

House Bill 2077

Sponsored by Representative GREENLICK (Pre-session 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 **as introduced**.

Directs State Board of Pharmacy to adopt rules making nicotine Schedule III controlled substance. Provides for phase-in of penalties by board.

Creates crime of unlawful possession of nicotine, effective until rules adopted. Punishes by maximum of one year's imprisonment, \$6,250 fine, or both.

Creates crime of unlawful distribution of nicotine, effective until rules adopted. Punishes by maximum of one year's imprisonment, \$6,250 fine, or both.

A BILL FOR AN ACT

1
2 Relating to tobacco; creating new provisions; amending ORS 163.575, 163.580, 323.500, 323.709,
3 339.883, 431.853, 433.835, 433.847, 475.035, 476.755, 809.380 and 809.423 and section 2, chapter 50,
4 Oregon Laws 2012; and repealing ORS 167.400, 167.401, 167.402, 167.404, 167.407, 431.840, 431.845
5 and 431.850.

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

7 **SECTION 1. (1)(a) The State Board of Pharmacy may not adopt rules that exempt a**
8 **product containing nicotine from classification as a controlled substance.**

9 **(b) The board shall adopt rules to classify nicotine as a Schedule III controlled substance.**

10 **(2) Records of transactions involving products containing nicotine are subject to in-**
11 **spection by the board and law enforcement agencies. A person required to make or maintain**
12 **records of transactions involving products containing nicotine shall forward the records to**
13 **the Department of State Police if directed to do so by the department. Failure to forward**
14 **records as required by this subsection is a Class A misdemeanor.**

15 **SECTION 2. No later than July 1, 2014, the State Board of Pharmacy shall make amend-**
16 **ments to the board's administrative rules that are necessary to bring the rules into compli-**
17 **ance with section 1 of this 2013 Act. The board shall provide that rules or amendments to**
18 **rules required by this section take effect on July 1, 2014.**

19 **SECTION 3. For the period beginning on the effective date of this 2013 Act and ending**
20 **on the date the rules required by section 2 of this 2013 Act take effect:**

21 **(1) The State Board of Pharmacy may adopt rules placing requirements and limitations**
22 **on the sale or transfer of products containing nicotine.**

23 **(2) If the board requires a person who sells or transfers products containing nicotine to**
24 **make or maintain records relating to the sale or transfer, the records are subject to in-**
25 **spection by the board and law enforcement agencies. A person required to make or maintain**
26 **records pursuant to rules adopted under this section shall forward the records to the De-**
27 **partment of State Police if directed to do so by the department. Failure to make or maintain**
28 **records required by rules adopted under this section or to forward records as required by**
29 **this subsection is a Class A misdemeanor.**

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 (3) Notwithstanding subsection (1) of this section, the board may not require a licensed
 2 veterinarian or physician or other licensed health care practitioner authorized to prescribe
 3 nicotine to make or maintain a record of the sale or transfer of products containing nicotine
 4 if the veterinarian, physician or other health care practitioner makes and maintains a record
 5 of the sale or transfer under other applicable laws or rules regarding prescribing and dis-
 6 pensing regulated or controlled substances by veterinarians, physicians and other health care
 7 practitioners.

8 (4)(a) Except as otherwise provided in paragraphs (b) and (c) of this subsection, a person
 9 commits the crime of unlawful possession of nicotine if the person knowingly possesses more
 10 than 0.1 milligram of nicotine.

11 (b) Paragraph (a) of this subsection does not apply to a person who possesses nicotine
 12 obtained directly from or pursuant to a valid prescription or order issued by a practitioner
 13 as defined in ORS 475.005 while acting in the course of professional practice.

14 (c) Paragraph (a) of this subsection does not apply to a veterinarian, physician,
 15 pharmacist, retail distributor, wholesaler, manufacturer, warehouse operator or common
 16 carrier or an agent of any of these persons if the possession is in the regular course of lawful
 17 business activities.

18 (d) Unlawful possession of nicotine is a Class A misdemeanor.

19 (5)(a) A person commits the crime of unlawful distribution of nicotine if the person sells
 20 or otherwise transfers nicotine:

21 (A) In violation of a rule of the board; or

22 (B) To a person other than:

23 (i) A person with a valid prescription or order for nicotine issued by a practitioner as
 24 defined in ORS 475.005 while acting in the course of professional practice; or

25 (ii) A veterinarian, physician, pharmacist, retail distributor, wholesaler, manufacturer,
 26 warehouse operator or common carrier or an agent of any of these persons in the regular
 27 course of lawful business activities.

