

Senate Bill 797

Sponsored by Senator KNOPP; Senator THOMSEN

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 products." Amends laws related to use of tobacco products by minors to include use 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 products by minor.

A BILL FOR AN ACT

1
2 Relating to use of nicotine by minors; creating new provisions; and amending ORS 163.575, 163.580,
3 165.800, 165.813, 167.400, 167.401, 167.402, 167.404, 167.407, 339.883, 431.840, 431.853, 807.500 and
4 811.193.

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

VAPOR PRODUCTS

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9 **SECTION 1.** ORS 431.840, as amended by section 2, chapter 20, Oregon Laws 2014, is amended
10 to read:

11 431.840. (1) **As used in this section and ORS 431.853:**

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

13 (A) **Bidis, cigars, cheroots, stogies, periques, granulated, plug cut, crimp cut, ready**
14 **rubbed and other smoking tobacco, snuff, snuff flour, cavendish, plug and twist tobacco,**
15 **fine-cut and other chewing tobaccos, shorts, refuse scraps, clippings, cuttings and sweepings**
16 **of tobacco and other forms of tobacco, prepared in a manner that makes the tobacco suitable**
17 **for chewing or smoking in a pipe or otherwise, or for both chewing and smoking; and**

18 (B) **Cigarettes as defined in ORS 323.010 (1).**

19 (b)(A) **"Vapor products" means:**

20 (i) **Electronic devices designed to heat nicotine solutions and other solutions for the**
21 **purpose of producing a vapor to be inhaled by the user of the device; or**

22 (ii) **Nicotine solutions in any form designed to be used with a device described in sub-**
23 **subparagraph (i) of this subparagraph.**

24 (B) **"Vapor products" does not include any product that is regulated by the United States**
25 **Food and Drug Administration under subchapter V of the Federal Food, Drug, and Cosmetic**
26 **Act, on or before the effective date of this 2015 Act.**

27 *[(1)]* (2) **It [shall be] is unlawful [to do any of the following]:**

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

30 (b) **To fail as a retailer of tobacco products to post a notice substantially similar to that set**
31 **forth in subsection (3) of this section in a location clearly visible to the seller and the purchaser**

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 that sale of tobacco products to persons under 18 years of age is prohibited.

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

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

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

12 (3) The notice [shall] **required by subsection (2)(b) of this section must** be substantially as
13 follows:

14
15
16 NOTICE

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

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21
22 (4) **The notice required by subsection (2)(c) of this section must be substantially as fol-**
23 **lows:**

24
25
26 NOTICE

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

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

35 431.853. (1) The Oregon Health Authority shall:

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

40 (b) Submit a report describing:

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

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

45 (C) The strategies to be utilized for enforcing the laws listed in paragraph (a) of this subsection

1 during the year following the report.

2 (2) The [*Oregon Health*] authority shall adopt rules concerning random inspections of places that
 3 **distribute or** sell tobacco products **or vapor products that are** consistent with [*section 1921,*
 4 *Public Law 102-321, 1992*] **any federal law or regulation relating to the inspection of such**
 5 **places.** The rules shall provide that inspections may take place:

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

7 (b) Only during **the** hours that tobacco products **or vapor products** are [*sold or*] distributed
 8 **or sold;** 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 **ENDANGERING THE WELFARE OF A MINOR**

13
 14 **SECTION 3.** ORS 163.575, as amended by section 1, chapter 20, Oregon Laws 2014, is amended
 15 to read:

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

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

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

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

24 (d) Distributes, sells[, *or causes*] **or allows** to be sold[,] tobacco in any form to a person under
 25 18 years of age; [*or*]

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

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

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

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

36 (C) Bongos;

37 (D) Chillums;

38 (E) Ice pipes or chillers;

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

40 (G) Cocaine free basing kits.

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

44 (3) Endangering the welfare of a minor by violation of subsection (1)(d) **or (e)** of this section is
 45 a Class A violation.

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

3
 4 **OTHER VIOLATIONS AND REGULATION**

5
 6 **SECTION 4.** ORS 167.400 is amended to read:

7 167.400. (1) **As used in this section and ORS 167.401, 167.402, 167.404 and 167.407:**

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

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

10 [(1)] **(2)** It is unlawful for [any] a person under 18 years of age to possess tobacco products[, as
 11 defined in ORS 431.840] **or vapor products.**

12 [(2)] **(3)** [Any] A person who violates [subsection (1) of] this section commits a Class D violation.

