

House Bill 3150

Sponsored by Representative KOMP; Representatives KENY-GUYER, THOMPSON

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**.

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

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

A BILL FOR AN ACT

1
2 Relating to tobacco; creating new provisions; and amending ORS 161.005, 163.575, 163.580, 165.800,
3 165.813, 167.400, 167.401, 167.402, 167.404, 167.407, 323.718, 339.883, 431.840, 431.853, 433.847 and
4 807.500 and section 2, chapter 50, Oregon Laws 2012.

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

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

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

11 **SECTION 2.** ORS 161.005 is amended to read:

12 161.005. ORS 161.005 to 161.055, 161.085 to 161.125, 161.150 to 161.175, 161.190 to 161.275, 161.290
13 to 161.370, 161.405 to 161.485, 161.505 to 161.585, 161.605, 161.615 to 161.685, 161.705 to 161.737,
14 162.005, 162.015 to 162.035, 162.055 to 162.115, 162.135 to 162.205, 162.225 to 162.375, 162.405 to
15 162.425, 162.465, 163.005, 163.115, 163.125 to 163.145, 163.149, 163.160 to 163.208, 163.196, 163.215 to
16 163.257, 163.261, 163.263, 163.264, 163.266, 163.275, 163.285, 163.305 to 163.467, 163.432, 163.433,
17 163.505 to 163.575, 163.665 to 163.693, 164.005, 164.015 to 164.135, 164.138, 164.140, 164.205 to 164.270,
18 164.305 to 164.377, 164.395 to 164.415, 164.805, 164.857, 164.886, 165.002 to 165.102, 165.109, 165.118,
19 165.805, 166.005 to 166.095, 166.350, 166.382, 166.384, 166.660, 167.002 to 167.027, 167.057, 167.060 to
20 167.100, 167.117, 167.122 to 167.162, 167.203 to 167.252, 167.310 to 167.340 and 167.350, 167.810 and
21 167.820 **and section 1 of this 2013 Act** shall be known and may be cited as Oregon Criminal Code
22 of 1971.

23 **SECTION 3.** ORS 163.575 is amended to read:

24 163.575. (1) A person commits the crime of endangering the welfare of a minor if the person
25 knowingly:

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

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

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

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

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

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

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

11 (C) Bongos;

12 (D) Chillums;

13 (E) Ice pipes or chillers;

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

15 (G) Cocaine free basing kits.

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

18 (3) Endangering the welfare of a minor by violation of subsection (1)(d) of this section *[or by*
19 *violation of subsection (1)(e) of this section]*, involving a device for smoking tobacco, is a Class A vi-
20 olation.

21 **SECTION 4.** ORS 163.580 is amended to read:

22 163.580. (1) Any person who sells any of the smoking devices listed in ORS 163.575 *[(1)(e)] (1)(d)*
23 shall display a sign clearly stating that the sale of such devices to persons under 18 years of age
24 is prohibited by law.

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

26 **SECTION 5.** ORS 165.800 is amended to read:

27 165.800. (1) A person commits the crime of identity theft if the person, with the intent to deceive
28 or to defraud, obtains, possesses, transfers, creates, utters or converts to the person's own use the
29 personal identification of another person.

30 (2) Identity theft is a Class C felony.

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

33 (a) Was under 21 years of age at the time of committing the offense and the person used the
34 personal identification of another person solely for the purpose of purchasing alcohol[;] **or tobacco**
35 **products; or**

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

38 *[(c) (b) Used the personal identification of another person solely for the purpose of misrepre-*
39 *senting the person's age to gain access to a:*

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

41 (B) Benefit based on age.

42 (4) As used in this section:

43 (a) "Another person" means a real person, whether living or deceased, or an imaginary person.

44 (b) "Personal identification" includes, but is not limited to, any written document or electronic
45 data that does, or purports to, provide information concerning:

1 (A) A person's name, address or telephone number;

2 (B) A person's driving privileges;

3 (C) A person's Social Security number or tax identification number;

4 (D) A person's citizenship status or alien identification number;

5 (E) A person's employment status, employer or place of employment;

6 (F) The identification number assigned to a person by a person's employer;

7 (G) The maiden name of a person or a person's mother;

8 (H) The identifying number of a person's depository account at a "financial institution" or "trust
9 company," as those terms are defined in ORS 706.008, or a credit card account;

10 (I) A person's signature or a copy of a person's signature;

11 (J) A person's electronic mail name, electronic mail signature, electronic mail address or elec-
12 tronic mail account;

13 (K) A person's photograph;

14 (L) A person's date of birth; and

15 (M) A person's personal identification number.

