

**LEGAL MAPPING GUIDE**

**TO**

**DECRIMINALIZE SEX WORK IN OREGON**

A PARTICIPATORY EDUCATIONAL RESEARCH PROJECT

FUNDED BY

OREGON SAFER WORKERS COALITION

(FORMERLY OREGON SEX WORKERS COMMITTEE)

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*This Legal Mapping Guide is dedicated to the sex workers who have fought relentlessly for equality, safety, and dignity amidst systematic oppression and discrimination. We honor those who have suffered at the hands of an unjust system and we extend gratitude to the allies, supporters, and policymakers fighting alongside us for change.*

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# 1. INTRODUCTION

## (A) BACKGROUND

The idea for this Legal Mapping Guide (“Guide”) was first discussed in 2023 at several sex worker and sex worker ally meetings held by the Oregon Safer Workers Coalition, an Oregon nonprofit corporation (formerly Oregon Sex Workers Committee) (“OSWC”).

At the time, there had been several recent efforts to decriminalize sex work in Oregon, including:

- Sex Workers Rights Act ballot initiative filed by chief petitioner Aaron Boonshoft on January 28, 2022, which was withdrawn on May 5, 2022;<sup>2</sup>
- Sex Workers Rights Act ballot initiative filed by chief petitioner Aaron Boonshoft on November 16, 2021, which was withdrawn on January 21, 2022;<sup>3</sup> and
- Oregon House Bill 3088 (2021) sponsored by Oregon Representative Rob Nosse (D-Portland), which was referred to the House Committee on Judiciary but which failed to receive any hearing or vote.<sup>4</sup>

Although each of these efforts received attention in the press,<sup>5</sup> none of them led to any legislation. However, as is almost always the case, each effort provided new opportunities for Oregon sex workers and allies to explore and discuss what might come next in the overall effort to decriminalize sex work.<sup>6</sup>

Much has been written about *why* decriminalizing sex work makes good policy sense.<sup>7</sup> However, sex workers and allies thought it would be interesting and useful to do something a bit different and write about *how* sex work could be decriminalized in Oregon. The idea was to

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<sup>2</sup> See [https://egov.sos.state.or.us/elec/web\\_irr\\_search.record\\_detail?p\\_reference=20220051..LSCYYSEX](https://egov.sos.state.or.us/elec/web_irr_search.record_detail?p_reference=20220051..LSCYYSEX).

<sup>3</sup> See [https://egov.sos.state.or.us/elec/web\\_irr\\_search.record\\_detail?p\\_reference=20220042..LSCYYSEX](https://egov.sos.state.or.us/elec/web_irr_search.record_detail?p_reference=20220042..LSCYYSEX).

<sup>4</sup> See

<https://olis.oregonlegislature.gov/liz/2021R1/Measures/Overview/HB3088#:~:text=Repeals%20crimes%20of%20prostitution%2C%20commercial,day%20following%20adjournment%20since%20die>.

<sup>5</sup> See: (i) <https://www.wweek.com/news/state/2022/05/05/backers-withdraw-ballot-initiative-to-decriminalize-sex-work/>; (ii) <https://www.wweek.com/news/courts/2021/11/21/advocates-launch-petition-to-decriminalize-sex-work-in-oregon/>; (iii) <https://kval.com/news/local/philanthropist-aims-for-oregon-ballot-measure-decriminalizing-prostitution>; and (iv) <https://katu.com/news/local/proposal-would-decriminalize-prostitution-in-oregon>.

<sup>6</sup> See, for example <https://www.opb.org/article/2023/08/18/oregon-governor-tina-kotek-vetoes-bills-funding-research-on-prostitution-laws/>.

<sup>7</sup> See, for example: (i) *Revolt Prostitution: The Fight for Sex Workers’ Rights* by Smith, M. and Mac, J. (2020); (ii) *Eliminating Discrimination Against Sex Workers and Securing Their Human Rights* by United Nations General Assembly, Human Rights Council, Working Group on Discrimination Against Women and Girls (January 15-19, 2024) (<https://documents.un.org/doc/undoc/gen/g23/241/61/pdf/g2324161.pdf>); (iii) *Sex Workers Organising for Change: Self-Representation, Community Mobilisation, and Working Conditions* by Global Alliance Against Traffic in Women (GAATW) (2018) (<https://gaatw.org/publications/SWorganising/SWorganising-complete-web.pdf>); and (iv) *Amnesty International Policy on State Obligations to Respect, Protect and Fulfil the Human Rights of Sex Workers* by Amnesty International (May 26, 2016) (<https://www.amnesty.org/en/documents/pol30/4062/2016/en/>).

create and publish a “deep dive” legal analysis of the numerous Oregon statutes that could be repealed, amended, and created as part of any future legislation that decriminalized sex work.

Meaningful sex worker participation in the project was essential. This meant that a group of sex workers should be “at the table” throughout the entire process of creating this Guide. In late 2023, a group of project participants was formed, and for the next 15 months there was a series of meetings (most lasting upwards of two to three hours) where a wide range of topics relevant to this Guide were discussed. In between meetings, draft versions of this Guide were prepared, circulated, reviewed, discussed, and revised. This Guide represents the final product of each participant’s efforts.

## (B) PURPOSE

As noted, the purpose of this Guide is to analyze *how* sex work could be decriminalized in Oregon.

There would be many different ways to decriminalize sex work in Oregon, and we hope that this Guide will:

- Provide insight into the various different possibilities;
- Contribute to the meaningful discussions that are taking place (and that will continue to take place) within Oregon’s sex workers’ rights organizations;
- Contribute to the discussions that are taking place (or that should be taking place) within Oregon’s political and legal communities and with the public at large;
- Serve as an initial technical legal roadmap for the drafters of any future legislation;
- Serve as a model for sex workers’ rights projects that are initiated and led by sex workers; and
- Inspire other sex workers’ rights organizations in other States to undertake similar projects.

## (C) MAIN THEMES AND ESSENTIAL CONCEPTS

The main themes of this Guide are as follows:

- Sex work involving consenting adults should not be a crime;
- Sex workers should have the same legal rights and protections as other service providers; and
- It should be unlawful to discriminate against an individual solely because the individual is a current or former sex worker.

The legal analysis in this Guide assumes that any future legislation will include statutory changes that are consistent with the main themes.<sup>8</sup>

In addition to the main themes, this Guide includes several “essential concepts” that the sex worker participants unanimously believed should be included in any future legislation.<sup>9</sup>

## (D) SCOPE

The scope of this Guide will include an analysis of:

- Existing Oregon statutes that criminalize: (i) sex work involving consenting adults; and (ii) various activities relating to sex work involving consenting adults;
- Existing Oregon statutes that allow for the discrimination of individuals because they are current or former sex workers;
- Other existing Oregon statutes that would be applicable to sex workers if sex work was decriminalized in Oregon; and
- Potential new Oregon statutes that could protect the welfare and health of sex workers and all Oregonians.<sup>10</sup>

The following are outside the scope of this Guide:

- Oregon statutes involving:
  - Sex trafficking and other forms of trafficking;
  - Involuntary servitude;
  - Force, intimidation, fraud, or coercion;
  - Physical injury, the threat of physical injury, damage to property, the threat of damage to property, or offensive physical contact;
  - Minors; or
  - Animals; and
- United States federal statutes and laws.<sup>11</sup>

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<sup>8</sup> See Section 4(A) (*Legal Mapping Guide; Criminal Statutes and Conforming Amendments*) and Section 4(C)(4) (*Legal Mapping Guide; Sex Work and Sex Workers Generally; Anti-Discrimination*).

<sup>9</sup> See Section 4(B) (*Legal Mapping Guide; Adult Prostitution Services*) and Section 4(C)(1) (*Legal Mapping Guide; Sex Work and Sex Workers Generally; Locations for Services*).

<sup>10</sup> For existing Oregon statutes, we reviewed the 2024 Oregon Revised Statutes. Readers will need to take into account any amendments to the 2024 Oregon Revised Statutes that occur in 2025 and any and all subsequent years.

<sup>11</sup> The fact that certain statutes and laws are outside the scope of this Guide does not mean that we believe they are not important. They *are* important and we believe that some of them should be analyzed and amended. However, for certain practical purposes, and for now, we have decided to keep this Guide focused on decriminalizing sex work involving consenting adults in Oregon.

## 2. PROJECT PARTICIPANTS

The individuals named below participated in the project from start to finish. Several other current and former sex workers participated in the project intermittently or preferred to not have their names listed here. Each project participant (whether they are named here or not) provided invaluable insight and input, and this Guide would not have been possible if it were not for the efforts of everyone involved.

- **Andrea Metheney** – Andrea is a legislative coordinator for a political advocacy nonprofit organization, where she plays a key role in shaping and advancing policies rooted in equity and social justice. Her work focuses on building relationships with lawmakers, analyzing legislation, and mobilizing grassroots power to influence public policy. Andrea advocates for labor rights across the state of Oregon and is deeply involved in efforts to decriminalize sex work. She serves on several panels and steering committees with organizations dedicated to this cause, ensuring that policy efforts are informed by and accountable to the communities most affected.
- **Bianca Beebe** – Bee is a sex worker, public health researcher, and labor organizer. Her work focuses on an empirical study of law to understand (and change) how regulatory regimes affect sex workers' material conditions. As a citizen of the USA, the Netherlands, and New Zealand, she has worked and organized under criminalized, legalized, and decriminalized models of sex work legislation, which is one of the reasons she is a strong proponent of decriminalization. She was one of the founders of OSWC and is the chair of Fired Up Stilettos in Aotearoa, New Zealand. She frequently lectures at universities and conferences around the world on sex worker rights as public health praxis, with the over-arching message, “Decriminalization is the floor, not the ceiling.”
- **Brandi L.** – With over 15 years of experience in various sectors of the sex industry, including street-based sex work, Brandi is a fierce advocate for sex workers' rights. With her lived experience as a survivor of commercial sexual exploitation (sex trafficking), and with her professional expertise as a consensual sex worker, Brandi passionately supports the decriminalization of sex work to advance the rights, protections, and well-being of both sex trafficking survivors and sex workers. In 2022, Brandi transitioned from the sex industry to pursue higher education, earning a Bachelor of Social Work degree. She now works as a domestic violence advocate at a nonprofit organization in Portland, Oregon, where she continues to support survivors of abuse.
- **Brironni Alex** – Bri (she/her) is a social equity consultant with over a decade of experience in leadership and organizational meeting facilitation. She has worked with multiple community organizations, including Young Nonprofit Professionals Network and The Cupcake Girls, a nonprofit advocating for the safety, dignity, and empowerment of sex workers and trafficking survivors. She also guided OSWC in utilizing an equity-based lens to fine-tune their policies and practices, working toward consistently considering and elevating the most marginalized populations in their work. Bri is honored to have been asked to help move this



group's work forward as their facilitator, and she hopes the information in this Guide will serve as a significant step toward decriminalizing sex work in Oregon.

- **Kate Marquez** – Kate is a former sex worker who was a member of COYOTE, the groundbreaking sex workers' rights organization, from 1979 to 1983. Kate previously served on the board of directors of OSWC. She is a member of the Multnomah County Sex Trafficking Collaborative and is the trustee of the Carol Leigh Trust. She is currently running for her third term on the Klamath Community College Board. Kate is a proud mom and a proud grandma of three.
- **Valentine Vonbettie** – Valentine is a Biracial-Black, Queer Femme sex worker who started her career in 2009. Valentine is a community organizer and Co-President of OSWC. She is an advocate for equity among marginalized groups in the adult industry. Having traveled nationally and internationally for adult work, spoken on panels and podcasts, and been interviewed many times regarding her experience in the adult industry, she is no stranger to the versatility the industry offers. She is proud of her work on this Guide and hopes its impact will lead to the decriminalization of sex work in Oregon.
- **Coya Sunbear**
- **Kaci Hohmann** – Kaci is a business and corporate attorney at Emerge Law Group P.C. Kaci was a member of the drafting team for Oregon Measure 109 (2020), which legalized psilocybin services in Oregon. From that experience, Kaci realized the power of collective action to advance critical social needs. Kaci strives to use her skills as an attorney to disrupt existing legal and punitive structures that undermine human rights to bodily autonomy and dignity of choice. Spending the past few years learning from the talented and intelligent sex workers of Oregon has been one of the deepest privileges of her lifetime.
- **Dave Kopilak** – Dave is a business and corporate attorney at Emerge Law Group P.C. Dave has been practicing law in Oregon since 1994. Prior to co-founding Emerge Law Group P.C. in 2013, he was a shareholder at the Schwabe law firm. Dave was the primary drafter of both Oregon Measure 91 (2014), which legalized the adult use of cannabis in Oregon, and Oregon Measure 109 (2020), which legalized psilocybin services in Oregon. Dave became interested in sex workers' rights after attending OSWC's Human Rights Commission event in Portland, Oregon in 2021, and soon after began attending OSWC's ally meetings. Working with the other project participants on this Guide has been one of the highlights of Dave's professional career.

### 3. TERMINOLOGY

Terminology is extremely important in a legal context. The terms discussed in this Section will be used in a consistent manner throughout this Guide.

#### (A) DEFINITIONS

For purposes of this Guide, the following terms, which are based on current Oregon statutes, will have the following meanings:

- “**Adult**” means a person who is 18 years of age or older.
- “**Minor**” means a person who is younger than 18 years of age.<sup>12</sup>
- “**Prostitute**” means a person who engages in sexual conduct or sexual contact for a fee.<sup>13</sup>
- “**Prostitution**” means the crime that a person commits if the person engages in, or offers or agrees to engage in, sexual conduct or sexual contact in return for a fee;<sup>14</sup> *provided however*, that when the term “prostitution” is used in the context of the term “consensual adult prostitution services” (defined below), the definition of “consensual adult prostitution services” will apply.
- “**Sexual conduct**” means sexual intercourse or oral or anal sexual intercourse.<sup>15</sup>
- “**Sexual contact**” means any touching of the sexual organs or other intimate parts of a person not married to the actor for the purpose of arousing or gratifying the sexual desire of either party.<sup>16</sup>

The decriminalization of sex work in Oregon undoubtedly will result in the creation of new statutory terms. The following terms, which do not currently exist anywhere in the Oregon Revised Statutes but which we created for purposes of this Guide, will have the following meanings:

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<sup>12</sup> See ORS 167.051(2) and ORS 167.060(3). See also ORS 163.315(1) (which provides that a person is considered incapable of consenting to a sexual act if the person is under 18 years of age) and ORS 109.510 (which provides that 18 years of age is the age of majority in Oregon, subject to limited exceptions involving married individuals who are under 18 years of age). Further, in Oregon, minors do not have the legal capacity to enter into contracts. See *Burton v. Anthony*, 46 OR 47 (1905).

<sup>13</sup> See ORS 167.002(2).

<sup>14</sup> See ORS 167.007. See also Section 3(E) (*Terminology; “Prostitution” and “Prostitute”*).

<sup>15</sup> See ORS 167.002(4).

<sup>16</sup> See ORS 167.002(5). The term “sexual contact” is defined differently in ORS 167.060(10). However, for purposes of this Guide, we are using the definition of “sexual contact” that is used within the definition of “prostitute” in ORS 167.002(2). Admittedly, the verbiage used in ORS 167.002(5) is ambiguous (“any touching”) and outdated (“not married to the actor”). However, given the scope of this Guide (and taking into account statutes that are outside the scope of this Guide), we decided to continue to use certain wording in certain cases rather than change wording that would affect statutes and activities that are outside the scope of this Guide. See Section 1(D) (*Introduction; Scope*).

