

Chapter 433

1993 EDITION

Disease Control; Sanitation; Allergens; Indoor Air

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GENERAL PROVISIONS

433.001 Definitions for ORS 433.001 to 433.045 and 433.106 to 433.770. As used in ORS 433.001 to 433.045 and 433.106 to 433.770 unless the context requires otherwise:

(1) "Assistant director" means the Assistant Director for Health or authorized representative.

(2) "Communicable disease" means a disease or condition, the infectious agent of which may be transmitted from one person or an animal to another person, either by direct contact or through an intermediate host, vector or inanimate object, and that may result in illness, death or severe disability.

(3) "Division" means the Health Division of the Department of Human Resources.

(4) "Local public health administrator" means the local public health administrator of the county or district under ORS 431.418 or the authorized representative of the public health administrator.

(5) "Property" means animals, inanimate objects, vessels, public conveyances, buildings and all other real or personal property.

(6) "Public health measure" means isolation, quarantine or other preventative public health measure imposed on persons or property in order to prevent the spread of or exposure to diseases or contaminants of threat to the public.

(7) "Reportable disease" means a disease or condition, the reporting of which enables a public health agency to take action to protect or to benefit the public health.

(8) "Toxic substance" means a substance that may cause illness, disability or death to persons who are exposed to it. [1973 c.259 §2; 1987 c.600 §1]

433.003 [1973 c.259 §4 (enacted in lieu of 433.005); repealed by 1987 c.600 §18]

433.004 Reportable diseases; duty to report; effect of failure to report. (1) The division shall by rule:

(a) Specify reportable diseases;

(b) Identify those categories of persons who must report reportable diseases and the circumstances under which the reports must be made;

(c) Prescribe the procedures and forms for making such reports and transmitting the reports to the division; and

(d) Prescribe measures for investigating the source and controlling reportable diseases.

(2) Persons required under the rules to report reportable diseases shall do so by reporting to the local public health administrator. The local public health administrator shall transmit such reports to the division.

(3) In addition to other grounds for which a state agency may exercise disciplinary action against its licensees or certificate holders, the substantial or repeated failure of such a licensee or certificate holder to report under subsection (2) of this section when required by division rule to do so shall be cause for the exercise of any of such agency's disciplinary powers. [1987 c.600 §3]

433.005 [Repealed by 1973 c.259 §3 (433.003 enacted in lieu of 433.005)]

433.006 Investigation and control measures. In response to each report of a reportable disease, the local public health administrator shall assure that investigations and control measures, as prescribed by division rule, shall be conducted. [1987 c.600 §4]

433.008 Confidentiality of disclosure; exception; privilege; authorization of disclosure. (1) Notwithstanding ORS 192.410 to 192.505, the division, the local public health administrator, all officers and employees thereof and all persons to whom disclosures are made under this subsection or subsection (2) of this section shall not disclose the name or address of, or otherwise disclose the identity of, any person reported under ORS 433.004 except to officers or employees of federal, state or local government public health agencies as may be necessary for the administration or enforcement of public health laws or rules.

(2) If the division or local public health administrator has determined that a reported person's disease or condition is in a contagious state and that the person is violating the rules of the division pertaining to control of that disease, it may disclose that person's name and address to persons other than those stated in subsection (1) of this section if clear and convincing evidence in the particular instance requires disclosure to avoid a clear and immediate danger to other individuals or to the public generally. A decision not to disclose information under this subsection, if made in good faith, shall not subject the entity or person withholding the information to any liability.

(3) Except where required in connection with the administration or enforcement of public health laws or rules, no public health official or employee shall be examined in an administrative or judicial proceeding as to the existence or contents of a report under ORS 433.004 or any record thereof.

(4) The disclosures and examination prohibited by this section may otherwise be authorized by the specific written consent of the person who is the subject of the report or the authorized representative of the person. [1987 c.600 §5]

433.010 Spreading disease prohibited; health certificates to be issued by physicians. (1) No person shall willfully cause the spread of any communicable disease within this state.

(2) Whenever Oregon Revised Statutes require a person to secure a health certificate, such certificate shall be acquired from a physician licensed by the Board of Medical Examiners for the State of Oregon or the Naturopathic Board of Examiners in accordance with the rules of the division. [Amended by 1973 c.259 §5; 1979 c.731 §5]

433.012 Division to provide laboratory examination. The division shall provide the necessary laboratory examinations requested by local health departments for the diagnosis of those communicable diseases identified by rule of the division to be a reportable disease. [1987 c.600 §7]

433.015 [Repealed by 1973 c.259 §20]

433.017 Test of blood of pregnant woman required; patient consent. (1) Every licensed physician attending a pregnant woman in this state for conditions relating to her pregnancy during the period of gestation or at the time of delivery shall, as required by rule of the division, take or cause to be taken a sample of blood of every woman so attended at the time of the first professional visit or within 10 days thereafter. The blood specimen thus obtained shall be submitted to a licensed laboratory for such tests related to any infectious condition which may affect a pregnant woman or fetus, as the division shall by rule require.

(2) Every other person permitted by law to attend a pregnant woman in this state, but not permitted by law to take blood samples, shall, as required by rule of the division, cause a sample of blood of such pregnant woman to be taken by a licensed physician, and have such sample submitted to a licensed laboratory for the tests described under subsection (1) of this section.

(3) In all cases under subsections (1) and (2) of this section the physician shall request consent of the patient to take a blood sample. No sample shall be taken without such consent. [1987 c.600 §8]

433.019 Procedure to impose public health measure; enforcement. (1) As used in this section, "subject of the petition" means the person or the property upon which the public health measure is sought to be imposed.

(2) Except as provided in ORS 433.022, proceedings for imposing a public health measure shall be initiated by filing a petition in the circuit court for the county in which the subject of the petition is located. If the property which is the subject of the petition

is in more than one county, then the petition may be filed in the circuit court for any one of those counties. The petition shall name as the respondent, the person who is the subject of the petition or the person who possesses the property which is the subject of the petition. The petition shall be accompanied by an affidavit or affidavits based upon the investigation of the assistant director or the local public health administrator supporting the allegations in the petition. The petition shall describe the public health measure requested and shall allege:

(a)(A) The subject of the petition has, or contains persons or property having, an infectious agent of a communicable disease designated a reportable disease by the division; or

(B) The subject of the petition is contaminated with or contains property contaminated with a toxic substance;

(b) The subject of the petition poses a substantial threat to public health;

(c) The respondent is unable or unwilling to behave or to control the subject of the petition so as not to expose other persons to danger of infection or contamination; and

(d) The public health measure requested is necessary and the least restrictive alternative measure under the circumstances to protect or preserve the public health.

(3) If the court, upon the basis of the affidavits, concludes that there is probable cause for the allegations in the petition, it shall issue a citation as provided in subsection (11) of this section. The court shall also issue a warrant of detention to the sheriff of the county or counties, directing the sheriff or the sheriff's designee to place the subject of the petition under custody.

(4) At the time the subject of the petition is placed under custody, the respondent shall be served certified copies of the warrant of detention, the citation and petition. The sheriff or designee shall also read the citation to the respondent and inform the respondent that a request for hearing may be made within 14 days by signing and filing with the petitioner a simple request form to be given to the respondent with the citation:

(a) If the respondent does not file a signed request for a hearing within 14 days of service of the citation, the petitioner shall so notify the court and the court shall have the respondent brought before it or communicate with the respondent by telephone. If the court then determines that the respondent does not request a hearing, it may, without hearing, order imposition of the requested public health measure effective for a period of time not to exceed 60 days or, if substantial medical evidence indicates that

the condition is spread by the airborne route and either that it cannot be rendered noninfectious within 60 days or that it may recur after the public health measure is discontinued, for a period not to exceed 180 days. However, if at the time of inquiry by the court it determines that the respondent does request a hearing, one shall be conducted at a time and place the court may direct consistent with subsection (6) of this section.

(b) If the respondent files a signed request for a hearing within 14 days of service of the citation, the petitioner shall immediately notify the court and the court shall have the respondent brought before it or communicate with the respondent, or if represented the respondent's counsel, by telephone. If the request for hearing is confirmed, one shall be conducted at a time and place the court may direct consistent with subsection (6) of this section. If at the time of inquiry by the court it is determined that the respondent does not request a hearing, it may without hearing, order imposition of the requested public health measure effective for a period of time not to exceed 60 days or, if substantial medical evidence indicates that the condition is spread by the airborne route and either that it cannot be rendered noninfectious within 60 days or that it may recur after the public health measure is discontinued, for a period not to exceed 180 days.

(5) A person placed under custody under subsection (4) of this section may as appropriate and as directed by the court be held in a residence or in a health care or other facility consistent with the requirements of subsection (19) of this section and receive the care, custody and treatment required for mental and physical health and safety. The treating physician shall report any care, custody and treatment to the court as required in subsection (9) of this section. All methods of treatment, including the prescription and administration of drugs, shall be the sole responsibility of the treating physician. Property placed under custody shall be detained as described by the court either under the possession of the respondent or under the possession of the sheriff, or the sheriff's designee. Property detained under the possession of the sheriff will be provided care and treatment which is reasonable under the circumstances.

(6) The hearing may be held in the place where the subject of the petition is being held in custody or in some other place convenient to the court and the respondent. The hearing shall be held within three judicial days of the respondent's initial appearance before the court requesting a hearing. The court may for good cause, allow the person

or property to be detained up to an additional 72 hours if additional time is requested by the respondent or the legal counsel of the respondent. The court may make any orders for the care and custody of the subject of the petition as it deems necessary.

(7) The petitioner shall prepare or cause to be prepared an investigative report setting forth the evidence on which the petition is based. A copy of the investigative report shall be provided upon request to the respondent and to the respondent's counsel. Copies shall likewise be provided to counsel assisting the court, to the examiners and to the court for the use in questioning witnesses in a hearing under this section.

(8) The provisions of ORS 40.230 to 40.240 shall not apply in a hearing under this section insofar as the information is relevant to the proceeding. Such evidence shall be disclosed only to the court, the examiners, the parties and their attorneys or persons authorized by the court and shall not be disclosed to the public.

(9) In a hearing under this section, the court shall be fully advised by the treating physician of all drugs and other treatment known to have been administered to the subject of the petition, which may be pertinent to the subject's infectious or contaminated state. The medical record of treatment shall be made available in order that the examiners may review the medical record of treatment and have an opportunity to inquire of the medical personnel concerning the treatment of the respondent during the detention period prior to the hearing. Such record shall be made available to counsel for said respondent at least 24 hours prior to the hearing.

(10) The person serving a warrant of detention, citation and petition provided for by subsection (4) of this section shall, immediately after service thereof, make a return showing the time, place and manner of such service and file it with the clerk of the court. In executing the warrant of detention, the person has all the powers provided by ORS 133.235 and 161.235 to 161.245 and may require the assistance of any peace officer or other person.

(11) The citation issued to the respondent shall state the nature of the proceedings and the public health measure requested in the petition. The citation shall further contain a notice that the respondent may file a request with the petitioner for a court hearing on the petition within 14 days and, if the respondent does not do so, the court will order imposition of the public health measure requested in the petition. The citation shall also notify of the right to legal counsel, the right to have legal counsel appointed if the

respondent is unable to afford legal counsel, and, if requested, to have legal counsel immediately appointed, the right to subpoena witnesses in behalf of the respondent to the hearing and other information as the court may direct. The respondent shall have an opportunity to consult with legal counsel when requested.

(12) In a hearing under this section, the respondent shall have the right to cross-examine all witnesses, the person conducting the investigation, the examining physicians or other qualified persons who have examined the subject of the petition.

(13) At the time the respondent appears before the court, the court shall advise the respondent of the nature of the proceedings and the possible results of the proceedings. The court shall also advise respondent of the right to subpoena witnesses and to obtain suitable legal counsel possessing skills and experience commensurate with the nature of the allegations and complexity of the case during the proceedings, and if the respondent is an individual in custody under subsection (4) of this section and does not have funds with which to retain legal counsel, the court shall appoint legal counsel to represent the respondent without cost. If the respondent is an individual in custody under subsection (4) of this section and does not request legal counsel, the legal guardian, relative or friend may request the assistance of suitable legal counsel on behalf of the respondent.

(a) If no request for legal counsel is made by an individual in custody, the court shall appoint suitable legal counsel therefor unless counsel is expressly, knowingly and intelligently refused by the respondent.

(b) If the respondent is an individual in custody and is unable to afford legal counsel, the court shall determine and allow, as provided in ORS 135.055, the reasonable expenses of the person and compensation for legal counsel. The expenses and compensation so allowed shall be paid by the county if the petition was filed by the local public health administrator and by the state if the petition was filed by the assistant director. In such cases suitable legal counsel shall be present at the hearing and examination and may examine all witnesses offering testimony, and otherwise represent the respondent and may be present in other cases.

(c) The governing body of the county shall designate either the district attorney or counsel appointed pursuant to ORS 203.145 to assist the court in the conduct of the hearing if the court requests assistance. If the person so designated has a conflict of interest in a particular case, the court may appoint private counsel to render such assistance.

(d) If the respondent, the legal counsel or guardian, or examiners request, the court may, for good cause, postpone the hearing for not more than 72 hours in order to allow preparation for the hearing. The court may make orders for the care and custody of the subject of the petition during a postponement as it deems necessary.

