

# House Bill 2471

Sponsored by Representative BUTLER

## SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Prohibits sales of tobacco products without tobacco vending license. Directs Oregon Liquor Control Commission to issue tobacco vending license to qualified persons upon application and payment of fee. Prohibits sales of tobacco products to persons under 18 years of age and requires vendors to request identification from persons who appear to be younger than 26 years of age. Requires vendors to post notices concerning prohibition of sales to minors. Permits Oregon Liquor Control Commission to suspend or revoke tobacco vending license for certain reasons. Prohibits sales of tobacco products in certain instances. Grants Oregon Liquor Control Commission rulemaking authority and certain powers to implement and enforce Act.

Provides for civil penalty of not more than \$1,000 for violation of Act and state laws related to tobacco product sales in addition to other existing fines and penalties.

Takes effect on 91st day following adjournment sine die.

## A BILL FOR AN ACT

1  
2 Relating to sales of tobacco products; creating new provisions; amending ORS 167.401, 167.402,  
3 167.404, 339.865, 431.853 and 471.805; repealing ORS 167.400, 431.840, 431.845 and 431.850; and  
4 prescribing an effective date.

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

6 **SECTION 1. As used in sections 1 to 15 of this 2007 Act:**

7 (1) **"Licensee" means a person licensed as a tobacco vendor under section 4 of this 2007**  
8 **Act.**

9 (2) **"Sell" includes an offer to sell and the keeping or display of tobacco products intended**  
10 **for sale.**

11 (3) **"Tobacco product" means:**

12 (a) **Cigarettes as defined in ORS 323.010;**

13 (b) **Cigars, cheroots, stogies and periques;**

14 (c) **Granulated, plug cut, crimp cut, ready rubbed and other smoking tobacco;**

15 (d) **Snuff, snuff flour, cavendish, plug and twist tobacco, fine-cut and other chewing**  
16 **tobaccos;**

17 (e) **Shorts, refuse scraps, clippings, cuttings and sweepings of tobacco;**

18 (f) **Other kinds and forms of tobacco, prepared in such a manner as to be suitable for**  
19 **chewing or smoking in a pipe or otherwise, or both for chewing and smoking; and**

20 (g) **Devices listed in ORS 163.575 (1)(e).**

21 (4) **"Tobacco vending license" means a license issued under section 4 of this 2007 Act.**

22 **SECTION 2. A person may not sell a tobacco product at retail unless the person pos-**  
23 **sesses a tobacco vending license issued by the Oregon Liquor Control Commission under**  
24 **section 4 of this 2007 Act.**

25 **SECTION 3. (1) An applicant for a tobacco vending license shall pay the fee established**  
26 **by the Oregon Liquor Control Commission under section 4 of this 2007 Act and shall show**

**NOTE:** Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 to the satisfaction of the commission that the applicant is a person 18 years of age or older.  
 2 The application for a tobacco vending license shall disclose all locations at which the appli-  
 3 cant will sell tobacco at retail, including the location of all tobacco vending machines that  
 4 the applicant will operate under the license. The applicant shall provide a mailing address for  
 5 the applicant's principal place of business.

6 (2) The commission shall require all applicants for a tobacco vending license to review  
 7 the laws relating to the sale of tobacco, with particular emphasis on laws relating to sales  
 8 of tobacco to minors.

9 **SECTION 4.** (1) After the applicant pays the fee established under this section, the  
 10 Oregon Liquor Control Commission shall issue a license to each applicant that meets the  
 11 requirements of section 3 of this 2007 Act. The license shall be effective for one year fol-  
 12 lowing issuance.

13 (2) Subject to the provisions of ORS 291.050 to 291.060, the commission shall establish fees  
 14 for the issuance and renewal of a tobacco vending license. The commission shall set the fees  
 15 at a rate such that the aggregate of moneys received from licensing fees is adequate to pay  
 16 the cost of administering the licensing program established by sections 1 to 15 of this 2007  
 17 Act and the cost of enforcing and investigating violations of the laws of this state related to  
 18 sales of tobacco products.

