

# House Bill 4115

Sponsored by Representatives BARNHART, THOMPSON, Senator MONNES ANDERSON; Representatives FREDERICK, GALLEGOS, GOMBERG, GORSEK, GREENLICK, KENY-GUYER, KOMP, SMITH WARNER, TOMEI, WHITSETT, WILLIAMSON, Senators PROZANSKI, STEINER HAYWARD (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**.

Defines "vapor product" and "vape."

Amends laws related to consumption of tobacco products by minors to include references to consumption of vapor products by minors, including crime of endangering welfare of minor and other criminal offenses and civil penalties related to use or acquisition of tobacco by minor.

Amends laws related to smoking in public to include references to vaping in public.

Amends offense of smoking in a motor vehicle so that person commits offense if person vapes in motor vehicle.

Declares emergency, effective on passage.

## A BILL FOR AN ACT

Relating to vapor products; creating new provisions; amending ORS 163.575, 163.580, 165.800, 165.813, 167.400, 167.401, 167.402, 167.404, 167.407, 192.710, 243.345, 243.350, 339.883, 431.840, 431.853, 433.835, 433.840, 433.845, 433.847, 433.850, 441.815, 807.500 and 811.193; and declaring an emergency.

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

## CONSUMPTION OF NICOTINE BY MINORS

### (Definition and Distribution)

**SECTION 1.** ORS 431.840 is amended to read:

431.840. (1) **As used in this section and ORS 431.853:**

(a) **"Tobacco products" means:**

(A) **Bidis, cigars, cheroots, stogies, periques, granulated, plug cut, crimp cut, ready rubbed and other smoking tobacco, snuff, snuff flour, cavendish, plug and twist tobacco, fine-cut and other chewing tobaccos, shorts, refuse scraps, clippings, cuttings and sweepings of tobacco and other kinds and forms of tobacco, prepared in such manner as to be suitable for chewing or smoking in a pipe or otherwise, or both for chewing and smoking; and**

(B) **Cigarettes as defined in ORS 323.010.**

(b) **"Vapor product" means:**

(A) **An electronic device designed to heat nicotine solutions and other solutions for the purpose of producing a vapor to be inhaled by the user of the device; or**

(B) **Nicotine solution in any form designed to be used with a device described in subparagraph (A) of this paragraph.**

*[(1)]* (2) *It [shall be] is unlawful [to do any of the following]:*

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

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

4 (c) **To fail as a retailer of vapor products to post a notice substantially similar to that**  
5 **set forth in subsection (4) of this section in a location clearly visible to the seller and the**  
6 **purchaser that sale of vapor products to persons under 18 years of age is prohibited.**

7 [(c)] (d) To sell cigarettes in any form other than a sealed package.

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

14 (3) The notice [shall] **described in subsection (2)(b) of this section must** be substantially as  
15 follows:

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17  
18 NOTICE

19 The sale of tobacco in any form to persons under 18 years of age is prohibited by law. Any  
20 person who knowingly sells, or causes to be sold, tobacco to a person under 18 years of age commits  
21 the crime of endangering the welfare of a minor, pursuant to ORS 163.575.

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24 (4) **The notice described in subsection (2)(c) of this section must be substantially as fol-**  
25 **lows:**

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26  
27  
28 NOTICE

29 **The sale of electronic cigarettes and other devices used to vaporize nicotine solutions,**  
30 **and the sale of nicotine in any form, to persons under 18 years of age is prohibited by law.**  
31 **Any person who knowingly sells, or causes to be sold, such devices or nicotine to a person**  
32 **under 18 years of age commits the crime of endangering the welfare of a minor, pursuant**  
33 **to ORS 163.575.**

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36 **SECTION 2.** ORS 431.853 is amended to read:

37 431.853. (1) The Oregon Health Authority shall:

38 (a) Coordinate with law enforcement agencies to conduct random, unannounced inspections of  
39 Oregon wholesalers and retailers of tobacco products **and vapor products** to [insure] **ensure** com-  
40 pliance with Oregon laws designed to discourage the use of [tobacco] **such products** by minors, in-  
41 cluding ORS 163.575, 163.580, 167.400, 167.402 and 431.840; and

42 (b) Submit a report describing:

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

45 (B) The extent of success achieved in reducing the availability of tobacco products **and vapor**