- **“Adult entertainer”** means an individual who personally performs consensual adult entertainment services for a fee.
- **“Adult prostitute”** means an individual who personally provides consensual adult prostitution services for a fee.
- **“Barrier device”** means any barrier device designed to be used during sexual conduct or sexual contact to: (a) reduce the probability of pregnancy; or (b) reduce the probability of passing or contracting an STI. “Barrier device” includes an external condom, an internal condom, and a dental dam. “Barrier device” does not include hormonal birth control, an intrauterine device, sterilization, or any other birth control method that is not designed to be used as a physical barrier during sexual conduct or sexual contact.
- **“Brothel”** means a commercial establishment (other than a residential dwelling) where consensual adult prostitution services are regularly provided in the ordinary course of business.
- **“Client”** means: (a) a person who pays, or offers or agrees to pay, a fee for consensual adult prostitution services or consensual adult entertainment services; or (b) an individual who receives consensual adult prostitution services or consensual adult entertainment services.
- **“Consensual adult entertainment services”**<sup>17</sup> means services performed by an individual for the purpose of arousing or gratifying the sexual desire of one or more other persons, if: (a) the services: (1) do not involve any sexual conduct or sexual contact; or (2) involve sexual conduct or sexual contact, but are legal under Oregon law because they are protected by the Constitution of Oregon<sup>18</sup> or the Constitution of the United States;<sup>19</sup> (b) the services involve only consenting adults; and (c) the services do not involve: (1) any minor; (2) any force, intimidation, fraud, or coercion by any person; or (3) the involuntary servitude of any person.
- **“Consensual adult prostitution services”**<sup>20</sup> means services provided by an individual for one or more other persons, if: (a) the services: (1) involve any sexual conduct or sexual contact; and (2) are not consensual adult entertainment services; (b) the services involve only

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<sup>17</sup> “Consensual adult entertainment services” are services that are currently *legal* under Oregon law. See Section 3(D) (*Terminology; “Sex Work” and “Sex Worker”*).

<sup>18</sup> Article I, Section 8 of the Constitution of Oregon provides, in relevant part: “No law shall be passed restraining the free expression of opinion, or restricting the right to speak, write, or print freely on any subject whatever . . . .” As a result of Article I, Section 8, pornography and other forms of expression by consenting adults are protected under the Constitution of Oregon despite the fact that the performers engage in sexual conduct and sexual contact. See *State v. Henry*, 302 Or. 510 (1987).

<sup>19</sup> Amendment I to the Constitution of the United States provides, in relevant part: “Congress shall make no law . . . abridging the freedom of speech, or the press . . . .” The Oregon Supreme Court has noted that the freedom of expression clause in Article I, Section 8 of the Constitution of Oregon is broader than Amendment 1 to the Constitution. See *State v. Henry*, 302 Or. 510, 515 (1987).

<sup>20</sup> “Consensual adult prostitution services” are services that are currently *illegal* under Oregon law. See Section 3(D) (*Terminology; “Sex Work” and “Sex Worker”*).

consenting adults; and (c) the services do not involve: (1) any minor; (2) any force, intimidation, fraud, or coercion by any person; or (3) the involuntary servitude of any person.

- **“Fee”** means money or other consideration.
- **“Legal entity”** means any corporation, limited liability company, limited partnership, partnership, association, organization, or other legal entity.
- **“Person”** means any individual or legal entity.
- **“Sex work”** or **“sex work involving consenting adults”** means the act of performing or providing sex worker services for a fee.<sup>21</sup>
- **“Sex worker”** mean an adult prostitute or an adult entertainer.<sup>22</sup>
- **“Sex worker-controlled entity”** means any legal entity in which one or more sex workers (whether individually or collectively and whether directly or indirectly) possess the power to direct or cause the direction of the management and policies of the legal entity, whether through the ownership of voting securities, by contract, or otherwise.
- **“Sex worker person”** means: (a) any sex worker; or (b) any sex worker-controlled entity.
- **“Sex worker services”**<sup>23</sup> means consensual adult prostitution services or consensual adult entertainment services.
- **“STI”** means a sexually transmitted infection.
- **“Third-party agreement”** means any agreement, contract, or legally binding arrangement, (whether written or oral): (a) that is between: (1) one or more sex worker persons, on the one hand; and (2) one or more third-party facilitators, on the other hand; and (b) that relates to or involves: (1) the employment or engagement of any sex worker; (2) the provision, performance, promotion, or advertising of any sex worker services; (3) the ownership, financing, management, operations, business, promotion, or advertising of any brothel; or (4) the ownership, financing, management, operations, business, promotion, or advertising of any sex worker-controlled entity.
- **“Third-party facilitator”** means, with respect to any third-party agreement, any person (other than a sex worker person or a client) who is a party to the third-party agreement.

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<sup>21</sup> See Section 3(D) (*Terminology; “Sex Work” and “Sex Worker”*).

<sup>22</sup> See Section 3(D) (*Terminology; “Sex Work” and “Sex Worker”*).

<sup>23</sup> “Sex worker services” include both: (i) services that are currently *legal* under Oregon law; and (ii) services that are currently *illegal* under Oregon law. See Section 3(D) (*Terminology; “Sex Work” and “Sex Worker”*).

## (B) “DECRIMINALIZATION” VS. “LEGALIZATION”

Sex work involving consenting adults has been decriminalized or legalized in many different jurisdictions around the world. No two systems of decriminalization or legalization are exactly alike.

Among those advocating for the rights of sex workers, the terms decriminalization and legalization often are described as follows:

- **“Decriminalization”** – As a starting point, prostitution should not be a crime. Prostitution, in all contexts involving consenting adults, should be legal. Under a decriminalization model: (i) no laws or regulations should make prostitution, in any context involving consenting adults, illegal; and (ii) the only laws or regulations that should exist should be those that prioritize the welfare of sex workers.<sup>24</sup>
- **“Legalization”** – Under a legalization model, legal sex work is heavily regulated by the state, generally in a way that does not prioritize the welfare of sex workers. This creates a two-tiered system in which: (i) only some sex work, in only some contexts, is legal; (ii) the barriers to the limited legal system are significant and unobtainable to the majority of sex workers; and (iii) as a result, the vast majority of sex work remains illegal.<sup>25</sup>

Both of these terms are somewhat general in nature, and neither term has any precise meaning or widespread use under Oregon law.<sup>26</sup>

For purposes of this Guide, we have adopted a slightly different definition of “decriminalization” that is tailored more specifically to Oregon law. When we use the terms “decriminalize” and “decriminalization” with respect to sex work, we contemplate a scenario where sex work, *in any context involving consenting adults*, will no longer be a “crime” under Oregon law.

Under Oregon law, there are two general classifications of illegal acts:

- **“Crime”** – A crime is an offense for which a sentence of imprisonment is authorized. A crime is either a felony or a misdemeanor.<sup>27</sup> Generally: (i) a crime is a felony if a person convicted may be sentenced to a term of imprisonment of more than one year;<sup>28</sup> and (ii) a

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<sup>24</sup> Smith, M. and Mac, J. (2020). *Revolted Prostitutes The Fight for Sex Workers’ Rights*, 175-178, 190-207. Verso.

<sup>25</sup> Smith, M. and Mac, J. (2020). *Revolted Prostitutes The Fight for Sex Workers’ Rights*, 175-178, 190-207. Verso.

<sup>26</sup> The terms “decriminalize” and “decriminalization” do not appear anywhere in the Oregon Revised Statutes. The terms “legalize” and “legalization” appear only in a few instances that are wholly unrelated to crimes or sex work, namely ORS Chapter 223 (involving the legalization of city roads), ORS Chapter 368 (involving the legalization of county roads), and ORS Chapter 320 (involving the taxation of amusement devices).

<sup>27</sup> See ORS 161.505 and 161.515.

<sup>28</sup> See ORS 161.525.

crime is a misdemeanor if a person convicted may be sentenced to a term of imprisonment of not more than one year.<sup>29</sup>

- **“Violation”** – Generally, a violation is an offense that is punishable by a fine, but is not punishable by any term of imprisonment.<sup>30</sup>

In this Guide, we analyze Oregon statutes and laws that would (or could) be impacted by legislation that decriminalizes sex work in Oregon.

As noted, we assume future legislation in which sex work, *in any context involving consenting adults*, will no longer be a “crime” under Oregon law. However, in the spirit of providing a comprehensive analysis under Oregon law, and in addition to analyzing potential new legislation that would prioritize the welfare of sex workers, we also analyze potential new legislation in which *some* sex work involving consenting adults, in *some* contexts, may result in a “violation” under Oregon law that may be punishable by a fine (but not imprisonment).<sup>31</sup>

We also recognize the fact that if sex work involving consenting adults is decriminalized, numerous other laws would apply to the provision of consensual adult prostitution services, including but not limited to laws governing real property, zoning, contracts, torts, advertising, and many others.

### (C) “SEX TRAFFICKING”

The term “sex trafficking” is often conflated with prostitution involving consenting adults. Both legally and factually, however, sex trafficking and prostitution are separate and distinct things. Under Oregon law, the terms “sex trafficking” and “trafficking” are used in a number of criminal and other statutes. However, in all cases in which the terms are defined, the definitions include an element of either:

- Involuntary servitude;
- Force, fraud, or coercion of a person; or
- The involvement of a minor.<sup>32</sup>

In contrast, none of the Oregon statutes that criminalize prostitution and other activities relating to sex work involving consenting adults includes any element of involuntary servitude, force, fraud, or coercion, or the involvement of a minor.<sup>33</sup>

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<sup>29</sup> See ORS 161.545.

<sup>30</sup> See ORS 153.008 and ORS 161.505.

<sup>31</sup> For clarity, we are not endorsing any specific violations or fines (or any violations or fines at all). Rather, as noted, we merely seek to provide a comprehensive analysis of how sex work *could* be decriminalized in Oregon.

<sup>32</sup> See ORS 163.266(1), which provides for the crime of “trafficking in persons” and which requires, among other things, that there be an element of either involuntary servitude, force, fraud, or coercion, or the involvement of a minor. See also ORS 137.221(7)(b) and ORS 418.322(1)(b).

<sup>33</sup> See Section 4(A) (*Legal Mapping Guide; Criminal Statutes and Conforming Amendments*).

## (D) “SEX WORK” AND “SEX WORKER”

As used in this Guide, the term “sex work” includes both: (i) consensual adult prostitution services, which currently are *illegal* under Oregon law; and (ii) consensual adult entertainment services, which currently are *legal* under Oregon law.

Although consensual adult entertainment services are legal, adult entertainers often experience various forms of discrimination, based solely on the fact that they are (or were) adult entertainers, and notwithstanding the fact that they are not doing (and have not done) anything illegal. Unfortunately, such discrimination is permitted under current Oregon law.<sup>34</sup>

For this reason, we believe that any comprehensive legislation addressing sex work and sex workers should provide new and expanded rights to sex workers of all kinds.

With respect to the terms “sex work” and “sex workers” themselves, we recognize that not everyone who performs or provides services that arouse or gratify the sexual desires of others may openly identify themselves as sex workers. We also recognize that some may think that other terms are preferable.

However, we chose to use the terms “sex work” and “sex workers” in this Guide because: (i) they are commonly used; (ii) they are, for the most part, generally understood; and (iii) we believe they adequately and accurately describe the services and the individuals performing and providing the services.<sup>35</sup>

## (E) “PROSTITUTION” AND “PROSTITUTE”

*The Merriam-Webster Dictionary*<sup>36</sup> defines “prostitute” as follows:

- As a verb:
  - To offer for sexual intercourse in exchange for pay; and
  - To devote to corrupt or unworthy purposes.

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<sup>34</sup> See Section 4(C)(4) (*Legal Mapping Guide; Sex Work and Sex Workers Generally; Anti-Discrimination*).

<sup>35</sup> The term “sex work” was coined in 1978 by sex worker and activist Carol Leigh. Smith, M. and Mac, J. (2020). *Revolting Prostitutes The Fight for Sex Workers’ Rights*, 1. Verso. According to authors Molly Smith and Juno Mac, the term “sex workers” refers to people who sell or trade their own sexual labor in exchange for a resource, which is often money but can also be other things. In addition to activities traditionally understood as prostitution, the term “sex work” covers, by design, many different kinds of sexual labor, including stripping, peepshows, pornography, camming, phone sex, and BDSM work. The authors also note that the term “sex worker” is a political term, and therefore not all people in the sex trade identify themselves as sex workers. Finally, the authors note that the sex workers’ rights movement does not consider managers or bosses to be sex workers. *Ibid*. We concur with the latter statement concerning managers and bosses, and for purposes of this Guide, the term “sex worker” only includes the individuals who personally perform the sex worker services.

<sup>36</sup> We refer to the online version of *The Merriam-Webster Dictionary* as of the date of this Guide.

- As a noun:
  - A person who engages in sexual intercourse for pay; and
  - A person (such as a writer or painter) who deliberately debases his or her talents (as for money).

*The Merriam-Webster Dictionary* notes that the words “prostitute” and “prostitution” in their senses relating to sex work are now increasingly rejected as offensive. However, that statement is then followed by various quotations from individuals, most (but not all) of whom agree.<sup>37</sup>

As explained in Section 3(D) (*Terminology; “Sex Work” and “Sex Worker”*), for purposes of this Guide, we found there to be a definitional need to distinguish between: (i) *currently illegal* adult prostitution services; and (ii) *currently legal* adult entertainment services.<sup>38</sup>

However, with respect to what terms would be used in a post-decriminalization legal structure, we had a choice, for purposes of this Guide to either: (i) retain the terms “prostitution” and “prostitute;” or (ii) use new terms.<sup>39</sup>

The project participants for this Guide who are current and former sex workers unanimously agreed to retain the terms “prostitution” and “prostitute” to reappropriate, reclaim, and resignify the meanings of the words.<sup>40</sup>

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<sup>37</sup> One quotation states: “The word ‘prostitute’ itself has very much fallen out of favor. Very few people who are engaged in sex work describe themselves as ‘prostitutes’ outside of their own communities, and in some circles the word ‘prostitute’ is considered a derogatory term.” Another quotation (from a sex worker) states: “Some sex workers find the term ‘prostitute’ offensive because of the intense stigma and baggage that goes with it. I feel that for me it’s important to take back that name in order to fight the stigma.”

<sup>38</sup> See also Section 3(A) (*Terminology; Definitions*).

<sup>39</sup> In a post-decriminalization legal structure, we believe that it will still be legally necessary to distinguish between consensual adult prostitution services and consensual adult entertainment services. See generally Section 4(B) (*Legal Mapping Guide; Adult Prostitution Services*) and Section 4(C) (*Legal Mapping Guide; Sex Work and Sex Workers Generally*).

<sup>40</sup> Notably, there are many recent examples of linguistic reappropriation, reclamation, and resignification in the areas of human sexuality, gender roles, and sexual orientation, including but not limited to words “dyke,” “queer,” and “slut.” See generally: <https://en.wikipedia.org/wiki/Reappropriation>. Using the terms “prostitution” and “prostitute” to describe lawful activities and law-abiding service providers would continue this trend.



## 4. LEGAL MAPPING GUIDE

### (A) CRIMINAL STATUTES AND CONFORMING AMENDMENTS

#### (1) CRIMINAL STATUTES GENERALLY

There are five Oregon statutes that criminalize various activities relating to sex work involving consenting adults. The criminal statutes are:

- ORS 167.007 – Prostitution
- ORS 167.008 – Commercial sexual solicitation
- ORS 167.012 – Promoting prostitution
- ORS 167.062 – Sadomasochistic abuse or sexual conduct in live show
- ORS 167.090 – Publicly displaying nudity or sex for advertising purposes

There is another Oregon statute that *probably* criminalizes *at least one activity* relating to sex work involving consenting adults. That statute is:

- ORS 167.017 – Compelling prostitution

Additionally, there are three statutes that define terms that are used in the above criminal statutes. The definitional statutes are:

- ORS 167.002 – Definitions for ORS 167.002 to 167.027
- ORS 167.027 – Evidence required to show place of prostitution
- ORS 167.060 – Definitions for ORS 167.060 to 167.0957

Appendix A<sup>41</sup> sets forth the complete text of each of the above criminal and definitional statutes.

#### (2) CRIMINAL STATUTES THAT MUST BE CHANGED

If sex work involving consenting adults is to be decriminalized in Oregon, the following statutes would need to be amended or repealed:

- ORS 167.007 (Prostitution)<sup>42</sup>
  - This statute criminalizes sex work involving consenting adults. Specifically, the statute makes it a crime to engage in, or offer or agree to engage in, sexual conduct or sexual contact in return for a fee.

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<sup>41</sup> See Section 7 (*Appendix A – Criminal Statutes Generally*).

<sup>42</sup> As a note, the crime of prostitution in ORS 167.007 does not include an element of force, intimidation, fraud, or coercion.