(14)(a) In the case where it is alleged that the subject of the petition has or contains an infectious agent of a communicable disease, when a hearing is requested the court shall appoint at least one competent physician, licensed by the Board of Medical Examiners for the State of Oregon and expert in the field of infectious diseases or public health to examine the respondent as to the matters alleged in the petition. The person appointed may be the county health officer or other person recommended by the local public health administrator.

(b) In the case where it is alleged that the subject of the petition is contaminated with a toxic substance, when a hearing is requested the court shall appoint an expert on the particular subject, who may be the county health officer or other person recommended by the local public health administrator, to examine the subject of the petition as to the matters alleged in the petition.

(c) If the respondent requests in writing that one additional examining physician or qualified person be appointed, or, in the absence of such request by the respondent, if such request is made by the legal guardian, relative or friend of the respondent, the court shall appoint an additional physician or other qualified person.

(15) The persons appointed to conduct the examination shall make their separate report in writing, under oath, to the court. The reports shall be filed immediately with the clerk of the court. If the examining persons find, and show by their reports, that the allegations described in subsection (2)(a) to (c) of this section are true, the reports shall include a recommendation as to whether the allegations described under subsection (2)(d) of this section are true or as to alternative measures that would satisfy subsection (2)(d) of this section.

(16) After hearing all of the evidence and reviewing the findings of the examining persons, the court shall determine the truth of the allegations contained in the petition and the need for the requested public health measure. If, based upon clear and convincing evidence, it is the opinion of the court that the allegations are true, the court shall order the requested order or such other measure the court deems appropriate to satisfy subsection (2)(d) of this section.

(17) The order shall be effective for a period of time not to exceed 60 days or, if substantial medical evidence indicates that the condition is spread by the airborne route and either that it cannot be rendered noninfectious within 60 days or that it may recur after the public health measure is discontinued, for a period not to exceed 180 days.

(18) If a respondent who is an individual in custody under subsection (4) of this section appeals the determination or disposition based thereon, and is unable to afford suitable legal counsel possessing skills and experience commensurate with the nature and complexity of the case to represent the respondent on appeal, the court, upon request of the respondent in custody or upon its own motion, shall appoint suitable legal counsel to represent the respondent. The compensation for legal counsel and costs and expenses necessary to the appeal shall be determined and allowed by the appellate court as provided in ORS 138.500 and the compensation, costs and expenses so allowed shall be paid as provided in ORS 138.500.

(19)(a) Any person who is not incarcerated upon a criminal charge and is the subject of a petition under this section, shall not be confined in any prison, jail or other enclosure where those charged with a crime or a violation of a municipal ordinance are incarcerated, unless the person represents an immediate and serious danger to staff or physical facilities of a hospital or other facility to which committed, or unless the person has been found in contempt of court because of failure to obey a court order or other public health measure.

(b) Any respondent who is the subject of a petition and has been taken into custody shall not be confined, either before or after the hearing, without an attendant in direct charge of the person. If the respondent is not confined in a health care facility, the sheriff having the person in custody shall select some suitable person to act as attendant in quarters suitable for the comfortable, safe and humane confinement of the person and approved by the assistant administrator or local public health administrator.

(20)(a) Upon receipt of the order of the court, the sheriff or the sheriff's designee shall take the subject of the petition into custody or continue custody, and insure the safekeeping and proper care of the subject until delivery is made to an assigned facility or other location. During custody of the subject, the sheriff or sheriff's designee or the representative of the facility has all the powers provided by ORS 133.225 and 161.255 and may require the assistance of any peace officer or other person.

(b) The court may authorize the guardian, custodian, friend or relative to transport the subject of the petition to the designated facility or location when the court determines that the means of transportation would not be detrimental to the welfare of the subject or to the public.

(21) The judge shall cause to be recorded and filed in the court records a full account of proceedings had at all hearings and examinations conducted pursuant to this section together with the judgments and orders of the court and a copy of the orders issued. If the respondent is the subject of the petition, the court clerk shall seal the record and it shall not be disclosed to any person except:

(a) The assistant administrator or local public health administrator;

(b) As provided in subsection (22) of this section;

(c) Upon request of the respondent, the legal representatives or the attorney of the person; or

(d) Pursuant to court order.

(22) If the subject of the petition is ordered committed to a facility, a copy of the judgment and orders of the court, medical records and such other information as the court deems necessary, certified by the court clerk shall be given to the sheriff, for delivery to the director of the facility to which such person is committed.

(23) The petitioner shall, by filing a written certificate with the ordering court, discharge the subject of the petition except when the subject is being held, upon an order of a court or judge having criminal jurisdiction, in an action or proceeding arising out of a criminal offense, when in the petitioner's opinion the matters alleged in the petition are no longer true.

(24)(a) At the end of the 60-day or 180-day period, the subject of the petition shall be released from an order imposing a public health measure under this section unless the petitioner certifies to the ordering court that the order should be continued. If the certification is made, the subject shall not be released from the order but the petitioner shall immediately issue a copy of the certification to the respondent.

(b) The certification shall be served upon the respondent by the sheriff or the sheriff's designee. The sheriff shall inform the court in writing that service has been made and the date thereof.

(c) The certification shall advise the respondent:

(A) That the petitioner has requested that the order be continued for an additional period of time;

(B) That the respondent may consult with legal counsel and that legal counsel shall be provided for the respondent who is an individual in custody without cost if the respondent is unable to afford legal counsel;

(C) That the respondent may protest this further extension of the order within 14 days and, if the respondent does not, it shall be continued for an indefinite period of time up to 60 days;

(D) That, if the respondent does protest a further extension of the order, the respondent is entitled to a hearing before the court on whether the order should be continued;

(E) That the respondent may protest in writing by signing a simple protest form accompanying the certification by filing it with the petitioner within 14 days;

(F) That the respondent is entitled to have a physician or other qualified person examine the subject of the petition and report to the court the results of the examination;

(G) That the respondent may subpoena witnesses and offer evidence on behalf of the respondent at the hearing; and

(H) That, if the respondent is an individual in custody and is without funds to retain legal counsel or an examining physician or qualified person, the court shall appoint legal counsel, a physician or other qualified person at no cost to the respondent.

(25) The person serving the certification shall read and deliver the certification to the respondent. If the respondent does not file a protest of the extension of order within 14 days, the procedures in subsection (4)(a) of this section shall be followed before ordering an extension of the order. If the respondent files a protest of the extension of order, the procedures in subsection (4)(b) of this section shall be followed before setting a hearing on the extension of the order.

(26) If, at the time of inquiry by the court, it is determined that no hearing is requested by the respondent the court, without hearing, may order an extension of the order effective for a period of time not to exceed 60 days.

(27) If at the time of inquiry the respondent requests a hearing, the hearing shall be conducted as promptly as possible and at a time and place the court may direct. If the respondent requests a continuance in order to prepare for the hearing or to obtain legal counsel to represent the respondent, the court may grant a continuance for up to 72 hours for this purpose. In the event the respondent is an individual in custody and requests the appointment of legal counsel

and is without funds to retain legal counsel, the court shall appoint legal counsel to represent respondent at no cost to the respondent. If no request for legal counsel is made, the court shall appoint legal counsel to represent a respondent who is an individual in custody unless legal counsel is expressly, knowingly and intelligently refused by the respondent. If such respondent requests an examination by a physician or other qualified person and is without funds to retain a physician or other qualified person for purposes of the examination, the court shall appoint a physician or other qualified person, other than a member of the staff from the facility where the respondent may be confined, to examine the respondent at no expense to the respondent and to report to the court the results of the examination. The court shall then conduct a hearing and after hearing the evidence and reviewing the recommendations of the treating and examining physician or other qualified person, the court shall determine whether the order should be continued. If in the opinion of the court the allegations of the original petition are still applicable to the subject of the petition by clear and convincing evidence the court may continue the order for an additional indefinite period of time up to 60 days or may order such other measure to satisfy subsection (2)(d) of this section. At the end of the 60-day period, the subject of the petition shall be released unless the assistant director or local public health administrator again certifies to the committing court that the order should be extended in which event the procedures set forth in subsections (24) to (27) of this section shall be followed.

(28) Neither the assistant director or any local public health administrator, sheriff, peace officer, physician, attorney, judge or other person or entity shall in any way be held criminally or civilly liable for actions pursuant to this section and ORS 433.022 provided the actions are taken in good faith, without malice and based on reasonable belief.

(29) Failure to obey a court order or other public health measure issued under this section shall subject the individual in violation of the order or measure to contempt proceedings. [1987 c.600 §10; 1989 c.224 §86; 1991 c.207 §1]

433.020 [Repealed by 1973 c.259 §20]

433.022 Taking subject into custody; information to subject; notice to court; court order; duration of custody. (1) Without the necessity of first filing a petition and affidavits under ORS 433.019, if the assistant director or local public health administrator has probable cause to believe that the person or property which is the subject

of a petition under ORS 433.019 requires immediate custody in order to avoid a clear and immediate danger to other individuals or to the public generally, the assistant director or local public health administrator may direct a sheriff or other peace officer to take the subject into custody and the peace officer shall do so immediately.

(2) A person or property taken into custody under this section shall be immediately removed to the nearest health care facility or other location consistent with ORS 433.019 (5) and (19).

(3) At the time the peace officer takes custody of the person or property, the peace officer shall inform the person in custody, or the person who possesses the property, of the action being taken and the right of the person to have legal counsel, and if requested, to have legal counsel immediately appointed.

(4) The assistant administrator or the local public health administrator, after authorizing the taking of a person or property into custody under this section, shall immediately notify a circuit court in the county in which the person or property was taken into custody of the fact the person was taken into custody and the person's or property's whereabouts. When the judge of such a court is so informed the judge shall immediately hear evidence on the matter, determine whether probable cause exists for the custody and enter an order as deemed appropriate by the court pending the filing of a petition and affidavits under ORS 433.019. The court shall not allow the person or property to be held in custody for longer than two judicial days without a petition being filed under ORS 433.019. [1987 c.600 §11]

433.025 [Amended by 1973 c.259 §6; 1987 c.600 §15; 1989 c.915 §8; renumbered 431.175 in 1989]

433.035 Examination of person reasonably believed to have reportable disease; imposition of public health measure. (1) Whenever the assistant director or any local public health administrator reasonably believes any person within the jurisdiction of the assistant director or local public health administrator has any communicable disease identified by rule of the division to be a reportable disease, the assistant director or local public health administrator may cause a medical examination to be made of such person to determine whether the person has a communicable disease. The person who orders an examination pursuant to this section shall, in the order, make written findings stating the communicable disease that the person ordering the examination believes the person has, the reasons for that belief, that medical or laboratory confirmation of the disease is feasible and possible

and that such confirmation would enable control measures to be taken to minimize infection of others with the disease. The order shall also include a statement that the person may refuse to submit to the examination and that if so, a public health measure may be imposed.

(2) When any person is directed to submit to an examination under subsection (1) of this section and the person agrees to do so, the person shall submit to such examination as may be necessary to establish the presence or absence of the communicable disease for which the medical examination was directed. The examination shall be carried out by the local health officer or a physician licensed by the Board of Medical Examiners for the State of Oregon or the Naturopathic Board of Examiners. A written report of the results of such examination shall be made to the person ordering the examination. Laboratory examinations, if any, shall be carried out by the laboratory of the division whenever such examinations are within the scope of the tests conducted by the laboratory. If treatment is needed, the person, the parent or guardian of the person shall be liable for the costs of treatment based on the examination carried out under this section, when able to pay such costs. Cost of any examination performed by a physician in private practice shall be paid from public funds available to the local public health administrator, if any, or from county funds available for general governmental expenses in the county for which the local public health administrator serves or in the county where the person examined resides if the local public health administrator serves more than one county or the examination was ordered by the assistant director.

(3) If the person directed to submit to a medical examination pursuant to subsection (1) of this section refuses to do so the assistant director or the local public health administrator may impose a public health measure pursuant to ORS 433.019, 433.022 and 433.106.

(4) In any proceeding under ORS 433.019, 433.022 and 433.106, the lack of confirming medical or laboratory evidence that could be obtained by an examination which was refused when requested under this section shall not preclude a finding that probable cause exists. [1967 c.617 §1 (enacted in lieu of 434.060); 1973 c.259 §7; 1979 c.731 §6; 1987 c.600 §6; 1989 c.224 §87]

HIV TESTING

433.045 Consent to HIV test required.

(1) Except as provided in ORS 433.080, no person shall subject the blood of an individual to an HIV test without first obtaining

informed consent as described in subsection (2) or (7) of this section.

(2) A physician licensed under ORS chapter 677 shall comply with the requirement of subsection (1) of this section through the procedure in ORS 677.097. Any other licensed health care provider or facility shall comply with the requirement of subsection (1) of this section through a procedure substantially similar to that specified in ORS 677.097. Any other person shall comply with this requirement through use of such forms, procedures and educational materials as the Health Division shall specify.

