(4) Any person who makes application as provided for in subsection (3) of this section shall be entitled to a hearing. The hearing shall be conducted as a contested case hearing pursuant to the applicable provisions of ORS 183.413 to 183.470.

(5) Judicial review of an order made after a hearing under subsection (4) of this section shall be as provided in ORS 183.480 to 183.497 for judicial review of contested cases.

(6) When an order assessing a civil penalty under this section becomes final by operation of law or on appeal, and the amount of penalty is not paid within 10 days after the order becomes final, the order may be recorded with the county clerk in any county of this state. The clerk shall thereupon record the name of the person incurring the penalty and the amount of the penalty in the County Clerk Lien Record.

(7) This section does not apply to penalties:

(a) Imposed under the tax laws of this state;

(b) Imposed under the provisions of ORS 646.760 or 652.332;

(c) Imposed under the provisions of ORS chapter 654, 656 or 659A; or

(d) Imposed by the Public Utility Commission.

(8) This section creates no new authority in any agency to impose civil penalties.

(9) This section does not affect:

(a) Any right under any other law that an agency may have to bring an action in a court of this state to recover a civil penalty; or

(b) The ability of an agency to collect a properly imposed civil penalty under the provisions of ORS 305.830.

(10) The notice provided for in subsection (2) of this section may be made part of any other notice served by the agency under ORS 183.415.

(11) Informal disposition of proceedings under this section, whether by stipulation, agreed settlement, consent order or default, may be made at any time.

(12) In addition to any other remedy provided by law, recording an order in the County Clerk Lien Record pursuant to the provisions of this section has the effect provided for in ORS 205.125 and 205.126, and the order may be enforced as provided in ORS 205.125 and 205.126.

(13) As used in this section:

(a) "Agency" has that meaning given in ORS 183.310.

(b) "Civil penalty" includes only those monetary penalties that are specifically denominated as civil penalties by statute. [Formerly 183.090]

Note: 183.745 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 183 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

READABILITY OF PUBLIC WRITINGS

183.750 State agency required to prepare public writings in readable form. (1) Every state agency shall prepare its public writings in language that is as clear and simple as possible.

(2) As used in this section:

(a) "Public writing" means any rule, form, license or notice prepared by a state agency.

(b) "State agency" means any officer, board, commission, department, division or institution in the executive or administrative branch of state government. [Formerly 183.025]

Note: 183.750 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 183 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

Oregon Revised Statutes

Miscellaneous Provisions Related to the Sale and Service of Alcoholic Beverages

MISCELLANEOUS PROVISIONS

2013 EDITION

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475.328	Limits on professional licensing board's authority to sanction licensee for medical use of marijuana; authorizes licensed health care professional to administer medical marijuana	807.550	Holding multiple licenses; penalty
475.331	List of persons and locations; disclosure	807.560	Failure to notify department upon change of address or name; rules; penalty
475.334	Adding diseases or conditions that qualify as debilitating medical conditions; rules	807.570	Failure to carry or present license; penalty
475.338	Rules	807.580	Using invalid license; penalty
475.340	Limitations on reimbursement of costs and employer accommodation	807.590	Permitting misuse of license; penalty
475.342	Limitations on protection from criminal liability	807.600	Using another's license; penalty
475.346	Short title	807.610	Employing or providing vehicle to unqualified driver; penalty
		807.620	Giving false information to police officer; penalty
			OPEN CONTAINER VIOLATIONS
		811.170	Violation of open container law; penalty
			DRIVING UNDER INFLUENCE OF INTOXICANTS
		813.010	Driving under the influence of intoxicants; penalty
		813.011	Felony driving under the influence of intoxicants; penalty
		813.012	Crime classification for purposes of rules of Oregon Criminal Justice Commission
		813.020	Fee to be paid on conviction; screening and treatment; mandatory imprisonment or community service; attendance at victim impact treatment session; session fee
		813.215	Eligibility for diversion
		813.220	Matters to be considered by court in determining to allow diversion agreement; reasons for denial
	DRUG PARAPHERNALIA		
475.525	Sale of drug paraphernalia prohibited; definition of drug paraphernalia; exceptions		
	ENFORCEMENT OF WAGE CLAIMS		
652.335	Liability of liquor dispenser licensee for wage claims of certain individuals		

CONSTITUTIONAL PROVISIONS

Note: Article I, section 39, of the Oregon Constitution, provides:

Section 39. Sale of liquor by individual glass. The State shall have power to license private clubs, fraternal organizations, veterans' organizations, railroad corporations operating interstate trains and commercial establishments where food is cooked and served, for the purpose of selling alcoholic liquor by the individual glass at retail, for consumption on the premises, including mixed drinks and cocktails, compounded or mixed on the premises only. The Legislative Assembly shall provide in such detail as it shall deem advisable for carrying out and administering the provisions of this amendment and shall provide adequate safeguards to carry out the original intent and purpose of the Oregon Liquor Control Act, including the promotion of temperance in the use and consumption of alcoholic beverages, encourage the use and consumption of lighter beverages and aid in the establishment of Oregon industry. This power is subject to the following:

(1) The provisions of this amendment shall take effect and be in operation sixty (60) days after the approval and adoption by the people of Oregon; provided, however, the right of a local option election exists in the counties and in any incorporated city or town containing a population of at least five hundred (500). The Legislative Assembly shall prescribe a means and a procedure by which the voters of any county or incorporated city or town as limited above in any county, may through a local option election determine whether to prohibit or permit such power, and such procedure shall specifically include that whenever fifteen per cent (15%) of the registered voters of any county in the state or of any incorporated city or town as limited above, in any county in the state, shall file a petition requesting an election in this matter, the question shall be voted upon at the next regular November biennial election, provided said petition is filed not less than sixty (60) days before the day of election.

(2) Legislation relating to this matter shall operate uniformly throughout the state and all individuals shall be treated equally; and all provisions shall be liberally construed for the accomplishment of these purposes.

[Created through initiative petition filed July 2, 1952, and adopted by the people Nov. 4, 1952]

SUSPENSION OF OCCUPATIONAL AND DRIVER LICENSES

25.750 Suspension of licenses, certificates, permits and registrations; when authorized; rules. (1) All licenses, certificates, permits or registrations that a person is required by state law to possess in order to engage in an occupation or profession or to use a particular occupational or professional title, all annual licenses issued to individuals by the Oregon Liquor Control Commission, all driver licenses or permits issued by the Department of Transportation and recreational hunting and fishing licenses, as defined by rule of the Department of Justice, are subject to suspension by the respective issuing entities upon certification to the issuing entity by the administrator that a child support case record is being maintained by the Department of Justice, that the case is being enforced by the administrator under the provisions of ORS 25.080 and that one or both of the following conditions apply:

(a) That the party holding the license, certificate, permit or registration is in arrears under any child support judgment or order, in an amount equal to the greater of three months of support or \$2,500, and:

(A) Has not entered into an agreement with the administrator with respect to the child support obligation; or

(B) Is not in compliance with an agreement entered into with the administrator; or

(b) That the party holding the license, certificate, permit or registration has failed, after receiving appropriate notice, to comply with a subpoena or other procedural order relating to a paternity or child support proceeding and:

(A) Has not entered into an agreement with the administrator with respect to compliance; or

(B) Is not in compliance with such an agreement.

(2) The Department of Justice by rule shall specify the conditions and terms of agreements, compliance with which precludes the suspension of the license, certificate, permit or registration. [1993 c.365 §2; 1995 c.620 §1; 1995 c.750 §7; 1997 c.704 §37; 1999 c.80 §11; 2001 c.323 §1; 2001 c.455 §14; 2003 c.73 §43; 2009 c.209 §1]

25.752 Memberships in professional organizations that are required by state law. As used in ORS 25.750 to 25.783, "licenses, certificates, permits or registrations" includes, but is not limited to, memberships in professional organizations that are required by state law in order to engage in a profession. [1995 c.620 §12]

25.756 Identifying persons holding licenses, certificates, permits and registrations. The Department of Justice shall enter into agreements regarding the identification of persons who are subject to the provisions of ORS 25.750 to 25.783 and who hold licenses, certificates, permits or registrations with:

- (1) The Oregon Liquor Control Commission;
- (2) All entities that issue licenses, certificates, permits or registrations that a person is required by state law to possess to engage in an occupation, profession or recreational hunting or fishing or to use a particular occupational or professional title; and
- (3) The Department of Transportation. [1993 c.365 §4; 1995 c.620 §2; 1995 c.750 §8; 1997 c.704 §38; 1999 c.80 §12]

25.759 Notice to persons subject to suspension; contents. Upon identification of a person subject to suspension under ORS 25.750 to 25.783, the administrator may issue a notice, sent by regular mail to both the address of record as shown in the records of the issuing entity and the address of record as shown on the administrator's child support file. Such notice shall contain the following information:

- (1) That certain licenses, certificates, permits and registrations, which shall be specified in the notice, are subject to suspension as provided for by ORS 25.750 to 25.783.
- (2) The name, final four digits of the Social Security number, if available, year of birth, if known, and child support case number or numbers of the person subject to the action.
- (3) The amount of arrears and the amount of the monthly child support obligation, if any, or, if suspension is based on ORS 25.750 (1)(b), a description of the subpoena or other procedural order with which the person subject to the action has failed to comply.
- (4) The procedures available for contesting the suspension of a license, certificate, permit or registration.
- (5) That the only bases for contesting the suspension are:
 - (a) That the arrears are not greater than three months of support or \$2,500;
 - (b) That there is a mistake in the identity of the obligor;
 - (c) That the person subject to the suspension has complied with the subpoena or other procedural order identified in subsection (3) of this section; or
 - (d) That the person subject to the suspension is in compliance with a previous

agreement as provided for by ORS 25.750 to 25.783.

(6) That the obligor may enter into an agreement, prescribed by rule by the Department of Justice, compliance with which shall preclude the suspension under ORS 25.750 to 25.783.

(7) That the obligor has 30 days from the date of the notice to contact the administrator in order to:

- (a) Contest the action in writing on a form prescribed by the administrator;
- (b) Comply with the subpoena or procedural order identified in subsection (3) of this section; or
- (c) Enter into an agreement authorized by ORS 25.750 and 25.762. The notice shall state that any agreement must be in writing and must be entered into within 30 days of making contact with the administrator.

(8) That failure to contact the administrator within 30 days of the date of the notice shall result in notification to the issuing entity to suspend the license, certificate, permit or registration. [1993 c.365 §5; 1995 c.620 §3; 1997 c.704 §39; 1999 c.80 §13; 2001 c.323 §2; 2001 c.455 §15; 2003 c.73 §44; 2011 c.318 §14; 2013 c.184 §3]

25.762 Agreement between obligor and administrator; effect of failure to contest suspension or to enter into agreement. (1) If the administrator is contacted within 30 days of the date of the notice specified in ORS 25.759, the administrator and the obligor may enter into an agreement as provided for by rule of the Department of Justice. If no contest is filed or if no agreement is entered into within the time prescribed by ORS 25.750 to 25.783, or if the obligor fails to comply with the terms of an agreement previously entered into, the administrator shall advise the issuing entity to suspend the license, certificate, permit or registration forthwith.

(2) After receipt of notice to suspend from the administrator, no further administrative review or contested case proceeding within or by the issuing entity is required. [1993 c.365 §6; 1995 c.620 §4; 1999 c.80 §14; 2001 c.323 §3; 2003 c.73 §45]

25.765 Procedure if obligor contacts administrator within time limits; hearing. (1) If the obligor makes the contact within 30 days of the date of the notice as provided for in ORS 25.759, the administrator shall provide the obligor with the opportunity to contest the suspension on the bases set forth in ORS 25.759 (5). The administrator shall determine whether suspension should occur. If the administrator determines that suspension should occur, the administrator shall make a written determination of such finding.

(2) The obligor may object to the determination described in subsection (1) of this section within 30 days after the date of the determination. Any hearing on the objection shall be conducted by an administrative law judge assigned from the Office of Administrative Hearings. Any suspension is stayed pending the decision of the administrative law judge. Any order of the administrative law judge that supports a suspension shall result in the notification to the issuing entity by the administrator to suspend the license, certificate, permit or registration forthwith.

(3) After receipt of notice to suspend from the administrator, no further administrative review or contested case proceeding within or by the issuing entity is required. [1993 c.365 §7; 1995 c.620 §5; 1999 c.80 §15; 1999 c.849 §§43,44; 2001 c.323 §§4,5; 2003 c.75 §26; 2005 c.560 §7]

25.768 Judicial review of order. The order of the administrative law judge is final and is subject to judicial review as provided in ORS 183.482. Any suspension under ORS 25.750 to 25.783 is not stayed pending judicial review. [1993 c.365 §8; 2003 c.75 §76]

25.771 Obligor holding more than one license, certificate, permit or registration. In the event that an obligor holds more than one license, certificate, permit or registration described in ORS 25.750, any determination regarding suspension of one license, certificate, permit or registration is sufficient to suspend any other license, certificate, permit or registration described in ORS 25.750. [1993 c.365 §9; 1995 c.620 §6]

25.774 Reinstatement. When, at any time after suspension under ORS 25.750 to 25.783, the conditions resulting in the suspension no longer exist, the administrator shall so notify the issuing entity and shall confirm that the license, certificate, permit or registration may be reinstated contingent upon the requirements of the issuing entity. Until the issuing entity receives notice under this section, the issuing entity may not reinstate, reissue, renew or otherwise make the license, certificate, permit or registration available to the holder of the suspended license, certificate, permit or registration. [1993 c.365 §10; 1995 c.620 §7; 1999 c.80 §16; 2001 c.323 §6]

25.777 Reimbursing issuing entities for costs incurred. The Department of Justice shall enter into agreements to reimburse issuing entities for their costs of compliance with ORS 25.750 to 25.783 to the extent that those costs are eligible for Federal Financial Participation under Title IV-D of the Social Security Act. [1993 c.365 §11; 1995 c.620 §8; 2001 c.323 §7]

25.780 Other licenses, certificates, permits and registrations subject to suspension. In addition to any other grounds for suspension provided by law:

(1) The Oregon Liquor Control Commission and any entity that issues licenses, certificates, permits or registrations that a person is required by state law to possess to engage in an occupation, profession or recreational hunting or fishing or to use a particular occupational or professional title shall suspend without further hearing the licenses, certificates, permits or registrations of a person upon certification by the administrator that the person is subject to an order suspending the license, certificate, permit or registration. The certification must include the information specified in ORS 25.750 (1).

(2) The Department of Transportation shall suspend without further hearing the driver license or driver permit of a person upon certification by the administrator that the person is subject to an order suspending the license or permit. The certification must include the information specified in ORS 25.750 (1). [1993 c.365 §13; 1995 c.620 §9; 1995 c.750 §5; 1999 c.80 §17; 2001 c.323 §8]

25.783 Confidentiality of information. Any entity described in ORS 25.756 that receives an inquiry as to the status of a person who has had a license, certificate, permit or registration suspended under ORS 25.750 to 25.783 shall respond only that the license, certificate, permit or registration was suspended pursuant to ORS 25.750 to 25.783. The entity shall not release or make other use of information that it receives pursuant to ORS 25.750 to 25.783. [1993 c.365 §14; 1995 c.620 §10]

25.785 Issuing entities to require Social Security number. (1) Any state agency, board or commission that is authorized to issue an occupational, professional, recreational or driver license, certificate, permit or registration subject to suspension under ORS 25.750 to 25.783 shall require that an individual's Social Security number be recorded on an application for, or form for renewal of, a license, certificate, permit or registration and to the maximum extent feasible shall include the Social Security number in automated databases containing information about the individual.

(2) A state agency, board or commission described in subsection (1) of this section may accept a written statement from an individual who has not been issued a Social Security number by the United States Social Security Administration to fulfill the requirement in subsection (1) of this section.

(3) An individual may not submit to a state agency, board or commission a written statement described in subsection (2) of this section knowing the statement to be false.

[1997 c.746 §117; 1999 c.80 §93; 2003 c.610 §1; 2005 c.22 §17]

Note: 25.785 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 25 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

FALSE SWEARING; UNSWORN FALSIFICATION

162.075 False swearing. (1) A person commits the crime of false swearing if the person makes a false sworn statement or a false unsworn declaration, knowing it to be false.

(2) False swearing is a Class A misdemeanor. [1971 c.743 §184; 2013 c.218 §20]

162.085 Unsworn falsification. (1) A person commits the crime of unsworn falsification if the person knowingly makes any false written statement to a public servant in connection with an application for any benefit.

(2) Unsworn falsification is a Class B misdemeanor. [1971 c.743 §185]

OBSTRUCTING GOVERNMENTAL ADMINISTRATION

162.245 Refusing to assist a peace officer. (1) A person commits the offense of refusing to assist a peace officer if upon command by a person known by the person to be a peace officer the person unreasonably refuses or fails to assist in effecting an authorized arrest or preventing another from committing a crime.

(2) Refusing to assist a peace officer is a Class B violation. [1971 c.743 §199; 1999 c.1051 §150]

162.247 Interfering with a peace officer or parole and probation officer. (1) A person commits the crime of interfering with a peace officer or parole and probation officer if the person, knowing that another person is a peace officer or a parole and probation officer as defined in ORS 181.610:

(a) Intentionally acts in a manner that prevents, or attempts to prevent, a peace officer or parole and probation officer from performing the lawful duties of the officer with regards to another person; or

(b) Refuses to obey a lawful order by the peace officer or parole and probation officer.

(2) Interfering with a peace officer or parole and probation officer is a Class A misdemeanor.

(3) This section does not apply in situations in which the person is engaging in:

(a) Activity that would constitute resisting arrest under ORS 162.315; or

(b) Passive resistance. [1997 c.719 §1; 1999 c.1040 §7; 2005 c.668 §1]

Note: 162.247 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 162 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

162.285 Tampering with a witness. (1) A person commits the crime of tampering with a witness if:

(a) The person knowingly induces or attempts to induce a witness or a person the person believes may be called as a witness in any official proceeding to offer false testimony or unlawfully withhold any testimony; or

(b) The person knowingly induces or attempts to induce a witness to be absent from any official proceeding to which the person has been legally summoned.

(2) Tampering with a witness is a Class C felony. [1971 c.743 §203; 1979 c.231 §1]

162.365 Criminal impersonation. (1) A person commits the crime of criminal impersonation if with intent to obtain a benefit, to injure or defraud another or to facilitate an unlawful activity, the person does an act in the assumed character of:

(a) A public servant; or

(b) An active member or veteran of the Armed Forces of the United States.

(2) It is no defense to a prosecution for criminal impersonation that:

(a) The office, position or title that the person pretended to hold did not in fact exist; or

(b) The unit of government that the person pretended to represent did not in fact exist.

(3)(a) Criminal impersonation is a Class A misdemeanor.

(b) Notwithstanding paragraph (a) of this subsection, criminal impersonation is a Class C felony if the public servant impersonated is a peace officer, judge or justice of the peace. [1971 c.743 §211; 1993 c.243 §1; 1997 c.395 §2; 2003 c.577 §12; 2007 c.510 §1]

162.385 Giving false information to peace officer for a citation or arrest on a warrant. (1) A person commits the crime of giving false information to a peace officer for issuance or service of a citation or for an arrest on a warrant if the person knowingly uses or gives a false or fictitious name, address or date of birth to any peace officer for the purpose of:

(a) The officer's issuing or serving the person a citation under authority of ORS 133.055 to 133.076 or ORS chapter 153; or

(b) The officer's arresting the person on a warrant.

(2) A person who violates this section commits a Class A misdemeanor. [1983 c.661 §11; 1999 c.1051 §70; 2003 c.777 §1; 2007 c.771 §1]

Note: 162.385 was added to and made a part of ORS chapter 133 by legislative action. It was not added to ORS chapter 162 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

MENACING

163.190 Menacing. (1) A person commits the crime of menacing if by word or conduct the person intentionally attempts to place another person in fear of imminent serious physical injury.

(2) Menacing is a Class A misdemeanor. [1971 c.743 §95]

FORGERY AND RELATED OFFENSES

165.002 Definitions for ORS 165.002 to 165.070. As used in ORS 165.002 to 165.027, and 165.032 to 165.070, unless the context requires otherwise:

(1) "Written instrument" means any paper, document, instrument, article or electronic record containing written or printed matter or the equivalent thereof, whether complete or incomplete, used for the purpose of reciting, embodying, conveying or recording information or constituting a symbol or evidence of value, right, privilege or identification, which is capable of being used to the advantage or disadvantage of some person.

(2) "Complete written instrument" means one which purports to be a genuine written instrument fully drawn with respect to every essential feature thereof.

(3) "Incomplete written instrument" means one which contains some matter by way of content or authentication but which requires additional matter in order to render it a complete written instrument.

(4) To "falsely make" a written instrument means to make or draw a complete written instrument in its entirety, or an incomplete written instrument which purports to be an authentic creation of its ostensible maker, but which is not, either because the ostensible maker is fictitious or because, if real, the ostensible maker did not authorize the making or drawing thereof.

(5) To "falsely complete" a written instrument means to transform, by adding, inserting or changing matter, an incomplete written instrument into a complete one, without the authority of anyone entitled to grant it, so that the complete written instrument falsely appears or purports to be in all respects an authentic creation of its ostensible maker or authorized by the ostensible maker.

(6) To "falsely alter" a written instrument means to change, without authorization by anyone entitled to grant it, a written instrument, whether complete or incomplete, by means of erasure, obliteration, deletion, insertion of new matter, transposition of matter, or in any other manner, so that the instrument so altered falsely appears or purports to be in all respects an authentic creation of its ostensible maker or authorized by the ostensible maker.

(7) To "utter" means to issue, deliver, publish, circulate, disseminate, transfer or tender a written instrument or other object to another.

(8) "Forged instrument" means a written instrument which has been falsely made, completed or altered.

(9) "Electronic record" has the meaning given that term in ORS 84.004.

(10) "Signature" includes, but is not limited to, an electronic signature, as defined in ORS 84.004. [1971 c.743 §151; 2001 c.535 §27]

165.013 Forgery in the first degree. (1) A person commits the crime of forgery in the first degree if the person violates ORS 165.007:

(a) And the written instrument is or purports to be any of the following:

(A) Part of an issue of money, securities, postage or revenue stamps, or other valuable instruments issued by a government or governmental agency;

(B) Part of an issue of stock, bonds or other instruments representing interests in or claims against any property or person;

(C) A deed, will, codicil, contract or assignment;

(D) A check for \$1,000 or more, a credit card purchase slip for \$1,000 or more, or a combination of checks and credit card purchase slips that, in the aggregate, total \$1,000 or more, or any other commercial instrument or other document that does or may evidence, create, transfer, alter, terminate or otherwise affect a legal right, interest, obligation or status; or

(E) A public record; or

(b) By falsely making, completing or altering, or by uttering, at least 15 retail sales receipts, Universal Product Code labels, EAN-8 labels or EAN-13 labels or a combination of at least 15 retail sales receipts, Universal Product Code labels, EAN-8 labels or EAN-13 labels.

(2) The value of single check or credit card transactions may be added together under subsection (1)(a)(D) of this section if the transactions were committed:

(a) Against multiple victims within a 30-day period; or

(b) Against the same victim within a 180-day period.

(3) Forgery in the first degree is a Class C felony. [1971 c.743 §153; 1993 c.680 §25; 2005 c.761 §1]

165.017 Criminal possession of a forged instrument in the second degree.

(1) A person commits the crime of criminal possession of a forged instrument in the second degree if, knowing it to be forged and with intent to utter same, the person possesses a forged instrument.

(2) Criminal possession of a forged instrument in the second degree is a Class A misdemeanor. [1971 c.743 §154]

165.022 Criminal possession of a forged instrument in the first degree.

(1) A person commits the crime of criminal possession of a forged instrument in the first degree if, knowing it to be forged and with intent to utter same, the person possesses a forged instrument of the kind and in the amount specified in ORS 165.013 (1).

(2) Criminal possession of a forged instrument in the first degree is a Class C felony. [1971 c.743 §155; 2005 c.761 §2]

165.055 Fraudulent use of a credit card. (1) A person commits the crime of fraudulent use of a credit card if, with intent to injure or defraud, the person uses a credit card for the purpose of obtaining property or services with knowledge that:

(a) The card is stolen or forged;

(b) The card has been revoked or canceled; or

(c) For any other reason the use of the card is unauthorized by either the issuer or the person to whom the credit card is issued.

(2) "Credit card" means a card, booklet, credit card number or other identifying symbol or instrument evidencing an undertaking to pay for property or services delivered or rendered to or upon the order of a designated person or bearer.

(3) The value of single credit card transactions may be added together if the transactions were committed:

(a) Against multiple victims within a 30-day period; or

(b) Against the same victim within a 180-day period.

(4) Fraudulent use of a credit card is:

(a) A Class A misdemeanor if the aggregate total amount of property or services the person obtains or attempts to obtain is less than \$1,000.

(b) A Class C felony if the aggregate total amount of property or services the person obtains or attempts to obtain is \$1,000 or more. [1971 c.743 §160; 1973 c.133 §7; 1987 c.907 §11; 1993 c.680 §26; 2009 c.16 §7]

165.065 Negotiating a bad check. (1) A person commits the crime of negotiating a bad check if the person makes, draws or utters a check or similar sight order for the payment of money, knowing that it will not be honored by the drawee.

(2) For purposes of this section, unless the check or order is postdated, it is prima facie evidence of knowledge that the check or order would not be honored if:

(a) The drawer has no account with the drawee at the time the check or order is drawn or uttered; or

(b) Payment is refused by the drawee for lack of funds, upon presentation within 30 days after the date of utterance, and the drawer fails to make good within 10 days after receiving notice of refusal.

(3) Negotiating a bad check is:

(a) A Class A misdemeanor, except as provided in paragraph (b) of this subsection.

(b) Enhanced from a Class A misdemeanor to a Class C felony if at the time of sentencing it is established beyond a reasonable doubt that the person has been convicted in this state, within the preceding five years, of the crime of negotiating a bad check or of theft by deception by means of a bad check. [1971 c.743 §161; 1979 c.594 §1]

165.080 Falsifying business records. (1) A person commits the crime of falsifying business records if, with intent to defraud, the person:

(a) Makes or causes a false entry in the business records of an enterprise; or

(b) Alters, erases, obliterates, deletes, removes or destroys a true entry in the business records of an enterprise; or

(c) Fails to make a true entry in the business records of an enterprise in violation of a known duty imposed upon the person by law or by the nature of the position of the person; or

(d) Prevents the making of a true entry or causes the omission thereof in the business records of an enterprise.

(2) Falsifying business records is a Class A misdemeanor. [1971 c.743 §163]

165.100 Issuing a false financial statement. (1) A person commits the crime of issuing a false financial statement if, with intent to defraud, the person:

(a) Knowingly makes or utters a written statement which purports to describe the financial condition or ability to pay of the

person or some other person and which is inaccurate in some material respect; or

(b) Represents in writing that a written statement purporting to describe a person's financial condition or ability to pay as of a prior date is accurate with respect to that person's current financial condition or ability to pay, knowing the statement to be materially inaccurate in that respect.

(2) Issuing a false financial statement is a Class A misdemeanor. [1971 c.743 §167]

IDENTITY THEFT

165.800 Identity theft. (1) A person commits the crime of identity theft if the person, with the intent to deceive or to defraud, obtains, possesses, transfers, creates, utters or converts to the person's own use the personal identification of another person.

(2) Identity theft is a Class C felony.

(3) It is an affirmative defense to violating subsection (1) of this section that the person charged with the offense:

(a) Was under 21 years of age at the time of committing the offense and the person used the personal identification of another person solely for the purpose of purchasing alcohol;

(b) Was under 18 years of age at the time of committing the offense and the person used the personal identification of another person solely for the purpose of purchasing tobacco products; or

(c) Used the personal identification of another person solely for the purpose of misrepresenting the person's age to gain access to a:

(A) Place the access to which is restricted based on age; or

(B) Benefit based on age.

(4) As used in this section:

(a) "Another person" means an individual, whether living or deceased, an imaginary person or a firm, association, organization, partnership, business trust, company, corporation, limited liability company, professional corporation or other private or public entity.

(b) "Personal identification" includes, but is not limited to, any written document or electronic data that does, or purports to, provide information concerning:

(A) A person's name, address or telephone number;

(B) A person's driving privileges;

(C) A person's Social Security number or tax identification number;

(D) A person's citizenship status or alien identification number;

(E) A person's employment status, employer or place of employment;

(F) The identification number assigned to a person by a person's employer;

(G) The maiden name of a person or a person's mother;

(H) The identifying number of a person's depository account at a "financial institution" or "trust company," as those terms are defined in ORS 706.008, or a credit card account;

(I) A person's signature or a copy of a person's signature;

(J) A person's electronic mail name, electronic mail signature, electronic mail address or electronic mail account;

(K) A person's photograph;

(L) A person's date of birth; and

(M) A person's personal identification number. [1999 c.1022 §1; 2001 c.870 §3; 2007 c.583 §1; 2013 c.158 §34]

165.803 Aggravated identity theft. (1) A person commits the crime of aggravated identity theft if:

(a) The person violates ORS 165.800 in 10 or more separate incidents within a 180-day period;

(b) The person violates ORS 165.800 and the person has a previous conviction for aggravated identity theft;

(c) The person violates ORS 165.800 and the losses incurred in a single or aggregate transaction are \$10,000 or more within a 180-day period; or

(d) The person violates ORS 165.800 and has in the person's custody, possession or control 10 or more pieces of personal identification from 10 or more different persons.

(2) Aggravated identity theft is a Class B felony.

(3) As used in this section, "previous conviction" includes:

(a) Convictions occurring before, on or after January 1, 2008; and

(b) Convictions entered in any other state or federal court for comparable offenses.

(4) The state shall plead in the accusatory instrument and prove beyond a reasonable doubt, as an element of the offense, the previous conviction for aggravated identity theft. [2007 c.584 §1]

MISREPRESENTATION OF AGE

165.805 Misrepresentation of age by a minor. (1) A person commits the crime of misrepresentation of age by a minor if:

(a) Being less than a certain, specified age, the person knowingly purports to be of

any age other than the true age of the person with the intent of securing a right, benefit or privilege which by law is denied to persons under that certain, specified age; or

(b) Being unmarried, the person knowingly represents that the person is married with the intent of securing a right, benefit or privilege which by law is denied to unmarried persons.

(2) Misrepresentation of age by a minor is a Class C misdemeanor.

(3) In addition to and not in lieu of any other penalty established by law, a person who, using a driver permit or license or other identification issued by the Department of Transportation of this state or its equivalent in another state, commits the crime of misrepresentation of age by a minor in order to purchase or consume alcoholic liquor may be required to perform community service 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 suspending driving privileges under this section, the court, upon petition of the person, may withdraw the order at any time the court deems appropriate. The court notification to the department 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) The prohibitions of this section do not apply to any person acting under the direction of the Oregon Liquor Control Commission or a liquor enforcement inspector or under the direction of state or local law enforcement agencies for the purpose of investigating possible violations of laws prohibiting sales of alcoholic beverages to persons who are under a certain, specified age.

(5) The prohibitions of this section do not apply to a person under the age of 21 years who is acting under the direction of a licensee for the purpose of investigating possible violations by employees of the licensee of laws prohibiting sales of alcoholic beverages to persons who are under the age of 21 years. [1971 c.743 §285; 1991 c.860 §1; 1993 c.18 §25; 2001 c.791 §3; 2011 c.355 §19; 2012 c.54 §28]

DISORDERLY CONDUCT; HARASSMENT

166.023 Disorderly conduct in the first degree. (1) A person commits the crime of disorderly conduct in the first degree if, with intent to cause public inconvenience, annoyance or alarm, or knowingly creating a risk thereof, the person initiates or circulates a report, knowing it to be false:

(a) Concerning an alleged hazardous substance or an alleged or impending fire, explosion, catastrophe or other emergency; and

(b) Stating that the hazardous substance, fire, explosion, catastrophe or other emergency is located in or upon a school as defined in ORS 339.315.

(2)(a) Disorderly conduct in the first degree is a Class A misdemeanor.