16 **SECTION 6.** ORS 165.813 is amended to read:

17 165.813. (1) A person commits the crime of unlawful possession of fictitious identification if the
18 person possesses a personal identification card containing identification information for a fictitious
19 person with the intent to use the personal identification card to commit a crime.

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

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

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

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

29 **SECTION 7.** ORS 167.400 is amended to read:

30 167.400. (1) It is unlawful for any person under [18] **21** years of age to possess tobacco products,
31 as defined in ORS 431.840.

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

33 **SECTION 8.** ORS 167.401 is amended to read:

34 167.401. (1) Except as provided in subsection (4) of this section, [no] **a** person under [18] **21** years
35 of age [shall] **may not** purchase, attempt to purchase or acquire tobacco products as defined in ORS
36 431.840. Except when such [minor] **person** is in a private residence accompanied by the parent or
37 guardian of the [minor] **person** and with the consent of such parent or guardian, [no] **a** person under
38 [18] **21** years of age [shall] **may not** have personal possession of tobacco products.

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

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

45 (b) In addition to and not in lieu of any other penalty established by law, a person who is con-

1 victed of a second violation of subsection (1) of this section through misrepresentation of age may
 2 be required to participate in a tobacco education or a tobacco use cessation program or to perform
 3 community service related to diseases associated with the consumption of tobacco products, and the
 4 court shall order that the person’s driving privileges and right to apply for driving privileges be
 5 suspended for a period not to exceed one year. If a court has issued an order suspending driving
 6 privileges under this subsection, the court, upon petition of the person, may withdraw the order at
 7 any time the court deems appropriate. The court notification to the Department of Transportation
 8 under this subsection may include a recommendation that the person be granted a hardship permit
 9 under ORS 807.240 if the person is otherwise eligible for the permit.

10 (4) A [*minor*] **person who is under 21 years of age and is** acting under the supervision of [*an*
 11 *adult*] **a person who is at least 21 years of age** may purchase, attempt to purchase or acquire to-
 12 bacco products for the purpose of testing compliance with a federal law, state statute, local law or
 13 retailer management policy limiting or regulating the delivery of tobacco products to [*minors*] **per-**
 14 **sons under 21 years of age.**

15 **SECTION 9.** ORS 167.402 is amended to read:

16 167.402. (1) As used in this section, “vending machine” means a mechanical, electronic or similar
 17 device that, upon the insertion of tokens, money or another form of payment, dispenses tobacco
 18 products.

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

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

25 **SECTION 10.** ORS 167.404 is amended to read:

26 167.404. Cities and counties by ordinance or resolution shall not regulate vending machines that
 27 dispense tobacco products, as defined in ORS 431.840, in any form and that are in any manner ac-
 28 cessible to [*minors*] **persons under 21 years of age.**

29 **SECTION 11.** ORS 167.407 is amended to read:

30 167.407. (1) A person having authority over the location of cigarettes and other tobacco products
 31 in a retail store may not locate cigarettes or other tobacco products in a location in the store where
 32 the cigarettes or other tobacco products are accessible by store customers without assistance by a
 33 store employee.

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

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

39 **SECTION 12.** ORS 323.718 is amended to read:

40 323.718. (1) Each person accepting a purchase order for a delivery sale, in connection with the
 41 delivery sale order, shall:

42 (a) Include as part of the shipping documents a clear and conspicuous statement providing as
 43 follows: “TOBACCO: OREGON LAW PROHIBITS SHIPPING TO INDIVIDUALS UNDER [~~18~~] **21**
 44 **AND REQUIRES THE PAYMENT OF ALL APPLICABLE TAXES**”; and

45 (b) Use a method of mail, shipping or other delivery of tobacco described in this paragraph as

1 follows:

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

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

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

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

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

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

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

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

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

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

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

29 **SECTION 13.** ORS 339.883 is amended to read:

30 339.883. (1) A facility shall not permit any person under [18] 21 years of age to possess tobacco
 31 products, as defined in ORS 431.840, while the person is present on facility grounds or in facility
 32 buildings or attending facility-sponsored activities.