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

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

19 **(b) A person under 18 years of age may not possess tobacco products or vapor products**
 20 **unless the person is in a private residence accompanied by the parent or guardian of the**
 21 **person and the parent or guardian has consented to the person possessing tobacco products**
 22 **or vapor products.**

23 (2) [Any] A person who violates subsection (1) of this section commits a Class B violation.

24 (3)(a) In lieu of any other penalty established by law, a person who is convicted for the first time
 25 of a violation of subsection (1) of this section may be ordered to participate in [a tobacco] **an** edu-
 26 cation program **about using tobacco products or vapor products** or a [tobacco use] cessation
 27 program **for users of tobacco products or vapor products** or to perform community service re-
 28 lated to diseases associated with [consumption of tobacco products] **using tobacco products or va-**
 29 **por products. Except as provided in paragraph (b) of this subsection,** a person may be ordered
 30 to participate in [such] a program **described in this paragraph** only once.

31 (b) In addition to and not in lieu of any other penalty established by law, a person who is con-
 32 victed of a second violation of subsection (1) of this section through misrepresentation of age may
 33 be required to participate in [a tobacco education or a tobacco use cessation program] **a program**
 34 **described in paragraph (a) of this subsection** or to perform community service [related to diseases
 35 associated with the consumption of tobacco products] **as described in paragraph (a) of this sub-**
 36 **section,** and the court shall order that the person’s driving privileges [and] **or** right to apply for
 37 driving privileges be suspended for a period not to exceed one year. If a court has issued an order
 38 suspending driving privileges under this [subsection] **paragraph,** the court, upon petition of the
 39 person, may withdraw the order at any time the court deems appropriate. The court notification
 40 to the Department of Transportation under this [subsection] **paragraph** may include a recommen-
 41 dation that the person be granted a hardship permit under ORS 807.240 if the person is otherwise
 42 eligible for the permit.

43 (4) A [minor] **person under 18 years of age who is** acting under the supervision of an adult
 44 may purchase, attempt to purchase or acquire tobacco products **or vapor products** for the purpose
 45 of testing compliance with a federal law, state [statute] **law,** local law or retailer management policy

1 limiting or regulating the delivery of tobacco products **or vapor products** to minors.

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

3 167.402. (1) As used in this section, “vending machine” means a mechanical, electronic or similar
4 device that, upon the insertion of tokens, money or another form of payment, dispenses tobacco
5 products **or vapor products**.

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

10 (3) [*Violation of subsection (2) of this section is*] **A person who violates this section commits**
11 a Class B violation. Each day [*of*] **that the person commits the** violation constitutes a separate
12 offense.

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

14 167.404. Cities and counties by ordinance or resolution [*shall*] **may** not regulate vending ma-
15 chines that dispense tobacco products[, *as defined in ORS 431.840, in any form*] **or vapor products**
16 and that are in any manner accessible to minors.

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

18 167.407. (1) A person having authority over the location of [*cigarettes and other*] tobacco pro-
19 ducts **or vapor products** in a retail store may not locate [*cigarettes or other*] **the** tobacco products
20 **or vapor products** in a location in the store where the [*cigarettes or other*] tobacco products **or**
21 **vapor products** are accessible by store customers without assistance by a store employee.

22 (2) Violation of [*subsection (1) of*] this section is a Class B violation. Each day [*of*] **that the**
23 **person commits the** violation constitutes a separate offense.

24 (3) [*Subsections (1) and (2) of this section do*] **This section does** not apply to a person if the
25 location at which the [*cigarettes or*] tobacco products **or vapor products** are sold is a store or other
26 establishment at which persons under 18 years of age are prohibited.

27 **SECTION 9.** ORS 811.193 is amended to read:

28 811.193. (1)(a) A person commits the offense of smoking, **aerosolizing or vaporizing** in a motor
29 vehicle if the person smokes **or uses a vapor product** in a motor vehicle while a person under 18
30 years of age is in the motor vehicle.

