

**PROPOSED AMENDMENTS TO
SENATE BILL 663**

1 On page 1 of the printed bill, line 2, after “ORS” delete the rest of the
2 line and delete lines 3 through 11 and insert “163.575, 163.580, 165.800,
3 165.813, 167.400, 167.401, 167.402, 167.404, 167.407, 181.430, 323.718, 339.883,
4 431.840, 431.853, 433.847, 743.737, 807.500 and 811.193; and declaring an emer-
5 gency.”.

6 Delete lines 13 through 28 and delete pages 2 through 76 and insert:

7 **“SECTION 1. Sections 2 and 3 of this 2015 Act are added to and**
8 **made a part of ORS 163.505 to 163.575.**

9 **“SECTION 2. (1) As used in this section:**

10 **“(a)(A) ‘Inhalant delivery system’ means:**

11 **“(i) A device that can be used to deliver nicotine in the form of a**
12 **vapor or aerosol to a person inhaling from the device; or**

13 **“(ii) A component of a device described in this subparagraph or a**
14 **substance in any form sold for the purpose of being vaporized or**
15 **aerosolized by a device described in this subparagraph, whether the**
16 **component or substance is sold separately or is not sold separately.**

17 **“(B) ‘Inhalant delivery system’ does not include:**

18 **“(i) Any product that has been approved by the United States Food**
19 **and Drug Administration for sale as a tobacco cessation product or for**
20 **any other therapeutic purpose, if the product is marketed and sold**
21 **solely for the approved purpose; and**

22 **“(ii) Tobacco products.**

1 **“(b) ‘Tobacco products’ means:**

2 **“(A) Bidis, cigars, cheroots, stogies, periques, granulated, plug cut,**
3 **crimp cut, ready rubbed and other smoking tobacco, snuff, snuff flour,**
4 **cavendish, plug and twist tobacco, fine-cut and other chewing**
5 **tobaccos, shorts, refuse scraps, clippings, cuttings and sweepings of**
6 **tobacco and other forms of tobacco, prepared in a manner that makes**
7 **the tobacco suitable for chewing or smoking in a pipe or otherwise,**
8 **or for both chewing and smoking; or**

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

10 **“(2) A person commits the offense of selling tobacco products, to-**
11 **bacco product devices or inhalant delivery systems to a person under**
12 **21 years of age if the person knowingly:**

13 **“(a) Distributes or sells, or causes to be sold, a tobacco product to**
14 **a person under 21 years of age;**

15 **“(b) Distributes or sells, or causes to be sold, to a person under 21**
16 **years of age any device that is designed to contain burning tobacco for**
17 **the purpose of delivering tobacco smoke into a person’s respiratory**
18 **system; or**

19 **“(c) Distributes or sells, or causes to be sold, an inhalant delivery**
20 **system to a person under 21 years of age.**

21 **“(3) Selling tobacco products, tobacco product devices or inhalant**
22 **delivery systems to a person under 21 years of age is a Class A vio-**
23 **lation.**

24 **“SECTION 3. (1) A person who sells a product, device, component**
25 **or substance described in section 2 of this 2015 Act shall display a sign**
26 **clearly stating that the sale of the product, device, component or**
27 **substance to persons under 21 years of age is prohibited by law.**

28 **“(2) A person who violates this section commits a Class B violation.**

29 **“SECTION 4. ORS 163.575, as amended by section 1, chapter 20, Oregon**
30 **Laws 2014, is amended to read:**

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

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

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

9 “(c) Induces, causes or permits a person under 18 years of age to partic-
10 ipate in gambling as defined by ORS 167.117; **or**

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

13 “[*(e)*] **(d)** Sells to a person under 18 years of age any device in which
14 [*tobacco,*] marijuana, cocaine or any controlled substance, as defined in ORS
15 475.005, is burned and the principal design and use of which is directly or
16 indirectly to deliver [*tobacco smoke,*] marijuana smoke, cocaine smoke or
17 smoke from any controlled substance into the human body, including but not
18 limited to:

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

29 “(2) Endangering the welfare of a minor [*by violation of subsection (1)(a),*
30 *(b) or (c) of this section, or by violation of subsection (1)(e) of this section in-*

1 *volving other than a device for smoking tobacco,] is a Class A misdemeanor.*

2 *“(3) Endangering the welfare of a minor by violation of subsection (1)(d)*
3 *of this section is a Class A violation.]*

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

6 **“SECTION 5.** ORS 163.580 is amended to read:

7 “163.580. (1) Any person who sells any of the smoking devices listed in
8 ORS 163.575 [(1)(e)] **(1)(d)** shall display a sign clearly stating that the sale
9 of such devices to persons under 18 years of age is prohibited by law.

