

House Bill 3191

Sponsored by Representative KOMP

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**.

Increases minimum age for tobacco possession from 18 years of age to 21 years of age.

Creates crime of distribution of tobacco products to person under 21 years of age. Punishes by fine of not less than \$100.

A BILL FOR AN ACT

1
2 Relating to tobacco; creating new provisions; and amending ORS 163.575, 163.580, 165.800, 165.813,
3 167.400, 167.401, 167.402, 167.404, 167.407, 323.718, 339.883, 431.840, 431.853, 433.835 and 807.500.

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

5 **SECTION 1.** ORS 167.400 is amended to read:

6 167.400. (1) It is unlawful for any person under [18] **21** years of age to possess tobacco products,
7 as defined in ORS 431.840.

8 (2) Any person who violates subsection (1) of this section commits a Class D violation.

9 **SECTION 2.** ORS 167.401 is amended to read:

10 167.401. (1) Except as provided in subsection (4) of this section, [no] **a** person under [18] **21** years
11 of age [shall] **may not** purchase, attempt to purchase or acquire tobacco products as defined in ORS
12 431.840. Except when such [minor] **person** is in a private residence accompanied by the parent or
13 guardian of the [minor] **person** and with the consent of such parent or guardian, [no] **a** person under
14 [18] **21** years of age [shall] **may not** have personal possession of tobacco products.

15 (2) Any person who violates subsection (1) of this section commits a violation.

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

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

31 (4) A [minor] **person who is under 21 years of age and is** acting under the supervision of [an

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 *adult*] **a person who is at least 21 years of age** may purchase, attempt to purchase or acquire to-
 2 bacco products for the purpose of testing compliance with a federal law, state statute, local law or
 3 retailer management policy limiting or regulating the delivery of tobacco products to [*minors*] **per-**
 4 **sons under 21 years of age.**

5 **SECTION 3.** ORS 167.402 is amended to read:

6 167.402. (1) As used in this section, “vending machine” means a mechanical, electronic or similar
 7 device that, upon the insertion of tokens, money or another form of payment, dispenses tobacco
 8 products.

9 (2) A person may not sell or dispense tobacco products, as defined in ORS 431.840, from a
 10 vending machine, except in an establishment where the premises are posted as permanently and
 11 entirely off-limits to [*minors*] **persons under 21 years of age** under rules adopted by the Oregon
 12 Liquor Control Commission.

13 (3) Violation of subsection (2) of this section is a Class B violation. Each day of violation con-
 14 stitutes a separate offense.

15 **SECTION 4.** ORS 167.404 is amended to read:

16 167.404. Cities and counties by ordinance or resolution shall not regulate vending machines that
 17 dispense tobacco products, as defined in ORS 431.840, in any form and that are in any manner ac-
 18 cessible to [*minors*] **persons under 21 years of age.**

19 **SECTION 5.** ORS 167.407 is amended to read:

20 167.407. (1) A person having authority over the location of cigarettes and other tobacco products
 21 in a retail store may not locate cigarettes or other tobacco products in a location in the store where
 22 the cigarettes or other tobacco products are accessible by store customers without assistance by a
 23 store employee.

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

26 (3) Subsections (1) and (2) of this section do not apply if the location at which the cigarettes or
 27 tobacco products are sold is a store or other establishment at which persons under [*18*] **21** years of
 28 age are prohibited.

29 **SECTION 6.** ORS 163.575 is amended to read:

30 163.575. (1) A person commits the crime of endangering the welfare of a minor if the person
 31 knowingly:

32 (a) Induces, causes or permits an unmarried person under 18 years of age to witness an act of
 33 sexual conduct or sadomasochistic abuse as defined by ORS 167.060; [*or*]

34 (b) Permits a person under 18 years of age to enter or remain in a place where unlawful activity
 35 involving controlled substances is maintained or conducted; [*or*]

36 (c) Induces, causes or permits a person under 18 years of age to participate in gambling as de-
 37 fined by ORS 167.117; or

38 [*(d) Distributes, sells, or causes to be sold, tobacco in any form to a person under 18 years of age;*
 39 *or*]