- The statute would need to be amended so that the provision of consensual adult prostitution services is not a crime, but prostitution involving a minor remains a crime.<sup>43</sup>
- Additionally, the definition of “prostitute” in ORS 167.002(2) would need to be amended so that the term does not include an adult prostitute.
- ORS 167.008 (Commercial sexual solicitation)<sup>44</sup>
  - This statute criminalizes certain activities relating to sex work involving consenting adults. Specifically, the statute makes it a crime to pay, or offer or agree to pay, a fee to engage in sexual conduct or sexual contact.
  - The statute would need to be amended so that commercial sexual solicitation involving adults<sup>45</sup> is not a crime, but commercial sexual solicitation involving a minor remains a crime.<sup>46</sup>
- ORS 167.012 (Promoting prostitution)<sup>47</sup>
  - This statute criminalizes certain activities relating to sex work involving consenting adults. Specifically, the statute makes it a crime to:
    - Own, control, manage, supervise, or maintain a place of prostitution or a prostitution enterprise;
    - Induce or cause a person to engage in prostitution or to remain in a place of prostitution;

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<sup>43</sup> Conceivably, ORS 167.007 could be repealed in its entirety. This perhaps could be possible because ORS Chapter 163 already contains a wide variety of sexual offenses against persons (including minors), which would remain crimes notwithstanding the repeal of ORS 167.007. If ORS 167.007 was repealed, the fact that there was a *commercial* element to any applicable ORS Chapter 163 crime would no longer result in the *additional* crime of prostitution. As a note, the sexual offense crimes in ORS Chapter 163 are set forth in ORS 163.305 through ORS 163.479 and include, but are not limited to, rape, sodomy, unlawful sexual penetration, sexual abuse, online sexual corruption. None of the sexual offense crimes in ORS Chapter 163 criminalizes acts involving consenting adults. Consequently, all of the sexual offense crimes in ORS Chapter 163 are outside the scope of this Guide.

<sup>44</sup> As a note, the crime of commercial sexual solicitation in ORS 167.008 does not include an element of force, intimidation, fraud, or coercion.

<sup>45</sup> We consciously did not say “consenting adults” because ORS 167.008 is broad enough to criminalize the act of merely offering to pay a fee to engage in sexual conduct or sexual contact. Offers can either be accepted or rejected, and so the word “consenting” did not seem appropriate in this context.

<sup>46</sup> Conceivably, ORS 167.008 could be repealed in its entirety. This perhaps could be possible because: (i) ORS 163.413(1) provides for the separate crime of purchasing sex with a minor; (ii) the separate crime of purchasing sex with a minor in ORS 163.413(1) contains the identical elements to ORS 167.008 (except that ORS 163.413(1) involves minors); and (iii) the separate crime of purchasing sex with a minor in ORS 163.413(1) results in a more severe offense than the crime of commercial sexual solicitation in ORS 167.008. As a note, the crime of purchasing sex with a minor under ORS 163.413(1) is either a Class C felony or a Class B felony, depending on whether the person has one or more prior convictions, while the crime of commercial sexual solicitation under ORS 167.008 is a Class A misdemeanor. In short, if commercial sexual solicitation involving adults is not a crime, then ORS 163.413(1) would appear to cover all of the scenarios that would be covered by the amended ORS 167.008, thereby arguably rendering the amended ORS 167.008 redundant and superfluous.

<sup>47</sup> As a note, the crime of promoting prostitution in ORS 167.012 does not include an element of force, intimidation, fraud, or coercion.

- Receive or agree to receive a fee (other than as a prostitute being compensated for personally rendered prostitution services) pursuant to an agreement or understanding that the fee is derived from a prostitution activity; or
  - Engage in any conduct that institutes, aids, or facilitates an act or enterprise of prostitution.<sup>48</sup>
- The statute would need to be amended so that the promotion of consensual adult prostitution services is not a crime, but the promotion of prostitution involving a minor remains a crime.<sup>49</sup>
- As a special note, subsection 1(c) (concerning the words “induce” and “cause”) should be examined in a manner similar to subsection 1(d) of ORS 167.017 (compelling prostitution).<sup>50</sup>
- Additionally, the following definitions should be examined to ensure that the terms are not inconsistent with the amended ORS 167.012:
  - “Place of prostitution” in ORS 167.002(1); and
  - “Prostitution enterprise” in ORS 167.002(3).
- ORS 167.062 (Sadomasochistic abuse or sexual conduct in live show)<sup>51</sup>
  - This statute is broad in that it addresses all of the following:
    - Activities involving any and all persons, including both minors and adults;
    - Activities involving animals; and
    - Activities that may be performed anywhere and may be accessible by anyone, ranging from: (i) activities performed in a club where minors are excluded; to (ii) activities performed in a public place where minors are admitted.
  - The statute would need to be amended so that live shows involving sadomasochistic or sexual conduct are lawful, so long as:
    - The participants are consenting adults; and

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<sup>48</sup> If sex work involving consenting adults is decriminalized in Oregon, there may be new statutes or rules that prohibit or regulate the promotion of such sex work. However, the violation of any such new statute or rule should result only in a violation or in civil liability and should not be a crime. For a more detailed discussion of advertising, see Section 4(B)(6) (*Legal Mapping Guide; Adult Prostitution Services; Advertising*). For a more detailed discussion of ways that sex workers could be protected against third-party promoters who attempt to take an unfair financial advantage over sex workers, see Section 4(C)(2) (*Legal Mapping Guide; Sex Work and Sex Workers Generally; Third-Party Agreements*).

<sup>49</sup> Even if ORS 167.007 (prostitution) and ORS 167.008 (commercial sexual solicitation) could conceivably be repealed in their entireties, ORS 167.012 should not be repealed in its entirety, as: (i) the statute also prohibits the promotion of prostitution involving minors (which is outside the scope of this Guide); and (ii) unlike ORS 167.007 and ORS 167.008, the elements of ORS 167.012 do not have any criminal counterparts involving minors in ORS Chapter 163.

<sup>50</sup> See Section 4(A)(3) (*Legal Mapping Guide; Criminal Statutes and Conforming Amendments; Other Criminal Statutes That Should Be Examined*).

<sup>51</sup> As a note, none of the crimes in ORS 167.062 includes an element of force, intimidation, fraud, or coercion.

- Minors are excluded from, and are otherwise unable to view, the shows.<sup>52</sup>

### (3) OTHER CRIMINAL STATUTES THAT SHOULD BE EXAMINED

If sex work involving consenting adults is to be decriminalized in Oregon, the following statutes should be examined to determine whether: (i) they should be amended; or (ii) they should remain unchanged.

- ORS 167.017 (Compelling prostitution)
  - Most of this statute prohibits various activities involving minors, force, and intimidation (all of which are outside the scope of this Guide).
  - However, there is *potentially problematic* language in subsection 1(d) that *probably* is broad enough to criminalize at least one activity relating to sex work involving consenting adults.
  - Specifically, subsection 1(d) makes it a crime merely to “induce” or “cause” a spouse, child, or stepchild to engage in prostitution. This verbiage may be too broad to retain because:
    - “Inducing” or “causing” a person to do something does not necessarily involve force, intimidation, fraud, or coercion;<sup>53</sup> and
    - A “spouse, child, or stepchild” does not necessarily involve a minor.
  - There would be several options with respect to subsection 1(d):
    - Amendment – Subsection 1(d) could be amended so that it only applies in cases involving: (i) minors; (ii) force, intimidation, fraud, or coercion; (iii) fear; or (iv) duress, including economic duress.
    - Repeal – Subsection 1(d) could be repealed in its entirety, on the theory that subsections 1(a-c) already cover all of the scenarios that would be covered by the amended subsection 1(d), thereby rendering the amended subsection 1(d) redundant and superfluous.<sup>54</sup>
    - Remain unchanged – Subsection 1(d) could remain unchanged. However, the potential risk would be that an adult could be committing a crime merely by making statements to another adult, even if the statements did not involve any force, intimidation, fraud, coercion, fear, or duress.<sup>55</sup>

<sup>52</sup> The statute should not be repealed in its entirety, as certain provisions in the statute prohibit activities involving minors and animals (both of which are outside the scope of this Guide).

<sup>53</sup> Compare ORS 163.275, which provides that a person commits the crime of coercion when the person compels or induces another person to engage or abstain from engaging in conduct by means of instilling “fear” into the other person. See also *State v. Pederson*, 242 Or. App. 305, 307-313 (2011). Notably, subsection (1)(d) of ORS 167.017 does not contain any element of force, intimidation, fear, or even duress, and simply uses the terms “induce” and “cause” by themselves.

<sup>54</sup> As a note, we did not find any Oregon case interpreting subsection 1(d) of ORS 167.017.

<sup>55</sup> *The Merriam-Webster Dictionary* defines “induce” as follows: (i) to move by persuasion or influence; and (ii) to call forth or bring about by influence of stimulation. Logically, if providing consensual adult prostitution services is no longer a crime, it may be difficult to explain why it should be crime for one adult to merely persuade or

- For clarity, all of the other parts of ORS 167.017 (other than subsection 1(d)) should, in all cases, remain unchanged.
- ORS 167.090 (Publicly displaying nudity or sex for advertising purposes)<sup>56</sup>
  - This statute criminalizes certain activities relating to sex work involving consenting adults. Specifically, the statute makes it a crime for any person to, for advertising purposes:
    - Display publicly<sup>57</sup> any visual representation or image of a person or portion of the human body that depicts nudity, sadomasochistic abuse, sexual conduct, or sexual excitement, or any written or printed matter bearing such representation or a verbal description or narrative account of such items or activities, or any obscenities; or
    - Permit any such display on any premises owned, rented, or operated by the person.
  - Subsection 1(a) could remain unchanged.
  - Subsection 1(b) could:
    - Be amended to provide an exception for such displays: (i) within a brothel, so long as the displays are not displayed publicly; or (ii) within an adult prostitute’s residence, so long as the displays are not displayed publicly; or
    - Remain unchanged.<sup>58</sup>

#### (4) CONFORMING AMENDMENTS

There are other Oregon statutes that are not criminal statutes, but that expressly cross-reference one or more of the criminal statutes and crimes listed in Section 4(A)(1) (*Legal Mapping Guide; Criminal Statutes and Conforming Amendments; Criminal Statutes Generally*). If sex work involving consenting adults is to be decriminalized in Oregon, then at a minimum, these other Oregon statutes should be examined to ensure that

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influence another adult into becoming a prostitute, if such persuasion or influence does not involve any force, intimidation, fraud, coercion, fear, or duress.

<sup>56</sup> As a note, the crime of publicly displaying nudity or sex for advertising purposes in ORS 167.090 does not include an element of force, intimidation, fraud, or coercion.

<sup>57</sup> The term “display publicly” means the exposing, placing, posting, exhibiting, or in any fashion displaying in any location, whether public or private, an item in such a manner that it may be readily seen and its content or character distinguished by normal unaided vision viewing it from a public thoroughfare, depot or vehicle. ORS 167.060(2). The term “public thoroughfare, depot or vehicle” means any street, highway, park, depot or transportation platform, or other place, whether indoors or out, or any vehicle for public transportation, owned or operated by government, either directly or through a public corporation or authority, or owned or operated by any agency of public transportation that is designed for the use, enjoyment or transportation of the general public. ORS 167.060(8).

<sup>58</sup> If sex work involving consenting adults is decriminalized in Oregon, there may be new statutes or rules that prohibit or regulate the public display of nudity or sex for advertising purposes. However, the violation of any such new statute or rule should result only in a violation or in civil liability and should not be a crime. For a more detailed discussion of advertising, see Section 4(B)(6) (*Legal Mapping Guide; Adult Prostitution Services; Advertising*).

they conform to (and remain logically consistent with) the amended or repealed criminal statutes.

These other Oregon statutes are:

- ORS 90.396 – Termination of rental agreement 24 hours after notice
- ORS 105.555 – Places declared nuisances
- ORS 131.602 – Criminal forfeiture; prohibited conduct for purposes of instrumentalities of crime
- ORS 133.724 – Order for interception of communications
- ORS 133.726 – Interception of oral communication without order
- ORS 136.437 – Use of evidence in prosecution of prostitution
- ORS 180.600 – Investigation of organized crime; definitions
- ORS 342.143 – Licensing of teachers and other school personnel

Appendix B<sup>59</sup> sets forth a brief explanation of each of the above statutes and the changes that should be made to each statute (or at least considered) based on the main themes of this Guide.<sup>60</sup>

## (B) ADULT PROSTITUTION SERVICES

### (1) BROTHELS

#### **ESSENTIAL CONCEPT #1 – Brothels should be permitted.**<sup>61</sup>

This concept and the provisions governing brothels should be stated expressly in one or more new statutes (the “Brothel Statutes”).

There would be a substantial number of issues to consider regarding brothels, including but not limited to the following:

- Land use and zoning, including:
  - Whether a brothel should be prohibited from being located within a specified number of feet from a school;<sup>62</sup>

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<sup>59</sup> See Section 8 (*Appendix B – Conforming Amendments*).

<sup>60</sup> See Section 1(C) (*Introduction; Main Themes and Essential Concepts*).

<sup>61</sup> As a reminder, a brothel is a commercial establishment (other than a residential dwelling) where consensual adult prostitution services are regularly provided in the ordinary course of business. See Section 3(A) (*Terminology; Definitions*). See also Section 4(C)(1) (*Legal Mapping Guide; Sex Work and Sex Workers Generally; Locations for Services*).

<sup>62</sup> For example, see ORS 475C.097(2)(d), ORS 475C.101, and ORS 475C.105 (proximity of marijuana retailer to prekindergarten, kindergarten or school) and ORS 475A.305(2)(e), ORS 475A.310, and ORS 475A.315 (proximity of psilocybin service center to school).

- Whether a brothel should be prohibited from being located within a specified number of feet from another brothel;<sup>63</sup>
- Whether a local jurisdiction may adopt ordinances that impose reasonable regulations on the operation of a brothel;<sup>64</sup>
- Whether the term “reasonable regulations” should be defined and whether specific examples of regulations that would (or would not) be reasonable should be included;<sup>65</sup>
- Whether a brothel should be required to obtain a land use compatibility statement from the local jurisdiction that authorizes the land use;<sup>66</sup> and
- Whether local jurisdictions should have the power to adopt specific land use designations for brothels or whether they must include brothels in an already-existing designation;<sup>67</sup>
- Rules and regulations, including:
  - Whether brothels should be required to obtain a license from a state agency;<sup>68</sup>
  - Whether there should be any restrictions on the ownership of brothels;<sup>69</sup>

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<sup>63</sup> For example, see ORS 475C.833(3)(e) (proximity of medical marijuana dispensary to another medical marijuana dispensary).

<sup>64</sup> For example, see ORS 471.164 (authority of cities and counties over establishments that offer entertainment or serve alcoholic beverages), ORS 475C.449 (local time, place, and manner regulations for marijuana establishments) and ORS 475A.530 (local time, place, and manner regulations for psilocybin establishments).

<sup>65</sup> See ORS 475C.449 (local time, place, and manner regulations for marijuana establishments) and ORS 475A.530 (local time, place, and manner regulations for psilocybin establishments).

<sup>66</sup> See ORS 475C.053 (land use compatibility statement for marijuana establishments) and ORS 475A.270 (land use compatibility statement for psilocybin establishments).

<sup>67</sup> For example, see ORS 475C.489 (marijuana as crop; exceptions to permitted uses) and 475A.570 (psilocybin-producing fungi as crop; exceptions to permitted uses). See also ORS 475C.085(2)(c), ORS 475C.093(2)(c), ORS 475C.097(2)(c), and ORS 475A.305(2)(d).

<sup>68</sup> For a more detailed discussion of state agencies, see Section 4(B)(7) (*Legal Mapping Guide; Adult Prostitution Services; State Agency*).

<sup>69</sup> The Oregon Psilocybin Services Act (ORS Chapter 475A) provided that, for a limited period of time, a majority of the ownership interests of psilocybin product manufacturers and psilocybin service center operators had to be owned by one or more Oregon residents. See ORS 475A.290(2)(c) and ORS 475A.305(2)(c). Many states have (or had) similar residency requirements for the ownership of cannabis businesses. However, many of those residency requirements have been challenged as unconstitutional. See: (i) <https://journal.cannabislawreport.com/troutman-pepper-residency-rules-in-cannabis-industry-may-not-withstand-constitutional-scrutiny/>; and (ii) <https://journal.cannabislawreport.com/troutman-pepper-cannabis-residency-rules-toppling-first-circuit-is-the-first-domino-to-fall/>. Analogously, the California legislature enacted a law in 2018 that required all publicly held corporations whose principal executive offices were located in California to have a specified number of women on their board of directors. However, that law was found to be unconstitutional. See <https://www.sos.ca.gov/business-programs/women-boards>. Restrictions on the ownership of brothels may be desirable. However, the drafters of any future legislation should carefully consider whether any such restrictions would be subject to constitutional challenges. Basing ownership restrictions on criteria that could invoke constitutional principles (such as interstate commerce or gender) probably should be avoided. If ownership restrictions are desirable, consideration should be given as to whether such restrictions could be based on an individual’s status as an adult prostitute who is employed by or otherwise performs services at the brothel.