(b) Notwithstanding paragraph (a) of this subsection, disorderly conduct in the first degree is a Class C felony if the defendant has at least one prior conviction for violating subsection (1) of this section. [2005 c.631 §3]

166.025 Disorderly conduct in the second degree. (1) A person commits the crime of disorderly conduct in the second degree if, with intent to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof, the person:

(a) Engages in fighting or in violent, tumultuous or threatening behavior;

(b) Makes unreasonable noise;

(c) Disturbs any lawful assembly of persons without lawful authority;

(d) Obstructs vehicular or pedestrian traffic on a public way;

(e) Initiates or circulates a report, knowing it to be false, concerning an alleged or impending fire, explosion, crime, catastrophe or other emergency; or

(f) Creates a hazardous or physically offensive condition by any act which the person is not licensed or privileged to do.

(2)(a) Disorderly conduct in the second degree is a Class B misdemeanor.

(b) Notwithstanding paragraph (a) of this subsection, disorderly conduct in the second degree is a Class A misdemeanor if the crime is committed within 200 feet of the real property on which the person knows a funeral service is being conducted.

(3) As used in this section, "funeral service" means a burial or other memorial service for a deceased person. [1971 c.743 §220; 1983 c.546 §5; 2001 c.104 §55; 2005 c.631 §1; 2012 c.35 §1]

166.065 Harassment. (1) A person commits the crime of harassment if the person intentionally:

(a) Harasses or annoys another person by:

(A) Subjecting such other person to offensive physical contact;

(B) Publicly insulting such other person by abusive words or gestures in a manner intended and likely to provoke a violent response; or

(C) Distributing a visual recording, as defined in ORS 163.665, of the other person

engaged in sexually explicit conduct, as defined in ORS 163.665, or in a state of nudity, as defined in ORS 163.700, when the other person is under 18 years of age at the time of the recording;

(b) Subjects another to alarm by conveying a false report, known by the conveyor to be false, concerning death or serious physical injury to a person, which report reasonably would be expected to cause alarm; or

(c) Subjects another to alarm by conveying a telephonic, electronic or written threat to inflict serious physical injury on that person or to commit a felony involving the person or property of that person or any member of that person's family, which threat reasonably would be expected to cause alarm.

(2)(a) A person is criminally liable for harassment if the person knowingly permits any telephone or electronic device under the person's control to be used in violation of subsection (1) of this section.

(b) Harassment that is committed under the circumstances described in subsection (1)(c) of this section is committed in either the county in which the communication originated or the county in which the communication was received.

(3) Harassment is a Class B misdemeanor.

(4) Notwithstanding subsection (3) of this section, harassment is a Class A misdemeanor if a person violates:

(a) Subsection (1)(a)(A) of this section by subjecting another person to offensive physical contact and the offensive physical contact consists of touching the sexual or other intimate parts of the other person;

(b) Subsection (1)(a)(C) of this section; or

(c) Subsection (1)(c) of this section and:

(A) The person has a previous conviction under subsection (1)(c) of this section and the victim of the current offense was the victim or a member of the family of the victim of the previous offense;

(B) At the time the offense was committed, the victim was protected by a stalking protective order, a restraining order as defined in ORS 24.190 or any other court order prohibiting the person from contacting the victim;

(C) At the time the offense was committed, the person reasonably believed the victim to be under 18 years of age and more than three years younger than the person; or

(D)(i) The person conveyed a threat to kill the other person or any member of the family of the other person;

(ii) The person expressed the intent to carry out the threat; and

(iii) A reasonable person would believe that the threat was likely to be followed by action.

(5) It is not a defense to a charge under subsection (1)(a)(C) of this section that the defendant did not know the age of the victim.

(6) As used in this section, "electronic threat" means a threat conveyed by electronic mail, the Internet, a telephone text message or any other transmission of information by wire, radio, optical cable, cellular system, electromagnetic system or other similar means. [1971 c.743 §223; 1981 c.468 §1; 1985 c.498 §1; 1987 c.806 §3; 1995 c.802 §1; 2001 c.870 §2; 2009 c.783 §1; 2013 c.649 §26]

166.070 Aggravated harassment. (1) A person commits the crime of aggravated harassment if the person, knowing that the other person is a:

(a) Staff member, knowingly propels saliva, blood, urine, semen, feces or other dangerous substance at the staff member while the staff member is acting in the course of official duty or as a result of the staff member's official duties;

(b) Public safety officer, knowingly propels blood, urine, semen or feces at the public safety officer while the public safety officer is acting in the course of official duty or as a result of the public safety officer's official duties; or

(c) Public safety officer, intentionally propels saliva at the public safety officer, and the saliva comes into physical contact with the public safety officer, while the public safety officer is acting in the course of official duty or as a result of the public safety officer's official duties.

(2) Aggravated harassment is a Class C felony. When a person is convicted of violating subsection (1)(a) of this section, in addition to any other sentence it may impose, the court shall impose a term of incarceration in a state correctional facility.

(3) As used in this section:

(a) "Public safety officer" means an emergency medical services provider as defined in ORS 682.025, a liquor enforcement inspector as defined in ORS 471.001 or a fire service professional, a parole and probation officer or a police officer as those terms are defined in ORS 181.610.

(b) "Staff member" has the meaning given that term in ORS 163.165. [2009 c.783 §2; 2011 c.703 §28; 2012 c.54 §27; 2013 c.477 §1]

Note: 166.070 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 166 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

GAMBLING OFFENSES

167.117 Definitions for ORS 167.108 to 167.164 and 464.270 to 464.530. As used in ORS 167.108 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, panquiqui, 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 non-profit 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 electromechanical 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;

(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; or

(F) Any device used to operate bingo in compliance with ORS 167.118 by a charitable, fraternal or religious organization licensed to operate bingo pursuant to ORS 167.118, 464.250 to 464.380 and 464.420 to 464.530.

(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) "Internet" means an interactive computer service or system or an information service, system or access software provider that provides or enables computer access by multiple users to a computer server and includes, but is not limited to, an information service, system or access software provider that provides access to a network system commonly known as the Internet, or any comparable system or service and also includes, but is not limited to a World Wide Web page, newsgroup, message board, mailing list or chat area on any

interactive computer service or system or other online service.

(12) "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;

(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.

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

(14) "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.

(15) "Operating expenses" means those expenses incurred in the operation of a bingo, lotto or raffle game, 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.

(16) "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.

(17) "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.

(18) "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.

(19) "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.

(20)(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 adap-

tation, 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.

(21) "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.

(22) "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.

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

(a) Not open to the public; and

(b) Of limited duration.

(24) "Unlawful" means not specifically authorized by law. [1971 c.669 §3a; 1971 c.743 §263; 1973 c.788 §1; 1974 c.7 §1; 1975 c.421 §1; 1977 c.850 §1; 1983 c.813 §1; 1987 c.914 §1; 1991 c.962 §7; 1995 c.577 §2; 1997 c.867 §1; 1999 c.193 §1; 2001 c.228 §1; 2001 c.502 §7; 2005 c.57 §1; 2005 c.355 §2]

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 §264; 1997 c.867 §21]

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 §265; 1997 c.867 §22]

**PUBLIC SAFETY STANDARDS
AND TRAINING**

181.610 Definitions for ORS 181.610 to 181.712. As used in ORS 181.610 to 181.712, unless the context requires otherwise:

(1) "Abuse" has the meaning given that term in ORS 107.705.

(2) "Board" means the Board on Public Safety Standards and Training appointed pursuant to ORS 181.620.

(3) "Certified reserve officer" means a reserve officer who has been designated by a local law enforcement unit, has received training necessary for certification and has met the minimum standards and training requirements established under ORS 181.640.

(4) "Commissioned" means being authorized to perform various acts or duties of a police officer or certified reserve officer and acting under the supervision and responsibility of a county sheriff or as otherwise provided by law.

(5) "Corrections officer" means an officer or member employed full-time by a law enforcement unit who:

(a) Is charged with and primarily performs the duty of custody, control or supervision of individuals convicted of or arrested for a criminal offense and confined in a place of incarceration or detention other than a place used exclusively for incarceration or detention of juveniles; or

(b) Has been certified as a corrections officer described in paragraph (a) of this subsection and has supervisory or management authority for corrections officers described in paragraph (a) of this subsection.

(6) "Department" means the Department of Public Safety Standards and Training.

(7) "Director" means the Director of the Department of Public Safety Standards and Training.

(8) "Domestic violence" means abuse between family or household members.

(9) "Emergency medical dispatcher" means a person who has responsibility to process requests for medical assistance from the public or to dispatch medical care providers.

(10) "Family or household members" has the meaning given that term in ORS 107.705.

(11) "Fire service professional" means a paid or volunteer firefighter, an officer or a member of a public or private fire protection agency that is engaged primarily in fire investigation, fire prevention, fire safety, fire control or fire suppression or providing emergency medical services, light and heavy rescue services, search and rescue services or hazardous materials incident response.

"Fire service professional" does not mean forest fire protection agency personnel.

(12) "Law enforcement unit" means:

(a) A police force or organization of the state, a city, university that has established a police department under ORS 352.383 or 353.125, port, school district, mass transit district, county, county service district authorized to provide law enforcement services under ORS 451.010, tribal government as defined in section 1, chapter 644, Oregon Laws 2011, that employs authorized tribal police officers as defined in section 1, chapter 644, Oregon Laws 2011, the Criminal Justice Division of the Department of Justice, the Department of Corrections, the Oregon State Lottery Commission, the Security and Emergency Preparedness Office of the Judicial Department or common carrier railroad the primary duty of which, as prescribed by law, ordinance or directive, is one or more of the following:

(A) Detecting crime and enforcing the criminal laws of this state or laws or ordinances relating to airport security;

(B) The custody, control or supervision of individuals convicted of or arrested for a criminal offense and confined to a place of incarceration or detention other than a place used exclusively for incarceration or detention of juveniles; or

(C) The control, supervision and reformation of adult offenders placed on parole or sentenced to probation and investigation of adult offenders on parole or probation or being considered for parole or probation;

(b) A police force or organization of a private entity with a population of more than 1,000 residents in an unincorporated area the employees of which are commissioned by a county sheriff;

(c) A district attorney's office;

(d) The Oregon Liquor Control Commission with regard to liquor enforcement inspectors; or

(e) A humane investigation agency as defined in ORS 181.433.

(13) "Liquor enforcement inspector" has the meaning given that term in ORS 471.001.

(14) "Parole and probation officer" means:

(a) An officer who is employed full-time by the Department of Corrections, a county or a court and who is charged with and performs the duty of:

(A) Community protection by controlling, investigating, supervising and providing or making referrals to reformatory services for adult parolees or probationers or offenders on post-prison supervision; or

(B) Investigating adult offenders on parole or probation or being considered for parole or probation; or

(b) An officer who:

(A) Is certified and has been employed as a full-time parole and probation officer for more than one year;

(B) Is employed part-time by the Department of Corrections, a county or a court; and

(C) Is charged with and performs the duty of:

(i) Community protection by controlling, investigating, supervising and providing or making referrals to reformatory services for adult parolees or probationers or offenders on post-prison supervision; or

(ii) Investigating adult offenders on parole or probation or being considered for parole or probation.

(15) "Police officer" means:

(a) An officer, member or employee of a law enforcement unit employed full-time as a peace officer who is:

(A) Commissioned by a city, port, school district, mass transit district, county, county service district authorized to provide law enforcement services under ORS 451.010, tribal government as defined in section 1, chapter 644, Oregon Laws 2011, the Criminal Justice Division of the Department of Justice, the Oregon State Lottery Commission, a university that has established a police department under ORS 352.383 or 353.125, the Governor or the Department of State Police; and

(B) Responsible for enforcing the criminal laws of this state or laws or ordinances relating to airport security;

(b) An investigator of a district attorney's office if the investigator is or has been certified as a peace officer in this or another state;

(c) A humane special agent commissioned under ORS 181.433;

(d) A judicial marshal appointed under ORS 1.177 who is trained pursuant to ORS 181.647; or

(e) An authorized tribal police officer as defined in section 1, chapter 644, Oregon Laws 2011.

(16) "Public or private safety agency" means a unit of state or local government, a special purpose district or a private firm that provides, or has authority to provide, fire fighting, police, ambulance or emergency medical services.

(17) "Public safety personnel" and "public safety officer" include corrections officers, youth correction officers, emergency medical dispatchers, parole and probation officers,

police officers, certified reserve officers, telecommunicators, liquor enforcement inspectors and fire service professionals.

(18) "Reserve officer" means an officer or member of a law enforcement unit who is:

(a) A volunteer or employed less than full-time as a peace officer commissioned by a city, port, school district, mass transit district, county, county service district authorized to provide law enforcement services under ORS 451.010, tribal government as defined in section 1, chapter 644, Oregon Laws 2011, the Criminal Justice Division of the Department of Justice, the Oregon State Lottery Commission, a university that has established a police department under ORS 352.383 or 353.125, the Governor or the Department of State Police;

(b) Armed with a firearm; and

(c) Responsible for enforcing the criminal laws and traffic laws of this state or laws or ordinances relating to airport security.

(19) "Telecommunicator" means a person employed as an emergency telephone worker as defined in ORS 243.736 or a public safety dispatcher whose primary duties are receiving, processing and transmitting public safety information received through a 9-1-1 emergency reporting system as defined in ORS 403.105.

(20) "Youth correction officer" means an employee of the Oregon Youth Authority who is charged with and primarily performs the duty of custody, control or supervision of youth offenders confined in a youth correction facility. [1961 c.721 §1; 1963 c.371 §1; 1967 c.305 §2; 1973 c.420 §1; 1975 c.290 §1; 1975 c.392 §3; 1975 c.666 §4; 1977 c.382 §1; 1977 c.477 §1; 1977 c.737 §1; 1979 c.656 §4; 1981 c.449 §1; 1985 c.302 §9; 1985 c.565 §20; 1987 c.320 §137; 1989 c.1058 §1; 1991 c.742 §1; 1993 c.14 §22; 1993 c.185 §10; 1993 c.594 §1; 1993 c.623 §1; 1995 c.97 §1; 1995 c.128 §2; 1995 c.303 §1; 1995 c.422 §131q; 1995 c.624 §§1.1a; 1995 c.651 §8; 1997 c.249 §53; 1997 c.853 §1; 1999 c.360 §1; 1999 c.854 §1; 1999 c.867 §1; 2009 c.316 §1; 2009 c.417 §1; 2011 c.320 §1; 2011 c.506 §27; 2011 c.644 §27; 2012 c.54 §22; 2012 c.67 §13; 2012 c.88 §4; 2013 c.1 §17; 2013 c.154 §6; 2013 c.180 §31]

Note: The amendments to 181.610 by section 50, chapter 644, Oregon Laws 2011, become operative July 1, 2015. See section 58, chapter 644, Oregon Laws 2011, as amended by section 77, chapter 644, Oregon Laws 2011. The text that is operative on and after July 1, 2015, including amendments by section 23, chapter 54, Oregon Laws 2012, section 14, chapter 67, Oregon Laws 2012, section 5, chapter 88, Oregon Laws 2012, section 18, chapter 1, Oregon Laws 2013, section 7, chapter 154, Oregon Laws 2013, and section 32, chapter 180, Oregon Laws 2013, is set forth for the user's convenience.

181.610. As used in ORS 181.610 to 181.712, unless the context requires otherwise:

(1) "Abuse" has the meaning given that term in ORS 107.705.

(2) "Board" means the Board on Public Safety Standards and Training appointed pursuant to ORS 181.620.

(3) "Certified reserve officer" means a reserve officer who has been designated by a local law enforcement

unit, has received training necessary for certification and has met the minimum standards and training requirements established under ORS 181.640.

(4) "Commissioned" means being authorized to perform various acts or duties of a police officer or certified reserve officer and acting under the supervision and responsibility of a county sheriff or as otherwise provided by law.

(5) "Corrections officer" means an officer or member employed full-time by a law enforcement unit who:

(a) Is charged with and primarily performs the duty of custody, control or supervision of individuals convicted of or arrested for a criminal offense and confined in a place of incarceration or detention other than a place used exclusively for incarceration or detention of juveniles; or

(b) Has been certified as a corrections officer described in paragraph (a) of this subsection and has supervisory or management authority for corrections officers described in paragraph (a) of this subsection.

(6) "Department" means the Department of Public Safety Standards and Training.

(7) "Director" means the Director of the Department of Public Safety Standards and Training.

(8) "Domestic violence" means abuse between family or household members.

(9) "Emergency medical dispatcher" means a person who has responsibility to process requests for medical assistance from the public or to dispatch medical care providers.

(10) "Family or household members" has the meaning given that term in ORS 107.705.

(11) "Fire service professional" means a paid or volunteer firefighter, an officer or a member of a public or private fire protection agency that is engaged primarily in fire investigation, fire prevention, fire safety, fire control or fire suppression or providing emergency medical services, light and heavy rescue services, search and rescue services or hazardous materials incident response. "Fire service professional" does not mean forest fire protection agency personnel.

(12) "Law enforcement unit" means:

(a) A police force or organization of the state, a city, university that has established a police department under ORS 352.383 or 353.125, port, school district, mass transit district, county, county service district authorized to provide law enforcement services under ORS 451.010, tribal government, the Criminal Justice Division of the Department of Justice, the Department of Corrections, the Oregon State Lottery Commission, the Security and Emergency Preparedness Office of the Judicial Department or common carrier railroad the primary duty of which, as prescribed by law, ordinance or directive, is one or more of the following:

(A) Detecting crime and enforcing the criminal laws of this state or laws or ordinances relating to airport security;

(B) The custody, control or supervision of individuals convicted of or arrested for a criminal offense and confined to a place of incarceration or detention other than a place used exclusively for incarceration or detention of juveniles; or

(C) The control, supervision and reformation of adult offenders placed on parole or sentenced to probation and investigation of adult offenders on parole or probation or being considered for parole or probation;

(b) A police force or organization of a private entity with a population of more than 1,000 residents in an unincorporated area the employees of which are commissioned by a county sheriff;

(c) A district attorney's office;

(d) The Oregon Liquor Control Commission with regard to liquor enforcement inspectors; or

(e) A humane investigation agency as defined in ORS 181.433.

(13) "Liquor enforcement inspector" has the meaning given that term in ORS 471.001.

(14) "Parole and probation officer" means:

(a) An officer who is employed full-time by the Department of Corrections, a county or a court and who is charged with and performs the duty of:

(A) Community protection by controlling, investigating, supervising and providing or making referrals to reformatory services for adult parolees or probationers or offenders on post-prison supervision; or

(B) Investigating adult offenders on parole or probation or being considered for parole or probation; or

(b) An officer who:

(A) Is certified and has been employed as a full-time parole and probation officer for more than one year;

(B) Is employed part-time by the Department of Corrections, a county or a court; and

(C) Is charged with and performs the duty of:

(i) Community protection by controlling, investigating, supervising and providing or making referrals to reformatory services for adult parolees or probationers or offenders on post-prison supervision; or

(ii) Investigating adult offenders on parole or probation or being considered for parole or probation.

(15) "Police officer" means:

(a) An officer, member or employee of a law enforcement unit employed full-time as a peace officer who is:

(A) Commissioned by a city, port, school district, mass transit district, county, county service district authorized to provide law enforcement services under ORS 451.010, tribal government, the Criminal Justice Division of the Department of Justice, the Oregon State Lottery Commission, a university that has established a police department under ORS 352.383 or 353.125, the Governor or the Department of State Police; and

(B) Responsible for enforcing the criminal laws of this state or laws or ordinances relating to airport security;

(b) An investigator of a district attorney's office if the investigator is or has been certified as a peace officer in this or another state;

(c) A humane special agent commissioned under ORS 181.433; or

(d) A judicial marshal appointed under ORS 1.177 who is trained pursuant to ORS 181.647.

(16) "Public or private safety agency" means a unit of state or local government, a special purpose district or a private firm that provides, or has authority to provide, fire fighting, police, ambulance or emergency medical services.

(17) "Public safety personnel" and "public safety officer" include corrections officers, youth correction officers, emergency medical dispatchers, parole and probation officers, police officers, certified reserve officers, telecommunicators, liquor enforcement inspectors and fire service professionals.

(18) "Reserve officer" means an officer or member of a law enforcement unit who is:

(a) A volunteer or employed less than full-time as a peace officer commissioned by a city, port, school district, mass transit district, county, county service district authorized to provide law enforcement services under ORS 451.010, tribal government, the Criminal Justice Division of the Department of Justice, the Ore-

gon State Lottery Commission, a university that has established a police department under ORS 352.383 or 353.125, the Governor or the Department of State Police;

(b) Armed with a firearm; and

(c) Responsible for enforcing the criminal laws and traffic laws of this state or laws or ordinances relating to airport security.

(19) "Telecommunicator" means a person employed as an emergency telephone worker as defined in ORS 243.736 or a public safety dispatcher whose primary duties are receiving, processing and transmitting public safety information received through a 9-1-1 emergency reporting system as defined in ORS 403.105.

(20) "Youth correction officer" means an employee of the Oregon Youth Authority who is charged with and primarily performs the duty of custody, control or supervision of youth offenders confined in a youth correction facility.

181.612 Authority of Department of Public Safety Standards and Training to require fingerprints. (1) For the purpose of requesting a state or nationwide criminal records check under ORS 181.534, the Department of Public Safety Standards and Training may require the fingerprints of a person who:

(a) Is employed or applying for employment by the department;

(b) Provides services or seeks to provide services to the department as a contractor, vendor or volunteer; or

(c) Is applying for a license or certificate, or for reissuance of a license or certificate, that is issued by the department or is under investigation by the department.

(2) ORS 181.534 (11) and (12) does not apply to the department when the department makes denial or revocation decisions regarding persons described in subsection (1)(c) of this section or ORS 181.880 or 703.090.

(3) The department and an employee of the department acting within the course and scope of employment are immune from any civil liability that might otherwise be incurred or imposed for making denial or revocation decisions regarding persons described in subsection (1)(c) of this section or ORS 181.880 or 703.090. The department, an employee of the department acting within the course and scope of employment and an employer or employer's agent who in good faith comply with the requirements of ORS 181.662, 181.875 or 703.090, any rules adopted by the department and the decision of the department or employee of the department acting within the course and scope of employment are not liable for employment-related decisions based on decisions made under ORS 181.662, 181.875 or 703.090. The department or an employee of the department acting within the course and scope of employment is not liable for defamation or invasion of privacy in connection with the

lawful dissemination of information lawfully obtained under ORS 181.534. [2005 c.730 §6]

Note: 181.612 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 181 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

181.620 Board on Public Safety Standards and Training; term limit; confirmation. (1) The Governor shall appoint a Board on Public Safety Standards and Training consisting of 24 members as follows:

(a) Two members who are chiefs of police recommended to the Governor by the Oregon Association Chiefs of Police;

(b) One member who is a sheriff recommended to the Governor by the Oregon State Sheriffs' Association;

(c) One member who is a fire chief recommended to the Governor by the Oregon Fire Chiefs Association;

(d) One member who is a representative of the fire service recommended to the Governor by the Oregon Fire District Directors Association;

(e) One member who is a member of the Oregon State Fire Fighters Council recommended to the Governor by the executive body of the council;

(f) One member who is a representative of corrections personnel recommended to the Governor by the Oregon State Sheriffs' Association;

(g) One member who is a representative of the fire service recommended to the Governor by the Oregon Volunteer Firefighters Association;

(h) One member who is a representative of public safety telecommunicators;

(i) One member who is a district attorney recommended to the Governor by the Oregon District Attorneys Association;

(j) One member who is the Superintendent of State Police;

(k) One member who is the Chief of the Portland Police Bureau;

(L) One member who is the State Fire Marshal;

(m) One member who is the Chief of the Portland Fire Bureau;

(n) One member who is the Director of the Department of Corrections;

(o) One nonvoting member who is the Special Agent in Charge of the Federal Bureau of Investigation for Oregon;

(p) One member who is an administrator of a municipality recommended to the Governor by the executive body of the League of Oregon Cities;

(q) Two members who are nonmanagement representatives of law enforcement;

(r) One member who is a public member. A person appointed as a public member under this section:

(A) May have no personal interest or occupational responsibilities in the area of responsibility given to the board; and

(B) Must represent the interests of the public in general;

(s) Two members recommended by and representing the private security industry;

(t) One member who is a representative of the collective bargaining unit that represents the largest number of individual workers in the Department of Corrections; and

(u) One member who is a nonmanagement parole and probation officer employed by a community corrections program.

(2) The term of office of a member is three years, and no member may be removed from office except for cause. Before the expiration of the term of a member, the Governor shall appoint the member's successor to assume the member's duties on July 1 next following. In case of a vacancy for any cause, the Governor shall make an appointment, effective immediately, for the unexpired term.

(3) Except for members who serve by virtue of office, no member shall serve more than two terms. For purposes of this subsection, a person appointed to fill a vacancy consisting of an unexpired term of at least one and one-half years has served a full term.

(4) Appointments of members of the board by the Governor, except for those members who serve by virtue of office, are subject to confirmation by the Senate in the manner provided in ORS 171.562 and 171.565.

(5) A member of the board is entitled to compensation and expenses as provided in ORS 292.495. [1961 c.721 §§4,5; 1967 c.305 §3; 1969 c.314 §12; 1973 c.599 §4; 1973 c.792 §2; 1975 c.290 §15; 1977 c.382 §12; 1979 c.410 §2; 1991 c.380 §1; 1993 c.185 §11; 1995 c.510 §19; 1999 c.139 §1; 2003 c.14 §80; 2003 c.546 §8; 2003 c.669 §1; 2005 c.447 §10; 2009 c.629 §1; 2012 c.29 §3]

181.630 Organization of board; meetings; policy of state. (1) The Board on Public Safety Standards and Training shall select one of its members as chairperson and another as vice chairperson. The vice chairperson shall act as chairperson when the chairperson is absent or unable to act.

(2) The board may appoint from among its members such subcommittees as it deems necessary or useful.

(3) The board shall prescribe such terms, powers and duties for the chairperson, vice chairperson and any subcommittees of the

board as are convenient for the performance of the functions of the board.

(4) The board shall meet at least once every three months at a place and time determined by the board. The board shall also meet at such other times and places as the chairperson shall specify.

(5) It shall be the policy of the state that:

(a) The board and Department of Public Safety Standards and Training exist to develop talented individuals into public safety providers who are:

(A) Culturally competent;

(B) Ethically, physically and emotionally fit; and

(C) Well trained, highly skilled and responsive to the needs of their communities.

(b) The board and department shall promote the safety, efficiency, effectiveness, self-sufficiency and competence of public safety agencies and professionals.

(c) The board and department shall support collaboration among public and private security, law enforcement, fire service, telecommunications and corrections organizations, the related organizations with whom they work and the interests of the communities they serve.

(d) The board and department shall consult with and inform each other fully on matters of public safety standards, training and certification.

(e) The board may adopt or approve all policies, standards and minimum requirements for public safety certifications and training.

(f) The department may administer operations and procedures and shall implement or apply the policies and standards of the board.

(g) The department is and remains a full department of the state.

(6) The department, in consultation with the board, shall evaluate the training delivery systems used in other states, including self-sponsored training, electronic remote learning methods and regional training employing colleges and other organizations. The evaluation shall seek economical and effective methods that may be adapted and used in Oregon and shall be used in the development of the department's budget and facilities planning.

(7) A member of the board who serves by virtue of office may appoint a designee to represent the member at subcommittee and policy committee meetings. The designee may vote only at subcommittee and policy committee meetings. [1961 c.721 §6; 1997 c.853 §2; 1999 c.139 §2; 2001 c.734 §7]

181.632 Leave to perform duties of board or policy committee. At the request of an employee who is a public safety officer and who serves on the Board on Public Safety Standards and Training or on a policy committee established by the board, an employer shall grant leaves of absence to the employee for periods reasonably necessary for the employee to attend meetings and perform the duties of the board or committee. The employer shall grant the leaves with regular pay and benefits. [2005 c.279 §2]

181.635 Appointment of director of department. (1)(a) The Governor shall appoint the Director of the Department of Public Safety Standards and Training, who shall hold office at the pleasure of the Governor and not be subject to the State Personnel Relations Law.

(b) The person appointed as director may be selected from candidates recommended to the Governor by the Board on Public Safety Standards and Training. The candidates shall be well qualified by training and experience to perform the functions of the office.

(c) An appointed director of the department shall receive such salary as is provided by law or, if not so provided, as is fixed by the Governor.

(2)(a) The director, with the approval of the Governor and after consulting the board for advice, shall organize and reorganize the department in the manner the director considers necessary to conduct the work of the department properly.

(b) With the approval of the Governor, the director may appoint a deputy director, who shall serve at the pleasure of the director, not be subject to the State Personnel Relations Law and have full authority to act for the director, subject to the control of the director. The appointment of the deputy director shall be by written order, filed with the Secretary of State.

(3) The director, subject to applicable provisions of the State Personnel Relations Law, shall appoint all subordinate officers and employees of the department, prescribe their functions and fix their compensation.

(4) The director or the director's designee shall serve as executive secretary to the board, but shall not be a member of the board.

(5) The board shall annually evaluate the director's implementation of policies, standards and minimum requirements for public safety certifications and training, reporting to the Governor the results of the evaluation. [1963 c.371 §3; 1997 c.853 §3; 2003 c.770 §9]

181.636 Training academy; title to real property. In carrying out its duties, the Department of Public Safety Standards and Training may take title to real property needed for a training academy. [2001 c.718 §2]

181.637 Policy committees; rules. (1) The Board on Public Safety Standards and Training shall establish the following policy committees:

(a) Corrections Policy Committee;

(b) Fire Policy Committee;

(c) Police Policy Committee;

(d) Telecommunications Policy Committee; and

(e) Private Security Policy Committee.

(2) The members of each policy committee shall select a chairperson and vice chairperson for the policy committee. Only members of the policy committee who are also members of the board are eligible to serve as a chairperson or vice chairperson. The vice chairperson may act as chairperson in the absence of the chairperson.

(3) The Corrections Policy Committee consists of:

(a) All of the board members who represent the corrections discipline;

(b) The chief administrative officer of the training division of the Department of Corrections;

(c) A security manager from the Department of Corrections recommended by the Director of the Department of Corrections; and

(d) The following, who may not be current board members, appointed by the chairperson of the board:

(A) One person recommended by and representing the Oregon State Sheriffs' Association;

(B) Two persons recommended by and representing the Oregon Sheriff's Jail Command Council;

(C) One person recommended by and representing a statewide association of community corrections directors;

(D) One nonmanagement corrections officer employed by the Department of Corrections;

(E) One corrections officer who is a female, who is employed by the Department of Corrections at a women's correctional facility and who is a member of a bargaining unit; and

(F) Two nonmanagement corrections officers.

(4) The Fire Policy Committee consists of:

(a) All of the board members who represent the fire service discipline; and

(b) The following, who may not be current board members, appointed by the chairperson of the board:

(A) One person recommended by and representing a statewide association of fire instructors;

(B) One person recommended by and representing a statewide association of fire marshals;

(C) One person recommended by and representing community college fire programs;

(D) One nonmanagement firefighter recommended by a statewide organization of firefighters; and

(E) One person representing the forest protection agencies and recommended by the State Forestry Department.

(5) The Police Policy Committee consists of:

(a) All of the board members who represent the law enforcement discipline; and

(b) The following, who may not be current board members, appointed by the chairperson of the board:

(A) One person recommended by and representing the Oregon Association Chiefs of Police;

(B) Two persons recommended by and representing the Oregon State Sheriffs' Association;

(C) One command officer recommended by and representing the Oregon State Police; and

(D) Three nonmanagement law enforcement officers.

(6) The Telecommunications Policy Committee consists of:

(a) All of the board members who represent the telecommunications discipline; and

(b) The following, who may not be current board members, appointed by the chairperson of the board:

(A) Two persons recommended by and representing a statewide association of public safety communications officers;

(B) One person recommended by and representing the Oregon Association Chiefs of Police;

(C) One person recommended by and representing the Oregon State Police;

(D) Two persons representing telecommunications;

(E) One person recommended by and representing the Oregon State Sheriffs' Association;

(F) One person recommended by and representing the Oregon Fire Chiefs Association;

(G) One person recommended by and representing the Emergency Medical Services and Trauma Systems Program of the Oregon Health Authority; and

(H) One person representing emergency medical services providers and recommended by a statewide association dealing with fire medical issues.

(7) The Private Security Policy Committee consists of:

(a) All of the board members who represent the private security industry; and

(b) The following, who may not be current board members, appointed by the chairperson of the board:

(A) One person representing unarmed private security professionals;

(B) One person representing armed private security professionals;

(C) One person representing the health care industry;

(D) One person representing the manufacturing industry;

(E) One person representing the retail industry;

(F) One person representing the hospital industry;

(G) One person representing private business or a governmental entity that utilizes private security services;

(H) One person representing persons who monitor alarm systems;

(I) Two persons who are investigators licensed under ORS 703.430, one of whom is recommended by the Oregon State Bar and one of whom is in private practice; and

(J) One person who represents the public at large and who is not related within the second degree by affinity or consanguinity to a person who is employed or doing business as a private security professional or executive manager, as defined in ORS 181.870, or as an investigator, as defined in ORS 703.401.

