

Senate Bill 571

Sponsored by Senators AVAKIAN, BURDICK, BATES, DEVLIN, Representatives ROSENBAUM, TOMEI; Senators COURTNEY, GORDLY, METSGER, MONNES ANDERSON, MONROE, MORRISETTE, PROZANSKI, WALKER, Representatives GELSER, NATHANSON

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**.

Expands prohibition of smoking in public places and places of employment. Specifies certain exceptions. Increases fine for permitting smoking in places of employment.

A BILL FOR AN ACT

1
2 Relating to smoking; amending ORS 433.835, 433.840, 433.845, 433.850, 433.855, 433.870 and 433.990;
3 and repealing ORS 433.863 and 433.865.

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

5 **SECTION 1.** ORS 433.835 is amended to read:

6 433.835. As used in ORS 433.835 to 433.875:

7 (1) "Enclosed area" means all space between a floor and a ceiling that is enclosed on *[all]* **three**
8 **or more** sides by *[solid]* **permanent or temporary** walls or windows, exclusive of doors or
9 passageways, that extend from the floor to the ceiling, *including all space therein screened by par-*
10 *titions that do not extend to the ceiling*].

11 (2) "Place of employment" means every enclosed area under the control of a public or private
12 employer that employees frequent during the course of employment, including but not limited to
13 work areas, employee lounges, **vehicles that are operated in the course of an employer's busi-**
14 **ness that are not operated exclusively by one employee**, rest rooms, conference rooms, class-
15 rooms, cafeterias, *[and]* hallways, **meeting rooms, elevators and stairways**. "Place of
16 employment" does not include a private residence unless it is used as a child care facility as defined
17 in ORS 657A.250[,] **or** a facility providing adult day care as defined in ORS 410.490 *[or a health care*
18 *facility as defined in ORS 442.015]*.

19 (3) "Public place" means any enclosed *[indoor]* area open to *[and frequented by]* the public, *ex-*
20 *cept those public places subject to ORS 441.815, including but not limited to restaurants, as defined in*
21 *ORS 624.010, retail stores, banks, commercial establishments, educational facilities, nursing homes,*
22 *auditoriums, arenas, meeting rooms and grocery stores*].

23 (4) "Smoking instrument" means any cigar, cigarette, pipe or other smoking equipment.

24 **SECTION 2.** ORS 433.840 is amended to read:

25 433.840. The people of Oregon find that because *[the smoking of tobacco creates a health hazard*
26 *to those present in confined places,]* **exposure to secondhand smoke is known to cause cancer**
27 **and other chronic diseases such as heart disease, asthma and bronchitis**, it is necessary to
28 reduce exposure to tobacco smoke by *[requiring nonsmoking areas in certain]* **prohibiting smoking**
29 **in all public places and places of employment**.

30 **SECTION 3.** ORS 433.845 is amended to read:

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.

1 433.845. (1) [No] A person [shall] **may not** smoke or carry any lighted smoking instrument in
 2 a public place **or place of employment** except in areas designated as smoking areas pursuant to
 3 ORS 433.850.

4 **(2) A person may not smoke or carry any lighted smoking instrument within 25 feet of**
 5 **the following parts of public places or places of employment:**

- 6 **(a) Entrances;**
- 7 **(b) Exits;**
- 8 **(c) Windows that open; and**
- 9 **(d) Ventilation intakes that serve an enclosed area.**

10 **(3) [Smoking is prohibited] A person may not smoke or carry any lighted smoking instru-**
 11 **ment** in a room during the time that jurors are required to use the room.

12 **SECTION 4.** ORS 433.850 is amended to read:

13 433.850. (1) [Except as provided in subsection (2) of this section,] An employer shall provide a
 14 place of employment that is free of tobacco smoke for all employees.

15 (2) [The following areas are not subject to the smoking restrictions in] **Notwithstanding** sub-
 16 section (1) of this section:

- 17 [(a) Retail businesses primarily engaged in the sale of tobacco or tobacco products.]
- 18 [(b) Restaurants posted as off-limits to minors or areas of restaurants posted as off-limits to minors
 19 under rules adopted by the Oregon Liquor Control Commission.]
- 20 [(c) Bars or taverns posted as off-limits to minors under rules adopted by the Oregon Liquor Con-
 21 trol Commission.]
- 22 [(d) Rooms or halls being used by a charitable, fraternal or religious organization to conduct bingo
 23 games under a license issued pursuant to ORS 464.270.]
- 24 [(e) Bowling centers.]
- 25 [(f) Rooms designated by the owner or person in charge of a hotel or motel as rooms in which
 26 smoking is permitted.]
- 27 [(g) Employee lounges designated by an employer for smoking if:]
 - 28 [(A) The lounge is not accessible to minors;]
 - 29 [(B) The air in the lounge is exhausted directly to the outside by an exhaust fan and not recircu-
 30 lated to other parts of the building;]
 - 31 [(C) The lounge is in compliance with ventilation standards established by rule by the Department
 32 of Human Services;]
 - 33 [(D) The lounge is located in a nonwork area where no employee is required to enter as part of the
 34 employee's work responsibilities. For purposes of this paragraph, "work responsibilities" does not in-
 35 clude custodial or maintenance work carried out in a lounge when it is unoccupied; and]
 - 36 [(E) There are sufficient nonsmoking lounges to accommodate nonsmokers.]