(3) Regardless of the manner of receipt or the source of the information, including information received from the tested individual, no person shall disclose or be compelled to disclose the identity of any individual upon whom an HIV-related test is performed, or the results of such a test in a manner which permits identification of the subject of the test, except as required or permitted by the law of this state or any rule, including any Health Division rule considered necessary for public health or health care purposes, or as authorized by the individual whose blood is tested. An employer shall not be responsible to provide reasonable accommodation under ORS 659.425 (1)(a) on the basis of a physical impairment consisting of human immunodeficiency virus infection if the employee does not provide the employer, including the employer's agents responsible for providing the reasonable accommodation, with the HIV test information regarding such employee.

(4) Any person who complies with the requirements of this section shall not be subject to an action for civil damages.

(5) An HIV test shall be considered diagnosis of venereal disease for purposes of ORS 109.610.

(6) As used in this section:

(a) "HIV test" means a test of an individual for the presence of Human Immunodeficiency Virus (HIV), or for antibodies or antigens that result from HIV infection, or for any other substance specifically indicating infection with HIV.

(b) "Person" includes but is not limited to any health care provider, health care facility, clinical laboratory, blood or sperm bank, insurer, insurance agent, insurance-support organization, as defined in ORS 746.600, government agency, employer, research organization or agent of any of them. For purposes of subsection (3) of this section, "person" does not include an individual acting in a private capacity and not in an employment, occupational or professional capacity.

(7) Whenever an insurer, insurance agent or insurance support organization asks an applicant for insurance to take an HIV test in connection with an application for insurance, the use of such a test must be revealed to the applicant and the written consent thereof obtained. The consent form shall disclose the purpose of the test and the persons to whom the results may be disclosed. [1987 c.600 §17; 1989 c.878 §6]

433.055 Prevalence testing. (1) The Health Division shall conduct studies of the prevalence of the HIV infection in this state. Its findings shall be reported to the Public Health Advisory Board, the Conference of Local Health Officials, the Emergency Board and other interested bodies at regular intervals, commencing in January 1988. The Health Division may cause the prevalence study of persons sentenced to the Department of Corrections of this state, as defined in ORS 421.005, to be made.

(2) The Health Division shall contract with an appropriate education agency to prepare a curriculum regarding HIV infection, acquired immune deficiency syndrome (AIDS) and prevention of the spread of AIDS for all school districts and offer workshops to prepare teachers and parents to implement the curriculum. The division shall award incentive grants from funds available therefor to school districts to encourage use of the curriculum in the schools.

(3) Prior informed consent to HIV antibody testing need not be obtained from an individual if the test is for the purpose of research as authorized by the Health Division and if the testing is performed in a manner by which the identity of the test subject is not known, and may not be retrieved by the researcher. [1987 c.600 §19]

433.060 Definitions for ORS 433.060 to 433.080. As used in ORS 433.060 to 433.080 unless the context requires otherwise:

(1) "Division" means the Health Division of the Department of Human Resources.

(2) "Health care facility" means a facility as defined in ORS 442.015 and a mental health facility, alcohol treatment facility or drug treatment facility licensed or operated under ORS chapter 426 or 430.

(3) "HIV test" means a test of an individual for the presence of Human Immunodeficiency Virus (HIV), or for antibodies or antigens that result from HIV infection, or for any other substance specifically indicating infection with HIV.

(4) "Licensed health care provider" or "health care provider" means a person licensed or certified to provide health care under ORS chapter 677, 678, 679, 680, 684 or

685 or ORS 823.150, or under comparable statutes of any other state.

(5) "Local public health administrator" means the public health administrator of the county or district health department for the jurisdiction in which the reported substantial exposure occurred.

(6) "Local public health officer" means the health officer, as described in ORS 431.418, of the county or district health department for the jurisdiction in which the substantial exposure occurred.

(7) "Occupational exposure" means a substantial exposure of a worker in the course of the worker's occupation.

(8) "Source person" means a person who is the source of the blood or body fluid in the instance of a substantial exposure of another person.

(9) "Substantial exposure" means an exposure to blood or certain body fluids as defined by rule of the Health Division to have a potential for transmitting the human immunodeficiency virus based upon current scientific information.

(10) "Worker" means a person who is licensed or certified to provide health care under ORS chapters 677, 678, 679, 680, 684 or 685 or ORS 823.150, an employee of a health care facility, of a licensed health care provider or of a clinical laboratory, as defined in ORS 438.010 (1), a firefighter, a law enforcement officer, as defined in ORS 414.805, a corrections officer or a probation officer. [1989 c.878 §1; 1993 c.196 §7]

433.065 Procedures for HIV testing. (1) The Health Division shall by rule prescribe procedures:

(a) Whereby a worker who has experienced an occupational exposure may request or cause to be requested the source person's voluntary informed consent to an HIV test;

(b) Whereby a person who, while being administered health care, has experienced a substantial exposure from a worker shall be given notice of such exposure and be given opportunity to request or cause to be requested the worker's voluntary informed consent to an HIV test; and

(c) Whereby a person who has experienced a substantial exposure shall be offered information about HIV infection, methods of preventing HIV infection and HIV tests.

(2) Rules prescribing procedures under subsection (1)(a) of this section may require the participation or intervention of the health care facility and licensed health care provider providing care to the source person and may require the further participation or intervention of the local public health administrator or local public health officer.

(3) Where the source person under subsection (1)(a) of this section is not known to be under the care of a health care facility or provider or cannot be located, and in the case of procedures under subsection (2) of this section, the rules may require the participation and intervention of the local public health administrator.

(4) The rules under this section may also include, but need not be limited to, time frames within which the notice and other procedures are to be performed and by whom, prescribed forms for reporting of exposures, and for recording of results of procedures undertaken and restrictions upon disclosure of such reports and records only to specific persons. [1989 c.878 §2]

433.070 Compliance with procedures required. (1) Workers, health care facilities, licensed health care providers, local public health administrators and officers and others upon whom duties are imposed by rules adopted under ORS 433.065 shall comply with such requirements.

(2) Any person having information as to the location of a source person shall, when requested for the purpose of carrying out ORS 433.045 and 433.060 to 433.080 and rules hereunder, provide that information. [1989 c.878 §3]

433.075 Informed consent required; confidentiality. (1) The informed consent provisions of ORS 433.045 (1) and (2) apply to any request for consent to an HIV test under rules adopted pursuant to ORS 433.065.

(2) When a source person is deceased, consent for voluntary informed consent under ORS 433.065 shall be from the next of kin.

(3) When an HIV test is performed pursuant to ORS 433.080 or rules adopted under ORS 433.065, the exposed person requesting the test, or the exposed person's employer in the case of an occupational exposure, shall be responsible for the cost of the testing.

(4) Where an employer provides a program of prevention, education and testing for HIV exposures for its employees, the employee to be tested under the provisions of this Act shall comply with the procedures provided by such program. Such program must be approved by the Health Division of the Department of Human Resources.

(5) When an HIV test is performed pursuant to ORS 433.080 or rules adopted under ORS 433.065, the results shall be reported confidentially to the person who suffered the substantial exposure giving rise to the test.

(6) The confidentiality provisions of ORS 433.045 (3) apply to any person who receives an HIV test result pursuant to ORS 433.080

or rules adopted under ORS 433.065. Any person who complies with the requirements of this subsection shall not be subject to an action for damages. [1989 c.878 §4]

433.080 When test may be required; procedure to require test. When the Health Division declares by rule that mandatory testing of source persons could help a defined class of workers from being infected or infecting others with the human immunodeficiency virus, the following apply:

(1) When a source person, after having been first requested to consent to testing by rules adopted under ORS 433.065, has refused or within a time period prescribed by rule of the division has failed to submit to the requested test, except when the exposed person has knowledge that the exposed person has a history of a positive HIV test, the exposed person may seek mandatory testing of the source person by filing a petition with the circuit court for the county in which the exposure occurred. The form for the petition shall be as prescribed by the division and shall be obtained from the local public health department.

(2) The petition shall name the source person as the respondent and shall include a short and plain statement of facts alleging:

(a) The petitioner is a worker subjected to an occupational exposure or a person who has been subjected to a substantial exposure by a worker administering health care and the respondent is the source person;

(b) The petitioner is in the class of workers defined by rule of the Health Division under this section;

(c) All procedures for obtaining the respondent's consent to an HIV test by rules adopted under ORS 433.065 have been exhausted by the petitioner and the respondent has refused to consent to the test, or within the time period prescribed by rule of the division has failed to submit to the test;

(d) The petitioner has no knowledge that the petitioner has a history of a positive HIV test and has since the exposure, within a time period prescribed by rule of the division, submitted a specimen from the petitioner for an HIV test; and

(e) The injury that petitioner is suffering or will suffer if the source person is not ordered to submit to an HIV test.

(3) The petition shall be accompanied by the certificate of the local public health administrator declaring that, based upon information in the possession of the administrator, the facts stated in the allegations under subsection (2)(a), (b) and (c) of this section are true.

(4) Upon the filing of the petition, the court shall issue a citation to the respondent stating the nature of the proceedings, the statutes involved and the relief requested and, that if the respondent does not appear at the time and place for hearing stated in the citation, that the court will order the relief requested in the petition.

(5) The citation shall be served on the respondent together with a copy of the petition by the county sheriff or deputy. The person serving the citation and petition shall, immediately after service thereof, make a return showing the time, place and manner of such service and file it with the clerk of the court.

(6) The hearing shall be held within three days of the service of the citation upon the respondent. The court may for good cause allow an additional period of 48 hours if additional time is requested by the respondent.

(7) Both the petitioner and the local public health administrator certifying to the matter alleged in the petition shall appear at the hearing. The hearing of the case shall be informal with the object of resolving the issue before the court promptly and economically between the parties. The parties shall be entitled to subpoena witnesses, to offer evidence and to cross-examine. The judge may examine witnesses to insure a full inquiry into the facts necessary for a determination of the matter before the court.

(8) After hearing all of the evidence, the court shall determine the truth of the allegations contained in the petition. The court shall order the respondent to submit to the requested test by a licensed health care provider without delay if, based upon clear and convincing evidence, the court finds that:

(a) The allegations in the petition are true;

(b) The injury the petitioner is suffering or will suffer is an injury that only the relief requested will adequately remedy; and

(c) The interest of the petitioner in obtaining the relief clearly outweighs the privacy interest of the respondent in withholding consent.

(9) If the court does not make the finding described in subsection (8) of this section, the court shall dismiss the petition.

(10) Failure to obey the order of the court shall be subject to contempt proceedings pursuant to law. [1989 c.878 §5]

IMMUNIZATION REGISTRY AND TRACKING SYSTEM

433.090 Definitions for ORS 433.090 to 433.102. As used in ORS 433.090 to 433.102:

(1) "Children's facility" has the meaning given that term in ORS 433.235.

(2) "Client" means any person registered with any Oregon immunization tracking and recall system.

(3) "Immunization record" includes but is not limited to the following:

- (a) Any immunization received;
- (b) Date immunization was received;
- (c) Complication or side effect associated with immunization;
- (d) Date and place of birth of a client;
- (e) Hospital where a client was born;
- (f) Client's name; and
- (g) Mother's name.

(4) "Immunization registry" means any listing of clients and information relating to their immunization status.

(5) "Immunization tracking and recall record" includes but is not limited to the client's name, address of the parent or guardian of the client, telephone number, insurance carrier, health care provider and other information needed to send reminder cards to, place telephone calls to or personally contact the client or the parent or the guardian of a client for the purposes of informing the client, parent or guardian that the client is late in receiving the recommended immunizations.

(6) "Local health department" has the meaning given that term in ORS 433.235.

(7) "Parent or guardian" has the meaning given the term "parent" in ORS 433.235.

(8) "Provider" means a health care provider licensed to provide health care services in Oregon, managed health care systems, health maintenance organizations, health service contractors, insurance carriers and the Oregon medical assistance program.

(9) "School" has the meaning given that term in ORS 433.235.

(10) "Tracking and recall system" means a system attached to an immunization registry designed to contact clients listed in the immunization registry for the purposes of assisting in the completion of the immunization series in a timely manner. [1993 c.297 §1]

433.092 Purpose of ORS 433.090 to 433.102; waivers of consent to release certain medical information. The purpose of ORS 433.090 to 433.102 is to waive the requirement of consent for release of information from, or providing information to, the immunization record of a client of any immunization registry and to waive issues of confidentiality in regard to this information. The waiver allows providers, the Health Division and local health departments and their

agents, parents or guardians, schools and children's facilities to share information from the immunization record through or between immunization registries without violating confidentiality. The immunization registries and the associated tracking and recall systems are designed to increase the state's immunization rates for clients and help prevent the spread of the diseases at which the immunizations are aimed. Immunizations are a proven benefit to individuals and society. An immunization registry reduces inappropriate immunizations and increases appropriate immunizations because clients' records will be easily available to all providers. [1993 c.297 §2]

433.094 Development of immunization registry and tracking and recall system; standards. Subject to availability of funds, the Health Division, a local health department, or both, or their agents or other providers shall be permitted to develop an immunization registry and an associated tracking and recall system to include, but not be limited to, children and young adults. This system shall include, but not be limited to, the following:

(1) Registering all clients born in or living in this state;

(2) Tracking and updating immunization histories of the registered clients and retaining in appropriate form information about clients who have attained 18 years of age for release only as provided in ORS 433.098 (2);

(3) Allowing a provider to provide information to and obtain information from the immunization and immunization tracking and recall records contained in an immunization registry without the consent of the client or the parent or guardian of the client;

(4) Allowing an immunization record of a client to be released to that client's parent, guardian, school, children's facility or provider;

(5) Notifying in writing the parent or guardian of a client, at least through five years of age, when the tracking and recall system indicates that a client has missed a scheduled immunization and, if the client has not been immunized after two notifications, arranging to have the parent or guardian contacted personally;

(6) Integrating with any immunization registry and its associated tracking and recall systems within this state; and

(7) Working with health care providers to develop easy information transfer systems. [1993 c.297 §3]

433.096 Authority to disclose registry information. Nothing in ORS 179.505, 192.410 to 192.505, 192.525, 192.530, 677.190

(5) or the client and provider privilege shall prevent:

(1) A provider, a local health department, the Health Division, the parent or guardian of a client, a school or a children's facility from providing information to and receiving information from the immunization record of a client from the immunization registry; or

(2) The immunization registry from:

(a) Providing immunization information to or receiving immunization information from a client's immunization record from a provider, a local health department, the division or the parent or guardian of a client, a school or a children's facility;

(b) Notifying or personally contacting a client or the parent or guardian of that client about the client's immunization status; or

(c) Providing or publishing information in aggregate form that does not identify a client. [1993 c.297 §4]

433.098 Nonliability for disclosure; confidential status of information; availability with consent of client. (1) A provider, or a local health department, the Health Division or the agents of any of them, children's facilities and schools shall not be subject to an action or be liable for sharing information from the immunization record or using information from the immunization tracking and recall record for purposes of tracking immunizations of clients and for outreach to clients who have missed immunizations.