1 **products** to minors; and

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

4 (2) The Oregon Health Authority shall adopt rules concerning random inspections of places that  
5 sell tobacco products **or vapor products that are** consistent with [section 1921, Public Law 102-321,  
6 1992] **42 U.S.C. 300x-21**. The rules shall provide that inspections may take place:

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

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

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

11  
12 **(Violations)**

13  
14 **SECTION 3.** ORS 163.575 is amended to read:

15 163.575. (1) A person commits the crime of endangering the welfare of a minor if the person  
16 knowingly:

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

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

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

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

25 **(e) Distributes, sells or causes to be sold a vapor product, as defined in ORS 431.840, to**  
26 **a person under 18 years of age; or**

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

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

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

35 (C) Bongs;

36 (D) Chillums;

37 (E) Ice pipes or chillers;

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

39 (G) Cocaine free basing kits.

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

42 (3) Endangering the welfare of a minor by violation of subsection (1)(d) **or (e)** of this section or  
43 by violation of subsection [(1)(e)] **(1)(f)** of this section, involving a device for smoking tobacco, is a  
44 Class A violation.

45 **SECTION 4.** ORS 167.400 is amended to read:

1 167.400. (1) **As used in this section and ORS 167.401, 167.402, 167.404 and 167.407:**

2 (a) **“Tobacco products” has the meaning given that term in ORS 431.840.**

3 (b) **“Vapor product” has the meaning given that term in ORS 431.840.**

4 [(1)] (2) It is unlawful for [any] a person under 18 years of age to possess tobacco products[, as  
5 defined in ORS 431.840] **or a vapor product.**

6 [(2)] (3) [Any] **A** person who violates subsection [(1)] (2) of this section commits a Class D vio-  
7 lation.

8 **SECTION 5.** ORS 167.401 is amended to read:

9 167.401. (1) Except as provided in subsection (4) of this section, [no] a person under 18 years of  
10 age [shall] **may not** purchase, attempt to purchase or acquire tobacco products [as defined in ORS  
11 431.840] **or a vapor product.** Except when such minor is in a private residence accompanied by the  
12 parent or guardian of the minor and with the consent of such parent or guardian, [no] a person  
13 under 18 years of age [shall] **may not** have personal possession of tobacco products **or a vapor**  
14 **product.**

15 (2) Any person who violates subsection (1) of this section commits a Class B 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] **an** edu-  
18 cation program **related to tobacco or nicotine use** or a [tobacco use cessation] program **related**  
19 **to tobacco or nicotine use cessation** or to perform community service related to diseases associ-  
20 ated with consumption of tobacco products **and nicotine. Except as provided in paragraph (b)**  
21 **of this subsection,** a person may be ordered to participate in such a program only once.

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

34 (4) A minor acting under the supervision of an adult may purchase, attempt to purchase or ac-  
35 quire tobacco products **or vapor products** for the purpose of testing compliance with a federal law,  
36 state statute, local law or retailer management policy limiting or regulating the delivery of tobacco  
37 products **and vapor products** to minors.

38 **SECTION 6.** ORS 167.402 is amended to read:

39 167.402. (1) As used in this section, “vending machine” means a mechanical, electronic or similar  
40 device that, upon the insertion of tokens, money or another form of payment, dispenses tobacco  
41 products **or vapor products.**

42 (2) A person may not sell or dispense tobacco products[, as defined in ORS 431.840,] **or vapor**  
43 **products** from a vending machine, except in an establishment where the premises are posted as  
44 permanently and entirely off-limits to minors under rules adopted by the Oregon Liquor Control  
45 Commission.

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

3 **SECTION 7.** ORS 167.404 is amended to read:

4 167.404. Cities and counties by ordinance or resolution [*shall*] **may** not regulate vending ma-  
5 chines that dispense tobacco products[, *as defined in ORS 431.840,*] **or vapor products** in any form  
6 and that are in any manner accessible to minors.

7 **SECTION 8.** ORS 167.407 is amended to read:

8 167.407. (1) A person having authority over the location of [*cigarettes and other*] tobacco pro-  
9 ducts **and vapor products** in a retail store may not locate [*cigarettes or other tobacco*] **those** pro-  
10 ducts in a location in the store where the [*cigarettes or other tobacco*] products are accessible by  
11 store customers without assistance by a store employee.

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

14 (3) Subsections (1) and (2) of this section do not apply if the location at which the [*cigarettes*  
15 *or*] tobacco products **and vapor products** are sold is a store or other establishment at which per-  
16 sons under 18 years of age are prohibited.