19 **SECTION 5.** (1) A licensee shall notify the Oregon Liquor Control Commission in writing  
 20 whenever the licensee changes any place where the licensee sells tobacco products or  
 21 changes the mailing address for the licensee's place of business and shall provide a current  
 22 mailing address and a list of all current sales locations.

23 (2) The commission shall keep a record of the places where licensees sell tobacco pro-  
 24 ducts.

25 (3) The commission may give any required notice to the licensee by mailing the notice  
 26 to the mailing address that the licensee last provided.

27 **SECTION 6.** A licensee or an employee or agent of the licensee shall request identifica-  
 28 tion from a person who appears to the licensee or to the agent or employee of the licensee  
 29 to be younger than 26 years of age before the licensee or the agent or employee of the  
 30 licensee sells the person a tobacco product. The identification must show the person's age  
 31 and must bear the photograph and signature of the person. The form of the identification  
 32 may include a state driver license, a state driver permit, an identification card issued under  
 33 ORS 807.400, a passport, a United States military identification card or a Merchant Marine  
 34 identification card issued by the United States Coast Guard.

35 **SECTION 7.** (1) A licensee must conspicuously post a copy of the licensee's tobacco  
 36 vending license in public view in all places where the licensee sells tobacco products at retail.

37 (2) The licensee must display a sign to notify prospective purchasers of tobacco products  
 38 that sales of tobacco products to minors are prohibited. The sign must be posted so that it  
 39 is clearly visible to anyone purchasing tobacco products from the licensee and must read  
 40 substantially as follows:

41 \_\_\_\_\_  
 42  
 43 **THE SALE OF TOBACCO PRODUCTS TO PERSONS UNDER AGE 18 IS STRICTLY PRO-**  
 44 **HIBITED BY STATE LAW. ANY PERSON WHO KNOWINGLY SELLS TOBACCO OR**  
 45 **CAUSES TOBACCO TO BE SOLD TO A PERSON UNDER 18 YEARS OF AGE COMMITS**

1 THE CRIME OF ENDANGERING THE WELFARE OF A MINOR, PURSUANT TO ORS  
2 163.575. IF YOU ARE UNDER 18, YOU COULD BE PENALIZED FOR PURCHASING A TO-  
3 BACCO PRODUCT. PHOTO ID MAY BE REQUIRED.  
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6 **SECTION 8.** (1) The Oregon Liquor Control Commission may revoke or suspend for a  
7 fixed period of time a licensee's tobacco vending license if:

8 (a) The licensee, in the application for the license or in any written or oral communi-  
9 cation to the commission concerning the issuance, retention or renewal of the license, makes  
10 any material misstatement of fact or fails to disclose any material fact necessary to make  
11 the licensee's statement not misleading;

12 (b) The licensee permits another person to use the license;

13 (c) The licensee fails to properly supervise or control employees or agents that sell to-  
14 bacco products under the license;

15 (d) The licensee is convicted of a crime in which the criminal activity bears a direct re-  
16 lationship to sales of tobacco products; or

17 (e) The licensee violates any of the provisions of sections 1 to 15 of this 2007 Act, any law  
18 relating to sales of tobacco products, including ORS 163.575, 163.580, 167.401, 167.402 and  
19 167.407 or any rule adopted by a state agency relating to sales of tobacco products.

20 (2) The commission may choose to place the licensee on probation, by which action the  
21 commission may restrict or condition the licensee's ability to sell tobacco products under the  
22 licensee's existing license or condition the renewal of the license on the licensee's taking  
23 specified actions to comply with the laws of this state or a rule or order of a state agency  
24 relating to sales of tobacco products.

25 **SECTION 9.** (1) A person may not sell cigarettes, as defined in ORS 323.010, that are not  
26 in the original unopened package or container. Cigarettes as defined in ORS 323.010 may not  
27 be sold in packages of fewer than 20 cigarettes.

28 (2) A person may not give or distribute tobacco products to another person through the  
29 use of a coupon if the coupon is redeemed in any manner that does not require a person-to-  
30 person transaction in a retail store.