28 (b) Unlawful distribution of nicotine is a Class A misdemeanor.

29 **SECTION 4.** It is an affirmative defense to a charge of violating ORS 475.752 by possess-
 30 ing nicotine that the person obtained the nicotine directly from or pursuant to a valid pre-
 31 scription or order issued by a practitioner as defined in ORS 475.005 while acting in the
 32 course of professional practice.

33 **SECTION 5.** ORS 163.575 is amended to read:

34 163.575. (1) A person commits the crime of endangering the welfare of a minor if the person
 35 knowingly:

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

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

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

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

44 [(e)] (d) Sells to a person under 18 years of age any device in which tobacco, marijuana, cocaine
 45 or any controlled substance, as defined in ORS 475.005, is burned and the principal design and use

1 of which is directly or indirectly to deliver tobacco smoke, marijuana smoke, cocaine smoke or
2 smoke from any controlled substance into the human body including but not limited to:

3 (A) Pipes, water pipes, hookahs, wooden pipes, carburetor pipes, electric pipes, air driven pipes,
4 corncob pipes, meerschaum pipes and ceramic pipes, with or without screens, permanent screens,
5 hashish heads or punctured metal bowls;

6 (B) Carburetion tubes and devices, including carburetion masks;

7 (C) Bonges;

8 (D) Chillums;

9 (E) Ice pipes or chillers;

10 (F) Cigarette rolling papers and rolling machines; and

11 (G) Cocaine free basing kits.

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

14 [(3) *Endangering the welfare of a minor by violation of subsection (1)(d) of this section or by vio-*
15 *lation of subsection (1)(e) of this section, involving a device for smoking tobacco, is a Class A*
16 *violation.*]

17 **SECTION 6.** ORS 163.580 is amended to read:

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

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

22 **SECTION 7.** ORS 323.500 is amended to read:

23 323.500. As used in ORS 323.500 to 323.645, unless the context otherwise requires:

24 (1) "Business" means any trade, occupation, activity or enterprise engaged in for the purpose
25 of selling or distributing tobacco products in this state.

26 (2) "Cigar" means a roll for smoking that is of any size or shape and that is made wholly or in
27 part of tobacco, irrespective of whether the tobacco is pure or flavored, adulterated or mixed with
28 any other ingredient, if the roll has a wrapper made wholly or in greater part of tobacco and if 1,000
29 of these rolls collectively weigh more than three pounds. "Cigar" does not include a cigarette, as
30 defined in ORS 323.010.

31 (3) "Consumer" means any person who purchases tobacco products in this state for the person's
32 use or consumption or for any purpose other than for reselling the tobacco products to another
33 person.

34 (4) "Contraband tobacco products" means tobacco products or packages containing tobacco
35 products:

36 (a) That do not comply with the requirements of ORS 323.500 to 323.645;

37 (b) That do not comply with the requirements of the tobacco products tax laws of the federal
38 government or of other states;

39 (c) That bear trademarks that are counterfeit under ORS 647.135 or other state or federal
40 trademark laws; or

41 (d) That have been sold, offered for sale or possessed for sale in this state in violation of ORS
42 180.486.

43 (5) "Department" means the Department of Revenue.

44 (6) "Distribute" means:

45 (a) Bringing, or causing to be brought, into this state from without this state tobacco products

1 for sale, storage, use or consumption;

2 (b) Making, manufacturing or fabricating tobacco products in this state for sale, storage, use or
3 consumption in this state;

4 (c) Shipping or transporting tobacco products to retail dealers in this state, to be sold, stored,
5 used or consumed by those retail dealers;

6 (d) Storing untaxed tobacco products in this state that are intended to be for sale, use or con-
7 sumption in this state;

8 (e) Selling untaxed tobacco products in this state; or

9 (f) As a consumer, being in possession of untaxed tobacco products in this state.