17  
18 (Affirmative Defenses to Identity Crimes)

19  
20 **SECTION 9.** ORS 165.800 is amended to read:

21 165.800. (1) A person commits the crime of identity theft if the person, with the intent to deceive  
22 or to defraud, obtains, possesses, transfers, creates, utters or converts to the person's own use the  
23 personal identification of another person.

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

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

27 (a) Was under 21 years of age at the time of committing the offense and the person used the  
28 personal identification of another person solely for the purpose of purchasing alcohol;

29 (b) Was under 18 years of age at the time of committing the offense and the person used the  
30 personal identification of another person solely for the purpose of purchasing tobacco products **or**  
31 **a vapor product, as those terms are defined in ORS 431.840;** or

32 (c) Used the personal identification of another person solely for the purpose of misrepresenting  
33 the person's age to gain access to a:

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

35 (B) Benefit based on age.

36 (4) As used in this section:

37 (a) "Another person" means an individual, whether living or deceased, an imaginary person or  
38 a firm, association, organization, partnership, business trust, company, corporation, limited liability  
39 company, professional corporation or other private or public entity.

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

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

43 (B) A person's driving privileges;

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

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

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

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

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

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

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

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

9 (K) A person's photograph;

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

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

12 **SECTION 10.** ORS 165.813 is amended to read:

13 165.813. (1) A person commits the crime of unlawful possession of fictitious identification if the  
14 person possesses a personal identification card containing identification information for a fictitious  
15 person with the intent to use the personal identification card to commit a crime.

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

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

19 (a) Was under 21 years of age at the time of committing the offense and the person possessed  
20 the personal identification card solely for the purpose of enabling the person to purchase alcohol;  
21 or

22 (b) Was under 18 years of age at the time of committing the offense and the person possessed  
23 the personal identification card solely for the purpose of enabling the person to purchase tobacco  
24 products **or a vapor product, as those terms are defined in ORS 431.840.**

25 **SECTION 11.** 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

38 (b) Was under 18 years of age at the time of committing the offense and the person produced  
39 an identification card, license or permit solely for the purpose of enabling the person to purchase  
40 tobacco products **or a vapor product, as those terms are defined in ORS 431.840.**

41  
42 **(Requirements for Schools, Youth Correction**  
43 **Facilities and Juvenile Detention Facilities)**  
44

45 **SECTION 12.** ORS 339.883 is amended to read:

1 339.883. (1) A facility shall not permit any person under 18 years of age to possess tobacco  
2 products **or a vapor product**, as **those terms are** defined in ORS 431.840, while the person is  
3 present on facility grounds or in facility buildings or attending facility-sponsored activities.

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

7 (3) This section does not apply to any person for whom a tobacco **product** or nicotine  
8 [*product*] has been lawfully prescribed.

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

12  
13 **CONSUMPTION OF NICOTINE IN PUBLIC PLACES**  
14 **(Oregon Indoor Clean Air Act)**  
15

16 **SECTION 13.** ORS 433.835 is amended to read:

17 433.835. As used in ORS 433.835 to 433.875:

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

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

20 (b) Has a humidor on the premises;

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

24 (d) Has been issued and operates under a full on-premises sales license issued under ORS  
25 471.175;

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

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

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

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

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

38 (3) “Place of employment” means every enclosed area under the control of a public or private  
39 employer that employees frequent during the course of employment, including but not limited to  
40 work areas, employee lounges, vehicles that are operated in the course of an employer’s business  
41 that are not operated exclusively by one employee, rest rooms, conference rooms, classrooms, cafe-  
42 terias, hallways, meeting rooms, elevators and stairways. “Place of employment” does not include a  
43 private residence unless it is used as a child care facility as defined in ORS 329A.250 or a facility  
44 providing adult day care as defined in ORS 410.490.

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

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

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

4 (7) **"Vape" means using a vapor product described in subsection (8)(a) of this section to**  
5 **heat nicotine solutions.**

6 (8) **"Vapor product" means:**

7 (a) **An electronic device designed to heat nicotine solutions and other solutions for the**  
8 **purpose of producing a vapor to be inhaled by the user of the device; or**

9 (b) **Nicotine solution in any form designed to be used with a device described in paragraph**  
10 **(a) of this subsection.**

11 **SECTION 14.** ORS 433.840 is amended to read:

12 433.840. The people of Oregon find that because exposure to secondhand smoke is known to  
13 cause cancer and other chronic diseases such as heart disease, asthma and bronchitis, it is neces-  
14 sary to reduce exposure to tobacco smoke **and other vapors containing nicotine** by prohibiting  
15 smoking **and vaping** in all public places and places of employment.

