

vehicles registered in the state as of December 31 of the preceding year, as indicated by motor vehicles registration records. All such vehicles owned and operated by the state and registered under ORS 481.125 shall be excluded from the computation in making the apportionment. Upon request, the Administrator of the Motor Vehicles Division of the Department of Transportation shall certify to the Department of Transportation the information necessary in order that the department may comply with this section.

Approved by the Governor July 26, 1977.

Filed in the office of Secretary of State July 26, 1977.

CHAPTER 744

AN ACT

[SB 893]

Relating to discovery in civil actions.

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

SECTION 1. Section 2 of this Act is added to and made a part of ORS chapter 41.

SECTION 2. (1) In a civil action, a party, upon the request of an adverse party, shall disclose the existence and contents of any insurance agreement or policy under which a person transacting insurance may be liable to satisfy part or all of a judgment which may be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment.

(2) The obligation to disclose under this section shall be performed as soon as practicable following the filing of the complaint and the request to disclose. The court may supervise the exercise of disclosure to the extent necessary to insure that it proceeds properly and expeditiously. However, the court may limit the extent of disclosure under this section as provided in section 4, chapter 240, Oregon Laws 1977.

(3) Information concerning the insurance agreement or policy is not by reason of disclosure under this section admissible in evidence at trial.

(4) As used in this section, "disclose" means to afford the adverse party an opportunity to inspect or copy the insurance agreement or policy.

Approved by the Governor July 26, 1977.

Filed in the office of Secretary of State July 26, 1977.

CHAPTER 745

AN ACT

[SB 904]

Relating to controlled substances; creating new provisions; amending ORS 161.705, 167.212, 167.222, 167.238, 167.242, 167.247, 181.010, 430.325, 430.405, 471.665, 475.645, 475.665, 475.695, 475.705, 483.710, 679.140, 680.100, 689.290, 689.410 and 689.620; repealing ORS 167.202, 167.207, 167.217, 167.228, 167.232, 474.010, 474.014, 474.016, 474.030, 474.040, 474.050, 474.060, 474.070, 474.080, 474.090, 474.100, 474.120, 474.130, 474.140, 474.150, 474.160, 474.190, 474.200, 474.220, 474.990, 475.010, 475.100, 475.110, 475.150, 475.160, 475.615, 475.732, 475.990 and 689.660; and prescribing an effective date.

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

ARTICLE I. DEFINITIONS

SECTION 1. Definitions. As used in sections 1 to 29 of this 1977 Act, unless the context requires otherwise:

(1) "Abuse" means the repetitive excessive use of a drug short of dependence, without legal or medical supervision, which may have a detrimental effect on the individual or society.

(2) "Administer" means the direct application of a controlled substance, whether by injection, inhalation, ingestion or any other means, to the body of a patient or research subject by:

(a) A practitioner or his authorized agent; or

(b) The patient or research subject at the direction of the practitioner.

(3) "Administration" means the Drug Enforcement Administration of the United States Department of Justice, or its successor agency.

(4) "Agent" means an authorized person who acts on behalf of or at the direction of a manufacturer, distributor or dispenser. It does not include a common or contract carrier, public warehouseman or employe of the carrier or warehouseman.

(5) "Board" means the State Board of Pharmacy.

(6) "Committee" means the Committee on Controlled Substances created pursuant to this 1977 Act.

(7) "Controlled substance" means a drug or its immediate precursor classified in Schedules I through V and controlled under the provisions of section 5 of this 1977 Act.

(8) "Counterfeit substance" means a controlled substance or its container or labeling, which, without authorization, bears the trade-mark, trade name, or other identifying mark, imprint, number or device, or any likeness thereof, of a manufacturer, distributor or dispenser other than the person who in fact manufactured, delivered or dispensed the substance.

(9) "Deliver" or "delivery" means the actual, constructive or attempted transfer, other than by administering or dispensing, from one person to another of a controlled substance, whether or not there is an agency relationship.

(10) "Device" means instruments, apparatus or contrivances, including their components, parts or accessories, intended:

(a) For use in the diagnosis, cure, mitigation, treatment or prevention of disease in humans or animals; or

(b) To affect the structure of any function of the body of humans or animals.

(11) "Dispense" means to deliver a controlled substance to an ultimate user or research subject by or pursuant to the lawful order of a practitioner, and includes the prescribing, administering, packaging, labeling or compounding necessary to prepare the substance for that delivery.

(12) "Dispenser" means a practitioner who dispenses.

(13) "Distributor" means a person who delivers.

(14) "Drug" means:

(a) Substances recognized as drugs in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States or official

National Formulary, or any supplement to any of them;

(b) Substances intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in humans or animals;

(c) Substances (other than food) intended to affect the structure or any function of the body of humans or animals; and

(d) Substances intended for use as a component of any article specified in paragraph (a), (b) or (c) of this subsection; however, the term does not include devices or their components, parts or accessories.

(15) "Impaired alertness" means an inability to concentrate and maintain attention.

(16) "Impaired coordination" means an inability to perform voluntary muscular actions in a smooth, nonawkward manner, usually manifest by staggering gait, slurred speech, tremor, dysequilibrium and slowed reflexes.

(17) "Impaired judgment" means an inability to assess the short and long-range consequences of one's actions.

(18) "Impaired perception" means an inability to clearly distinguish objects or sensations through one or more of the senses. The deficit may be complete, partial or result in distortion of the objects or sensations perceived.

(19) "Ingredient" means a substance which the committee has found to be and the board designates by rule as being the principal compound used or produced primarily for use in the manufacture of a controlled substance, the control of which is necessary to prevent, curtail or limit manufacture, and which is an immediate chemical intermediary used or likely to be used as a component of the controlled substance.

(20) "Interpersonal conflict" means a psychosocial impairment manifest by problems in marital, familial or employment relationships because of suspiciousness, irritability, loss of impulse control, mood changes, unpredictability, sexual incapacity or impairment of the ability to communicate effectively.

(21) "Manufacture" means the production, preparation, propagation, compounding, conversion or processing of a controlled substance, either directly or indirectly by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes any packaging or repackaging of the substance or labeling or relabeling of its container, except that this term does not include the preparation or compounding of a controlled substance:

(a) By a practitioner as an incident to his administering or dispensing of a controlled substance in the course of his professional practice; or

(b) By a practitioner, or by an authorized agent under the practitioner's supervision, for the purpose of, or as an incident to, research, teaching or chemical analysis and not for sale.

(22) "Marijuana" means all parts of the plant Cannabis family Moraceae, whether growing or not; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its resin. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature

stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.

(23) "Permanent" or "permanence" means a condition, tissue change or dysfunction which is irreversible, even after discontinuation of the drug.

(24) "Person" includes a government subdivision or agency, business trust, estate, trust or any other legal entity.

(25) "Physical dependence" means a condition in which the body requires a continuing supply of a drug to avoid characteristic withdrawal signs or symptoms, to the extent that the person has lost his ability to control the use of the drug or uses the drug to the extent that his health or that of others is substantially impaired or endangered.

(26) "Physically aggressive behavior" means behavior that directly or indirectly threatens the physical safety of individuals including, but not limited to, homicide, assault, kidnapping, sexual offenses (not including public indecency, sexual misconduct, accosting for deviate purposes and crimes based on the lack of consent due to age), robbery, burglary with violence, escape in the first and second degree, resisting arrest, child abuse, menacing, recklessly endangering, criminal mistreatment, coercion and behavior that directly involves physical violence to personal or real property. Criminal behavior includes but is not limited to those acts defined in this subsection which are the direct or proximate result of the use or abuse of a controlled substance, but does not include criminal consequences related to violation of any law regulating controlled substances.

(27) "Practitioner" means physician, dentist, veterinarian, scientific investigator or other person licensed, registered or otherwise permitted by law to dispense, conduct research with respect to or to administer a controlled substance in the course of professional practice or research in this state.

(28) "Prescription" means a written or oral direction, given by a licensed medical practitioner for the preparation and use of a drug. When the context requires, "prescription" also means the drug prepared under such written or oral direction. Any label affixed to a drug prepared under written or oral direction shall prominently display a warning that the removal thereof is prohibited by law.

(29) "Production" includes the manufacture, planting, cultivation, growing or harvesting of a controlled substance.