37 **(a) The owner or person in charge of a hotel or motel may designate up to 25 percent**
 38 **of the sleeping rooms of the hotel or motel as rooms in which smoking is permitted.**

39 **(b) Smoking of noncommercial tobacco products for ceremonial purposes is permitted in**
 40 **spaces designated for traditional ceremonies in accordance with the American Indian Reli-**
 41 **gious Freedom Act, 42 U.S.C. 1996.**

42 (3) An employer, except in those places described in subsection (2) of this section, shall post
 43 [appropriate] signs **that provide notice of the provisions of ORS 433.835 to 433.875.**

44 **SECTION 5.** ORS 433.855 is amended to read:

45 433.855. (1) The Department of Human Services, in accordance with the provisions of ORS

1 chapter 183:

2 (a) Shall adopt rules necessary to implement the provisions of ORS 433.835 to 433.875 and
3 433.990 (4);

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

5 (c) May impose a civil penalty not to exceed the amount specified in ORS 433.990 (4) for each
6 violation of a rule of the department applicable to ORS **433.845 or** 433.850, to be collected in the
7 manner provided in ORS 441.705 to 441.745. All penalties recovered shall be paid into the State
8 Treasury and credited to the [*General Fund*] **Tobacco Use Reduction Account established under**
9 **ORS 431.832.**

10 (2) In carrying out its duties under this section, the Department of Human Services is not au-
11 thorized to require any changes in ventilation or barriers in any public place **or place of employ-**
12 **ment.** However, nothing in this subsection is intended to limit the authority of the department to
13 impose any requirements under any other provision of law.

14 (3) In public places which the Department of Human Services regularly inspects, the Department
15 of Human Services shall check for compliance with the provisions of ORS 433.835 to 433.875 and
16 433.990 (4). In other public places **and places of employment,** the Department of Human Services
17 shall respond in writing or orally by telephone to complaints, notifying the proprietor or person in
18 charge of responsibilities of the proprietor or person in charge under ORS 433.835 to 433.875 and
19 433.990 (4). If repeated complaints are received, the Department of Human Services may take ap-
20 propriate action to [*insure*] **ensure** compliance.

21 (4) When a county has received delegation of the duties and responsibilities under ORS 446.425
22 and 448.100, or contracted with the Department of Human Services under ORS 190.110, the county
23 shall be responsible for enforcing the provisions of ORS 433.835 to 433.875 and 433.990 (4) that are
24 applicable to those licensed facilities and shall have the same authority as the Department of Human
25 Services for such enforcement.

26 **SECTION 6.** ORS 433.870 is amended to read:

27 433.870. The [*regulations*] **rules** authorized by ORS 433.855[,] **and** 433.860 [*and 433.865*] are in
28 addition to and not in lieu of any other law regulating smoking.

29 **SECTION 7.** ORS 433.990 is amended to read:

30 433.990. (1) Violation of ORS 433.004 or 433.008, 433.255, 433.260 or 433.715 is a Class A
31 misdemeanor.

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

34 (3) Violation of ORS 433.035 is punishable upon conviction by a fine of not less than \$10 nor
35 more than \$100, or by imprisonment for not less than 10 days nor more than 30 days, or by both.

36 (4) Violation of ORS 433.850 is a Class [*D*] **A** violation punishable by [*finest totaling*] **a fine of**
37 not more than [*\$50*] **\$500** per day[.]. **Fines imposed against a single employer under this sub-**
38 **section may not [*to*] exceed [*\$1,000*] **\$2,000** in any 30-day period.**

39 (5) Violation of ORS 433.345 or 433.365 is a Class B violation. Failure to obey any lawful order
40 of the Director of Human Services issued under ORS 433.350 is a Class C misdemeanor.

41 (6) Any organizer, as defined in ORS 433.735, violating ORS 433.745 is punishable, upon con-
42 viction, by a fine of not more than \$10,000.

43 **SECTION 8. ORS 433.863 and 433.865 are repealed.**

44