

House Bill 3539

Sponsored by Representative WITT; Representative KENNEMER, Senators BOQUIST, STEINER HAYWARD

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**.

Requires culpable mental state for committing offense of endangering welfare of minor through distribution, sale or causing sale of tobacco to minor.

Reduces penalty for first and second offenses of making alcoholic liquor available to minor when offender is employed at premises of off-premises sales licensee and monitoring self-checkout device at which minor purchases alcohol. Makes first offense violation subject to maximum fine of \$2,000. Makes second offense violation subject to maximum fine of \$2,000 with presumptive fine of \$860.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to allowing underage persons access to prohibited items; creating new provisions; amending

3 ORS 163.575, 431.840 and 471.410; and declaring an emergency.

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

5 **SECTION 1.** ORS 163.575 is amended to read:

6 163.575. (1) A person commits the [*crime*] **offense** of endangering the welfare of a minor if the
7 person knowingly:

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

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

12 (c) Induces, causes or permits a person under 18 years of age to participate in gambling as de-
13 fined by ORS 167.117; [*or*]

14 (d) Distributes, sells, or causes to be sold, tobacco in any form to a person under 18 years of
15 age; or

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

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

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

24 (C) Bonges;

25 (D) Chillums;

26 (E) Ice pipes or chillers;

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

28 (G) Cocaine free basing kits.

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

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

7 **(4) Endangering the welfare of a minor by violation of subsection (1)(e) of this section**
 8 **involving a device for smoking tobacco is a Class A violation.**

9 **SECTION 2.** ORS 431.840 is amended to read:

10 431.840. (1) It shall be unlawful to do any of the following:

11 (a) To distribute free tobacco products to persons under 18 years of age as part of a marketing
 12 strategy to encourage the use of tobacco products.

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

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

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

23 (3) The notice shall be substantially as follows:
 24

25 **NOTICE**

26
 27 The sale of tobacco in any form to persons under 18 years of age is prohibited by law. Any
 28 person who knowingly sells, or causes to be sold, tobacco to a person under 18 years of age commits
 29 the [*crime*] **offense** of endangering the welfare of a minor, pursuant to ORS 163.575.
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 32 **SECTION 3.** ORS 471.410 is amended to read:

33 471.410. (1) A person may not sell, give or otherwise make available any alcoholic liquor to any
 34 person who is visibly intoxicated.

35 (2) No one other than the person’s parent or guardian may sell, give or otherwise make available
 36 any alcoholic liquor to a person under the age of 21 years. A parent or guardian may give or oth-
 37 erwise make alcoholic liquor available to a person under the age of 21 years only if the person is
 38 in a private residence and is accompanied by the parent or guardian. A person violates this sub-
 39 section who sells, gives or otherwise makes available alcoholic liquor to a person with the knowl-
 40 edge that the person to whom the liquor is made available will violate this subsection.

41 (3)(a) A person who exercises control over private real property may not knowingly allow any
 42 other person under the age of 21 years who is not a child or minor ward of the person to consume
 43 alcoholic liquor on the property, or allow any other person under the age of 21 years who is not a
 44 child or minor ward of the person to remain on the property if the person under the age of 21 years
 45 consumes alcoholic liquor on the property.

1 (b) This subsection:

2 (A) Applies only to a person who is present and in control of the location at the time the con-
3 sumption occurs;

4 (B) Does not apply to the owner of rental property, or the agent of an owner of rental property,
5 unless the consumption occurs in the individual unit in which the owner or agent resides; and

6 (C) Does not apply to a person who exercises control over a private residence if the liquor
7 consumed by the person under the age of 21 years is supplied only by an accompanying parent or
8 guardian.

9 (4) This section does not apply to sacramental wine given or provided as part of a religious rite
10 or service.

11 (5) Except as provided in subsection (6) of this section, a person who violates subsection (1) or
12 (2) of this section commits a Class A misdemeanor. Upon violation of subsection (2) of this section,
13 the court shall impose at least a mandatory minimum sentence as follows:

14 (a) Upon a first conviction, a fine of at least \$500.

15 (b) Upon a second conviction, a fine of at least \$1,000.

16 (c) Upon a third or subsequent conviction, a fine of at least \$1,500 and not less than 30 days
17 of imprisonment.

18 (6)(a) A person who violates subsection (2) of this section is subject to the provisions of this
19 subsection if the person does not act knowingly or intentionally and:

20 (A) Is licensed or appointed under this chapter; *[or]*

21 (B) Is an employee of a person licensed or appointed under this chapter and holds a valid service
22 permit or has attended a program approved by the Oregon Liquor Control Commission that provides
23 training to avoid violations of this section[.]; **or**

24 **(C) Is employed at the premises of an off-premises sales licensee and is monitoring cus-**
25 **tomer operation of a self-checkout device that a minor uses to purchase alcoholic liquor. As**
26 **used in this subparagraph, “self-checkout device” means equipment designed to permit a**
27 **consumer to initiate and complete a purchase without the active or direct participation of a**
28 **cashier.**

29 (b) For a person described in paragraph (a) of this subsection:

30 (A) A first conviction is a Class A violation.

31 (B) A second conviction is a specific fine violation, and the presumptive fine for the violation
32 is \$860.

33 (C) A third conviction is a Class A misdemeanor. The court shall impose a mandatory fine of
34 not less than \$1,000.

35 (D) A fourth or subsequent conviction is a Class A misdemeanor. The court shall impose a
36 mandatory fine of not less than \$1,000 and a mandatory sentence of not less than 30 days of
37 imprisonment.

38 (7) The court may waive an amount that is at least \$200 but not more than one-third of the fine
39 imposed under subsection (5) of this section, if the violator performs at least 30 hours of community
40 service.

41 (8) Except as provided in subsection (7) of this section, the court may not waive or suspend
42 imposition or execution of the mandatory minimum sentence required by subsection (5) or (6) of this
43 section. In addition to the mandatory sentence, the court may require the violator to make
44 restitution for any damages to property where the alcoholic liquor was illegally consumed or may
45 require participation in volunteer service to a community service agency.

1 (9)(a) Except as provided in paragraph (b) of this subsection, a person who violates subsection
2 (3) of this section commits a Class A violation.

3 (b) A second or subsequent violation of subsection (3) of this section is a specific fine violation,
4 and the presumptive fine for the violation is \$1,000.

5 (10) Nothing in this section prohibits any licensee under this chapter from allowing a person
6 who is visibly intoxicated from remaining on the licensed premises so long as the person is not sold
7 or served any alcoholic liquor.

8 **SECTION 4. The amendments to ORS 163.575 and 471.410 by sections 1 and 3 of this 2013
9 Act apply to conduct occurring on or after the effective date of this 2013 Act.**

10 **SECTION 5. The amendments to ORS 431.840 by section 2 of this 2013 Act do not require
11 the replacement or alteration of any notice that is posted by a retailer prior to the effective
12 date of this 2013 Act.**

13 **SECTION 6. This 2013 Act being necessary for the immediate preservation of the public
14 peace, health and safety, an emergency is declared to exist, and this 2013 Act takes effect
15 on its passage.**

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