(30) "Psychological dependence" means a condition characterized by an overwhelming mental desire for continued use of a drug, to the extent that the person has lost his ability to control the use of the drug or uses the drug to the extent that his health or safety or that of others is substantially impaired or endangered.

(31) "Psychosis" means a psychosocial impairment manifest by an inability to test reality, including, but not limited to, disturbances in the stream of consciousness, irrational thinking, confusion, hallucinations, delusions and deficits in memory and orientation.

(32) "Research" means an activity conducted by the person registered with the Drug Enforcement

Administration pursuant to a protocol approved by the United States Food and Drug Administration.

(33) "Reversibility" means a condition, tissue change or dysfunction which is reversible upon discontinuation of the drug.

(34) "Risk of overdose death" means the ease with which death can occur from overdosage or sensitivity reaction associated with the drug.

(35) "State," when applied to a part of the United States, includes any state, district, commonwealth, territory, insular possession thereof, and any area subject to the legal authority of the United States of America.

(36) "Ultimate user" means a person who lawfully possesses a controlled substance for his own use or for the use of a member of his household or for administering to an animal owned by him or by a member of his household.

ARTICLE II. STANDARDS AND SCHEDULES

SECTION 2. Committee on controlled substances. (1) There is created a Committee on Controlled Substances in the Health Division of the Department of Human Resources, to consist of seven members appointed by the Administrator of the Health Division, with the approval of the Governor, for four-year terms. Three of the members shall be pharmacologists; three shall be practitioners as defined under section 1 of this 1977 Act; and one shall be a member of the general public knowledgeable about the use and abuse of controlled substances within this state. As nearly as practicable, appointments shall be made from the various geographic regions of this state. The public member shall serve as chairman of the committee.

(2) The committee shall meet on the call of the chairman or the administrator, but shall not meet less than four times in each calendar year.

(3) Members shall be paid per diem and actual expenses incurred in the performance of their official duties as provided by law.

(4) No member of the Committee on Controlled Substances, or his spouse or children, shall have a financial interest exceeding a fair market value in excess of \$1,000, in any business relating directly or indirectly to the manufacture or delivery of controlled substances, excluding any professional activities involving the compounding or dispensation of a controlled substance to an ultimate user.

(5) The committee may adopt rules for its own governance and such other rules, pursuant to ORS 183.310 to 183.500, as may be necessary to implement its responsibilities under this 1977 Act.

SECTION 3. Schedules for controlled substances. (1) The committee, with the advice of the Committee on Drug Problems created pursuant to ORS 430.100, shall create five schedules for controlled substances which reflect the following:

(a) Schedule I for substances with very high hazard potential;

(b) Schedule II for substances with high hazard potential;

(c) Schedule III for substances with intermediate hazard potential;

(d) Schedule IV for substances with low hazard potential; and

(e) Schedule V for substances with very low hazard potential.

(2) Until such time as the schedules are created and all drugs currently classified as controlled substances by section 202 of the United States Department of Justice Drug Enforcement Administration Act (21 USC 812) as set forth in part 1308 are reviewed and classified by the committee according to procedures designated in sections 4 and 5 of this 1977 Act, the schedule under federal law as of June 1, 1977, shall be the schedule under this 1977 Act for purposes of regulations and control.

SECTION 4. Rating of controlled substances.

(1) The committee may add, reclassify or delete any drug or its immediate precursor from the schedules designated in section 3 of this 1977 Act. The decision of the committee shall be based on the total hazard potential of the substance. In determining total hazard potential, the committee, with the advice of the Committee on Drug Problems, shall consider and rate each substance on the following potential consequences of acute or chronic maximum abuse:

(a) Psychosocial impairment manifested by:

(A) Psychosis;

(B) Interpersonal conflicts;

(C) Physically aggressive behavior; and

(D) The permanence of the symptoms listed in subparagraph (A), (B) or (C) of this paragraph.

(b) Psychomotor impairment (e.g., driving skills) manifested by:

(A) Impaired judgment;

(B) Impaired coordination;

(C) Impaired alertness;

(D) Impaired perception; and

(E) The permanence of the symptoms listed in subparagraph (A), (B), (C) or (D) of this paragraph.

(c) Health impairment manifested by:

(A) Reversible tissue change or dysfunction;

(B) Permanent tissue change or dysfunction; and

(C) Risk of overdose death.

(d) Dependence potential manifested by:

(A) Severity of physical dependence;

(B) Ease of development of physical dependence;

(C) Severity of psychological dependence; or

(D) Ease of development of psychological dependence.

(2) If any substance is designated, reclassified or deleted as a controlled substance under federal law and notice thereof is given to the board, the board shall immediately notify the committee of such notice, and the committee shall within 90 days classify the substances in the appropriate schedule by use of the method provided in subsection (1) of this section.

(3) At the request of the board or two members of the committee, the committee shall convene to consider the classification or reclassification of any substance by use of the method provided in subsection (1) of this section.

(4) Based upon the classifications made under subsection (1), (2) or (3) of this section, the committee shall notify the board that the substance has been designated, reclassified or deleted as a controlled substance.

SECTION 5. Authority to control. (1) In arriving at a decision on classification, the committee shall review the scientific knowledge available

regarding the substance, its pharmacological effects, patterns of use and misuse, and potential consequences of abuse, and consider the judgment of individuals with training and experience with the substance, including the Committee on Drug Problems.

(2) The board shall assist the committee in securing information needed to make a valid classification.

(3) Upon being notified by the committee of its decision on classification, the board shall issue a rule controlling the substance consistent with the schedules in section 3 of this 1977 Act.

(4) If a substance is an ingredient of a controlled substance, the ingredient shall be considered to be in the same schedule as that controlled substance. Substances which are precursors of the ingredient shall not be subject to control solely because they are precursors of the ingredient.

(5) The board shall administer sections 1 to 29 of this 1977 Act in accordance with ORS 183.310 to 183.500.

(6) Authority to control under this section does not extend to tobacco or to alcoholic liquor, distilled spirits, wine or malt beverages as those terms are defined or used in ORS chapters 471 and 472.

SECTION 6. Publishing of schedules. The board shall publish the classification of controlled substances within 30 days of the effective date of this 1977 Act and thereafter within 30 days following the revision of the classification of a controlled substance.

ARTICLE III. REGULATION OF MANUFACTURE,

DELIVERY AND DISPENSING OF CONTROLLED SUBSTANCES

SECTION 7. Rules. The board may promulgate rules and charge reasonable fees in addition to any other fees required by statute or rule, relating to the registration and control of the manufacture, delivery and dispensing of controlled substances within this state.

SECTION 7a. The board shall exclude any nonnarcotic substance from a schedule if such substance may, under the Federal Food, Drug, and Cosmetic Act and the law of this state, be lawfully sold over the counter without a prescription.

SECTION 8. Registration requirements. (1) Every person who manufactures, delivers or dispenses any controlled substance within this state or who proposes to engage in the manufacture, delivery or dispensing of any controlled substance within this state, must obtain annually a registration issued by the board in accordance with its rules.

(2) Persons registered by the board under sections 1 to 29 of this 1977 Act to manufacture, deliver, dispense or conduct research with controlled substances may possess, manufacture, deliver, dispense or conduct research with those substances to the extent authorized by their registration and in conformity with the other provisions of sections 7 to 14 of this 1977 Act and other applicable laws of this state.

(3) The following persons need not register and may lawfully possess controlled substances under sections 1 to 29 of this 1977 Act:

(a) An agent or employe of any registered manufacturer, distributor or dispenser of any controlled substance if he is acting in the usual course of his business or employment.

(b) A common or contract carrier or warehouseman, or an employe thereof, whose possession of any controlled substance is in the usual course of business or employment.

(c) An ultimate user or a person in possession of any controlled substance pursuant to a lawful order of a practitioner or in lawful possession of a Schedule V substance, unless otherwise prohibited.

(d) A practitioner otherwise licensed under the laws of this state and authorized to dispense or administer a controlled substance by the licensing authority.

(4) The board may waive by rule the requirement for registration of certain manufacturers or dispensers if it finds it consistent with the public health and safety.

(5) A separate registration is required at each principal place of business or professional practice where the applicant manufactures, delivers or dispenses controlled substances.

(6) The board may inspect the establishment of a registrant or applicant for registration in accordance with the rules of the board.