- What should the rules be concerning:
  - Security and panic buttons;
  - Barrier devices;
  - Lavatories;
  - Privacy;
  - Ventilation;
  - Storage and cleaning of linens;
  - Storage and cleaning of toys, gear, and wear;
  - Storage and prevention of contamination of topicals and lubricants;
  - Sanitary and hygienic conditions generally;
  - Restricted areas of the premises;
  - Food items and drinks;
  - Alcohol, marijuana, and other intoxicants;
  - Firearms and other weapons; and
  - Minors;
- Advertising;<sup>70</sup> and
- The bill of rights for independent contractors and employees.<sup>71</sup>

(2) RIGHT TO REFUSE TO PROVIDE SERVICES

**ESSENTIAL CONCEPT #2 – An adult prostitute should have: (i) the right to refuse to provide consensual adult prostitution services to a potential client for any or no reason; and (ii) the right to cease providing consensual adult prostitution services to a client at any time for any or no reason.**

This concept should be stated expressly in a new statute (the “Right to Refuse Statute”).

To ensure that the Right to Refuse Statute is consistent with other applicable Oregon laws:

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<sup>70</sup> For a more detailed discussion of advertising, see Section 4(B)(6) (*Legal Mapping Guide; Adult Prostitution Services; Advertising*).

<sup>71</sup> For a more detailed discussion of rights for sex workers who are classified as independent contractors or employees, see Section 4(C)(3) (*Legal Mapping Guide; Sex Work and Sex Workers Generally; Bill of Rights for Independent Contractors and Employees*).



- Oregon’s various anti-discrimination statutes concerning public accommodations<sup>72</sup> should be amended to the extent necessary to provide an exception for the Right to Refuse Statute;<sup>73</sup>
- The Right to Refuse Statute should not amend, or be inconsistent with, Oregon’s “bias crime” statutes;<sup>74</sup>
- Oregon’s “bias incident” statute probably should be amended to provide that an adult prostitute’s refusal to provide services under the Right to Refuse Statute does not, by itself, constitute a bias incident;<sup>75</sup>
- All other Oregon statutes should be reviewed to determine whether there would be any other inconsistencies with the Right to Refuse Statute that would require any additional amendments to any other statutes; and
- The Right to Refuse Statute should provide that it is subject to the Constitution of Oregon and the Constitution of the United States.

An issue likely to arise as a result of the Right to Refuse Statute would involve the monetary arrangement between the adult prostitute and the client. Specifically, what should be the legal result in situations where a client prepays for consensual adult prostitution services and the adult prostitute subsequently refuses or ceases to provide the services. This scenario probably should be addressed in detail. There would be several different ways to do so, one of which could be the following:

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<sup>72</sup> See ORS 659A.003, ORS 659A.006, ORS 659A.403, ORS 659A.406, ORS 659A.409, ORS 659A.805, ORS 659A.815, and ORS 659A.885. For a more detailed discussion of Oregon’s anti-discrimination statutes, see Section 4(C)(4)(a) (*Legal Mapping Guide; Sex Work and Sex Workers Generally; Anti-Discrimination; Protected Classes*). One notable anti-discrimination case concerning public accommodations in Oregon is the “Sweet Cakes” case. See *Klein v. Oregon Bureau of Labor and Industries*, 317 Or App 138 (2022). In that case, the Oregon Court of Appeals held that a baker violated ORS 659A.403 (Discrimination in place of public accommodation prohibited) by refusing to provide a couple with a wedding cake based on the couple’s sexual orientation. See also <https://www.opb.org/article/2022/01/26/oregon-appeals-court-sweet-cakes-bakery-same-sex-discrimination-ruling/>.

<sup>73</sup> Various anti-discrimination statutes in Oregon include exceptions in certain cases. See, for example ORS 659A.006(3-5) (exceptions of religious groups), ORS 659A.409 (age exceptions), ORS 659A.421 (exceptions with respect to housing for older persons, and ORS 659A.421(8) (exceptions when renting space within a single-family residence).

<sup>74</sup> “Bias crime” is the legal term that Oregon uses for what is commonly known as a hate crime. See ORS 166.155 and ORS 166.165. See also <https://www.doj.state.or.us/oregon-department-of-justice/civil-rights/bias-and-hate/whats-the-difference-between-a-hate-or-bias-crime-and-a-bias-incident/>. Oregon’s bias crime statutes prohibit various acts that involve physical injury, the threat of physical injury, damage to property, the threat of damage to property, and offensive physical contact (all of which are outside the scope of this Guide).

<sup>75</sup> See ORS 147.380. A “bias incident” means person’s hostile expression of animus toward another person, relating to the other person’s perceived race, color, religion, gender identity, sexual orientation, disability or national origin, of which criminal investigation or prosecution is impossible or inappropriate. ORS 147.380(1)(b). While a bias incident is not a crime under Oregon law, law enforcement agencies may respond to a reported bias incident and, if they do so, are required to refer the victim of the bias incident to local victims’ services or a hate crimes hotline. See ORS 147.380(2). See also <https://www.doj.state.or.us/wp-content/uploads/2023/03/Free-Speech-and-Hate-Speech.pdf>.

- If the adult prostitute (or the brothel) and the client entered into a written contract that addressed the situation, then the contract would govern.
- If the adult prostitute (or the brothel) had a written policy addressing the situation and the policy was disclosed to the client before the client paid for the services, then the policy would govern.
- In the absence of any such written contract or written policy,<sup>76</sup> the legal result could be something similar to the following:
  - If the adult prostitute refuses or ceases to provide services to the client “*for cause*,”<sup>77</sup> then the adult prostitute would be entitled to retain all amounts paid by the client.
  - If the adult prostitute refuses or ceases to provide services to the client “*without cause*,” then the client would be entitled to a fair and reasonable refund.
- In any case, if there was any dispute concerning a refund:
  - The adult prostitute (or brothel) would have no legal obligation to provide any refund to the client at the time the refusal or cessation occurred; and
  - The client would be entitled to recover any fair and reasonable refund only in accordance with a specified legal process.<sup>78</sup>

### (3) BARRIER DEVICES

**ESSENTIAL CONCEPT #3 – The following should govern the use of barrier devices during the provision of consensual adult prostitution services:**

- **Adult prostitutes should have the right to require that a barrier device be used.**
- **It should be a violation for a client:**
  - **To request or demand that a barrier device not be used; or**
  - **To engage in sexual conduct or sexual contact with an adult prostitute without the use of a barrier device, even if the adult prostitute agrees that a barrier device will not be used.**<sup>79</sup>

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<sup>76</sup> Many Oregon statutes set forth “default” contract terms that govern in the absence of a written contract between the parties. For example, see ORS Chapter 63 (Limited Liability Companies), ORS Chapter 67 (Partnerships; Limited Liability Partnerships), ORS Chapter 72 (Sales), and ORS Chapter 91 (Tenancy).

<sup>77</sup> Several Oregon statutes use the term “for cause” in various contexts. For example, see ORS Chapter 60 (Private Corporations) and ORS Chapter 90 (Residential Landlord and Tenant),

<sup>78</sup> There likely would be many details to address, including how and when disputes would be resolved concerning (i) whether a refusal or cessation was for cause or without cause; (ii) when the refusal or cessation occurred; and (iii) what would be a fair and reasonable refund.

<sup>79</sup> This concept is based on the premise that barrier devices should be used in all cases. However, the concept also recognizes that adult prostitutes (especially those who may not provide consensual adult prostitution services at a brothel) often will not have the bargaining power or financial luxury to refuse a client’s request or demand that a barrier device not be used. As a reminder, a violation generally is an offense that is punishable by a fine, but is not punishable by any term of imprisonment. See Section 3(B) (*Terminology; “Decriminalization” vs. “Legalization”*). Finally, creating a scenario where an adult prostitute is permitted to engage in an activity that is legal for the adult prostitute but a violation for the client would, itself, not be inconsistent with Oregon’s criminal conspiracy statute, which applies only to felonies and misdemeanors (and not violations). See ORS 161.450.

This concept and these specific provisions should be stated expressly in a new statute (the “Barrier Device Statute”).

An issue likely to arise as a result of the Barrier Device Statute would involve advertising.<sup>80</sup> Specifically, should an adult prostitute be permitted to advertise that the adult prostitute is willing to agree that a barrier device will not be used. Similarly, should a brothel be permitted to advertise that one or more of the adult prostitutes who work at the brothel are willing to agree that a barrier device will not be used. This scenario probably should be addressed directly. There would be several alternatives, including:

- Adult prostitutes and brothels are not permitted to initiate any discussion about barrier device-free consensual adult prostitution services (“Barrier Device-Free Services”), and can only offer Barrier Device-Free Services if the potential client initiated the discussion by specifically inquiring about Barrier Device-Free Services;
- Adult prostitutes and brothels are not permitted to *publicly* advertise Barrier Device-Free Services, but can offer Barrier Device-Free Services to potential clients in *private* communications; or
- Adult prostitutes and brothels are permitted to publicly advertise Barrier Device-Free Services, subject only to other applicable advertising laws and restrictions.<sup>81</sup>

If there are any restrictions on advertising Barrier Device-Free Services, the following additional issues should be considered:

- Whether there should be any exceptions for regular or repeat clients; and
- Whether it should be a violation<sup>82</sup> for the adult prostitute or brothel to violate such restrictions.

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<sup>80</sup> For a more detailed discussion of advertising, see Section 4(B)(6) (*Legal Mapping Guide; Adult Prostitution Services; Advertising*).

<sup>81</sup> For a more detailed discussion of advertising, see Section 4(B)(6) (*Legal Mapping Guide; Adult Prostitution Services; Advertising*).

<sup>82</sup> As a reminder, a violation generally is an offense that is punishable by a fine, but is not punishable by any term of imprisonment. See Section 3(B) (*Terminology; “Decriminalization” vs. “Legalization”*).

(4) NO MANDATORY STI TESTING

**ESSENTIAL CONCEPT #4 – Adult prostitutes should not be required to be tested for STIs.<sup>83</sup>**

This concept should be stated expressly in a new statute (the “No Mandatory STI Testing Statute”).

The No Mandatory STI Testing Statute should apply to the State of Oregon, all local jurisdictions, and all brothels.

An issue likely to arise as a result of the No Mandatory STI Testing Statute would involve advertising.<sup>84</sup> Specifically, what should be the legal result if: (i) an adult prostitute voluntarily gets tested for STIs; (ii) the test results are negative; and (iii) the adult prostitute wants to advertise these facts to potential clients. This scenario probably should be addressed in detail. There would be several different ways to do so, all of which should consider:

- Existing Oregon statutes that govern advertising and that prohibit deceptive, false, or misleading advertising;<sup>85</sup>
- Specifying the details of any legal “safe harbor”<sup>86</sup> for adult prostitutes that want to advertise that they have tested negative for STIs;

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<sup>83</sup> This concept is based on the premise that requiring STI testing may actually result in *more* STI transmissions than would otherwise be the case. Although research on the subject is limited, there is some evidence that the mandatory STI testing of adult prostitutes increases the transmission of STIs. See, for example: (i) *Testing Commercial Sex Workers for Sexually Transmitted Infections in Victoria, Australia: An Evaluation of the Impact of Reducing the Frequency of Testing* by Eric P. F. Chow (July 21, 2014) (<https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0103081>); and (ii) *Mandatory Testing for HIV and Sexually Transmissible Infections among Sex Workers in Australia: A Barrier to HIV and STI Prevention* by Elena Jeffreys, Janelle Fawkes, et al. (2012) (<https://www.scirp.org/journal/paperinformation?paperid=22595>). While this may seem counterintuitive, there could be several reasons for this, including: (i) negative STI test results could induce a false sense of security in adult prostitutes and clients, which could make them more likely to not use a barrier device; (ii) negative STI test results could make clients more likely to pressure adult prostitutes into not using a barrier device; and (iii) obviously, negative STI test results for adult prostitutes do not protect adult prostitutes from STIs that clients may have. (We recognize that mandatory STI testing is common in the pornography industry. However, pornography involves a “closed loop” of adult entertainers, which is a substantially different scenario.) In short, in the context of consensual adult prostitution services, we believe that everyone should *assume* that everyone else has an STI. On a macro level, this would make it more likely for everyone involved to use barrier devices.

<sup>84</sup> For a more detailed discussion of advertising, see Section 4(B)(6) (*Legal Mapping Guide; Adult Prostitution Services; Advertising*).

<sup>85</sup> See generally ORS 646.605 to ORS 646.656 (Unlawful Trade Practices).

<sup>86</sup> In a legal context, the term “safe harbor” means a provision in a statute that protects persons from criminal prosecution, fines, or other penalties, provided certain specific conditions are satisfied. Safe harbors usually are specific scenarios that are found within the context of a more general standard. For example, in the context of a statute that prohibits deceptive, false, or misleading advertising, there could be a safe harbor provision that states that a person would *not* be engaging in deceptive, false, or misleading advertising if the person: (i) merely says “XXX;” and (ii) does not say “YYY.”

- Whether there should be one or more exact phrases that should be used by the adult prostitute and, if so, specifying exactly what the phrases mean;
- Whether it should be a violation<sup>87</sup> for the adult prostitute to engage in deceptive, false, or misleading advertising concerning STIs;
- Whether deceptive, false, or misleading advertising concerning STIs should be subject to, or exempt from, certain existing Oregon statutes that provide for civil remedies by the State of Oregon and private parties against persons who engage in deceptive, false, or misleading advertising;<sup>88</sup> and
- Whether any restrictions (or outright prohibitions) would be constitutional under Article I, Section 8 of the Constitution of Oregon.<sup>89</sup>

(5) IMMUNITY CONCERNING STIs

**ESSENTIAL CONCEPT #5 – Adult prostitutes should be immune from any civil or criminal liability: (i) for exposing a client to an STI; and (ii) for transmitting an STI to a client, subject to one possible exception.**

This concept should be stated expressly in a new statute (the “STI Immunity Statute”).

To ensure that the STI Immunity Statute is consistent with other applicable Oregon laws, the following should be considered:

- Oregon has prosecuted individuals for exposing others to a communicable disease under general criminal laws, including attempted murder, assault, and reckless endangerment;<sup>90</sup>
- ORS 433.010, which makes it a crime for a person to willfully cause the spread of any communicable disease within Oregon;<sup>91</sup> and
- ORS 433.035, which: (i) permits certain public health officials to require the testing or medical examination of a person for certain communicable diseases in certain

<sup>87</sup> As a reminder, a violation generally is an offense that is punishable by a fine, but is not punishable by any term of imprisonment. See Section 3(B) (*Terminology; “Decriminalization” vs. “Legalization”*).

<sup>88</sup> For example, see ORS 646.618 (investigative demand by prosecuting attorney), ORS 646.632 (suit brought by prosecuting attorney), and ORS 646.638 (civil action by private party).

<sup>89</sup> Article I, Section 8 of the Constitution of Oregon provides, in relevant part: “No law shall be passed restraining the free expression of opinion, or restricting the right to speak, write, or print freely on any subject whatever . . . .” For a recent case where advertising restrictions were found to violate Article I, Section 8 of the Constitution of Oregon, see *Bates v. Oregon Health Authority*, 335 Or App 464 (2024).

<sup>90</sup> For a discussion of Oregon laws and policies involving the spread of HIV, see CHLP’s *Sourcebook on State and Federal HIV Criminal Law and Practice* at <https://www.hivlawandpolicy.org/state-profiles/oregon>. See also <https://www.hivlawandpolicy.org/sites/default/files/Oregon%20-%20Excerpt%20from%20CHLP%27s%20Sourcebook%20on%20HIV%20Criminalization%20in%20the%20U.S.%20.pdf>.