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

11 **“SECTION 6.** ORS 165.800 is amended to read:

12 “165.800. (1) A person commits the crime of identity theft if the person,
13 with the intent to deceive or to defraud, obtains, possesses, transfers, creates,
14 utters or converts to the person’s own use the personal identification of an-
15 other person.

16 “(2) Identity theft is a Class C felony.

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

19 “(a) Was under 21 years of age at the time of committing the offense and
20 the person used the personal identification of another person solely for the
21 purpose of purchasing **tobacco products or inhalant delivery systems,**
22 **both as defined in section 2 of this 2015 Act, or** alcohol; **or**

23 *“(b) Was under 18 years of age at the time of committing the offense and*
24 *the person used the personal identification of another person solely for the*
25 *purpose of purchasing tobacco products; or]*

26 “[c] **(b)** Used the personal identification of another person solely for the
27 purpose of misrepresenting the person’s age to gain access to a:

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

29 “(B) Benefit based on age.

30 “(4) As used in this section:

1 “(a) ‘Another person’ means an individual, whether living or deceased, an
2 imaginary person or a firm, association, organization, partnership, business
3 trust, company, corporation, limited liability company, professional corpo-
4 ration or other private or public entity.

5 “(b) ‘Personal identification’ includes, but is not limited to, any written
6 document or electronic data that does, or purports to, provide information
7 concerning:

8 “(A) A person’s name, address or telephone number;

9 “(B) A person’s driving privileges;

10 “(C) A person’s Social Security number or tax identification number;

11 “(D) A person’s citizenship status or alien identification number;

12 “(E) A person’s employment status, employer or place of employment;

13 “(F) The identification number assigned to a person by a person’s em-
14 ployer;

15 “(G) The maiden name of a person or a person’s mother;

16 “(H) The identifying number of a person’s depository account at a ‘fi-
17 nancial institution’ or ‘trust company,’ as those terms are defined in ORS
18 706.008, or a credit card account;

19 “(I) A person’s signature or a copy of a person’s signature;

20 “(J) A person’s electronic mail name, electronic mail signature, electronic
21 mail address or electronic mail account;

22 “(K) A person’s photograph;

23 “(L) A person’s date of birth; and

24 “(M) A person’s personal identification number.

25 “**SECTION 7.** ORS 165.813 is amended to read:

26 “165.813. (1) A person commits the crime of unlawful possession of ficti-
27 tious identification if the person possesses a personal identification card
28 containing identification information for a fictitious person with the intent
29 to use the personal identification card to commit a crime.

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

1 “(3) It is an affirmative defense to violating subsection (1) of this section
2 that the person charged with the offense[.]

3 “[*a*] was under 21 years of age at the time of committing the offense and
4 the person possessed the personal identification card solely for the purpose
5 of enabling the person to purchase **tobacco products or inhalant delivery**
6 **systems, both as defined in section 2 of this 2015 Act, or** alcohol[; *or*].

7 “[*b*] *Was under 18 years of age at the time of committing the offense and*
8 *the person possessed the personal identification card solely for the purpose of*
9 *enabling the person to purchase tobacco products.*]

10 “**SECTION 8.** ORS 167.400 is amended to read:

11 “167.400. (1) It is unlawful for any person under [*18*] **21** years of age to
12 possess tobacco products[, *as defined in ORS 431.840*] **or inhalant delivery**
13 **systems, both as defined in section 2 of this 2015 Act.**

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

16 “**SECTION 9.** ORS 167.401 is amended to read:

17 “167.401. (1) Except as provided in subsection (4) of this section, [*no*] **a**
18 person under [*18*] **21** years of age [*shall*] **may not** purchase, attempt to pur-
19 chase or acquire tobacco products [*as defined in ORS 431.840*] **or inhalant**
20 **delivery systems, both as defined in section 2 of this 2015 Act.** Except
21 when [*such minor*] **a person** is in a private residence accompanied by the
22 parent or guardian of the [*minor*] **person** and [*with*] **has** the consent of
23 [*such*] **the** parent or guardian, [*no*] **a** person under [*18*] **21** years of age
24 [*shall*] **may not** have personal possession of tobacco products **or inhalant**
25 **delivery systems.**

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

28 “(3)(a) In lieu of any other penalty established by law, a person who is
29 convicted for the first time of a violation of subsection (1) of this section
30 may be ordered to participate in a [*tobacco*] **nicotine use** education program

1 or a [tobacco] **nicotine** use cessation program or to perform community ser-
2 vice related to diseases associated with consumption of [tobacco products]
3 **nicotine**. A person may be ordered to participate in such a program only
4 once.