SECTION 9. Registration. (1) The board shall register or renew the registration of an applicant to manufacture or dispense controlled substances included in schedules under procedures defined in sections 3, 4 and 5 of this 1977 Act, unless it determines that the issuance of that registration would be inconsistent with the public interest. In determining the public interest, the board shall consider the following factors:

(a) Failure to maintain effective controls against diversion of controlled substances into other than legitimate medical, scientific or industrial channels;

(b) Failure to comply with applicable state or local laws;

(c) Any convictions of the applicant under any federal or state laws relating to any controlled substance;

(d) Past experience in the manufacture, delivery or dispensing of controlled substances and the existence in the applicant's establishment of effective controls against diversion;

(e) Furnishing by the applicant of false or fraudulent material in any application filed under sections 1 to 29 of this 1977 Act;

(f) Suspension or revocation of the applicant's federal registration to manufacture, deliver or dispense controlled substances as authorized by federal law; or

(g) Any other factors relevant to and consistent with the public health and safety.

(2) Registration under subsection (1) of this section does not entitle a registrant to manufacture, deliver or dispense controlled substances in Schedule I or II other than those specified in the registration.

(3) Practitioners must be registered to dispense any controlled substances or to conduct research with controlled substances in Schedules I through V if they are authorized to dispense or conduct research under the law of this state. The board need not require separate registration under sections 7 to 14 of this

1977 Act for practitioners engaging in research with controlled substances in Schedules I through V where the registrant is already registered under sections 7 to 14 of this 1977 Act in another capacity. Persons with valid registration from the Drug Enforcement Administration for research on controlled substances may conduct research within this state in compliance with other state law upon furnishing the board evidence of that federal registration, and are exempt from state prosecution for possession and distribution of controlled substances to the extent of the registration. Registration under this 1977 Act does not exempt the registrant from compliance with any other relevant law of this state or the United States, unless such exemption is expressly provided under this 1977 Act.

(4) Notwithstanding this section, the manufacture, delivery or dispensing of any controlled substance excluded from any medical use by federal law is prohibited, except:

(a) For research authorized under subsection (3) of this section and section 25 of this 1977 Act; or

(b) As otherwise provided by state or federal law.

(5) Compliance by manufacturers and distributors with the provisions of the federal law respecting registration (excluding fees) entitles them to be registered under sections 7 to 14 of this 1977 Act.

SECTION 10. Revocation and suspension of registration. (1) A registration under section 9 of this 1977 Act to manufacture, deliver or dispense a controlled substance may be suspended or revoked by the board upon a finding that the registrant:

(a) Has furnished false or fraudulent material information in any application filed under sections 1 to 29 of this 1977 Act;

(b) Has been convicted of a felony under any state or federal law relating to any controlled substance;

(c) Has had his federal registration suspended or revoked to manufacture, deliver or dispense controlled substances; or

(d) Has violated any rule of the board under section 5 of this 1977 Act or that continuance of registration would be inconsistent with the public interest under any factor stated in section 9 of this 1977 Act.

(2) The board may limit revocation or suspension of a registration to the particular controlled substance with respect to which grounds for revocation or suspension exist.

(3) If the board suspends or revokes a registration, all controlled substances owned or possessed by the registrant at the time of suspension or the effective date of the revocation order may be placed under seal. No disposition may be made of substances under seal until the time for taking an appeal has elapsed or until all appeals have been concluded unless a court, upon application therefor, orders the sale of perishable substances and the deposit of the proceeds of the sale with the court. Upon a revocation order becoming final, all controlled substances may be forfeited to the state.

(4) The board shall promptly notify the administration of all orders suspending or revoking registration and all forfeitures of controlled substances.

SECTION 11. Order to show cause. (1) Before denying, suspending or revoking a registration, or refusing a renewal of registration, the board shall serve upon the applicant or registrant an order to

show cause why registration should not be denied, revoked or suspended, or why the renewal should not be refused. The order to show cause shall contain a statement of the basis therefor and shall call upon the applicant or registrant to appear before the board at a time and place not less than 30 days after the date of service of the order. These proceedings shall be conducted in accordance with ORS 183.310 to 183.500 without regard to any criminal prosecution or other proceeding. Proceedings to refuse renewal of registration shall not abate the existing registration which shall remain in effect pending the outcome of the administrative hearing.

(2) The board may suspend, without an order to show cause, any registration simultaneously with the institution of proceedings under section 10 of this 1977 Act or where renewal of registration is refused, if it finds that there is an imminent danger to the public health or safety which warrants this action. The suspension shall continue in effect until the conclusion of the proceedings, including judicial review thereof, unless sooner withdrawn by the board or dissolved by a court of competent jurisdiction.

SECTION 12. Records of registrants. Persons registered to manufacture, deliver or dispense controlled substances under sections 1 to 29 of this 1977 Act shall keep records and maintain inventories in conformance with the recordkeeping and inventory requirements of federal law and with any additional rules the board issues.

SECTION 13. Order forms. Controlled substances in Schedules I and II shall be distributed by a registrant to another registrant only pursuant to an order form. Compliance with the provisions of federal law respecting order forms shall be deemed compliance with this section.

SECTION 14. Prescriptions. (1) Except when dispensed directly by a practitioner, other than a pharmacy, to an ultimate user, no controlled substance in Schedule II may be dispensed without the written prescription of a practitioner.

(2) In emergency situations, as defined by rule of the board, Schedule II drugs may be dispensed upon oral prescription of a practitioner, reduced promptly to writing and filed by the pharmacy. Prescriptions shall be retained in conformity with the requirements of section 12 of this 1977 Act. No prescription for a Schedule II substance may be refilled.

(3) Except when dispensed directly by a practitioner, other than a pharmacy, to an ultimate user, a controlled substance included in Schedule III, IV or V, which is a prescription drug as determined by the board under ORS 689.620, shall not be dispensed without a written or oral prescription of a practitioner. The prescription shall not be filled or refilled more than six months after the date on which it was issued and no prescription authorized to be refilled may be refilled more than five times. Additional quantities of the controlled substances listed in Schedule III, IV or V may only be authorized by a practitioner through issuance of a new prescription.

(4) A controlled substance shall not be delivered or dispensed other than for a medical purpose.

(5) Except in good faith and in the course of his professional practice only, a practitioner may not dispense controlled substances.

(6) Any oral prescription authorized by statute or rule shall be reduced promptly to writing and filed by the pharmacy.

(7) Issuance, preparation, labeling, dispensing, recordkeeping and filing of prescriptions or medication orders shall be in conformance with the requirements of the federal law and rules of the board.

ARTICLE IV. OFFENSES AND PENALTIES

SECTION 15. Prohibited acts A; penalties. (1) Except as authorized by sections 1 to 29 of this 1977 Act, it is unlawful for any person to manufacture or deliver a controlled substance. Any person who violates this subsection with respect to:

(a) A controlled substance in Schedule I, is guilty of a Class A felony.

(b) A controlled substance in Schedule II, is guilty of a Class B felony.

(c) A controlled substance in Schedule III, is guilty of a Class C felony.

(d) A controlled substance in Schedule IV, is guilty of a Class B misdemeanor.

(e) A controlled substance in Schedule V, is guilty of a Class C misdemeanor.

(2) Notwithstanding the placement of marijuana in a schedule of controlled substances under this 1977 Act:

(a) Any person who delivers marijuana for consideration is guilty of a Class B felony.

(b) Any person who delivers, for no consideration, less than one avoirdupois ounce of the dried leaves, stems and flowers of the plant Cannabis family Moraceae is guilty of a Class A misdemeanor, except that

(c) Any person who delivers, for no consideration, less than five grams of the dried leaves, stems and flowers of the plant Cannabis family Moraceae is guilty of a violation, punishable by a fine of not more than \$100.

(3) Except as authorized in sections 1 to 29 of this 1977 Act, it is unlawful for any person to create or deliver a counterfeit substance. Any person who violates this subsection with respect to:

(a) A counterfeit substance in Schedule I, is guilty of a Class A felony.

(b) A counterfeit substance in Schedule II, is guilty of a Class B felony.

(c) A counterfeit substance in Schedule III, is guilty of a Class C felony.

(d) A counterfeit substance in Schedule IV, is guilty of a Class B misdemeanor.

(e) A counterfeit substance in Schedule V, is guilty of a Class C misdemeanor.