(2) Information in an immunization registry or in the immunization tracking and recall record or derived therefrom is confidential and shall not be disclosed to any person who is not specifically authorized to receive information under ORS 433.090 to 433.102. However, when a client attains 18 years of age, information in the registry shall be made available only with the written consent of the client unless the requester shows a public health need for the information. Upon the written request of a client who is at least 18 years of age, the registry shall purge that client's immunization record and tracking and recall record from the registry. [1993 c.297 §8]

433.100 Rulemaking; parental consent not required for enrollment in registry.

(1) The Health Division shall adopt rules pertaining to the development and implementation of the immunization registries and their associated tracking and recall systems. The rules shall include a process by which a custodial parent or guardian can control the transfer of information from the immunization record or the immunization tracking and recall record when such control

is necessary to protect the health or safety of the family.

(2) Nothing in this section requires the consent of a parent or guardian prior to enrolling the child in the registry or restricts the registry from providing tracking and recall information to a custodial parent or guardian. [1993 c.297 §5]

433.102 Parental responsibility for immunization; medical or religious exemptions. (1) Nothing in ORS 433.090 to 433.102 is intended to affect the responsibility of a parent or guardian to have a child of that parent or guardian properly immunized.

(2) Nothing in ORS 433.090 to 433.102 is intended to require immunization or tracking of any child otherwise exempt from immunization requirements under ORS 433.267 (1)(b) or (c). [1993 c.297 §§6,7]

433.105 [Repealed by 1973 c.259 §8 (433.106 enacted in lieu of 433.105)]

PUBLIC HEALTH MEASURES

433.106 Power to impose public health measures. (1) When compliance with a necessary control measure is not voluntarily obtained or where noncompliance is imminently threatened, the assistant director or any local public health administrator, in the manner described in ORS 433.019 and 433.022, may impose a public health measure on a person or property in order to prevent the spread of or exposure to a disease or a contaminant that is a threat to the public.

(2) Nothing in this section or in ORS 433.019 or 433.022 prohibits excluding any person from any occupation or from attendance in any school or facility as is otherwise authorized by law. [1973 c.259 §9 (enacted in lieu of 433.105); 1987 c.600 §9]

433.110 Duties of physicians in controlling communicable disease. Every physician attending a person affected with any communicable disease shall use such precautionary measures to prevent the spread of the disease as the division may prescribe by rule. [Amended by 1973 c.259 §10]

433.115 [Repealed by 1973 c.259 §20]

433.120 [Repealed by 1973 c.259 §20]

433.125 [Repealed by 1973 c.259 §20]

433.130 Magistrate's authority to enforce public health measures. Any magistrate authorized to issue warrants in criminal cases shall issue a warrant upon affidavit of the assistant director or any local public health officer, directing the warrant to the sheriff of the county or the deputy of the sheriff, or to any constable or police officer, requiring them under the direction of the division to enforce all public health

measures required by orders under ORS 433.019, 433.022 and 433.106. [Amended by 1973 c.259 §11; 1987 c.600 §12]

433.135 Providing for quarantined persons. When a person is quarantined on account of a communicable disease, the local board of health having jurisdiction may provide for such persons confined, the necessities of life, including medical care when necessary. [Amended by 1973 c.259 §12]

433.140 Payment of quarantine expenses; assistance. (1) The expenses incurred under ORS 433.135, when properly certified by the executive officer of such board, shall be paid by the person quarantined, when able to pay them.

(2) The Adult and Family Services Division may provide general assistance, including medical care for such person, on the basis of need, provided that no payment shall be made for the care of any such person in or under the care of any public institution or public agency or municipality. [Amended by 1971 c.779 §64]

433.145 [Repealed by 1973 c.259 §20]

433.150 Quarantine hospital; seizure, control of and compensation for emergency hospital. (1) Any city or municipality may establish a quarantine hospital within or without its own limits, but if within its own limits, consent of the municipality within which it is proposed to establish such hospital shall be first obtained. Such consent shall not be necessary if the hospital is more than 800 feet from any occupied house or public highway.

(2) When a great emergency exists the board of health may seize and occupy temporarily for such quarantine hospital any suitable vacant house or building within its jurisdiction and the board of health of any city or municipality having a quarantine hospital shall have control over the same. However, in case of use of such house or premises, due compensation shall be tendered for their use.

433.155 [Repealed by 1973 c.259 §13 (433.156 enacted in lieu of 433.155)]

433.156 Enforcement of isolation or quarantine by police. All state and local police officers shall cooperate with any officer authorized to impose isolation or quarantine in the enforcement thereof. [1973 c.259 §14 (enacted in lieu of 433.155)]

433.160 [Repealed by 1973 c.259 §20]

433.205 [Repealed by 1973 c.259 §20]

433.210 [Repealed by 1973 c.259 §20]

433.215 [Repealed by 1973 c.259 §15 (433.216 enacted in lieu of 433.215)]

433.216 Detaining conveyance for inspection or investigation. If the assistant director finds that there is an imminent risk

of the introduction into the state by means of any public or private conveyance of any dangerous communicable disease or toxic substance which presents a substantial threat to public health, the assistant director may detain such conveyance for inspection or investigation. [1973 c.259 §16 (enacted in lieu of 433.215); 1987 c.600 §13]

433.220 Measures taken on discovery of disease or toxic substance; jurisdiction over emergency. (1) If upon inspection pursuant to ORS 433.216, there is discovered among the passengers or goods therein the existence of any communicable disease or toxic substance which presents a substantial threat to public health, the assistant director, under rules of the division may:

(a) Isolate or quarantine or impose other public health measures on such persons or goods in accordance with ORS 433.019, 433.022 and 433.106.

(b) Cause the passengers and material in the involved conveyance to be subjected to requirements by the division for the control of the specific communicable disease or prevention of harm to the public health from the toxic substance.

(c) Offer free immunization in those diseases to which such prophylactic treatment is applicable to all persons exposed in any conveyance.

(2) Should any question arise as to the existence of any emergency, the assistant director shall have final jurisdiction. [Amended by 1973 c.259 §17; 1987 c.600 §14]

433.225 [Repealed by 1973 c.259 §20]

433.230 [Repealed by 1973 c.259 §20]

DISEASE CONTROL IN SCHOOLS

433.235 Definitions for ORS 433.235 to 433.284. As used in ORS 433.235 to 433.284:

(1) "Administrator" means the principal or other person having general control and supervision of a school or children's facility.

(2) "Children's facility" or "facility" means:

(a) A certified day care facility as described in ORS 657A.250 to 657A.450, except as exempted by rule of the Health Division;

(b) A program operated by, or sharing the premises with, a certified day care facility, school or post-secondary institution where care is provided to children, six weeks of age to kindergarten entry, except as exempted by rule of the Health Division; or

(c) A program providing day care or educational services to children, six weeks of age to kindergarten entry, in a residential or nonresidential setting, except as exempted by rule of the Health Division.

(3) "Local health department" or "department" means the district or county board of health, public health officer, public health administrator or health department having jurisdiction within the area.

(4) "Parent" means a parent or guardian of a child or any adult responsible for the child.

(5) "Physician" means a physician licensed by the Board of Medical Examiners for the State of Oregon or by the Naturopathic Board of Examiners or a physician similarly licensed by another state or country in which the physician practices or a commissioned medical officer of the Armed Forces or Public Health Service of the United States.

(6) "School" means a public, private or parochial school offering kindergarten through grade 12 or any part thereof, except as exempted by rule of the Health Division. [Formerly 433.263; 1991 c.255 §1]

433.240 Parental responsibility. (1) In adopting ORS 433.235 to 433.284, the Legislative Assembly recognizes the obligation of parents to have their children properly immunized and to provide to schools and facilities accurate records of immunization.

(2) Notwithstanding ORS 339.030, nothing in ORS 433.235 to 433.284 operates to remove parental liability under compulsory attendance laws. [1981 c.78 §§9,10; 1985 c.579 §5; 1989 c.619 §6]

433.245 Advisory committee; membership. (1) The Assistant Director for Health shall appoint a committee to advise the Health Division on the administration of the provisions of ORS 433.235 to 433.284, including the adoption of rules pursuant to ORS 433.269 (2), 433.273, 433.282 and 433.283.

(2) Members of the committee appointed pursuant to subsection (1) of this section shall include, but need not be limited to, representatives of the Health Division, the Department of Education, public, private and parochial schools, children's facilities, institutions of post-secondary education, education service districts, local health departments, the boards of county commissioners or county courts and the public. [1981 c.78 §8; 1991 c.255 §2]

433.255 Persons with or exposed to restrictable disease excluded from school or children's facility. Except in strict conformity with the rules of the Health Division, no child or employee shall be permitted to be in any school or children's facility when:

(1) That child or employee has any restrictable disease;

(2) That child or employee comes from any house in which exists any restrictable disease; or

(3) That child has been excluded as provided in ORS 433.267 (5) or (8). [Amended by 1973 c.259 §18; 1981 c.78 §2; 1989 c.224 §88; 1991 c.67 §115; 1991 c.255 §4]

433.260 Exclusion of persons exposed to or having restrictable disease from school or children's facility; certificate for readmission. (1) Whenever any administrator has reason to suspect that any child or employee has or has been exposed to any restrictable disease as prescribed by rules of the Health Division pursuant to ORS 433.273 required by the rules of the Health Division to be excluded from a school or children's facility, the administrator shall send such person home and, if the disease is one that must be reported to the Health Division, report the occurrence to the local health department by the most direct means available.

(2) Any person excluded under subsection (1) of this section shall not be permitted to be in the school or facility until the person presents a certificate from a physician, local health department nurse or school nurse stating that the person does not have or is not a carrier of any restrictable disease. [Amended by 1973 c.259 §19; 1979 c.731 §7; 1981 c.78 §3; 1989 c.224 §89; 1991 c.255 §5]

433.263 [1973 c.566 §1; 1979 c.731 §8; 1981 c.78 §1; renumbered 433.235]

433.265 [Repealed by 1973 c.259 §20]

433.267 Immunization of school children; exceptions; effect of failure to comply. (1) As a condition of attendance in any school or children's facility in this state, every child through grade 12 shall submit to the administrator one of the following statements unless the school or facility which the child attends already has on file a record which indicates that the child has received immunizations against the restrictable diseases prescribed by rules of the Health Division as provided in ORS 433.273:

(a) A statement signed by the parent, a practitioner of the healing arts who has within the scope of the practitioner's license the authority to administer immunizations or a representative of the local health department certifying the immunizations the child has received;

(b) A statement signed by a physician or a representative of the local health department that the child should be exempted from receiving specified immunization because of indicated medical diagnosis;

(c) A statement signed by the parent that the child has not been immunized as described in paragraph (a) of this subsection because the child is being reared as an ad-

herent to a religion the teachings of which are opposed to such immunization; or

(d) A statement signed by the parent of a child transferring to a school or facility from another school or facility that the parent will have records required by paragraphs (a) to (c) of this subsection for the child sent to the school or facility within 30 days of initial attendance of the child therein. The statement shall be accompanied by a presigned exclusion order from the local health department to be used as described in subsection (6) of this section.

(2) A child shall be required to submit the statement described in subsection (1) of this section prior to attending the school or facility.

(3) Persons who have been emancipated pursuant to ORS 419B.558 or who have reached the age of majority as provided in ORS 109.510 or 109.520 may sign those statements on their own behalf otherwise requiring the signatures of parents under subsection (1) of this section.

(4) The administrator shall conduct a primary evaluation of the records submitted pursuant to subsection (1) of this section to determine whether the child is entitled to begin attendance by reason of having submitted a statement that complies with the requirements of subsection (1) of this section.

(5) If the records do not meet the initial minimum requirements established by rule, the child shall not be allowed to attend until the requirements are met. If the records meet the initial minimum requirements, the child shall be allowed to attend.