10 (7) "Distributor" means:

11 (a) Any person engaged in the business of selling tobacco products in this state who brings, or
12 causes to be brought, into this state from without the state any tobacco products for sale;

13 (b) Any person who makes, manufactures or fabricates tobacco products in this state for sale in
14 this state;

15 (c) Any person engaged in the business of selling tobacco products without this state who ships
16 or transports tobacco products to retail dealers in this state, to be sold by those retail dealers;

17 (d) Any person, including a retail dealer, who sells untaxed tobacco products in this state; or

18 (e) A consumer in possession of untaxed tobacco products in this state.

19 (8) "Manufacturer" means a person who manufactures tobacco products for sale.

20 (9) "Moist snuff" means:

21 (a) Any finely cut, ground or powdered tobacco that is not intended to be smoked or placed in
22 a nasal cavity; or

23 (b) Any other product containing tobacco that is intended or expected to be consumed without
24 being combusted.

25 (10) "Place of business" means any place where tobacco products are sold or where tobacco
26 products are manufactured, stored or kept for the purpose of sale or consumption, including any
27 vessel, vehicle, airplane, train or vending machine.

28 (11) "Retail dealer" means any person who is engaged in the business of selling or otherwise
29 dispensing tobacco products to consumers. [*The term also includes the operators of or recipients of*
30 *revenue from all places such as smoke shops, cigar stores and vending machines, where tobacco pro-*
31 *ducts are made or stored for ultimate sale to consumers.*]

32 (12) "Sale" means any transfer, exchange or barter, in any manner or by any means, for a con-
33 sideration, and includes and means all sales made by any person. It includes a gift by a person en-
34 gaged in the business of selling tobacco products, for advertising, as a means of evading the
35 provisions of ORS 323.500 to 323.645, or for any other purpose.

36 (13) "Taxpayer" includes a distributor or other person required to pay a tax imposed under ORS
37 323.500 to 323.645.

38 (14) "Tobacco products" means cigars, cheroots, stogies, periques, granulated, plug cut, crimp
39 cut, ready rubbed and other smoking tobacco, snuff, snuff flour, moist snuff, cavendish, plug and
40 twist tobacco, fine-cut and other chewing tobaccos, shorts, refuse scraps, clippings, cuttings and
41 sweepings of tobacco and other kinds and forms of tobacco, prepared in such manner as to be suit-
42 able for chewing or smoking in a pipe or otherwise, or both for chewing and smoking, but shall not
43 include cigarettes as defined in ORS 323.010.

44 (15) "Untaxed tobacco products" means tobacco products for which the tax required under ORS
45 323.500 to 323.645 has not been paid.

1 (16) “Wholesale sales price” means the price paid for untaxed tobacco products to or on behalf
 2 of a seller by a purchaser of the untaxed tobacco products.

3 **SECTION 8.** ORS 323.709 is amended to read:

4 323.709. A person may not mail or ship tobacco in connection with a delivery sale order unless
 5 the person, before mailing or shipping the tobacco, does all of the following:

6 (1) Obtains a certification from the prospective consumer that includes a written statement
 7 signed by the prospective consumer that:

8 (a) Certifies the prospective consumer’s address and that the prospective consumer is at least
 9 the legal minimum purchase age; and

10 (b) Confirms that the prospective consumer understands that signing another person’s name to
 11 the certification is illegal[, *that the sale of tobacco to individuals under the legal minimum purchase*
 12 *age is illegal and that the purchase of tobacco by individuals under the legal minimum purchase age*
 13 *is illegal under ORS 167.401];*

14 (2) Verifies the information contained in the certification against a commercially available da-
 15 tabase of government-collected information showing the age or date of birth of the individual placing
 16 the order and obtains a photocopy or other image of a valid, government-issued identification stating
 17 the age or date of birth of the individual placing the order;

18 (3) Provides a notice to the prospective consumer, via electronic mail or other means, that meets
 19 the requirements of ORS 323.715; and

20 (4) In the case of an order for tobacco placed through an Internet website, receives payment for
 21 the delivery sale from the prospective purchaser by a credit or debit card that has been issued in
 22 the name of the prospective purchaser or by a personal check issued by the prospective purchaser.

23 **SECTION 9.** ORS 339.883 is amended to read:

24 339.883. (1) A facility shall not permit any person under 18 years of age to possess tobacco
 25 products[, *as defined in ORS 431.840,*] while the person is present on facility grounds or in facility
 26 buildings or attending facility-sponsored activities.