31 (3) A person may not distribute or offer to distribute samples of tobacco products and  
32 may not distribute free tobacco products to persons under 18 years of age as part of a mar-  
33 keting strategy to encourage the use of tobacco products.

34 (4) All retail sales of tobacco products must be made on a person-to-person basis except  
35 for sales made through vending machines. Tobacco products may not be sold or delivered  
36 through the mail.

37 **SECTION 10.** If the Oregon Liquor Control Commission refuses to issue or renew a to-  
38 bacco vending license or proposes to revoke or suspend a tobacco vending license, the com-  
39 mission shall accord the applicant or licensee a hearing under ORS 183.413 to 183.470.

40 **SECTION 11.** In administering the provisions of sections 1 to 15 of this 2007 Act, the  
41 Oregon Liquor Control Commission:

42 (1) May authorize all disbursements necessary to carry out sections 1 to 15 of this 2007  
43 Act.

44 (2) Shall issue a tobacco vending license (to persons applying to the commission that have  
45 qualified for the license.

1 (3) May suspend or revoke tobacco vending licenses in the manner provided in ORS  
2 183.310 to 183.497.

3 (4) May authorize officers, inspectors and investigators employed by the commission to  
4 enforce the laws of this state relating to sales of tobacco products, including ORS 163.575,  
5 163.580, 167.401, 167.402 and 167.407. The officers, inspectors and investigators employed by  
6 the commission shall have the authority described in ORS 471.775 and in addition may issue  
7 citations for violations of ORS 163.575, 163.580, 167.401, 167.402 and 167.407.

8 (5) May adopt rules necessary to implement the provisions of sections 1 to 15 of this 2007  
9 Act and to enforce the laws of this state relating to sales of tobacco products, including ORS  
10 163.575, 163.580, 167.401, 167.402 and 167.407.

11 **SECTION 12.** Officers, inspectors and investigators employed by the Oregon Liquor Con-  
12 trol Commission and any peace officer, for the purpose of enforcing sections 1 to 15 of this  
13 2007 Act and any state law related to the sale of tobacco products, may:

14 (1) Enter any place of business where tobacco products are sold;

15 (2) Detain for a reasonable period of time any person that the officer has observed at-  
16 tempting to purchase, purchasing, or possessing a tobacco product if the officer has rea-  
17 sonable grounds to believe that the person is under 18 years of age and if the officer detains  
18 the person in a reasonable manner for the purpose of determining the person's true identity  
19 and date of birth; and

20 (3) Seize as contraband any tobacco products possessed by persons under 18 years of age.

21 **SECTION 13.** The Oregon Liquor Control Commission may impose a civil penalty not to  
22 exceed \$1,000 for violation of ORS 163.575, 163.580, 167.401, 167.402 or 167.407 or section 2, 5,  
23 6, 7 or 9 of this 2007 Act, or any rule that the commission adopts to implement sections 1  
24 to 15 of this 2007 Act. If the commission imposes a civil penalty under this section, the  
25 commission shall do so as provided in ORS 183.745. Any civil penalty imposed under this  
26 section is in addition to any other penalty that may be imposed for violation of ORS 163.575,  
27 163.580, 167.401, 167.402 or 167.407 or section 2, 5, 6, 7 or 9 of this 2007 Act.

28 **SECTION 14.** All moneys that the Oregon Liquor Control Commission receives under  
29 sections 1 to 15 of this 2007 Act shall be remitted monthly to the State Treasurer, who shall  
30 credit the moneys as provided in ORS 471.805.

31 **SECTION 15.** Violation of section 2, 6, 7 or 9 of this 2007 Act is a Class A violation.

32 **SECTION 16.** ORS 431.853 is amended to read:

33 431.853. (1) The *[Department of Human Services]* **Oregon Liquor Control Commission** shall:

34 (a) Coordinate with law enforcement agencies to conduct random, unannounced inspections of  
35 Oregon wholesalers and retailers of tobacco products to *[insure]* **ensure** compliance with Oregon  
36 laws designed to discourage the use of tobacco by minors including ORS 163.575, 163.580, *[167.400,]*  
37 167.402 *[and 431.840]* **and sections 1 to 15 of this 2007 Act**; and

38 (b) Submit a report describing:

39 (A) The activities carried out to enforce the laws listed in paragraph (a) of this subsection  
40 during the previous fiscal year;

41 (B) The extent of success achieved in reducing the availability of tobacco products to minors;  
42 and

43 (C) The strategies to be utilized for enforcing the laws listed in paragraph (a) of this subsection  
44 during the year following the report.

