

# Oregon Revised Statutes

Chapter 167

2001 EDITION

## Offenses Against Public Health, Decency and Animals

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### GAMBLING OFFENSES

**167.116 Rulemaking.** (1) The Oregon State Lottery Commission shall adopt rules to carry out the provisions of ORS 167.117 (9)(c)(E) and (20)(b).

(2) Devices authorized by the Oregon State Lottery Commission for the purposes described in ORS 167.117 (9)(c)(E) and (20)(b) are exempted from the provisions of 15 U.S.C. 1172. [1999 c.193 §2; 2001 c.502 §6]

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

#### **167.117 Definitions for ORS 167.108 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, panquinqui, red dog, acey-deucey, or any other gambling-based game similar in form or content.

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

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

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

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

amended, constitutes prima facie evidence that the organization is not a bona fide charitable, fraternal or religious organization.

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

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

"Gambling" does not include:

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

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

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

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

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

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

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

(c) Social games.

(d) Bingo, lotto or raffle games or Monte Carlo events operated in compliance with ORS 167.118, by a charitable, fraternal or religious organization licensed pursuant to ORS 167.118,

464.250 to 464.380 and 464.420 to 464.530 to operate such games.

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

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

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

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

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

(c) "Gray machine" does not include:

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

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

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

(D) A slot machine; or

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

- (i) Display and demonstration purposes only at trade shows; or
  - (ii) Training and testing purposes by the Department of State Police.
- (10) "Handle" means the total amount of money and other things of value bet on the bingo, lotto or raffle games, the value of raffle chances sold or the total amount collected from the sale of imitation money during Monte Carlo events.
- (11) "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 on-line 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; and
  - (b) The winning chances are to be determined by a drawing or by some other method; and
  - (c) The holders of the winning chances are to receive something of value.
- (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 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 adaptation, conversion or workability. Nor is it any less a slot machine because apart from its use or adaptability as such it may also sell or deliver something of value on the basis other than chance.

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

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

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

(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]

**167.118 Bingo, lotto or raffle games or Monte Carlo events conducted by charitable, fraternal or religious organizations.**

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

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

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

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

(3)(a) An organization licensed by the department to operate bingo or lotto games shall not award a prize exceeding \$2,500 in value in any one game. An organization licensed by the department to operate a Monte Carlo event may not present any prize of money, or a cash equivalent, to any player.

(b) Notwithstanding any provision of this chapter to the contrary, a bingo licensee may operate two games per year with a prize not to exceed \$10,000 per game.

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

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

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

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

(b) The games and events do not generate for the organization's purposes, after the cost of prizes and operating expenses are deducted from the handle, an amount that equals or exceeds five percent of the handle. [1987 c.914 §3; 1991 c.274 §2; 1995 c.331 §1; 1997 c.867 §2; 1999 c.218 §1; 2001 c.228 §2]

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

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

**167.121 Local regulation of social games.**

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

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

**167.122 Unlawful gambling in the second degree.**

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

(a) Places a bet with a bookmaker; or

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

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

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

**167.127 Unlawful gambling in the first degree.**

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

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

**167.130** [Repealed by 1971 c.743 §432]

**167.132 Possession of gambling records in the second degree.**

(1) A person commits the crime

of possession of gambling records in the second degree if, with knowledge of the contents thereof, the person possesses any writing, paper, instrument or article:

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

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

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

**167.135** [Repealed by 1971 c.743 §432]

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

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

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

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

**167.140** [Repealed by 1971 c.743 §432]

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

**167.145** [Repealed by 1971 c.743 §432]

**167.147 Possession of a gambling device; defense.** (1) A person commits the crime of possession of a gambling device if, with knowledge of the character thereof, the person manufactures, sells, transports, places or

possesses, or conducts or negotiates a transaction affecting or designed to affect ownership, custody or use of:

(a) A slot machine; or

(b) Any other gambling device, believing that the device is to be used in promoting unlawful gambling activity.

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

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

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

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

(A) Is located in a private residence;

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

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

**167.150** [Repealed by 1961 c.579 §2]

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

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

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

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

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

**167.155** [Repealed by 1961 c.503 §3]

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

**167.158 Lottery prizes forfeited to county; exception; action by county to recover.** (1)

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

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

**167.160** [Repealed by 1961 c.503 §3]

**167.162 Gambling device as public nuisance; defense; seizure and destruction.** (1) A

gambling device is a public nuisance. Any peace officer shall summarily seize any such device that the peace officer finds and deliver it to the custody of the sheriff, who shall hold it subject to the order of the court having jurisdiction.

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

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

(4) Whenever, in any proceeding in court for the forfeiture of any gambling device except a slot machine seized for a violation of ORS 167.147,

and such forfeiture is decreed, the court shall have exclusive jurisdiction to remit or mitigate the forfeiture.

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

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

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

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

**167.164 Possession of gray machine; penalty; defense.** (1) On and after December 1, 1991, a

person commits the crime of possession of a gray machine if the person manufactures, sells, leases, transports, places, possesses or services a gray machine or conducts or negotiates a transaction affecting or designed to affect the ownership, custody or use of a gray machine.

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

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

forfeiture may direct that the machine be destroyed.

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

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

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

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

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

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

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

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

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

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

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

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