16 **SECTION 15.** ORS 433.845 is amended to read:

17 433.845. (1) A person may not smoke, [or] carry [any] a lighted smoking instrument **or vape** in  
18 a public place or place of employment except in areas designated as smoking **and vaping** areas  
19 pursuant to ORS 433.850.

20 (2) A person may not smoke, [or] carry [any] a lighted smoking instrument **or vape** within 10  
21 feet of the following parts of public places or places of employment:

22 (a) Entrances;

23 (b) Exits;

24 (c) Windows that open; and

25 (d) Ventilation intakes that serve an enclosed area.

26 (3) A person may not smoke, [or] carry [any] a lighted smoking instrument **or vape** in a room  
27 during the time that jurors are required to use the room.

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

29 433.847. (1) The Oregon Health Authority shall adopt rules establishing a certification system  
30 for smoke shops.

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

32 (a)(A) Is primarily engaged in the sale of tobacco products and smoking instruments **or of vapor**  
33 **products** intended for off-premises consumption or use, with at least 75 percent of the gross reven-  
34 ues of the business resulting from such sales;

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

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

38 (D) Does not sell, offer or allow on-premises consumption of food or beverages, including alco-  
39 holic beverages;

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

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

43 (G) Allows smoking only for the purpose of sampling tobacco products, **or vaping only for the**  
44 **purpose of sampling vapor products**, for making retail purchase decisions;

45 (b) On December 31, 2008:



- 1 (A) Met the requirements of paragraph (a)(A) to (D) of this subsection; and  
2 (B)(i) Was a stand-alone business with no other businesses or residential property attached; or  
3 (ii) Had a ventilation system that exhausted smoke from the business and was designed and  
4 terminated in accordance with the state building code standards for the occupancy classification in  
5 use; or  
6 (c)(A) Filed an application for certification as a smoke shop before June 30, 2011;  
7 (B) Met the requirements of ORS 433.835 (5), as in effect immediately before June 30, 2011, at  
8 the time of application;  
9 (C) Was certified as a smoke shop under ORS 433.835 (5), as in effect immediately before June  
10 30, 2011, by the authority on or before December 31, 2012; and  
11 (D) Allows smoking of cigarettes only if at least 75 percent of the gross revenues of the business  
12 results from the sale of cigarettes.
- 13 (3) A smoke shop certified under subsection (2)(b) of this section must renew the smoke shop  
14 certification every five years by demonstrating to the satisfaction of the authority that the smoke  
15 shop:  
16 (a)(A) Meets the requirements of subsection (2)(a)(A) to (D) of this section; and  
17 (B)(i) Is a stand-alone business with no other businesses or residential property attached; or  
18 (ii) Has a ventilation system that exhausts smoke from the business and is designed and termi-  
19 nated in accordance with the state building code standards for the occupancy classification in use;  
20 and  
21 (b) Allows smoking of cigarettes only if at least 75 percent of the gross revenues of the business  
22 results from the sale of cigarettes.
- 23 (4) A smoke shop certified under subsection (2)(c) of this section must renew the smoke shop  
24 certification every five years by demonstrating to the satisfaction of the authority that the smoke  
25 shop:  
26 (a) Meets the requirements of ORS 433.835 (5), as in effect immediately before June 30, 2011; and  
27 (b) Allows smoking of cigarettes only if at least 75 percent of the gross revenues of the business  
28 results from the sale of cigarettes.
- 29 (5) The owner of a smoke shop certified under subsection (2)(b) or (c) of this section may  
30 transfer the certification with ownership of the smoke shop in accordance with rules adopted by the  
31 authority.
- 32 (6) A smoke shop certified under subsection (2)(b) of this section may continue to be certified  
33 in a new location under subsection (2)(b) of this section if:  
34 (a)(A) The new location occupies no more than 3,500 square feet; or  
35 (B) If the old location occupied more than 3,500 square feet, the new location occupies no more  
36 than 110 percent of the space occupied by the old location; and  
37 (b) The smoke shop as operated in the new location:  
38 (A) Meets the requirements of subsection (2)(a)(A) to (D) of this section;  
39 (B)(i) Is a stand-alone business with no other businesses or residential property attached; or  
40 (ii) Has a ventilation system that exhausts smoke from the business and is designed and termi-  
41 nated in accordance with the state building code standards for the occupancy classification in use;  
42 and  
43 (C) Allows smoking of cigarettes only if at least 75 percent of the gross revenues of the business  
44 results from the sale of cigarettes.
- 45 (7) A smoke shop certified under subsection (2)(c) of this section may continue to be certified