40 [*(e)*] **(d)** Sells to a person under 18 years of age any device in which tobacco, marijuana, cocaine
 41 or any controlled substance, as defined in ORS 475.005, is burned and the principal design and use
 42 of which is directly or indirectly to deliver tobacco smoke, marijuana smoke, cocaine smoke or
 43 smoke from any controlled substance into the human body including but not limited to:

44 (A) Pipes, water pipes, hookahs, wooden pipes, carburetor pipes, electric pipes, air driven pipes,
 45 corncob pipes, meerschaum pipes and ceramic pipes, with or without screens, permanent screens,

- 1 hashish heads or punctured metal bowls;
- 2 (B) Carburetion tubes and devices, including carburetion masks;
- 3 (C) Bongs;
- 4 (D) Chillums;
- 5 (E) Ice pipes or chillers;
- 6 (F) Cigarette rolling papers and rolling machines; and
- 7 (G) Cocaine free basing kits.

8 (2) Endangering the welfare of a minor by violation of subsection [(1)(a), (b), (c) or (e)] (1) of this
 9 section, involving other than a device for smoking tobacco, is a Class A misdemeanor.

10 (3) Endangering the welfare of a minor by violation of subsection (1)(d) of this section [*or by*
 11 *violation of subsection (1)(e) of this section*], involving a device for smoking tobacco, is a Class A vi-
 12 olation and the court shall impose a fine of not less than \$100.

13 **SECTION 7. (1) A person commits the crime of distribution of tobacco products to a**
 14 **person under 21 years of age if the person knowingly distributes, sells or causes to be sold**
 15 **tobacco in any form to a person under 21 years of age.**

16 **(2) Distribution of tobacco products to a person under 21 years of age is a Class A vio-**
 17 **lation, and the court shall impose a fine of not less than \$100.**

18 **SECTION 8.** ORS 163.580 is amended to read:

19 163.580. (1) Any person who sells any of the smoking devices listed in ORS 163.575 [(1)(e)] (1)(d)
 20 shall display a sign clearly stating that the sale of such devices to persons under 18 years of age
 21 is prohibited by law.

22 (2) Any person who violates this section commits a Class B violation.

23 **SECTION 9.** ORS 431.840 is amended to read:

24 431.840. (1) It shall be unlawful to do any of the following:

25 (a) To distribute free tobacco products to persons under [18] 21 years of age as part of a mar-
 26 keting strategy to encourage the use of tobacco products.

27 (b) To fail as a retailer to post a notice substantially similar to that set forth in subsection (3)
 28 of this section in a location clearly visible to the seller and the purchaser that sale of tobacco
 29 products to persons under [18] 21 years of age is prohibited.

30 (c) To sell cigarettes in any form other than a sealed package.

31 (2) As used in this section “tobacco products” means bidis, cigars, cheroots, stogies, periques,
 32 granulated, plug cut, crimp cut, ready rubbed and other smoking tobacco, snuff, snuff flour,
 33 cavendish, plug and twist tobacco, fine-cut and other chewing tobaccos, shorts, refuse scraps, clip-
 34 pings, cuttings and sweepings of tobacco and other kinds and forms of tobacco, prepared in such
 35 manner as to be suitable for chewing or smoking in a pipe or otherwise, or both for chewing and
 36 smoking, and shall include cigarettes as defined in ORS 323.010 (1).

37 (3) The notice shall be substantially as follows:

38
 39
 40 NOTICE

41 The sale of tobacco in any form to persons under [18] 21 years of age is prohibited by law. Any
 42 person who knowingly sells, or causes to be sold, tobacco to a person under [18] 21 years of age
 43 commits the crime of [*endangering the welfare of a minor, pursuant to ORS 163.575*] **distribution of**
 44 **tobacco products to a person under 21 years of age, pursuant to section 7 of this 2011 Act.**

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SECTION 10. ORS 431.853 is amended to read:

431.853. (1) The Oregon Health Authority shall:

(a) Coordinate with law enforcement agencies to conduct random, unannounced inspections of Oregon wholesalers and retailers of tobacco products to *[insure]* **ensure** compliance with Oregon laws designed to discourage the use of tobacco by *[minors]* **persons under 21 years of age** including ORS 163.575, 163.580, 167.400, 167.402 and 431.840 **and section 7 of this 2011 Act**; and