(6) If the records are not received within 30 days, as provided in subsection (1)(d) of this section, the administrator shall enforce the presigned exclusion order and exclude the child in accordance with a time schedule established by rule of the Health Division.

(7) At the time specified by the Health Division by rule, records for children meeting the initial minimum requirements and records previously on file shall be reviewed for completion of requirements by the administrator to determine whether the child is entitled to continue in attendance. If the records do not comply, the administrator shall notify the local health department and shall transmit any records concerning the child's immunization status to the department.

(8) The department shall provide for a secondary evaluation of the records to determine whether the child should be excluded for noncompliance with the requirements stated in subsection (1)(a), (b) or (d) of this section. If the child is determined to be in noncompliance, the department shall issue an

exclusion order and shall send copies of the order to the parent or the person who is emancipated or has reached the age of majority and the administrator. On the effective date of the order, the administrator shall exclude the child from the school or facility and not allow the child to attend the school or facility until the requirements of this section have been met.

(9) The administrator shall readmit the child to the school or facility when in the judgment of the local health department the child is in compliance with the requirements of this section.

(10) The administrator shall be responsible for updating the statement described in subsection (1)(a) of this section as necessary to reflect the current status of the immunization of the child and the time at which the child comes into compliance with immunizations against the restrictable diseases prescribed by rules of the Health Division pursuant to ORS 433.273.

(11) Nothing in this section shall be construed as relieving agencies, in addition to school districts, which are involved in the maintenance and evaluation of immunization records on April 27, 1981, from continuing responsibility for these activities.

(12) All statements required by this section shall be on forms approved or provided by the Health Division.

(13) In lieu of signed statements from practitioners of the healing arts, the division may accept immunization record updates using practitioner documented immunization records generated by electronic means or on practitioner letterhead but unsigned, if the division determines such records are accurate. [1973 c.566 §2; 1977 c.457 §1; 1981 c.78 §4; 1991 c.255 §3; 1993 c.546 §139]

433.269 Immunization by local health departments; records and reports. (1) Local health departments shall make available immunizations to be administered under the direction of the local health officer in convenient areas and at convenient times. No person shall be refused service because of inability to pay.

(2) The local health department and all schools and children's facilities shall report annually to the Health Division as specified in the rules of the Health Division on the number of children in the area served and those children who are susceptible to restrictable disease as prescribed by rules of the Health Division pursuant to ORS 433.273 by reason of noncompliance. A child exempted under ORS 433.267 shall be considered to be susceptible.

(3) The administrator shall maintain immunization records of children, including

children in attendance conditionally because of incomplete immunization schedules and children exempted under ORS 433.267. [1973 c.566 §3; 1981 c.78 §5; 1991 c.255 §6]

433.270 [Repealed by 1973 c.259 §20]

433.273 Rules of division. The Health Division shall adopt rules pertaining to the implementation of ORS 433.235 to 433.284, which shall include, but need not be limited to:

(1) The definition of "restrictable" disease;

(2) The required immunization against diseases, including rubella, considered to be dangerous to the public health under ORS 433.267;

(3) The time schedule for immunization;

(4) The approved means of immunization;

(5) The procedures and time schedule whereby children may be excluded from attendance in schools or facilities, including service of notice to parents;

(6) The manner in which immunization records for children are established, evaluated and maintained;

(7) The exempted schools and children's facilities; and

(8) The implementation of ORS 433.282 and 433.283. [1973 c.566 §4; 1977 c.457 §2; 1981 c.78 §6; 1991 c.255 §7]

433.275 [1973 c.566 §5; repealed by 1981 c.78 §15]

433.280 Status of immunization records as public records. Nothing in ORS 179.505, 192.525, 192.530, 326.565, 326.575 or 336.187 operates to prevent:

(1) Inspection by or release to administrators by local health departments of information relating to the status of a person's immunization against restrictable diseases without the consent of the person, if the person has been emancipated or has reached the age of majority, or the parent of a child.

(2) Local health departments from releasing information concerning the status of a person's immunization against restrictable diseases by telephone to the parent, administrators and public health officials. [1981 c.78 §11; 1991 c.255 §8]

433.282 Immunizations against measles at certain post-secondary educational institutions. (1) The Health Division may require each post-secondary educational institution, except a community college and a private, proprietary vocational school, to require that each entering full-time student born on or after January 1, 1957, has current immunizations against measles prior to the student's second quarter or semester of enrollment on an Oregon campus, using procedures developed by the institution.

(2) The Health Division by rule shall establish immunization schedules and may further limit the students and programs to which the requirement applies.

(3) The Health Division may conduct validation surveys to insure compliance with this section. [1991 c.255 §10]

433.283 Immunizations against measles for certain students at community colleges. (1) The Health Division may require each community college to require that students involved in clinical experiences in allied health programs, practicum experiences in education and child care programs and membership on intercollegiate sports teams have current immunizations for measles prior to each student's participation. The requirement shall apply only to those students born on or after January 1, 1957.

(2) The State Board of Education by rule shall define clinical experiences in allied health programs, practicum experiences in education and child care programs and membership on intercollegiate sports teams at the community colleges. The Health Division by rule shall establish immunization schedules and may further limit the students and programs to which the requirement applies. Each community college shall develop procedures to implement and maintain this requirement.

(3) The Health Division may conduct validation surveys to insure compliance with this section. Community colleges shall be required to keep immunization records only while the student is involved in the program. [1991 c.255 §11]

433.284 Adoption of more stringent measles immunization requirements. Private schools, children's facilities and post-secondary educational institutions may adopt additional or more stringent requirements as long as medical and religious exemptions are included and the requirements are in compliance with the United States Public Health Service Advisory Committee on Immunization Practices recommendations. [1991 c.255 §12]

CONTROL OF METABOLIC DISEASES

433.285 Policy to control metabolic diseases; diseases specified by rule; testing; fees; exemptions; waiver of fees. (1) It hereby is declared to be a matter of public policy of the State of Oregon that in the interest of public health and the prevention of mental retardation, every infant, shall be given tests approved by the Health Division for the detection of the disease of phenylketonuria and other metabolic diseases.

(2) The Health Division by rule shall specify the diseases for which infants shall be tested under subsection (1) of this section, the appropriate time following delivery for collecting specimens, the manner in which the specimens are to be submitted, the persons responsible for submitting the specimens, the methods of testing and the manner of payment of the fees.

(3) The testing required by subsection (1) of this section shall not be required if the infant is being reared as an adherent to a religion the teachings of which are opposed to such testing. The person responsible for submitting specimens under the rules of the Health Division shall be responsible for submitting a statement signed by the infant's parent that the infant is being so reared. The division by rule shall prescribe the form of the statement.

(4) The Health Division shall adopt by rule a procedure whereby the fees established under subsection (2) of this section shall be waived and no infant refused service because of the parent's inability to pay the fee.

(5) The Health Division by rule shall prescribe the procedure to be followed in cases where initial testing for metabolic diseases is administered too early to detect these diseases, where the sample submitted for testing is improperly collected and where a sample shows an abnormal result. The Health Division, within the limits of funds available from fees collected under this section, shall institute a pilot program for follow-up on abnormal test results. [1963 c.190 §1; 1965 c.88 §1; 1977 c.582 §34; 1981 c.630 §2; 1983 c.490 §2]

433.290 Division to conduct educational program concerning metabolic diseases. (1) The Legislative Assembly finds that many newborn children are given their first tests for metabolic diseases too early for the detection of these diseases because parents remove these newborn infants from the hospital before the optimum testing period commences. To assure proper first testing and follow-up testing and increase knowledge about the nature and results of these diseases, the Health Division shall institute and carry on an intensive educational program among physicians, hospitals, public health nurses, the parents of newborn children and the public concerning the disease of phenylketonuria and other metabolic diseases. This educational program shall include information concerning:

(a) The nature of these diseases; and

(b) Examinations for the detection of these diseases in infancy in order that meas-

ures may be taken to prevent the mental retardation resulting from these diseases.

(2) The Health Division shall make a special effort specifically to inform expectant parents and parents of newborn children of the necessity of newborn infants receiving appropriate tests within the optimum time range after birth to prevent the mental retardation or other serious complications resulting from these diseases. [1963 c.190 §2; 1977 c.582 §35; 1983 c.490 §1]

433.295 Report of cases required; forms to be furnished. (1) All physicians, public health nurses and the administrators of hospitals shall report the discovery of cases of phenylketonuria to the Health Division.

(2) The Health Division shall furnish all physicians, public health nurses and hospitals forms on which the result of tests for phenylketonuria shall be reported to the Health Division. [1963 c.190 §3]

VITAMIN K FOR NEWBORN

433.303 Policy on vitamin K. It is the policy of the State of Oregon that all newborn infants born in hospital or out of hospital receive vitamin K before they are 24 hours old. [1983 c.585 §1]

433.305 [Repealed by 1969 c.685 §23]

433.306 Duty to administer vitamin; religious objection; effect of inability to pay. (1) A physician licensed under ORS chapters 677, 684 and 685 or the midwife attending the mother at the birth of the child shall be responsible for insuring that the newborn infant shall receive vitamin K within 24 hours after birth by the most appropriate means, either by injection or orally.

(2) The procedure described in subsection (1) of this section does not apply to any infant whose parents object to the procedure on the grounds that the procedure conflicts with the religious tenets and practices of the parents. The parents must sign a statement saying the infant is being so reared.

(3) No infant shall be refused the procedure described in subsection (1) of this section because of the parent's inability to pay. [1983 c.585 §2]

433.307 [1973 c.470 §1; 1981 c.630 §3; repealed by 1983 c.490 §3]

433.309 [1973 c.470 §2; 1981 c.630 §4; repealed by 1983 c.490 §3]

433.310 [Amended by 1969 c.314 §41; 1969 c.685 §17; renumbered 438.410]

433.311 [1973 c.470 §3; repealed by 1983 c.490 §3]

433.312 Determining dosage; notice to practitioners. (1) The Health Division in consultation with the Oregon Pediatric Soci-

ety by rule shall establish the appropriate dosage of vitamin K and the procedures for administering vitamin K which may be either by injection or orally.

(2) The Health Division in cooperation with the licensing boards established in ORS chapters 677, 684 and 685 shall notify their licensees of these rules. Any association of midwives shall also be notified. [1983 c.585 §3]

433.313 [1973 c.470 §4; repealed by 1983 c.490 §3]

433.314 Educational program. The Health Division shall institute and carry on an educational program among medical and naturopathic physicians, chiropractors, midwives, potential parents and the public concerning the need for newborn infants to receive vitamin K within 24 hours after birth. [1983 c.585 §4]

433.315 [Repealed by 1969 c.685 §23]

433.320 [Repealed by 1969 c.685 §23]

433.325 [Amended by 1969 c.685 §19; renumbered 438.420]

433.330 [Repealed by 1969 c.685 §23]

433.335 [Amended by 1969 c.685 §15; renumbered 438.450]

RABIES CONTROL

433.340 Definitions for ORS 433.340 to 433.390. As used in ORS 433.340 to 433.390 unless the context requires otherwise:

(1) "Animal" means a dog or other animal of a species susceptible to rabies.

(2) "Owner" means any person having a right of property in an animal or who harbors an animal or who has it in the care of the person, or acts as its custodian, or who knowingly permits an animal to remain on or about any premises occupied by the person. "Owner" does not include veterinarians or kennel operators temporarily maintaining on their premises animals owned by other persons for a period of not more than 30 days. [1971 c.413 §1]

433.345 Report of animal bites; handling and disposition of animals. (1) Whenever an animal bites any person or is suspected of rabies or has been in close contact with an animal suspected of rabies, the facts shall be immediately reported to the local health officer by any person having direct knowledge.

(2) The Health Division, in consultation with the State Department of Agriculture, shall promulgate rules relating to the handling and disposition of animals that have bitten any person or are suspected of rabies or that have been in close contact with an animal suspected of rabies. Such rules may include requirements for confinement, isolation and inoculation. Owners or persons in possession of animals subject to such rules,

shall handle or dispose or allow the handling or disposal of such animals strictly in accordance with such rules. [1971 c.413 §2; 1977 c.189 §4]

433.350 Authority to take possession and order destruction of animal. When confinement and observation of an animal for purposes of determining infection with rabies will not avoid the necessity of the application of painful or possibly dangerous preventative treatment to a person who has been bitten or scratched by such animal, the Assistant Director for Health may order possession of the animal to be immediately relinquished to the assistant director or to the authorized representative of the assistant director and may order the animal destroyed for examination of its bodily tissues. [1971 c.413 §3]

433.355 Procedure to force compliance with ORS 433.350. (1) In the event of the refusal of the owner or person in possession of an animal to comply with an order of the Assistant Director for Health under ORS 433.350, the Assistant Director for Health or the authorized representative of the assistant director may petition the circuit court of the county in which such animal is located for an order requiring such owner or person to comply with such order.

(2) The petition shall be verified and shall set forth the facts relative to the refusal to comply with the order. A copy of the petition shall be served upon the owner or person in possession of the animal in the manner provided for service of summons in civil actions. Such owner or person in possession shall appear and answer the petition at a time and place set by the court in an order, a copy of which shall be served with the petition, directing the defendant to appear at such time and place, and to then and there show cause, if any, why an order directing compliance with the order of the Assistant Director for Health should not be granted. The time set by the court for the hearing to show cause shall be made with due regard for the circumstances of the person or persons who have been subjected to the bite or scratch of the animal and whose health or life may be in jeopardy.