<sup>91</sup> A violation of ORS 433.010 is a Class C felony. See ORS 433.990(2). For purposes of ORS 433.010, a “communicable disease” is a disease or condition, the infectious agent of which may be transmitted by any means from one person or from an animal to another person, that may result in illness, death or severe disability. See ORS 433.001(1) and ORS 431A.005(2).

circumstances; and (ii) makes it a crime for a person to refuse to submit to any such required testing or medical examination.<sup>92</sup>

Ultimately, the STI Immunity Statute would have to be reconciled with ORS 433.010.<sup>93</sup>

At a minimum, the STI Immunity Statute should provide for the following: (i) if a barrier device *is used* during the provision of consensual adult prostitution services, then the adult prostitute should be absolutely immune from any civil or criminal liability arising from the exposure or transmission of any STI during the provision of the services; and (ii) if a barrier device *is not used* during the provision of consensual adult prostitution services, then that fact, by itself, is insufficient to demonstrate that the adult prostitute intentionally or willfully exposed the client to any STI or transmitted any STI to the client during the provision of the services.

Another option would be to provide an unqualified immunity exemption from any civil or criminal liability arising from the exposure or transmission of any STI during the provision of consensual adult prostitution services, regardless of whether a barrier device is used.

#### (6) ADVERTISING

There are various Oregon statutes that generally prohibit deceptive, false, or misleading advertising.<sup>94</sup>

There are various other Oregon statutes that more specifically regulate (or that authorize an applicable state agency to regulate) the advertising of certain adult products and services, including but not limited to alcoholic beverages,<sup>95</sup> marijuana items,<sup>96</sup> psilocybin products,<sup>97</sup> and psilocybin services.<sup>98</sup>

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<sup>92</sup> See ORS 433.035(1)(a). A violation of ORS 433.035 is a Class C misdemeanor. See ORS 433.990(3). ORS 433.035 applies only to: (i) a communicable disease identified by rule of the Oregon Health Authority to be a reportable disease; (ii) a new or uncommon disease of potential public health significance; or (iii) a condition that is the basis of a state of public health emergency declared by the Governor as authorized by ORS 433.441. See ORS 433.035(1)(a). See also ORS 433.035(4) (which requires public health officials to make every effort to obtain voluntary compliance from a person) and ORS 433.035(5) (which any compelled testing or medical examination must be the least restrictive alternative available to accomplish the results necessary to minimize the transmission of the disease to others).

<sup>93</sup> We recognize that STI criminalization statutes are controversial, and we note that some research indicates that such statutes are counterproductive to reducing the transmission of STIs. We believe that ORS 433.010 and ORS 433.035 should be analyzed and perhaps amended. However, a full analysis of ORS 433.010 and ORS 433.035 (which apply to all communicable diseases and not only STIs) is outside the scope of this Guide.

<sup>94</sup> See generally ORS 646.605 to ORS 646.656 (Unlawful Trade Practices).

<sup>95</sup> See ORS 471.730(7), ORS 471.750, and OAR 845-007-0005 through OAR 845-007-0035.

<sup>96</sup> See ORS 475C.017(2)(e) and OAR 845-025-8000 through OAR 845-025-8060.

<sup>97</sup> See ORS 475A.235(2)(e) and OAR 333-333-6100 through OAR 333-333-6120.

<sup>98</sup> See ORS 475A.235(2)(f) and OAR 333-333-6100 through OAR 333-333-6120.

If prostitution is decriminalized in Oregon, providing for certain industry-specific advertising restrictions should be considered. Examples of such restrictions could include:

- A general prohibition on statements that are deceptive, false, or misleading;
- In certain instances, specific examples of statements that would be (or would not be) deceptive, false, or misleading;<sup>99</sup>
- A prohibition against content that could reasonably be considered to target minors;
- In certain instances, specific examples of content that would be (or would not be) considered the targeting of minors;
- Restrictions on television, radio, billboard, print media, or internet advertising unless there is reasonable evidence that no more than a certain specified percentage of the audience is reasonably expected to be minors;
- In certain instances, specific examples of content that would (or would not) constitute reasonable evidence; and
- If an adult prostitute or a brothel has a website, that the website have: (i) an age-restricted notice; and (ii) an age verification option where the user must assert that the user is “18 or older” or “under 18.”

If there are any industry-specific advertising restrictions, the following additional issues should be considered:

- Whether it should be a violation<sup>100</sup> for the adult prostitute or brothel to violate such restrictions;
- Whether deceptive, false, or misleading advertising concerning STIs should be subject to, or exempt from, certain existing Oregon statutes that provide for civil remedies by the State of Oregon and private parties against persons who engage in deceptive, false, or misleading advertising;<sup>101</sup> and
- Whether the restrictions are constitutional under Article I, Section 8 of the Constitution of Oregon.<sup>102</sup>

#### (7) STATE AGENCY

In Oregon, an “agency” is any state board, commission, department, or division thereof, or officer authorized by law to make rules or to issue orders, except those in the

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<sup>99</sup> ORS 646.605 to ORS 646.656 (Unlawful Trade Practices) contain many examples of specific statements and actions that are, or are not, considered unlawful trade practices.

<sup>100</sup> As a reminder, a violation generally is an offense that is punishable by a fine, but is not punishable by any term of imprisonment. See Section 3(B) (*Terminology; “Decriminalization” vs. “Legalization”*).

<sup>101</sup> For example, see ORS 646.618 (investigative demand by prosecuting attorney), ORS 646.632 (suit brought by prosecuting attorney), and ORS 646.638 (civil action by private party).

<sup>102</sup> Article I, Section 8 of the Constitution of Oregon provides, in relevant part: “No law shall be passed restraining the free expression of opinion, or restricting the right to speak, write, or print freely on any subject whatever . . . .” For a recent case where advertising restrictions were found to violate Article I, Section 8 of the Constitution of Oregon, see *Bates v. Oregon Health Authority*, 335 Or App 464 (2024).

legislative and judicial branches.<sup>103</sup> An agency must be created by an authorizing statute, and an agency may exercise only the powers that are granted to it by the authorizing statute.<sup>104</sup> The functions of an agency are often delegated to a board or commission of the agency and are generally divided into three main categories:

- Rulemaking – This function is legislative in nature and includes the power to make rules that “fill in the gaps” of the authorizing statute. Delegating rulemaking authority to an agency is often desirable when the authorizing statute is too broad or complex for the legislature to consider all of the details or when the subject matter requires technical or experiential expertise.
- Executive – This function involves the implementation and administering of the authorizing statute, and often includes the power to issue, suspend, and cancel licenses or permits.
- Judicial – This function involves the power to make decisions on individual contested cases that arise under the authorizing statute, and often includes the power to impose civil penalties.<sup>105</sup>

If sex work involving consenting adults is decriminalized in Oregon, there would be several options to consider concerning a state agency, including:

- Not having a state agency;
- Creating a new semi-independent state agency;<sup>106</sup>
- Creating a new state agency; or
- Utilizing an already-existing state agency.

We recognize that some sex workers may be extremely wary of any state agency having any regulatory authority over the sex worker industry. However, as noted: (i) state agencies perform different functions; and (ii) each state agency may only exercise the

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<sup>103</sup> ORS 183.310(1).

<sup>104</sup> Most Oregon agencies are subject to the provisions of ORS Chapter 183 (Administrative Procedures Act; Review of Rules; Civil Penalties).

<sup>105</sup> Some Oregon agencies exercise all of these functions, while others only exercise one or two of the functions. For example, some Oregon agencies are only authorized to hold hearings to resolve disputes, and they have no rulemaking or executive power.

<sup>106</sup> Semi-independent state agencies were first introduced in Oregon in 1997. They were meant to be a more streamlined option for industries that may only require a small agency and a small board. Semi-independent agencies are exempt from many of the statutes and rules that apply to other state agencies and, as a consequence, can act more quickly and more efficiently than other state agencies. Semi-independent agencies are governed by ORS 182.454 to ORS 182.472. See also *A Model of Efficiency for Small State Agencies, A Report Produced by the SIBA Group – February 1, 2011* (<https://olis.oregonlegislature.gov/liz/2011R1/Downloads/CommitteeMeetingDocument/151928>). There are 12 semi-independent agencies in Oregon, including the State Board of Massage Therapists. See ORS 182.454. One significant feature of semi-independent agencies is that they are not allocated any tax dollars from Oregon’s General Fund and are required to be self-funded. As such, semi-independent agencies must generate their own revenue and be fully supported by income from application, examination, and licensing fees, federal funds, grants, and other program revenue.



powers that are granted to it by the authorizing statute. In other words, if the drafters of any future legislation are considering a state agency, the drafters themselves will be able to determine the specific powers and limitations of the agency.

If there is to be a state agency, there would be a substantial number of issues to consider, including:

- With respect to the governing board of the agency,
  - The number of members;
  - The qualifications of the members;
  - The procedure to appoint members; and
  - The terms of the members;
- The specific powers and functions of the agency;
- If the agency has rulemaking powers, the general or specific rules that the agency has the power to make; and
- Whether the agency would have authority:
  - Only with respect to brothels;
  - Only with respect to brothels and prostitutes;
  - With respect to brothels and all sex workers; or
  - With respect to brothels, all sex workers, and all third-party agreements and third-party facilitators.<sup>107</sup>

If there is to be a state agency, the creation of a new semi-independent agency would probably be the best option for sex workers.

The drafters of the legislation could decide the makeup of the board of the agency. For example: (i) a majority of the board could consist of current (or perhaps former) adult prostitutes who reside in Oregon; (ii) other members of the board could include one or more current (or perhaps former) adult entertainers, one or more members of the public, and one member selected from a health-related field; (iii) to the extent not otherwise prohibited by law, representation on the board could be balanced according to geographic areas, gender, and ethnic groups; and (iv) individuals who have a conflict of interest could be excluded.<sup>108</sup>

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<sup>107</sup> For a more detailed discussion of third-party agreements and third-party facilitators, see Section 4(C)(2) (*Legal Mapping Guide; Sex Work and Sex Workers Generally; Third-Party Agreements*).

<sup>108</sup> If the drafters of any future legislation are considering creating a new semi-independent state agency, we recommend reviewing the provisions of ORS Chapter 687 (Massage Therapists; Direct Entry Midwives) and OAR Chapter 334 (Board of Massage Therapists).

## (C) SEX WORK AND SEX WORKERS GENERALLY

### (1) LOCATIONS FOR SERVICES

**ESSENTIAL CONCEPT #6 – A sex worker should be able to provide sex worker services: (i) at a brothel; (ii) at the sex worker’s residence or place of business, subject to other applicable laws and restrictions; (iii) at a client’s residence or place of business, subject to other applicable laws and restrictions; and (iv) at any other place, subject to other applicable laws and restrictions.**<sup>109</sup>

This concept should be stated expressly in a new statute (the “Locations Statute”).

As background, there almost always are various laws, contracts, and policies that govern and restrict the activities that can lawfully take place at any given location. With respect to private property, examples include but are not limited to: (i) local land use and zoning laws;<sup>110</sup> (ii) real property leases; (iii) covenants, conditions, and restrictions (“CC&Rs”) of an owners’ association; and (iv) policies of places of public accommodation, including hotels, motels, inns, short-term rental units, and the like.<sup>111</sup>

Further, many Oregon cities and counties have detailed rules and regulations concerning home-based businesses. These rules and regulations typically require individuals who intend to operate a home-based business to: (i) obtain a permit; (ii) pay a fee; and (iii) in some cases (usually when employees or customers will be coming to the home), notify surrounding neighbors of certain details concerning the business.<sup>112</sup>

Generally, except for brothels<sup>113</sup> the Locations Statute probably should not override the rights of local jurisdictions to adopt land use and zoning laws, the rights of local jurisdictions to adopt rules and regulations concerning home-based businesses, or the rights of private parties to establish rules and regulations concerning properties that they own or lease.<sup>114</sup>

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<sup>109</sup> For a potentially analogous situation, we again recommend reviewing the provisions of ORS Chapter 687 (Massage Therapists; Direct Entry Midwives) and OAR Chapter 334 (Board of Massage Therapists). In particular, see OAR 334-020-0005(1)(b) and (2), which expressly contemplate massage therapists providing “outcall” and “on-site” services at “temporary locations.”

<sup>110</sup> See generally ORS Chapter 197 (Comprehensive Land Use Planning).

<sup>111</sup> Additionally: (i) various federal statutes, rules, and regulations govern the activities that can lawfully take place on land owned or leased by the United States; and (ii) various Oregon statutes, rules, and regulations govern the activities that can lawfully take place on land owned or leased by the State of Oregon.

<sup>112</sup> For example, the City of Portland has detailed rules and regulations about establishing and maintaining a “home occupation.” See Portland City Code, Title 24, Chapter 24.30 (Home Occupations).

<sup>113</sup> For a more detailed discussion of brothels, see Section 4(B)(1) (*Legal Mapping Guide; Adult Prostitution Services; Brothels*).

<sup>114</sup> For example, see ORS 475C.013(2) (Adult and Medicinal Use of Cannabis Act may not be construed to amend or affect landlord-tenant matters) and ORS 475A.215 (Oregon Psilocybin Services Act may not be construed to amend

However, the Locations Statute could state expressly that:

- With respect to home-based businesses, a local jurisdiction cannot adopt rules and regulations:
  - That are more stringent or burdensome for sex workers than they are for other home-based businesses; or
  - That apply (or that have the effect of applying) only to sex workers; and
- With respect to real property leases, CC&Rs of an owners' association, or places of public accommodation, any prohibition or restriction on sex work must be specific, clear, and unambiguous.

## (2) THIRD-PARTY AGREEMENTS

Like many other service providers, prostitutes and other sex workers frequently enter into agreements with third parties.<sup>115</sup> Such agreements are not inherently unfair. Unfortunately, however, there is a long history of third parties taking financial advantage of prostitutes and other sex workers.

Even if sex work involving consenting adults is decriminalized in Oregon, it is likely that such third-party facilitators<sup>116</sup> will continue to take (or attempt to take) financial advantage of sex workers.

There would be several different ways to protect sex workers and sex worker-controlled entities against third-party agreements that provide unfair advantages over sex workers,<sup>117</sup> one of which could be the following:

- A new statute could provide that:
  - No third-party agreement may provide any third-party facilitator with an unfair advantage over any sex worker or any sex worker-controlled entity; and
  - Any provision within any third-party agreement that provides any third-party facilitator with an unfair advantage over the sex worker is void and unenforceable.<sup>118</sup>

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or affect landlord-tenant matters). See also ORS 475C.449 (local time, place, and manner regulations for marijuana establishments) and ORS 475A.530 (local time, place, and manner regulations for psilocybin establishments).

<sup>115</sup> Such third parties include but are not limited to procurers, pimps, madams, partners, agents, and managers. See Smith, M. and Mac, J. (2020). *Revolting Prostitutes The Fight for Sex Workers' Rights*, 149-150, 164-165, 180-181. Verso.

<sup>116</sup> See the definition of "third-party facilitator" in Section 3(A) (*Terminology; Definitions*).

<sup>117</sup> See the definitions of "sex worker-controlled entity" and "third-party agreement" in Section 3(A) (*Terminology; Definitions*).

<sup>118</sup> Oregon law provides that a contract may be void and unenforceable in certain situations, including: (i) if the contract is "unconscionable," in that it is so one-sided as to be oppressive and bears no reasonable relation to the business risks involved; and (ii) if one party was subject to "economic duress" when the contract was formed. See *Best v. U.S. National Bank*, 303 Or 557 (1987) (unconscionability) and *Eulrich v. Snap-On Tolls Corp.*, 121 Or App 25 (1993) (economic duress). However, for more certainty and predictability, certain Oregon statutes expressly

- The definition of “unfair advantage:”
  - Could be very detailed in nature to ensure that all potential business arrangements are considered;
  - Could perhaps include various examples of provisions that would be unfair under any circumstance;
  - Could perhaps include various “safe harbor”<sup>119</sup> examples of provisions that would *not* be unfair so that both the third party and the sex worker would know that their agreement (or at least certain provisions within their agreement) are enforceable; and
  - Should probably include a general “catch-all” provision to capture agreements that are unfair in some respect that is not specifically contemplated or that are unfair in their totality.<sup>120</sup>

### (3) BILL OF RIGHTS FOR INDEPENDENT CONTRACTORS AND EMPLOYEES

There also is a history of adult entertainment establishments in Oregon taking financial advantage of adult entertainers who work at the establishments, most of whom are classified by the establishments as independent contractors.<sup>121</sup>

While Oregon has comprehensive labor and employment statutes,<sup>122</sup> and while Oregon has an established test as to whether an individual service provider should be classified as an employee or an independent contractor,<sup>123</sup> Oregon has no statutory protections

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provide that certain contracts are void and unenforceable in all cases. For example, see ORS 653.295, which provides that noncompetition agreements between an employer and employee are void and unenforceable except in certain limited circumstances, and then only for a limited period of time.