45 (2) The *[Department of Human Services]* **Oregon Liquor Control Commission** shall adopt rules

1 concerning random inspections of places that sell tobacco products consistent with section 1921,  
 2 Public Law 102-321, 1992. The rules shall provide that inspections may take place:

3 (a) Only in areas open to the public;

4 (b) Only during hours that tobacco products are sold or distributed; and

5 (c) No more frequently than once a month in any single establishment unless a compliance  
 6 problem exists or is suspected.

7 **SECTION 17.** ORS 167.401 is amended to read:

8 167.401. (1) Except as **otherwise** provided in [*subsection (4) of*] this section, [*no*] a person under  
 9 18 years of age [*shall*] **may not** purchase, attempt to purchase, [*or*] acquire **or possess** tobacco  
 10 products as defined in [*ORS 431.840*] **section 1 of this 2007 Act**. [*Except when such*] **A minor who**  
 11 is in a private residence accompanied by the parent or guardian of the minor and with the consent  
 12 of such parent or guardian[, *no person under 18 years of age shall*] **may** have personal possession  
 13 of tobacco products.

14 (2) Any person who violates subsection (1) of this section commits a violation, **except that a**  
 15 **person under 18 years of age who violates subsection (1) of this section commits a Class D**  
 16 **violation.**

17 (3)(a) In lieu of any other penalty established by law, a person who is convicted for the first time  
 18 of a violation of subsection (1) of this section may be ordered to participate in a tobacco education  
 19 program or a tobacco use cessation program or to perform community service related to diseases  
 20 associated with consumption of tobacco products. A person may be ordered to participate in such  
 21 a program only once.

22 (b) In addition to and not in lieu of any other penalty established by law, a person who **gains**  
 23 **possession of a tobacco product as defined in section 1 of this 2007 Act by misrepresenting**  
 24 **the person's age and who** is convicted of a second violation of subsection (1) of this section  
 25 [*through misrepresentation of age*] may be required to participate in a tobacco education or a tobacco  
 26 use cessation program or to perform community service related to diseases associated with the  
 27 consumption of tobacco products, and the court shall order that the person's driving privileges and  
 28 right to apply for driving privileges be suspended for a period not to exceed one year. If a court has  
 29 issued an order denying driving privileges under this subsection, the court, upon petition of the  
 30 person, may withdraw the order at any time the court deems appropriate. The court notification to  
 31 the Department of Transportation under this subsection may include a recommendation that the  
 32 person be granted a hardship permit under ORS 807.240 if the person is otherwise eligible for the  
 33 permit.

34 (4) A minor acting under the supervision of an adult may purchase, attempt to purchase or ac-  
 35 quire tobacco products for the purpose of testing compliance with a federal law, state statute, local  
 36 law or retailer management policy limiting or regulating the delivery of tobacco products to minors.

37 **SECTION 18.** ORS 167.402 is amended to read:

38 167.402. (1) No person having authority over such placement shall locate a vending machine  
 39 from which tobacco products, as defined in [*ORS 431.840*] **section 1 of this 2007 Act**, in any form  
 40 are dispensed in any place legally accessible to persons under 18 years of age except taverns and  
 41 cocktail lounges, industrial plants, as defined in ORS 308.408, hotels and motels.

42 (2) Violation of subsection (1) of this section is a Class B violation. Each day of violation con-  
 43 stitutes a separate offense.

44 **SECTION 19.** ORS 167.404 is amended to read:

45 167.404. Cities and counties by ordinance or resolution shall not regulate vending machines that

1 dispense tobacco products, as defined in [ORS 431.840] **section 1 of this 2007 Act**, in any form and  
 2 that are in any manner accessible to minors.