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

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

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

35 **SECTION 10.** ORS 431.853 is amended to read:

36 431.853. (1) The Oregon Health Authority shall:

37 (a) Coordinate with law enforcement agencies to conduct random, unannounced inspections of
 38 Oregon wholesalers and retailers of tobacco products to [*insure*] **ensure** compliance with Oregon
 39 laws designed to discourage the use of tobacco by minors including ORS 163.575[,] **and** 163.580[,
 40 *167.400, 167.402 and 431.840*]; and

41 (b) Submit a report describing:

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

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

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

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

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

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

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

10 **SECTION 11.** ORS 433.835 is amended to read:

11 433.835. As used in ORS 433.835 to 433.875:

12 (1) "Cigar bar" means a business that:

13 [(a) *Has on-site sales of cigars as defined in ORS 323.500;*]

14 [(b)] (a) Has a humidor on the premises;

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

18 [(d)] (c) Has been issued and operates under a full on-premises sales license issued under ORS
 19 471.175;

20 [(e)] (d) Prohibits persons under 21 years of age from entering the premises and posts notice of
 21 the prohibition;

22 [(f)] (e) Does not offer video lottery games as authorized under ORS 461.217;

23 [(g)] (f) Has a maximum seating capacity of 40 persons;

24 [(h)] (g) Has a ventilation system that exhausts smoke from the business and is designed and
 25 terminated in accordance with the state building code standards for the occupancy classification in
 26 use; and

27 [(i)] (h) Requires all employees to read and sign a document that explains the dangers of expo-
 28 sure to secondhand smoke.

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

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

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

40 (5) "Smoke shop" means a business that is certified with the authority as a smoke shop pursuant
 41 to the rules adopted under ORS 433.847.

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

43 **SECTION 12.** ORS 433.847 is amended to read:

44 433.847. (1) The Oregon Health Authority shall adopt rules establishing a certification system
 45 for smoke shops.

- 1 (2) The authority shall issue a smoke shop certification to a business that:
- 2 (a)(A) Is primarily engaged in the sale of [*tobacco products and*] smoking instruments intended
- 3 for off-premises consumption or use, with at least 75 percent of the gross revenues of the business
- 4 resulting from such sales;
- 5 (B) Prohibits persons under 18 years of age from entering the premises;
- 6 (C) Does not offer video lottery games as authorized under ORS 461.217, social gaming or betting
- 7 on the premises;
- 8 (D) Does not sell, offer or allow on-premises consumption of food or beverages, including alco-
- 9 holic beverages;
- 10 (E) Is a stand-alone business with no other businesses or residential property attached to the
- 11 premises;
- 12 (F) Has a maximum seating capacity of four persons; and
- 13 (G) Allows smoking only for the purpose of sampling tobacco products [*for making retail pur-*
- 14 *chase decisions*];
- 15 (b) On December 31, 2008:
- 16 (A) Met the requirements of paragraph (a)(A) to (D) of this subsection; and
- 17 (B)(i) Was a stand-alone business with no other businesses or residential property attached; or
- 18 (ii) Had a ventilation system that exhausted smoke from the business and was designed and
- 19 terminated in accordance with the state building code standards for the occupancy classification in
- 20 use; or
- 21 (c)(A) Filed an application for certification as a smoke shop before June 30, 2011;
- 22 (B) Met the requirements of ORS 433.835 (5), as in effect immediately before June 30, 2011, at
- 23 the time of application;
- 24 (C) Was certified as a smoke shop under ORS 433.835 (5), as in effect immediately before June
- 25 30, 2011, by the authority on or before December 31, 2012; and
- 26 (D) Allows smoking of cigarettes only [*if at least 75 percent of the gross revenues of the business*
- 27 *results from the sale of cigarettes*] **for the purpose of sampling cigarette products.**
- 28 (3) A smoke shop certified under subsection (2)(b) of this section must renew the smoke shop
- 29 certification every five years by demonstrating to the satisfaction of the authority that the smoke
- 30 shop:
- 31 (a)(A) Meets the requirements of subsection (2)(a)(A) to (D) of this section; and
- 32 (B)(i) Is a stand-alone business with no other businesses or residential property attached; or
- 33 (ii) Has a ventilation system that exhausts smoke from the business and is designed and termi-
- 34 nated in accordance with the state building code standards for the occupancy classification in use;
- 35 and
- 36 (b) Allows smoking of cigarettes only [*if at least 75 percent of the gross revenues of the business*
- 37 *results from the sale of cigarettes*] **for the purpose of sampling cigarette products.**
- 38 (4) A smoke shop certified under subsection (2)(c) of this section must renew the smoke shop
- 39 certification every five years by demonstrating to the satisfaction of the authority that the smoke
- 40 shop:
- 41 (a) Meets the requirements of ORS 433.835 (5), as in effect immediately before June 30, 2011; and
- 42 (b) Allows smoking of cigarettes only [*if at least 75 percent of the gross revenues of the business*
- 43 *results from the sale of cigarettes*] **for the purpose of sampling cigarette products.**
- 44 (5) The owner of a smoke shop certified under subsection (2)(b) or (c) of this section may
- 45 transfer the certification with ownership of the smoke shop in accordance with rules adopted by the