(3) If the owner or person in possession fails to appear or the court either with or without such appearance finds the allegations of the petition are true and the order of the Assistant Director for Health is necessary under ORS 433.350, the court shall enter its order requiring the owner or person in possession of such animal to comply with the order of the Assistant Director for Health.

(4) The sheriff of the county in which the animal is located shall execute such order by

serving upon the owner or person in possession a copy thereof duly certified to by the clerk of the circuit court and by enforcing the provisions thereof. [1971 c.413 §4]

433.360 Report of rabies cases; quarantine. (1) Whenever a case of animal rabies occurs, the fact shall be reported to the Assistant Director for Health and to the State Department of Agriculture immediately.

(2) The State Department of Agriculture in consultation with the Assistant Director for Health shall establish such quarantine under ORS chapter 596 as the department and the Assistant Director for Health may deem necessary.

(3) The State Department of Agriculture and the Assistant Director for Health may contract with counties for the purpose of carrying out the provisions of ORS 433.350, 433.355 and subsection (2) of this section. [1971 c.413 §5; 1975 c.750 §1; 1977 c.189 §5]

433.365 Inoculation against rabies; exemption; costs. (1) All dogs must be inoculated against rabies, unless specifically exempted by rule of the Health Division or the State Department of Agriculture.

(2) Unless pursuant to conditions specified in ORS 430.357, any regulations of the State Department of Agriculture or the Assistant Director for Health with respect to inoculation shall:

(a) Not apply to animals brought temporarily into the state for periods of less than 30 days but they may require that such animals be kept under strict supervision by their owners.

(b) Not apply to dogs or to any other animal specifically exempted from the inoculation requirement by rule of the Health Division or the State Department of Agriculture.

(3) The costs of all such required inoculations shall be borne by the owners of the animal. [1971 c.413 §7; 1975 c.750 §2]

433.367 Division to establish vaccination clinics; payment of costs by dog owners. The Health Division shall be responsible for development and coordination of vaccination clinics at sufficient and reasonable times at various locations throughout the state for the inoculation of dogs against rabies. Costs of vaccination shall be borne by the dog owner. [1977 c.189 §2]

433.370 Inoculation certificate. Every veterinarian inoculating an animal against rabies shall supply to the owner evidence of inoculation which shall consist of a certificate issued and signed by the veterinarian. The form of the certificate shall be prescribed by the Health Division. [1971 c.413 §8; 1975 c.750 §3; 1977 c.189 §6; 1985 c.793 §1]

433.375 Filing of inoculation certificate; certificate required for license; issuance of tag. (1) The owner of the animal shall present by mail or otherwise the inoculation certificate, together with the fee fixed pursuant to ORS 433.380, if any, to the clerk of the county in which the owner resides.

(2) The county shall upon receipt of the fee and presentation of the certificate issue to the owner a serial-numbered tag, legibly identifying its expiration date as such date is determined in accordance with rules of the Health Division relating to intervals of inoculation. The tag shall be designed for and shall be attached to a collar or harness which shall be worn by the dog for which the tag and certificate is issued at all times when off or outside the premises of the owner. Whenever an original tag is lost, mutilated or destroyed, upon application and payment of the fee prescribed under ORS 433.380, if any, a replacement tag, to be dated, designed and worn as the original, shall be issued.

(3) No official of any county shall issue a license for a dog until the official has been shown a proper certification, or its equivalent, of a rabies inoculation.

(4) If the county files the certificate upon which a tag is issued, it shall be cross referenced to the tag number. If the certificate is not filed, the county shall keep an appropriate record of the expiration date and number, if any, of the certificate cross referenced to the tag number. Notwithstanding ORS 205.320 (1), a fee is not required for filing the certificate.

(5) Unexpired tags shall be honored in all counties when the animal is in transit or where the owner has established a new residence.

(6) The provisions of this section apply to a city, rather than a county, in a city which has a dog licensing program. [1971 c.413 §9; 1975 c.750 §4; 1977 c.189 §6a; 1985 c.793 §2; 1991 c.230 §34]

433.377 Issuance of license as verification of inoculation; issuance of tag not required. Notwithstanding ORS 433.375 or any other provision of law, a county or city may consider issuance of a license for a dog as verification of there being a certificate of inoculation on file and need not issue a tag pursuant to ORS 433.375 (2). [1977 c.189 §3]

433.379 Disposal of inoculation certificates. Notwithstanding ORS 192.001 to 192.170, the county or city may dispose of certificates of inoculation upon their expiration date. [1977 c.189 §12]

433.380 Tag fee; status of fee. A fee for the tag and replacement tag may be fixed in each county by the governing body of the

county in such amount as it finds necessary to enable the county to carry out the provisions of ORS 433.365, 433.370 and 433.380 to 433.390 and the regulations promulgated hereunder and shall not be considered a license or tax within the meaning of ORS 609.100. [1971 c.413 §10]

433.385 Impoundment of animals; notice to owner; redeeming animal; disposition of animals. (1) Any animal in violation of ORS 433.365 shall be apprehended and impounded.

(2) All animals apprehended and impounded under this section shall be held in adequate and sanitary pounds to be established or contracted for in each county by the governing body of the county. All animals so impounded shall be given proper care and maintenance.

(3) When an animal is apprehended and impounded, the owner, if known, shall be given notice of not less than five days from the date of such impounding before the animal is destroyed or otherwise disposed of. An owner appearing to redeem the animal may do so if the provisions of ORS 433.365 are complied with and if the owner pays the expense of keeping the animal during the time it was impounded and in addition thereto, the sum established by the county governing body. If the animal is subject to any other impounding law the requirements for release under that law shall also be met except that the expense of keeping the animal shall be payable only once for the period of impoundment. If the owner does not appear to redeem the animal after the notice provided for herein, or otherwise, after five days, or if the owner is not known, after three days, the governing body of the county may provide for animals impounded to be released to any other person upon the conditions outlined in this subsection or otherwise disposed of in a humane manner.

(4) Where the owner desires to redeem an animal impounded pursuant to this section or the animal is to be released to any other person as provided in subsection (3) of this section, the person shall post a \$20 deposit with the county and obtain possession of the animal for the purpose of complying with ORS 433.365. Upon demonstrating proof of rabies inoculation and purchase of a license as required under ORS 609.100, within eight days of obtaining possession of the animal, the \$20 deposit shall be refunded to the person posting the deposit. Failure to demonstrate proof of rabies inoculation and licensing within the prescribed time shall forfeit the deposit to the county.

(5) The governing body of the county shall designate persons responsible for the

enforcement of this section. [1971 c.413 §11; 1977 c.189 §7]

433.390 County dog control fund; sources and uses. (1) All moneys received by a county under ORS 433.340 to 433.390 and 433.990 (6) shall be paid to the county dog control fund.

(2) The governing body of the county may, in the event of a rabies outbreak within the county, use such portion of the dog control fund as it deems necessary to purchase rabies vaccine for administration to animals under the direction of the state and local health officers. [1971 c.413 §12; 1977 c.189 §8; 1987 c.158 §78; 1987 c.905 §22]

433.405 [Amended by 1973 c.779 §4; 1979 c.828 §5; repealed by 1981 c.198 §2]

PROCEDURE WHERE WORKERS EXPOSED TO INFECTIOUS DISEASE

433.407 Definitions for ORS 433.407 to 433.423. As used in ORS 433.407 to 433.423 unless the context requires otherwise:

(1) "Division" means the Health Division of the Department of Human Resources.

(2) "Health care facility" means a facility as defined in ORS 442.015 and a mental health facility, alcohol treatment facility or drug treatment facility licensed or operated under ORS chapter 426 or 430.

(3) "Worker" means a person who is licensed or certified to provide health care under ORS chapter 677, 678, 679, 680, 684 or 685 or ORS 823.150, an employee of a health care facility, of a licensed health care provider or of a clinical laboratory as defined in ORS 438.010 (1), a firefighter, a law enforcement officer as defined in ORS 414.805, a corrections officer or a probation officer. [1989 c.949 §2; 1993 c.196 §8]

Note: 433.407 to 433.423 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 433 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

433.410 [Amended by 1973 c.779 §5; repealed by 1981 c.198 §2]

433.411 Legislative finding. The Legislative Assembly finds that by reason of and in the course of their employment, health care workers and emergency response employees, are subject to exposure to infectious diseases, that this exposure is not fully preventable due to the nature of their duties and that health care workers should be informed of exposure to infectious diseases as soon as is practicable to initiate appropriate medical care and to prevent exposing other persons to infectious diseases. [1989 c.949 §1]

Note: See note under 433.407.

433.415 [Amended by 1973 c.779 §6; 1979 c.590 §1; 1979 c.828 §6; repealed by 1981 c.198 §2]

433.416 When employer to provide preventive immunization. (1) An employer of a health care worker at risk of contracting an infectious disease in the course of employment shall provide to the worker preventive immunization for infectious disease if such preventive immunization is available and is medically appropriate.

(2) Such preventive immunization shall be provided by the employer at no cost to the worker.

(3) A worker shall not be required as a condition of work to be immunized under this section, unless such immunization is otherwise required by federal or state law, rule or regulation. [1989 c.949 §3]

Note: See note under 433.407.

433.419 Notice to employer and worker of exposure. When a local health department or the Health Division learns of a case or suspected case of an infectious disease which may have exposed a worker to risk of infection, the local health department or the Health Division shall make every reasonable effort to notify the worker and employer of the exposure as soon as medically appropriate given the urgency of the disease or suspected disease. Notification shall include recommendations to the worker and employer that are medically appropriate. [1989 c.949 §4]

Note: See note under 433.407.

433.420 [Amended by 1973 c.779 §7; 1979 c.828 §7; repealed by 1981 c.198 §2]

433.423 Content of Health Division rules. (1) The Health Division shall adopt rules implementing ORS 433.407 to 433.423. Such rules shall include, but need not be limited to:

(a) The development of curriculum dealing with the exposure of workers to infectious diseases;

(b) Development and conduct of training programs for local health department personnel to prepare them to train workers about the subject of infectious diseases;

(c) Information on the manner in which infectious diseases are transmitted; and

(d) Guidelines that can assist workers and their employers in distinguishing between conditions in which such workers are or are not at risk with respect to infectious diseases.

(2) The rules adopted by the Health Division shall require that implementation of ORS 433.407 to 433.423 be accomplished in such a manner as to protect the confidentiality of persons with infectious diseases and workers exposed to such persons. [1989 c.949 §5]

Note: See note under 433.407.

433.425 [Amended by 1973 c.779 §8; repealed by 1981 c.198 §2]

433.430 [Amended by 1973 c.779 §9; repealed by 1981 c.198 §2]

433.435 [Amended by 1973 c.779 §10; repealed by 1981 c.198 §2]

433.440 [Repealed by 1981 c.198 §2]

433.445 [Amended by 1973 c.779 §11; repealed by 1981 c.198 §2]

433.450 [Amended by 1973 c.779 §12; repealed by 1981 c.198 §2]

433.455 [Amended by 1973 c.779 §13; repealed by 1981 c.198 §2]

433.460 [Amended by 1973 c.779 §14; repealed by 1981 c.198 §2]

433.465 [Amended by 1973 c.779 §15; repealed by 1981 c.198 §2]

433.470 [Amended by 1973 c.779 §16; repealed by 1981 c.198 §2]

433.475 [Amended by 1979 c.590 §2; 1979 c.828 §8; repealed by 1981 c.198 §2]

433.480 [Repealed by 1981 c.198 §2]

433.485 [Repealed by 1981 c.198 §2]

433.490 [Amended by 1973 c.779 §17; repealed by 1981 c.198 §2]

433.495 [Amended by 1967 c.187 §1; 1973 c.779 §18; repealed by 1981 c.198 §2]

433.500 [Amended by 1967 c.187 §2; 1973 c.779 §19; repealed by 1981 c.198 §2]

INDOOR AIR POLLUTION

433.502 Definitions for ORS 433.502 to 433.526. As used in ORS 433.502 to 433.526, 455.445 and 468A.775 to 468A.785:

(1) "Office workplace" means any enclosed nonmanufacturing indoor area, located in a building of more than 4,000 square feet, and in which 50 or more employees, as defined in ORS 654.005 spend any part of their working hours.

(2) "Public area" means any enclosed indoor area open to and frequented by the public and where, during a representative 24-hour period the number of public occupants exceeds the number of employees, except private residences. "Public area" includes a health care facility as defined in ORS 442.015.

(3) "Remodeling" means any change, addition or modification in the ventilation system for which a building permit is or was required.

(4) "Significant indoor air pollutant" means any solid, liquid, semisolid, dissolved solid, biological organism, aerosol or gaseous material, including combinations or mixtures of substances, which has an adverse effect on human health and has been designated by the state for regulation under ORS 433.502 to 433.526, 455.445 and 468A.775 to 468A.785. [1989 c.1070 §1]

Note: 433.502 to 433.526 were enacted into law by the Legislative Assembly but were not added to or made

a part of ORS chapter 433 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

433.505 [Repealed by 1981 c.198 §2]

433.507 Legislative findings. The Legislative Assembly finds and declares:

(1) Scientific studies reveal that indoor concentrations of some pollutants are frequently higher than outdoor concentrations of those pollutants and that indoor pollutant concentrations can exceed health-based standards.