5 “(b) In addition to and not in lieu of any other penalty established by law,
6 a person who is convicted of a second violation of subsection (1) of this
7 section through misrepresentation of age may be required to participate in
8 a [tobacco] **nicotine use education program** or a [tobacco] **nicotine** use
9 cessation program or to perform community service related to diseases asso-
10 ciated with the consumption of [tobacco products,] **nicotine** and the court
11 shall order that the person’s driving privileges and right to apply for driving
12 privileges be suspended for a period not to exceed one year. If a court has
13 issued an order suspending driving privileges under this subsection, the
14 court, upon petition of the person, may withdraw the order at any time the
15 court deems appropriate. The court notification to the Department of
16 Transportation under this subsection may include a recommendation that the
17 person be granted a hardship permit under ORS 807.240 if the person is oth-
18 erwise eligible for the permit.

19 “(4) A [minor] **person under 21 years of age who is** acting under the
20 supervision of an adult may purchase, attempt to purchase or acquire to-
21 bacco products **or inhalant delivery systems** for the purpose of testing
22 compliance with a federal law, state statute, local law or retailer manage-
23 ment policy limiting or regulating the delivery of tobacco products **or**
24 **inhalant delivery systems** to [minors] **persons under 21 years of age**.

25 “**SECTION 10.** ORS 167.402 is amended to read:

26 “167.402. (1) As used in this section, ‘vending machine’ means a mechan-
27 ical, electronic or similar device that, upon the insertion of tokens, money
28 or another form of payment, dispenses tobacco products **or inhalant deliv-**
29 **ery systems**.

30 “(2) A person may not sell or dispense tobacco products[, *as defined in*

1 *ORS 431.840,*] **or inhalant delivery systems, both as defined in section**
2 **2 of this 2015 Act**, from a vending machine, except in an establishment
3 where the premises are posted as permanently and entirely off-limits to [*mi-*
4 *nors under*] **persons under 21 years of age as required by rules adopted**
5 by the Oregon Liquor Control Commission.

6 “(3) Violation of subsection (2) of this section is a Class B violation. Each
7 day of violation constitutes a separate offense.

8 “**SECTION 11.** *ORS 167.404* is amended to read:

9 “167.404. Cities and counties by ordinance or resolution [*shall*] **may not**
10 regulate vending machines that dispense tobacco products[, *as defined in*
11 *ORS 431.840,*] **or inhalant delivery systems, both as defined in section**
12 **2 of this 2015 Act**, in any form and that are in any manner accessible to
13 [*minors*] **persons under 21 years of age.**

14 “**SECTION 12.** *ORS 167.407* is amended to read:

15 “167.407. (1) A person having authority over the location of [*cigarettes and*
16 *other*] tobacco products **and inhalant delivery systems, both as defined**
17 **in section 2 of this 2015 Act**, in a retail store may not locate [*cigarettes*
18 *or other*] **the** tobacco products **or inhalant delivery systems** in a location
19 in the store where the [*cigarettes or other*] tobacco products **or inhalant**
20 **delivery systems** are accessible by store customers without assistance by a
21 store employee.

22 “(2) Violation of subsection (1) of this section is a Class B violation. Each
23 day of violation constitutes a separate offense.

24 “(3) Subsections (1) and (2) of this section do not apply if the location at
25 which the [*cigarettes or*] tobacco products **or inhalant delivery systems** are
26 sold is a store or other establishment at which persons under [*18*] **21** years
27 of age are prohibited.

28 “**SECTION 13.** *ORS 181.430* is amended to read:

29 “181.430. (1) As used in this section, ‘tobacco products’ has the meaning
30 given that term in [*ORS 431.840*] **section 2 of this 2015 Act.**

1 “(2) The Oregon Health Authority may apply for and accept moneys from
2 the United States Government or other public or private sources for utiliza-
3 tion of those moneys by the Department of State Police in accordance with
4 any federal restrictions or other funding source restrictions to carry out the
5 duties, functions and powers of the department under this section. Moneys
6 received as provided under this subsection shall be deposited into the State
7 Treasury to the credit of the State Police Tobacco Law Enforcement Fund.
8 Moneys that are subject to funding source conditions or restrictions shall
9 be placed in separate subaccounts of the fund and accounted for separately
10 from other fund moneys.