31 (b) As used in this subsection[.]:

32 (A) “Smokes” means to inhale, exhale, burn or carry a lighted cigarette, cigar, pipe, weed, plant,
33 regulated narcotic or other combustible substance[.]; **and**

34 (B) “Uses a vapor product” means to use a vapor product, as defined in ORS 431.840, in
35 **a manner that creates an aerosol or vapor.**

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

39 (3) Smoking, **aerosolizing or vaporizing** in a motor vehicle is a:

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

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

42
43 **AFFIRMATIVE DEFENSES TO IDENTITY CRIMES**

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45 **SECTION 10.** ORS 165.800 is amended to read:

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

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

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

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

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

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

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

15 (B) Benefit based on age.

16 (4) As used in this section:

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

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

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

23 (B) A person's driving privileges;

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

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

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

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

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

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

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

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

34 (K) A person's photograph;

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

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

37 **SECTION 11.** ORS 165.813 is amended to read:

38 165.813. (1) A person commits the crime of unlawful possession of fictitious identification if the
 39 person possesses a personal identification card containing identification information for a fictitious
 40 person with the intent to use the personal identification card to commit a crime.

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

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

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

1 or

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

5 **SECTION 12.** ORS 807.500 is amended to read:

6 807.500. (1) A person commits the offense of unlawful production of identification cards, licenses,
7 permits, forms or camera cards if the person, without the authority of the Department of Transpor-
8 tation, advertises for the production of, produces in any way or causes to be produced any facsimiles
9 of the identification cards, licenses, permits, forms or camera cards upon which the department is-
10 sues identification cards, licenses or driver permits under the vehicle code.

11 (2) The offense described in this section, unlawful production of identification cards, licenses,
12 permits, forms or camera cards, is a Class C felony.

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

15 (a) Was under 21 years of age at the time of committing the offense and the person produced
16 an identification card, license or permit solely for the purpose of enabling the person to purchase
17 alcohol; or

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

21
22 **AMENDMENTS TO OTHER STATUTES**

23
24 **SECTION 13.** ORS 339.883 is amended to read:

25 339.883. (1) **As used in this section:**

26 (a)(A) **“Facility” means a public or private school, youth correction facility or juvenile**
27 **detention facility.**

28 (B) **“Facility” does not include a college, university, career or technical education school**
29 **or community college.**

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

31 (c) **“Vapor products” has the meaning given that term in ORS 431.840.**

32 [(1)] (2) A facility shall not permit any person under 18 years of age to possess tobacco
33 products[, *as defined in ORS 431.840,*] **or vapor products** while the person is present on facility
34 grounds or in facility buildings or attending facility-sponsored activities.

35 [(2)] (3) [*The*] **A** facility must have a written [*policies*] **policy** prohibiting the possession of to-
36 bacco products [*described in subsection (1) of this section*] **and vapor products** by persons under 18
37 years of age **under the conditions described in subsection (2) of this section.** The facility must
38 have a written [*plans*] **plan** to implement [*such policies*] **the policy.**

39 [(3)] (4) This section does not apply to [*any*] **a** person for whom a tobacco or nicotine product
40 **or a substance to be used with a vapor product** has been lawfully prescribed.

41 [(4) *As used in this section, “facility” means public or private schools, youth correction facilities*
42 *or juvenile detention facilities. “Facility” does not include colleges or universities, career and technical*
43 *education schools or community colleges.*]

44
45 **CONFORMING AMENDMENTS**

1 **SECTION 14.** ORS 163.580 is amended to read:

2 163.580. (1) [*Any*] **A** person who sells any of the smoking devices listed in ORS 163.575 [(1)(e)]
3 **(1)(f)** shall display a sign clearly stating that the sale of such devices to persons under 18 years of
4 age is prohibited by law.

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

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7

APPLICABILITY

8

9 **SECTION 15.** (1) **The amendments to ORS 163.575, 167.400, 167.401, 167.402, 167.404,**
10 **167.407, 431.840 and 811.193 by sections 1 and 3 to 9 of this 2015 Act apply to conduct occur-**
11 **ring on or after the effective date of this 2015 Act.**

12 (2) **The amendments to ORS 165.800, 165.813 and 807.500 by sections 10 to 12 of this 2015**
13 **Act apply to conduct occurring before, on or after the effective date of this 2015 Act.**

14

15

UNIT CAPTIONS

16

17 **SECTION 16.** **The unit captions used in this 2015 Act are provided only for the conven-**
18 **ience of the reader and do not become part of the statutory law of this state or express any**
19 **legislative intent in the enactment of this 2015 Act.**

20