(2) On the average, people spend at least 90 percent of their time indoors, and, as a result, the population has a significant potential for exposure to indoor air pollutants.

(3) Indoor air pollution poses one of the most serious environmental threats to public health, including cancer, respiratory illness, multiple chemical sensitivities, skin and eye irritation and related effects, and is estimated to cause significant increases in medical costs and claims, and declines in work productivity. Indoor air pollution also has been linked significantly to improperly maintained ventilation systems that increase consumption of energy.

(4) Existing state environmental and occupational health programs do not adequately protect the public from exposure to indoor air pollution that may occur in public areas or office workplaces.

(5) It is in the public interest to reduce exposure to indoor air pollution by developing a comprehensive program to investigate and remedy indoor air pollution and to educate the public. [1989 c.1070 §2]

Note: See note under 433.502.

433.510 [Amended by 1973 c.779 §20; repealed by 1981 c.198 §2]

433.511 Public information program. Subject to available funds, the Health Division may establish a broad public information program to educate the public on indoor air pollutants, their identities, causes and effects, and on effective practical methods for preventing, detecting and correcting the causes of indoor air pollution. [1989 c.1070 §3]

Note: See note under 433.502.

433.515 [Repealed by 1973 c.779 §21 (433.516 enacted in lieu of 433.515)]

433.516 [1973 c.779 §22 (enacted in lieu of 433.515); 1979 c.828 §9; repealed by 1981 c.198 §2]

433.517 Field investigations and epidemiological studies. Subject to available funds, the Health Division may conduct field investigations and epidemiological studies to quantify the extent of indoor air pollution levels and public exposure in Oregon. Field investigations shall be conducted in a manner that does not compete with the

business of private contractors. Epidemiological studies may be conducted to look for the causes of illness and collect and analyze data to identify trends and health impacts, especially where national information on significant potential problems is lacking. [1989 c.1070 §4]

Note: See note under 433.502.

433.520 [Amended by 1973 c.779 §23; repealed by 1981 c.198 §2]

433.521 Indoor air quality standards. (1) Based upon the recommendations of the Indoor Air Pollution Task Force, the Health Division may establish indoor air quality standards for significant indoor air pollutants. If established, the standards:

(a) Shall include an adequate margin of safety;

(b) Shall be adequate to protect the population, including sensitive groups; and

(c) May be revised as appropriate.

(2) If established, indoor air quality standards shall be at least for the following significant indoor air pollutants:

(a) Particulate matter;

(b) Aldehydes;

(c) Radon;

(d) Carbon monoxide;

(e) Carbon dioxide;

(f) Ozone; and

(g) Water vapor.

(3) In developing the indoor air quality standards, the Health Division shall consult with the Department of Environmental Quality, the Department of Consumer and Business Services and the Indoor Air Pollution Task Force.

(4) The standards established by the Health Division shall not take effect before July 1, 1991. The Health Division shall seek voluntary compliance with the standards. [1989 c.1070 §5; 1993 c.744 §227]

Note: See note under 433.502.

433.525 [Repealed by 1981 c.198 §2]

433.526 Public recognition program for compliance. (1) The Health Division may establish by rule a public recognition program for office workplaces, buildings and public areas that consistently meet the indoor air quality requirements of ORS 433.502 to 433.526, 455.445 and 468A.775 to 468A.785. Any workplace, building or public area that qualifies for such recognition may display a notice indicating that the building exceeds the requirements of Oregon's indoor clean air statutes.

(2) To qualify for recognition under this section, an office workplace, building or public area shall:

(a) Comply with all applicable provisions of ORS 433.835 to 433.875;

(b) Demonstrate a consistent pattern of compliance in meeting all indoor air quality standards and other requirements of ORS 433.502 to 433.526, 455.445 and 468A.775 to 468A.785; and

(c) Demonstrate to the satisfaction of the Health Division that all technically and economically practicable steps have been taken to minimize significant sources of indoor air pollution.

(3) The Health Division by rule may establish a fee to be submitted by the owner or responsible party of a building, workplace or public area who requests certification under this section. The fee shall be an amount sufficient to pay the division's costs in carrying out the provisions of this section. [1989 c.1070 §8]

Note: See note under 433.502.

433.530 [Amended by 1973 c.779 §24; repealed by 1981 c.198 §2]

433.535 [Amended by 1973 c.779 §25; repealed by 1981 c.198 §2]

433.540 [Amended by 1973 c.779 §26; repealed by 1981 c.198 §2]

433.545 [Amended by 1973 c.779 §27; repealed by 1981 c.198 §2]

433.550 [Amended by 1973 c.779 §28; repealed by 1981 c.198 §2]

433.555 [Amended by 1973 c.779 §29; repealed by 1981 c.198 §2]

433.560 [Repealed by 1963 c.574 §1 (433.561 enacted in lieu of 433.560)]

433.561 [1963 c.574 §2 (enacted in lieu of 433.560); 1973 c.779 §30; repealed by 1981 c.198 §2]

433.565 [Repealed by 1963 c.574 §3 (433.566 enacted in lieu of 433.565)]

433.566 [1963 c.574 §4 (enacted in lieu of 433.565); 1973 c.779 §31; repealed by 1981 c.198 §2]

433.570 [Amended by 1973 c.779 §32; repealed by 1981 c.198 §2]

433.575 [Amended by 1973 c.779 §33; repealed by 1981 c.198 §2]

433.580 [Repealed by 1981 c.198 §2]

433.585 [Amended by 1973 c.779 §34; repealed by 1981 c.198 §2]

433.590 [Amended by 1973 c.779 §35; repealed by 1981 c.198 §2]

433.595 [Amended by 1973 c.779 §36; repealed by 1981 c.198 §2]

433.600 [Amended by 1973 c.779 §37; repealed by 1981 c.198 §2]

433.605 [Amended by 1973 c.779 §38; repealed by 1981 c.198 §2]

433.610 [Repealed by 1981 c.198 §2]

433.615 [Amended by 1963 c.574 §5; 1969 c.449 §1; 1973 c.779 §39; 1975 c.526 §1; 1977 c.696 §1; 1979 c.590 §3; 1979 c.828 §10; repealed by 1981 c.198 §2]

433.620 [Repealed by 1963 c.574 §6 (433.621 enacted in lieu of 433.620)]

433.621 [1963 c.574 §7 (enacted in lieu of 433.620); repealed by 1981 c.198 §2]

433.625 [Amended by 1963 c.574 §8; 1973 c.779 §40; repealed by 1981 c.198 §2]

433.630 [Amended by 1973 c.779 §41; repealed by 1981 c.198 §2]

433.635 [Repealed by 1973 c.427 §8 (433.636 enacted in lieu of 433.635)]

433.636 [1973 c.427 §9 (enacted in lieu of 433.635); repealed by 1981 c.198 §2]

433.640 [Repealed by 1981 c.198 §2]

433.645 [Repealed by 1971 c.743 §432]

433.650 [Repealed by 1981 c.198 §2]

433.655 [Repealed by 1981 c.198 §2]

433.660 [Amended by 1973 c.779 §42; 1977 c.582 §36; repealed by 1981 c.198 §2]

433.665 [Amended by 1973 c.779 §43; repealed by 1981 c.198 §2]

433.670 [Repealed by 1981 c.198 §2]

433.675 [Amended by 1969 c.314 §42; 1973 c.779 §44; repealed by 1981 c.198 §2]

433.680 [Amended by 1973 c.779 §45; repealed by 1981 c.198 §2]

433.685 [1973 c.779 §2; repealed by 1981 c.198 §2]

433.690 [1973 c.779 §3; repealed by 1981 c.198 §2]

433.705 [Amended by 1977 c.582 §38; repealed by 1979 c.492 §1]

MISCELLANEOUS SANITATION PROVISIONS

433.710 Unclean slaughterhouses prohibited. No owner or occupier of premises where animals are slaughtered shall permit the same to remain unclean, to the extent that it constitutes a health hazard. [Amended by 1977 c.582 §39]

433.715 Exposed merchandise; intermingling or sale without disinfectant prohibited. No person having delivered merchandise, such as clothing, wearing apparel of every description, hair goods, brushes, rubber goods, books, mattresses, blankets, sheets, pillows or other kinds of bedding, to any person or institution at or thereafter taken to any place where any communicable disease exists or may exist, after the delivery of such merchandise, shall intermingle the same with the goods for sale or offer the same for sale or sell the same, or receive any merchandise from any place or premises where any communicable disease exists or has existed, and intermingle such goods with other goods for sale or offer the same for sale or sell the same, until such goods have been thoroughly disinfected in accordance with the rules and regulations of the Health Division.

433.720 [Amended by 1967 c.428 §10; 1969 c.593 §35; repealed by 1971 c.648 §33]

433.725 [Amended by 1967 c.428 §11; 1969 c.593 §36; repealed by 1971 c.648 §33]

433.730 [1957 c.422 §1; 1967 c.428 §12; 1969 c.593 §37; repealed by 1971 c.648 §33]

REGULATION OF OUTDOOR MASS GATHERINGS

433.735 Definitions for ORS 433.735 to 433.770. As used in ORS 433.735 to 433.770 and 433.990 (7):

(1) "Outdoor mass gathering," unless otherwise defined by county ordinance, means an actual or reasonably anticipated assembly of more than 3,000 persons which continues or can reasonably be expected to continue for more than 24 consecutive hours but less than 120 hours within any three-month period and which is held primarily in open spaces and not in any permanent structure.

(2) "Organizer" includes any person who holds, stages or sponsors an outdoor mass gathering and the owner, lessee or possessor of the real property upon which the outdoor mass gathering is to take place.

(3) "Permanent structure" includes a stadium, an arena, an auditorium, a coliseum, a fairgrounds or other similar established places for assemblies.

(4) "Temporary structure" includes tents, trailers, chemical toilet facilities and other structures customarily erected or sited for temporary use. [1971 c.597 §1a; 1981 c.82 §3; 1985 c.758 §1]

433.740 Policy. The Legislative Assembly finds that the uncontrolled outdoor gatherings of large groups of persons for extended periods of time have necessitated a need for the establishment of reasonable health and safety rules to regulate such outdoor mass gatherings. [1971 c.597 §1]

433.745 Outdoor mass gathering without permit prohibited. (1) No organizer shall hold, conduct, advertise or otherwise promote an outdoor mass gathering or allow an outdoor mass gathering to be held on real property the organizer owns, leases or possesses unless a permit to hold such outdoor mass gathering has been issued by the county governing body in which the outdoor mass gathering is to take place.

(2) A permit issued under this section does not entitle the organizer to make any permanent physical alterations to or on the real property which is the site of the outdoor mass gathering. [1971 c.597 §2; 1985 c.758 §3]

433.750 Permit application; procedure for issuance of permit; fee; fee amount limitation. (1) The governing body of a county in which an outdoor mass gathering is to take place shall issue a permit upon application when the organizer demonstrates compliance with or the ability to comply with the health and safety rules governing outdoor mass gatherings to be regulated ac-

ording to the anticipated crowd and adopted by the Health Division. The application shall include all of the following:

- (a) Name and address of the applicant.
- (b) Legal description of the place of the proposed gathering.
- (c) Date of the proposed gathering.
- (d) Estimated attendance at the proposed gathering.
- (e) Nature of the proposed gathering.
- (f) Such other appropriate information as the county governing body may require in order to insure compliance with rules of the Health Division.

(2) Notice of the application shall be sent by the county governing body to the county sheriff or county chief law enforcement officer, the county health officer and the chief of the fire district in which the gathering is to be held.

(3) Each officer receiving notice of the application under subsection (2) of this section who wishes to comment on the application shall submit such comment in writing to the county governing body not later than the hearing date. The comment may include recommendations related to the official functions of the officer as to granting the permit and any recommended conditions that should be imposed.

(4) The county governing body shall hold a public hearing on the issue of compliance with this section. Notice of the time and place of such hearing including a general explanation of the matter to be considered shall be published at least 10 calendar days before the hearing in a newspaper of general circulation in the county or, if there is none, it shall be posted in at least three public places in the county.

(5) Any decision of a county governing body on an application for a permit to hold an outdoor mass gathering may be appealed to a circuit court for the county as provided in ORS 34.020 to 34.100.

(6) A county governing body may charge permit applicants a fee reasonably calculated to reimburse the county for its reasonable and necessary costs in receiving, processing and reviewing applications for permits to hold outdoor mass gatherings. However, a fee authorized by this subsection shall not exceed \$5,000 and shall not be charged when the governing body finds, by a preponderance of the evidence presented to the governing body, that the applicant is unable to reimburse the governing body. [1971 c.597 §3; 1985 c.758 §4; 1993 c.779 §1]

433.755 Additional information required before permit issued; liability of

permit holder; casualty insurance; county as additional insured. (1) In reviewing an application for a permit to hold an outdoor mass gathering, the county governing body may require such plans, specifications and reports as it may deem necessary for proper review and it may request and shall receive from all public officers, departments and agencies of the state and its political subdivisions such cooperation and assistance as it may deem necessary. If the county governing body determines upon examination of the permit application that the outdoor mass gathering creates a potential for injury to persons or property, the county governing body may require organizers to obtain an insurance policy in an amount commensurate with the risk, but not exceeding \$1 million. The policy of casualty insurance shall provide coverage against liability for death, injury or disability of any human or for damage to property arising out of the outdoor mass gathering. The county shall be named as an additional insured under the policy.