11 “(3) The department shall establish and administer a program employing
12 retired state police officers who are active reserve officers for the purpose
13 of enforcing laws designed to discourage the use of tobacco products by
14 persons **who are** under [*18 years of*] **the legal minimum purchase** age. The
15 department shall periodically consult with the authority to maximize pro-
16 gram qualification for federal funds to enforce laws designed to discourage
17 the use of tobacco products by persons **who are** under [*18 years of*] **the legal**
18 **minimum purchase** age, including but not limited to grants under P.L.
19 102-321, section 1926 (42 U.S.C. 300x-26). Service by a retired state police
20 member under this section is subject to ORS 238.082. The department may
21 not use the services of a retired state police officer under this section to
22 displace an active state police member from the enforcement of laws con-
23 cerning tobacco products.

24 “(4) The department shall adopt rules for carrying out subsection (3) of
25 this section.

26 “**SECTION 14.** ORS 323.718 is amended to read:

27 “323.718. (1) Each person accepting a purchase order for a delivery sale,
28 in connection with the delivery sale order, shall:

29 “(a) Include as part of the shipping documents a clear and conspicuous
30 statement providing as follows: ‘TOBACCO: OREGON LAW PROHIBITS

1 SHIPPING TO INDIVIDUALS UNDER [18] 21 AND REQUIRES THE PAY-
2 MENT OF ALL APPLICABLE TAXES'; and

3 “(b) Use a method of mail, shipping or other delivery of tobacco described
4 in this paragraph as follows:

5 “(A) Unless subparagraph (B) of this paragraph applies, use a method of
6 shipping or other delivery that obligates the delivery service to require:

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

10 “(ii) Proof, in the form of a valid, government-issued identification bear-
11 ing a photograph of the individual who signs to accept delivery of the ship-
12 ping container, demonstrating that the individual who signs to accept
13 delivery:

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

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

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

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

24 “(ii) Proof, in the form of a valid, government-issued identification bear-
25 ing a photograph of the individual who signs to accept delivery of the ship-
26 ping container, demonstrating that the individual who signs to accept
27 delivery:

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

30 “(II) Is at least the legal minimum purchase age, except that proof of age

1 is required only if the individual appears to be under 27 years of age.

2 “(2) If the person accepting a purchase order for a delivery sale delivers
3 the tobacco without using a delivery service or the United States Postal
4 Service, the person shall comply with all requirements of ORS 323.700 to
5 323.730 that apply to a delivery service and shall be in violation of this sec-
6 tion if the person fails to comply with all requirements applicable to a de-
7 livery service.

8 **“SECTION 15.** ORS 339.883 is amended to read:

9 “339.883. (1) A facility [*shall*] **may** not permit any person under [18] **21**
10 years of age to possess tobacco products[, *as defined in ORS 431.840,*] **or**
11 **inhalant delivery systems, both as defined in section 2 of this 2015 Act,**
12 while the person is present on facility grounds or in facility buildings or
13 attending facility-sponsored activities.

14 “(2) The facility must have written policies prohibiting the possession of
15 tobacco products **and inhalant delivery systems** described in subsection (1)
16 of this section by persons under [18] **21** years of age. The facility must have
17 written plans to implement such policies.

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

20 “(4)(a) As used in this section, ‘facility’ means public or private schools,
21 youth correction facilities or juvenile detention facilities.

22 “(b) ‘Facility’ does not include colleges or universities, career and tech-
23 nical education schools or community colleges.

24 **“SECTION 16.** ORS 431.840, as amended by section 2, chapter 20, Oregon
25 Laws 2014, is amended to read:

26 “431.840. (1) It shall be unlawful to do any of the following:

27 “(a) To distribute free tobacco products **or inhalant delivery systems**
28 to persons under [18] **21** years of age as part of a marketing strategy to en-
29 courage the use of tobacco products **or inhalant delivery systems.**

30 “(b) To fail as a retailer to post a notice substantially similar to that set

1 forth in subsection (3) of this section in a location clearly visible to the
2 seller and the purchaser that sale of tobacco products **and inhalant delivery**
3 **systems** to persons under [18] **21** years of age is prohibited.