(4) It is unlawful for any person knowingly or intentionally to possess a controlled substance unless the substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of his professional practice, or except as otherwise authorized by sections 1 to 29 of this 1977 Act. Any person who violates this subsection with respect to:

(a) A controlled substance in Schedule I, is guilty of a Class B felony.

(b) A controlled substance in Schedule II, is guilty of a Class C felony.

(c) A controlled substance in Schedule III, is guilty of a Class A misdemeanor.

(d) A controlled substance in Schedule IV, is guilty of a Class C misdemeanor.

(e) A controlled substance in Schedule V, is guilty of a violation.

(f) Notwithstanding the placement of marijuana in a schedule of controlled substances under this 1977 Act, any person who knowingly or intentionally is in unlawful possession of less than one avoirdupois ounce of the dried leaves, stems and flowers of the plant Cannabis family Moraceae is guilty of a violation, punishable by a fine of not more than \$100.

SECTION 16. Prohibited acts B; penalties.

(1) It is unlawful for any person:

(a) Who is subject to sections 7 to 14 of this 1977 Act to deliver or dispense a controlled substance in violation of section 14 of this 1977 Act;

(b) Who is a registrant, to manufacture a controlled substance not authorized by this registration, or to deliver or dispense a controlled substance not authorized by his registration to another registrant or other authorized person;

(c) To refuse or fail to make, keep or furnish any record, notification, order form, statement, invoice or information required under sections 1 to 29 of this 1977 Act;

(d) To refuse an entry into any premises for any inspection authorized by sections 1 to 29 of this 1977 Act; or

(e) To keep or maintain any store, shop, warehouse, dwelling, building, vehicle, boat, aircraft or other structure or place, while knowingly permitting persons to use controlled substances in such places in violation of sections 1 to 29 of this 1977 Act, or which is used for keeping or selling them in violation of sections 1 to 29 of this 1977 Act.

(2) Any person who violates this section with respect to:

(a) A controlled substance in Schedule I, is guilty of a Class C felony.

(b) A controlled substance in Schedule II, is guilty of a Class A misdemeanor.

(c) A controlled substance in Schedule III, is guilty of a Class B misdemeanor.

(d) A controlled substance in Schedule IV or V, is guilty of a Class C misdemeanor.

SECTION 17. Prohibited acts C; penalties.

(1) It is unlawful for any person knowingly or intentionally:

(a) To deliver as a registrant a controlled substance classified in Schedule I or II, except pursuant to an order form as required by section 13 of this 1977 Act;

(b) To use in the course of manufacture or delivery of a controlled substance a registration number which is fictitious, revoked, suspended or issued to another person;

(c) To acquire or obtain possession of a controlled substance by misrepresentation, fraud, forgery, deception or subterfuge;

(d) To furnish false or fraudulent material information in, or omit any material information from, any application, report, record or other document required to be kept or filed under sections 1 to 29 of this 1977 Act; or

(e) To make, deliver or possess any punch, die, plate, stone or other thing designed to print, imprint or reproduce the trademark, trade name or other

identifying mark, imprint or device of another or any likeness of any of the foregoing upon any drug or container or labeling thereof so as to render the drug a counterfeit substance.

(2) Any person who violates this section is guilty of a Class A misdemeanor.

SECTION 18. Penalties under other laws. Any penalty imposed for violation of sections 1 to 29 of this 1977 Act is in addition to, and not in lieu of, any civil or administrative penalty or sanction otherwise authorized by law.

SECTION 19. Bar to prosecution. If a violation of sections 1 to 29 of this 1977 Act is a violation of a federal law or the law of another state, a conviction or acquittal under federal law or the law of another state for the same act is a bar to prosecution in this state.

SECTION 20. Distribution to persons under age 18. Except as authorized by sections 1 to 29 of this 1977 Act, it is unlawful for any person to deliver a controlled substance to a person under 18 years of age. Any person who violates this section with respect to:

(1) A controlled substance in Schedule I or II, is guilty of a Class A felony.

(2) A controlled substance in Schedule III, is guilty of a Class B felony.

(3) A controlled substance in Schedule IV, is guilty of a Class A misdemeanor.

(4) A controlled substance in Schedule V, is guilty of a Class B misdemeanor.

(5) Notwithstanding the placement of marijuana in a schedule of controlled substances under this 1977 Act, and notwithstanding subsection (2) of section 15 of this 1977 Act, delivery of marijuana to a minor is a Class A felony if:

(a) The defendant is 18 years of age or over; and

(b) The conviction is for delivery of marijuana to a person under 18 years of age who is at least three years younger than the defendant.

SECTION 21. Conditional discharge for possession as first offense. Whenever any person who has not previously been convicted of any offense under sections 1 to 29 of this 1977 Act or under any statute of the United States or of any state relating to narcotic drugs, marijuana, stimulant, depressant or hallucinogenic drugs, pleads guilty to or is found guilty of possession of a controlled substance under subsection (4) of section 15 of this 1977 Act, the court, without entering a judgment of guilt and with the consent of the accused, may defer further proceedings and place him on probation. Upon violation of a term or condition of probation, the court may enter an adjudication of guilt and proceed as otherwise provided. Upon fulfillment of the terms and conditions, the court shall discharge the person and dismiss the proceedings against him. Discharge and dismissal under this section shall be without adjudication of guilt and is not a conviction for purposes of this section or for purposes of disqualifications or disabilities imposed by law upon conviction of a crime. There may be only one discharge and dismissal under this section with respect to any person.

ARTICLE V. ENFORCEMENT AND ADMINISTRATIVE PROVISIONS

SECTION 22. Cooperative arrangements. The board shall cooperate with federal and other state agencies in discharging its responsibilities concerning traffic in controlled substances and in suppressing the abuse of controlled substances. To this end, it may:

(1) Arrange for the exchange of information among governmental officials concerning the use and abuse of controlled substances; and

(2) Cooperate in training programs concerning controlled substance law enforcement at local and state levels.

SECTION 23. Burden of proof; liabilities. (1) It is not necessary for the state to negate any exemption or exception in sections 1 to 29 of this 1977 Act in any complaint, information, indictment or other pleading or in any trial, hearing or other proceeding under sections 1 to 29 of this 1977 Act. The burden of proof of any exemption or exception is upon the person claiming it.

(2) In the absence of proof that a person is the duly authorized holder of an appropriate registration or order form issued under sections 1 to 29 of this 1977 Act, he is presumed not to be the holder of the registration or form. The burden of proof is upon him to rebut the presumption.

SECTION 24. Judicial review. All final determinations, findings and conclusions of the board or committee under sections 1 to 29 of this 1977 Act are final and conclusive decisions of the matters involved. Any person aggrieved by the decision may obtain review of the decision in accordance with ORS 183.310 to 183.500. Findings of fact by the board or committee, if supported by substantial evidence, are conclusive.

SECTION 25. Education and research. (1) The Mental Health Division of the Department of Human Resources, with the advice of the Committee on Controlled Substances, shall carry out educational programs designed to prevent and deter misuse and abuse of controlled substances. In connection with these programs it may:

(a) Promote better recognition of the problems of misuse and abuse of controlled substances within the regulated industry and among interested groups and organizations;

(b) Assist the regulated industry and interested groups and organizations in contributing to the reduction of misuse and abuse of controlled substances;

(c) Consult with interested groups and organizations to aid them in solving administrative and organizational problems;

(d) Evaluate procedures, projects, techniques and controls conducted or proposed as part of educational programs on misuse or abuse of controlled substances;

(e) Disseminate the results of research on misuse and abuse of controlled substances to promote a better public understanding of what problems exist and what can be done to combat them; and

(f) Assist in the education and training of state and local law enforcement officials in their efforts to control misuse and abuse of controlled substances.

(2) The division shall encourage research on the medical use, misuse and abuse of controlled substances. In connection with the research, and in

furtherance of the enforcement of sections 1 to 29 of this 1977 Act, it may:

(a) Establish methods to assess accurately the physiological, psychological and social effects of controlled substances and identify their medical uses, relative hazard potential, and potential for abuse;

(b) Make studies and undertake programs of research to:

(A) Develop new or improved approaches, techniques, systems, equipment and devices to strengthen the enforcement of sections 1 to 29 of this 1977 Act;

(B) Determine patterns of use, misuse and abuse of controlled substances and the social effects thereof; and

(C) Improve methods for preventing, predicting, understanding and dealing with the misuse and abuse of controlled substances.