1 authority.

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

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

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

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

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

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

10 (ii) Has a ventilation system that exhausts smoke from the business and is designed and termi-
11 nated in accordance with the state building code standards for the occupancy classification in use;
12 and

13 (C) Allows smoking of cigarettes only [*if at least 75 percent of the gross revenues of the business*
14 *results from the sale of cigarettes*] **for the purpose of sampling cigarette products.**

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

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

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

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

21 (A) Meets the requirements of ORS 433.835 (5), as in effect immediately before June 30, 2011;
22 and

23 (B) Allows smoking of cigarettes only [*if at least 75 percent of the gross revenues of the business*
24 *results from the sale of cigarettes*] **for the purpose of sampling cigarette products.**

25 (8) The rules adopted under subsection (1) of this section must provide that, in order to obtain
26 a smoke shop certification, a business must agree to allow the authority to make unannounced in-
27 spections of the business to determine compliance with ORS 433.835 to 433.875.

28 **SECTION 13.** ORS 475.035 is amended to read:

29 475.035. (1) In arriving at any decision on changes in or addition to classification when changes
30 or additions are proposed by the federal Drug Enforcement Administration or by any other reliable
31 source, the State Board of Pharmacy shall review the scientific knowledge available regarding the
32 substance, its pharmacological effects, patterns of use and misuse, and potential consequences of
33 abuse, and consider the judgment of individuals with training and experience with the substance.

34 (2) Whenever the board determines that a change in or an addition to the schedule of a con-
35 trolled substance is justified, the board by rule may order the change and fix the effective date
36 thereof.

37 (3) If a substance is an ingredient of a controlled substance, the ingredient shall be considered
38 to be in the same schedule as that controlled substance. Substances which are precursors of the
39 ingredient shall not be subject to control solely because they are precursors of the ingredient. The
40 use of the term "precursor" in this subsection does not control and is not controlled by the use of
41 the term "precursor" in ORS 475.752 to 475.980.

42 (4) The board shall administer ORS 475.005 to 475.285 and 475.752 to 475.980 in accordance with
43 ORS chapter 183.

44 (5) Authority to control under this section does not extend [*to tobacco or*] to alcoholic beverages
45 as defined in ORS 471.001.

SECTION 14. ORS 476.755 is amended to read:

476.755. As used in ORS 476.755 to 476.790 and 476.995:

(1) "Cigarette" means a roll for smoking:

(a) That is made wholly of tobacco, or of tobacco and any other substance, regardless of size, shape or flavoring or adulteration by or mixing with other ingredients, the wrapper of which is made of paper or other nontobacco materials; and

(b) That, because of its appearance, the type of tobacco used in the filler or its packaging and labeling, is likely to be offered to or purchased by consumers as a cigarette.

(2) "Distribute" means to do any of the following:

(a) Sell cigarettes or deliver cigarettes for sale by another person to consumers.

(b) Receive or retain more than 199 cigarettes at a place of business where the person receiving or retaining the cigarettes customarily sells cigarettes or offers cigarettes for sale to consumers.

[(c) Place cigarettes in vending machines.]

[(d)] (c) Sell or accept orders for cigarettes that are to be transported from a point outside this state to a consumer within this state.

[(e)] (d) Buy cigarettes directly from a manufacturer or wholesale dealer for resale in this state.

[(f) Give cigarettes as a sample, prize, gift or other promotion.]

