

B-Engrossed
House Bill 2726

Ordered by the Senate June 22
Including House Amendments dated April 25 and Senate Amendments
dated June 22

Sponsored by Representative TOMEI; Representatives DOHERTY, FREDERICK, HARKER, READ (Presession filed.)

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.

Modifies [*definition of*] **definitions of “cigar bar” and “smoke shop”** for purposes of Oregon Indoor Clean Air Act and directs Oregon Health Authority to establish certification system for smoke shops.

Increases maximum amount of fines that may be imposed during 30-day period on employer that does not provide for employees place of employment that is free of tobacco smoke.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to the Oregon Indoor Clean Air Act; creating new provisions; amending ORS 433.835 and
3 433.990; and declaring an emergency.

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) “Cigar bar” means a business that:

8 (a) Has on-site sales of cigars as defined in ORS 323.500;

9 (b) Has a humidor on the premises;

10 (c) Allows the smoking of cigars on the premises but prohibits the smoking of all other tobacco
11 products in any form including, but not limited to, loose tobacco, pipe tobacco, cigarettes as defined
12 in ORS 323.010 and cigarillos as defined by the Oregon Health Authority by rule;

13 (d) Has been issued and operates under a full on-premises sales license issued under ORS
14 471.175;

15 (e) Prohibits persons under 21 years of age from entering the premises and posts notice of the
16 prohibition;

17 (f) Does not offer video lottery games as authorized under ORS 461.217;

18 (g) Has a maximum seating capacity of 40 persons;

19 [*h) Has a ventilation system that is certified by the assistant to the State Fire Marshal described*
20 *in ORS 476.060 for the jurisdiction in which the cigar bar is located as adequate to remove the cigar*
21 *smoke in the cigar bar and vents the smoke from the cigar bar in a manner that prevents the smoke*
22 *from entering any other establishment; and]*

23 **(h) Has a ventilation system that exhausts smoke from the business and is designed and**
24 **terminated in accordance with the state building code standards for the occupancy classi-**
25 **fication in use; and**

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 (i) Requires all employees to read and sign a document that explains the dangers of exposure
2 to secondhand smoke.

3 (2) "Enclosed area" means all space between a floor and a ceiling that is enclosed on three or
4 more sides by permanent or temporary walls or windows, exclusive of doors or passageways, that
5 extend from the floor to the ceiling.

6 (3) "Place of employment" means every enclosed area under the control of a public or private
7 employer that employees frequent during the course of employment, including but not limited to
8 work areas, employee lounges, vehicles that are operated in the course of an employer's business
9 that are not operated exclusively by one employee, rest rooms, conference rooms, classrooms, cafe-
10 terias, hallways, meeting rooms, elevators and stairways. "Place of employment" does not include a
11 private residence unless it is used as a child care facility as defined in ORS 657A.250 or a facility
12 providing adult day care as defined in ORS 410.490.

13 (4) "Public place" means any enclosed area open to the public.

14 (5) "Smoke shop" means a business that[:] **is certified with the authority as a smoke shop**
15 **pursuant to the rules adopted under section 3 of this 2011 Act.**

16 [*(a) Is primarily engaged in the sale of tobacco products and smoking instruments, with at least*
17 *75 percent of the gross revenues of the business resulting from such sales;*]

18 [*(b) Prohibits persons under 18 years of age from entering the premises;*]

19 [*(c) Does not offer video lottery games as authorized under ORS 461.217, social gaming or betting*
20 *on the premises;*]

21 [*(d) Does not sell or offer on-premises consumption of alcoholic beverages; and*]

22 [*(e) Is a stand-alone business with no other businesses or residential property attached to the*
23 *premises.*]

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

25 **SECTION 2. Section 3 of this 2011 Act is added to and made a part of ORS 433.835 to**
26 **433.875.**

27 **SECTION 3. (1) The Oregon Health Authority shall adopt rules establishing a certification**
28 **system for smoke shops.**

29 **(2) The authority shall issue a smoke shop certification to a business that:**

30 **(a)(A) Is primarily engaged in the sale of tobacco products and smoking instruments in-**
31 **tended for off-premises consumption or use, with at least 75 percent of the gross revenues**
32 **of the business resulting from such sales;**

33 **(B) Prohibits persons under 18 years of age from entering the premises;**

34 **(C) Does not offer video lottery games as authorized under ORS 461.217, social gaming**
35 **or betting on the premises;**

36 **(D) Does not sell, offer or allow on-premises consumption of food or beverages, including**
37 **alcoholic beverages;**

38 **(E) Is a stand-alone business with no other businesses or residential property attached**
39 **to the premises;**

40 **(F) Has a maximum seating capacity of four persons; and**

41 **(G) Allows smoking only for the purpose of sampling tobacco products for making retail**
42 **purchase decisions;**

43 **(b) On December 31, 2008:**

44 **(A) Met the requirements of paragraph (a)(A) to (D) of this subsection; and**

45 **(B)(i) Was a stand-alone business with no other businesses or residential property at-**

1 tached; or

2 (ii) Had a ventilation system that exhausted smoke from the business and was designed
3 and terminated in accordance with the state building code standards for the occupancy
4 classification in use; or

5 (c)(A) Filed an application for certification as a smoke shop before the effective date of
6 this 2011 Act;

7 (B) Met the requirements of ORS 433.835 (5), as in effect immediately before the effective
8 date of this 2011 Act at the time of application;

9 (C) Was certified as a smoke shop under ORS 433.835 (5), as in effect immediately before
10 the effective date of this 2011 Act, by the authority on or before December 31, 2012; and

11 (D) Allows smoking of cigarettes only if at least 75 percent of the gross revenues of the
12 business results from the sale of cigarettes.