(c) Enter into contracts with public agencies, institutions of higher education, and private organizations or individuals for the purpose of conducting research, demonstrations or special projects which bear directly on misuse and abuse of controlled substances.

(3) The division may enter into contracts for educational and research activities without performance bonds and without regard to ORS 279.710 to 279.746.

ARTICLE VI. MISCELLANEOUS

SECTION 26. Pending proceedings. (1) Prosecution for any violation of law occurring prior to the effective date of this 1977 Act is not affected or abated by this 1977 Act. If the offense being prosecuted is similar to one set out in sections 15 to 21 of this 1977 Act, then the penalties under those sections apply if they are less than those under prior law.

(2) Civil seizures or forfeitures and injunctive proceedings commenced prior to the effective date of this 1977 Act are not affected by this 1977 Act.

(3) All administrative proceedings pending under prior laws which are superseded by this 1977 Act shall be continued and brought to a final determination in accord with the laws and rules in effect prior to the effective date of this 1977 Act. Any substance controlled under prior law which is not listed within Schedules I through V, is automatically controlled without further proceedings and shall be classified as in the federal schedules unless explicitly deleted or reclassified by the committee pursuant to sections 4 and 5 of this 1977 Act.

(4) The board shall initially permit persons to register who own or operate any establishment engaged in the manufacture, delivery or dispensing of any controlled substance prior to the effective date of this 1977 Act and who are registered or licensed by the state.

(5) This 1977 Act applies to violations of law, seizures and forfeiture, injunctive proceedings, administrative proceedings and investigations which occur after the effective date of this 1977 Act.

SECTION 27. Continuation of rules. Any orders or rules promulgated under any law affected by sections 1 to 29 of this 1977 Act and in effect on the effective date of this 1977 Act and not in conflict with it continue in effect until modified, superseded or repealed.

SECTION 28. Uniformity of interpretation. Sections 1 to 29 of this 1977 Act shall be so applied and construed as to effectuate its general purpose to make uniform the law with respect to the subject of sections 1 to 29 of this 1977 Act among those states which enact similar laws.

SECTION 29. Short title. Sections 1 to 29 of this 1977 Act may be cited as the Uniform Controlled Substances Act.

SECTION 30. Sections 1 to 29 of this Act are added to and made a part of ORS chapter 475.

Section 31. ORS 161.705 is amended to read:

161.705. Reduction of felony to misdemeanor. Notwithstanding ORS 161.525, when a person is convicted of any Class C felony [*or of the crime of criminal activity in drugs under ORS 167.207*] under sections 1 to 29 of this 1977 Act or when a person is convicted of a Class B felony pursuant to paragraph (a) of subsection (2) of section 15 of this 1977 Act, if the court, having regard to the nature and circumstances of the crime and to the history and character of the defendant, is of the opinion that it would be unduly harsh to sentence the defendant for a felony, the court may enter judgment of conviction for a Class A misdemeanor and make disposition accordingly. **This section does not apply, however, in cases subject to section 20 of this 1977 Act.**

SECTION 32. Repeals ORS 167.202. ORS 167.202 is repealed and section 33 of this 1977 Act is enacted in lieu thereof.

SECTION 33. Definitions. As used in ORS 167.212 to 167.252, unless the context requires otherwise:

(1) "Apothecary" means a pharmacist, as defined by ORS 689.010, and where the context so requires, the owner of a store or other place of business where controlled substances are compounded or dispensed by a licensed pharmacist.

(2) "Controlled substance" and "manufacture" have the meaning given those terms by section 1 of this 1977 Act.

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

(4) "Practitioner" has the meaning given that term by section 1 of this 1977 Act.

(5) "Wholesaler" means a person who supplies controlled substances that he himself has not produced or prepared, on official written orders, but not on prescriptions.

(6) "Unlawfully" means in violation of any provision of sections 1 to 29 of this 1977 Act.

Section 34. ORS 167.212 is amended to read:

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

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

(b) Affixes a false or forged label to a package or receptacle containing [*narcotic or dangerous drugs*] controlled substances; [or]

(c) Makes or utters a false or forged prescription or false or forged official written order for [*narcotic or dangerous drugs*] controlled substances; or

(d) Makes a false statement in any [*narcotic or dangerous drug*] controlled substance prescription, order, report or record required by [*ORS chapter 474 or 475*] sections 1 to 29 of this 1977 Act.

(2) Tampering with drug records is a Class C felony.

Section 35. ORS 167.222 is amended to read:

167.222. **Criminal drug promotion.** (1) A person commits the offense of criminal drug promotion if he [*knowingly*] keeps, maintains, frequents, or remains at a place[.], while knowingly permitting persons to use controlled substances in such place or to keep or sell them in violation of sections 1 to 29 of this 1977 Act.

[*(a) Resorted to by drug users for the purpose of unlawfully using narcotic or dangerous drugs; or*]

[*(b) Which is used for the unlawful keeping or sale of narcotic or dangerous drugs.*]

(2) Criminal drug promotion is a Class A misdemeanor.

(3) Notwithstanding subsection (2) of this section, if the conviction is for knowingly maintaining, frequenting or remaining at a place where [*less than*] one avoirdupois ounce of [*marijuana*] the dried leaves, stems, and flowers of the plant *Cannabis* family *Moraceae* is found at the time of an arrest under this section, criminal drug promotion is a violation punishable by a fine of not more than \$100.

(4) As used in this section, "frequents" means repeatedly or habitually visits, goes to or resorts to.

Section 36. ORS 167.238 is amended to read:

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

[*(2) Proof of possession of a narcotic drug not in the container in which it was originally delivered, sold or dispensed is prima facie evidence that the possession is unlawful.*]

[*(3)*] (2) Proof of possession of a [*dangerous drug*] controlled substance not in the container in which it was originally delivered, sold or dispensed, when a prescription or order of a practitioner is required under the provisions of [*ORS chapter 474 or 475*] sections 1 to 29 of this 1977 Act, is prima facie evidence that the possession is unlawful unless the possessor also has in his possession a label prepared by the pharmacist for the drug dispensed or the possessor is authorized by sections 1 to 29 of this 1977 Act to possess the controlled substance.

Section 37. ORS 167.242 is amended to read:

167.242. **Exemption from application of drug laws as defense in prosecution of drug offenses.** In any prosecution under ORS [*167.202 to 167.228*] 167.212 and 167.222, or in a forfeiture proceeding under ORS 167.247, any exception, excuse, proviso or

exemption contained in [*ORS chapter 474 or 475*] sections 1 to 29 of this 1977 Act shall be an affirmative defense.

Section 38. ORS 167.247 is amended to read:

167.247. **Search, seizure and forfeiture of conveyance in which drugs unlawfully transported or possessed.** (1) A district attorney or peace officer charged with the enforcement of ORS [*167.202 to 167.228*] 167.212 and 167.222, having personal knowledge or reasonable information that [*narcotic or dangerous drugs*] controlled substances are being unlawfully transported or possessed in any boat, vehicle or other conveyance, may search the same without warrant and without an affidavit being filed. If [*narcotic or dangerous drugs*] controlled substances are found in or upon such conveyance, he may seize them, arrest any person in charge of the conveyance and as soon as possible take the arrested person and the seized [*drugs*] controlled substances before any court in the county in which the seizure is made. He shall also, without delay, make and file a complaint for any crime justified by the evidence obtained.

(2) Any boat, vehicle or other conveyance used by or with the knowledge of the owner, operator or person in charge thereof for the unlawful transportation[, *possession*] or concealment of [*narcotic or dangerous drugs*] controlled substances shall be forfeited to the state in the same manner and with like effect as provided in ORS 471.660 and 471.665. However, a conveyance is not subject to forfeiture for a violation of subsection (3) of section 15 of this 1977 Act.

(3) No conveyance used by any person as a common carrier in the transaction of business as a common carrier is subject to forfeiture under this section unless it appears that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of sections 1 to 29 of this 1977 Act.

(4) No conveyance is subject to forfeiture under this section by reason of any act or omission committed or omitted without the knowledge or consent of the owner.

Section 39. ORS 430.325 is amended to read:

430.325. **Prohibitions on local governments as to certain crimes.** (1) A political subdivision in this state shall not adopt or enforce any local law or regulation that makes any of the following an offense, a violation or the subject of criminal or civil penalties or sanctions of any kind:

(a) Public intoxication.