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

5 “[*(2) As used in this section ‘tobacco products’ means bidis, cigars,*
6 *cheroots, stogies, periques, granulated, plug cut, crimp cut, ready rubbed and*
7 *other smoking tobacco, snuff, snuff flour, cavendish, plug and twist tobacco,*
8 *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*
10 *such manner as to be suitable for chewing or smoking in a pipe or otherwise,*
11 *or both for chewing and smoking, and shall include cigarettes as defined in*
12 *ORS 323.010 (1).]*

13 **“(2) As used in this section and ORS 431.853, ‘inhalant delivery**
14 **system’ and ‘tobacco products’ have the meanings given those terms**
15 **in section 2 of this 2015 Act.**

16 “(3) The notice shall be substantially as follows:

17 “

18 NOTICE

19 The sale of tobacco in any form **and inhalant delivery systems** to per-
20 sons under [18] **21** years of age is prohibited by law. Any person who know-
21 ingly sells, or causes to be sold, tobacco **or an inhalant delivery system**
22 to a person under [18] **21** years of age commits the offense of [*endangering*
23 *the welfare of a minor, pursuant to ORS 163.575*] **selling tobacco products,**
24 **tobacco product devices or inhalant delivery systems to a person under**
25 **21 years of age, pursuant to section 2 of this 2015 Act.**

26 “

27 **“SECTION 17.** ORS 431.853 is amended to read:

28 “431.853. (1) The Oregon Health Authority shall:

29 “(a) Coordinate with law enforcement agencies to conduct random, unan-
30 nounced inspections of Oregon wholesalers and retailers of tobacco products

1 **or inhalant delivery systems to ensure** [*to insure*] compliance with Oregon
2 laws designed to discourage the use of [*tobacco by minors*] **nicotine by per-**
3 **sons under 21 years of age**, including ORS [*163.575, 163.580,*] 167.400,
4 167.402 and 431.840 **and sections 2 and 3 of this 2015 Act**; and

5 “(b) Submit a report describing:

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

8 “(B) The extent of success achieved in reducing the availability of [*to-*
9 *bacco*] products **containing nicotine** to minors; and

10 “(C) The strategies to be utilized for enforcing the laws listed in para-
11 graph (a) of this subsection during the year following the report.

12 “(2) The Oregon Health Authority shall adopt rules concerning random
13 inspections of places that sell tobacco products **and inhalant delivery sys-**
14 **tems** consistent with section 1921, Public Law 102-321, 1992. The rules shall
15 provide that inspections may take place:

16 “(a) Only in areas open to the public;

17 “(b) Only during hours that tobacco products **or inhalant delivery sys-**
18 **tems** are sold or distributed; and

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

21 **“SECTION 18.** ORS 433.847 is amended to read:

22 “433.847. (1) The Oregon Health Authority shall adopt rules establishing
23 a certification system for smoke shops.

24 “(2) The authority shall issue a smoke shop certification to a business
25 that:

26 “(a)(A) Is primarily engaged in the sale of tobacco products and smoking
27 instruments intended for off-premises consumption or use, with at least 75
28 percent of the gross revenues of the business resulting from such sales;

29 “(B) Prohibits persons under [*18*] **21** years of age from entering the
30 premises;

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

3 “(D) Does not sell, offer or allow on-premises consumption of food or
4 beverages, including alcoholic beverages;

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

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

8 “(G) Allows smoking only for the purpose of sampling tobacco products
9 for making retail purchase decisions;

10 “(b) On December 31, 2008:

11 “(A) Met the requirements of paragraph (a)(A) to (D) of this subsection;
12 and

13 “(B)(i) Was a stand-alone business with no other businesses or residential
14 property attached; or

15 “(ii) Had a ventilation system that exhausted smoke from the business and
16 was designed and terminated in accordance with the state building code
17 standards for the occupancy classification in use; or

18 “(c)(A) Filed an application for certification as a smoke shop before June
19 30, 2011;

20 “(B) Met the requirements of ORS 433.835 (5), as in effect immediately
21 before June 30, 2011, at the time of application;

22 “(C) Was certified as a smoke shop under ORS 433.835 (5), as in effect
23 immediately before June 30, 2011, by the authority on or before December
24 31, 2012; and

25 “(D) Allows smoking of cigarettes only if at least 75 percent of the gross
26 revenues of the business results from the sale of cigarettes.

27 “(3) A smoke shop certified under subsection (2)(b) of this section must
28 renew the smoke shop certification every five years by demonstrating to the
29 satisfaction of the authority that the smoke shop:

30 “(a)(A) Meets the requirements of subsection (2)(a)(A) to (D) of this sec-

1 tion; and

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

4 “(ii) Has a ventilation system that exhausts smoke from the business and
5 is designed and terminated in accordance with the state building code stan-
6 dards for the occupancy classification in use; and

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

9 “(4) A smoke shop certified under subsection (2)(c) of this section must
10 renew the smoke shop certification every five years by demonstrating to the
11 satisfaction of the authority that the smoke shop:

12 “(a) Meets the requirements of ORS 433.835 (5), as in effect immediately
13 before June 30, 2011; and

14 “(b) Allows smoking of cigarettes only if at least 75 percent of the gross
15 revenues of the business results from the sale of cigarettes.