(8) In making appointments to the policy committees under this section, the chairperson of the board shall seek to reflect the diversity of the state's population. An appointment made by the chairperson of the board must be ratified by the board before the appointment is effective. The chairperson of the board may remove an appointed member for just cause. An appointment to a policy committee that is based on the member's employment is automatically revoked if the member changes employment. The chairperson of the board shall fill a vacancy in the

same manner as making an initial appointment. The term of an appointed member is two years. An appointed member may be appointed to a second term.

(9) A policy committee may meet at such times and places as determined by the policy committee in consultation with the Department of Public Safety Standards and Training. A majority of a policy committee constitutes a quorum to conduct business. A policy committee may create subcommittees if needed.

(10)(a) Each policy committee shall develop policies, requirements, standards and rules relating to its specific discipline. A policy committee shall submit its policies, requirements, standards and rules to the board for the board's consideration. When a policy committee submits a policy, requirement, standard or rule to the board for the board's consideration, the board shall:

(A) Approve the policy, requirement, standard or rule;

(B) Disapprove the policy, requirement, standard or rule; or

(C) Defer a decision and return the matter to the policy committee for revision or reconsideration.

(b) The board may defer a decision and return a matter submitted by a policy committee under paragraph (a) of this subsection only once. If a policy, requirement, standard or rule that was returned to a policy committee is resubmitted to the board, the board shall take all actions necessary to implement the policy, requirement, standard or rule unless the board disapproves the policy, requirement, standard or rule.

(c) Disapproval of a policy, requirement, standard or rule under paragraph (a) or (b) of this subsection requires a two-thirds vote by the members of the board.

(11) At any time after submitting a matter to the board, the chairperson of the policy committee may withdraw the matter from the board's consideration. [2001 c.734 §2; 2003 c.14 §81; 2003 c.546 §1; 2003 c.669 §2; 2005 c.447 §11; 2005 c.613 §28; 2009 c.595 §160; 2009 c.629 §2; 2011 c.703 §29]

181.638 Executive committee. (1) An executive committee of the Board on Public Safety Standards and Training is created consisting of the chairperson of the board and the chairpersons of the policy committees created in ORS 181.637.

(2) If necessary, the executive committee shall reconcile inconsistencies in policies among the policy committees. The executive committee shall recommend agenda items for meetings of the board and indicate if a board vote is requested on particular agenda items. The executive committee shall meet as necessary to consider legislative concepts, bud-

gets, grants and other matters that arise between regular board meetings.

(3) Except as otherwise provided in this subsection, only those members of the executive committee who are chairpersons of policy committees may vote. A majority of the executive committee constitutes a quorum to transact business. If the chairperson of the executive committee is not a chairperson of a policy committee, the chairperson may vote only in the case of a tie vote of the other members. [2001 c.734 §3; 2003 c.14 §82; 2003 c.546 §11]

181.639 Legislative findings. (1) The Legislative Assembly finds that:

(a) Providing high quality training for public safety personnel enhances the quality of public safety services provided to communities, contributes significantly to the safety of public safety officers and reduces state, local and individual liability;

(b) Basic training for public safety personnel provides a consistent foundation of best practices knowledge and skills necessary for public safety officers throughout the state;

(c) Advanced, leadership and continuing training preserve and build on the knowledge and skills acquired during basic training, ensuring that communities continue to have well-trained professional public safety officers;

(d) Advanced, leadership and continuing training should be consistent with recognized best practices while meeting specific local needs; and

(e) Course and instructor accreditation help to ensure that advanced, leadership and continuing training programs are consistent with recognized best practices and are legally sufficient.

(2) The Department of Public Safety Standards and Training may continue to accredit advanced, leadership and continuing training courses and programs consistent with ORS 181.650. [2003 c.770 §8]

181.640 Minimum standards and training for certification; duties in improving public safety units; grants; fees; rules. (1) In accordance with any applicable provision of ORS chapter 183, to promote enforcement of law and fire services by improving the competence of public safety personnel and their support staffs, and in consultation with the agencies for which the Board on Public Safety Standards and Training and Department of Public Safety Standards and Training provide standards, certification, accreditation and training:

(a) The department shall recommend and the board shall establish by rule reasonable

minimum standards of physical, emotional, intellectual and moral fitness for public safety personnel and instructors.

(b) The department shall recommend and the board shall establish by rule reasonable minimum training for all levels of professional development, basic through executive, including but not limited to courses or subjects for instruction and qualifications for public safety personnel and instructors. Training requirements shall be consistent with the funding available in the department's legislatively approved budget.

(c) The department, in consultation with the board, shall establish by rule a procedure or procedures to be used by law enforcement units, public or private safety agencies or the Oregon Youth Authority to determine whether public safety personnel meet minimum standards or have minimum training.

(d) Subject to such terms and conditions as the department may impose, the department shall certify instructors and public safety personnel, except youth correction officers, as being qualified under the rules established by the board.

(e) The department shall deny applications for training and deny, suspend and revoke certification in the manner provided in ORS 181.661, 181.662 and 181.664 (1).

(f) The department shall cause inspection of standards and training for instructors and public safety personnel, except youth correction officers, to be made.

(g) The department may recommend and the board may establish by rule accreditation standards, levels and categories for mandated and nonmandated public safety personnel training or educational programs. The department and board, in consultation, may establish to what extent training or educational programs provided by an accredited university, college, community college or public safety agency may serve as equivalent to mandated training or as a prerequisite to mandated training. Programs offered by accredited universities, colleges or community colleges may be considered equivalent to mandated training only in academic areas.

(2) The department may:

(a) Contract or otherwise cooperate with any person or agency of government for the procurement of services or property;

(b) Accept gifts or grants of services or property;

(c) Establish fees for determining whether a training or educational program meets the accreditation standards established under subsection (1)(g) of this section;

(d) Maintain and furnish to law enforcement units and public and private safety agencies information on applicants for appointment as instructors or public safety personnel, except youth correction officers, in any part of the state; and

(e) Establish fees to allow recovery of the full costs incurred in providing services to private entities or in providing services as experts or expert witnesses.

(3) The department, in consultation with the board, may:

(a) Upon the request of a law enforcement unit or public safety agency, conduct surveys or aid cities and counties to conduct surveys through qualified public or private agencies and assist in the implementation of any recommendations resulting from such surveys.

(b) Upon the request of law enforcement units or public safety agencies, conduct studies and make recommendations concerning means by which requesting units can coordinate or combine their resources.

(c) Conduct and stimulate research to improve the police, fire service, corrections, adult parole and probation, emergency medical dispatch and telecommunicator professions.

(d) Provide grants from funds appropriated or available therefor, to law enforcement units, public safety agencies, special districts, cities, counties and private entities to carry out the provisions of this subsection.

(e) Provide optional training programs for persons who operate lockups. The term "lockup" has the meaning given it in ORS 169.005.

(f) Provide optional training programs for public safety personnel and their support staffs.

(g) Enter into agreements with federal, state or other governmental agencies to provide training or other services in exchange for receiving training, fees or services of generally equivalent value.

(h) Upon the request of a law enforcement unit or public safety agency employing public safety personnel, except youth correction officers, grant an officer, fire service professional, telecommunicator or emergency medical dispatcher a multidiscipline certification consistent with the minimum requirements adopted or approved by the board. Multidiscipline certification authorizes an officer, fire service professional, telecommunicator or emergency medical dispatcher to work in any of the disciplines for which the officer, fire service professional, telecommunicator or emergency medical dispatcher is certified. The provisions of ORS

181.652, 181.653 and 181.667 relating to lapse of certification do not apply to an officer or fire service professional certified under this paragraph as long as the officer or fire service professional maintains full-time employment in one of the certified disciplines and meets the training standards established by the board.

(i) Establish fees and guidelines for the use of the facilities of the training academy operated by the department and for nonmandated training provided to federal, state or other governmental agencies, private entities or individuals.

(4) Pursuant to ORS chapter 183, the board, in consultation with the department, shall adopt rules necessary to carry out the board's duties and powers.

(5) Pursuant to ORS chapter 183, the department, in consultation with the board, shall adopt rules necessary to carry out the department's duties and powers.

(6) For efficiency, board and department rules may be adopted jointly as a single set of combined rules with the approval of the board and the department.

(7) The department shall obtain approval of the board before submitting its legislative concepts, Emergency Board request or budget requests to the Oregon Department of Administrative Services.

(8) The Department of Public Safety Standards and Training shall develop a training program for conducting investigations required under ORS 181.789. [1961 c.721 §2; 1967 c.305 §4; 1969 c.609 §7; 1975 c.290 §2; 1975 c.605 §12; 1977 c.382 §2; 1979 c.410 §3; 1981 c.449 §2; 1983 c.606 §1; 1987 c.320 §138; 1987 c.901 §7; 1991 c.380 §2; 1991 c.742 §2; 1993 c.185 §12; 1995 c.79 §57; 1995 c.422 §131r; 1995 c.624 §2; 1997 c.853 §4; 1999 c.457 §1; 1999 c.867 §2; 2005 c.446 §1; 2005 c.448 §3; 2005 c.524 §1a; 2007 c.842 §14; 2009 c.165 §1]

181.641 Training in vehicle pursuit and mental illness recognition. The Department of Public Safety Standards and Training shall include in the minimum training required for basic certification as a police officer under ORS 181.665:

(1) The law, theory, policies and practices related to vehicle pursuit driving and, as facilities and funding permit, vehicle pursuit training exercises; and

(2) At least 24 hours of training in the recognition of mental illnesses utilizing a crisis intervention training model, at least one hour of which must include training on the appropriate use of the medical health database described in ORS 181.735. [2001 c.734 §8; 2007 c.377 §1; 2009 c.784 §2]

Note: 181.641 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 181 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

181.642 Training relating to Vienna Convention and crimes motivated by prejudice or that constitute abuse. The Board on Public Safety Standards and Training shall ensure that all police officers and certified reserve officers are trained to:

(1) Investigate, identify and report crimes:

(a) Motivated by prejudice based on the perceived race, color, religion, national origin, sexual orientation, marital status, political affiliation or beliefs, membership or activity in or on behalf of a labor organization or against a labor organization, physical or mental disability, age, economic or social status or citizenship of the victim; and

(b) That constitute abuse, as defined in ORS 419B.005, or domestic violence.

(2) Understand the requirements of the Vienna Convention on Consular Relations and identify situations in which the officers are required to inform a person of the person's rights under the convention. [1989 c.1028 §3; 1995 c.128 §1; 1995 c.624 §3; 2003 c.109 §1; 2007 c.70 §47]

181.643 Training in missing persons cases. Subject to the availability of funds, the Board on Public Safety Standards and Training shall ensure that all police officers and certified reserve officers are trained to investigate and report cases of missing children and adults. When federal training programs are made available to the state at no cost to the state, the board shall offer the training to police officers and certified reserve officers. [2001 c.612 §2; 2007 c.500 §10]

181.644 Certification of telecommunicator or emergency medical dispatcher required; extension. (1) Except for a person who has requested and obtained an extension from the Department of Public Safety Standards and Training pursuant to subsection (2) of this section, no person may be employed as a telecommunicator or emergency medical dispatcher by any public or private public safety agency for more than 18 months unless the person has been certified as being qualified as a telecommunicator or emergency medical dispatcher under the provisions of ORS 181.610 to 181.712 and the certification has neither lapsed nor been revoked pursuant to ORS 181.661, 181.662 and 181.664 (1) and not been reissued under ORS 181.664.

(2) The department, upon the facts contained in an affidavit accompanying the request for an extension, may find good cause for failure to obtain certification within the time period described in subsection (1) of this section. If the department finds that there is good cause for such failure, the department may extend for up to one year the period

that a person may serve as a telecommunicator or an emergency medical dispatcher without certification. The grant or denial of such an extension is with the sole discretion of the department. [1991 c.742 §10; 1999 c.112 §1; 2001 c.687 §1]

181.645 Certain officers required to be at least 21 years of age. A law enforcement unit in this state may not employ as a police officer, corrections officer, parole and probation officer or liquor enforcement inspector, or utilize as a certified reserve officer, any person who has not yet attained the age of 21 years. [1987 c.901 §2; 1995 c.624 §4; 2012 c.54 §24]

181.646 Certification of liquor enforcement inspectors required. (1) Except for a person who has requested and obtained an extension from the Department of Public Safety Standards and Training under subsection (2) of this section, subject to subsection (3) of this section the Oregon Liquor Control Commission may not employ a person as a liquor enforcement inspector for more than 18 months unless the person is a citizen of the United States who has been certified under ORS 181.640 as being qualified as a liquor enforcement inspector and the certification has not:

(a) Lapsed; or

(b) Been revoked under ORS 181.661, 181.662 and 181.664 (1) and not reissued under ORS 181.661 (2).

(2) The department, upon the facts contained in an affidavit accompanying the request for extension, may find good cause for failure to obtain certification within the time period described in subsection (1) of this section. If the department finds that there is good cause for the failure, the department may extend for up to one year the period that a person may serve as a liquor enforcement inspector without certification. The grant or denial of an extension is within the sole discretion of the department.

(3) The citizenship requirement in subsection (1) of this section does not apply to a person employed as a liquor enforcement inspector on March 16, 2012, who continues to serve as a liquor enforcement inspector without a lapse under subsection (4) of this section.

(4) The certification of a liquor enforcement inspector shall lapse after three or more consecutive months of not being employed as a liquor enforcement inspector unless the liquor enforcement inspector is on leave from the commission. Upon reemployment as a liquor enforcement inspector, the person whose certification has lapsed may apply to be certified under ORS 181.610 to 181.712.

(5) The commission shall pay the costs of training required for a liquor enforcement inspector to be certified by the department. [2012 c.54 §21]

Note: Section 32, chapter 54, Oregon Laws 2012, provides:

Sec. 32. (1) The Department of Public Safety Standards and Training shall make public safety personnel certification under ORS 181.640 as liquor enforcement inspectors available for qualified applicants no later than July 1, 2015.

(2) Notwithstanding section 21 of this 2012 Act [181.646] and the amendments to ORS 181.610 by sections 22 and 23 of this 2012 Act, an inspector or investigator employed by the Oregon Liquor Control Commission and not granted an extension under section 21 of this 2012 Act to obtain certification may perform the duties of a liquor enforcement inspector without certification under ORS 181.640 until January 1, 2017.

(3) An employee of the Oregon Liquor Control Commission who takes voluntary training for commission inspectors and investigators provided by the Department of Public Safety Standards and Training prior to the date that liquor enforcement inspector training is available from the department is deemed to have met the minimum basic training requirements for a liquor enforcement inspector and is exempt from any minimum physical standards for liquor enforcement inspectors developed under section 21 of this 2012 Act. [2012 c.54 §32]

181.647 Certification of judicial marshals. (1) Upon request of the Security and Emergency Preparedness Office of the Judicial Department, the Department of Public Safety Standards and Training shall certify individual judicial marshals appointed under ORS 1.177 as being qualified in the same manner as police officers pursuant to ORS 181.640.

(2) The provisions of ORS 181.610 to 181.712 relating to the training and certification of police officers apply to individual judicial marshals trained pursuant to subsection (1) of this section.

(3) Notwithstanding any other provision of law, the Security and Emergency Preparedness Office of the Judicial Department shall bear the expense of training pursuant to subsection (1) of this section. [2012 c.88 §3; 2013 c.1 §19; 2013 c.154 §8]

181.648 Certification for certain purposes of individual employed by tribal government to perform duties of public safety officer. (1) Notwithstanding any other provision of law, an individual who is employed full time by a tribal government to perform the duties of a public safety officer and who possesses the requisite qualifications may be certified or recertified as a police officer, certified reserve officer, corrections officer, parole and probation officer, fire service professional, telecommunicator or emergency medical dispatcher if the individual and the tribal government comply with the applicable provisions of ORS 181.610 to 181.712.

(2) An individual who is certified under subsection (1) of this section is considered to be employed as a full-time public safety officer in the discipline in which the certification is held for the following purposes:

(a) Denying, suspending or revoking certification under ORS 181.661, 181.662 and 181.664;

(b) Determining eligibility to apply for benefits from the Public Safety Memorial Fund under ORS 243.954 to 243.974; and

(c) Determining eligibility to be honored at the memorial created pursuant to section 1, chapter 508, Oregon Laws 1987. [2012 c.29 §2]

181.649 Training in human trafficking. The Board on Public Safety Standards and Training may require that all police officers and certified reserve officers are trained to recognize, investigate and report cases involving labor trafficking and sex trafficking of children and adults at any advanced training program operated or authorized by the Department of Public Safety Standards and Training. [2013 c.720 §13]

181.650 Certification of instructors; accreditation of training programs. (1) Upon application and payment of the appropriate fees, the Department of Public Safety Standards and Training or its authorized representative shall examine and evaluate any instructor or any public safety personnel training or educational program.

(2) If the department finds that an instructor is qualified under the minimum requirements established pursuant to ORS 181.640 (1)(a) and (b), the department in writing may certify the instructor as being qualified for such a term and upon such conditions as the department may prescribe.

(3) If the department finds that a public safety personnel training or educational program or any course, subject, facility or instruction thereof is qualified to satisfy any minimum training requirement established pursuant to ORS 181.640 (1)(a) and (b) or any accreditation standard established pursuant to ORS 181.640 (1)(g), the department may accredit the extent of that qualification to the executive authority of that public safety personnel training or educational program for such a term and upon such conditions as the department may prescribe.

(4) An individual complies with any minimum requirement of ORS 181.640 (1)(b) when the individual receives training that is accredited under ORS 181.640 (1)(g) or subsection (3) of this section as qualified to satisfy that requirement and the individual successfully meets any academic or proficiency standard or condition relating to that

minimum requirement. [1961 c.721 §8; 1967 c.305 §6; 1975 c.290 §3; 1977 c.382 §3; 1991 c.742 §3; 1993 c.185 §13; 1995 c.624 §5; 1997 c.853 §5; 1999 c.867 §3]

181.651 Certification of full-time department employees. (1) Notwithstanding any other provision of law, any full-time employee of the Department of Public Safety Standards and Training who possesses the requisite qualifications may be certified or recertified as a police officer, certified reserve officer, corrections officer, parole and probation officer, fire service professional, telecommunicator or emergency medical dispatcher.

(2) A department employee who is certified as a police, certified reserve, corrections or parole and probation officer may exercise the authority granted by law to such officers. This includes, but is not limited to, the authority to possess material that is otherwise contraband under the laws of this state in the performance of official duties and the authority to carry a firearm or other weapon concealed.

(3) A department employee who is certified as a police, certified reserve, corrections or parole and probation officer, a fire service professional, a telecommunicator or an emergency medical dispatcher is considered to be employed as a full-time public safety officer in the discipline in which certification is held under this section for the following purposes:

(a) Denying, suspending or revoking certification under ORS 181.661, 181.662 and 181.664;

(b) Determining eligibility to apply for benefits from the Public Safety Memorial Fund under ORS 243.954 to 243.974; and

(c) Determining eligibility to be honored at the memorial created pursuant to section 1, chapter 508, Oregon Laws 1987. [1987 c.901 §3; 1991 c.742 §4; 1995 c.624 §6; 1997 c.853 §6; 2007 c.361 §1]

181.652 Certification of corrections officers required; extension; when training to commence. (1) Except for a person who has requested and obtained an extension pursuant to subsection (2) of this section, no person may be employed as a corrections officer by any law enforcement unit for more than one year unless the person is a citizen of the United States, and:

(a) The person has been certified as being qualified as a corrections officer under the provisions of ORS 181.610 to 181.712 and the certification has neither lapsed nor been revoked pursuant to ORS 181.661, 181.662 and 181.664 (1) and not been reissued under ORS 181.664 (2); or

(b) The person is exempted from the certification requirement under ORS 181.660.

(2) The Department of Public Safety Standards and Training, upon the facts contained in an affidavit accompanying the request for an extension, may find good cause for failure to obtain certification within the time period described in subsection (1) of this section. If the department finds that there is good cause for such failure, the department may extend for up to one year the period that a person may serve as a corrections officer without certification. The grant or denial of such an extension is within the sole discretion of the department.

(3) The certification of a corrections officer shall lapse upon the passage of more than three consecutive months during which period the officer is not employed as a corrections officer, unless the corrections officer is on leave from a law enforcement unit. Upon reemployment as a corrections officer, the person whose certification has lapsed may apply for certification in the manner provided in ORS 181.610 to 181.712.

(4) Except as provided in subsection (5) of this section, a person employed as a corrections officer by any law enforcement unit shall commence the training necessary for certification under ORS 181.610 to 181.712 not later than the 90th day after the date of the officer's employment by the law enforcement unit at an academy operated or authorized by the department in consultation with the Board on Public Safety Standards and Training.

(5) A law enforcement unit may delay the commencement of training of a corrections officer for up to 120 days from the date of the officer's employment when it considers the delay necessary. When a law enforcement unit delays commencement of a corrections officer's training under this subsection, it shall file a written statement of its reasons with the department.

(6) When a delay in the commencement of training necessary for certification under ORS 181.610 to 181.712 at an academy operated or authorized by the department is caused by the inability of the department, for any reason, to provide that training, the period of such delay shall not be counted as part of the periods set forth in subsections (4) and (5) of this section within which the training must be commenced. [1975 c.290 §11,12; 1987 c.901 §4; 1997 c.853 §7; 1999 c.112 §2]

(Temporary provisions relating to training of corrections officers)

Note: Sections 43, 44, 46b and 46d, chapter 885, Oregon Laws 2009, provide:

Sec. 43. Section 44 of this 2009 Act is added to and made a part of ORS 181.610 to 181.712. [2009 c.885 §43]

Sec. 44. Notwithstanding any contrary provision of ORS 181.610 to 181.712:

(1) The Department of Corrections shall provide training for basic certification of corrections officers employed by the Department of Corrections.

(2) The Department of Corrections shall develop proposed training standards for the basic certification of corrections officers employed by the Department of Corrections and provide the proposed standards to the Corrections Policy Committee. After reviewing the proposed standards provided by the Department of Corrections, the Corrections Policy Committee shall recommend, and the Board on Public Safety Standards and Training shall adopt by rule, minimum training standards for basic certification of corrections officers employed by the Department of Corrections. The minimum training standards adopted under this subsection must meet or exceed the minimum training standards for the basic certification of corrections officers employed by a law enforcement unit other than the Department of Corrections.

(3) The Department of Public Safety Standards and Training shall conduct periodic audits of the training provided by the Department of Corrections to ensure compliance with the standards adopted under subsection (2) of this section. If the Department of Public Safety Standards and Training finds that the training complies with the standards, the department shall accredit the training for the same term and upon the same conditions as training programs for corrections officers that are employed by a law enforcement unit other than the Department of Corrections.

(4) Training provided in accordance with this section constitutes training necessary for certification as a corrections officer under ORS 181.610 to 181.712.

(5) Nothing in this section limits the ability of any law enforcement unit to employ a corrections officer who is provided training in accordance with this section. [2009 c.885 §44]

Sec. 46b. (1) Section 44, chapter 885, Oregon Laws 2009, applies to corrections officers hired by the Department of Corrections on or after August 4, 2009, and before January 2, 2026.

(2) Nothing in the repeal of section 44, chapter 885, Oregon Laws 2009, by section 46d, chapter 885, Oregon Laws 2009:

(a) Prohibits the Department of Corrections from completing the basic training of corrections officers who are hired on or after August 4, 2009, and before January 2, 2026.

(b) Affects the certification, or the eligibility for certification, of a corrections officer who is provided basic training by the Department of Corrections in accordance with section 44, chapter 885, Oregon Laws 2009. [2009 c.885 §46b; 2013 c.573 §1]

Sec. 46d. Sections 43, 44 and 46, chapter 885, Oregon Laws 2009, are repealed on January 2, 2026. [2009 c.885 §46d; 2013 c.573 §2]

181.653 Certification of parole and probation officers required; extension.

(1) Except for a person who has requested and obtained an extension from the Department of Public Safety Standards and Training pursuant to subsection (2) of this section, no person may be employed as a parole and probation officer for more than 18 months unless the person is a citizen of the United States, and:

(a) The person has been certified as being qualified as a parole and probation officer under provisions of ORS 181.610 to 181.712 and the certification has neither lapsed nor been revoked pursuant to ORS 181.661,

181.662 and 181.664 (1) and not reissued under ORS 181.664 (2); or

(b) The person is exempted from the certification requirement under ORS 181.660.

(2) The department, upon the facts contained in an affidavit accompanying the request for an extension, may find good cause for failure to obtain certification within the time period described in subsection (1) of this section. If the department finds that there is good cause for such failure, the department may extend for up to one year the period that a person may serve as a parole and probation officer without certification. The grant or denial of such an extension is within the sole discretion of the department.

(3) The certification of a parole and probation officer shall lapse upon the passage of more than three consecutive months during which period the officer is not employed as a parole and probation officer, unless the officer is on leave from a law enforcement unit. Upon reemployment as a parole and probation officer, the person whose certification has lapsed may apply for certification in the manner provided in ORS 181.610 to 181.712.

(4) In order to maintain certification, a parole and probation officer who is employed part-time must complete annually at least 20 hours of continuing education approved by the Department of Public Safety Standards and Training.

(5) The requirement of citizenship imposed under subsection (1) of this section does not apply to a person employed as a parole and probation officer on September 27, 1987, who continues to serve as a parole and probation officer. [1977 c.382 §§9,10; 1981 c.449 §3; 1987 c.320 §139; 1987 c.901 §5; 1999 c.112 §3; 1999 c.854 §2; 2001 c.687 §2]

181.654 Certification of certain Law Enforcement Data System employees. (1) A certified police officer or certified reserve officer who leaves police service to become a full-time employee of the Law Enforcement Data System under ORS 181.730 may retain certification, subject to satisfactory completion of any continuing training required by the Department of Public Safety Standards and Training to maintain certification.

(2) A full-time employee of the Law Enforcement Data System whose certification has lapsed, or who previously has had equivalent certification with another state or the federal government may, within 30 months following the lapse of certification or end of prior equivalent certification, apply to the department for certification as provided in ORS 181.660 (2). [1987 c.901 §11; 1993 c.188 §12; 1995 c.624 §7; 1997 c.853 §8]

181.655 Reimbursement for training to local law enforcement units; rules. (1) The Department of Public Safety Standards and Training, in consultation with the Board on Public Safety Standards and Training, shall provide a reimbursement program to local law enforcement units which send police officers or corrections officers to the training academy operated or authorized by the department. Such reimbursement shall be to defray the cost of salaries and other expenses incurred during the training of the officers.

(2) Such reimbursement program shall be supported entirely out of funds maintained in the Police Standards and Training Account after administrative and operational expenses of the board and department can be met from existing revenues.

(3) Reimbursement programs shall not apply to nongovernmental organizations.

(4) Pursuant to ORS chapter 183, the department, in consultation with the board, shall adopt rules necessary to carry out the provisions of this section.

(5) Notwithstanding the provisions of subsection (1) of this section, a common carrier railroad law enforcement unit shall not be entitled to receive reimbursement of any kind from the department. [1971 c.328 §2; 1975 c.290 §4; 1977 c.382 §14; 1977 c.737 §2; 1979 c.410 §4; 1997 c.853 §9]

181.657 Limitation on accreditation of training programs. (1) Notwithstanding ORS 181.640 (1)(g) and 181.650 (3), the Department of Public Safety Standards and Training may not accredit any public safety personnel training program provided by a public safety agency or any educational program as equivalent to the minimum training required for basic certification as a police officer under ORS 181.665.

(2) Subsection (1) of this section does not apply to Department of State Police training programs or the Oregon Police Corps training program.

(3) As used in this section, "Oregon Police Corps training program" means the residential, basic law enforcement training program that is required of Oregon participants in the scholarship program administered by the United States Department of Justice that is designed to address violent crime by helping state and local law enforcement agencies increase the number of officers with advanced education and training assigned to community patrol. [2001 c.734 §4; 2003 c.770 §6]

181.660 Inapplicability of minimum standards and training to certain persons; certification based on experience, education or training. (1) The minimum standards and minimum training require-

ments established pursuant to ORS 181.640 (1) do not apply to:

- (a) The Superintendent of State Police.
- (b) Any individual who is a constable of the justice court.
- (c) Any sheriff's deputy appointed with authority only to receive and serve summons and civil process.
- (d) Any municipal parole officer.
- (e) Any dog control officer commissioned by a city or county.
- (f) An individual performing the duties of a reserve officer who has not been required by the law enforcement unit utilizing the individual to receive training for certification as a certified reserve officer.

(2) The Department of Public Safety Standards and Training may, upon application of an individual public safety officer, except a youth correction officer, at its discretion, certify the public safety officer as provided in ORS 181.640 (1)(d) upon a finding that the public safety officer's professional experience, education or training meets the standards required for certification. [1961 c.721 §9,10; 1967 c.305 §5; 1969 c.609 §8; 1975 c.290 §5; 1975 c.356 §1; 1977 c.382 §4; 1981 c.449 §4; 1987 c.901 §9; 1991 c.742 §5; 1993 c.185 §14; 1993 c.594 §3; 1995 c.624 §8; 1995 c.658 §90; 1997 c.853 §§10,11; 1999 c.867 §4; 2011 c.547 §38]

181.661 Procedure for denial, suspension or revocation of application or certification. (1) When the Department of Public Safety Standards and Training, the Board on Public Safety Standards and Training or a policy committee of the board established under ORS 181.637 believes there is a reasonable basis for denying, suspending or revoking, as applicable, the application or certification of an instructor or a public safety officer, except a youth correction officer, notice and opportunity for a hearing shall be provided in accordance with rules approved by the board and in accordance with ORS 183.415 and 183.417 prior to denial, suspension or revocation.

(2)(a) Pursuant to rules adopted under ORS 181.640 and 181.662, the policy committee in the relevant discipline and the board shall review denials, suspensions and revocations based on discretionary grounds.

(b) If a policy committee votes to recommend denial or revocation of the application or certification of an instructor or a public safety officer pursuant to paragraph (a) of this subsection, the notice and opportunity for a hearing required under subsection (1) of this section shall be provided after the committee has voted and before the board considers the committee's recommendation.

(c) If the board disapproves the policy committee's recommendation under paragraph (b) of this subsection, the department

shall withdraw the notice issued under subsection (1) of this section.

(d)(A) For cases originally considered by a policy committee, if the department proposes to amend an administrative law judge's proposed order issued in response to a request for a hearing by an instructor or a public safety officer under subsection (1) of this section, the committee shall consider the proposed amendment before the department may issue a final order pursuant to ORS 181.640.

(B) The department's final order may not incorporate the proposed amendment unless the policy committee approves the amendment. [1973 c.612 §11 (enacted in lieu of 181.663); 1975 c.290 §6; 1977 c.382 §5; 1991 c.742 §6; 1995 c.624 §9; 1997 c.853 §13; 1999 c.867 §5; 2005 c.524 §3; 2007 c.288 §8; 2009 c.629 §3]

181.662 Grounds for denial, suspension or revocation of application or certification of person or accreditation of program; rules. (1) The Department of Public Safety Standards and Training may deny the application for training, or deny, suspend or revoke the certification, of any public safety officer or instructor, except a youth correction officer or fire service professional, after written notice and hearing consistent with the provisions of ORS 181.661, based upon a finding that:

(a) The public safety officer or instructor falsified any information submitted on the application for certification or on any documents submitted to the Board on Public Safety Standards and Training or the department.

(b) The public safety officer or instructor has been convicted of a crime or violation in this state or any other jurisdiction.

(c) The public safety officer or instructor does not meet the applicable minimum standards, minimum training or the terms and conditions established under ORS 181.640 (1)(a) to (d).

(d) The public safety officer failed to comply with ORS 181.789 (3)(b).

(2) The department shall deny, suspend or revoke the certification of a fire service professional, after written notice and hearing consistent with the provisions of ORS 181.661, based upon a finding that the fire service professional has been convicted in this state of a crime listed in ORS 137.700 or in any other jurisdiction of a crime that, if committed in this state, would constitute a crime listed in ORS 137.700.