(b) Public drinking, except as to places where any consumption of alcoholic beverages is generally prohibited.

(c) Drunk and disorderly conduct.

(d) Vagrancy or other behavior that includes as one of its elements either drinking alcoholic beverages or using [*narcotics or dangerous drugs*] controlled substances in public, being [*a common drunkard*] an alcoholic or a drug-dependent person, or being found in specified places under the influence of alcohol[, *narcotic or dangerous drugs*] or controlled substances.

(e) Using or being under the influence of [*narcotics or dangerous drugs*, except that the political

subdivision may adopt a local law or regulation identical to ORS 167.217 **controlled substances.**

(2) Nothing in subsection (1) of this section shall affect any local law or regulation of any political subdivision in this state against [*drunken driving*] driving [*under the influence of alcohol, narcotic or dangerous drugs*] while under the influence of intoxicants, as defined in ORS 487.540, or other similar offenses that involve the operation of motor vehicles.

Section 40. ORS 471.665 is amended to read:

471.665. Disposal of conveyance transporting liquor. (1) The court, upon conviction of the person arrested under ORS 471.660, shall order the alcoholic liquor delivered to the commission, and shall, subject to the provisions of subsection (3) of this section, and 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 his name and address in the records of the Motor Vehicles Division 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.

(3) In the case of any boat, vehicle or other conveyance seized pursuant to ORS 167.247 [*for violation of a narcotic or dangerous drug criminal statute*], the boat, vehicle or other conveyance may, in the discretion of the seizing law enforcement agency, following conviction of the person arrested but prior to public auction, be claimed by the seizing law enforcement agency by giving timely notice to the sheriff of the county in which the seizure was made, that the seizing law enforcement agency intends to retain the boat, vehicle or other conveyance for official use. On receipt of notice of such claim, the sheriff shall determine the expense of keeping the boat, vehicle or other conveyance, and all the liens. The seizing agency may then pay the total of the expenses and liens to the sheriff of the county in which the seizure was made. The sheriff shall pay all

the liens, according to their priorities, and all other expenses incurred in the seizing and keeping of the boat, vehicle or other conveyance. Upon payment of the liens and expenses, the boat, vehicle or other conveyance shall be delivered to the possession of, and title to the conveyance shall rest in, the seizing agency. The seizing agency then shall put the boat, vehicle or other conveyance to official law enforcement use.

Section 41. ORS 475.645 is amended to read:

475.645. Examination and treatment of persons arrested for drug law violations; court record; confidentiality of certain information. (1) When a person [*who*] has been arrested for [*violation of ORS 167.217*] possession of a controlled substance under subsection (4) of section 15 of this 1977 Act or [*who has been arrested upon another*] any other charge [*and*], is suspected of [*violating ORS 167.217*] being a drug-dependent person, submits to an examination for drug dependence under ORS 475.665, and is found to be drug dependent, the court may require treatment as a condition of [*bail*] release, unless release is prohibited by law for the charge, and may consider the results of such treatment and the defendant's cooperation therewith, in sentencing. Where deemed to be in the best interests of a drug-dependent arrestee, the district attorney with the concurrence of the court may continue treatment as a contingent alternative to prosecution.

(2) Detoxification of any drug-dependent arrestee shall be provided in a facility approved by the division on the request of the arrestee. Such request cannot be revoked until detoxification is completed. Arraignment shall be delayed until detoxification is completed.

(3) If the director of the treatment facility finds that the drug-dependent arrestee may be substantially benefited by further treatment, he may apply to the court for an order directing that person to remain at the treatment facility for an additional period, not to exceed one year, before being released. If the court finds that additional treatment would be beneficial, the court may direct that the drug-dependent arrestee be held for such treatment for a period not to exceed one year, upon the written consent of the arrestee. However, the arrestee shall remain in treatment under this subsection no longer than the maximum time he could be sentenced for the offense for which he is charged.

(4) If continuing treatment is successful, based on biochemical surveillance and social rehabilitation, charges of [*criminal use of drugs under ORS 167.217*] possession of controlled substances under subsection (4) of section 15 of this 1977 Act shall be dismissed, subject to the same limitations as in section 21 of this 1977 Act. The district attorney and the court shall be notified by the treatment facility of the release of the person from treatment prior to termination of treatment.

(5) If treatment is unsuccessful, the district attorney and the court shall be notified before the arrestee is released from treatment, whereupon, the prosecution may be resumed.

[(6) First offenders who plead guilty to criminal use of drugs under ORS 167.217 may receive treatment under ORS 475.732. Upon the successful completion of treatment the plea of guilty and all proceedings

leading thereto shall be expunged from the record upon order of the court.]

[(7) (6) [For all other drug offenses] For any person convicted of a criminal offense under sections 1 to 29 of this 1977 Act and determined to be drug dependent under ORS 475.665 to 475.705, the court may give a suspended sentence[s] with immediate probation and may for a term not to exceed the maximum sentence authorized by law require treatment as a condition of probation, except where [a prison sentence] incarceration is required by statute.

[(8) (7) [The] Any sentence of imprisonment [under ORS 167.217] shall be reduced by the number of days [a] the person is in a treatment facility[,] for the same offense, under subsections (2), (3)[,] and (6) [and (7)] of this section.

[(9) (8) Results of tests or of information voluntarily provided to treatment personnel by the drug-dependent arrestee under subsections (1), (2)[,] and (3) [and (6)] of this section shall be confidential and shall not be admitted as evidence in criminal proceedings.

Section 42. ORS 475.665 is amended to read:

475.665. **Test on suspected drug users; use of results in evidence.** [(1) When a person is arrested for [violation of ORS 167.217] possession of a controlled substance under subsection (4) of section 15 of this 1977 Act, or is arrested upon another charge and is suspected of [violating that section] being a drug-dependent person, the officer or person making the arrest shall inform the person of his right to examination and the possible consequences and may, upon the written consent of the arrested person, request an approved evaluation site to administer tests within [48] 24 hours of apprehension to determine whether the arrested person is using or is under the influence of [narcotic or other dangerous drugs] controlled substances. Results of the tests shall be made available without delay to the person requesting the tests and to the person tested. At a subsequent trial of that person, and upon the request of either party, the court may admit those results in evidence. Refusal of the arrested person to consent to the tests at the time of his arrest is not admissible in evidence upon his trial.

[(2) Nothing in this section is intended to limit the introduction of other evidence bearing upon the question of whether or not a person is using or is under the influence of narcotic or other dangerous drugs.]

Section 43. ORS 689.290 is amended to read:

689.290. **Fees.** The fees for licenses, permits and certificates issued under this chapter are as follows:

- (1) Pharmacist's examination fee, [~~\$45~~] \$60.
- (2) Reciprocity licensing fee, [~~\$60~~] \$100.
- (3) Annual pharmacist license fee, [~~\$20~~] \$30.
- (4) Pharmacist license, delinquent renewal fee, \$5.
- (5) Pharmacy intern license, \$5.
- (6) Initial pharmacy license, [~~\$25~~] \$35.
- (7) Annual pharmacy license, [~~\$25~~] \$35.
- (8) Reinspection fee, \$25.
- (9) Pharmacy license, delinquent renewal fee, \$25.
- (10) Shopkeeper fee, for all outlets distributing six or less items, \$10; for all outlets distributing more than six items, \$15.
- (11) Itinerant vendor fee, \$10.

(12) Duplicate pharmacist certificate, \$10.

[(12) (13) Manufacturer's license fee and annual renewal thereof, [~~\$50~~] \$100.

[(13) (14) Wholesaler's license fee and annual renewal thereof, [~~\$50~~] \$100.

[(14) Duplicate pharmacist certificate, \$3.]

(15) Distributor's license fee and annual renewal thereof, \$25.

(16) Practitioner's license fee and annual renewal thereof, \$5.

Section 44. ORS 689.410 is amended to read:

689.410. **Grounds for suspension, revocation or refusal to reissue certificates or licenses of pharmacists or pharmacy interns.** (1) The board may suspend, revoke or refuse to renew the license of any pharmacist or pharmacy intern or may suspend or revoke the certificate of a pharmacist:

(a) When the certificate or license has been obtained by fraudulent means.

(b) When the pharmacist or pharmacy intern has been convicted of a felony, evidenced by the record of conviction or a certified copy thereof, certified by the clerk of the court or by the judge in whose court the conviction is entered.