1 in a new location under subsection (2)(c) of this section if:

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

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

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

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

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

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

13 **SECTION 17.** ORS 433.850 is amended to read:

14 433.850. (1) An employer shall provide a place of employment that is free of tobacco smoke **and**  
15 **other vapors containing nicotine** for all employees.

16 (2) Notwithstanding subsection (1) of this section:

17 (a) The owner or person in charge of a hotel or motel may designate up to 25 percent of the  
18 sleeping rooms of the hotel or motel as rooms in which smoking **or vaping** is permitted.

19 (b) Smoking of noncommercial tobacco products for ceremonial purposes is permitted in spaces  
20 designated for traditional ceremonies in accordance with the American Indian Religious Freedom  
21 Act, 42 U.S.C. 1996.

22 (c) Smoking [*is*] **and vaping are** permitted in a smoke shop.

23 (d) Smoking is permitted in a cigar bar that generated on-site retail sales of cigars of at least  
24 \$5,000 for the calendar year ending December 31, 2006.

25 (e) A performer may smoke or carry a lighted smoking instrument that does not contain tobacco  
26 while performing in a scripted stage, motion picture or television production if:

27 (A) The production is produced by an organization whose primary purpose is producing scripted  
28 productions; and

29 (B) Smoking is an integral part of the production.

30 (3) An employer, except in those places described in subsection (2) of this section, shall post  
31 signs that provide notice of the provisions of ORS 433.835 to 433.875.

32  
33 **(Public Meetings)**  
34

35 **SECTION 18.** ORS 192.710 is amended to read:

36 192.710. (1) [*No*] **A** person [*shall*] **may not** smoke, [*or*] carry [*any*] **a** lighted smoking instrument  
37 **or vape** in a room where a public meeting is being held or is to continue after a recess. For pur-  
38 poses of this subsection, a public meeting is being held from the time the agenda or meeting notice  
39 indicates the meeting is to commence regardless of the time it actually commences.

40 (2) As used in this section:

41 (a) "Public meeting" means any regular or special public meeting or hearing of a public body  
42 to exercise or advise in the exercise of any power of government in buildings or rooms rented,  
43 leased or owned by the State of Oregon or by any county, city or other political subdivision in the  
44 state regardless of whether a quorum is present or is required.

45 (b) "Public body" means the state or any department, agency, board or commission of the state

1 or any county, city or other political subdivision in the state.

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

3 (d) **"Vape" has the meaning given that term in ORS 433.835.**

4  
5 (Places of Employment)

6  
7 **SECTION 19.** ORS 243.345 is amended to read:

8 243.345. The Legislative Assembly finds that because the smoking of tobacco **and the inhalation**  
9 **of other vapors containing nicotine** creates a health hazard, it is necessary to protect the public  
10 health by restricting smoking **and vaping** in places of employment operated by the State of Oregon.

11 **SECTION 20.** ORS 243.350 is amended to read:

12 243.350. (1) **As used in this section, "vape" has the meaning given that term in ORS**  
13 **433.835.**

14 [(1)] (2) In accordance with the provisions of ORS chapter 183, the Personnel Division shall  
15 adopt rules restricting smoking in places of employment operated by departments or agencies of the  
16 State of Oregon. The rules of the division shall:

17 (a) Set standards for the designation of areas in a place of employment where smoking [is] **and**  
18 **vaping are** permitted, including standards for ventilation and physical barriers.

19 (b) Require departments or agencies to designate areas in the place of employment where  
20 smoking [is] **and vaping are** permitted pursuant to the standards of the division.

21 (c) Require departments or agencies supplying employees with lounges to provide [*smoke-free*  
22 *lounge areas for nonsmoking employees*] **lounge areas that are free of smoke and other vapors**  
23 **containing nicotine for employees who do not smoke or vape.**

24 (d) Prohibit smoking **and vaping** in a place of employment in any area not designated as an area  
25 where smoking [is] **and vaping are** permitted.