<sup>119</sup> In a legal context, the term “safe harbor” means a provision in a statute that protects persons from criminal prosecution, fines, or other penalties, provided certain specific conditions are satisfied. Safe harbors usually are specific scenarios that are found within the context of a more general standard.

<sup>120</sup> If the drafters of any future legislation are considering creating a new statute that protects sex workers against unfair third-party agreements, we recommend reviewing the New Jersey Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act (N.J. Stat. § 24:6I-31 et seq.) and the rules promulgated under the statute (N.J.A.C. 17:30-1.1 et seq.), which: (i) contain comprehensive and extremely detailed requirements for “financial source agreements,” “management services agreements,” and other agreements; and (ii) generally provide that all such agreements must be commercially reasonable and consistent with the fair market value for the terms generally applicable to agreements of a comparable nature, in each case as determined by the New Jersey Cannabis Regulatory Commission.

<sup>121</sup> See: (i) <https://www.koin.com/news/portland/portlands-magic-tavern-becomes-2nd-unionized-strip-club-in-the-u-s/>; (ii) <https://theportlandmedium.com/local-news/no-justice-no-booty-portland-strippers-strike%ef%bf%bc/>; and (iii) <https://www.oregonlive.com/news/2020/06/portland-strippers-march-for-equal-scheduling-of-black-dancers.html>.

<sup>122</sup> See generally ORS Chapter 651 through ORS Chapter 663 in Title 51 (Labor and Employment; Unlawful Discrimination).

<sup>123</sup> Generally, under Oregon law, an independent contractor is a person who provides services for remuneration and who, in the provision of the services: (i) is free from direction and control over the means and manner of providing the services, subject only to the right of the person for whom the services are provided to specify the desired results; (ii) is customarily engaged in an independently established business; (iii) is licensed under ORS Chapter 671 (Architects, Landscape Professions and Business) or ORS Chapter 701 (Construction Contractors and

for independent contractors in general, and no statutory protections for adult entertainers.

The State of Washington recently passed a well-publicized “Stripper’s Bill of Rights” law<sup>124</sup> that should be considered for Oregon. Although the Washington legislation is applicable only to “adult entertainment establishments,” if sex work involving consenting adults is decriminalized in Oregon the same principles could be applied to both adult entertainment establishments and brothels.<sup>125</sup>

The Washington legislation, among other things, provides for the following:

- An adult entertainment establishment must:
  - Provide detailed and specific training to its employees;
  - Provide accessible panic buttons in specific rooms;
  - Record allegations it receives concerning specific inappropriate behavior by a customer;
  - Decline to allow a customer to return to the establishment for at least three years if an allegation of inappropriate behavior is supported by evidence;
  - Provide security in accordance with specified rules; and
  - Have written policies and procedures concerning various specified scenarios.
- With respect to leasing fees and other fees charged by an adult entertainment establishment to an entertainer:
  - All fees must:
    - Apply equally to all entertainers;
    - Be stated in a written contract; and
    - Continue for a period of not less than three months.
  - All fees are subject to detailed restrictions and limitations, including:
    - No fee or interest for late payment or nonpayment;

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Contracts) if the person provides services for which a license is required under ORS Chapter 671 or ORS Chapter 701; and (iv) is responsible for obtaining other licenses or certificates necessary to provide the services. See ORS 670.600(2). A person is considered “customarily engaged in an independently established business” if any three of the following five requirements are met: (1) the person maintains a business location (A) that is separate from the business or work location of the person for whom the services are provided or (B) that is in a portion of the person’s residence and that portion is primarily used for the business; (2) the person bears the risk of loss related to the business or the provision of the services; (3) the person provides contracted services for two or more different persons within a 12-month period, or the person routinely engages in business advertising, solicitation, or other marketing efforts reasonably calculated to obtain new contracts to provide similar services; (4) the person makes a significant investment in the business; and (5) the person has the authority to hire other persons to provide or assist in providing the services and has the authority to fire those persons. See ORS 670.600(3).

<sup>124</sup> The Washington law amends Title 49 of the Revised Code of Washington (Labor Regulations). See <https://app.leg.wa.gov/billsummary?BillNumber=6105&Initiative=false&Year=2023>; <https://lawfilesexternal.wa.gov/biennium/2023-24/Pdf/Bills/Session%20Laws/Senate/6105-S.L.pdf?q=20240729094109>; <https://app.leg.wa.gov/RCW/default.aspx?cite=49.17.470>; and <https://app.leg.wa.gov/RCW/default.aspx?cite=49.46.360>.

<sup>125</sup> For a more detailed discussion of brothels, see Section 4(B)(1) (*Legal Mapping Guide; Adult Prostitution Services; Brothels*).

- No fee for failure to appear at a scheduled time;
- No fee in an amount greater than the entertainer receives during an applicable period; and
- Within an eight-hour period, no fee that exceeds: (i) the lesser of \$150 or 30% of amounts collected by the entertainer in areas other than a private performance area; and (ii) 30% of amounts collected by the entertainer in a private performance area.
- Any amounts that are owed by an adult entertainment establishment to an entertainer may be enforced by the entertainer as a wage claim under employment laws (even if the adult entertainer is an independent contractor).
- Adult entertainment establishments must display signage concerning the entertainers' rights concerning fees.
- If an adult entertainment establishment terminates or refuses to rehire an entertainer, the establishment must provide the entertainer with a written notice of the reasons for the termination or refusal, upon the entertainer's request.

Additionally, consider whether noncompetition agreements and non-solicitation agreements should be void and unenforceable for all sex workers in all employment and independent contractor contexts.<sup>126</sup>

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<sup>126</sup> See Section 4(C)(2) (*Legal Mapping Guide; Sex Work and Sex Workers Generally; Third-Party Agreements*). See also ORS 653.295 and ORS 653.020(3). Note that sex workers could be considered professional workers who perform predominantly "creative tasks" under ORS 653.020(3), which would mean that employers could require sex workers to sign a noncompetition agreement as a condition of employment. Note also that noncompetition and non-solicitation agreements probably should be permitted in the context of a sale of a business that is owned and controlled by one or more sex workers.

#### (4) ANTI-DISCRIMINATION

##### (a) *PROTECTED CLASSES*

There are a substantial number of Oregon statutes that prohibit or address discrimination against various protected classes of individuals in certain contexts,<sup>127</sup> including but not limited to education,<sup>128</sup> employment,<sup>129</sup> real property transactions,<sup>130</sup> and public accommodations.<sup>131</sup>

Most Oregon anti-discrimination statutes prohibit discrimination based on an individual's race, color, religion, sex, sexual orientation, gender identity, national origin, marital status, age, or disability.<sup>132</sup> In the context of real property transactions only, Oregon's anti-discrimination statutes also prohibit discrimination based on an individual's financial status or source of income.<sup>133</sup>

Unfortunately, none of the protected classes in Oregon's anti-discrimination statutes protect sex workers as a class.<sup>134</sup> As a result, under current Oregon law, it is *legally permissible to discriminate* against an individual solely because the

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<sup>127</sup> See generally ORS Chapter 350 (which is a wide-ranging chapter of the Oregon Revised Statutes concerning the state's goals and missions of post-secondary education) and ORS Chapter 659A (which is a wide-ranging chapter of the Oregon Revised Statutes that prohibits discrimination in employment, real property transactions, and public accommodations).

<sup>128</sup> Within ORS Chapter 350, see ORS 350.009, ORS 350.014, ORS 350.075(2), ORS 350.335, ORS 350.337, ORS 350.343, and ORS 350.375. See also ORS 659.850.

<sup>129</sup> Within ORS Chapter 659A concerning employment, see ORS 659A.003, ORS 659A.006, ORS 659A.030, ORS 659A.805, ORS 659A.815, and ORS 659A.885. See also ORS 652.210 and ORS 652.220.

<sup>130</sup> Within ORS Chapter 659A concerning real property transactions, see ORS 659A.003, ORS 659A.006, ORS 659A.421, ORS 659A.425, ORS 659A.805, ORS 659A.815, and ORS 659A.885. See also ORS 90.295 and ORS 93.270. Within ORS Chapter 659A, real property transactions include the selling, renting, and leasing of real property. See ORS 659A.421(2).

<sup>131</sup> Within ORS Chapter 659A concerning public accommodations, see ORS 659A.003, ORS 659A.006, ORS 659A.403, ORS 659A.406, ORS 659A.409, ORS 659A.805, ORS 659A.815, and ORS 659A.885. Places of public accommodation generally means: (i) any place or service offering to the public accommodations, advantages, facilities or privileges whether in the nature of goods, services, lodgings, amusements, transportation or otherwise; (ii) any place that is open to the public and owned or maintained by a public body; or (iii) any service to the public that is provided by a public body. See ORS 659A.400(1). A public body generally means any state government, local government, or special government body. See ORS 174.109.

<sup>132</sup> See generally ORS 659A.003 and ORS 659A.006.

<sup>133</sup> See ORS 90.295, ORS 93.270, ORS 659A.421, ORS 659A.425, and ORS 659.805.

<sup>134</sup> While the "source of income" class would appear to be a class that would protect sex workers in the context of real property transactions, that is not the case. As defined in ORS Chapter 659A, the term "source of income" specifically excludes income derived from a "specific occupation" or income derived in an illegal manner. See ORS 659A.421(1)(d). We did not find any Oregon statute, rule, or case that interprets the term "specific occupation" as used in ORS 659A.421(1)(d). However, the plain language of ORS 659A.421(1)(d) makes it clear that it is legally permissible to discriminate against an individual because of the individual's source of income from any specific occupation (including sex work).

individual is (or was) a sex worker, even if the sex work performed by the sex worker is (or was) completely legal.<sup>135</sup>

For such discrimination to be unlawful in Oregon,<sup>136</sup> a new protected class should be created and added to all relevant anti-discrimination statutes in ORS Chapter 659A and throughout the Oregon Revised Statutes.<sup>137</sup>

Specifically:

- A new protected class should be created and could be defined as an individual's "sex worker status" or "status as a sex worker."
- The new protected class should be added to the following statutes:
  - Generally
    - ORS 659A.003
    - ORS 659A.006
    - ORS 659A.805
    - ORS 659A.815
    - ORS 659A.885
  - Education
    - ORS 350.335
    - ORS 350.337
    - ORS 350.343
    - ORS 350.375
    - ORS 659.850
  - Employment
    - ORS 652.210
    - ORS 652.220
    - ORS 659A.030
  - Real property transactions
    - ORS 90.295
    - ORS 93.270
    - ORS 659A.421
    - ORS 659A.425

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<sup>135</sup> One notable sex worker discrimination case in Oregon is *Nicole Gililland v. Southwestern Oregon Community College District et al*, No. 6:19-cv-00283-MK (D. Or. 2021). In that case, Nicole Gililland, a former nursing student at Southwestern Oregon Community College ("SWOCC"), claimed that instructors changed her grades, gave her extra assignments, subjected her to unduly harsh discipline inconsistent with SWOCC policy, and generally harassed her after they became aware of her past work as an adult film actress. Gililland sued for breach of contract and a violation of Title IX for sex discrimination under 20 U.S.C. Section § 1681(a). The court rejected Gililland's Title IX claim but awarded her \$1.7 million in damages under her breach of contract claim. Although Gililland was successful in her lawsuit, the case itself illustrates that the discrimination suffered by Gililland *would have been permissible* if SWOCC had not breached a contract between SWOCC and Gililland.

<sup>136</sup> See Section 1(C) (*Introduction; Main Themes and Essential Concepts*).

<sup>137</sup> For a recent history of the expansion of protected classes under Oregon law, see [History of the Law - Oregon Department of Justice \(state.or.us\)](https://www.oregon.gov/DepartmentofJustice/state.or.us).



- Public accommodations
  - ORS 659A.403
  - ORS 659A.406
  - ORS 659A.409
- Healthcare
  - ORS 659.875
  - ORS 659A.142

*(b) FACTORS THAT DECISION MAKERS MAY CONSIDER*

There are several Oregon statutes that permit decision makers to consider certain factors about an individual when the individual is applying or petitioning for a right or privilege. The factors are sometimes vague in nature and provide the decision maker with substantial discretion, which could be exercised in a discriminatory way against sex workers.

Set forth below are several Oregon statutes that permit decision makers to consider certain factors about an individual applicant or petitioner, together with a brief explanation of each statute and the changes that should be made to each statute.

- ORS 670.280 (Licensing of occupations and professions generally)<sup>138</sup>
  - This statute governs the licensing of occupations and professions generally.
  - The statute provides that, except for teachers and certain other school personnel,<sup>139</sup> a licensing board, commission, or agency:
    - *May not* deny, suspend, or revoke a license solely because the applicant or licensee has been convicted of a crime, but *may* consider certain facts relating to the conviction in determining

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<sup>138</sup> There are many occupations and professions in Oregon that require a license, certificate, or other form of authorization from a state regulatory agency or board. ORS Chapter 670 governs the licensing of occupations and professions generally, while many other Oregon statutes further govern the licensing of specific occupations and professions. Examples of such occupations and professions include architects, engineers, accountants, real estate appraisers, psychologists, occupational therapists, professional counselors, physicians, podiatrists, acupuncturists, nurses, dentists, dental hygienists, speech-language pathologists, emergency medical service providers, optometrists, chiropractors, naturopathic physicians, veterinarians, massage therapists, physical therapists, pharmacists, cosmetic professionals (including barbers, nail technicians, electrologists, and body art practitioners), dietitians, teachers and school administrators, psilocybin facilitators, attorneys, and many others. See generally ORS Chapters 671 to 704. See also ORS Chapters 9 and 475A. For a more detailed discussion of state regulatory agencies, see Section 4(B)(7) (*Legal Mapping Guide; Adult Prostitution Services; State Agency*).

<sup>139</sup> For a discussion concerning the licensing of teachers and other school personnel, see the analysis of ORS 342.143 (licensing of teachers and other school personnel) in Section 4(A)(4) (*Legal Mapping Guide; Criminal Statutes and Conforming Amendments; Conforming Amendments*) and Section 8 (*Appendix B – Conforming Amendments*).

- the “fitness” of the person to receive or hold the license;<sup>140</sup> and
- *May* deny a license or impose discipline on a licensee based on conduct that is substantially related to the “fitness and ability” of the applicant or licensee, even if the conduct was not undertaken directly in the course of the licensed activity.<sup>141</sup>
  - Subsection (3) should be amended to ensure that a licensing board, commission, or agency:
    - *May not* deny, suspend, or revoke a license solely because the applicant or licensee is a current or former sex worker;
    - *May not* consider the fact that the applicant or licensee is a current or former sex worker in determining the fitness of the person to receive or hold a license; and
    - *May not* consider sex work that is undertaken outside the course of the licensed activity to be conduct that is related to the fitness of the person to receive or hold a license.
  - The statute could be amended further to ensure that a person *may not* consider the fact that a prospective renter or lessee was convicted of, or arrested or arraigned for, a crime under ORS 167.007 (prostitution), ORS 167.008 (commercial sexual solicitation), ORS 167.012 (promoting prostitution), ORS 167.017 (compelling prostitution), ORS 167.062 (sodomasochistic abuse or sexual conduct in live show), or ORS 167.090 (publicly displaying nudity or sex for advertising purposes) that occurred before the effective date of the amendment, but that is no longer a crime after such effective date.<sup>142</sup>
  - ORS 659A.421 (Unlawful discrimination in real property transactions)<sup>143</sup>
    - This statute generally prohibits discrimination in the selling, renting, and leasing of real property.
    - The statute provides that a person:
      - *May not* refuse to sell, lease, or rent any real property to a purchaser<sup>144</sup> because of any person’s race, color, religion, sex, sexual orientation, gender identity, national origin, marital status, familial status, or source of income;<sup>145</sup>

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<sup>140</sup> See ORS 670.280(2).

<sup>141</sup> See ORS 670.280(3).

<sup>142</sup> See Section 4(A)(1) (*Legal Mapping Guide; Criminal Statutes and Conforming Amendments*).

<sup>143</sup> This statute is also discussed in Section 4(C)(4)(a) (*Legal Mapping Guide; Sex Work and Sex Workers Generally; Anti-Discrimination; Protected Classes*).