(b) Submit a report describing:

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

(B) The extent of success achieved in reducing the availability of tobacco products to *[minors]* **persons under 21 years of age**; and

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

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

(a) Only in areas open to the public;

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

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

SECTION 11. ORS 807.500 is amended to read:

807.500. (1) A person commits the offense of unlawful production of identification cards, licenses, permits, forms or camera cards if the person, without the authority of the Department of Transportation, advertises for the production of, produces in any way or causes to be produced any facsimiles of the identification cards, licenses, permits, forms or camera cards upon which the department issues identification cards, licenses or driver permits under the vehicle code.

(2) The offense described in this section, unlawful production of identification cards, licenses, permits, forms or camera cards, is a Class C felony.

(3) It is an affirmative defense to violating subsection (1) of this section that the person charged with the offense[:]

[(a)] was under 21 years of age at the time of committing the offense and the person produced an identification card, license or permit solely for the purpose of enabling the person to purchase alcohol[;] or **tobacco products**.

[(b) Was under 18 years of age at the time of committing the offense and the person produced an identification card, license or permit solely for the purpose of enabling the person to purchase tobacco products.]

SECTION 12. ORS 165.800 is amended to read:

165.800. (1) A person commits the crime of identity theft if the person, with the intent to deceive or to defraud, obtains, possesses, transfers, creates, utters or converts to the person's own use the personal identification of another person.

(2) Identity theft is a Class C felony.

(3) It is an affirmative defense to violating subsection (1) of this section that the person charged with the offense:

(a) Was under 21 years of age at the time of committing the offense and the person used the

1 personal identification of another person solely for the purpose of purchasing alcohol[;] **or tobacco**
2 **products; or**

3 *[(b) Was under 18 years of age at the time of committing the offense and the person used the per-*
4 *sonal identification of another person solely for the purpose of purchasing tobacco products; or]*

5 *[(c)]* (b) Used the personal identification of another person solely for the purpose of misrepre-
6 senting the person’s age to gain access to a:

7 (A) Place the access to which is restricted based on age; or

8 (B) Benefit based on age.

9 (4) As used in this section:

10 (a) “Another person” means a real person, whether living or deceased, or an imaginary person.

11 (b) “Personal identification” includes, but is not limited to, any written document or electronic
12 data that does, or purports to, provide information concerning:

13 (A) A person’s name, address or telephone number;

14 (B) A person’s driving privileges;

15 (C) A person’s Social Security number or tax identification number;

16 (D) A person’s citizenship status or alien identification number;

17 (E) A person’s employment status, employer or place of employment;

18 (F) The identification number assigned to a person by a person’s employer;

19 (G) The maiden name of a person or a person’s mother;

20 (H) The identifying number of a person’s depository account at a “financial institution” or “trust
21 company,” as those terms are defined in ORS 706.008, or a credit card account;

22 (I) A person’s signature or a copy of a person’s signature;

23 (J) A person’s electronic mail name, electronic mail signature, electronic mail address or elec-
24 tronic mail account;

25 (K) A person’s photograph;

26 (L) A person’s date of birth; and

27 (M) A person’s personal identification number.

28 **SECTION 13.** ORS 165.813 is amended to read:

29 165.813. (1) A person commits the crime of unlawful possession of fictitious identification if the
30 person possesses a personal identification card containing identification information for a fictitious
31 person with the intent to use the personal identification card to commit a crime.

32 (2) Unlawful possession of fictitious identification is a Class C felony.

33 (3) It is an affirmative defense to violating subsection (1) of this section that the person charged
34 with the offense[.]

35 *[(a)]* was under 21 years of age at the time of committing the offense and the person possessed
36 the personal identification card solely for the purpose of enabling the person to purchase alcohol[;]
37 **or tobacco products.**

38 *[(b) Was under 18 years of age at the time of committing the offense and the person possessed the*
39 *personal identification card solely for the purpose of enabling the person to purchase tobacco*
40 *products.]*

41 **SECTION 14.** ORS 339.883 is amended to read:

42 339.883. (1) A facility shall not permit any person under [18] **21** years of age to possess tobacco
43 products, as defined in ORS 431.840, while the person is present on facility grounds or in facility
44 buildings or attending facility-sponsored activities.