(c) When the pharmacist or pharmacy intern is found to have violated any provision of this chapter or [ORS chapter 474 or] of ORS 453.175, 453.185, 453.605 to 453.745 or [475.010 to 475.705] of sections 1 to 29 of this 1977 Act or any rule of the board promulgated under those sections or chapters, to have engaged in dishonest business practices, [to have been grossly immoral,] to have been incompetent in the preparation of prescriptions or to have habitually or excessively used [intoxicants or drugs] alcoholic beverages or controlled substances to such a degree as to render him unfit to practice pharmacy.

(2) Pardon and restoration of civil rights to any former pharmacist or former pharmacy intern do not obligate the board to restore revoked or suspended licenses.

Section 45. ORS 689.620 is amended to read:

689.620. **Powers of board.** The board may:

(1) Cause to have printed and circulated copies of the laws relating to pharmacy, controlled substances, drugs and poisons and the rules promulgated to enforce such laws, and set reasonable charges therefor.

(2) Regulate the practice of pharmacy.

(3) Regulate the sale of poisons.

(4) Regulate the quality of all pharmaceutical prescriptions and medicines dispensed in the state, using the Pharmacopoeia, Formulary and Homeopathic Pharmacopoeia as the standard.

(5) Investigate all complaints as to the quality and strength of all pharmaceutical preparations, drugs and medicines, and take necessary action to prevent the sale of preparations and medicines not conforming to the standards and tests prescribed in the latest editions or revisions of the Pharmacopoeia, Formulary, Homeopathic Pharmacopoeia or rules of the board.

(6) Fix standards and requirements for licensing of pharmacists, pharmacy interns and pharmacies.

(7) Employ inspectors, chemists, agents and clerical help for the proper conduct of the office.

(8) Pursuant to ORS [chapter 183] 183.310 to 183.500, make such rules as are necessary and

feasible for carrying out ORS 453.175 and 453.185 and this chapter, and make rules relating to [drugs] controlled substances, [that the Committee on Drug Problems designates by order to the board as dangerous drugs pursuant to ORS 689.660] designated as such pursuant to sections 4 and 5 of this 1977 Act.

(9) Examine and certify as pharmacists all applicants who meet the requirements of law and of the board and collect and receive application fees from such applicants.

(10) Issue and renew licenses of pharmacists and pharmacy interns and revoke or suspend such licenses upon violation by the holder thereof of any of the provisions of ORS 453.175, 453.185 or of this chapter.

(11) Appoint advisory committees.

(12) Issue and renew licenses to all shopkeepers, pharmacies, itinerant vendors, manufacturers and wholesalers, receive and collect annual license fees therefrom and suspend or revoke such licenses in the manner provided in this chapter.

(13) At all reasonable hours, in performance of the duties imposed by this section enter, or cause its authorized representatives to enter upon, and examine the premises or records required by law of any pharmacy, shopkeeper, itinerant vendor, manufacturing plant or wholesale warehouse under the jurisdiction of the board.

(14) Assist the regularly constituted law enforcement agencies of this state in enforcing ORS 453.010 to 453.170, and this chapter by prosecution in the courts of this state or otherwise.

(15) Designate the minimum requirements for equipment in each pharmacy and fix the standards therefor.

(16) Cause to have made a regular inspection of all pharmacies.

Section 46. ORS 181.010 is amended to read:

181.010. **Definitions for ORS 181.010 to 181.540.** As used in ORS 181.010 to 181.540, unless the context requires otherwise:

(1) "Bureau" means the Department of State Police Bureau of Criminal Identification.

(2) "Criminal offender information" includes records and related data, fingerprints received and compiled by the bureau for purposes of identifying criminal offenders and alleged offenders, records of arrests and the nature and disposition of criminal charges, including sentencing, confinement and release.

(3) "Crime for which criminal offender information is required" means:

(a) Any felony;

(b) Any misdemeanor or other offense which involves criminal sexual conduct; or

(c) Any offense which involves the use or sale of narcotic drugs as defined in ORS 474.010 or dangerous drugs defined in ORS 475.010.]

(c) Any crime which involves a violation of the Uniform Controlled Substances Act.

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

(5) "Deputy superintendent" means the Deputy Superintendent of State Police.

(6) "Law enforcement agency" means county sheriffs, municipal police departments, State Police, other police officers of this and other states and law enforcement agencies of the Federal Government.

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

(8) "Superintendent" means the Superintendent of State Police.

(9) "Criminal Justice Agency" means:

(a) The Governor,

(b) Courts of criminal jurisdiction,

(c) The Attorney General,

(d) District attorneys,

(e) Law enforcement agencies,

(f) The Corrections Division,

(g) The State Board of Parole, and

(h) Any other state or local agency designated by order of the Governor.

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

Section 47. ORS 430.405 is amended to read:

430.405. **Definitions for ORS 161.125, 430.100, 430.270, 430.405 to 430.425, 475.645 to 475.705, 475.742 and 689.620.** As used in ORS 161.125, 430.100, 430.270, 430.405 to 430.425, [475.010,] 475.645 to 475.705, [475.732,] 475.742[,] and 689.620 [and 689.660], unless the context requires otherwise:

(1) "Drug-dependent person" means one who has lost the ability to control the use of dangerous drugs or other drugs with abuse potential, or who uses such drugs to the extent that his health or that of others is substantially impaired or endangered or his social or economic function is substantially disrupted. A drug-dependent person may be physically dependent, a condition in which the body requires a continuing supply of a drug to avoid characteristic withdrawal symptoms, or psychologically dependent, a condition characterized by an overwhelming mental desire for continued use of a drug.

(2) "Drug abuse" means repetitive, excessive use of drugs short of dependence, without legal or medical supervision, which may have a detrimental effect on the individual or society.

(3) "Division" means the Mental Health Division.

(4) "Administrator" means the Administrator of the Mental Health Division.

(5) "Treatment facility" means detoxification centers, outpatient clinics, residential facilities, hospitals and such other facilities as the Mental Health Division determines suitable, any of which may provide diagnosis and evaluation, medical care, detoxification, social services or rehabilitation for drug-dependent persons.

(6) "Director of the treatment facility" means the person in charge of treatment and rehabilitation programs at the treatment facility.

Section 48. ORS 475.695 is amended to read:

475.695. **Tests to be performed at evaluation sites; testing only upon written consent; conditions for performance of certain tests.** (1) Evaluation sites provided under ORS 475.685 shall administer tests under ORS 475.665[,] and 475.675 [and 475.732]. A person shall be tested only upon his written consent.

(2) Narcotic antagonist drugs may be administered for detection of narcotic addiction by a registered nurse at an approved site when the nurse has completed required training and a physician is available on call.

(3) Urine collection at evaluation sites shall be obtained under direct observation with positive identification of the donor, utilizing urine containers clearly marked with the person's code prior to collection and stored in a secure area.

Section 49. ORS 475.705 is amended to read:

475.705. **Costs of tests.** The cost of administering tests under ORS 475.665 shall be the responsibility of the county initiating the arrest. The cost of administering tests under ORS 475.675 shall be the responsibility of the Corrections Division, subject to availability of funds appropriated therefor, or of the local court initiating such action. Costs of evaluation and surveillance for individuals participating in the drug exemption program [*under ORS 475.732*] shall be paid from funds appropriated to the Mental Health Division for this purpose.

Section 50. ORS 483.710 is amended to read:

483.710. **Operation of snowmobile to hunt; while under the influence of liquor or drugs; "dangerous drugs" defined.** (1) No person shall operate a snowmobile in a manner so as to run down, harass, chase or annoy any game animals or birds or domestic animals. No person shall hunt from a snowmobile. This subsection does not apply to officers of the State Fish and Wildlife Commission, to persons under contract to the commission in the performance of their official duties or to individuals who have secured a permit from the commission for purposes of research and study.

(2) No owner or other person having charge or control of a snowmobile shall knowingly authorize or permit any person to operate the snowmobile across a highway who is incapable by reason of age, physical or mental disability or who is under the influence of intoxicating liquor[, *dangerous drugs or narcotic drugs.*] or controlled substances.

(3) As used in [*subsection (2) of this section and*] ORS 483.730, "dangerous drugs" means any drug designated a [*dangerous drug by the Drug Advisory Council under ORS 689.660*] controlled substance by the Committee on Controlled Substances.