16 “(5) The owner of a smoke shop certified under subsection (2)(b) or (c) of
17 this section may transfer the certification with ownership of the smoke shop
18 in accordance with rules adopted by the authority.

19 “(6) A smoke shop certified under subsection (2)(b) of this section may
20 continue to be certified in a new location under subsection (2)(b) of this
21 section if:

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

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

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

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

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

30 “(ii) Has a ventilation system that exhausts smoke from the business and

1 is designed and terminated in accordance with the state building code stan-
2 dards for the occupancy classification in use; and

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

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

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

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

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

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

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

17 “(8) The rules adopted under subsection (1) of this section must provide
18 that, in order to obtain a smoke shop certification, a business must agree to
19 allow the authority to make unannounced inspections of the business to de-
20 termine compliance with ORS 433.835 to 433.875.

21 **“SECTION 19.** ORS 743.737 is amended to read:

22 “743.737. (1) A health benefit plan issued to a small employer:

23 “(a) Must cover essential health benefits consistent with 42 U.S.C.
24 300gg-11.

25 “(b) May:

26 “(A) Require an affiliation period that does not exceed two months for
27 an enrollee or 90 days for a late enrollee;

28 “(B) Impose an exclusion period for specified covered services, as estab-
29 lished under ORS 743.745, applicable to all individuals enrolling for the first
30 time in the small employer health benefit plan; or

1 “(C) Not apply a preexisting condition exclusion to any enrollee.

2 “(2) Late enrollees in a small employer health benefit plan may be sub-
3 jected to a group eligibility waiting period that does not exceed 90 days.

4 “(3) Each small employer health benefit plan shall be renewable with re-
5 spect to all eligible enrollees at the option of the policyholder, small em-
6 ployer or contract holder unless:

7 “(a) The policyholder, small employer or contract holder fails to pay the
8 required premiums.

9 “(b) The policyholder, small employer or contract holder or, with respect
10 to coverage of individual enrollees, an enrollee or a representative of an
11 enrollee engages in fraud or makes an intentional misrepresentation of a
12 material fact as prohibited by the terms of the plan.

13 “(c) The number of enrollees covered under the plan is less than the
14 number or percentage of enrollees required by participation requirements
15 under the plan.

16 “(d) The small employer fails to comply with the contribution require-
17 ments under the health benefit plan.

18 “(e) The carrier discontinues offering or renewing, or offering and re-
19 newing, all of its small employer health benefit plans in this state or in a
20 specified service area within this state. In order to discontinue plans under
21 this paragraph, the carrier:

22 “(A) Must give notice of the decision to the Department of Consumer and
23 Business Services and to all policyholders covered by the plans;

24 “(B) May not cancel coverage under the plans for 180 days after the date
25 of the notice required under subparagraph (A) of this paragraph if coverage
26 is discontinued in the entire state or, except as provided in subparagraph (C)
27 of this paragraph, in a specified service area;

28 “(C) May not cancel coverage under the plans for 90 days after the date
29 of the notice required under subparagraph (A) of this paragraph if coverage
30 is discontinued in a specified service area because of an inability to reach

1 an agreement with the health care providers or organization of health care
2 providers to provide services under the plans within the service area; and

3 “(D) Must discontinue offering or renewing, or offering and renewing, all
4 health benefit plans issued by the carrier in the small employer market in
5 this state or in the specified service area.

6 “(f) The carrier discontinues offering and renewing a small employer
7 health benefit plan in a specified service area within this state because of
8 an inability to reach an agreement with the health care providers or organ-
9 ization of health care providers to provide services under the plan within the
10 service area. In order to discontinue a plan under this paragraph, the carrier:

11 “(A) Must give notice to the department and to all policyholders covered
12 by the plan;

13 “(B) May not cancel coverage under the plan for 90 days after the date
14 of the notice required under subparagraph (A) of this paragraph; and

15 “(C) Must offer in writing to each small employer covered by the plan,
16 all other small employer health benefit plans that the carrier offers to small
17 employers in the specified service area. The carrier shall issue any such
18 plans pursuant to the provisions of ORS 743.733 to 743.737. The carrier shall
19 offer the plans at least 90 days prior to discontinuation.