33 (2) The facility must have written policies prohibiting the possession of tobacco products de-
 34 scribed in subsection (1) of this section by persons under [18] 21 years of age. The facility must have
 35 written plans to implement such policies.

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

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

41 **SECTION 14.** ORS 431.840 is amended to read:

42 431.840. (1) It shall be unlawful to do any of the following:

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

45 (b) To fail as a retailer to post a notice substantially similar to that set forth in subsection (3)

1 of this section in a location clearly visible to the seller and the purchaser that sale of tobacco
2 products to persons under [18] 21 years of age is prohibited.

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

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

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

11
12
13 NOTICE

14 The sale of tobacco in any form to persons under [18] 21 years of age is prohibited by law. Any
15 person who knowingly sells, or causes to be sold, tobacco to a person under [18] 21 years of age
16 commits the crime of [endangering the welfare of a minor, pursuant to ORS 163.575] **distribution of**
17 **tobacco products to a person under 21 years of age, pursuant to section 1 of this 2013 Act.**

18
19
20 **SECTION 15.** ORS 431.853 is amended to read:

21 431.853. (1) The Oregon Health Authority shall:

22 (a) Coordinate with law enforcement agencies to conduct random, unannounced inspections of
23 Oregon wholesalers and retailers of tobacco products to [insure] **ensure** compliance with Oregon
24 laws designed to discourage the use of tobacco by [minors] **persons under 21 years of age** includ-
25 ing ORS 163.575, 163.580, 167.400, 167.402 and 431.840 **and section 1 of this 2013 Act**; and

26 (b) Submit a report describing:

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

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

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

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

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

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

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

40 **SECTION 16.** ORS 433.847 is amended to read:

41 433.847. (1) The Oregon Health Authority shall adopt rules establishing a certification system
42 for smoke shops.

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

44 (a)(A) Is primarily engaged in the sale of tobacco products and smoking instruments intended for
45 off-premises consumption or use, with at least 75 percent of the gross revenues of the business re-

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 **SECTION 17.** ORS 807.500 is amended to read:

26 807.500. (1) A person commits the offense of unlawful production of identification cards, licenses,
27 permits, forms or camera cards if the person, without the authority of the Department of Transpor-
28 tation, advertises for the production of, produces in any way or causes to be produced any facsimiles
29 of the identification cards, licenses, permits, forms or camera cards upon which the department is-
30 sues identification cards, licenses or driver permits under the vehicle code.

31 (2) The offense described in this section, unlawful production of identification cards, licenses,
32 permits, forms or camera cards, 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 produced
36 an identification card, license or permit solely for the purpose of enabling the person to purchase
37 alcohol[:] or **tobacco products**.

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

41 **SECTION 18.** Section 2, chapter 50, Oregon Laws 2012, is amended to read:

42 **Sec. 2.** (1) As used in this section, "tobacco products" has the meaning given that term in ORS
43 431.840.

44 (2) The Oregon Health Authority may apply for and accept moneys from the United States
45 Government or other public or private sources for utilization of those moneys by the Department

1 of State Police in accordance with any federal restrictions or other funding source restrictions to
 2 carry out the duties, functions and powers of the department under this section. Moneys received
 3 as provided under this subsection shall be deposited into the State Treasury to the credit of the
 4 State Police Tobacco Law Enforcement Fund. Moneys that are subject to funding source conditions
 5 or restrictions shall be placed in separate subaccounts of the fund and accounted for separately from
 6 other fund moneys.

7 (3) The department shall establish and administer a program employing retired state police of-
 8 ficers who are active reserve officers for the purpose of enforcing laws designed to discourage the
 9 use of tobacco products by persons under [18] **21** years of age. The department shall periodically
 10 consult with the authority to maximize program qualification for federal funds to enforce laws de-
 11 signed to discourage the use of tobacco products by persons under [18] **21** years of age, including
 12 but not limited to grants under P.L. 102-321, section 1926 (42 U.S.C. 300x-26) **with respect to the**
 13 **use of tobacco products by persons under 18 years of age**. Service by a retired state police
 14 member under this section is subject to ORS 238.082. The department may not use the services of
 15 a retired state police officer under this section to displace an active state police member from the
 16 enforcement of laws concerning tobacco products.

17 (4) The department shall adopt rules for carrying out subsection (3) of this section.
 18