<sup>144</sup> See ORS 659A.421(2)(a). The term “purchaser” includes an occupant, prospective occupant, renter, prospective renter, lessee, prospective lessee, buyer, and prospective buyer. See ORS 659A.421(1)(b).

<sup>145</sup> See ORS 659A.421(2)(a).

- *May not* take certain other specified actions relating to the selling, renting, and leasing of real property<sup>146</sup> because of any person’s race, color, religion, sex, sexual orientation, gender identity, national origin, marital status, familial status, or source of income; but
  - *May* refuse to lease or rent real property to a prospective renter or lessee based upon the prospective renter’s or lessee’s “past conduct” or “inability to pay rent.”<sup>147</sup>
- Subsection (2)(a) should be amended to ensure that a person *may not* consider the fact that a prospective renter or lessee is a current or former sex worker when considering the prospective renter’s or lessee’s past conduct or inability to pay rent.
- The statute could be amended further to ensure that a person *may not* consider the fact that a prospective renter or lessee was convicted of, or arrested or arraigned for, a crime under ORS 167.007 (prostitution), ORS 167.008 (commercial sexual solicitation), ORS 167.012 (promoting prostitution), ORS 167.017 (compelling prostitution), ORS 167.062 (sodomasochistic abuse or sexual conduct in live show), or ORS 167.090 (publicly displaying nudity or sex for advertising purposes) that occurred before the effective date of the amendment, but that is no longer a crime after such effective date.<sup>148</sup>
- ORS 107.137 (Factors considered in determining custody of child)<sup>149</sup>
  - This statute provides generally that, in determining custody of a minor child, the court must give primary consideration to the best interests and welfare of the child.<sup>150</sup>
  - The statute provides that the court, in determining custody of a minor child, *may* consider the conduct, income, social environment, or lifestyle of a party, *but only if* it is shown that any of these factors are causing or may cause emotional or physical damage to the child.<sup>151</sup>
  - The statute should be amended to ensure that, in determining custody of a minor child, the court *may not* consider the fact that a party was a *former* sex worker.
  - With respect to *current* sex workers, at a minimum, the statute should be amended to ensure that the court may not consider the fact that a

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<sup>146</sup> See ORS 659A.421(2)(b-j).

<sup>147</sup> See ORS 659A.421(2)(a)(A-B).

<sup>148</sup> See Section 4(A)(1) (*Legal Mapping Guide; Criminal Statutes and Conforming Amendments; Criminal Statutes Generally*).

<sup>149</sup> ORS Chapter 107 generally governs marital dissolutions, annulments, and separations. In any such marital dissolution, annulment, or separation, a court must render a judgment that sets forth each spouse’s rights and obligations, including each’s spouse’s custody rights of any minor children. See ORS 107.105.

<sup>150</sup> See ORS 107.137(1).

<sup>151</sup> See ORS 107.137(4). The statute also provides that the court *may not* consider certain other factors. See ORS 107.137(1)(f); (3).

party is a current sex worker, unless it is shown that the party's status as a current sex worker *is* causing emotional or physical damage to the child (as opposed to some hypothetical "*may*" cause emotional or physical damage to the child). The statute could be amended further as follows:

- The court *may not* consider the fact that a party is a current sex worker *at all*, if the party does not provide sex worker services to clients who are physically present at the party's residence; *or*
- The court *may not* consider the fact that a party is a current sex worker *at all*, if the party does not provide sex worker services to clients who are physically present at the party's residence during those periods of time when the child is present at the residence.
- The statute could be amended further to ensure that, in determining custody of a minor child, the court *may not* consider the fact that a party was convicted of, or arrested or arraigned for, a crime under ORS 167.007 (prostitution), ORS 167.008 (commercial sexual solicitation), ORS 167.012 (promoting prostitution), ORS 167.017 (compelling prostitution), ORS 167.062 (sodomasochistic abuse or sexual conduct in live show), or ORS 167.090 (publicly displaying nudity or sex for advertising purposes) that occurred before the effective date of the amendment, but that is no longer a crime after such effective date.<sup>152</sup>

(c) *LAW ENFORCEMENT PROFILING*

All Oregon law enforcement agencies and law enforcement officers are prohibited from profiling.<sup>153</sup> As defined in the Oregon Revised Statutes:

"Profiling" means the targeting of an individual by a law enforcement agency or a law enforcement officer, on suspicion of the individual's having violated a provision of law, based solely on the individual's real or perceived age, race, ethnicity, color, national origin, language, sex, gender identity, sexual orientation, political affiliation, religion, homelessness or disability, unless the agency or officer is acting on a suspect description or information related to an identified or suspected violation of a provision of law.<sup>154</sup>

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<sup>152</sup> See Section 4(A)(1) (*Legal Mapping Guide; Criminal Statutes and Conforming Amendments; Criminal Statutes Generally*).

<sup>153</sup> See ORS 131.920.

<sup>154</sup> See ORS 131.915(4). Interestingly, Oregon's anti-profiling statutes include three protected classes that do not appear in Oregon's other anti-discrimination statutes. The three protected classes that are unique to law

Profiling is a form of discrimination. If sex work involving consenting adults is decriminalized in Oregon, it should be unlawful for law enforcement to profile an individual based solely on the individual's status as a sex worker.<sup>155</sup>

Specifically:

- A new protected class should be created and added to all relevant anti-profiling statutes throughout the Oregon Revised Statutes.
- The new protected class could be defined as an individual's "sex worker status" or "status as a sex worker."
- The new protected class should be added to the following statutes:
  - ORS 131.915 (Law enforcement profiling)
  - ORS 131.925 (Complaints alleging profiling)
  - ORS 131.930 (Data collection and analysis relating to officer-initiated stops)
  - ORS 243.812 (Commission on law enforcement standards of conduct and discipline)

#### (D) SETTING ASIDE CRIMINAL CONVICTIONS AND RECORDS

There are a number of Oregon statutes that address the "setting aside"<sup>156</sup> of criminal convictions and criminal records and the "vacation"<sup>157</sup> of criminal convictions, the two most relevant of which are the following:

- ORS 137.225 (Order setting aside conviction or record of criminal charge; fees; prerequisites; limitations) – This is Oregon's general set aside statute, which contains detailed and specific requirements, timelines, and procedures to obtain an order to set aside a criminal conviction or criminal records.
- ORS 137.221 (Vacation of judgment of conviction for prostitution) – This statute provides that a court may vacate a judgment of conviction for prostitution under ORS 167.007 if the court finds, by clear and convincing evidence, that the person was the victim of sex

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enforcement profiling are an individual's language, political affiliation; and homelessness. See ORS 131.915 and ORS 131.930. For a more detailed discussion of other protected classes in Oregon, see Section 4(C)(4)(a) (*Legal Mapping Guide; Sex Work and Sex Workers Generally; Anti-Discrimination; Protected Classes*).

<sup>155</sup> See Section 1(C) (*Introduction; Main Themes and Essential Concepts*).

<sup>156</sup> A person convicted of a crime may, under some circumstances, apply to a court for an order to "set aside" the conviction. Similarly, if a prosecutor elects not to proceed with a prosecution after a person has been arrested, cited, or charged, the person may, under some circumstances apply to a court for an order to "set aside" the record of the arrest, citation, or charge. (This process is often referred to as an "expungement," however Oregon statutes do not use that term.) The setting aside of any criminal conviction or any criminal records does not reverse (or otherwise nullify or void) the conviction, arrest, citation, or charge. Rather, it merely means that any record of the conviction, arrest, citation, or charge will be "sealed" and no longer available to the public, whether through a criminal background check or otherwise. See ORS 137.226.

<sup>157</sup> In contrast to the setting aside of a criminal conviction, a conviction may, under some circumstances, be "vacated." When a conviction is "vacated," the conviction is essentially reversed.

trafficking at or around the time of the conduct giving rise to the prostitution conviction. This statute also contains detailed and specific requirements, timelines, and procedures to obtain an order of vacation.

What also may be relevant are the following marijuana-specific statutes that were enacted after the legalization of marijuana in Oregon, each of which eased and streamlined the requirements, timelines, and procedures to obtain an order to set aside a marijuana-related conviction or criminal records relating to a marijuana-related arrest, citation, or charge:

- ORS 137.226 (Eligibility for order setting aside certain marijuana convictions); and
- ORS 475C.397 (Order setting aside qualifying marijuana conviction).<sup>158</sup>

If sex work involving consenting adults is decriminalized in Oregon, the easing and streamlining of the requirements, timelines, and procedures in ORS 137.225 and ORS 137.221 should be considered: (i) for persons convicted, arrested, cited, or charged under ORS 167.007 (prostitution); and (ii) perhaps for persons convicted, arrested, cited, or charged under ORS 167.008 (commercial sexual solicitation), ORS 167.012 (promoting prostitution), ORS 167.017 (compelling prostitution), ORS 167.062 (sodomasochistic abuse or sexual conduct in live show), or ORS 167.090 (publicly displaying nudity or sex for advertising purposes), if the conduct giving rise to the conviction, arrest, citation, or charge is no longer a crime.<sup>159</sup>

The easing and streamlining of the requirements, timelines, and procedures in ORS 137.225 and ORS 137.221 could generally follow the marijuana-specific statutes or perhaps go further.

## (E) ADDITIONAL POSSIBILITIES

Future legislation that decriminalizes sex work in Oregon can be as expansive and creative as the drafters of the legislation desire.

The following additional possibilities should be considered in the drafting of any future legislation:

- Optional registration for sex workers, including the optional registration of pseudonyms for sex workers so they can:
  - Lawfully transact business without publicly revealing their legal names;<sup>160</sup>
  - Lawfully organize business entities, register trademarks, and register assumed business names using their pseudonyms; and
  - In some cases, commence or defend legal proceedings using their pseudonyms;

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<sup>158</sup> See also ORS 137.222, which sets forth a procedure to request that a court reduce the offense classification of an eligible marijuana conviction.

<sup>159</sup> See Section 4(A)(1) (*Legal Mapping Guide; Criminal Statutes and Conforming Amendments; Criminal Statutes Generally*).

<sup>160</sup> An “assumed business name” is one or more words or numerals, or a combination of words and numerals, that a person uses to identify a business that the person carries on, conducts or transacts, if at the time and place that the person carries on, conducts or transacts the business, the person does not conspicuously disclose the real and

- Educational resources for sex workers;
- Banking in Oregon state-chartered banks and credit unions; and
- Taxation of brothels.

## (F) GENERAL

The following general issues and provisions should be considered in the drafting of any future legislation:

- Preemption of local laws – To ensure that the legislation is not inconsistent with any local laws, and to ensure that any local jurisdictions do not impose any licensing or other additional requirements on brothels or sex workers, a provision should be included that states expressly:
  - That the legislation is designed to operate uniformly throughout the state and is paramount and superior to and fully replaces and supersedes any municipal charter amendment or local ordinance that is inconsistent with the legislation;<sup>161</sup> and
  - That the authority to require any brothel or sex worker to register or obtain a license for performing or providing sex worker services is vested solely in the Legislative Assembly, even if the legislation does not require any registrations or licenses.<sup>162</sup>
- Single-subject rule – If any future legislation to decriminalize sex work will be in the form of a ballot initiative (rather than a law passed by the Oregon legislature and signed by the Governor), the ballot initiative must comply with Oregon’s “single-subject rule,” which provides that any ballot initiative “must embrace one subject only and matters properly connected therewith.”<sup>163</sup>
- Severability – To ensure that the legislation is enforceable to the maximum extent permissible under Oregon law, a severability provision should be included that states expressly that if any part of the legislation is held to be unconstitutional, void, or illegal, that the remaining parts of the legislation will remain enforceable.<sup>164</sup>
- Effective date – What should be the effective date of the legislation.

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true name of each person that is carrying on, conducting or transacting the business. See ORS 648.005(1)(a). In Oregon, no person may carry on, conduct, or transact business under an assumed business name in a county where the business is located, where a physical facility of the business is located, or where an employee of the business is stationed, unless the person has registered the assumed business name with the Oregon Secretary of State. See ORS 648.007(1), ORS 648.010, and ORS 648.012.

<sup>161</sup> See ORS 475A.524 (preemption of local laws by the Oregon Psilocybin Services Act) and ORS 475A.429 (preemption of local laws by the Adult and Medical Use of Cannabis Act).

<sup>162</sup> See ORS 475A.527 (no local license for the manufacturing or sale of psilocybin products or for the provision of psilocybin services).

<sup>163</sup> See Article IV, Section 1(2)(d) and Article XVII, Section 1 of the Constitution of Oregon.

<sup>164</sup> For example, see ORS 475C.525 (severability in the Adult and Medicinal Use of Cannabis Act) and ORS 475A.722 (severability in the Oregon Psilocybin Services Act).

- Timelines
  - If the legislation provides for a state agency, what should be the timelines for:
    - The formation of the agency; and
    - The adoption of any rules by the agency.
  - If the legislation provides for the licensing of brothels by a state agency, what should be the timelines for:
    - Accepting applications; and
    - Issuing licenses following the receipt of an application.

## 5. RECOMMENDATIONS

### (A) CONTINUED DISCUSSIONS

At the outset, we noted that two of the purposes of this Guide were to:

- Contribute to the meaningful discussions that are taking place (and that will continue to take place) within Oregon’s sex workers’ rights organizations; and
- Contribute to the discussions that are taking place (or that should be taking place) within Oregon’s political and legal communities and with the public at large.

Naturally, we recommend and hope that discussions will continue to take place among Oregon’s sex worker organizations, sex workers, and sex worker allies to see if certain consensuses could be reached on as many issues as possible, including what might come next in the overall effort to decriminalize sex work.

With respect to this Guide specifically, we recommend and hope that the issues raised in this Guide will lead to further discussions about *how* sex work could be decriminalized in Oregon. We invite any and all feedback, good, bad, or otherwise, and we welcome any and all suggestions, ideas, and criticisms. Ideally, there might be one or more forums, panels, or educational seminars where some or all of the issues raised in this Guide could be discussed.

### (B) DRAFTING LEGISLATION

We have the following recommendations concerning the drafting of any future legislation:

- Meaningful sex worker participation – Oregon sex workers should play a substantial role in the drafting of any future Oregon legislation that decriminalizes sex work. Sex workers should not be used as mere sounding boards by those drafting the legislation. A diverse group of Oregon sex workers should be “at the table” throughout the entire drafting process. Finally, the drafting process should not move forward if a majority of the Oregon sex workers who are at the table desire to terminate the process.



- Ballot initiative vs. Oregon legislature
  - A ballot initiative may be preferable to a law passed by the Oregon legislature and signed by the Governor. A ballot initiative likely would have the following advantages:
    - A better opportunity for meaningful sex worker participation;
    - A better chance at more effective and comprehensive legislation, as the end result likely would be less susceptible to “watered-down” political compromises;
    - A better opportunity for a more open process, which could result in more discussions, more educational opportunities, and more buy-in from voters; and
    - A better chance to simply pass the legislation within any reasonable time frame, as Oregon legislators are often reluctant to take the lead on issues that could be considered controversial on a social or cultural level.
  - Conversely, a ballot initiative could have the following disadvantages:
    - A ballot initiative could be more expensive to finance, as over 120,000 signatures<sup>165</sup> would have to be gathered and a professional campaign organization would have to be assembled and engaged; and
    - If a ballot initiative qualifies for the ballot but is rejected by the voters, it could, as a political matter, be years or even a decade or more before the Oregon legislature, financiers, or the voters have any appetite to revisit the issue.
- Thoughtful and careful drafting – The drafters of any future legislation (and especially the drafters of any future ballot initiative) would have to be extremely careful to ensure that:
  - The legislation is well-organized, well-written, clear, and unambiguous;
  - The legislation is politically viable to Oregon voters;
  - There is little to no opposition or backlash from any Oregon sex workers or sex worker organizations;
  - The legislation is constitutional; and
  - The legislation is likely to be effective in practice, to avoid any after-the-fact backlash from Oregon voters or the Oregon legislature.
- Sex worker support – Finally, future legislation should not move forward at all, in any form, unless at least a substantial majority of Oregon sex workers support the legislation.

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<sup>165</sup> See Article IV, Section 1(2)(b-c) of the Constitution of Oregon. See also [https://ballotpedia.org/Signature\\_requirements\\_for\\_ballot\\_measures\\_in\\_Oregon](https://ballotpedia.org/Signature_requirements_for_ballot_measures_in_Oregon).