20 “(g) The carrier discontinues offering or renewing, or offering and re-
21 newing, a health benefit plan, other than a grandfathered health plan, for
22 all small employers in this state or in a specified service area within this
23 state, other than a plan discontinued under paragraph (f) of this subsection.

24 “(h) The carrier discontinues renewing or offering and renewing a
25 grandfathered health plan for all small employers in this state or in a spec-
26 ified service area within this state, other than a plan discontinued under
27 paragraph (f) of this subsection.

28 “(i) With respect to plans that are being discontinued under paragraph (g)
29 or (h) of this subsection, the carrier must:

30 “(A) Offer in writing to each small employer covered by the plan, all

1 other health benefit plans that the carrier offers to small employers in the
2 specified service area.

3 “(B) Issue any such plans pursuant to the provisions of ORS 743.733 to
4 743.737.

5 “(C) Offer the plans at least 90 days prior to discontinuation.

6 “(D) Act uniformly without regard to the claims experience of the affected
7 policyholders or the health status of any current or prospective enrollee.

8 “(j) The Director of the Department of Consumer and Business Services
9 orders the carrier to discontinue coverage in accordance with procedures
10 specified or approved by the director upon finding that the continuation of
11 the coverage would:

12 “(A) Not be in the best interests of the enrollees; or

13 “(B) Impair the carrier’s ability to meet contractual obligations.

14 “(k) In the case of a small employer health benefit plan that delivers
15 covered services through a specified network of health care providers, there
16 is no longer any enrollee who lives, resides or works in the service area of
17 the provider network.

18 “(L) In the case of a health benefit plan that is offered in the small em-
19 ployer market only to one or more bona fide associations, the membership
20 of an employer in the association ceases and the termination of coverage is
21 not related to the health status of any enrollee.

22 “(4) A carrier may modify a small employer health benefit plan at the
23 time of coverage renewal. The modification is not a discontinuation of the
24 plan under subsection (3)(e), (g) and (h) of this section.

25 “(5) Notwithstanding any provision of subsection (3) of this section to the
26 contrary, a carrier may not rescind the coverage of an enrollee in a small
27 employer health benefit plan unless:

28 “(a) The enrollee or a person seeking coverage on behalf of the enrollee:

29 “(A) Performs an act, practice or omission that constitutes fraud; or

30 “(B) Makes an intentional misrepresentation of a material fact as pro-

1 hibited by the terms of the plan;

2 “(b) The carrier provides at least 30 days’ advance written notice, in the
3 form and manner prescribed by the department, to the enrollee; and

4 “(c) The carrier provides notice of the rescission to the department in the
5 form, manner and time frame prescribed by the department by rule.

6 “(6) Notwithstanding any provision of subsection (3) of this section to the
7 contrary, a carrier may not rescind a small employer health benefit plan
8 unless:

9 “(a) The small employer or a representative of the small employer:

10 “(A) Performs an act, practice or omission that constitutes fraud; or

11 “(B) Makes an intentional misrepresentation of a material fact as pro-
12 hibited by the terms of the plan;

13 “(b) The carrier provides at least 30 days’ advance written notice, in the
14 form and manner prescribed by the department, to each plan enrollee who
15 would be affected by the rescission of coverage; and

16 “(c) The carrier provides notice of the rescission to the department in the
17 form, manner and time frame prescribed by the department by rule.

18 “(7)(a) A carrier may continue to enforce reasonable employer partic-
19 ipation and contribution requirements on small employers. However, partic-
20 ipation and contribution requirements shall be applied uniformly among all
21 small employer groups with the same number of eligible employees applying
22 for coverage or receiving coverage from the carrier. In determining minimum
23 participation requirements, a carrier shall count only those employees who
24 are not covered by an existing group health benefit plan, Medicaid, Medi-
25 care, TRICARE, Indian Health Service or a publicly sponsored or subsidized
26 health plan, including but not limited to the medical assistance program
27 under ORS chapter 414.

28 “(b) A carrier may not deny a small employer’s application for coverage
29 under a health benefit plan based on participation or contribution require-
30 ments but may require small employers that do not meet participation or

1 contribution requirements to enroll during the open enrollment period be-
2 ginning November 15 and ending December 15.

3 “(8) Premium rates for small employer health benefit plans shall be sub-
4 ject to the following provisions:

5 “(a) Each carrier must file with the department the initial geographic
6 average rate and any changes in the geographic average rate with respect
7 to each health benefit plan issued by the carrier to small employers.