(3) The department may deny, suspend or revoke the certification of any fire service professional after written notice and hearing consistent with the provisions of ORS 181.661, based upon a finding:

(a) That the fire service professional falsified any information submitted on the application for certification or on any documents submitted to the board or the department; or

(b) Consistent with ORS 670.280, that the fire service professional is not fit to receive or hold the certification as a result of conviction of a crime in this state, or in any other jurisdiction, other than a crime described in subsection (2) of this section.

(4) The department shall deny, suspend or revoke the certification of any public safety officer or instructor, except a youth correction officer, after written notice and hearing consistent with the provisions of ORS 181.661, based upon a finding that the public safety officer or instructor has been discharged for cause from employment as a public safety officer.

(5) The department, in consultation with the board, shall adopt rules specifying those crimes and violations for which a conviction requires the denial, suspension or revocation of the certification of a public safety officer or instructor.

(6) Notwithstanding the lapse, suspension, revocation or surrender of the certification of a public safety officer or instructor, the department may:

(a) Proceed with any investigation of, or any action or disciplinary proceedings against, the public safety officer or instructor; or

(b) Revise or render void an order suspending or revoking the certification.

(7) The department shall deny, suspend or revoke the accreditation of a training or educational program or any course, subject, facility or instruction thereof if the program, course, subject, facility or instruction is not in compliance with rules adopted or conditions prescribed under ORS 181.640 (1)(g) or 181.650 (3).

(8) When the department completes an investigation relating to a person's qualifications for employment, training or certification under this section, the department shall issue a report.

(9) In cases involving a proposed denial of training or certification of a public safety officer or instructor by the department, the department has jurisdiction to proceed with any action against the public safety officer or instructor notwithstanding a subsequent change in the employment status of the officer or instructor, if:

(a) The department has issued a notice of intent to deny training or certification; and

(b) The officer or instructor has requested a hearing. [1969 c.609 §2; 1975 c.290 §7; 1977 c.382 §6; 1979 c.410 §5; 1981 c.449 §5; 1987 c.901 §8; 1991 c.742 §7; 1993 c.185 §15; 1993 c.301 §5; 1995 c.624 §10; 1995 c.768 §13; 1997 c.853 §14; 1999 c.867 §6; 2001 c.104 §61; 2001 c.654 §1; 2003 c.770 §3; 2005 c.448 §1; 2005 c.524 §2; 2007 c.842 §8; 2009 c.135 §4; 2013 c.6 §1]

181.664 Judicial review of department's final order; reapplication for certification; rules. (1) An instructor or a public safety officer, except a youth correction officer, aggrieved by the findings and order of the Department of Public Safety Standards and Training may, as provided in ORS 183.480, file an appeal with the Court of Appeals from the final order of the department.

(2) The department shall recommend and the Board on Public Safety Standards and Training shall establish by rule a policy and procedures governing the circumstances under which a public safety officer or instructor who has had certification denied or revoked pursuant to ORS 181.661 and 181.662 and subsection (1) of this section may reapply for certification and specifying the circumstances under which the public safety officer or instructor may not reapply. [1969 c.609 §§4,5; 1973 c.612 §12; 1975 c.290 §8; 1977 c.382 §7; 1981 c.449 §6; 1991 c.742 §8; 1993 c.185 §16; 1995 c.624 §11; 1999 c.112 §5; 1999 c.867 §7; 2005 c.448 §2]

181.665 Certification of police officer and certified reserve officer required; extension. (1) Except for a person who has requested and obtained an extension from the Department of Public Safety Standards and Training pursuant to subsection (2) of this section, a person may not be employed as a police officer, or utilized as a certified reserve officer, by any law enforcement unit for more than 18 months unless:

(a) The person is a citizen of the United States; and

(b) The person has been certified as being qualified as a police officer or certified reserve officer under the provisions of ORS 181.610 to 181.712 and the certification has neither lapsed nor been revoked pursuant to ORS 181.661, 181.662 and 181.664 (1) and not been reissued under ORS 181.664 (2).

(2) The department, upon the facts contained in an affidavit accompanying the request for an extension, may find good cause for failure to obtain certification within the time period described in subsection (1) of this section. If the department finds that there is good cause for such failure, the department may extend for up to one year the period that a person may serve as a police officer or reserve officer without certification. The grant or denial of such an extension is within the sole discretion of the department.

(3) Except as provided in subsection (4) of this section, a person employed as a police officer by any law enforcement unit shall commence the training necessary for certification under ORS 181.610 to 181.712 at an academy operated by the department not later than the 90th day after the date of the officer's employment by the law enforcement unit.

(4) A law enforcement unit may delay the commencement of training of a police officer for up to 120 days from the date of the officer's employment when it considers the delay necessary. When a law enforcement unit delays commencement of a police officer's training under this subsection, it shall file a written statement of its reasons with the department.

(5) When a delay in the commencement of training necessary for certification under ORS 181.610 to 181.712 at an academy operated by the department is caused by the inability of the department, for any reason, to provide that training, the period of such delay shall not be counted as part of the periods set forth in subsections (3) and (4) of this section within which the training must be commenced.

(6) A person utilized as a certified reserve officer by a law enforcement unit must complete the training necessary for certification under ORS 181.610 to 181.712 at a site approved by the department.

(7) Notwithstanding any other provision of law, the law enforcement unit described in ORS 181.610 (12)(e) shall bear the expense of training necessary for certification under ORS 181.610 to 181.712. [1967 c.305 §1; 1969 c.609 §9; 1975 c.290 §9; 1975 c.356 §2; 1979 c.410 §6; 1987 c.901 §6; 1995 c.624 §12; 1997 c.853 §15; 1999 c.112 §4; 2001 c.687 §3; 2001 c.734 §5; 2009 c.417 §2; 2011 c.320 §2; 2012 c.54 §29]

181.667 Lapse of certification; reapplication for certification; rules; fees. (1)(a) The certification of any police officer who does not serve as a police officer, or any certified reserve officer who is not utilized as a certified reserve officer, for any period of time in excess of three consecutive months is lapsed. Upon reemployment as a police officer, or recommencing service as a reserve officer, the person whose certification has lapsed may apply for certification in the manner provided in ORS 181.610 to 181.712.

(b) Notwithstanding paragraph (a) of this subsection, the certification of a police officer or certified reserve officer does not lapse if the officer:

(A) Is on leave from a law enforcement unit; or

(B) Is an honorably retired police officer who meets the requirements established by

the Department of Public Safety Standards and Training under paragraph (c) of this subsection for maintaining certification.

(c) The department, in consultation with the Board on Public Safety Standards and Training, may adopt rules establishing:

(A) A program of continuing training for honorably retired police officers that would enable a police officer whose certification would otherwise lapse under paragraph (a) of this subsection to maintain certification for as long as the police officer meets the training requirements; and

(B) A fee to be paid by honorably retired police officers to maintain certification under this subsection. The fee may not exceed the costs incurred by the department and board in administering the training program.

(2) The certification of any fire service professional, telecommunicator or emergency medical dispatcher who is not utilized as a fire service professional, telecommunicator or emergency medical dispatcher for any period of time in excess of 12 consecutive months, unless the fire service professional, telecommunicator or emergency medical dispatcher is on leave from a public or private safety agency, is lapsed. Upon reemployment as a fire service professional, telecommunicator or emergency medical dispatcher, the person whose certification has lapsed may apply for certification in the manner provided in ORS 181.610 to 181.712. [1969 c.609 §6; 1995 c.624 §13; 1997 c.315 §1; 1999 c.566 §1]

181.670 Effect of minimum requirements under authority other than ORS 181.640. Compliance with minimum standards or minimum training recommended pursuant to ORS 181.640 for public safety personnel, except youth correction officers, does not exempt any individual from any minimum requirement for selection or promotion as a police officer or certified reserve officer under ORS 181.260 or under any civil service law, charter or ordinance for a county or city. [1961 c.721 §11; 1975 c.290 §13; 1977 c.382 §13; 1991 c.742 §11; 1993 c.185 §17; 1995 c.624 §14; 1999 c.867 §8]

181.675 Disclosure of information about public safety officer. (1) The Board on Public Safety Standards and Training and the Department of Public Safety Standards and Training may not disclose a photograph of a public safety officer without the written consent of the public safety officer or the public safety officer's employer. This subsection does not apply to the use by the board or department of a photograph of a public safety officer.

(2) A public safety agency shall provide the department with access to personnel records of an employee or former employee of the public safety agency if:

(a) The department requests access to the records;

(b) The department is conducting an investigation under ORS 181.662 relating to the employee or former employee's qualifications for employment, training or certification as a public safety officer; and

(c) The records are related to the issue being investigated.

(3) A public safety agency that discloses information under subsection (2) of this section is presumed to be acting in good faith and, unless lack of good faith is shown by a preponderance of the evidence, is immune from civil liability from the disclosure or its consequences. For purposes of this subsection, the presumption of good faith is rebutted upon a showing that the public safety agency disclosed the information knowing that the information was false or deliberately misleading or disclosed the information with malicious purpose. [2003 c.770 §2]

181.679 Civil penalties relating to certification; rules. (1) The Department of Public Safety Standards and Training may impose a civil penalty on a public safety agency for violation of ORS 181.644, 181.652, 181.653 or 181.665.

(2) The department shall recommend and the Board on Public Safety Standards and Training by rule shall adopt a schedule establishing civil penalties that may be imposed under subsection (1) of this section. Civil penalties imposed under subsection (1) of this section may not exceed \$1,500 for each violation.

(3) When the department imposes a civil penalty under subsection (1) of this section, the department shall impose the penalty in the manner provided by ORS 183.745.

(4) All penalties recovered under subsection (1) of this section shall be paid into the State Treasury and credited to the General Fund and are available for general governmental expenses.

(5) When, for the purpose of complying with ORS 181.644, 181.652, 181.653 or 181.665 and after notice from the department that an employee has not met the certification requirements of ORS 181.644, 181.652, 181.653 or 181.665, a public safety agency terminates or reassigns the employee solely because the employee has not met the certification requirements of ORS 181.644, 181.652, 181.653 or 181.665, the public safety agency is presumed to be acting in good faith and, unless lack of good faith is shown by clear and convincing evidence, is immune from civil liability for the termination or reassignment. [2005 c.586 §2]

181.685 Oregon Center for Policing Excellence; purpose; rules. (1) The Oregon Center for Policing Excellence is established within the Department of Public Safety Standards and Training.

(2) The primary purposes of the center are:

(a) To make policing in this state more effective and efficient by:

(A) Developing and promulgating updated skills in policing among officers, managers and administrators; and

(B) Making use of the body of knowledge of effective and efficient methods in the criminal justice system.

(b) To make communities safer.

(c) To reduce, through the use of police practices proven to be effective, the number of offenders entering the criminal justice system.

(3) To accomplish the purposes described in subsection (2) of this section, the center shall provide opportunities for:

(a) Practitioners to present actual problems to researchers in order to identify potential approaches to resolving the problems.

(b) Researchers to present to practitioners the results of research on effective and efficient methods of policing.

(c) Practitioners and researchers to form partnerships to test the effectiveness of practices and approaches.

(d) The development and delivery of training to public safety personnel in this state to enhance their skills related to:

(A) Problem solving;

(B) Leadership and facilitation;

(C) Effective application and use of information from reputable research; and

(D) Identifying and addressing future challenges affecting public safety.

(4) All agencies of state government, as defined in ORS 174.111, and local government, as defined in ORS 174.116, are directed to cooperate with the center in achieving the purposes described in subsection (2) of this section.

(5) The Director of the Department of Public Safety Standards and Training may adopt rules necessary to implement the provisions of this section. [2013 c.649 §49]

181.690 Police Standards and Training Account. (1) There is established in the General Fund of the State Treasury the Police Standards and Training Account. All contributions or other moneys received by the Board on Public Safety Standards and Training or Department of Public Safety Standards and Training shall be paid into the

State Treasury and credited to the Police Standards and Training Account. All moneys in the Police Standards and Training Account are appropriated continuously to the department and, except as provided in subsection (2) of this section, shall be used by the department to carry out the functions of the department under the policies and standards for training and certification approved by the board.

(2) Moneys in the Police Standards and Training Account may be transferred to the Department of State Police and the Department of Corrections to defray the training costs of police officers and parole and probation officers and to defray the cost of the Law Enforcement Data System. The amounts transferred under this subsection shall be deposited in the cash accounts of such agencies in accordance with an allotment plan approved by the Oregon Department of Administrative Services.

(3) Notwithstanding subsection (1) of this section, moneys credited to the account under ORS 181.887 and 703.490 may be used only for the expenses of administration and enforcement of ORS 181.870 to 181.887, 181.991, 703.401 to 703.490, 703.993 and 703.995. [1961 c.721 §7; 1979 c.410 §7; 1987 c.320 §140; 1993 c.188 §13; 1997 c.853 §16; 2007 c.362 §1]

181.695 Reimbursement of training costs. (1) As used in this section:

(a) "Original employing governmental agency" means a governmental agency that first employs an employee in a position that requires training.

(b) "Parole and probation officer" has the meaning given that term in ORS 181.610.

(c) "Police officer" has the meaning given that term in ORS 181.610.

(d) "Training costs" means training expenses paid for by an employing governmental agency that include the cost of salary and benefits paid to an employee during training, the cost of salary and benefits paid to another employee to cover the workload of an employee in training and the cost of initial training courses required for employment.

(2) Subject to an employment agreement between an original employing governmental agency and an employee or to an applicable collective bargaining agreement, when an employee of a governmental agency who is employed in a position that requires training voluntarily leaves employment with that original employing governmental agency and is subsequently employed by a different governmental agency in a position that requires the same training as required for the position with the original employing governmental agency, the subsequent employing govern-

mental agency shall reimburse the original employing governmental agency for training costs incurred by the original employing governmental agency in accordance with the reimbursement schedule adopted under subsection (3) of this section.

(3) If an employing governmental agency requires employees to be trained, the agency shall adopt a policy providing for a pro rata reimbursement schedule for the reimbursement of training costs by a subsequent employing governmental agency to the original employing governmental agency as follows:

(a) If the training costs are for training provided to an employee who is employed as a state police officer, a police officer or a deputy sheriff, the required reimbursement shall be:

(A) 100 percent of training costs if the employee is employed by the subsequent employing governmental agency within 12 months from the date the employee completes training required by the original employing governmental agency.

(B) 66 percent of training costs if the employee is employed by the subsequent employing governmental agency more than 12 months but less than 24 months from the date the employee completes training required by the original employing governmental agency.

(C) 33 percent of training costs if the employee is employed by the subsequent employing governmental agency more than 24 months but less than 36 months from the date the employee completes training required by the original employing governmental agency.

(D) Waived if the employee is employed by the subsequent employing governmental agency more than 36 months from the date the employee completes training required by the original employing governmental agency.

(b) If the training costs are for training provided to an employee who is employed as a state or local corrections officer or as a parole and probation officer, the required reimbursement shall be:

(A) 100 percent of training costs if the employee is employed by the subsequent employing governmental agency within 10 months from the date the employee completes training required by the original employing governmental agency.

(B) 66 percent of training costs if the employee is employed by the subsequent employing governmental agency more than 10 months but less than 20 months from the date the employee completes training required by the original employing governmental agency.

(C) 33 percent of training costs if the employee is employed by the subsequent employing governmental agency more than 20 months but less than 30 months from the date the employee completes training required by the original employing governmental agency.

(D) Waived if the employee is employed by the subsequent employing governmental agency more than 30 months from the date the employee completes training required by the original employing governmental agency.

(4) Notwithstanding subsection (2) of this section, an original employing governmental agency may waive the reimbursement of training costs for an employee who voluntarily leaves employment with the original employing governmental agency and is subsequently employed by another governmental agency.

(5) When making employment decisions, a governmental agency may not take into consideration the possibility that the reimbursement of training costs specified in subsection (2) of this section will be required if a particular applicant is employed.

(6) A governmental agency that requires employees to complete training shall develop and implement policies that provide incentives to promote the retention of such employees. [2009 c.902 §1]

Note: 181.695 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 181 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

181.700 Legislative intent. It is the intent of the Legislative Assembly in creating the Board on Public Safety Standards and Training to provide for the coordination of training programs for police officers, certified reserve officers, corrections officers and parole and probation officers and to set standards. [1961 c.721 §14; 1975 c.290 §14; 1977 c.382 §11; 1995 c.624 §15; 1999 c.59 §39]

181.705 Minimum standards and training requirements not applicable to certain police officers. The minimum standards and training requirements established pursuant to ORS 181.640 (1) do not apply to police officers commissioned by the Governor under ORS 131.880 who have served in that capacity for at least two years immediately preceding October 4, 1977. [1977 c.737 §4]

181.711 Department not required to provide training for certification of reserve officers. Nothing in ORS 181.610, 181.640, 181.642, 181.645, 181.650, 181.651, 181.654, 181.660, 181.661, 181.662, 181.664, 181.665, 181.667, 181.670, 181.700 and 181.711 requires:

(1) A law enforcement unit to certify individuals who are utilized by the law enforcement unit to perform the duties of a reserve officer; or

(2) The Department of Public Safety Standards and Training to provide the training for, or to fund, certification of reserve officers. [1995 c.624 §17; 1997 c.853 §17]

REGULATION OF PRIVATE SECURITY SERVICE PROVIDERS

181.870 Definitions for ORS 181.620, 181.870 to 181.887 and 181.991. As used in ORS 181.620, 181.870 to 181.887, 181.991 and 203.090:

(1) "Certification" means recognition by the Department of Public Safety Standards and Training that a private security professional meets all of the qualifications listed in ORS 181.875.

(2) "Executive manager" means a person:

(a) Who is authorized to act on behalf of a company or business in matters of licensure and certification;

(b) Who is authorized to hire and terminate personnel;

(c) Whose primary responsibility is the management of certified private security professionals; and

(d) Who has final responsibility for a company's or business's compliance with ORS 181.870 to 181.887.

(3) "Instructor" means any person who has been certified by the department as meeting the requirements to provide instruction to private security providers or applicants.

(4) "License" means recognition by the department that an executive manager or supervisory manager meets the requirements adopted by the Board on Public Safety Standards and Training as necessary to provide private security services.

(5) "Primary responsibility" means an activity that is fundamental to, and required or expected in, the regular course of employment and is not merely incidental to employment.

(6) "Private security professional" means an individual who performs, as the individual's primary responsibility, private security services for consideration, regardless of whether the individual, while performing the private security services, is armed or unarmed or wears a uniform or plain clothes, and regardless of whether the individual is employed part-time or full-time to perform private security services.

(7) "Private security provider" means any individual who performs the functions of a

private security professional, executive manager, supervisory manager or instructor.

(8) "Private security services" means the performance of at least one of the following activities:

(a) Observing and reporting unlawful activity.

(b) Preventing or detecting theft or misappropriation of goods, money or other items of value.

(c) Protecting individuals or property, including but not limited to proprietary information, from harm or misappropriation.

(d) Controlling access to premises being protected or, with respect to a licensee of the Oregon Liquor Control Commission, controlling access to premises at an entry to the premises or any portion of the premises where minors are prohibited.

(e) Securely moving prisoners.

(f) Taking enforcement action by detaining persons or placing persons under arrest under ORS 133.225.

(g) Providing canine services for guarding premises or for detecting unlawful devices or substances.

(9) "Supervisory manager" means an employee of or a person supervised by an executive manager who has as a primary responsibility the supervision of certified private security professionals. [1995 c.510 §1a; 1997 c.588 §1; 1997 c.853 §23; 1999 c.198 §1; 2001 c.498 §1; 2003 c.14 §84; 2003 c.546 §3; 2005 c.447 §1; 2012 c.28 §1]

181.871 Applicability of ORS 181.870 to 181.887. (1) ORS 181.870 to 181.887 do not apply to:

(a) A person certified by the Department of Public Safety Standards and Training as a police officer or a parole and probation officer.

(b) A law enforcement officer of the United States.

(c) An officer or employee of this state, Oregon Health and Science University established by ORS 353.020 or the United States while performing duties of the office or employment.

(d) A person appointed or commissioned by the Governor to perform law enforcement or security services.

(e) An attorney admitted to practice law in this state while engaged in the practice of law.

(f) An insurance adjuster licensed in this state while performing duties authorized by the license.

(g) A person who monitors alarm systems that are not designed to detect threats to public safety or personal well-being.

(h) A person while protecting the person's property.

(i) A person who repairs and installs intrusion alarms while repairing or installing intrusion alarms.

(j) A person acting as an investigator as defined in ORS 703.401.

(k) A person performing crowd management or guest services, including, but not limited to, a person described as a ticket taker, an usher, a parking attendant or event staff.

(L) A person who has a valid service permit issued by the Oregon Liquor Control Commission pursuant to ORS 471.360 and who is an employee of a licensee of the commission when the person is performing age verification and controlling access to premises of the licensee, if the person is not:

(A) Armed;

(B) Permitted to initiate confrontational activities, including physical contact and the confiscation of property; or

(C) Hired with the primary responsibility of taking enforcement action as described in ORS 181.870 (8)(f).

(m) A person performing security services at a facility regulated by the United States Nuclear Regulatory Commission if the facility is operated by the person's employer.

(n) An individual while on active duty as a member of the armed services or while performing duties as a law enforcement officer.

(o) An employee of a financial institution who has been designated as a security officer for the financial institution pursuant to the Bank Protection Act of 1968 (12 U.S.C. 1881 et seq.) and regulations adopted under the act.

(p) A person who provides security services as a volunteer or for de minimis consideration other than money for an event operated for the benefit of a corporation that is organized not for profit pursuant to ORS chapter 65 or any predecessor of ORS chapter 65 or that is exempt from taxation under section 501(a) of the Internal Revenue Code as an organization described in section 501(c) of the Internal Revenue Code.

(q) A student enrolled in a community college as defined in ORS 341.005 while engaged in nonconfrontational activities that contribute to campus safety under the direct or indirect supervision of a law enforcement professional or private security professional certified or licensed by the Department of Public Safety Standards and Training, provided the community college has conducted a criminal background check on the student.

(2) The exemption provided by subsection (1)(k) of this section applies only:

(a) To a person who is not:

(A) Armed;

(B) Permitted to initiate confrontational activities, including physical contact and the confiscation of property; or

(C) Hired with the primary responsibility of taking enforcement action as described in ORS 181.870 (8)(f);

(b) If there is at least one person on-site who is certified or licensed under ORS 181.878 for every 10 or fewer uncertified persons performing the services described in subsection (1)(k) of this section;

(c) If any enforcement action, as described in ORS 181.870 (8)(f), other than incidental or temporary action, is taken by or under the supervision of a person certified or licensed under ORS 181.878; and

(d) During the time when a crowd has assembled for the purpose of attending or taking part in an organized event, including pre-event assembly, event operation hours and post-event departure activities.

(3) The exemption provided by subsection (1)(L) of this section does not apply during an organized event that is on a scale substantially outside the ordinary course of the licensee's business. [1995 c.510 §2; 1997 c.588 §2; 1997 c.853 §24; 1997 c.870 §25; 1999 c.198 §6; 1999 c.291 §29; 2001 c.498 §2; 2001 c.838 §22; 2003 c.14 §85; 2003 c.546 §5; 2005 c.447 §2; 2011 c.427 §1; 2011 c.516 §1; 2012 c.28 §2; 2013 c.480 §9]

181.873 Prohibited acts; temporary assignment of person not certified allowed. (1) It is unlawful:

(a) For a person to engage in the business of, or perform any service as a private security professional, or to offer services in such capacity unless the person has obtained a certificate under ORS 181.878.

(b) For a person to engage in the business of, or perform any service as an executive manager or supervisory manager, or to offer services in such capacities unless the person has obtained a license under ORS 181.878.

(c) For a person to perform supervisory duties over persons performing crowd management or guest services, as described in ORS 181.871, unless the person has obtained a license or certificate under ORS 181.878.

(d) Except as otherwise provided in subsection (2) of this section, for an executive manager to assign a person to perform private security services unless the person is certified as a private security professional under ORS 181.878.

(2) An executive manager may temporarily assign a person who is not certified as

required by this section to perform private security services within this state for a period of time not to exceed 90 days if:

(a) The person is employed in another state;

(b) The person holds a private security professional's certification or license from the other state; and

(c) The certification or licensing standards of the other state meet or exceed the standards of this state. [1995 c.510 §3; 2001 c.498 §3; 2003 c.546 §7; 2005 c.447 §3]

181.875 Qualifications for private security professional; rules. (1) An applicant for certification as a private security professional:

(a) Must be:

(A) At least 18 years of age, if an applicant for certification as an unarmed private security professional; or

(B) At least 21 years of age, if an applicant for certification as an armed private security professional;

(b) Must have satisfactorily completed training requirements approved by the Board on Public Safety Standards and Training; and

(c) Must not be required to register or be registered as a sex offender under ORS 181.806, 181.807, 181.808 or 181.809.

(2) An applicant meets the requirements of subsection (1)(b) of this section if the applicant provides the Department of Public Safety Standards and Training with documentation of military training or experience that the department determines is substantially equivalent to the training required by subsection (1)(b) of this section.

(3) The department, in consultation with the board, shall adopt rules specifying those crimes for which a conviction requires the denial or revocation of certification as a private security professional or instructor. [1995 c.510 §4; 1997 c.588 §5; 1999 c.198 §3; 2001 c.288 §1; 2001 c.654 §2a; 2005 c.447 §4; 2011 c.271 §22; 2012 c.43 §1]

181.876 Application procedure. An applicant for certification as a private security professional shall submit a written application to the Department of Public Safety Standards and Training. The application must be on a form approved by the department, contain all the information required by the department and be made under oath to the department. [1995 c.510 §5; 1997 c.588 §6; 1997 c.853 §25; 1999 c.198 §4; 2001 c.654 §3; 2005 c.447 §5]

181.877 Qualifications for executive manager or supervisory manager. An applicant for licensure as an executive manager or supervisory manager must meet the qualifications set forth in ORS 181.875. [2001 c.288 §3; 2001 c.498 §4a; 2003 c.546 §10]

181.878 Board on Public Safety Standards and Training to establish standards; department to establish procedures and fees; report; rules. (1) The Board on Public Safety Standards and Training shall establish standards for:

(a) Issuing, denying, renewing and revoking licenses for executive managers and supervisory managers; and

(b) Reviewing the private security services of executive managers in relation to the licensing and certification standards set forth in ORS 181.870 to 181.887.

(2) In accordance with any applicable provision of ORS chapter 183, to promote consistent standards for private security services by improving the competence of private security providers, the board, in conjunction with the Private Security Policy Committee, shall establish reasonable minimum standards of physical, emotional, intellectual and moral fitness for private security providers.

(3) The board, in consultation with the Department of Public Safety Standards and Training, may establish by rule accreditation standards for required training programs. The board, in consultation with the Private Security Policy Committee, may establish to what extent training or educational programs offered by employers may be considered equivalent to required training programs.

(4) The department shall:

(a) Establish and carry out procedures for issuing, denying, renewing and revoking, subject to terms and conditions imposed by the department, a private security provider's certificate or license;

(b) In collaboration with the Private Security Policy Committee, recommend for approval by the board the content of and standards for all training courses and testing required for certification as a private security professional and the standards for all instructors providing the training;

(c) Establish procedures in consultation with the board for temporary assignment of persons performing private security services for a period of no longer than 120 days while an application for certification is being processed;

(d) In collaboration with the Private Security Policy Committee, establish fees for issuing certificates and licenses to private security providers. The fees may not exceed the prorated direct costs of administering:

(A) The certification or licensing program required by this section;

(B) The criminal records checks required by ORS 181.880; and

(C) Any training program required by rules of the department or board; and

(e) In collaboration with the Private Security Policy Committee, establish fees for accrediting training programs offered by employers.

(5) In establishing procedures for issuing certificates and licenses under subsection (4)(a) of this section, the department shall establish a procedure for issuing a certificate or license to a person upon submission by the person of proof of successful completion of a training program accredited by the board pursuant to subsection (3) of this section as being equivalent to the required training program offered by the department.

(6) The department shall investigate alleged violations of the provisions of ORS 181.870 to 181.887 and of any rules adopted by the department or the board. The department shall issue a report when the investigation is complete.

(7) The department and the board may adopt rules necessary to carry out their duties under ORS 181.870 to 181.887 and 181.991. For efficiency, the department and board may adopt rules jointly as a single set of combined rules. [1995 c.510 §6; 1997 c.588 §7; 1997 c.853 §26; 1999 c.198 §5; 2001 c.498 §5; 2003 c.546 §12; 2005 c.447 §6; 2009 c.135 §3]

181.880 Licenses and certificates; issuance; duration. (1) A license or certificate issued by the Department of Public Safety Standards and Training under ORS 181.878 expires two years following the date of issuance or on the assigned renewal date.

(2) The department shall offer certificates or licenses to private security providers in levels and categories as established by the Board on Public Safety Standards and Training in consultation with the department.

(3) Upon receipt of an application for certification under ORS 181.876, the department shall forward a complete set of the applicant's fingerprints to the Department of State Police and request that the Department of State Police conduct a nationwide criminal records check of the applicant as provided in ORS 181.534. Notwithstanding ORS 181.534 (5) and (6), the Department of State Police shall maintain in the department's files the fingerprint cards used to conduct the criminal records check. [1995 c.510 §§7,18; 1997 c.853 §27; 1999 c.198 §2; 2005 c.730 §§11,80]

181.882 Hearing if license or certificate denied, suspended or revoked. (1) If the Board on Public Safety Standards and Training or the Department of Public Safety Standards and Training denies a license or certificate or declines to renew a license or certificate or suspends or revokes a license or certificate, opportunity for a hearing consistent with the provisions of ORS 181.661

shall be afforded as provided in ORS chapter 183.

(2) Judicial review of orders issued after a hearing under subsection (1) of this section shall be as provided in ORS chapter 183. [1995 c.510 §8; 1997 c.853 §28]

181.885 Effect of being charged with crime. (1) If a private security provider is charged with a crime, the private security provider shall notify the private security provider's employer, or, if the private security provider is not employed, the Department of Public Safety Standards and Training, of that fact not later than 48 hours after the charge is filed.

(2) If an executive manager knows that an employee has been charged with a crime, the executive manager shall notify the department of that fact not later than 48 hours after the executive manager acquired the knowledge.

(3) The department may suspend the certificate or license of a private security provider charged with a crime pending disposition of the charge.

(4) If an applicant for certification or licensure as a private security provider is charged with a crime, the applicant shall notify the department of that fact not later than 48 hours after the charge is filed. [1995 c.510 §10; 1997 c.853 §30; 2003 c.546 §4]

181.886 Persons providing private security services on September 9, 1995. Any person engaged in providing private security services on September 9, 1995, shall file an application for a license or certificate within 180 days after September 9, 1995. Such persons may continue providing private security services without a license or certificate until a license or certificate is issued or denied. [1995 c.510 §11]

181.887 Disposition of funds received by department. All moneys received by the Department of Public Safety Standards and Training under ORS 181.870 to 181.887 and 181.991, including penalties recovered under ORS 181.991 (2), shall be paid into the General Fund in the State Treasury and placed to the credit of the Police Standards and Training Account established in ORS 181.690. [1995 c.510 §12; 1997 c.853 §31; 2005 c.447 §12; 2007 c.362 §2]

181.990 Penalties. Violation of ORS 181.140 is a Class A misdemeanor. [Amended by 1971 c.743 §343]

181.991 Penalties relating to regulation of private security services; criminal and civil. (1) A person commits a:

(a) Class A misdemeanor if the person knowingly falsifies any information pertinent to an application for a license or certificate under ORS 181.870 to 181.887.

(b) Class A violation if the person provides private security services as a private security professional without being certified to do so under ORS 181.878 and having in the person's possession the certificate issued under ORS 181.878.

(2) In addition to any other liability or penalty provided by law, the Board on Public Safety Standards and Training may impose a civil penalty not to exceed \$1,500 for a violation of any provision of ORS 181.870 to 181.887 or any rule adopted by the Board on Public Safety Standards and Training or Department of Public Safety Standards and Training pursuant to ORS 181.870 to 181.887.