Section 51. ORS 679.140, as amended by section 3a, chapter 192, Oregon Laws 1977, is further amended to read:

679.140. (1) The board may discipline as provided in this section any person licensed to practice dentistry in this state for any of the following causes:

(a) Conviction of any offense for which the court could impose a punishment of imprisonment in a state or federal penal institution if the board makes the finding required by ORS 670.280. The record of conviction or a certified copy thereof, certified by the clerk of the court or by the judge in whose court the conviction is entered, is conclusive evidence of the conviction.

(b) Renting or loaning to any person his license or diploma to be used as a license or diploma of such person.

(c) Unprofessional conduct, or for gross ignorance, incompetence or inefficiency in his profession.

(d) Any violation of ORS 679.170 or 679.176.

(2) Unprofessional conduct as used in this chapter includes but is not limited to the following:

(a) Employing what are known as "cappers" or "steerers" to obtain business.

(b) Obtaining any fee by fraud or misrepresentation.

(c) Wilfully betraying confidences involved in the patient-dentist relationship.

(d) Employing, aiding, abetting or permitting any unlicensed personnel to practice dentistry.

(e) Making use of any advertising statements of a character tending to deceive or mislead the public, or which are untruthful.

(f) Advertising professional superiority or the performance of professional services in a superior manner.

(g) Advertising prices for professional service, unless in accord with rules developed by the board.

(h) Advertising by means of large display, glaring light signs, or advertising containing as a part thereof the representation of a tooth, teeth, bridgework or any portion of the human head.

(i) Employing or making use of advertising solicitors or publicity press agents.

(j) Advertising any free dental work or free examination.

(k) Advertising to guarantee any dental service, or to perform any dental operation painlessly.

(l) Advertising which makes reference to any anesthetic, drug, formula, material, medicine, method or system to be used in treatment.

(m) Advertising extractions, artificial teeth or dentures.

(n) Habitual or excessive use of intoxicants[, *a narcotic drug, as defined in ORS 474.010, or a dangerous drug, as defined in ORS 475.010*] or a controlled substance as defined under this 1977 Act.

(o) Obtaining or attempting to obtain a narcotic drug or a dangerous drug, as previously defined in this section, in any manner proscribed by the rules of the board.

(p) Prescribing or dispensing drugs outside the scope of the practice of dentistry.

(q) Using, in any advertisement, a portrait cut, photograph or reproduced likeness which is more than five years old of the dentist so advertising.

(3) The proceedings under this section and ORS 679.150 may be taken by the board from the matters within its knowledge, or may be taken upon the information of another, but if the informant is a member of the board, the other members of the board shall constitute the board for the purpose of finding judgment of the accused.

(4) In determining what constitutes "gross ignorance, incompetence or inefficiency in his profession" within the meaning of paragraph (c) of subsection (1) of this section, the board may take into account all relevant factors and practices, including but not limited to the practices generally and currently followed and accepted by persons licensed to practice dentistry in this state, the current teachings at accredited dental schools, relevant technical reports published in recognized dental journals and the desirability of reasonable experimentation in the furtherance of the dental arts.

(5) In disciplining a person as authorized by subsection (1) of this section, the board may use any or all of the following methods:

(a) Suspend judgment.

(b) Place him upon probation.

(c) Suspend his license to practice dentistry in this

state.

(d) Revoke his license to practice dentistry in this state.

(e) Place limitations on his license to practice dentistry in this state.

(f) Refuse to renew his license to practice dentistry in this state.

(g) Take such other disciplinary action as the board in its discretion finds proper, including assessment of the costs of the disciplinary proceedings.

(6) If the board places any person upon probation as set forth in paragraph (b) of subsection (5) of this section, the board may determine and may at any time modify the conditions of the probation and may include among them any reasonable condition for the purpose of protection of the public and for the purpose of the rehabilitation of the probationer or both. Upon expiration of the term of probation, further proceedings shall be abated by the board if the holder of the license furnishes the board with evidence that he is competent to practice dentistry, and has complied with the terms of probation. If such evidence fails to establish to the satisfaction of the board that he is competent, or if such evidence shows that he has not complied with the terms of the probation, the board may revoke or suspend the license.

(7) If a license to practice dentistry in this state is suspended, the holder of the license may not practice during the term of suspension. Upon the expiration of the term of suspension, the license shall be reinstated by the board if the holder of the license furnishes the board evidence on the basis of which the board finds that he is competent to practice dentistry, and that he has not practiced dentistry in this state during the term of suspension. If such evidence fails to establish to the satisfaction of the board that the holder is competent, or if any evidence shows he has practiced dentistry in this state during the term of suspension, the board may revoke his license after notice and hearing.

Section 52. ORS 680.100 is amended to read:

680.100. **Grounds for revocation of license.** (1)

The board may revoke or suspend the license of any dental hygienist for any of the following causes:

(a) Conviction of any offense for which the court could impose a punishment of imprisonment in the county jail or any penal institution other than for traffic offenses and other offenses which are unrelated to the ability of such hygienist to practice dental hygiene in accordance with the provisions of this chapter.

(b) Permitting any other person to use or display his license as the license of such other person.

(c) A finding by the board of the violation of any law of this state relating to the practice of dentistry or the practice of dental hygiene.

(d) For unprofessional conduct, or for gross ignorance, incompetence or inefficiency in his profession. For the purposes of this chapter, the board shall by rule or regulation define what constitutes unprofessional conduct, gross ignorance, incompetence or inefficiency. In defining such terms the board shall take into account all relevant factors and practices, including but not limited to the practices generally and currently followed and accepted by persons licensed to practice dental hygiene in this state, the current teachings at accredited schools, relevant

technical reports published in recognized dental journals and the desirability of reasonable experimentation in the furtherance of the practice of dental hygiene.

(e) Habitual or excessive use of intoxicants[, a narcotic drug, as defined in ORS 474.010 or a dangerous drug, as defined in ORS 475.010] or a controlled substance as defined under this 1977 Act.

(2) The provisions of ORS 679.150, 679.160 and 679.250 shall apply to proceedings by the board for the revocation or suspension of or refusal to renew a license issued pursuant to this chapter.

SECTION 53. Captions and headings. The article and section headings or captions used in this Act are used only for convenience in locating or explaining provisions of this Act and are not intended to be part of the statutory law of the State of Oregon.

SECTION 54. Repealer. ORS 167.207, 167.217, 167.228, 167.232, 474.010, 474.014, 474.016, 474.030, 474.040, 474.050, 474.060, 474.070, 474.080, 474.090, 474.100, 474.120, 474.130, 474.140, 474.150, 474.160, 474.190, 474.200, 474.220, 474.990, 475.010, 475.100, 475.110, 475.150, 475.160, 475.615, 475.732, 475.990 and 689.660 are repealed.

SECTION 55. For the purposes of requesting and receiving the information necessary to perform its functions pursuant to this Act, the Committee on Controlled Substances is a criminal justice agency.

SECTION 56. Effective date. Section 1 and sections 6 to 55 of this Act take effect July 1, 1978.

Approved by the Governor July 26, 1977.

Filed in the office of Secretary of State July 26, 1977.

CHAPTER 746

AN ACT

[SB 906]

Relating to courts; amending ORS 133.030, 133.120, 133.140, 136.567, 136.570, 136.575, 136.585, 136.603, 136.607, 136.609, 136.613, 156.060 and 484.230.

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

Section 1. ORS 133.030 is amended to read:

133.030. The following persons are magistrates:

- (1) Judges of the Supreme Court;
- (2) Judges of the Court of Appeals;
- (3) Judges of the circuit court;
- (4) Judges of the district court;
- (5) County judges and justices of the peace; and

[(6) *Municipal officers authorized to exercise the powers and perform the duties of a justice of the peace.*]

(6) **Municipal judges.**

Section 2. ORS 133.120 is amended to read:

133.120. A judge of the Supreme Court or the Court of Appeals may issue a warrant of arrest for any offense committed or triable within the state, and any other magistrate mentioned in ORS 133.030 may issue a warrant for any offense committed or triable within [*his county*] the territorial jurisdiction of the magistrate's court.

Section 3. ORS 133.140 is amended to read:

133.140. A warrant of arrest shall:

- (1) Be in writing;
- (2) Specify the name of the person to be arrested,