## 6. ACKNOWLEDGMENTS

The project participants sincerely thank the following organizations, each of which provided generous funding for this Guide:

- Carol Leigh Trust<sup>166</sup>
- New Moon Network: <https://www.newmoonnetwork.org/>
- Oregon Safer Workers Coalition (formerly Oregon Sex Workers Committee): <https://oregonswc.org/>
- Proteus Fund: <https://www.proteusfund.org/>

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<sup>166</sup> For a biography of Carol Leigh, see [https://en.wikipedia.org/wiki/Carol\\_Leigh](https://en.wikipedia.org/wiki/Carol_Leigh). For the Papers of Carol Leigh, 1970-2020, see [https://hollis.harvard.edu/primo-explore/fulldisplay?docid=01HVD\\_ALMA212586057320003941&context=L&vid=HVD2&lang=en\\_US&search\\_scope=everything&adaptor=Local%20Search%20Engine&tab=everything&query=lsr01,contains,99156724978803941&mode=basic&offset=0](https://hollis.harvard.edu/primo-explore/fulldisplay?docid=01HVD_ALMA212586057320003941&context=L&vid=HVD2&lang=en_US&search_scope=everything&adaptor=Local%20Search%20Engine&tab=everything&query=lsr01,contains,99156724978803941&mode=basic&offset=0).

## **7. APPENDIX A – CRIMINAL STATUTES GENERALLY**

### **Definitional Statutes**

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

- (1) “Place of prostitution” means any place where prostitution is practiced.
- (2) “Prostitute” means a male or female person who engages in sexual conduct or sexual contact for a fee.
- (3) “Prostitution enterprise” means an arrangement whereby two or more prostitutes are organized to conduct prostitution activities.
- (4) “Sexual conduct” means sexual intercourse or oral or anal sexual intercourse.
- (5) “Sexual contact” means any touching of the sexual organs or other intimate parts of a person not married to the actor for the purpose of arousing or gratifying the sexual desire of either party.

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

(2) Notwithstanding ORS 136.655, in any prosecution under ORS 167.012 and 167.017, spouses are competent and compellable witnesses for or against either party.

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

- (1) “Advertising purposes” means purposes of propagandizing in connection with the commercial sale of a product or type of product, the commercial offering of a service, or the commercial exhibition of an entertainment.
- (2) “Displays publicly” means the exposing, placing, posting, exhibiting, or in any fashion displaying in any location, whether public or private, an item in such a manner that it may be readily seen and its content or character distinguished by normal unaided vision viewing it from a public thoroughfare, depot or vehicle.
- (3) “Furnishes” means to sell, give, rent, loan or otherwise provide.
- (4) “Minor” means an unmarried person under 18 years of age.
- (5) “Nudity” means uncovered, or less than opaquely covered, post-pubertal human genitals, pubic areas, the post-pubertal human female breast below a point immediately above the top of the areola, or the covered human male genitals in a discernibly turgid state. For purposes of this definition, a female breast is considered uncovered if the nipple only or the nipple and areola only are covered.
- (6) “Obscene performance” means a play, motion picture, dance, show or other presentation, whether pictured, animated or live, performed before an audience and which in whole or in part depicts or reveals nudity, sexual conduct, sexual excitement or sadomasochistic abuse, or which includes obscenities or explicit verbal descriptions or narrative accounts of sexual conduct.

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

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

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

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

(11) “Sexual excitement” means the condition of human male or female genitals or the breasts of the female when in a state of sexual stimulation, or the sensual experiences of humans engaging in or witnessing sexual conduct or nudity

## **Criminal Statutes**

**167.007 Prostitution.** (1) A person commits the crime of prostitution if the person engages in, or offers or agrees to engage in, sexual conduct or sexual contact in return for a fee.

(2) Prostitution is a Class A misdemeanor.

(3) It is an affirmative defense to prosecution under this section that the defendant, at the time of the alleged offense, was a victim of the crime of trafficking in persons as described in ORS 163.266 (1)(b) or (c).

**167.008 Commercial sexual solicitation.** (1) A person commits the crime of commercial sexual solicitation if the person pays, or offers or agrees to pay, a fee to engage in sexual conduct or sexual contact.

(2) Commercial sexual solicitation is a Class A misdemeanor.

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

(a) Owns, controls, manages, supervises or otherwise maintains a place of prostitution or a prostitution enterprise;

(b) Induces or causes a person to engage in prostitution or to remain in a place of prostitution;

(c) Receives or agrees to receive money, goods, property, services or something else of value, other than as a prostitute being compensated for personally rendered prostitution services, pursuant to an agreement or understanding that the money, goods, property, services or something else of value is derived from a prostitution activity; or

(d) Engages in any conduct that institutes, aids or facilitates an act or enterprise of prostitution.

(2) Promoting prostitution is a Class C felony.

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

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

(b) Induces or causes a person under 18 years of age to engage in prostitution;

(c) Aids or facilitates the commission of prostitution or attempted prostitution by a person under 18 years of age; or

(d) Induces or causes the spouse, child or stepchild of the person to engage in prostitution.

(2) Compelling prostitution is a Class B felony.

(3) In a prosecution under subsection (1)(b) or (c) of this section, the state is not required to prove that the defendant knew the other person was under 18 years of age and it is no defense that the defendant did not know the person's age or that the defendant reasonably believed the person to be older than 18 years of age.

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

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

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

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

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

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

(b) "Public show" means any entertainment or exhibition advertised or in some other fashion held out to be accessible to the public or member of a club, whether or not an admission or other charge is levied or collected and whether or not minors are admitted or excluded.

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

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

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

(2) Publicly displaying nudity or sex for advertising purposes is a Class A misdemeanor.

## 8. APPENDIX B – CONFORMING AMENDMENTS

- **ORS 90.396 (Termination of rental agreement 24 hours after notice)**
  - This is a residential landlord and tenant statute that references ORS 167.007 (prostitution), ORS 167.008 (commercial sexual solicitation), and ORS 167.012 (promotion of prostitution). The statute permits landlords to evict tenants upon 24 hours' notice if any prostitution, commercial sexual solicitation, or promotion of prostitution occurs at the premises. The statute characterizes such acts as acts that are "outrageous in the extreme."<sup>167</sup>
  - If ORS 167.007, ORS 167.008, and ORS 167.012 are amended as contemplated in Section 4(A)(2) (*Legal Mapping Guide; Criminal Statutes and Conforming Amendments; Statutes That Must Be Changed*) (and not repealed), then the statute can remain unchanged and subsection (1)(f)(A) should continue to reference ORS 167.007, ORS 167.008, and ORS 167.012.
- **ORS 105.555 (Places declared nuisances)**
  - This is a property rights statute that references "prostitution" and "commercial sexual solicitation."<sup>168</sup> The statute permits various persons to bring actions against the owner of any property where acts of prostitution or commercial sexual solicitation occur. The statute declares any such property to be a "nuisance."
  - If ORS 167.007 is amended as contemplated in Section 4(A)(2) (*Legal Mapping Guide; Criminal Statutes and Conforming Amendments; Statutes That Must Be Changed*) (and not repealed), then subsection (1)(a) should be amended to clarify that the references to prostitution: (i) mean prostitution as described in ORS 167.007; and (ii) do not include consensual adult prostitution services.
  - If ORS 167.008 is amended as contemplated in Section 4(A)(2) (*Legal Mapping Guide; Criminal Statutes and Conforming Amendments; Statutes That Must Be Changed*) (and not repealed), then subsection (1)(a) should be amended to clarify that the reference to commercial sexual solicitation: (i) means commercial sexual solicitation as described in ORS 167.008; and (ii) does not include commercial sexual solicitation involving adults.

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<sup>167</sup> If sex work involving consenting adults is decriminalized in Oregon, then such sex work should not be characterized as an act that is outrageous in the extreme, even if such sex work violates the rental agreement between the landlord and the tenant. Notably, all of the other acts in ORS 90.396 that permit a landlord to evict a tenant upon 24 hours' notice involve: (i) actual or a serious risk of substantial personally injury; (ii) actual or a serious risk of substantial property damage; or (iii) the commission of a crime. See ORS 90.396(1)(a-f). Additionally, ORS 90.392 permits landlords to terminate a residential rental agreement upon 30 days' notice if the tenant materially violates the rental agreement. See ORS 90.392(2-3). A rental agreement could prohibit consensual adult prostitution services at the residence and provide that any such services are a material violation of the lease. In that case, a landlord could terminate the rental agreement for cause upon 30 days' notice, in the same manner as the landlord could in all other instances where the tenant materially violated the rental agreement. See Section 4(C)(1) (*Legal Mapping Guide; Sex Work and Sex Workers Generally; Locations for Services*).

<sup>168</sup> The statute does not expressly reference ORS 167.007 or ORS 167.008.

- **ORS 131.602 (Criminal forfeiture; prohibited conduct for purposes of instrumentalities of crime)**
  - This is a criminal procedures statute that references “prostitution, as defined in ORS 167.007,” “commercial sexual solicitation, as defined in ORS 167.008,” “promoting prostitution, as defined in ORS 167.012, and “compelling prostitution, as defined in ORS 167.017.”
  - If ORS 167.007, ORS 167.008, and ORS 167.012 are amended as contemplated in Section 4(A)(2) (*Legal Mapping Guide; Criminal Statutes and Conforming Amendments; Statutes That Must Be Changed*) (and not repealed), then:
    - Subsection (90) should be amended to clarify that the reference to prostitution: (i) mean prostitution as described in ORS 167.007; and (ii) does not include consensual adult prostitution services;
    - Subsection (91) should be amended to clarify that the reference to commercial sexual solicitation: (i) means commercial sexual solicitation as described in ORS 167.008; and (ii) does not include commercial sexual solicitation involving adults; and
    - Subsection (92) should be amended to clarify that the reference to prostitution: (i) mean prostitution as described in ORS 167.007; and (ii) does not include consensual adult prostitution services
  - If ORS 167.017 is amended or remains unchanged (in either case as contemplated in Section 4(A)(3) (*Legal Mapping Guide; Criminal Statutes and Conforming Amendments; Statutes That Should Be Examined*)), then subsection (93) should continue to reference compelling prostitution, as defined in ORS 167.017.
- **ORS 133.724 (Order for interception of communications)**
  - This is a criminal search and seizures statute that references ORS 167.007 (prostitution), ORS 167.008 (commercial sexual solicitation), ORS 167.012 (promoting prostitution), and ORS 167.017 (compelling prostitution).
  - If ORS 167.007, ORS 167.008, and ORS 167.012 are amended as contemplated in Section 4(A)(2) (*Legal Mapping Guide; Criminal Statutes and Conforming Amendments; Statutes That Must Be Changed*) (and not repealed), then subsection (1)(c)(B) should continue to reference ORS 167.007, ORS 167.008, and ORS 167.012.
  - If ORS 167.017 is amended or remains unchanged (in either case as contemplated in Section 4(A)(3) (*Legal Mapping Guide; Criminal Statutes and Conforming Amendments; Statutes That Should Be Examined*)), then subsection (1)(c)(B) should continue to reference ORS 167.017.
- **ORS 133.726 (Interception of oral communication without order)**
  - This is another criminal search and seizures statute that references ORS 167.007 (prostitution) and ORS 167.008 (commercial sexual solicitation).
  - If ORS 167.007 and ORS 167.008 are amended as contemplated in Section 4(A)(2) (*Legal Mapping Guide; Criminal Statutes and Conforming Amendments; Statutes That Must Be Changed*) (and not repealed), then the statute can remain unchanged

and subsections (3)(b), 5(a), and 7(a) should continue to reference ORS 167.007 and ORS 167.008.

- **ORS 136.437 (Use of evidence in prosecution of prostitution)**

- This is a criminal evidence statute that references ORS 167.007 and contains multiple references to “prostitution.”
- If ORS 167.007 is amended as contemplated in Section 4(A)(2) (*Legal Mapping Guide; Criminal Statutes and Conforming Amendments; Statutes That Must Be Changed*) (and not repealed), then the statute should be amended to clarify that the references to prostitution: (i) mean prostitution as described in ORS 167.007; and (ii) do not include consensual adult prostitution services.

- **ORS 166.715 (Racketeering; definitions)**

- This is a criminal racketeering statute that references “ORS 167.007 to ORS 167.017” (which includes ORS 167.007 (prostitution), ORS 167.008 (commercial sexual solicitation), ORS 167.012 (promoting prostitution), and ORS 167.017 (compelling prostitution)), ORS 167.062 (sodomasochistic abuse or sexual conduct in live show), and ORS 167.090 (publicly displaying nudity or sex for advertising purposes).
- If ORS 167.007, ORS 167.008, ORS 167.012, and ORS 167.062 are amended as contemplated in Section 4(A)(2) (*Legal Mapping Guide; Criminal Statutes and Conforming Amendments; Statutes That Must Be Changed*) (and not repealed), then subsection (6)(a)(T) should continue to reference (or otherwise include) ORS 167.007, ORS 167.008, ORS 167.012, and ORS 167.062.
- If ORS 167.017 and ORS 167.090 are amended or remain unchanged (in either case as contemplated in Section 4(A)(3) (*Legal Mapping Guide; Criminal Statutes and Conforming Amendments; Statutes That Should Be Examined*)), then subsection (6)(a)(T) should continue to reference (or otherwise include) ORS 167.017 and ORS 167.090.

- **ORS 180.600 (Investigation of organized crime; definitions)**

- This is an organized crime statute that references “criminal laws relating to prostitution,” which presumably includes ORS 167.007 (prostitution), ORS 167.008 (commercial sexual solicitation), ORS 167.012 (promoting prostitution), and ORS 167.017 (compelling prostitution).<sup>169</sup>
- If ORS 167.007, ORS 167.008, and ORS 167.012 are amended as contemplated in Section 4(A)(2) (*Legal Mapping Guide; Criminal Statutes and Conforming Amendments; Statutes That Must Be Changed*) (and not repealed), and if ORS 167.012 is amended or remains unchanged (in either case as contemplated in Section 4(A)(3) (*Legal Mapping Guide; Criminal Statutes and Conforming Amendments; Statutes That Should Be Examined*)), then subsection (2) should be amended to clarify that the reference to “criminal laws relating to prostitution:”

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<sup>169</sup> The statute does not expressly reference ORS 167.007, ORS 167.008, ORS 167.012, and ORS 167.017. However, all of those statutes are criminal statutes that are listed under the heading “PROSTITUTION AND RELATED OFFENSES” in ORS Chapter 167.



- means prostitution as described in ORS 167.007, ORS 167.012, and ORS 167.017 and commercial sexual solicitation as described in ORS 167.008;
  - does not include consensual adult prostitution services; and
  - does not include commercial sexual solicitation involving adults.
- **ORS 342.143 (Licensing of teachers and other school personnel)**
    - This statute governs the licensing of teachers and certain other school personnel. The statute provides that various teaching and other school personnel licenses and registrations *may not* be issued to, or held by, any person who has been convicted of a crime listed in ORS 167.007 (prostitution), ORS 167.008 (commercial sexual solicitation), ORS 167.012 (promoting prostitution), ORS 167.017 (compelling prostitution), ORS 167.062 (sodomasochistic abuse or sexual conduct in live show), or ORS 167.090 (publicly displaying nudity or sex for advertising purposes).<sup>170</sup>
    - If ORS 167.007, ORS 167.008, ORS 167.012, and ORS 167.062 are amended as contemplated in Section 4(A)(2) (*Legal Mapping Guide; Criminal Statutes and Conforming Amendments; Statutes That Must Be Changed*) (and not repealed), then subsection (3)(a)(A) should continue to reference ORS 167.007, ORS 167.008, ORS 167.012, and ORS 167.062.
    - If ORS 167.017 and ORS 167.090 are amended or remain unchanged (in either case as contemplated in Section 4(A)(3) (*Legal Mapping Guide; Criminal Statutes and Conforming Amendments; Statutes That Should Be Examined*)), then subsection (3)(a)(A) should continue to reference ORS 167.017 and ORS 167.090.
    - However, subsection (3)(a)(A) could be amended so that it does not include any crime under ORS 167.007, ORS 167.008, ORS 167.012, ORS 167.017, ORS 167.062, or ORS 167.090 that occurred before the effective date of the amendment, but that is no longer a crime after such effective date.

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<sup>170</sup> For a discussion concerning the licensing of occupations and professions generally, see the analysis of ORS 670.280 in Section 4(C)(4)(b) (*Legal Mapping Guide; Sex Work and Sex Workers Generally; Anti-Discrimination; Factors That Decision Makers May Consider*).