(3) Judicial review of civil penalties imposed under subsection (2) of this section shall be as provided under ORS 183.480. [1995 c.510 §§13,14; 1997 c.853 §33; 2005 c.447 §8]

TAX REVENUE DISBURSEMENT

221.760 Prerequisites for cities in counties of over 100,000 population to receive revenues from cigarette, gas and liquor taxes. (1) The officer responsible for disbursing funds to cities under ORS 323.455, 366.785 to 366.820 and 471.805 shall disburse such funds in the case of a city located within a county having more than 100,000 inhabitants, according to the most recent federal decennial census, only if the officer reasonably is satisfied that the city meets the requirements set out in subsection (2) of this section, or if the city provides four or more of the following municipal services:

- (a) Police protection.
- (b) Fire protection.
- (c) Street construction, maintenance and lighting.
- (d) Sanitary sewers.
- (e) Storm sewers.
- (f) Planning, zoning and subdivision control.
- (g) One or more utility services.

(2) In the year in which any city is first incorporated and the following two years it shall be considered a city for the purposes of ORS 323.455, 366.785 to 366.820 and 471.805 if the city charter gives the city power to provide four or more of the municipal services enumerated in subsection (1) of this section. [1969 c.634 §1,2]

221.770 Revenue sharing to cities; conditions for receipt; apportionment formula. (1) A share of certain revenues of this state shall be apportioned among and distributed to the cities of this state for general purposes as provided in this section. A city shall not be included in apportionments or receive distributions under this section for

a fiscal year commencing on July 1 unless the city:

(a) Elects to receive distributions under this section for the fiscal year by enactment of an ordinance or resolution expressing that election and filing a copy of that ordinance or resolution with the Oregon Department of Administrative Services not later than July 31 of the fiscal year;

(b) Holds at least one public hearing, after adequate public notice, at which citizens have the opportunity to provide written and oral comment to the authority responsible for approving the proposed budget of the city for the fiscal year on the possible uses of the distributions, including offset against property tax levies by the city for the fiscal year, and certifies its compliance with this paragraph to the Oregon Department of Administrative Services not later than July 31 of the fiscal year;

(c) Holds at least one public hearing, after adequate public notice, at which citizens have the opportunity to provide written and oral comment to, and ask questions of, the authority responsible for adopting the budget of the city for the fiscal year on the proposed use of the distributions in relation to the entire budget of the city for the fiscal year, including possible offset of the distributions against property tax levies by the city for the fiscal year, and certifies its compliance with this paragraph to the Oregon Department of Administrative Services not later than July 31 of the fiscal year; and

(d) Levied a property tax for the year preceding the year in which revenue sharing is due under ORS 471.810 and this section.

(2) Not later than 35 days after the last day of each calendar quarter ending March 31, June 30, September 30 and December 31, the Oregon Liquor Control Commission shall determine the amount of the net revenue under ORS 471.805, received during the preceding calendar quarter and shall certify that amount to the Oregon Department of Administrative Services.

(3) In addition to amounts otherwise apportioned to cities under ORS 471.810, not later than 20 days after the date the Oregon Department of Administrative Services receives a certification under subsection (2) of this section, the department shall apportion among the cities of this state in the manner provided in subsection (4) of this section an amount equal to 14 percent of the amount so certified, and shall pay to each city the amount so apportioned to the city. Payments shall be made from the Oregon Liquor Control Commission Account.

(4) The amount apportioned to each city under subsection (3) of this section shall be

a percentage of the total amount to be apportioned among the cities determined by dividing the adjusted population of the city by the sum of the adjusted populations of all cities. The adjusted population of a city shall be determined by multiplying the city's population by the sum of:

(a) The city's local consolidated property taxes per capita divided by the average consolidated property taxes per capita for all cities in the state; and

(b) The amount of state income per capita divided by the amount of city income per capita.

(5) The amount apportioned to each city shall be further limited to an amount no greater than the amount of all property taxes levied by the city during the year previous to the year in which distributions are made.

(6) For purposes of the formula set forth in subsection (4) of this section, "city population" is the population of a city as last determined under ORS 190.510 to 190.590.

(7)(a) For purposes of the formula set forth in subsection (4) of this section, "local consolidated property taxes" has the meaning given in subsection (8) of this section, for a city divided by the population of the city as last determined under ORS 190.510 to 190.590.

(b) The Oregon Department of Administrative Services shall determine the amounts of property taxes for each city during the fiscal year closing on June 30 preceding the fiscal year commencing on July 1 for which calendar quarter apportionments are made, and that determination shall be used for each calendar quarter apportionment for that fiscal year commencing on July 1.

(8) For purposes of subsection (7) of this section "consolidated property taxes" are the total of all compulsory contributions in the form of ad valorem taxes on property located within a city levied during a one-year period by the city, a county, any school district and any special governmental district for public purposes and in amounts as compiled by the Department of Revenue on the basis of application of consolidated tax rates to assessor code area valuations.

(9) For purposes of the formula set forth in subsection (4) of this section, "income per capita" is the estimated average annual money income of residents of this state and of residents of each city of this state, respectively, based upon the latest information available from the most recent federal decennial census.

(10) A city receiving a distribution under this section may return all or any part of the distribution to the Oregon Department of Administrative Services, which shall deposit

the returned distribution or part thereof in the General Fund to be available for payment of the general expenses of the state. [1977 c.831 §1; 1987 c.158 §35; 1987 c.406 §1; 1995 c.79 §79; 1997 c.108 §1; 2005 c.755 §4]

SUSPENSION OF YOUTH DRIVING PRIVILEGES

419C.472 Suspension of driving privileges. (1) The court may order that the driving privileges of a youth be suspended if:

(a) The petition alleges that the youth is within the jurisdiction of the court for violating ORS 471.430;

(b) The youth has been issued a summons under ORS 419C.306; and

(c) The youth fails to appear as required by the summons.

(2) When a court issues an order under subsection (1) of this section:

(a) The court shall send a notice to the Department of Transportation certifying that the youth failed to appear and that the court has ordered the suspension of the driving privileges of the youth; and

(b) Neither the state nor a juvenile department counselor may file a petition under ORS 419C.250 alleging that the youth is within the jurisdiction of the court for having committed an act that if committed by an adult would constitute a violation of ORS 153.992. [2001 c.817 §5]

BEVERAGE CONTAINERS; BOTTLE BILL (Generally)

459A.700 Definitions for ORS 459A.700 to 459A.740. As used in ORS 459.992 (3) and (4) and 459A.700 to 459A.740, unless the context requires otherwise:

(1) "Beverage" means a fluid described in ORS 459A.702.

(2) "Beverage container" means a container described in ORS 459A.702.

(3) "Commission" means the Oregon Liquor Control Commission.

(4) "Consumer" means every person who purchases a beverage in a beverage container for use or consumption.

(5) "Dealer" means every person in this state who engages in the sale of beverages in beverage containers to a consumer, or means a redemption center certified under ORS 459A.735.

(6) "Distributor" means every person who engages in the sale of beverages in beverage containers to a dealer in this state including any manufacturer who engages in such sales.

(7) "Importer" means any dealer or manufacturer who directly imports beverage containers into this state.

(8) "In this state" means within the exterior limits of the State of Oregon and includes all territory within these limits owned by or ceded to the United States of America.

(9) "Manufacturer" means every person bottling, canning or otherwise filling beverage containers for sale to distributors, importers or dealers.

(10) "Place of business of a dealer" means the location at which a dealer sells or offers for sale beverages in beverage containers to consumers.

(11) "Use or consumption" includes the exercise of any right or power over a beverage incident to the ownership thereof, other than the sale or the keeping or retention of a beverage for the purposes of sale.

(12) "Water and flavored water" means any beverage identified through the use of letters, words or symbols on its product label as a type of water. [Formerly 459.810; 2007 c.303 §1; 2011 c.277 §1]

459A.702 Applicability of ORS 459A.700 to 459A.740. (1) Except as provided in subsection (2) of this section, ORS 459A.700 to 459A.740 apply to any individual, separate, sealed glass, metal or plastic bottle or can, except for cartons, foil pouches and drink boxes, that contains the following beverages, intended for human consumption and in a quantity less than or equal to three fluid liters:

(a) Water and flavored water;

(b) Beer or other malt beverages; and

(c) Mineral waters, soda water and similar carbonated soft drinks.

(2) One year after the date on which the Oregon Liquor Control Commission determines that at least 60 percent of the beverage containers returned for the refund value specified in ORS 459A.705 are returned statewide to redemption centers approved under ORS 459A.735, or on January 1, 2018, whichever comes first, ORS 459A.700 to 459A.740 apply to any individual, separate, sealed glass, metal or plastic bottle or can, except for cartons, foil pouches, drink boxes and metal containers that require a tool to be opened, that contains:

(a) The following beverages, intended for human consumption and in a quantity less than or equal to three fluid liters:

(A) Water and flavored water;

(B) Beer or other malt beverages; and

(C) Mineral waters, soda water and similar carbonated soft drinks.

(b) Any beverage other than those specified in paragraph (a) of this subsection that is intended for human consumption and is in a quantity more than or equal to four fluid ounces and less than or equal to one and one-half fluid liters, except distilled liquor, wine, dairy or plant-based milks, infant formula and any other exemptions set forth in rule of the Oregon Liquor Control Commission. [2011 c.277 §2]

Note: Sections 4 and 5, chapter 106, Oregon Laws 2013, provide:

Sec. 4. Report. No later than March 1 of each odd-numbered year, the Oregon Liquor Control Commission shall submit a report to the Legislative Assembly regarding beverage container redemption centers approved pursuant to the provisions of ORS 459A.737. The report must include, for the two previous calendar years:

(1) The number of beverage containers that are returned for refund value as a percentage of the total number of beverage containers sold in this state.

(2) The number of beverage container redemption centers operating in this state and the number of redemption centers for which applications are pending with the commission.

(3) The number of beverage containers that are returned for refund value in areas designated by the commission and the number of beverage containers returned for refund value in each area in the year before the beverage container redemption center began operation.

(4) The number of beverage containers that are returned for refund value to beverage container redemption centers in this state and the number of beverage containers that are returned for refund value to dealers in this state. [2013 c.106 §4]

Sec. 5. Section 4 of this 2013 Act is repealed on January 2, 2022. [2013 c.106 §5]

459A.705 Refund value. (1) Except as provided in subsections (2) and (3) of this section, every beverage container sold or offered for sale in this state shall have a refund value of not less than five cents.

(2)(a) Every beverage container sold or offered for sale in this state shall have a refund value of not less than 10 cents, beginning on the later of:

(A) Eight months after the Oregon Liquor Control Commission determines that, in each of the two previous calendar years, the number of beverage containers returned for the refund value specified in this section was less than 80 percent of the total number of beverage containers that were sold in this state; or

(B) January 1 of the calendar year following the determination by the commission described in subparagraph (A) of this paragraph.

(b) The commission may not make a determination under this subsection before January 1, 2016.

(c) In making a determination under this subsection, the commission may not include

the beverage containers and beverages described in ORS 459A.702 (2)(b) before January 1, 2021.

(3) Every beverage container certified as provided in ORS 459A.725, sold or offered for sale in this state, shall have a refund value of not less than two cents. [Formerly 459.820; 2011 c.277 §3]

459A.710 Practices required of dealers and distributors. Except as provided in ORS 459A.715:

(1)(a) Except as provided in paragraph (b) of this subsection, a dealer may not refuse to accept from any person any empty beverage containers that contained the kind of beverage sold by the dealer, or refuse to pay to that person the refund value of a beverage container as established by ORS 459A.705.

(b) A dealer that occupies a space of less than 5,000 square feet in a single area may refuse to accept from any person any empty beverage containers of the kind, size and brand that the dealer does not sell.

(2) A distributor or importer may not refuse to accept from a dealer any empty beverage containers of the kind, size and brand sold by the distributor or importer, or refuse to pay the dealer the refund value of a beverage container as established by ORS 459A.705.

(3) The manufacturer, distributor or importer of any beverage sold in this state shall ensure that all dealers or redemption centers in this state that redeem beverage containers are paid the refund value for those beverage containers and that those beverage containers are collected from the dealer or redemption center in a timely manner. [Formerly 459.830; 2007 c.303 §2]

459A.712 Liability of manufacturer, distributor and importer for failure to pay refund value of beverage containers. Any manufacturer, distributor or importer that fails to pay to a dealer or redemption center the refund value of beverage containers and to collect beverage containers as required by ORS 459A.710 (3) is liable to the dealer or redemption center for treble the unpaid refund value and treble the collection costs incurred by the dealer or redemption center for any beverage containers that were not collected as required. [2007 c.303 §7]

459A.715 Refusal of dealer or distributor to accept or pay refund in certain cases; notice. (1) A dealer may refuse to accept from any person, and a distributor or importer may refuse to accept from a dealer, any empty beverage container that does not state thereon a refund value as established by ORS 459A.705.

(2) A dealer may refuse to accept and to pay the refund value of:

(a) Empty beverage containers if the place of business of the dealer and the kind of empty beverage containers are included in an order of the Oregon Liquor Control Commission approving a redemption center under ORS 459A.735.

(b) Any beverage container visibly containing or contaminated by a substance other than water, residue of the original contents or ordinary dust.

(c)(A) More than 144 individual beverage containers returned by any one person during one day, if the dealer occupies a space of 5,000 or more square feet in a single area.

(B) More than 50 individual beverage containers returned by any one person during one day, if the dealer occupies a space of less than 5,000 square feet in a single area.

(d) Any beverage container that is damaged to the extent that the brand appearing on the container cannot be identified.

(3)(a) In order to refuse containers under subsection (2)(b), (c)(A) or (d) of this section, if a dealer occupies a space of 5,000 or more square feet in a single area, the dealer must post in each area where containers are received a clearly visible and legible sign containing the following information:

NOTICE:

Oregon Law allows a dealer to refuse to accept:

1. Beverage containers visibly containing or contaminated by a substance other than water, residue of the original contents or ordinary dust;

2. More than 144 individual beverage containers from any one person during one day; or

3. Beverage containers that are damaged to the extent that the brand appearing on the container cannot be identified.

(b) In order to refuse containers under subsection (2)(b), (c)(B) or (d) of this section, if a dealer occupies a space of less than 5,000 square feet in a single area, the dealer must post in each area where containers are received a clearly visible and legible sign containing the following information:

NOTICE:

Oregon Law allows a dealer to refuse to accept:

1. Beverage containers visibly containing

or contaminated by a substance other than water, residue of the original contents or ordinary dust;

2. More than 50 individual beverage containers from any one person during one day; or

3. Beverage containers that are damaged to the extent that the brand appearing on the container cannot be identified.

[Formerly 459.840; 1993 c.356 §1; 2003 c.761 §1; 2007 c.303 §§3,4]

459A.717 Civil penalties. (1) The Oregon Liquor Control Commission may impose a civil penalty of at least \$50, but not more than \$500, for a violation of any provision of ORS 459A.700 to 459A.740. Each day a violation occurs constitutes a separate violation. The authority to impose a civil penalty under this section is in addition to and not in lieu of the revocation and suspension authority under ORS 459.992 (4) and the criminal penalty authorized by ORS 459.992.

(2) Civil penalties under this section shall be imposed as provided in ORS 183.745.

(3) All penalties recovered under this section shall be paid into the State Treasury and credited to the General Fund and are available for general governmental expenses. [2013 c.157 §2]

459A.718 Distributor cooperatives; requirements; compliance; rules. (1) Two or more distributors or importers may establish a distributor cooperative for the purposes of:

(a) Collecting the refund value of beverage containers specified in ORS 459A.705 from distributors or importers and refunding to dealers the amount the dealers paid for the refund value of empty beverage containers;

(b) Paying the refund value specified in ORS 459A.705 for beverage containers sold in this state; and

(c) Processing beverage containers sold in this state.

(2) A distributor cooperative established under this section must service a majority of the dealers in this state.

(3) If a distributor cooperative is established, a dealer that uses the distributor cooperative to redeem and process beverage containers sold in this state is not required to return beverage containers to a distributor or importer that does not participate in the distributor cooperative, provided that the dealer or the distributor cooperative provides an accounting to the distributor or importer of the beverage containers by brand and kind that were distributed by the distributor or

importer and subsequently redeemed by the dealer or distributor cooperative.

(4) Upon receipt of the accounting required by subsection (3) of this section, a distributor or importer that does not participate in the distributor cooperative must pay the refund value of the redeemed beverage containers specified in the accounting to the dealer or distributor cooperative that provided the accounting.

(5)(a) For purposes of this subsection, beverage container return data is the number of beverage containers returned for the refund value specified in ORS 459A.705 in Oregon during the calendar year and the number of beverage containers that carry a refund value specified in ORS 459A.705 sold in Oregon during the calendar year, calculated separately.

(b) By July 1 of each calendar year, a distributor cooperative shall provide the Oregon Liquor Control Commission with a report that lists, in aggregate form for all distributors and importers that participate in the distributor cooperative, the previous calendar year's beverage container return data, calculated separately for glass, metal and plastic beverage containers.

(c) By July 1 of each calendar year, a distributor or importer that does not participate in a distributor cooperative shall provide the commission with a report that lists the distributor's or the importer's beverage container return data for the previous calendar year, calculated separately for glass, metal and plastic beverage containers.

(6)(a) By August 1 of each calendar year, using the beverage container return data provided in subsection (5)(b) of this section, the Oregon Liquor Control Commission shall calculate the previous calendar year's percentage of beverage containers returned for the refund value specified in ORS 459A.705 for each distributor cooperative. The commission shall carry out the calculation separately for glass, metal and plastic beverage containers and shall post the percentages on the commission's website.

(b) By August 1 of each calendar year, using the beverage container return data provided in subsection (5)(c) of this section, the commission shall calculate the previous calendar year's percentage of beverage containers returned for the refund value specified in ORS 459A.705 for each distributor or importer that does not participate in a distributor cooperative. The commission shall carry out the calculation separately for glass, metal and plastic beverage containers and shall post the percentages on the commission's website.

(c) By August 1 of each calendar year, using the beverage container return data provided in subsection (5)(b) and (c) of this section, the commission shall calculate the previous calendar year's percentage of beverage containers returned for the refund value specified in ORS 459A.705 for all distributors and importers in Oregon. The commission shall carry out the calculation for all beverage containers, and separately for glass, metal and plastic beverage containers, and shall post the percentages on the commission's website.

(d) Except for the percentages described in paragraphs (a) to (c) of this subsection or in a proceeding under ORS 459A.717 for a violation of subsection (5) of this section, the commission may not disclose any information provided by a distributor, an importer or a distributor cooperative under subsection (5) of this section.

(7)(a) In order to determine compliance with the provisions of subsection (5) of this section, within six months of the date that the commission receives a report described in subsection (5)(b) and (c) of this section, the commission may review or audit the records of each reporting distributor cooperative, or each reporting distributor or importer that does not participate in a distributor cooperative.

(b)(A) If in the course of a review described in paragraph (a) of this subsection the commission determines that an audit of a distributor cooperative, distributor or importer is necessary, the commission shall require the distributor cooperative, distributor or importer to retain an independent financial audit firm to determine the accuracy of information contained in the report. The distributor cooperative, distributor or importer that is the subject of review shall pay the costs of the audit. The audit must be limited to the records described in paragraph (a) of this subsection.

(B) The commission shall adopt rules to carry out the provisions of this paragraph. [2012 c.100 §2; 2013 c.157 §4]

459A.720 Indication of refund value; exception; prohibition of certain metal containers and plastic container holders.

(1) Every beverage container sold or offered for sale in this state by a dealer shall clearly indicate by embossing or by a stamp, or by a label or other method securely affixed to the beverage container, the refund value of the container.

(2) Subsection (1) of this section shall not apply to glass beverage containers designed for beverages having a brand name permanently marked thereon which, on October 1, 1972, had a refund value of not less than five cents.

(3) No person shall sell or offer for sale at retail in this state any metal beverage container so designed and constructed that a part of the container is detachable in opening the container without the aid of a can opener.

(4) On or after March 1, 1979, no person shall sell or offer for sale at retail in this state, in addition to beverages as defined in ORS 459A.700 (1), any beverage in liquid form intended for human consumption in any beverage container so designed and constructed that a metal part of the container is detachable in opening the container through use of a metal ring or tab without the aid of a can opener. However, nothing in this subsection shall prohibit the sale of a container the only detachable part of which is a piece of pressure sensitive tape.

(5) No person shall sell or offer for sale at retail in this state metal beverage containers connected to each other by a separate holding device constructed of plastic rings or other material which will not decompose by photobiodegradation, chemical degradation, or biodegradation within 120 days of disposal. [Formerly 459.850]

459A.725 Certification of containers as reusable by more than one manufacturer; rules. (1) To promote the use in this state of reusable beverage containers of uniform design, and to facilitate the return of containers to manufacturers for reuse as a beverage container, the Oregon Liquor Control Commission may certify beverage containers which satisfy the requirements of this section.

(2) A beverage container may be certified if:

(a) It is reusable as a beverage container by more than one manufacturer in the ordinary course of business; and

(b) More than one manufacturer will in the ordinary course of business accept the beverage container for reuse as a beverage container and pay the refund value of the container.

(3) The commission may by rule establish appropriate liquid capacities and shapes for beverage containers to be certified or decertified in accordance with the purposes set forth in subsection (1) of this section.

(4) A beverage container shall not be certified under this section if by reason of its shape or design, or by reason of words or symbols permanently inscribed thereon, whether by engraving, embossing, painting or other permanent method, it is reusable as a beverage container in the ordinary course of business only by a manufacturer of a beverage sold under a specific brand name. [Formerly 459.860]

459A.730 Decision upon certification applications; review and withdrawal of certifications. (1) Unless an application for certification under ORS 459A.725 is denied by the Oregon Liquor Control Commission within 60 days after the filing of the application, the beverage container shall be deemed certified.

(2) The commission may review at any time certification of a beverage container. If after such review, with written notice and hearing afforded to the person who filed the application for certification under ORS 459A.725, the commission determines the container is no longer qualified for certification, it shall withdraw certification.

(3) Withdrawal of certification shall be effective not less than 30 days after written notice to the person who filed the application for certification under ORS 459A.725 and to the manufacturers referred to in ORS 459A.725 (2). [Formerly 459.870]

459A.735 Redemption centers; application for approval. (1) To facilitate the return of empty beverage containers and to serve dealers of beverages, any person may establish a redemption center, subject to the approval of the Oregon Liquor Control Commission, at which any person may return empty beverage containers and receive payment of the refund value of such beverage containers.

(2) Application for approval of a redemption center shall be filed with the commission. The application shall state the name and address of the person responsible for the establishment and operation of the redemption center, the kind of beverage containers that will be accepted at the redemption center, the names and addresses of the dealers to be served by the redemption center and proposals for up to two convenience zones described in ORS 459A.737. The application shall include such additional information as the commission may require.

(3) The commission shall approve a redemption center if it finds the redemption center will provide a convenient service to persons for the return of empty beverage containers. The order of the commission approving a redemption center shall state the dealers to be served by the redemption center and the kind of empty beverage containers that the redemption center must accept. The order may contain such other provisions to ensure the redemption center will provide a convenient service to the public as the commission may determine.

(4) The commission may review at any time approval of a redemption center. After written notice to the person responsible for the establishment and operation of the re-

demption center, and to the dealers served by the redemption center, the commission may, after hearing, withdraw approval of a redemption center if the commission finds there has not been compliance with its order approving the redemption center, or if the redemption center no longer provides a convenient service to the public. [Formerly 459.880; 2007 c.303 §5; 2013 c.106 §3]

459A.737 Redemption centers; convenience zones; rules. (1)(a) Pursuant to the provisions of ORS 459A.735, the Oregon Liquor Control Commission:

(A) Shall approve one beverage container redemption center in a city having a population of less than 300,000, operated by a distributor cooperative serving a majority of the dealers in this state; and

(B) May approve one or more additional beverage container redemption centers.

(b) Notwithstanding any other provision of ORS 459A.700 to 459A.740, a beverage container redemption center:

(A) May not refuse to accept and to pay the refund value of up to 350 individual empty beverage containers, as established by ORS 459A.705, returned by any one person during one day;

(B) Must provide hand counting of up to 50 individual empty beverage containers returned by any one person during one day for the refund value established by ORS 459A.705;

(C) May provide drop off service for at least 125 individual empty beverage containers returned by any one person during one day for the refund value established by ORS 459A.705, and may provide an accounting mechanism by which the person may redeem the refund value of the beverage containers at a later date; and

(D) May provide other services as determined necessary by the person responsible for the operation of the beverage container redemption center.

(2)(a) For each beverage container redemption center, the commission shall specify up to two convenience zones. The first convenience zone shall be the sector within a radius of not more than two miles around the beverage container redemption center. The second convenience zone shall be the sector beginning at the border of the first convenience zone and continuing to a radius of not more than three and one-half miles around the beverage container redemption center. The convenience zones shall be based to the greatest extent practicable upon the proposals submitted as part of the application for approval of the redemption center under ORS 459A.735.

(b) All dealers doing business within the first convenience zone that occupy a space of 5,000 or more square feet in a single area may participate in, be served by and be charged the cost of participation in the beverage container redemption center and, if such a dealer participates in, is served by and pays the cost of participation in the redemption center, the dealer may, notwithstanding any other provision of ORS 459A.700 to 459A.740, refuse to accept and to pay the refund value of empty beverage containers.

(c) All dealers doing business within the second convenience zone that occupy a space of 5,000 or more square feet in a single area may participate in, be served by and be charged the cost of participation in the beverage container redemption center and, if such a dealer participates in, is served by and pays the cost of participation in the redemption center, the dealer may, notwithstanding any other provision of ORS 459A.700 to 459A.740, refuse to accept and to pay the refund value of more than 24 individual empty beverage containers returned by any one person during one day.

(d) All dealers doing business within either convenience zone that occupy a space of less than 5,000 square feet in a single area may, notwithstanding any other provision of ORS 459A.700 to 459A.740, refuse to accept and to pay the refund value of more than 24 individual empty beverage containers returned by any one person during one day.

(e)(A) Any dealer doing business in either convenience zone that occupies a space of 5,000 or more square feet in a single area that does not participate in, and is not served by, the beverage container redemption center may not refuse to accept and to pay the refund value of up to 350 individual empty beverage containers, as established by ORS 459A.705, returned by any one person during one day and must provide services equivalent to those provided by the redemption center under subsection (1)(b) of this section, including hand counting and drop off service.

(B) In addition to complying with the requirements specified in subparagraph (A) of this paragraph, a dealer described in subparagraph (A) of this paragraph must:

(i) Post in each area where beverage containers are received a clearly visible and legible sign that contains the list of services that must be provided by the dealer; and

(ii) Provide two automated reverse vending machines capable of processing metal, plastic and glass beverage containers, or one automated reverse vending machine capable of processing metal, plastic and glass beverage containers for each 500,000 beverage

containers sold by the dealer in the previous calendar year, whichever is greater.

(C) The provisions of subparagraphs (A) and (B) of this paragraph do not apply to a dealer described in subparagraph (A) of this paragraph if the dealer sold fewer than 100,000 beverage containers in the previous calendar year.

(3) The provisions of subsection (2) of this section do not apply to any dealer for which the driving distance from the place of business of the dealer to the beverage container redemption center, calculated using the shortest route, is more than two times the radius specified for the second convenience zone or, if only one convenience zone is specified by the commission, two times the radius specified for that convenience zone.

(4) The commission may adopt all rules necessary to implement and administer the provisions of this section. [2011 c.277 §5; 2013 c.106 §2]

459A.740 Certification and withdrawal procedures. The procedures for certification or withdrawal provided for in ORS 459A.725 to 459A.735 shall be in accordance with ORS chapter 183. [Formerly 459.890]

(Penalties)

459.992 Criminal penalties; license suspension and revocation. (1) The following are Class A misdemeanors:

(a) Violation of rules or ordinances adopted under ORS 459.005 to 459.105 and 459.205 to 459.385.

(b) Violation of ORS 459.205.

(c) Violation of ORS 459.270.

(d) Violation of ORS 459A.080.

(e) Violation of ORS 459.272.

(2) Each day a violation referred to by subsection (1) of this section continues constitutes a separate offense. Such separate offenses may be joined in one indictment or complaint or information in several counts.

(3) Violation of ORS 459A.705, 459A.710, 459A.718 (5) or 459A.720 is a Class A misdemeanor.

(4) In addition to the penalty prescribed by subsection (3) of this section, the Oregon Liquor Control Commission or the State Department of Agriculture may revoke or suspend the license of any person who willfully violates ORS 459A.705, 459A.710, 459A.718 (5) or 459A.720, who is required by ORS chapter 471 or 635, respectively, to have a license. [Subsections (1), (2) and (3) enacted as 1971 c.648 §20; subsection (4) enacted as 1971 c.699 §20; subsections (5) and (6) enacted as 1971 c.745 §10; 1973 c.835 §158; 1977 c.867 §22; 1981 c.81 §2; 1981 c.709 §17; 1983 c.729 §17; 1983 c.766 §8; subsections (3) and (4) renumbered 466.995; 1993 c.526 §10; 1995 c.301 §37; 2012 c.100 §4]

459.995 Civil penalties. (1) Except as provided in subsection (2) of this section, in addition to any other penalty provided by law:

(a) Any person who violates ORS 459.205, 459.270, 459.272, 459.386 to 459.405, 459.705 to 459.790, 459A.005 to 459A.620, 459A.310 to 459A.335, 459A.675 to 459A.685 or 646A.080, or any rule or order of the Environmental Quality Commission pertaining to the disposal, collection, storage or reuse or recycling of solid wastes, as defined by ORS 459.005, or any rule or order pertaining to the disposal, storage or transportation of waste tires, as defined by ORS 459.705, or any rule or order pertaining to the sale of novelty items that contain encapsulated liquid mercury, incurs a civil penalty not to exceed \$25,000 per day for each day of the violation.

(b) Any person who violates the provisions of ORS 459.420 to 459.426 incurs a civil penalty not to exceed \$500 for each violation. Each battery that is disposed of improperly is a separate violation. Each day an establishment fails to post the notice required under ORS 459.426 is a separate violation.

(c) For each day a city, county or metropolitan service district fails to provide the opportunity to recycle as required under ORS 459A.005, the city, county or metropolitan service district incurs a civil penalty not to exceed \$500 for each violation.

(d) Any person who violates the provisions of ORS 459.247 (1)(f) incurs a civil penalty not to exceed \$500 for each violation. Each covered electronic device that is disposed of improperly is a separate violation.

(e) Any retailer that violates the provisions of section 3 (1) or (2)(b), chapter 777, Oregon Laws 2009, incurs a civil penalty not to exceed \$100 per day for each day of the violation.

(f) Any producer that violates the provisions of section 3 (1), chapter 777, Oregon Laws 2009, incurs a civil penalty not to exceed \$1,000 per day for each day of the violation.

(g) Any stewardship organization that violates the provisions of ORS 459A.830 to 459A.837 or section 3 (2)(a), 4 or 6, chapter 777, Oregon Laws 2009, incurs a civil penalty not to exceed \$1,000 per day for each day of the violation.

(2) Any product manufacturer or package manufacturer who violates ORS 459A.650 to 459A.665 or any rule adopted under ORS 459A.650 to 459A.665 incurs a civil penalty not to exceed \$1,000 per day for each day of the violation. A violation of ORS 459A.650 to

459A.665 is not subject to additional penalties under subsection (1) of this section.

(3) Any civil penalty authorized by subsection (1) or (2) of this section shall be imposed in the manner provided by ORS 468.135. [1973 c.835 §130; 1977 c.317 §1; 1981 c.709 §18; 1983 c.703 §16; 1983 c.729 §18; 1983 c.766 §9; subsections (2) and (3) renumbered 466.880; 1987 c.706 §19; 1989 c.290 §7; 1989 c.763 §14; 1991 c.385 §§14.90; 1991 c.650 §3; 1991 c.653 §8; 1991 c.734 §32; 1991 c.882 §13; 1993 c.18 §115; 1993 c.526 §11; 1993 c.560 §73; 1995 c.584 §5; 2001 c.924 §8; 2007 c.302 §§16,17; 2009 c.267 §§1,2; 2013 c.677 §§13,14]

Note: The amendments to 459.995 by section 14, chapter 677, Oregon Laws 2013, become operative July 1, 2014, and apply to violations that occur on or after July 1, 2014. See sections 15 and 21, chapter 677, Oregon Laws 2013. The text that is operative until July 1, 2014, is set forth for the user's convenience.