(2) In the event of failure to remove all debris or residue and repair any damage to personal or real property arising out of the outdoor mass gathering within 72 hours after its termination and to remove any temporary structures used at the outdoor mass gathering within three weeks after its termination, the county governing body may file suit against the organizer for financial settlement as is needed to remove debris, residue or temporary structures and to repair such damage to real or personal property of persons not attending the outdoor mass gathering. The organizer shall be wholly responsible for payment of any fines imposed under ORS 433.990 (7). [1971 c.597 §4; 1985 c.758 §5; 1993 c.779 §2]

433.760 Rulemaking authority. Notwithstanding any other provisions of law, the Health Division shall, in accordance with the provisions of ORS 183.310 to 183.550, make rules regulated according to anticipated crowds with respect to health and safety at outdoor mass gatherings which provide for:

- (1) Adequate water supply, drainage and sewerage facilities;
- (2) Adequate toilet facilities;
- (3) Adequate refuse storage and disposal facilities;
- (4) Adequate food and sanitary food service, if supplied;
- (5) Adequate emergency medical facilities and communication systems;
- (6) Adequate fire protection; and
- (7) Adequate security personnel and traffic control. [1971 c.597 §5; 1981 c.82 §4; 1985 c.758 §8]

433.763 Compliance with land use regulations required; criteria for approval.

(1) Any gathering of more than 3,000 persons which continues or can reasonably be expected to continue for more than 120 hours within any three-month period and any part of which is held in open spaces shall be allowed by a county planning commission if all of the following occur:

(a) The organizer makes application for a permit to the county planning commission.

(b) The applicant demonstrates to the county planning commission that the applicant has complied or can comply with the requirements for an outdoor mass gathering permit set out in ORS 433.750.

(c) The county planning commission shall make findings that:

(A) Any permits required by the applicable land use regulations have been granted; and

(B) The proposed gathering:

(i) Is compatible with existing land uses; and

(ii) Does not materially alter the stability of the overall land use pattern of the area.

(2) The provisions of ORS 433.755 apply to any gatherings reviewed or approved under this section.

(3) A decision granting or denying a permit under this section may be appealed to the county governing body as provided in ORS 215.402 to 215.438.

(4) If a county has not created a planning commission as provided in ORS 215.030, the county governing body, or such other person as the governing body designates shall receive the application and make the findings and decision required by this section. [1985 c.758 §7]

433.765 Effect on county ordinances adopted under county charter. Ordinances or regulations of a county enacted under a county charter adopted pursuant to section 10, Article VI, Oregon Constitution, and not inconsistent with ORS 433.735 to 433.770 and 433.990 (7) or any rules adopted under ORS 433.735 to 433.770 and 433.990 (7), are not superseded by ORS 433.735 to 433.770 and 433.990 (7) or such rules. Nothing in ORS 433.735 to 433.770 and 433.990 (7) or any rules adopted under ORS 433.735 to 433.770 and 433.990 (7) precludes the right of a county to enact ordinances or regulations under a county charter if such ordinances or regulations are not inconsistent with ORS 433.735 to 433.770 and 433.990 (7) or any rules adopted under ORS 433.735 to 433.770 and 433.990 (7). [1971 c.597 §6]

433.767 Application to gatherings defined by county ordinance. ORS 433.735 to 433.770 and 433.990 (7) apply to outdoor mass gatherings defined by county ordinance as well as to those defined by ORS 433.735 (1). [1981 c.82 §2]

433.770 Enforcement. (1) In addition to and not in lieu of the maintenance of other actions for any violation of ORS 433.745, the district attorney for the county in which an outdoor mass gathering is to be held may maintain an action in any court of general equitable jurisdiction to prevent, restrain or enjoin any violation of ORS 433.745.

(2) Cases filed under the provisions of this section or an appeal therefrom shall be given preference on the docket over all other civil cases except those given equal preference by statute. [1971 c.597 §6a; 1979 c.284 §143]

PROGRAMS TO TREAT ALLERGENS

433.800 Definitions for ORS 433.800 to 433.830. As used in ORS 433.800 to 433.830, unless the context requires otherwise:

(1) "Allergen" means a substance, usually a protein, which evokes a particular adverse response in a sensitive individual.

(2) "Allergic response" means a medical condition caused by exposure to an allergen, with physical symptoms that may be life threatening, ranging from localized itching to severe anaphylactic shock and death. [1989 c.299 §2]

433.805 Policy. It is the purpose of ORS 433.800 to 433.830 to provide a means of authorizing certain individuals when a physician is not immediately available to administer lifesaving treatment to those persons who have severe allergic responses to insect stings and other specific allergens. [1981 c.367 §1; 1989 c.299 §3]

433.810 Duties of Health Division. The Health Division shall:

(1) Adopt rules necessary for the administration of ORS 433.800 to 433.830 including defining circumstances under which 433.800 to 433.815 and 433.825 shall apply.

(2) Approve educational training programs as described in ORS 433.815 and approve such programs conducted by other governmental agencies or private entities. [1981 c.367 §2; 1989 c.299 §4]

433.815 Educational training. Educational training programs required by ORS 433.800 to 433.830 shall be conducted under the supervision of a physician licensed under ORS chapter 677 to practice medicine in this state. The curriculum shall minimally include the following subjects:

(1) Recognition of the symptoms of systemic allergic responses to insect stings and other allergens;

(2) Proper administration of a subcutaneous injection of epinephrine; and

(3) Familiarity with common allergens likely to elicit systemic allergic responses. [1981 c.367 §3; 1989 c.299 §5]

433.820 Eligibility for training. A person eligible to receive the training described in ORS 433.815 must meet the following requirements:

(1) Be 18 years of age or older; and

(2) Have, or reasonably expect to have, responsibility for or contact with at least one other person as a result of the eligible person's occupational or volunteer status, such as camp counselors, scout leaders, school teachers, forest rangers, tour guides or chaperones. [1981 c.367 §4]

433.825 Availability of premeasured doses of epinephrine to trained persons. A person who has successfully completed an educational training program described in ORS 433.815, upon request, may receive from any physician licensed under ORS chapter 677 in this state a prescription for premeasured doses of epinephrine and the necessary paraphernalia for administration. The person may possess and administer in an emergency situation when a physician is not immediately available such prescribed epinephrine to any person suffering a severe allergic response to an insect sting or other allergens as defined by the Health Division. [1981 c.367 §5; 1989 c.299 §6]

433.830 Immunity of trained person rendering emergency assistance. No cause of action shall arise against a person who has successfully completed an educational training program described in ORS 433.815 for any act or omission of the person when acting in good faith while rendering emergency treatment pursuant to the authority granted by ORS 433.800 to 433.830, except where such conduct amounts to gross negligence. [1981 c.367 §6]

OREGON INDOOR CLEAN AIR ACT

433.835 Definitions for ORS 433.835 to 433.875. As used in ORS 433.835 to 433.875:

(1) "Public place" means any enclosed indoor area open to and frequented by the public, except those public places subject to ORS 441.815, including but not limited to restaurants, as defined in ORS 624.010, bowling centers, retail stores, banks, commercial establishments, educational facilities, nursing homes, auditoriums, arenas, meeting rooms and grocery stores.

(2) "Smoking instrument" means any cigar, cigarette, pipe or other smoking equipment. [1981 c.384 §2]

433.840 Policy. The people of Oregon find that because the smoking of tobacco creates a health hazard to those present in confined places, it is necessary to reduce exposure to tobacco smoke by requiring non-smoking areas in certain places. [1981 c.384 §1]

433.845 Smoking prohibited except in designated areas. No person shall smoke or carry any lighted smoking instrument in a public place except in areas designated as smoking areas pursuant to ORS 433.850. Smoking is prohibited in a room during the time that jurors are required to use the room. [1981 c.384 §3; 1985 c.752 §1]

433.850 Designating areas where smoking permitted; changing areas; posting signs. (1) Pursuant to rules adopted by the Health Division, a proprietor or person in charge of a public place may designate areas in which smoking is permitted.

(2) No public place may be designated in its entirety as a smoking area except:

(a) Cocktail lounges and taverns.

(b) Enclosed offices or rooms occupied exclusively by smokers, even though the offices or rooms may be visited by nonsmokers.

(c) Rooms or halls being used for private social functions where the seating arrangements are under the control of the sponsor of the function.

(d) Retail businesses primarily engaged in the sale of tobacco or tobacco products.

(e) Restaurants with seating capacity for 30 or fewer patrons or restaurants with air filtration systems meeting the standards established pursuant to ORS 433.855.

(3) Notwithstanding any other provisions of ORS 433.835 to 433.875 and 433.990 (5), in the case of restaurants, as defined in ORS 624.010, or bowling centers, nothing in ORS 433.835 to 433.875 and 433.990 (5) is intended to prevent the owner or person in charge from expanding or contracting the size of the smoking area to meet the requirements of patrons.

(4) The proprietor or person in charge of a public place, except places described in subsection (2) of this section, shall post appropriate signs. [1981 c.384 §§4,5]

433.855 Duties of Health Division; limitations; compliance checks. (1) The Health Division, in accordance with the provisions of ORS 183.310 to 183.550:

(a) Shall adopt rules necessary to implement the provisions of ORS 433.835 to 433.875 and 433.990 (5);

(b) Shall be responsible for compliance with such rules; and

(c) May impose a civil penalty not to exceed the amount specified in ORS 433.990 (5) for each violation of a rule of the division applicable to ORS 433.850 (2) or (4), to be collected in the manner provided in ORS 441.705 to 441.745. All penalties recovered shall be paid into the State Treasury and credited to the General Fund.

(2) In carrying out its duties under this section, the Health Division is not authorized to require any changes in ventilation or barriers in any public place. However, nothing in this subsection is intended to limit the authority of the division to impose any requirements under any other provision of law.

(3) In public places which the Health Division regularly inspects, the Health Division shall check for compliance with the provisions of ORS 433.835 to 433.875 and 433.990 (5). In other public places, the Health Division shall respond in writing or orally by telephone to complaints, notifying the proprietor or person in charge of responsibilities of the proprietor or person in charge under ORS 433.835 to 433.875 and 433.990 (5). If repeated complaints are received, the Health Division may take appropriate action to insure compliance.

(4) When a county has received delegation of the duties and responsibilities under ORS 446.425, 448.100 and 624.510, or contracted with the Health Division under ORS 190.110, the county shall be responsible for enforcing the provisions of ORS 433.835 to 433.875 and 433.990 (5) that are applicable to those licensed facilities and shall have the same authority as the Health Division for such enforcement. [1981 c.384 §6; 1991 c.734 §21]

433.860 Enforcement. The Health Division or local board of health may institute an action in the circuit court of the county where the violation occurred to enjoin repeated violations of ORS 433.850. [1981 c.384 §7]

433.865 Waiver authorized. Upon request, the Health Division may waive the provisions of ORS 433.835 to 433.875 and 433.990 (5) for any public place if it determines that:

(1) There are valid reasons to do so; and

(2) A waiver will not significantly affect the health and comfort of nonsmokers. [1981 c.384 §8]

433.870 Regulation in addition to other smoking regulations. The regulations authorized by ORS 433.835 to 433.875 and 433.990 (5) are in addition to and not in lieu of any other law regulating smoking. [1981 c.384 §11]

433.875 Short title. ORS 433.835 to 433.875 and 433.990 (5) shall be cited as the Oregon Indoor Clean Air Act. [1981 c.384 §12]

PENALTIES

433.990 Penalties. (1) Violation of ORS 433.004 or 433.008, 433.255, 433.260 or 433.715 is a Class A misdemeanor.

(2) Violation of ORS 433.010 is punishable, upon conviction, by imprisonment in the custody of the Department of Corrections for not more than three years.

(3) Violation of ORS 433.710 is punishable, upon conviction, by a fine of not less than \$5 nor more than \$50. If the nuisance is not removed within five days after the first offense, it is considered a second offense and every like neglect of each succeeding five days thereafter is considered an additional offense.

(4) Violation of ORS 433.035 is punishable upon conviction by a fine of not less

than \$10 nor more than \$100, or by imprisonment for not less than 10 days nor more than 30 days, or by both.

(5) Violation of ORS 433.850 (2) or (4) is a violation punishable by a fine or fines totaling not more than \$100 in any 30-day period.

(6) Violation of ORS 433.345 or 433.365 or failure to obey any lawful order of the director issued under ORS 433.350 is a misdemeanor.

(7) Any organizer, as defined in ORS 433.735, violating ORS 433.745 is punishable, upon conviction, by a fine of not more than \$10,000. [Subsection (8) (1969 Replacement Part) enacted as 1957 c.422 §2; subsection (8) derived from 434.990; 1971 c.648 §23; subsection (9) enacted as 1971 c.413 §6; subsection (10) enacted as 1971 c.597 §7; 1973 c.779 §46; 1979 c.492 §6; 1979 c.828 §13; subsection (5) enacted as 1981 c.384 §10; 1987 c.320 §232; 1987 c.600 §16]