(3) "Manufacturer" means:

(a) An entity that produces, or causes the production of, cigarettes for sale in this state;

(b) An importer or first purchaser of cigarettes that intends to resell within this state cigarettes that were produced for sale outside this state; or

(c) A successor to an entity, importer or first purchaser described in paragraph (a) or (b) of this subsection.

(4) "Packaging" includes, but is not limited to, cigarette soft packs, boxes, cartons and cases.

(5) "Quality control and assurance program" means laboratory procedures implemented to ensure that operator bias, systematic and nonsystematic methodological errors and equipment-related problems do not affect the results of testing.

(6) "Reduced ignition propensity" means meeting the fire safety performance standard described in ORS 476.770 (6).

(7) "Repeatability" means the range of values within which the repeat results of ignition propensity testing by a single laboratory will fall 95 percent of the time.

(8) "Retail dealer" means a person, other than a manufacturer or wholesale dealer, that engages in distributing cigarettes.

(9) "Sell" means to transfer, or agree to transfer, title or possession for a monetary or non-monetary consideration.

(10) "Variety" means a type of cigarette marketed by the manufacturer as being distinct from other types of cigarettes on the basis of brand name, length, filter, wrapping, flavoring or other characteristics as the State Fire Marshal may provide by rule.

(11) "Wholesale dealer" means a person that distributes cigarettes to[:]

[(a)] a retail dealer or other person for resale[: or]

[(b) A person that owns, operates or maintains cigarette vending machines on premises owned or operated by another person].

SECTION 15. ORS 809.380 is amended to read:

809.380. All of the following apply to a person whose driving privileges have been suspended:

(1) The period of suspension shall last as long as provided for that particular suspension by law.

1 (2) During the period of suspension, the person is not entitled to exercise any driving privileges
2 in this state except as provided under this subsection. Unless otherwise specifically provided by law,
3 a person whose driving privileges are suspended may obtain, if the person qualifies, a hardship
4 driver permit under ORS 807.240, and exercise driving privileges under the driver permit.

5 (3) Upon expiration of the suspension, the Department of Transportation shall reissue, upon re-
6 quest of the person, the suspended driving privileges and any license or driver permit that evidences
7 the driving privileges. The reissuance shall be without requalification by the person except that the
8 department may require the person to furnish evidence satisfactory to the department that the per-
9 son is qualified to continue to exercise driving privileges in this state before the department reissues
10 the driving privileges.

11 (4) The department may not issue any driving privileges in contradiction to this section.

12 (5) If the person fails to surrender to the department any license or driver permit issued as ev-
13 idence of driving privileges that are suspended, the person is subject to the penalties under ORS
14 809.500.

15 (6) No reinstatement of suspended driving privileges will be made by the department until the
16 fee for reinstatement of suspended driving privileges established under ORS 807.370 is paid to or
17 waived by the department. The department may waive the reinstatement fee for any of the following
18 reasons:

19 (a) The suspension occurred under ORS 809.419 for failure to take an examination upon request
20 of the department under ORS 807.340.

21 (b) The suspension occurred under ORS 809.419 for failure to obtain required medical clearance
22 upon request of the department under ORS 807.070 or 807.090.

23 (c) The suspension occurred under ORS 809.419 for incompetence to drive a motor vehicle or
24 having a mental or physical condition or impairment that affects the person's ability to safely op-
25 erate a motor vehicle.

26 (d) The suspension occurred under ORS 809.419 upon notification by the superintendent of a
27 hospital under ORS 807.700 that a person should not drive.

28 (e) The suspension occurred under ORS 809.419 upon notification by a court under ORS 810.375
29 that a person charged with a traffic offense has been found guilty except for insanity.

30 (f) The department committed an error in issuing the suspension.

31 (g) The suspension was the result of an error committed by an insurance company in issuing or
32 failing to issue a certification of insurance or in canceling a certification of insurance filed with the
33 department under ORS 806.270.

34 (h) The department issued the suspension without error because the person failed to respond as
35 required under ORS 806.160 or to furnish proof of exemption under ORS 806.210 from the filing re-
36 quirement of ORS 806.200, but the department later determines that the person in fact was in com-
37 pliance with financial responsibility requirements as of the date of the department's letter of
38 verification under ORS 806.150 or at the time of an accident described in ORS 806.200.