459.995. (1) Except as provided in subsection (2) of this section, in addition to any other penalty provided by law:

(a) Any person who violates ORS 459.205, 459.270, 459.272, 459.386 to 459.405, 459.705 to 459.790, 459A.005 to 459A.620, 459A.310 to 459A.335, 459A.675 to 459A.685 or 646A.080, or any rule or order of the Environmental Quality Commission pertaining to the disposal, collection, storage or reuse or recycling of solid wastes, as defined by ORS 459.005, or any rule or order pertaining to the disposal, storage or transportation of waste tires, as defined by ORS 459.705, or any rule or order pertaining to the sale of novelty items that contain encapsulated liquid mercury, incurs a civil penalty not to exceed \$25,000 per day for each day of the violation.

(b) Any person who violates the provisions of ORS 459.420 to 459.426 incurs a civil penalty not to exceed \$500 for each violation. Each battery that is disposed of improperly is a separate violation. Each day an establishment fails to post the notice required under ORS 459.426 is a separate violation.

(c) For each day a city, county or metropolitan service district fails to provide the opportunity to recycle as required under ORS 459A.005, the city, county or metropolitan service district incurs a civil penalty not to exceed \$500 for each violation.

(d) Any person who violates the provisions of ORS 459.247 (1)(f) incurs a civil penalty not to exceed \$500 for each violation. Each covered electronic device that is disposed of improperly is a separate violation.

(e) Any retailer that violates the provisions of section 3 (1) or (2)(b), chapter 777, Oregon Laws 2009, incurs a civil penalty not to exceed \$100 per day for each day of the violation.

(f) Any producer that violates the provisions of section 3 (1), chapter 777, Oregon Laws 2009, incurs a civil penalty not to exceed \$1,000 per day for each day of the violation.

(g) Any stewardship organization that violates the provisions of ORS 459A.830 to 459A.837 or section 3 (2)(a), 4 or 6, chapter 777, Oregon Laws 2009, or section 9, chapter 677, Oregon Laws 2013, incurs a civil penalty not to exceed \$1,000 per day for each day of the violation.

(2) Any product manufacturer or package manufacturer who violates ORS 459A.650 to 459A.665 or any rule adopted under ORS 459A.650 to 459A.665 incurs a civil penalty not to exceed \$1,000 per day for each day of the violation. A violation of ORS 459A.650 to 459A.665 is not subject to additional penalties under subsection (1) of this section.

(3) Any civil penalty authorized by subsection (1) or (2) of this section shall be imposed in the manner provided by ORS 468.135.

VIDEO LOTTERY GAMES

461.217 Video lottery game regulation; limitation on number and placement of terminals; rules. (1) As used in this section, "video lottery game retailer" means a contractor under contract with the Oregon State Lottery to place video lottery game terminals on premises authorized by the contract.

(2) A video lottery game terminal that offers a video lottery game authorized by the Director of the Oregon State Lottery:

(a) May be placed for operation only in or on the premises of an establishment that has a contract with the Oregon State Lottery as a video lottery game retailer.

(b) Must be within the control of an employee of the video lottery game retailer.

(c) May not be placed in any other business or location.

(3) A video lottery game terminal may be placed only on the premises of an establishment licensed by the Oregon Liquor Control Commission with a full on-premises sales license, a limited on-premises sales license or a brewery-public house license. A video lottery game terminal may be placed only in that part of the premises that is posted by the Oregon Liquor Control Commission as being closed to minors. In addition to the requirements of this subsection, the director may by rule establish other criteria and conditions as the director determines appropriate for the placement of video lottery game terminals in establishments.

(4) No more than six video lottery game terminals may be placed in or on premises described in subsection (3) of this section.

(5) No more than 10 video lottery game terminals may be placed in or on the premises of a race meet licensee licensed under ORS 462.020 that qualifies as a video lottery game retailer. [1991 c.962 §10; 1999 c.351 §16; 2003 c.787 §1; 2007 c.631 §1; 2009 c.221 §4]

OREGON MEDICAL MARIJUANA ACT

475.300 Findings. The people of the state of Oregon hereby find that:

(1) Patients and doctors have found marijuana to be an effective treatment for suffering caused by debilitating medical conditions, and therefore, marijuana should be treated like other medicines;

(2) Oregonians suffering from debilitating medical conditions should be allowed to use small amounts of marijuana without fear of civil or criminal penalties when their doctors advise that such use may provide a medical benefit to them and when other reasonable restrictions are met regarding that use;

(3) ORS 475.300 to 475.346 are intended to allow Oregonians with debilitating med-

ical conditions who may benefit from the medical use of marijuana to be able to discuss freely with their doctors the possible risks and benefits of medical marijuana use and to have the benefit of their doctor's professional advice; and

(4) ORS 475.300 to 475.346 are intended to make only those changes to existing Oregon laws that are necessary to protect patients and their doctors from criminal and civil penalties, and are not intended to change current civil and criminal laws governing the use of marijuana for nonmedical purposes. [1999 c.4 §2]

Note: 475.300 to 475.346 were enacted into law but were not added to or made a part of ORS chapter 475 or any series therein by law. See Preface to Oregon Revised Statutes for further explanation.

475.302 Definitions for ORS 475.300 to 475.346. As used in ORS 475.300 to 475.346:

(1) "Attending physician" means a physician licensed under ORS chapter 677 who has primary responsibility for the care and treatment of a person diagnosed with a debilitating medical condition.

(2) "Authority" means the Oregon Health Authority.

(3) "Debilitating medical condition" means:

(a) Cancer, glaucoma, agitation incident to Alzheimer's disease, positive status for human immunodeficiency virus or acquired immune deficiency syndrome, or a side effect related to the treatment of these medical conditions;

(b) A medical condition or treatment for a medical condition that produces, for a specific patient, one or more of the following:

(A) Cachexia;

(B) Severe pain;

(C) Severe nausea;

(D) Seizures, including seizures caused by epilepsy; or

(E) Persistent muscle spasms, including spasms caused by multiple sclerosis;

(c) Post-traumatic stress disorder; or

(d) Any other medical condition or side effect related to the treatment of a medical condition adopted by the authority by rule or approved by the authority pursuant to a petition submitted under ORS 475.334.

(4)(a) "Delivery" has the meaning given that term in ORS 475.005.

(b) "Delivery" does not include transfer of:

(A) Marijuana by a registry identification cardholder to another registry identification cardholder if no consideration is paid for the transfer;

(B) Usable marijuana or immature marijuana plants from a registry identification cardholder, the designated primary caregiver of a registry identification cardholder or a marijuana grow site to a medical marijuana facility registered under ORS 475.314; or

(C) Usable marijuana or immature marijuana plants from a medical marijuana facility registered under ORS 475.314 to a registry identification cardholder or the designated primary caregiver of a registry identification cardholder.

(5) "Designated primary caregiver" means an individual 18 years of age or older who has significant responsibility for managing the well-being of a person who has been diagnosed with a debilitating medical condition and who is designated as such on that person's application for a registry identification card or in other written notification to the authority. "Designated primary caregiver" does not include the person's attending physician.

(6) "Marijuana" has the meaning given that term in ORS 475.005.

(7) "Marijuana grow site" means a location registered under ORS 475.304 where marijuana is produced for use by a registry identification cardholder.

(8) "Medical use of marijuana" means the production, possession, delivery, distribution or administration of marijuana, or paraphernalia used to administer marijuana, as necessary for the exclusive benefit of a person to mitigate the symptoms or effects of the person's debilitating medical condition.

(9) "Production" has the meaning given that term in ORS 475.005.

(10) "Registry identification card" means a document issued by the authority that identifies a person authorized to engage in the medical use of marijuana and, if the person has a designated primary caregiver under ORS 475.312, the person's designated primary caregiver.

(11) "Usable marijuana" means the dried leaves and flowers of the plant Cannabis family Moraceae, and any mixture or preparation thereof, that are appropriate for medical use as allowed in ORS 475.300 to 475.346. "Usable marijuana" does not include the seeds, stalks and roots of the plant.

(12) "Written documentation" means a statement signed by the attending physician of a person diagnosed with a debilitating medical condition or copies of the person's relevant medical records. [1999 c.4 §3; 2001 c.900 §205; 2003 c.14 §305; 2005 c.22 §346; 2005 c.822 §1; 2007 c.573 §1; 2009 c.595 §964; 2013 c.337 §1; 2013 c.726 §3]

Note: The amendments to 475.302 by section 3, chapter 726, Oregon Laws 2013, become operative March

1, 2014. See section 9, chapter 726, Oregon Laws 2013. The text that is operative until March 1, 2014, including amendments by section 1, chapter 337, Oregon Laws 2013, is set forth for the user's convenience.

475.302. As used in ORS 475.300 to 475.346:

(1) "Attending physician" means a physician licensed under ORS chapter 677 who has primary responsibility for the care and treatment of a person diagnosed with a debilitating medical condition.

(2) "Authority" means the Oregon Health Authority.

(3) "Debilitating medical condition" means:

(a) Cancer, glaucoma, agitation incident to Alzheimer's disease, positive status for human immunodeficiency virus or acquired immune deficiency syndrome, or a side effect related to the treatment of these medical conditions;

(b) A medical condition or treatment for a medical condition that produces, for a specific patient, one or more of the following:

(A) Cachexia;

(B) Severe pain;

(C) Severe nausea;

(D) Seizures, including seizures caused by epilepsy; or

(E) Persistent muscle spasms, including spasms caused by multiple sclerosis;

(c) Post-traumatic stress disorder; or

(d) Any other medical condition or side effect related to the treatment of a medical condition adopted by the authority by rule or approved by the authority pursuant to a petition submitted under ORS 475.334.

(4) "Delivery" has the meaning given that term in ORS 475.005. "Delivery" does not include transfer of marijuana by a registry identification cardholder to another registry identification cardholder if no consideration is paid for the transfer.

(5) "Designated primary caregiver" means an individual 18 years of age or older who has significant responsibility for managing the well-being of a person who has been diagnosed with a debilitating medical condition and who is designated as such on that person's application for a registry identification card or in other written notification to the authority. "Designated primary caregiver" does not include the person's attending physician.

(6) "Marijuana" has the meaning given that term in ORS 475.005.

(7) "Marijuana grow site" means a location registered under ORS 475.304 where marijuana is produced for use by a registry identification cardholder.

(8) "Medical use of marijuana" means the production, possession, delivery, distribution or administration of marijuana, or paraphernalia used to administer marijuana, as necessary for the exclusive benefit of a person to mitigate the symptoms or effects of the person's debilitating medical condition.

(9) "Production" has the meaning given that term in ORS 475.005.

(10) "Registry identification card" means a document issued by the authority that identifies a person authorized to engage in the medical use of marijuana and, if the person has a designated primary caregiver under ORS 475.312, the person's designated primary caregiver.

(11) "Usable marijuana" means the dried leaves and flowers of the plant Cannabis family Moraceae, and any mixture or preparation thereof, that are appropriate for medical use as allowed in ORS 475.300 to 475.346. "Usable marijuana" does not include the seeds, stalks and roots of the plant.

(12) "Written documentation" means a statement signed by the attending physician of a person diagnosed with a debilitating medical condition or copies of the person's relevant medical records.

Note: See note under 475.300.

475.303 Advisory Committee on Medical Marijuana. (1) There is created the Advisory Committee on Medical Marijuana in the Oregon Health Authority, consisting of 11 members appointed by the Director of the Oregon Health Authority.

(2) The director shall appoint members of the committee from persons who possess registry identification cards, designated primary caregivers of persons who possess registry identification cards and advocates of the Oregon Medical Marijuana Act.

(3) The committee shall advise the director on the administrative aspects of the Oregon Medical Marijuana Program, review current and proposed administrative rules of the program and provide annual input on the fee structure of the program.

(4) The committee shall meet at least four times per year, at times and places specified by the director.

(5) The authority shall provide staff support to the committee.

(6) All agencies of state government, as defined in ORS 174.111, are directed to assist the committee in the performance of its duties and, to the extent permitted by laws relating to confidentiality, to furnish information and advice that the members of the committee consider necessary to perform their duties. [2005 c.822 §7; 2009 c.595 §965]

Note: See note under 475.300. 475.303 was added to and made a part of 475.300 to 475.346 by legislative action.

475.304 Marijuana grow site registration system; rules; fee. (1) The Oregon Health Authority shall establish by rule a marijuana grow site registration system to authorize production of marijuana by a registry identification cardholder, a designated primary caregiver who grows marijuana for the cardholder or a person who is responsible for a marijuana grow site. The marijuana grow site registration system adopted must require a registry identification cardholder to submit an application to the authority that includes:

(a) The name of the person responsible for the marijuana grow site;

(b) The address of the marijuana grow site;

(c) The registry identification card number of the registry cardholder for whom the marijuana is being produced; and

(d) Any other information the authority considers necessary.

(2) The authority shall issue a marijuana grow site registration card to a registry identification cardholder who has met the requirements of subsection (1) of this section.

(3) A person who has been issued a marijuana grow site registration card under this section must display the registration card at the marijuana grow site at all times when marijuana is being produced.

(4) A marijuana grow site registration card must be obtained and posted for each registry identification cardholder for whom marijuana is being produced at a marijuana grow site.

(5) All usable marijuana, plants, seedlings and seeds associated with the production of marijuana for a registry identification cardholder by a person responsible for a marijuana grow site are the property of the registry identification cardholder and must be provided to the registry identification cardholder, or, if the marijuana is usable marijuana or an immature marijuana plant, transferred to a medical marijuana facility registered under ORS 475.314, upon request.

(6)(a) The authority shall conduct a criminal records check under ORS 181.534 of any person whose name is submitted as a person responsible for a marijuana grow site.

(b) A person convicted of a Class A or Class B felony under ORS 475.752 to 475.920 for the manufacture or delivery of a controlled substance in Schedule I or Schedule II may not be issued a marijuana grow site registration card or produce marijuana for a registry identification cardholder for five years from the date of conviction.

(c) A person convicted more than once of a Class A or Class B felony under ORS 475.752 to 475.920 for the manufacture or delivery of a controlled substance in Schedule I or Schedule II may not be issued a marijuana grow site registration card or produce marijuana for a registry identification cardholder.

(7) A registry identification cardholder or the designated primary caregiver of the cardholder may reimburse the person responsible for a marijuana grow site for the costs of supplies and utilities associated with the production of marijuana for the registry identification cardholder. No other costs associated with the production of marijuana for the registry identification cardholder, including the cost of labor, may be reimbursed.

(8) The authority may adopt rules imposing a fee in an amount established by the authority for registration of a marijuana grow site under this section. [2005 c.822 §8; 2007 c.573 §2; 2009 c.595 §966; 2011 c.630 §92; 2013 c.726 §4]

Note: The amendments to 475.304 by section 4, chapter 726, Oregon Laws 2013, become operative March

1, 2014. See section 9, chapter 726, Oregon Laws 2013. The text that is operative until March 1, 2014, is set forth for the user's convenience.

475.304. (1) The Oregon Health Authority shall establish by rule a marijuana grow site registration system to authorize production of marijuana by a registry identification cardholder, a designated primary caregiver who grows marijuana for the cardholder or a person who is responsible for a marijuana grow site. The marijuana grow site registration system adopted must require a registry identification cardholder to submit an application to the authority that includes:

(a) The name of the person responsible for the marijuana grow site;

(b) The address of the marijuana grow site;

(c) The registry identification card number of the registry cardholder for whom the marijuana is being produced; and

(d) Any other information the authority considers necessary.

(2) The authority shall issue a marijuana grow site registration card to a registry identification cardholder who has met the requirements of subsection (1) of this section.

(3) A person who has been issued a marijuana grow site registration card under this section must display the registration card at the marijuana grow site at all times when marijuana is being produced.

(4) A marijuana grow site registration card must be obtained and posted for each registry identification cardholder for whom marijuana is being produced at a marijuana grow site.

(5) All usable marijuana, plants, seedlings and seeds associated with the production of marijuana for a registry identification cardholder by a person responsible for a marijuana grow site are the property of the registry identification cardholder and must be provided to the registry identification cardholder upon request.

(6)(a) The authority shall conduct a criminal records check under ORS 181.534 of any person whose name is submitted as a person responsible for a marijuana grow site.

(b) A person convicted of a Class A or Class B felony under ORS 475.752 to 475.920 for the manufacture or delivery of a controlled substance in Schedule I or Schedule II may not be issued a marijuana grow site registration card or produce marijuana for a registry identification cardholder for five years from the date of conviction.

(c) A person convicted more than once of a Class A or Class B felony under ORS 475.752 to 475.920 for the manufacture or delivery of a controlled substance in Schedule I or Schedule II may not be issued a marijuana grow site registration card or produce marijuana for a registry identification cardholder.

(7) A registry identification cardholder or the designated primary caregiver of the cardholder may reimburse the person responsible for a marijuana grow site for the costs of supplies and utilities associated with the production of marijuana for the registry identification cardholder. No other costs associated with the production of marijuana for the registry identification cardholder, including the cost of labor, may be reimbursed.

(8) The authority may adopt rules imposing a fee in an amount established by the authority for registration of a marijuana grow site under this section.

Note: Section 7, chapter 573, Oregon Laws 2007, provides:

Sec. 7. The amendments to ORS 475.304 and 475.320 by sections 2 and 5 of this 2007 Act apply only to a person convicted after January 1, 2006, of a Class A or Class B felony under ORS 475.840 to 475.920 [series became 475.752 to 475.920] for the manufacture or delivery

of a controlled substance in Schedule I or Schedule II. [2007 c.573 §7]

Note: See note under 475.300. 475.304 was added to and made a part of 475.300 to 475.346 by legislative action.

475.306 Medical use of marijuana; rules. (1) A person who possesses a registry identification card issued pursuant to ORS 475.309 may engage in, and a designated primary caregiver of such a person may assist in, the medical use of marijuana only as justified to mitigate the symptoms or effects of the person's debilitating medical condition.

(2) A person who is a registry identification cardholder must possess the registry identification card when using or transporting marijuana in a location other than the residence of the cardholder.

(3) The Oregon Health Authority shall define by rule when a marijuana plant is mature and when it is immature. The rule shall provide that a plant that has no flowers and that is less than 12 inches in height and less than 12 inches in diameter is a seedling or a start and is not a mature plant. [1999 c.4 §7; 2005 c.822 §2; 2009 c.595 §967]

Note: See note under 475.300.

475.309 Registry identification card; issuance; eligibility; duties of cardholder; revocation; immunity. (1) Except as provided in ORS 475.316, 475.320 and 475.342, a person engaged in or assisting in the medical use of marijuana is excepted from the criminal laws of the state for possession, delivery or production of marijuana, aiding and abetting another in the possession, delivery or production of marijuana or any other criminal offense in which possession, delivery or production of marijuana is an element if the following conditions have been satisfied:

(a)(A) The person holds a registry identification card issued pursuant to this section, has applied for a registry identification card pursuant to subsection (9) of this section, is the designated primary caregiver of the cardholder or applicant, or is the person responsible for a marijuana grow site that is producing marijuana for the cardholder and is registered under ORS 475.304; and

(B) The person who has a debilitating medical condition, the person's primary caregiver and the person responsible for a marijuana grow site that is producing marijuana for the cardholder and is registered under ORS 475.304 are collectively in possession of, delivering or producing marijuana for medical use in amounts allowed under ORS 475.320; or

(b) The person is responsible for or employed by a medical marijuana facility registered under ORS 475.314 and does not

commit any of the acts described in this subsection anywhere other than at the medical marijuana facility.

(2) The Oregon Health Authority shall establish and maintain a program for the issuance of registry identification cards to persons who meet the requirements of this section. Except as provided in subsection (3) of this section, the authority shall issue a registry identification card to any person who pays a fee in the amount established by the authority and provides the following:

(a) Valid, written documentation from the person's attending physician stating that the person has been diagnosed with a debilitating medical condition and that the medical use of marijuana may mitigate the symptoms or effects of the person's debilitating medical condition;

(b) The name, address and date of birth of the person;

(c) The name, address and telephone number of the person's attending physician;

(d) The name and address of the person's designated primary caregiver, if the person has designated a primary caregiver at the time of application; and

(e) A written statement that indicates whether the marijuana used by the cardholder will be produced at a location where the cardholder or designated primary caregiver is present or at another location.

(3) The authority shall issue a registry identification card to a person who is under 18 years of age if the person submits the materials required under subsection (2) of this section, and the custodial parent or legal guardian with responsibility for health care decisions for the person under 18 years of age signs a written statement that:

(a) The attending physician of the person under 18 years of age has explained to that person and to the custodial parent or legal guardian with responsibility for health care decisions for the person under 18 years of age the possible risks and benefits of the medical use of marijuana;

(b) The custodial parent or legal guardian with responsibility for health care decisions for the person under 18 years of age consents to the use of marijuana by the person under 18 years of age for medical purposes;

(c) The custodial parent or legal guardian with responsibility for health care decisions for the person under 18 years of age agrees to serve as the designated primary caregiver for the person under 18 years of age; and

(d) The custodial parent or legal guardian with responsibility for health care decisions for the person under 18 years of age agrees to control the acquisition of marijuana and

the dosage and frequency of use by the person under 18 years of age.

(4) A person applying for a registry identification card pursuant to this section may submit the information required in this section to a county health department for transmittal to the authority. A county health department that receives the information pursuant to this subsection shall transmit the information to the authority within five days of receipt of the information. Information received by a county health department pursuant to this subsection shall be confidential and not subject to disclosure, except as required to transmit the information to the authority.

(5)(a) The authority shall verify the information contained in an application submitted pursuant to this section and shall approve or deny an application within thirty days of receipt of the application.

(b) In addition to the authority granted to the authority under ORS 475.316 to deny an application, the authority may deny an application for the following reasons:

(A) The applicant did not provide the information required pursuant to this section to establish the applicant's debilitating medical condition and to document the applicant's consultation with an attending physician regarding the medical use of marijuana in connection with such condition, as provided in subsections (2) and (3) of this section;

(B) The authority determines that the information provided was falsified; or

(C) The applicant has been prohibited by a court order from obtaining a registry identification card.

(c) Denial of a registry identification card shall be considered a final authority action, subject to judicial review. Only the person whose application has been denied, or, in the case of a person under the age of 18 years of age whose application has been denied, the person's parent or legal guardian, shall have standing to contest the authority's action.

(d) Any person whose application has been denied may not reapply for six months from the date of the denial, unless so authorized by the authority or a court of competent jurisdiction.

(6)(a) If the authority has verified the information submitted pursuant to subsections (2) and (3) of this section and none of the reasons for denial listed in subsection (5)(b) of this section is applicable, the authority shall issue a serially numbered registry identification card within five days of verification of the information. The registry identification card shall state:

(A) The cardholder's name, address and date of birth;

(B) The date of issuance and expiration date of the registry identification card;

(C) The name and address of the person's designated primary caregiver, if any;

(D) Whether the marijuana used by the cardholder will be produced at a location where the cardholder or designated primary caregiver is present or at another location; and

(E) Any other information that the authority may specify by rule.

(b) When the person to whom the authority has issued a registry identification card pursuant to this section has specified a designated primary caregiver, the authority shall issue an identification card to the designated primary caregiver. The primary caregiver's registry identification card shall contain the information provided in paragraph (a) of this subsection.

(7)(a) A person who possesses a registry identification card shall:

(A) Notify the authority of any change in the person's name, address, attending physician or designated primary caregiver.

(B) If applicable, notify the designated primary caregiver of the cardholder, the person responsible for the marijuana grow site that produces marijuana for the cardholder and any person responsible for a medical marijuana facility that transfers usable marijuana or immature marijuana plants to the cardholder under ORS 475.314 of any change in status including, but not limited to:

(i) The assignment of another individual as the designated primary caregiver of the cardholder;

(ii) The assignment of another individual as the person responsible for a marijuana grow site producing marijuana for the cardholder; or

(iii) The end of the eligibility of the cardholder to hold a valid registry identification card.

(C) Annually submit to the authority:

(i) Updated written documentation from the cardholder's attending physician of the person's debilitating medical condition and that the medical use of marijuana may mitigate the symptoms or effects of the person's debilitating medical condition; and

(ii) The name of the person's designated primary caregiver if a primary caregiver has been designated for the upcoming year.

(b) If a person who possesses a registry identification card fails to comply with this subsection, the card shall be deemed expired.

If a registry identification card expires, the identification card of any designated primary caregiver of the cardholder shall also expire.

(8)(a) A person who possesses a registry identification card pursuant to this section and who has been diagnosed by the person's attending physician as no longer having a debilitating medical condition or whose attending physician has determined that the medical use of marijuana is contraindicated for the person's debilitating medical condition shall return the registry identification card and any other associated Oregon Medical Marijuana Program cards to the authority within 30 calendar days of notification of the diagnosis or notification of the contraindication.

(b) If, due to circumstances beyond the control of the registry identification cardholder, a cardholder is unable to obtain a second medical opinion about the cardholder's continuing eligibility to use medical marijuana before the 30-day period specified in paragraph (a) of this subsection has expired, the authority may grant the cardholder additional time to obtain a second opinion before requiring the cardholder to return the registry identification card and any associated cards.

(9) A person who has applied for a registry identification card pursuant to this section but whose application has not yet been approved or denied, and who is contacted by any law enforcement officer in connection with the person's administration, possession, delivery or production of marijuana for medical use may provide to the law enforcement officer a copy of the written documentation submitted to the authority pursuant to subsection (2) or (3) of this section and proof of the date of mailing or other transmission of the documentation to the authority. This documentation shall have the same legal effect as a registry identification card until such time as the person receives notification that the application has been approved or denied.

(10)(a) A registry identification cardholder has the primary responsibility of notifying the designated primary caregiver, the person responsible for the marijuana grow site that produces marijuana for the cardholder and any person responsible for a medical marijuana facility that transfers usable marijuana or immature marijuana plants to the cardholder under ORS 475.314 of any change in status of the cardholder.

(b) If the authority is notified by the cardholder that a primary caregiver or person responsible for a marijuana grow site has changed, the authority shall notify the primary caregiver or the person responsible for the marijuana grow site by mail at the ad-

dress of record confirming the change in status and informing the caregiver or person responsible for the marijuana grow site that their card is no longer valid and must be returned to the authority.

(11) The authority shall revoke the registry identification card of a cardholder if a court has issued an order that prohibits the cardholder from participating in the medical use of marijuana or otherwise participating in the Oregon Medical Marijuana Program under ORS 475.300 to 475.346. The cardholder shall return the registry identification card to the authority within seven calendar days of notification of the revocation. If the cardholder is a patient, the patient shall return the patient's card and all other associated Oregon Medical Marijuana Program cards.

(12) The authority shall revoke the registration of a medical marijuana facility registered under ORS 475.314 if a court has issued an order that prohibits the person responsible for the medical marijuana facility from participating in the Oregon Medical Marijuana Program under ORS 475.300 to 475.346.

(13) The authority and employees and agents of the authority acting within the course and scope of their employment are immune from any civil liability that might be incurred or imposed for the performance of or failure to perform duties required by this section. [1999 c.4 §4; 1999 c.825 §2; 2003 c.14 §306; 2005 c.822 §3; 2007 c.573 §3; 2009 c.595 §968; 2013 c.726 §5]

Note: The amendments to 475.309 by section 5, chapter 726, Oregon Laws 2013, become operative March 1, 2014. See section 9, chapter 726, Oregon Laws 2013. The text that is operative until March 1, 2014, is set forth for the user's convenience.

475.309. (1) Except as provided in ORS 475.316, 475.320 and 475.342, a person engaged in or assisting in the medical use of marijuana is exempted from the criminal laws of the state for possession, delivery or production of marijuana, aiding and abetting another in the possession, delivery or production of marijuana or any other criminal offense in which possession, delivery or production of marijuana is an element if the following conditions have been satisfied:

(a) The person holds a registry identification card issued pursuant to this section, has applied for a registry identification card pursuant to subsection (9) of this section, is the designated primary caregiver of the cardholder or applicant, or is the person responsible for a marijuana grow site that is producing marijuana for the cardholder and is registered under ORS 475.304; and

(b) The person who has a debilitating medical condition, the person's primary caregiver and the person responsible for a marijuana grow site that is producing marijuana for the cardholder and is registered under ORS 475.304 are collectively in possession of, delivering or producing marijuana for medical use in amounts allowed under ORS 475.320.

(2) The Oregon Health Authority shall establish and maintain a program for the issuance of registry identification cards to persons who meet the requirements of this section. Except as provided in subsection (3) of this section, the authority shall issue a registry

identification card to any person who pays a fee in the amount established by the authority and provides the following:

(a) Valid, written documentation from the person's attending physician stating that the person has been diagnosed with a debilitating medical condition and that the medical use of marijuana may mitigate the symptoms or effects of the person's debilitating medical condition;

(b) The name, address and date of birth of the person;

(c) The name, address and telephone number of the person's attending physician;

(d) The name and address of the person's designated primary caregiver, if the person has designated a primary caregiver at the time of application; and

(e) A written statement that indicates whether the marijuana used by the cardholder will be produced at a location where the cardholder or designated primary caregiver is present or at another location.

(3) The authority shall issue a registry identification card to a person who is under 18 years of age if the person submits the materials required under subsection (2) of this section, and the custodial parent or legal guardian with responsibility for health care decisions for the person under 18 years of age signs a written statement that:

(a) The attending physician of the person under 18 years of age has explained to that person and to the custodial parent or legal guardian with responsibility for health care decisions for the person under 18 years of age the possible risks and benefits of the medical use of marijuana;

(b) The custodial parent or legal guardian with responsibility for health care decisions for the person under 18 years of age consents to the use of marijuana by the person under 18 years of age for medical purposes;

(c) The custodial parent or legal guardian with responsibility for health care decisions for the person under 18 years of age agrees to serve as the designated primary caregiver for the person under 18 years of age; and

(d) The custodial parent or legal guardian with responsibility for health care decisions for the person under 18 years of age agrees to control the acquisition of marijuana and the dosage and frequency of use by the person under 18 years of age.

(4) A person applying for a registry identification card pursuant to this section may submit the information required in this section to a county health department for transmittal to the authority. A county health department that receives the information pursuant to this subsection shall transmit the information to the authority within five days of receipt of the information. Information received by a county health department pursuant to this subsection shall be confidential and not subject to disclosure, except as required to transmit the information to the authority.

(5)(a) The authority shall verify the information contained in an application submitted pursuant to this section and shall approve or deny an application within thirty days of receipt of the application.

(b) In addition to the authority granted to the authority under ORS 475.316 to deny an application, the authority may deny an application for the following reasons:

(A) The applicant did not provide the information required pursuant to this section to establish the applicant's debilitating medical condition and to document the applicant's consultation with an attending physician regarding the medical use of marijuana in connection with such condition, as provided in subsections (2) and (3) of this section;

(B) The authority determines that the information provided was falsified; or

(C) The applicant has been prohibited by a court order from obtaining a registry identification card.

(c) Denial of a registry identification card shall be considered a final authority action, subject to judicial review. Only the person whose application has been denied, or, in the case of a person under the age of 18 years of age whose application has been denied, the person's parent or legal guardian, shall have standing to contest the authority's action.

(d) Any person whose application has been denied may not reapply for six months from the date of the denial, unless so authorized by the authority or a court of competent jurisdiction.

(6)(a) If the authority has verified the information submitted pursuant to subsections (2) and (3) of this section and none of the reasons for denial listed in subsection (5)(b) of this section is applicable, the authority shall issue a serially numbered registry identification card within five days of verification of the information. The registry identification card shall state:

(A) The cardholder's name, address and date of birth;

(B) The date of issuance and expiration date of the registry identification card;

(C) The name and address of the person's designated primary caregiver, if any;

(D) Whether the marijuana used by the cardholder will be produced at a location where the cardholder or designated primary caregiver is present or at another location; and

(E) Any other information that the authority may specify by rule.

(b) When the person to whom the authority has issued a registry identification card pursuant to this section has specified a designated primary caregiver, the authority shall issue an identification card to the designated primary caregiver. The primary caregiver's registry identification card shall contain the information provided in paragraph (a) of this subsection.

(7)(a) A person who possesses a registry identification card shall:

(A) Notify the authority of any change in the person's name, address, attending physician or designated primary caregiver.

(B) If applicable, notify the designated primary caregiver of the cardholder and the person responsible for the marijuana grow site that produces marijuana for the cardholder of any change in status including, but not limited to:

(i) The assignment of another individual as the designated primary caregiver of the cardholder;

(ii) The assignment of another individual as the person responsible for a marijuana grow site producing marijuana for the cardholder; or

(iii) The end of the eligibility of the cardholder to hold a valid registry identification card.

(C) Annually submit to the authority:

(i) Updated written documentation from the cardholder's attending physician of the person's debilitating medical condition and that the medical use of marijuana may mitigate the symptoms or effects of the person's debilitating medical condition; and

(ii) The name of the person's designated primary caregiver if a primary caregiver has been designated for the upcoming year.