45 (2) The facility must have written policies prohibiting the possession of tobacco products de-

1 scribed in subsection (1) of this section by persons under [18] 21 years of age. The facility must have
2 written plans to implement such policies.

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

5 (4) As used in this section, “facility” means public or private schools, youth correction facilities
6 or juvenile detention facilities. “Facility” does not include colleges or universities, career and
7 technical education schools or community colleges.

8 **SECTION 15.** ORS 433.835 is amended to read:

9 433.835. As used in ORS 433.835 to 433.875:

10 (1) “Cigar bar” means a business that:

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

12 (b) Has a humidor on the premises;

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

16 (d) Has been issued and operates under a full on-premises sales license issued under ORS
17 471.175;

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

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

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

22 (h) Has a ventilation system that is certified by the assistant to the State Fire Marshal de-
23 scribed in ORS 476.060 for the jurisdiction in which the cigar bar is located as adequate to remove
24 the cigar smoke in the cigar bar and vents the smoke from the cigar bar in a manner that prevents
25 the smoke from entering any other establishment; and

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

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

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

38 (4) “Public place” means any enclosed area open to the public.

39 (5) “Smoke shop” means a business that:

40 (a) Is primarily engaged in the sale of tobacco products and smoking instruments, with at least
41 75 percent of the gross revenues of the business resulting from such sales;

42 (b) Prohibits persons under [18] 21 years of age from entering the premises;

43 (c) Does not offer video lottery games as authorized under ORS 461.217, social gaming or betting
44 on the premises;

45 (d) Does not sell or offer on-premises consumption of alcoholic beverages; and

1 (e) Is a stand-alone business with no other businesses or residential property attached to the
2 premises.

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

4 **SECTION 16.** ORS 323.718 is amended to read:

5 323.718. (1) Each person accepting a purchase order for a delivery sale, in connection with the
6 delivery sale order, shall:

7 (a) Include as part of the shipping documents a clear and conspicuous statement providing as
8 follows: "TOBACCO: OREGON LAW PROHIBITS SHIPPING TO INDIVIDUALS UNDER [18] 21
9 AND REQUIRES THE PAYMENT OF ALL APPLICABLE TAXES"; and

10 (b) Use a method of mail, shipping or other delivery of tobacco described in this paragraph as
11 follows:

12 (A) Unless subparagraph (B) of this paragraph applies, use a method of shipping or other deliv-
13 ery that obligates the delivery service to require:

14 (i) The consumer placing the delivery sale order, or another individual of at least the legal
15 minimum purchase age who resides at the residence of the consumer, to sign to accept delivery of
16 the shipping container; and

17 (ii) Proof, in the form of a valid, government-issued identification bearing a photograph of the
18 individual who signs to accept delivery of the shipping container, demonstrating that the individual
19 who signs to accept delivery:

20 (I) Is either the consumer or another individual residing at the residence of the consumer; and

21 (II) Is at least the legal minimum purchase age, except that proof of age is required only if the
22 individual appears to be under 27 years of age.

23 (B) If the person is fulfilling a purchase order for a delivery sale by mailing tobacco, to the
24 extent permitted by the United States Postal Service, use a method of mailing that requires the
25 postal service to require:

26 (i) The consumer placing the delivery sale order, or another individual of at least the legal
27 minimum purchase age residing at the residence of the consumer, to sign to accept delivery of the
28 shipping container; and

29 (ii) Proof, in the form of a valid, government-issued identification bearing a photograph of the
30 individual who signs to accept delivery of the shipping container, demonstrating that the individual
31 who signs to accept delivery:

32 (I) Is either the consumer or another individual residing at the residence of the consumer; and

33 (II) Is at least the legal minimum purchase age, except that proof of age is required only if the
34 individual appears to be under 27 years of age.

35 (2) If the person accepting a purchase order for a delivery sale delivers the tobacco without
36 using a delivery service or the United States Postal Service, the person shall comply with all re-
37 quirements of ORS 323.700 to 323.730 that apply to a delivery service and shall be in violation of
38 this section if the person fails to comply with all requirements applicable to a delivery service.
39