26 [(2)] (3) The rules adopted by the division pursuant to subsection [(1)] (2) of this section shall  
27 not apply to enclosed offices occupied exclusively by [*smokers*] **individuals who smoke or vape,**  
28 even though the offices may be visited by [*nonsmokers*] **individuals who do not smoke or vape.**

29 [(3)] (4) Nothing in this section is intended to prevent departments or agencies from prohibiting  
30 smoking **and vaping** in the entire area of the place of employment.

31  
32 (Hospitals)

33  
34 **SECTION 21.** ORS 441.815 is amended to read:

35 441.815. (1) As used in this section[,]:

36 (a) "Hospital" has the meaning given the term in ORS 442.015.

37 (b) **"Vape" has the meaning given that term in ORS 433.835.**

38 (2) The administrator or person in charge of a hospital may not permit a person to smoke to-  
39 bacco **or vape:**

40 (a) In the hospital; or

41 (b) Within 10 feet of a doorway, open window or ventilation intake of the hospital.

42 (3) The Director of the Oregon Health Authority may impose a civil penalty of not more than  
43 \$500 per day on a person for violation of subsection (2) of this section. Civil penalties imposed  
44 against a person under this subsection may not exceed \$2,000 in any 30-day period. Civil penalties  
45 imposed under this subsection shall be imposed in the manner provided by ORS 183.745.

1 (4) The Oregon Health Authority may adopt rules necessary for the administration of this sec-  
2 tion.

3  
4 **CONSUMPTION OF NICOTINE IN MOTOR VEHICLES**

5  
6 **SECTION 22.** ORS 811.193 is amended to read:

7 811.193. (1)[(a)] A person commits the offense of smoking **or vaping** in a motor vehicle if the  
8 person smokes **or vapes** in a motor vehicle while a person under 18 years of age is in the motor  
9 vehicle.

10 [(b) As used in this subsection, "smokes" means to inhale, exhale, burn or carry a lighted cigarette,  
11 cigar, pipe, weed, plant, regulated narcotic or other combustible substance.]

12 (2) Notwithstanding ORS 810.410, a police officer may enforce this section only if the police of-  
13 ficer has already stopped and detained the driver operating the motor vehicle for a separate traffic  
14 violation or other offense.

15 (3) Smoking **or vaping** in a motor vehicle is a:

16 (a) Class D traffic violation for a first offense.

17 (b) Class C traffic violation for a second or subsequent offense.

18 (4) **As used in this section:**

19 (a) **"Smokes" means to inhale, exhale, burn or carry a lighted cigarette, cigar, pipe, weed,**  
20 **plant, regulated narcotic or other combustible substance.**

21 (b) **"Vape" has the meaning given that term in ORS 433.835.**

22  
23 **CONFORMING AMENDMENTS**

24  
25 **SECTION 23.** ORS 163.580 is amended to read:

26 163.580. (1) [Any] **A** person who sells any of the smoking devices listed in ORS 163.575 [(1)(e)]  
27 (1)(f) shall display a sign clearly stating that the sale of such devices to persons under 18 years of  
28 age is prohibited by law.

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

30  
31 **APPLICABILITY**

32  
33 **SECTION 24.** (1) **The amendments to ORS 163.575, 167.400, 167.401, 167.402, 167.404,**  
34 **167.407, 431.840, 433.845 and 811.193 by sections 1, 3 to 8, 15 and 22 of this 2014 Act apply to**  
35 **conduct occurring on or after the effective date of this 2014 Act.**

36 (2) **The amendments to ORS 165.800, 165.813 and 807.500 by sections 9 to 11 of this 2014**  
37 **Act apply to conduct occurring before, on or after the effective date of this 2014 Act.**

38  
39 **UNIT CAPTIONS**

40  
41 **SECTION 25.** **The unit captions used in this 2014 Act are provided only for the conven-**  
42 **ience of the reader and do not become part of the statutory law of this state or express any**  
43 **legislative intent in the enactment of this 2014 Act.**

44  
45 **EMERGENCY CLAUSE**

1        **SECTION 26.** This 2014 Act being necessary for the immediate preservation of the public  
2        peace, health and safety, an emergency is declared to exist, and this 2014 Act takes effect  
3        on its passage.

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