(b) If a person who possesses a registry identification card fails to comply with this subsection, the card shall be deemed expired. If a registry identification card

expires, the identification card of any designated primary caregiver of the cardholder shall also expire.

(8)(a) A person who possesses a registry identification card pursuant to this section and who has been diagnosed by the person's attending physician as no longer having a debilitating medical condition or whose attending physician has determined that the medical use of marijuana is contraindicated for the person's debilitating medical condition shall return the registry identification card and any other associated Oregon Medical Marijuana Program cards to the authority within 30 calendar days of notification of the diagnosis or notification of the contraindication.

(b) If, due to circumstances beyond the control of the registry identification cardholder, a cardholder is unable to obtain a second medical opinion about the cardholder's continuing eligibility to use medical marijuana before the 30-day period specified in paragraph (a) of this subsection has expired, the authority may grant the cardholder additional time to obtain a second opinion before requiring the cardholder to return the registry identification card and any associated cards.

(9) A person who has applied for a registry identification card pursuant to this section but whose application has not yet been approved or denied, and who is contacted by any law enforcement officer in connection with the person's administration, possession, delivery or production of marijuana for medical use may provide to the law enforcement officer a copy of the written documentation submitted to the authority pursuant to subsection (2) or (3) of this section and proof of the date of mailing or other transmission of the documentation to the authority. This documentation shall have the same legal effect as a registry identification card until such time as the person receives notification that the application has been approved or denied.

(10) A registry identification cardholder has the primary responsibility of notifying the primary caregiver and person responsible for the marijuana grow site that produces marijuana for the cardholder of any change in status of the cardholder. If the authority is notified by the cardholder that a primary caregiver or person responsible for a marijuana grow site has changed, the authority shall notify the primary caregiver or the person responsible for the marijuana grow site by mail at the address of record confirming the change in status and informing the caregiver or person that their card is no longer valid and must be returned to the authority.

(11) The authority shall revoke the registry identification card of a cardholder if a court has issued an order that prohibits the cardholder from participating in the medical use of marijuana or otherwise participating in the Oregon Medical Marijuana Program under ORS 475.300 to 475.346. The cardholder shall return the registry identification card to the authority within seven calendar days of notification of the revocation. If the cardholder is a patient, the patient shall return the patient's card and all other associated Oregon Medical Marijuana Program cards.

(12) The authority and employees and agents of the authority acting within the course and scope of their employment are immune from any civil liability that might be incurred or imposed for the performance of or failure to perform duties required by this section.

Note: See note under 475.300.

475.312 Designated primary caregiver.

(1) If a person who possesses a registry identification card issued pursuant to ORS 475.309 chooses to have a designated primary caregiver, the person must designate the pri-

mary caregiver by including the primary caregiver's name and address:

(a) On the person's application for a registry identification card;

(b) In the annual updated information required under ORS 475.309; or

(c) In a written, signed statement submitted to the Oregon Health Authority.

(2) A person described in this section may have only one designated primary caregiver at any given time. [1999 c.4 §13; 2009 c.595 §969]

Note: See note under 475.300.

475.314 Medical marijuana facility registration; qualifications; inspections; revocation; rules; fees. (1) The Oregon Health Authority shall establish by rule a medical marijuana facility registration system to authorize the transfer of usable marijuana and immature marijuana plants from:

(a) A registry identification cardholder, the designated primary caregiver of a registry identification cardholder, or a person responsible for a marijuana grow site to the medical marijuana facility; or

(b) A medical marijuana facility to a registry identification cardholder or the designated primary caregiver of a registry identification cardholder.

(2) The registration system established under subsection (1) of this section must require a medical marijuana facility to submit an application to the authority that includes:

(a) The name of the person responsible for the medical marijuana facility;

(b) The address of the medical marijuana facility;

(c) Proof that the person responsible for the medical marijuana facility is a resident of Oregon;

(d) Documentation, as required by the authority by rule, that demonstrates the medical marijuana facility meets the qualifications for a medical marijuana facility as described in subsection (3) of this section; and

(e) Any other information that the authority considers necessary.

(3) To qualify for registration under this section, a medical marijuana facility:

(a) Must be located in an area that is zoned for commercial, industrial or mixed use or as agricultural land and may not be located at the same address as a marijuana grow site;

(b) Must be registered as a business or have filed a pending application to register

as a business with the Office of the Secretary of State;

(c) Must not be located within 1,000 feet of the real property comprising a public or private elementary, secondary or career school attended primarily by minors;

(d) Must not be located within 1,000 feet of another medical marijuana facility; and

(e) Must comport with rules adopted by the authority related to:

(A) Installing a minimum security system, including a video surveillance system, alarm system and safe; and

(B) Testing for pesticides, mold and mildew and the processes by which usable marijuana and immature marijuana plants that test positive for pesticides, mold or mildew must be returned to the registry identification cardholder, the cardholder's designated primary caregiver or the cardholder's registered grower.

(4)(a) The authority shall conduct a criminal records check under ORS 181.534 of a person whose name is submitted as the person responsible for a medical marijuana facility under subsection (2) of this section.

(b) A person convicted for the manufacture or delivery of a controlled substance in Schedule I or Schedule II may not be the person responsible for a medical marijuana facility for five years from the date the person is convicted.

(c) A person convicted more than once for the manufacture or delivery of a controlled substance in Schedule I or Schedule II may not be the person responsible for a medical marijuana facility.

(5) If a person submits the application required under subsection (2) of this section, the medical marijuana facility identified in the application meets the qualifications for a medical marijuana facility described in subsection (3) of this section and the person responsible for the medical marijuana facility passes the criminal records check required under subsection (4) of this section, the authority shall register the medical marijuana facility and issue the person responsible for the medical marijuana facility proof of registration. The person responsible for the medical marijuana facility shall display the proof of registration on the premises of the medical marijuana facility at all times when usable marijuana or immature marijuana plants are being transferred as described in subsection (1) of this section.

(6)(a) A registered medical marijuana facility may receive usable marijuana or immature marijuana plants only from a registry identification cardholder, designated primary caregiver or person responsible for a

marijuana grow site if the registered medical marijuana facility obtains authorization, on a form prescribed by the authority by rule and signed by a registry identification cardholder, to receive the usable marijuana or immature marijuana plants.

(b) A registered medical marijuana facility shall maintain:

(A) A copy of each authorization form described in paragraph (a) of this subsection; and

(B) Documentation of each transfer of usable marijuana or immature marijuana plants.

(7) A medical marijuana facility registered under this section may possess usable marijuana and immature marijuana plants in excess of the limits imposed on registry identification cardholders and designated primary caregivers under ORS 475.320.

(8) The authority may inspect:

(a) The premises of an applicant for a medical marijuana facility or a registered medical marijuana facility to ensure compliance with the qualifications for a medical marijuana facility described in subsection (3) of this section; and

(b) The records of a registered medical marijuana facility to ensure compliance with subsection (6)(b) of this section.

(9)(a) A registry identification cardholder or the designated primary caregiver of a registry identification cardholder may reimburse a medical marijuana facility registered under this section for the normal and customary costs of doing business, including costs related to transferring, handling, securing, insuring, testing, packaging and processing usable marijuana and immature marijuana plants and the cost of supplies, utilities and rent or mortgage.

(b) A medical marijuana facility may reimburse a person responsible for a marijuana grow site under this section for the normal and customary costs of doing business, including costs related to transferring, handling, securing, insuring, testing, packaging and processing usable marijuana and immature marijuana plants and the cost of supplies, utilities and rent or mortgage.

(10) The authority may revoke the registration of a medical marijuana facility registered under this section for failure to comply with ORS 475.300 to 475.346 or rules adopted under ORS 475.300 to 475.346. The authority may release to the public a final order revoking a medical marijuana facility registration.

(11) The authority shall adopt rules to implement this section, including rules that:

(a) Require a medical marijuana facility registered under this section to annually renew that registration; and

(b) Establish fees for registering and renewing registration for a medical marijuana facility under this section. [2013 c.726 §2]

Note: 475.314 becomes operative March 1, 2014. See section 9, chapter 726, Oregon Laws 2013.

Note: See note under 475.300. 475.314 was added to and made a part of 475.300 to 475.346 by legislative action.

475.316 Limitations on cardholder's immunity from criminal laws involving marijuana.

(1) No person authorized to possess, deliver or produce marijuana for medical use pursuant to ORS 475.300 to 475.346 shall be excepted from the criminal laws of this state or shall be deemed to have established an affirmative defense to criminal charges of which possession, delivery or production of marijuana is an element if the person, in connection with the facts giving rise to such charges:

(a) Drives under the influence of marijuana as provided in ORS 813.010;

(b) Engages in the medical use of marijuana in a public place as that term is defined in ORS 161.015, or in public view or in a correctional facility as defined in ORS 162.135 (2) or youth correction facility as defined in ORS 162.135 (6);

(c) Delivers marijuana to any individual who the person knows is not in possession of a registry identification card;

(d) Delivers marijuana for consideration to any individual, even if the individual is in possession of a registry identification card;

(e) Manufactures or produces marijuana at a place other than a marijuana grow site authorized under ORS 475.304; or

(f) Manufactures or produces marijuana at more than one address.

(2) In addition to any other penalty allowed by law, a person who the Oregon Health Authority finds has willfully violated the provisions of ORS 475.300 to 475.346, or rules adopted under ORS 475.300 to 475.346, may be precluded from obtaining or using a registry identification card for the medical use of marijuana for a period of up to six months, at the discretion of the authority. [1999 c.4 §5; 1999 c.825 §3; 2005 c.822 §13; 2007 c.573 §4; 2009 c.595 §970]

Note: See note under 475.300.

475.319 Affirmative defense to certain criminal laws involving marijuana; notice.

(1) Except as provided in ORS 475.316 and 475.342, it is an affirmative defense to a criminal charge of possession or production of marijuana, or any other criminal offense in which possession or production of

marijuana is an element, that the person charged with the offense is a person who:

(a) Has been diagnosed with a debilitating medical condition within 12 months prior to arrest and been advised by the person's attending physician that the medical use of marijuana may mitigate the symptoms or effects of that debilitating medical condition;

(b) Is engaged in the medical use of marijuana; and

(c) Possesses or produces marijuana only in amounts permitted under ORS 475.320.

(2) It is not necessary for a person asserting an affirmative defense pursuant to this section to have received a registry identification card in order to assert the affirmative defense established in this section.

(3) No person engaged in the medical use of marijuana who claims that marijuana provides medically necessary benefits and who is charged with a crime pertaining to such use of marijuana shall be precluded from presenting a defense of choice of evils, as set forth in ORS 161.200, or from presenting evidence supporting the necessity of marijuana for treatment of a specific disease or medical condition, provided that the amount of marijuana at issue is no greater than permitted under ORS 475.320 and the patient has taken a substantial step to comply with the provisions of ORS 475.300 to 475.346.

(4) Any defendant proposing to use the affirmative defense provided for by this section in a criminal action shall, not less than five days before the trial of the cause, file and serve upon the district attorney a written notice of the intention to offer such a defense that specifically states the reasons why the defendant is entitled to assert and the factual basis for such affirmative defense. If the defendant fails to file and serve such notice, the defendant is not permitted to assert the affirmative defense at the trial of the cause unless the court for good cause orders otherwise. [1999 c.4 §6; 1999 c.825 §4; 2005 c.22 §347; 2005 c.822 §12]

Note: See note under 475.300.

475.320 Limits on amounts possessed.

(1)(a) A registry identification cardholder or the designated primary caregiver of the cardholder may possess up to six mature marijuana plants and 24 ounces of usable marijuana.

(b) Notwithstanding paragraph (a) of this subsection, if a registry identification cardholder has been convicted of a Class A or Class B felony under ORS 475.752 to 475.920 for the manufacture or delivery of a controlled substance in Schedule I or Schedule II, the registry identification cardholder or the designated primary caregiver of the cardholder may possess one ounce of usable

marijuana at any given time for a period of five years from the date of the conviction.

(2) A person authorized under ORS 475.304 to produce marijuana at a marijuana grow site:

(a) May produce marijuana for and provide marijuana:

(A) To a registry identification cardholder or a cardholder's designated primary caregiver as authorized under this section; or

(B) If the marijuana is usable marijuana or an immature marijuana plant and the registry identification cardholder authorizes the person responsible for the marijuana grow site to transfer the usable marijuana or immature marijuana plant to a medical marijuana facility registered under ORS 475.314, to the medical marijuana facility.

(b) May possess up to six mature plants and up to 24 ounces of usable marijuana for each cardholder or caregiver for whom marijuana is being produced.

(c) May produce marijuana for no more than four registry identification cardholders or designated primary caregivers concurrently.

(d) Must obtain and display a marijuana grow site registration card issued under ORS 475.304 for each registry identification cardholder or designated primary caregiver for whom marijuana is being produced.

(e) Must provide all marijuana produced for a registry identification cardholder or designated primary caregiver to the cardholder or caregiver at the time the person responsible for a marijuana grow site ceases producing marijuana for the cardholder or caregiver.

(f) Must return the marijuana grow site registration card to the registry identification cardholder to whom the card was issued when requested to do so by the cardholder or when the person responsible for a marijuana grow site ceases producing marijuana for the cardholder or caregiver.

(3) Except as provided in subsections (1) and (2) of this section, a registry identification cardholder, the designated primary caregiver of the cardholder and the person responsible for a marijuana grow site producing marijuana for the registry identification cardholder may possess a combined total of up to six mature plants and 24 ounces of usable marijuana for that registry identification cardholder.

(4)(a) A registry identification cardholder and the designated primary caregiver of the cardholder may possess a combined total of up to 18 marijuana seedlings or starts as de-

defined by rule of the Oregon Health Authority.

(b) A person responsible for a marijuana grow site may possess up to 18 marijuana seedlings or starts as defined by rule of the authority for each registry identification cardholder for whom the person responsible for the marijuana grow site is producing marijuana. [2005 c.822 §9; 2007 c.573 §5; 2009 c.595 §971; 2013 c.726 §6]

Note: The amendments to 475.320 by section 6, chapter 726, Oregon Laws 2013, become operative March 1, 2014. See section 9, chapter 726, Oregon Laws 2013. The text that is operative until March 1, 2014, is set forth for the user's convenience.

475.320. (1)(a) A registry identification cardholder or the designated primary caregiver of the cardholder may possess up to six mature marijuana plants and 24 ounces of usable marijuana.

(b) Notwithstanding paragraph (a) of this subsection, if a registry identification cardholder has been convicted of a Class A or Class B felony under ORS 475.752 to 475.920 for the manufacture or delivery of a controlled substance in Schedule I or Schedule II, the registry identification cardholder or the designated primary caregiver of the cardholder may possess one ounce of usable marijuana at any given time for a period of five years from the date of the conviction.

(2) A person authorized under ORS 475.304 to produce marijuana at a marijuana grow site:

(a) May produce marijuana for and provide marijuana to a registry identification cardholder or that person's designated primary caregiver as authorized under this section.

(b) May possess up to six mature plants and up to 24 ounces of usable marijuana for each cardholder or caregiver for whom marijuana is being produced.

(c) May produce marijuana for no more than four registry identification cardholders or designated primary caregivers concurrently.

(d) Must obtain and display a marijuana grow site registration card issued under ORS 475.304 for each registry identification cardholder or designated primary caregiver for whom marijuana is being produced.

(e) Must provide all marijuana produced for a registry identification cardholder or designated primary caregiver to the cardholder or caregiver at the time the person responsible for a marijuana grow site ceases producing marijuana for the cardholder or caregiver.

(f) Must return the marijuana grow site registration card to the registry identification cardholder to whom the card was issued when requested to do so by the cardholder or when the person responsible for a marijuana grow site ceases producing marijuana for the cardholder or caregiver.

(3) Except as provided in subsections (1) and (2) of this section, a registry identification cardholder, the designated primary caregiver of the cardholder and the person responsible for a marijuana grow site producing marijuana for the registry identification cardholder may possess a combined total of up to six mature plants and 24 ounces of usable marijuana for that registry identification cardholder.

(4)(a) A registry identification cardholder and the designated primary caregiver of the cardholder may possess a combined total of up to 18 marijuana seedlings or starts as defined by rule of the Oregon Health Authority.

(b) A person responsible for a marijuana grow site may possess up to 18 marijuana seedlings or starts as defined by rule of the authority for each registry iden-

tification cardholder for whom the person responsible for the marijuana grow site is producing marijuana.

Note: See second note under 475.304.

Note: See note under 475.300. 475.320 was added to and made a part of 475.300 to 475.346 by legislative action.

475.323 Effect of possession of registry identification card, designated primary caregiver card or proof of registration as medical marijuana facility on search and seizure rights. (1) Possession of a registry identification card, designated primary caregiver identification card pursuant to ORS 475.309 or proof of registration as a medical marijuana facility under ORS 475.314 does not alone constitute probable cause to search the person or property of the cardholder or otherwise subject the person or property of the cardholder to inspection by any governmental agency. However, the Oregon Health Authority may inspect a medical marijuana facility registered under ORS 475.314 at any reasonable time to determine whether the facility is in compliance with ORS 475.300 to 475.346.

(2) Any property interest possessed, owned or used in connection with the medical use of marijuana or acts incidental to the medical use of marijuana that has been seized by state or local law enforcement officers may not be harmed, neglected, injured or destroyed while in the possession of any law enforcement agency. A law enforcement agency has no responsibility to maintain live marijuana plants lawfully seized. No such property interest may be forfeited under any provision of law providing for the forfeiture of property other than as a sentence imposed after conviction of a criminal offense. Usable marijuana and paraphernalia used to administer marijuana that was seized by any law enforcement office shall be returned immediately upon a determination by the district attorney in whose county the property was seized, or the district attorney's designee, that the person from whom the marijuana or paraphernalia used to administer marijuana was seized is entitled to the protections contained in ORS 475.300 to 475.346. The determination may be evidenced, for example, by a decision not to prosecute, the dismissal of charges or acquittal. [1999 c.4 §8; 1999 c.825 §5; 2005 c.22 §348; 2013 c.726 §7]

Note: The amendments to 475.323 by section 7, chapter 726, Oregon Laws 2013, become operative March 1, 2014. See section 9, chapter 726, Oregon Laws 2013. The text that is operative until March 1, 2014, is set forth for the user's convenience.

475.323. (1) Possession of a registry identification card or designated primary caregiver identification card pursuant to ORS 475.309 does not alone constitute probable cause to search the person or property of the cardholder or otherwise subject the person or property of the cardholder to inspection by any governmental agency.

(2) Any property interest possessed, owned or used in connection with the medical use of marijuana or acts incidental to the medical use of marijuana that has been seized by state or local law enforcement officers may not be harmed, neglected, injured or destroyed while in the possession of any law enforcement agency. A law enforcement agency has no responsibility to maintain live marijuana plants lawfully seized. No such property interest may be forfeited under any provision of law providing for the forfeiture of property other than as a sentence imposed after conviction of a criminal offense. Usable marijuana and paraphernalia used to administer marijuana that was seized by any law enforcement office shall be returned immediately upon a determination by the district attorney in whose county the property was seized, or the district attorney's designee, that the person from whom the marijuana or paraphernalia used to administer marijuana was seized is entitled to the protections contained in ORS 475.300 to 475.346. The determination may be evidenced, for example, by a decision not to prosecute, the dismissal of charges or acquittal.

Note: See note under 475.300.

475.324 Limits on confiscation of marijuana. A law enforcement officer who determines that a registry identification cardholder is in possession of amounts of usable marijuana or numbers of marijuana plants in excess of the amount or number authorized by ORS 475.320 may confiscate only any usable marijuana or plants that are in excess of the amount or number authorized. [2005 c.822 §10]

Note: See note under 475.300. 475.324 was added to and made a part of 475.300 to 475.346 by legislative action.

475.326 Attending physician; limitation on civil penalty and professional discipline. No attending physician may be subjected to civil penalty or discipline by the Oregon Medical Board for:

(1) Advising a person whom the attending physician has diagnosed as having a debilitating medical condition, or a person who the attending physician knows has been so diagnosed by another physician licensed under ORS chapter 677, about the risks and benefits of medical use of marijuana or that the medical use of marijuana may mitigate the symptoms or effects of the person's debilitating medical condition, provided the advice is based on the attending physician's personal assessment of the person's medical history and current medical condition; or

(2) Providing the written documentation necessary for issuance of a registry identification card under ORS 475.309, if the documentation is based on the attending physician's personal assessment of the applicant's medical history and current medical condition and the attending physician has discussed the potential medical risks and benefits of the medical use of marijuana with the applicant. [1999 c.4 §9; 2005 c.822 §11]

Note: See note under 475.300.

475.328 Limits on professional licensing board's authority to sanction licensee for medical use of marijuana; authorizes licensed health care professional to administer medical marijuana. (1) No professional licensing board may impose a civil penalty or take other disciplinary action against a licensee based on the licensee's medical use of marijuana in accordance with the provisions of ORS 475.300 to 475.346 or actions taken by the licensee that are necessary to carry out the licensee's role as a designated primary caregiver to a person who possesses a lawful registry identification card.

(2)(a) A licensed health care professional may administer medical marijuana to a person who possesses a registry identification card and resides in a licensed health care facility if the administration of pharmaceuticals is within the scope of practice of the licensed health care professional. Administration of medical marijuana under this subsection may not take place in a public place as defined in ORS 161.015 or in the presence of a person under 18 years of age. If the medical marijuana administered under this subsection is smoked, adequate ventilation must be provided.

(b) Nothing in this subsection requires:

(A) A licensed health care professional to administer medical marijuana; or

(B) A licensed health care facility to make accommodations for the administration of medical marijuana. [1999 c.4 §10; 2005 c.822 §4]

Note: See note under 475.300.

475.331 List of persons and locations; disclosure. (1)(a) The Oregon Health Authority shall create and maintain a list of the persons to whom the authority has issued registry identification cards, the names of any designated primary caregivers, the names of persons responsible for a medical marijuana facility registered under ORS 475.314, the addresses of authorized marijuana grow sites and the addresses of registered medical marijuana facilities. Except as provided in subsection (2) of this section, the list shall be confidential and not subject to public disclosure.

(b) The authority shall develop a system by which authorized employees of state and local law enforcement agencies may verify at all times that:

(A) A person is a lawful possessor of a registry identification card;

(B) A person is the designated primary caregiver of a lawful possessor of a registry identification card;

(C) A location is an authorized marijuana grow site;

(D) A location is a registered medical marijuana facility; or

(E) A person is the person listed as the person responsible for a registered medical marijuana facility.

(2) Names and other identifying information from the list established pursuant to subsection (1) of this section may be released to:

(a) Authorized employees of the authority as necessary to perform official duties of the authority.

(b) Authorized employees of state or local law enforcement agencies, who provide to the authority adequate identification, such as a badge number or similar authentication of authority, only as necessary to verify that:

(A) A person is a lawful possessor of a registry identification card;

(B) A person is the designated primary caregiver of a lawful possessor of a registry identification card;

(C) A location is an authorized marijuana grow site;

(D) A location is a registered medical marijuana facility; or

(E) A person is the person listed as the person responsible for a registered medical marijuana facility.

(3) Authorized employees of state or local law enforcement agencies that obtain identifying information from the list as authorized under this section may not release or use the information for any purpose other than verification that:

(a) A person is a lawful possessor of a registry identification card;

(b) A person is the designated primary caregiver of a lawful possessor of a registry identification card;

(c) A location is an authorized marijuana grow site;

(d) A location is a registered medical marijuana facility; or

(e) A person is the person listed as the person responsible for a registered medical marijuana facility. [1999 c.4 §12; 2005 c.822 §5; 2009 c.595 §972; 2013 c.726 §8]

Note: The amendments to 475.331 by section 8, chapter 726, Oregon Laws 2013, become operative March 1, 2014. See section 9, chapter 726, Oregon Laws 2013. The text that is operative until March 1, 2014, is set forth for the user's convenience.

475.331. (1)(a) The Oregon Health Authority shall create and maintain a list of the persons to whom the authority has issued registry identification cards, the names of any designated primary caregivers and the addresses of authorized marijuana grow sites. Except as provided in subsection (2) of this section, the list shall be confidential and not subject to public disclosure.

(b) The authority shall develop a system by which authorized employees of state and local law enforcement agencies may verify at all times that a person is a lawful possessor of a registry identification card or the designated primary caregiver of a lawful possessor of a registry identification card or that a location is an authorized marijuana grow site.

(2) Names and other identifying information from the list established pursuant to subsection (1) of this section may be released to:

(a) Authorized employees of the authority as necessary to perform official duties of the authority; and

(b) Authorized employees of state or local law enforcement agencies, only as necessary to verify that a person is a lawful possessor of a registry identification card or the designated primary caregiver of a lawful possessor of a registry identification card or that a location is an authorized marijuana grow site. Prior to being provided identifying information from the list, authorized employees of state or local law enforcement agencies shall provide to the authority adequate identification, such as a badge number or similar authentication of authority.

(3) Authorized employees of state or local law enforcement agencies that obtain identifying information from the list as authorized under this section may not release or use the information for any purpose other than verification that a person is a lawful possessor of a registry identification card or the designated primary caregiver of a lawful possessor of a registry identification card or that a location is an authorized marijuana grow site.

Note: See note under 475.300.

475.334 Adding diseases or conditions that qualify as debilitating medical conditions; rules. Any person may submit a petition to the Oregon Health Authority requesting that a particular disease or condition be included among the diseases and conditions that qualify as debilitating medical conditions under ORS 475.302. The authority shall adopt rules establishing the manner in which the authority will evaluate petitions submitted under this section. Any rules adopted pursuant to this section shall require the authority to approve or deny a petition within 180 days of receipt of the petition by the authority. Denial of a petition shall be considered a final authority action subject to judicial review. [1999 c.4 §14; 2009 c.595 §973]

Note: See note under 475.300.

475.338 Rules. The Oregon Health Authority shall adopt all rules necessary for the implementation and administration of ORS 475.300 to 475.346. [1999 c.4 §15; 2009 c.595 §974]

Note: See note under 475.300.

475.340 Limitations on reimbursement of costs and employer accommodation. Nothing in ORS 475.300 to 475.346 shall be construed to require:

(1) A government medical assistance program or private health insurer to reimburse a person for costs associated with the medical use of marijuana; or

(2) An employer to accommodate the medical use of marijuana in any workplace. [1999 c.4 §16]

Note: See note under 475.300.

475.342 Limitations on protection from criminal liability. Nothing in ORS 475.300 to 475.346 shall protect a person from a criminal cause of action based on possession, production, or delivery of marijuana that is not authorized by ORS 475.300 to 475.346. [1999 c.4 §11]

Note: See note under 475.300.

475.346 Short title. ORS 475.300 to 475.346 shall be known as the Oregon Medical Marijuana Act. [1999 c.4 §1]

Note: See note under 475.300.

DRUG PARAPHERNALIA

475.525 Sale of drug paraphernalia prohibited; definition of drug paraphernalia; exceptions. (1) It is unlawful for any person to sell or deliver, possess with intent to sell or deliver or manufacture with intent to sell or deliver drug paraphernalia, knowing that it will be used to unlawfully plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale or otherwise introduce into the human body a controlled substance as defined by ORS 475.005.

(2) For the purposes of this section, "drug paraphernalia" means all equipment, products and materials of any kind which are marketed for use or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling or otherwise introducing into the human body a controlled substance in violation of ORS 475.752 to 475.980. Drug paraphernalia includes, but is not limited to:

(a) Kits marketed for use or designed for use in unlawfully planting, propagating, cultivating, growing or harvesting of any species of plant which is a controlled substance or from which a controlled substance can be derived;

(b) Kits marketed for use or designed for use in manufacturing, compounding, converting, producing, processing or preparing controlled substances;

(c) Isomerization devices marketed for use or designed for use in increasing the potency of any species of plant which is a controlled substance;

(d) Testing equipment marketed for use or designed for use in identifying or in ana-

lyzing the strength, effectiveness or purity of controlled substances;

(e) Scales and balances marketed for use or designed for use in weighing or measuring controlled substances;

(f) Diluents and adulterants, such as quinine hydrochloride, mannitol, mannite, dextrose and lactose, marketed for use or designed for use in cutting controlled substances;

(g) Separation gins and sifters marketed for use or designed for use in removing twigs and seeds from, or in otherwise cleaning or refining marijuana;

(h) Containers and other objects marketed for use or designed for use in storing or concealing controlled substances; and

(i) Objects marketed for use or designed specifically for use in ingesting, inhaling or otherwise introducing marijuana, cocaine, hashish or hashish oil into the human body, such as:

(A) Metal, wooden, acrylic, glass, stone, plastic or ceramic pipes with or without screens, permanent screens or hashish heads;

(B) Water pipes;

(C) Carburetion tubes and devices;

(D) Smoking and carburetion masks;

(E) Roach clips, meaning objects used to hold burning material that has become too small or too short to be held in the hand, such as a marijuana cigarette;

(F) Miniature cocaine spoons and cocaine vials;

(G) Chamber pipes;

(H) Carburetor pipes;

(I) Electric pipes;

(J) Air-driven pipes;

(K) Chillums;

(L) Bongs;

(M) Ice pipes or chillers; and

(N) Lighting equipment specifically designed for the growing of controlled substances.

(3) Drug paraphernalia does not include hypodermic syringes or needles.

(4) In determining whether an object is drug paraphernalia, a trier of fact should consider, in addition to all other relevant factors, the following:

(a) Instructions, oral or written, provided with the object concerning its use;

(b) Descriptive materials accompanying the object which explain or depict its use;

(c) National and local advertising concerning its use;

(d) The manner in which the object is displayed for sale;

(e) The existence and scope of legitimate uses for the object in the community; and

(f) Any expert testimony which may be introduced concerning its use.

(5) The provisions of ORS 475.525 to 475.565 do not apply to persons registered under the provisions of ORS 475.125 or to persons specified as exempt from registration under the provisions of that statute. [1989 c.1077 §1; 1995 c.440 §10]

ENFORCEMENT OF WAGE CLAIMS

652.335 Liability of liquor dispenser licensee for wage claims of certain individuals. (1) A person operating a commercial establishment where food is cooked and served who holds a full on-premises sales license issued under ORS 471.175 is liable for all valid wage claims of individuals employed in the kitchen facilities and dining space of such establishment who are not employed by such person, if the wage claims cannot be enforced against the employer of such individuals. The Commissioner of the Bureau of Labor and Industries may in such a case proceed under ORS 652.310 to 652.414 against the person operating the establishment as if that person had employed the individuals assigning the wage claims.

(2) This section does not impose any liability not otherwise imposed by law for compensation for the performance of an individual's personal services in excess of a period of 60 days, nor does it subject the person operating an establishment described in this section to criminal penalties for violation of any law providing for payment of wages. [1961 c.475 §2; 1999 c.351 §40]

OCCUPATIONAL OR PROFESSIONAL LICENSING

670.280 Denial, suspension or revocation of license based on criminal conviction; denial of license or imposition of discipline for conduct substantially related to fitness and ability of applicant or licensee. (1) As used in this section:

(a) "License" includes a registration, certification or permit.

(b) "Licensee" includes a registrant or a holder of a certification or permit.

(2) Except as provided in ORS 342.143 (3) or 342.175 (3), a licensing board, commission or agency may not deny, suspend or revoke an occupational or professional license solely for the reason that the applicant or licensee has been convicted of a crime, but it may consider the relationship of the facts which support the conviction and all intervening

circumstances to the specific occupational or professional standards in determining the fitness of the person to receive or hold the license.

(3) Except as provided in ORS 342.143 (3) and 342.175 (3), a licensing board, commission or agency may deny an occupational or professional license or impose discipline on a licensee based on conduct that is not undertaken directly in the course of the licensed activity, but that is substantially related to the fitness and ability of the applicant or licensee to engage in the activity for which the license is required. In determining whether the conduct is substantially related to the fitness and ability of the applicant or licensee to engage in the activity for which the license is required, the licensing board, commission or agency shall consider the relationship of the facts with respect to the conduct and all intervening circumstances to the specific occupational or professional standards. [1973 c.359 §1; 1991 c.662 §6a; 2003 c.749 §13; 2009 c.386 §5]

**MISUSE OF IDENTIFICATION CARD;
MISUSE OF OR FALSE
APPLICATION FOR LICENSE**

807.400 Issuance; application; contents; renewal; fee; validity; replacement; cancellation; rules. (1) The Department of Transportation shall issue an identification card to any person who:

(a) Is domiciled in or is a resident of this state, as described in ORS 807.062;

(b) As required by ORS 807.021 and 807.730, provides the Social Security number assigned to the person by the United States Social Security Administration and proof of legal presence in the United States or, if the person is not eligible for a Social Security number, proof of legal presence in the United States and proof that the person is not eligible for a Social Security number;

(c) Does not have a current, valid driver license;

(d) Furnishes evidence of the person's full legal name, age and identity as the department may require; and

(e) Submits to collection of biometric data by the department that establish the identity of the person as provided in ORS 807.024.