13 (3) A smoke shop certified under subsection (2)(b) of this section must renew the smoke
14 shop certification every five years by demonstrating to the satisfaction of the authority that
15 the smoke shop:

16 (a)(A) Meets the requirements of subsection (2)(a)(A) to (D) of this section; and

17 (B)(i) Is a stand-alone business with no other businesses or residential property attached;
18 or

19 (ii) Has a ventilation system that exhausts smoke from the business and is designed and
20 terminated in accordance with the state building code standards for the occupancy classi-
21 fication in use; and

22 (b) Allows smoking of cigarettes only if at least 75 percent of the gross revenues of the
23 business results from the sale of cigarettes.

24 (4) A smoke shop certified under subsection (2)(c) of this section must renew the smoke
25 shop certification every five years by demonstrating to the satisfaction of the authority that
26 the smoke shop:

27 (a) Meets the requirements of ORS 433.835 (5), as in effect immediately before the effec-
28 tive date of this 2011 Act; and

29 (b) Allows smoking of cigarettes only if at least 75 percent of the gross revenues of the
30 business results from the sale of cigarettes.

31 (5) The owner of a smoke shop certified under subsection (2)(b) or (c) of this section may
32 transfer the certification with ownership of the smoke shop in accordance with rules adopted
33 by the authority.

34 (6) A smoke shop certified under subsection (2)(b) of this section may continue to be
35 certified in a new location under subsection (2)(b) of this section if:

36 (a)(A) The new location occupies no more than 3,500 square feet; or

37 (B) If the old location occupied more than 3,500 square feet, the new location occupies
38 no more than 110 percent of the space occupied by the old location; and

39 (b) The smoke shop as operated in the new location:

40 (A) Meets the requirements of subsection (2)(a)(A) to (D) of this section;

41 (B)(i) Is a stand-alone business with no other businesses or residential property attached;
42 or

43 (ii) Has a ventilation system that exhausts smoke from the business and is designed and
44 terminated in accordance with the state building code standards for the occupancy classi-
45 fication in use; and

1 (C) Allows smoking of cigarettes only if at least 75 percent of the gross revenues of the
2 business results from the sale of cigarettes.

3 (7) A smoke shop certified under subsection (2)(c) of this section may continue to be
4 certified in a new location under subsection (2)(c) of this section if:

5 (a)(A) The new location occupies no more than 3,500 square feet; or

6 (B) If the old location occupied more than 3,500 square feet, the new location occupies
7 no more than 110 percent of the space occupied by the old location; and

8 (b) The smoke shop as operated in the new location:

9 (A) Meets the requirements of ORS 433.835 (5), as in effect immediately before the ef-
10 fective date of this 2011 Act; and

11 (B) Allows smoking of cigarettes only if at least 75 percent of the gross revenues of the
12 business results from the sale of cigarettes.

13 (8) The rules adopted under subsection (1) of this section must provide that, in order to
14 obtain a smoke shop certification, a business must agree to allow the authority to make
15 unannounced inspections of the business to determine compliance with ORS 433.835 to
16 433.875.

17 **SECTION 4.** ORS 433.990 is amended to read:

18 433.990. (1) Violation of ORS 433.004 or 433.008, 433.255, 433.260 or 433.715 is a Class A
19 misdemeanor.

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

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

24 (4) Violation of ORS 433.131 is a Class D violation punishable by fines totaling not more than
25 \$50 per day, not to exceed \$1,000 in any 30-day period.

26 (5) Violation of ORS 433.850 is a Class A violation punishable by a fine of not more than \$500
27 per day. Fines imposed against a single employer under this subsection may not exceed [~~\$2,000~~
28 **\$4,000**] in any 30-day period.

29 (6) Violation of ORS 433.345 or 433.365 is a Class B violation. Failure to obey any lawful order
30 of the Director of the Oregon Health Authority issued under ORS 433.350 is a Class C misdemeanor.

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

33 **SECTION 5.** Section 3 of this 2011 Act and the amendments to ORS 433.835 by section 1
34 of this 2011 Act apply to:

35 (1) Businesses certified as smoke shops before, on or after the effective date of this 2011
36 Act.

37 (2) Applications for certification as a smoke shop submitted before, on or after the ef-
38 fective date of this 2011 Act.

39 **SECTION 6.** The amendments to ORS 433.990 by section 4 of this 2011 Act apply to 30-day
40 periods that end on or after the effective date of this 2011 Act.

41 **SECTION 7.** This 2011 Act being necessary for the immediate preservation of the public
42 peace, health and safety, an emergency is declared to exist, and this 2011 Act takes effect
43 on its passage.
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