3 **SECTION 20.** ORS 339.865 is amended to read:

4 339.865. (1) A facility [shall] **may** not permit any person under 18 years of age to possess to-  
 5 bacco products, as defined in [ORS 431.840] **section 1 of this 2007 Act**, while the person is present  
 6 on facility grounds or in facility buildings or attending facility-sponsored activities.

7 (2) The facility must have written policies prohibiting the possession of tobacco products de-  
 8 scribed in subsection (1) of this section by persons under 18 years of age. The facility must have  
 9 written plans to implement such policies.

10 (3) This section does not apply to any person for whom a tobacco or nicotine product has been  
 11 lawfully prescribed.

12 (4) As used in this section, "facility" means public or private schools, youth correction facilities  
 13 or juvenile detention facilities. "Facility" does not include colleges or universities, professional  
 14 technical schools or community colleges.

15 **SECTION 21.** ORS 471.805 is amended to read:

16 471.805. (1) Except as otherwise provided in ORS 471.810 (2), all money collected by the Oregon  
 17 Liquor Control Commission under this chapter, [and] ORS chapter 473 **and sections 1 to 15 of this**  
 18 **2007 Act** and privilege taxes shall be remitted to the State Treasurer who shall credit it to a sus-  
 19 pense account of the commission. Whenever the commission determines that moneys have been re-  
 20 ceived by it in excess of the amount legally due and payable to the commission or that it has  
 21 received money to which it has no legal interest, or that any license fee or deposit is properly  
 22 refundable, the commission is authorized and directed to refund such money by check drawn upon  
 23 the State Treasurer and charged to the suspense account of the commission. After withholding  
 24 refundable license fees and such sum, not to exceed \$250,000, as it considers necessary as a revolv-  
 25 ing fund for a working cash balance for the purpose of paying travel expenses, advances, other  
 26 miscellaneous bills and extraordinary items which are payable in cash immediately upon presenta-  
 27 tion, the commission shall direct the State Treasurer to transfer the money remaining in the sus-  
 28 pense account to the Oregon Liquor Control Commission Account in the General Fund. Moneys in  
 29 the Oregon Liquor Control Commission Account are continuously appropriated to the commission  
 30 to be distributed and used as required or allowed by law.

31 (2) All necessary expenditures of the commission incurred in carrying out the purposes required  
 32 of the commission by law, including the salaries of its employees, purchases made by the commission  
 33 and such sums necessary to reimburse the \$250,000 revolving fund, shall be audited and paid from  
 34 the Oregon Liquor Control Commission Account in the General Fund, upon warrants drawn by the  
 35 Oregon Department of Administrative Services, pursuant to claims duly approved by the commission.

36 **SECTION 22.** ORS 167.400, 431.840, 431.845 and 431.850 are repealed on January 1, 2008.

37 **SECTION 23.** ORS 431.853 is added to and made a part of sections 1 to 15 of this 2007 Act.

38 **SECTION 24.** (1) Sections 1 to 15 of this 2007 Act and the amendments to ORS 167.401,  
 39 167.402, 167.404, 339.865 and 431.853 by sections 16 to 20 of this 2007 Act apply to persons that  
 40 sell tobacco products and to sales of tobacco products on or after the operative date of this  
 41 2007 Act.

42 (2) ORS 471.805, as amended by section 21 of this 2007 Act, applies to all moneys the  
 43 Oregon Liquor Control Commission receives under sections 1 to 15 of this 2007 Act on or  
 44 after the operative date of this 2007 Act.

45 **SECTION 25.** Sections 1 to 15 and the amendments to ORS 167.401, 167.402, 167.404,

1 339.865, 431.853 and 471.805 by sections 16 to 21 of this 2007 Act become operative January 1,  
2 2008.

3 SECTION 26. The Oregon Liquor Control Commission may take any action before Janu-  
4 ary 1, 2008, that is necessary to enable the commission to exercise, on and after January 1,  
5 2008, all the duties, functions and powers conferred on the commission by this 2007 Act.

6 SECTION 27. This 2007 Act takes effect on the 91st day after the date on which the  
7 regular session of the Seventy-fourth Legislative Assembly adjourns sine die.

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