(2) The department shall work with other agencies and organizations to attempt to improve the issuance system for identification cards.

(3) Every original application for an identification card must be signed by the applicant. The department shall require at least one document to verify the address of an applicant for issuance of an identification card

in addition to other documents the department may require of the applicant. If the address of an applicant has changed since the last time an identification card was issued to or renewed for the applicant, the department shall require proof to verify the address of the applicant for renewal of an identification card, in addition to anything else the department may require.

(4) Every identification card shall be issued upon the standard license form described under ORS 807.110 and shall bear a statement to the effect that the identification card is not a license or any other grant of driving privileges to operate a motor vehicle and is to be used for identification purposes only. The department shall use the same security procedures, processes, materials and features for an identification card as are required for a license under ORS 807.110. The identification card is not required to contain the residence address of persons listed in ORS 807.110 (1)(e).

(5) If the identification card is a limited term identification card issued under ORS 807.730, the limited term identification card shall indicate:

(a) That it is a limited term identification card; and

(b) The date on which the limited term identification card expires.

(6) Upon order of the juvenile court, the department shall include on the card the fact that the person issued the identification card is an emancipated minor.

(7) Upon request of the person to whom the identification card is issued and presentation of proof, as determined by the department, that the person is a veteran, as defined in ORS 408.225, the department shall include on the card the fact that the person is a veteran.

(8) Each original identification card shall expire on a date consistent with the expiration dates of licenses as set forth in ORS 807.130.

(9) Identification cards shall be renewed under the terms for renewal of licenses as set forth in ORS 807.150.

(10) The fee for an original identification card or a renewal thereof shall be the fee established under ORS 807.410.

(11) An identification card becomes invalid if the holder of the card changes the holder's residence address from that shown on the identification card and does not provide the department with notice of the change as required under ORS 807.420.

(12) If a person to whom an identification card was issued and who changes the person's residence address appears in person

at a department office that issues identification cards, the department may do any of the following:

(a) Issue a replacement identification card containing the new address upon receipt of the old identification card and payment of the fee established for issuing a replacement identification card with a changed address under ORS 807.410. Except as otherwise provided in subsection (14) of this section, the replacement identification card shall bear the same distinguishing number as the card being replaced.

(b) Note the new address on the old identification card in a manner to be determined by the department by rule.

(13) An identification card becomes invalid if the holder of the card changes the holder's name from that shown on the card, including a change of name by marriage, without providing the department with notice of the change as required under ORS 807.420. Upon receiving such notice and the old identification card, the department shall issue a replacement identification card upon payment of the fee required under ORS 807.410.

(14) In the event that, for a reason identified by the department by rule, a person needs a replacement identification card that bears a distinguishing number different from the number on the card being replaced, the person to whom the card was issued may obtain a replacement card from the department upon furnishing proof satisfactory to the department of the need for such replacement and payment of the replacement fee under ORS 807.410.

(15) If a person furnishes proof that the person is a veteran, as defined in ORS 408.225, and the person's identification card does not include the fact that the person is a veteran, the department shall issue a replacement identification card that includes the fact that the person is a veteran.

(16) The department may establish by rule reasons for issuing replacement identification cards that are in addition to the reasons identified in subsections (12) to (15) of this section. The fee for a replacement identification card is provided under ORS 807.410.

(17) Upon cancellation of an identification card, the card is terminated and must be surrendered to the department. An identification card may be canceled for any of the reasons that driving privileges or a driver license may be canceled under ORS 809.310. The department may reissue an identification card canceled under this subsection when the applicant has satisfied all requirements for the identification card.

(18) Notwithstanding any other provision of this section, the department may issue an identification card to a person under this subsection without charge when the person surrenders the person's driver license or driver permit to the department for reasons described in this subsection. If the department issues an identification card under this subsection, the identification card shall expire at the same time as the surrendered driver license or driver permit would have expired. An identification card issued under this subsection is subject to the same requirements and fees for renewal or upon expiration as any other identification card issued under this section. The department may issue identification cards under this subsection for any of the following reasons:

(a) The person voluntarily surrenders the person's driver license or driver permit to the department based upon the person's recognition that the person is no longer competent to drive.

(b) The person's driving privileges are suspended under ORS 809.419 (1). This paragraph only applies if the person voluntarily surrenders the person's driver license or driver permit to the department as provided under ORS 809.500. [1983 c.338 §866; 1985 c.16 §437; 1985 c.174 §13; 1985 c.301 §2; 1989 c.535 §2; 1993 c.393 §2a; 1993 c.741 §82; 1993 c.751 §48; 2001 c.452 §1; 2003 c.402 §19; 2005 c.59 §10; 2005 c.241 §2a; 2005 c.775 §8; 2007 c.542 §§8,9; 2008 c.1 §§21,22; 2010 c.61 §3; 2011 c.282 §4]

807.430 Misuse of identification card; penalty. (1) A person commits the offense of misuse of an identification card if the person performs any act in relation to an identification card issued under ORS 807.400 that is prohibited in relation to a license under ORS 807.530, 807.580 to 807.600 or 809.500 or fails to perform any act in relation to an identification card issued under ORS 807.400 that is required in relation to a license under ORS 807.530, 807.580 to 807.600 or 809.500.

(2) The offense described by this section, misuse of identification card, is a Class A misdemeanor. [1983 c.338 §869; 1985 c.393 §67; 1987 c.262 §3]

807.500 Unlawful production of certain documents; affirmative defense; penalty. (1) A person commits the offense of unlawful production of identification cards, licenses, permits, forms or camera cards if the person, without the authority of the Department of Transportation, advertises for the production of, produces in any way or causes to be produced any facsimiles of the identification cards, licenses, permits, forms or camera cards upon which the department issues identification cards, licenses or driver permits under the vehicle code.

(2) The offense described in this section, unlawful production of identification cards,

licenses, permits, forms or camera cards, is a Class C felony.

(3) It is an affirmative defense to violating subsection (1) of this section that the person charged with the offense:

(a) Was under 21 years of age at the time of committing the offense and the person produced an identification card, license or permit solely for the purpose of enabling the person to purchase alcohol; or

(b) Was under 18 years of age at the time of committing the offense and the person produced an identification card, license or permit solely for the purpose of enabling the person to purchase tobacco products. [1983 c.338 §330; 1985 c.597 §19; 1993 c.393 §3; 2003 c.633 §1]

807.510 Transfer of documents for purposes of misrepresentation; penalty.

(1) A person commits the offense of transfer of documents for the purposes of misrepresentation if the person:

(a) Manufactures, produces, sells, offers for sale or transfers to another person any document purporting to be a certified copy of a record of a live birth, certificate of baptism, driver license or any other document designated by the Department of Transportation by rule as acceptable for establishing age or identity; and

(b) Knows or has reason to know that the document may be used to represent a person as another person in obtaining documents issued by a government agency to grant driving privileges or for identification purposes.

(2) The offense described in this section, transfer of documents for purposes of misrepresentation, is a Class A misdemeanor. [1983 c.338 §331; 1985 c.597 §20; 1993 c.393 §4; 2013 c.366 §84]

807.520 False swearing to receive license; penalty.

(1) A person commits the offense of false swearing to receive a driver license if the person makes any false affidavit or knowingly swears or affirms falsely to any matter required to be sworn to or affirmed in the process of applying for, receiving and holding a license or driver permit under the vehicle code.

(2) The offense described in this section, false swearing to receive a driver license, is a Class A misdemeanor. [1983 c.338 §332]

807.530 False application for license; penalty.

(1) A person commits the offense of providing a false application for a license if the person in applying for a license or driver permit or for renewal or replacement thereof under the vehicle code knowingly:

(a) Uses or gives a false or fictitious name or identity;

(b) Gives or uses a false or fictitious address;

(c) Gives or uses a false age;

(d) Makes a false statement;

(e) Conceals a material fact;

(f) Uses or attempts to use false identification documents;

(g) Allows another person to take any test related to issuance of a license or permit on behalf of the applicant; or

(h) Otherwise commits fraud in the application.

(2) The offense described in this section, providing a false application for a license, is a Class A misdemeanor. [1983 c.338 §333; 1985 c.16 §153; 1993 c.393 §5; 1999 c.770 §3; 2005 c.59 §9]

807.540 Failure to surrender prior license; penalty.

(1) A person commits the offense of failing to surrender a prior license if the person accepts a license or driver permit issued by the Department of Transportation to that person without first surrendering all out-of-state licenses or driver permits issued to that person.

(2) The offense described in this section, failure to surrender a prior license, is a Class D traffic violation. [1983 c.338 §334; 1985 c.16 §154; 1985 c.597 §21; 1995 c.383 §9]

807.550 Holding multiple licenses; penalty.

(1) A person commits the offense of holding multiple licenses if the person applies for and accepts a license or driver permit, other than an instruction driver permit, when the person holds an existing license or driver permit.

(2) The offense described in this section, holding multiple licenses, is a Class B traffic violation. [1983 c.338 §335; 1985 c.608 §30]

807.560 Failure to notify department upon change of address or name; rules; penalty.

(1) A person to whom a license or driver permit is issued commits the offense of failure to notify upon change of driver address or name if the person does not notify the Department of Transportation in a manner authorized by the department by rule upon any change of the person's:

(a) Residence from that noted on the person's license or driver permit as issued;

(b) Name from that noted on the person's license or driver permit as issued, including a change of name by marriage; or

(c) Place of employment, if the person is a corrections officer, as provided in ORS 802.253, or an eligible employee, as defined in ORS 802.250, whose place of employment address is noted on department records in accordance with ORS 802.250 or 802.253.

(2) Notice required under this section:

(a) Must be given within 30 days of change.

(b) Must be given in person for a change of name.

(3) Failure to notify upon change of driver address or name is a Class D traffic violation. [1983 c.338 §337; 1985 c.563 §8; 1989 c.695 §2; 1991 c.523 §8; 2003 c.129 §3; 2005 c.292 §9]

807.570 Failure to carry or present license; penalty. (1) A person commits the offense of failure to carry a license or to present a license to a police officer if the person either:

(a) Drives any motor vehicle upon a highway in this state without a license, driver permit or out-of-state license in the person's possession; or

(b) Does not present and deliver such license or permit to a police officer when requested by the police officer under any of the following circumstances:

(A) Upon being lawfully stopped or detained when driving a vehicle.

(B) When the vehicle that the person was driving is involved in an accident.

(2) This section does not apply to any person expressly exempted under ORS 807.020 from the requirement to have a driver license or driver permit.

(3) Except as provided in ORS 813.110, it is a defense to any charge under this section that the person so charged produce a license, driver permit or out-of-state license that had been issued to the person and was valid at the time of violation of this section.

(4) A police officer may detain a person arrested or cited for the offense described in this section only for such time as reasonably necessary to investigate and verify the person's identity.

(5) The offense described in this section, failure to carry a license or to present a license to a police officer, is a Class C misdemeanor. [1983 c.338 §339; 1985 c.16 §158; 1987 c.217 §6]

807.580 Using invalid license; penalty.

(1) A person commits the offense of using an invalid license if the person knowingly displays or permits to be displayed or possesses any license or driver permit that the person knows is fictitious, canceled, revoked, suspended or fraudulently altered.

(2) The offense described in this section, using an invalid license, is a Class A misdemeanor. [1983 c.338 §340]

807.590 Permitting misuse of license; penalty. (1) A person commits the offense of permitting misuse of a license if the person has been issued a license or driver permit

and the person knowingly lends the license or driver permit to another or knowingly permits another person to use the license or driver permit.

(2) The offense described in this section, permitting misuse of a license, is a Class A misdemeanor. [1983 c.338 §341]

807.600 Using another's license; penalty. (1) A person commits the offense of using another's license if the person knowingly displays or represents as the person's license or driver permit a license or driver permit that has not been issued to the person.

(2) The offense described in this section, using another's license, is a Class A misdemeanor. [1983 c.338 §342; 1985 c.16 §159]

807.610 Employing or providing vehicle to unqualified driver; penalty. (1) A person commits the offense of employing or providing a vehicle to an unqualified driver if the person does any of the following:

(a) Employs another person for the purpose of engaging in a particular type of operation of a vehicle for which the person does not have an appropriate grant of driving privileges from this state in the form of a license, driver permit, endorsement or statutory grant of driving privileges allowing the person to engage in the particular type of operation.

(b) Rents, leases or otherwise furnishes a motor vehicle owned or controlled by the person to any other person without first seeing the other person's license, driver permit or license with endorsement allowing the person, under the vehicle code, to operate the particular type of vehicle being furnished.

(2) The offense described in this section, employing or providing a vehicle to an unqualified driver, is a Class D traffic violation. [1985 c.608 §7; 1995 c.383 §10; 2003 c.14 §486]

807.620 Giving false information to police officer; penalty. (1) A person commits the offense of giving false information to a police officer if the person knowingly uses or gives a false or fictitious name, address or date of birth to any police officer who is enforcing motor vehicle laws.

(2) The offense described in this section, giving false information to a police officer, is a Class A misdemeanor. [1983 c.338 §343; 1985 c.16 §160; 1985 c.597 §22]

OPEN CONTAINER VIOLATIONS

811.170 Violation of open container law; penalty. (1) A person commits the offense of violation of the open container law in a motor vehicle if the person does any of the following:

(a) Drinks any alcoholic liquor in a motor vehicle when the vehicle is upon a highway.

(b) Possesses on one's person, while in a motor vehicle upon a highway, any bottle, can or other receptacle containing any alcoholic liquor, which has been opened, or a seal broken, or the contents of which have been partially removed.

(c) Keeps in a motor vehicle when the vehicle is upon any highway, any bottle, can or other receptacle containing any alcoholic liquor, which has been opened, or a seal broken, or the contents of which have been partially removed. The following apply to this paragraph:

(A) This paragraph applies only to the registered owner of any motor vehicle or, if the registered owner is not then present in the vehicle, to the driver of the vehicle.

(B) This paragraph does not apply if the bottle, can or other receptacle is kept in the trunk of the vehicle, or kept in some other area of the vehicle not normally occupied by the driver or passengers if the vehicle is not equipped with a trunk.

(C) For purposes of this paragraph, a utility compartment or glove compartment is considered within the area occupied by the driver and passengers.

(D) This paragraph does not apply to the living quarters of a camper or motor home.

(2) The offense described in this section does not apply to passengers in a motor vehicle operated by a common carrier and used primarily to carry passengers for hire.

(3) The offense described in this section, violation of the open container law in a motor vehicle, is a Class B traffic violation. [1983 c.338 §597; 1985 c.16 §303; 2001 c.827 §10]

DRIVING UNDER INFLUENCE OF INTOXICANTS

813.010 Driving under the influence of intoxicants; penalty. (1) A person commits the offense of driving while under the influence of intoxicants if the person drives a vehicle while the person:

(a) Has 0.08 percent or more by weight of alcohol in the blood of the person as shown by chemical analysis of the breath or blood of the person made under ORS 813.100, 813.140 or 813.150;

(b) Is under the influence of intoxicating liquor, a controlled substance or an inhalant; or

(c) Is under the influence of any combination of intoxicating liquor, an inhalant and a controlled substance.

(2) A person may not be convicted of driving while under the influence of intoxicants on the basis of being under the influence of a controlled substance or an inhalant unless the fact that the person was under the influence of a controlled substance or an inhalant is pleaded in the accusatory instrument and is either proved at trial or is admitted by the person through a guilty plea.

(3) A person convicted of the offense described in this section is subject to ORS 813.020 in addition to this section.

(4) Except as provided in subsection (5) of this section, the offense described in this section, driving while under the influence of intoxicants, is a Class A misdemeanor and is applicable upon any premises open to the public.

(5)(a) Driving while under the influence of intoxicants is a Class C felony if the current offense was committed in a motor vehicle and the person has, at least three times in the 10 years prior to the date of the current offense, been convicted of, or been found to be within the jurisdiction of the juvenile court for an act that if committed by an adult would be, any of the following offenses in any combination:

(A) Driving while under the influence of intoxicants in violation of:

(i) This section; or

(ii) The statutory counterpart to this section in another jurisdiction.

(B) A driving under the influence of intoxicants offense in another jurisdiction that involved the impaired driving or operation of a vehicle, an aircraft or a boat due to the use of intoxicating liquor, a controlled substance, an inhalant or any combination thereof.

(C) A driving offense in another jurisdiction that involved operating a vehicle, an aircraft or a boat while having a blood alcohol content above that jurisdiction's permissible blood alcohol content.

(b) For the purposes of paragraph (a) of this subsection, a conviction or adjudication for a driving offense in another jurisdiction based solely on a person under 21 years of age having a blood alcohol content that is lower than the permissible blood alcohol content in that jurisdiction for a person 21 years of age or older does not constitute a prior conviction or adjudication.

(6) In addition to any other sentence that may be imposed, the court shall impose one or more of the following fines on a person convicted of driving while under the influence of intoxicants as follows:

(a) For a person's first conviction, a minimum of \$1,000.

(b) For a person's second conviction, a minimum of \$1,500.

(c) For a person's third or subsequent conviction, a minimum of \$2,000 if the person is not sentenced to a term of imprisonment.

(d) For a person who drives a vehicle while the person has 0.15 percent or more by weight of alcohol in the blood of the person as shown by chemical analysis of the breath or blood of the person made under ORS 813.100, 813.140 or 813.150, a minimum of \$2,000.

(7) Notwithstanding ORS 161.635, \$10,000 is the maximum fine that a court may impose on a person convicted of driving while under the influence of intoxicants if:

(a) The current offense was committed in a motor vehicle; and

(b) There was a passenger in the motor vehicle who was under 18 years of age and was at least three years younger than the person driving the motor vehicle. [1983 c.338 §587; 1985 c.16 §293; 1987 c.138 §5; 1991 c.835 §7; 1999 c.619 §3; 1999 c.1049 §1; 2003 c.14 §495; 2003 c.445 §1; 2007 c.879 §3; 2009 c.525 §1; 2009 c.613 §1]

813.011 Felony driving under the influence of intoxicants; penalty. (1) Driving under the influence of intoxicants under ORS 813.010 shall be a Class C felony if the defendant has been convicted of driving under the influence of intoxicants in violation of ORS 813.010, or its statutory counterpart in another jurisdiction, at least two times in the 10 years prior to the date of the current offense.

(2) Once a person has been sentenced for a Class C felony under this section, the 10-year time limitation is eliminated and any subsequent episode of driving under the influence of intoxicants shall be a Class C felony regardless of the amount of time which intervenes.

(3) Upon conviction for a Class C felony under this section, the person shall be sentenced to a mandatory minimum term of incarceration of 90 days, without reduction for any reason. [2011 c.1 §3; 2011 c.598 §2]

813.012 Crime classification for purposes of rules of Oregon Criminal Justice Commission. (1) The Oregon Criminal Justice Commission shall classify felony driving while under the influence of intoxicants that is committed under the circumstances described in ORS 813.010 (5) as crime category 6 of the rules of the Oregon Criminal Justice Commission.

(2) In determining criminal history for a person convicted of a felony that has operation of a motor vehicle as an element, or of a felony that involved death, injury or prop-

erty damage caused by the use of a motor vehicle, the commission shall:

(a) Consider two prior convictions of misdemeanor driving while under the influence of intoxicants to be equivalent to one conviction of felony driving while under the influence of intoxicants; and

(b) Consider felony driving while under the influence of intoxicants to be a person felony and consider misdemeanor driving while under the influence of intoxicants to be a person Class A misdemeanor. [1999 c.1049 §3; 2011 c.598 §1]

813.020 Fee to be paid on conviction; screening and treatment; mandatory imprisonment or community service; attendance at victim impact treatment session; session fee. When a person is convicted of driving while under the influence of intoxicants in violation of ORS 813.010, a court shall comply with the following in addition to any fine or other penalty imposed upon the person under ORS 813.010:

(1) The court shall require the person to:

(a) Pay to the court the fee described under ORS 813.030 in addition to any fine imposed under ORS 813.010; and

(b) Complete a screening interview and a treatment program as provided in ORS 813.021.

(2) The court must impose and not suspend execution of a sentence requiring the person either to serve at least 48 hours' imprisonment, which shall be served consecutively unless justice requires otherwise, or to perform community service for times specified by the court under ORS 137.129. For purposes of this subsection:

(a) A court may provide for the imprisonment to be served in jail, minimum security facilities or inpatient rehabilitation or treatment centers.

(b) Whenever the judge provides for the mandatory imprisonment to be served other than consecutively, the judgment must specifically so provide and the judge must state the reasons in writing.

(3) In a county that has a victim impact program a court may require the person to attend a victim impact treatment session. If the court requires attendance under this section, the court may require the defendant to pay a reasonable fee to the victim impact program to offset the cost of the defendant's participation. The fee shall be established for each county by the victim impact panel coordinator and steering committee of that county and shall be not less than \$5 or more than \$50. [1983 c.338 §588; 1985 c.16 §294 and former 487.549; 1989 c.576 §5; 1991 c.557 §3; 1993 c.13 §4; 1993 c.468 §1; 1999 c.126 §1; 2003 c.14 §496]

813.215 Eligibility for diversion. (1) A defendant is eligible for diversion if the defendant meets all of the following conditions:

(a) On the date the defendant filed the petition for a driving while under the influence of intoxicants diversion agreement, the defendant had no charge, other than the charge for the present offense, pending for:

(A) An offense of driving while under the influence of intoxicants in violation of:

(i) ORS 813.010; or

(ii) The statutory counterpart to ORS 813.010 in another jurisdiction;

(B) A driving under the influence of intoxicants offense in another jurisdiction that involved the impaired driving of a vehicle due to the use of intoxicating liquor, a controlled substance, an inhalant or any combination thereof; or

(C) A driving offense in another jurisdiction that involved operating a vehicle while having a blood alcohol content above that jurisdiction's permissible blood alcohol content.

(b) The defendant has not been convicted of an offense described in paragraph (a) of this subsection within the period beginning 15 years before the date of the commission of the present offense and ending on the date the defendant filed the petition for a driving while under the influence of intoxicants diversion agreement.

(c) The defendant has not been convicted of a felony offense described in ORS 813.010 (5)(a).

(d) The defendant was not participating in a driving while under the influence of intoxicants diversion program or in any similar alcohol or drug rehabilitation program in this state or in another jurisdiction on the date the defendant filed the petition for a driving while under the influence of intoxicants diversion agreement. A defendant is not ineligible for diversion under this paragraph by reason of participation in a diversion program or any similar alcohol or drug rehabilitation program as a result of the charge for the present offense, a charge for violation of ORS 471.430 or a charge for violation of ORS 475.864 (3).

(e) The defendant did not participate in a diversion or rehabilitation program described in paragraph (d) of this subsection within the period beginning 15 years before the date of the commission of the present offense and ending on the date the defendant filed the petition for a driving while under the influence of intoxicants diversion agreement. A defendant is not ineligible for diversion under this paragraph by reason of participation in a diversion program or re-

habilitation program described in paragraph (d) of this subsection as a result of the charge for the present offense, a charge for violation of ORS 471.430 or a charge for violation of ORS 475.864 (3).

(f) The defendant had no charge of an offense of aggravated vehicular homicide or of murder, manslaughter, criminally negligent homicide or assault that resulted from the operation of a motor vehicle pending in this state or in another jurisdiction on the date the defendant filed the petition for a driving while under the influence of intoxicants diversion agreement.

(g) The defendant has not been convicted of an offense described in paragraph (f) of this subsection within the period beginning 15 years before the date of the commission of the present offense and ending on the date the defendant filed the petition for a driving while under the influence of intoxicants diversion agreement.

(h) The defendant did not hold a commercial driver license on the date of the commission of the offense.

(i) The defendant was not operating a commercial motor vehicle at the time of the offense.

(j) The present driving while under the influence of intoxicants offense did not involve an accident resulting in:

(A) Death of any person; or

(B) Physical injury as defined in ORS 161.015 to any person other than the defendant.

(2) For the purposes of subsection (1)(a) of this section, a conviction for a driving offense in another jurisdiction based solely on a person under 21 years of age having a blood alcohol content that is lower than the permissible blood alcohol content in that jurisdiction for a person 21 years of age or older does not constitute a prior conviction.

(3) A defendant is eligible for a second or subsequent diversion if the defendant meets all of the conditions of subsection (1) of this section and the defendant has not been convicted of any other criminal offense involving a motor vehicle within the period beginning 15 years before the date of the commission of the present offense and ending on the date the defendant filed the petition for the second or subsequent driving while under the influence of intoxicants diversion agreement. [1987 c.441 §3; 1997 c.749 §5; 1999 c.445 §1; 1999 c.1051 §295; 2005 c.649 §29; 2007 c.122 §11; 2007 c.867 §14; 2007 c.879 §10; 2009 c.515 §1; 2013 c.134 §1]

Note: The amendments to 813.215 by section 28, chapter 237, Oregon Laws 2013, become operative July 8, 2015. See section 50, chapter 237, Oregon Laws 2013. The text that is operative on and after July 8, 2015, is set forth for the user's convenience.

813.215. (1) A defendant is eligible for diversion if the defendant meets all of the following conditions:

(a) On the date the defendant filed the petition for a driving while under the influence of intoxicants diversion agreement, the defendant had no charge, other than the charge for the present offense, pending for:

(A) An offense of driving while under the influence of intoxicants in violation of:

(i) ORS 813.010; or

(ii) The statutory counterpart to ORS 813.010 in another jurisdiction;

(B) A driving under the influence of intoxicants offense in another jurisdiction that involved the impaired driving of a vehicle due to the use of intoxicating liquor, a controlled substance, an inhalant or any combination thereof; or

(C) A driving offense in another jurisdiction that involved operating a vehicle while having a blood alcohol content above that jurisdiction's permissible blood alcohol content.

(b) The defendant has not been convicted of an offense described in paragraph (a) of this subsection within the period beginning 15 years before the date of the commission of the present offense and ending on the date the defendant filed the petition for a driving while under the influence of intoxicants diversion agreement.

(c) The defendant has not been convicted of a felony offense described in ORS 813.010 (5)(a).

(d) The defendant was not participating in a driving while under the influence of intoxicants diversion program or in any similar alcohol or drug rehabilitation program in this state or in another jurisdiction on the date the defendant filed the petition for a driving while under the influence of intoxicants diversion agreement. A defendant is not ineligible for diversion under this paragraph by reason of participation in a diversion program or any similar alcohol or drug rehabilitation program as a result of the charge for the present offense, a charge for violation of ORS 471.430 or a charge for violation of ORS 475.864 (3).

(e) The defendant did not participate in a diversion or rehabilitation program described in paragraph (d) of this subsection within the period beginning 15 years before the date of the commission of the present offense and ending on the date the defendant filed the petition for a driving while under the influence of intoxicants diversion agreement. A defendant is not ineligible for diversion under this paragraph by reason of participation in a diversion program or rehabilitation program described in paragraph (d) of this subsection as a result of the charge for the present offense, a charge for violation of ORS 471.430 or a charge for violation of ORS 475.864 (3).

(f) The defendant had no charge of an offense of aggravated vehicular homicide or of murder, manslaughter, criminally negligent homicide or assault that resulted from the operation of a motor vehicle pending in this state or in another jurisdiction on the date the defendant filed the petition for a driving while under the influence of intoxicants diversion agreement.

(g) The defendant has not been convicted of an offense described in paragraph (f) of this subsection within the period beginning 15 years before the date of the commission of the present offense and ending on the date the defendant filed the petition for a driving while under the influence of intoxicants diversion agreement.

(h) The defendant did not hold commercial driving privileges on the date of the commission of the offense.

(i) The defendant was not operating a commercial motor vehicle at the time of the offense.

(j) The present driving while under the influence of intoxicants offense did not involve an accident resulting in:

(A) Death of any person; or

(B) Physical injury as defined in ORS 161.015 to any person other than the defendant.

(2) For the purposes of subsection (1)(a) of this section, a conviction for a driving offense in another jurisdiction based solely on a person under 21 years of age having a blood alcohol content that is lower than the permissible blood alcohol content in that jurisdiction for a person 21 years of age or older does not constitute a prior conviction.

(3) A defendant is eligible for a second or subsequent diversion if the defendant meets all of the conditions of subsection (1) of this section and the defendant has not been convicted of any other criminal offense involving a motor vehicle within the period beginning 15 years before the date of the commission of the present offense and ending on the date the defendant filed the petition for the second or subsequent driving while under the influence of intoxicants diversion agreement.

813.220 Matters to be considered by court in determining to allow diversion agreement; reasons for denial. After the time for requesting a hearing under ORS 813.210 has expired with no request for a hearing, or after a hearing requested under ORS 813.210, the court shall determine whether to allow or deny a petition for a driving while under the influence of intoxicants diversion agreement. In making a determination under this section, the court:

(1) Shall consider whether the diversion will be of benefit to the defendant and the community.

(2) May take into consideration whether there was an early recognition by the defendant during the proceeding that a course of diagnosis and treatment of problem drinking, alcoholism or drug dependency would be beneficial.

(3) May take into consideration whether there is a probability that the defendant will cooperate with the diagnostic assessment and treatment agencies.

(4) May take into consideration whether the defendant will observe the restrictions contained in the diversion agreement.

(5) May take into consideration whether the offense was committed in a motor vehicle and whether there was a passenger in the motor vehicle who was under 18 years of age and at least three years younger than the defendant.

(6) Shall deny the petition for a driving while under the influence of intoxicants diversion agreement if the defendant failed to appear at an arraignment on the present offense without good cause.

(7) Shall deny the petition for a driving while under the influence of intoxicants diversion agreement if, after the date the defendant filed the petition, the defendant was charged with or convicted of:

(a) An offense of driving while under the influence of intoxicants in violation of:

(A) ORS 813.010; or

(B) The statutory counterpart to ORS 813.010 in another jurisdiction;

(b) A driving under the influence of intoxicants offense in another jurisdiction that involved the impaired driving of a vehicle due to the use of intoxicating liquor, a controlled substance, an inhalant or any combination thereof; or

(c) A driving offense in another jurisdiction that involved operating a vehicle while having a blood alcohol content above that jurisdiction's permissible blood alcohol content.

(8) Shall deny the petition for a driving while under the influence of intoxicants diversion agreement if the defendant participated in a driving while under the influence of intoxicants diversion program or in any similar alcohol or drug rehabilitation program, other than a program entered into as a result of the charge for the present offense, in this state or in another jurisdiction after the date the defendant filed the petition.

(9) Shall deny the petition for a driving while under the influence of intoxicants diversion agreement if the defendant was charged with or convicted of an offense of aggravated vehicular homicide or of murder, manslaughter, criminally negligent homicide or assault that resulted from the operation

of a motor vehicle in this state or in another jurisdiction after the date the defendant filed the petition.

(10) Shall deny the petition for a driving while under the influence of intoxicants diversion agreement if the defendant has been convicted of a felony offense described in ORS 813.010 (5)(a).

(11) For the purposes of subsection (7) of this section, may not consider a conviction for a driving offense in another jurisdiction based solely on a person under 21 years of age having a blood alcohol content that is lower than the permissible blood alcohol content in that jurisdiction for a person 21 years of age or older as a prior conviction.

(12) May not deny the petition for a driving while under the influence of intoxicants diversion agreement solely on the basis that the defendant is a member of the Armed Forces of the United States, the reserve components of the Armed Forces of the United States or the National Guard and has been called or demonstrates that the defendant will be called to active duty, and the military service will impair the defendant's ability to complete the diversion program. [1983 c.338 §371; 1987 c.441 §6; 1997 c.749 §6; 1999 c.1051 §296; 2003 c.445 §2; 2007 c.867 §15; 2007 c.879 §7; 2011 c.197 §1]

Oregon Administrative Rules

Chapter 845

Oregon Liquor Control Commission

**Including selected rules from
Chapter 137 (Department of Justice) and
Chapter 471 (Office of Administrative Hearings)**