39 (i) The department issued the suspension without error because the person was not in compli-
40 ance with financial responsibility requirements as of the date of the department's letter of verifica-
41 tion under ORS 806.150 or at the time of an accident described in ORS 806.200, but the department
42 later determines that the person reasonably and in good faith believed that the person was in com-
43 pliance with financial responsibility requirements on the date of the department's letter of verifica-
44 tion or at the time of the accident.

45 (j) The suspension was the result of an error committed by an insurance company in notifying

1 the department regarding the correctness of a certification under ORS 806.150.

2 (k) The suspension occurred because the person failed to make future responsibility filings but
 3 the department later determines that the reason for the failure was that the person was a military
 4 reservist or a member of a national guard unit that was ordered to active military duty to a location
 5 outside of the United States. The effective date of the military orders must be prior to the effective
 6 date of a suspension issued by the department for failure to make a future responsibility filing.

7 (L) The department issued the suspension without error because the department received a no-
 8 tice to suspend from a court under ORS 809.210 or 809.220, but the department later determines that
 9 the person in fact was in compliance with the requirements of the court prior to the effective date
 10 of the suspension.

11 (7) The department shall waive the reinstatement fee for a person whose driving privileges were
 12 suspended under ORS 809.423 [(3)] (2) if the person:

13 (a) Has graduated from high school and provides the department with proof of graduation sat-
 14 isfactory to the department; or

15 (b) Has received a General Educational Development (GED) certificate from a community col-
 16 lege and provides the department with proof of the certificate satisfactory to the department.

17 **SECTION 16.** ORS 809.423 is amended to read:

18 809.423. (1) Upon request by a school superintendent or a school district board under ORS
 19 339.254, the Department of Transportation shall suspend the driving privileges of a person. The
 20 suspension shall be for the amount of time stated in the request. A person is entitled to adminis-
 21 trative review under ORS 809.440 of a suspension under this subsection.

22 *[(2) Upon receipt of notification of a court order that a person's driving privileges be suspended for*
 23 *violation of ORS 167.401, the department shall suspend the driving privileges of the person subject to*
 24 *the order for the time specified in the order. A person is entitled to administrative review under ORS*
 25 *809.440 of a suspension under this subsection.]*

26 [(3)] (2) Upon receipt of a notice under ORS 339.257 that a person under 18 years of age has
 27 withdrawn from school, the department shall notify the person that driving privileges will be sus-
 28 pended on the 30th day following the date of the notice unless the person presents documentation
 29 that complies with ORS 807.066. A suspension under this subsection shall continue until the person
 30 reaches 18 years of age or until the person presents documentation that complies with ORS 807.066.
 31 Appeals of a suspension under this subsection shall be as provided by a school district or private
 32 school under a policy adopted in accordance with ORS 339.257.

33 **SECTION 17.** Section 2, chapter 50, Oregon Laws 2012, is amended to read:

34 **Sec. 2.** (1) As used in this section, "tobacco products" has the meaning given that term in ORS
 35 [431.840] **323.500.**

36 (2) The Oregon Health Authority may apply for and accept moneys from the United States
 37 Government or other public or private sources for utilization of those moneys by the Department
 38 of State Police in accordance with any federal restrictions or other funding source restrictions to
 39 carry out the duties, functions and powers of the department under this section. Moneys received
 40 as provided under this subsection shall be deposited into the State Treasury to the credit of the
 41 State Police Tobacco Law Enforcement Fund. Moneys that are subject to funding source conditions
 42 or restrictions shall be placed in separate subaccounts of the fund and accounted for separately from
 43 other fund moneys.

44 (3) The department shall establish and administer a program employing retired state police of-
 45 ficers who are active reserve officers for the purpose of enforcing laws designed to discourage the

1 use of tobacco products by persons under 18 years of age. The department shall periodically consult
2 with the authority to maximize program qualification for federal funds to enforce laws designed to
3 discourage the use of tobacco products by persons under 18 years of age, including but not limited
4 to grants under P.L. 102-321, section 1926 (42 U.S.C. 300x-26). Service by a retired state police
5 member under this section is subject to ORS 238.082. The department may not use the services of
6 a retired state police officer under this section to displace an active state police member from the
7 enforcement of laws concerning tobacco products.

8 (4) The department shall adopt rules for carrying out subsection (3) of this section.

9 **SECTION 18. ORS 167.400, 167.401, 167.402, 167.404, 167.407, 431.840, 431.845 and 431.850 are**
10 **repealed.**

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