

# Senate Bill 1546

Sponsored by Senator SHIELDS; Senators BEYER, BOQUIST, DEVLIN, MONNES ANDERSON, ROSENBAUM, STEINER HAYWARD, Representatives BARKER, BUCKLEY, GORSEK, KENNEMER, PARRISH, REARDON, WITT (at the request of United Food and Commercial Workers Local 555) (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**.

Resolves terminology conflict to reflect that offense of endangering welfare of minor through distributing, selling or causing sale of tobacco to minor is Class A violation.

Reduces penalty for first and second offenses of making alcoholic liquor available to minor when offender is employee of off-premises sales licensee and monitors 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. Reduces mandatory fine for third or subsequent offense to \$1,000. Eliminates minimum term of imprisonment for third conviction.

Reduces penalty for first offense of making alcoholic liquor available to minor when offender is employee of off-premises sales licensee and operates checkout device. Makes first offense violation subject to maximum fine of \$2,000.

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 corn-cob 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) Bongs;

**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) Chillums;
- 2 (E) Ice pipes or chillers;
- 3 (F) Cigarette rolling papers and rolling machines; and
- 4 (G) Cocaine free basing kits.

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

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

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

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

14 431.840. (1) It shall be unlawful to do any of the following:

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

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

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

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

27 (3) The notice shall be substantially as follows:  
 28

---

29  
 30 **NOTICE**

31 The sale of tobacco in any form to persons under 18 years of age is prohibited by law. Any  
 32 person who knowingly sells, or causes to be sold, tobacco to a person under 18 years of age commits  
 33 the [*crime*] **offense** of endangering the welfare of a minor, pursuant to ORS 163.575.  
 34

35  
 36 **SECTION 3.** ORS 471.410 is amended to read:

37 471.410. (1) A person may not sell, give or otherwise make available any alcoholic liquor to any  
 38 person who is visibly intoxicated.

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

45 (3)(a) A person who exercises control over private real property may not knowingly allow any

1 other person under the age of 21 years who is not a child or minor ward of the person to consume  
 2 alcoholic liquor on the property, or allow any other person under the age of 21 years who is not a  
 3 child or minor ward of the person to remain on the property if the person under the age of 21 years  
 4 consumes alcoholic liquor on the property.

5 (b) This subsection:

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

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

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

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

15 (5) Except as provided in [subsection (6)] **subsections (6) and (7)** of this section, a person who  
 16 violates subsection (1) or (2) of this section commits a Class A misdemeanor. Upon violation of  
 17 subsection (2) of this section, the court shall impose at least a mandatory minimum sentence as  
 18 follows:

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

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

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

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

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

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

29 **(C) Is an employee of an off-premises sales licensee and monitors customer operation of**  
 30 **a self-checkout device that a minor uses to purchase alcoholic liquor. As used in this sub-**  
 31 **paragraph, "self-checkout device" means equipment designed to permit a consumer to initi-**  
 32 **ate and complete a purchase without the active or direct participation of a cashier.**

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

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

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

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

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

42 **(7) For an employee of an off-premises sales licensee who violates subsection (2) of this**  
 43 **section while operating a checkout device and does not act knowingly or intentionally, a first**  
 44 **conviction is a Class A violation.**

45 [(7)] (8) The court may waive an amount that is at least \$200 but not more than one-third of the

1 fine imposed under subsection (5) of this section, if the violator performs at least 30 hours of com-  
2 munity service.

3 [(8)] (9) Except as provided in subsection [(7)] (8) of this section, the court may not waive or  
4 suspend imposition or execution of the mandatory minimum sentence required by subsection (5) or  
5 (6) of this section. In addition to the mandatory sentence, the court may require the violator to make  
6 restitution for any damages to property where the alcoholic liquor was illegally consumed or may  
7 require participation in volunteer service to a community service agency.

8 [(9)(a)] (10)(a) Except as provided in paragraph (b) of this subsection, a person who violates  
9 subsection (3) of this section commits a Class A violation.

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

12 [(10)] (11) Nothing in this section prohibits any licensee under this chapter from allowing a  
13 person who is visibly intoxicated from remaining on the licensed premises so long as the person is  
14 not sold or served any alcoholic liquor.

15 **SECTION 4. The amendments to ORS 163.575 and 471.410 by sections 1 and 3 of this 2014**  
16 **Act apply to conduct occurring on or after the effective date of this 2014 Act.**

17 **SECTION 5. The amendments to ORS 431.840 by section 2 of this 2014 Act do not require**  
18 **the replacement or alteration of any notice that is posted by a retailer prior to the effective**  
19 **date of this 2014 Act.**

20 **SECTION 6. This 2014 Act being necessary for the immediate preservation of the public**  
21 **peace, health and safety, an emergency is declared to exist, and this 2014 Act takes effect**  
22 **on its passage.**