8 “(b)(A) The variations in premium rates charged during a rating period
9 for health benefit plans issued to small employers shall be based solely on
10 the factors specified in subparagraph (B) of this paragraph. A carrier may
11 elect which of the factors specified in subparagraph (B) of this paragraph
12 apply to premium rates for health benefit plans for small employers. All
13 other factors must be applied in the same actuarially sound way to all small
14 employer health benefit plans.

15 “(B) The variations in premium rates described in subparagraph (A) of
16 this paragraph may be based only on one or more of the following factors
17 as prescribed by the department by rule:

18 “(i) The ages of enrolled employees and their dependents, except that the
19 rate for adults may not vary by more than three to one;

20 “(ii) The level at which enrolled employees and their dependents [18] 21
21 years of age and older engage in [*tobacco*] **nicotine** use, except that the rate
22 may not vary by more than 1.5 to one; and

23 “(iii) Adjustments to reflect differences in family composition.

24 “(C) A carrier shall apply the carrier’s schedule of premium rate vari-
25 ations as approved by the department and in accordance with this paragraph.
26 Except as otherwise provided in this section, the premium rate established
27 by a carrier for a small employer health benefit plan shall apply uniformly
28 to all employees of the small employer enrolled in that plan.

29 “(c) Except as provided in paragraph (b) of this subsection, the variation
30 in premium rates between different health benefit plans offered by a carrier

1 to small employers must be based solely on objective differences in plan de-
2 sign or coverage, age, [tobacco] **nicotine** use and family composition and
3 must not include differences based on the risk characteristics of groups as-
4 sumed to select a particular health benefit plan.

5 “(d) A carrier may not increase the rates of a health benefit plan issued
6 to a small employer more than once in a 12-month period. Annual rate in-
7 creases shall be effective on the plan anniversary date of the health benefit
8 plan issued to a small employer. The percentage increase in the premium rate
9 charged to a small employer for a new rating period may not exceed the sum
10 of the following:

11 “(A) The percentage change in the geographic average rate measured from
12 the first day of the prior rating period to the first day of the new period; and

13 “(B) Any adjustment attributable to changes in age and differences in
14 family composition.

15 “(e) Premium rates for small employer health benefit plans shall comply
16 with the requirements of this section.

17 “(9) In connection with the offering for sale of any health benefit plan to
18 a small employer, each carrier shall make a reasonable disclosure as part
19 of its solicitation and sales materials of:

20 “(a) The full array of health benefit plans that are offered to small em-
21 ployers by the carrier;

22 “(b) The authority of the carrier to adjust rates and premiums, and the
23 extent to which the carrier will consider age, [tobacco] **nicotine** use, family
24 composition and geographic factors in establishing and adjusting rates and
25 premiums; and

26 “(c) The benefits and premiums for all health insurance coverage for
27 which the employer is qualified.

28 “(10)(a) Each carrier shall maintain at its principal place of business a
29 complete and detailed description of its rating practices and renewal under-
30 writing practices relating to its small employer health benefit plans, includ-

1 ing information and documentation that demonstrate that its rating methods
2 and practices are based upon commonly accepted actuarial practices and are
3 in accordance with sound actuarial principles.

4 “(b) A carrier offering a small employer health benefit plan shall file with
5 the department at least once every 12 months an actuarial certification that
6 the carrier is in compliance with ORS 743.733 to 743.737 and that the rating
7 methods of the carrier are actuarially sound. Each certification shall be in
8 a uniform form and manner and shall contain such information as specified
9 by the department. A copy of each certification shall be retained by the
10 carrier at its principal place of business. A carrier is not required to file the
11 actuarial certification under this paragraph if the department has approved
12 the carrier’s rate filing within the preceding 12-month period.

13 “(c) A carrier shall make the information and documentation described
14 in paragraph (a) of this subsection available to the department upon request.
15 Except as provided in ORS 743.018 and except in cases of violations of ORS
16 743.733 to 743.737, the information shall be considered proprietary and trade
17 secret information and shall not be subject to disclosure to persons outside
18 the department except as agreed to by the carrier or as ordered by a court
19 of competent jurisdiction.

20 “(11) A carrier shall not provide any financial or other incentive to any
21 insurance producer that would encourage the insurance producer to market
22 and sell health benefit plans of the carrier to small employer groups based
23 on a small employer group’s anticipated claims experience.

24 “(12) For purposes of this section, the date a small employer health ben-
25 efit plan is continued shall be the anniversary date of the first issuance of
26 the health benefit plan.

27 “(13) A carrier must include a provision that offers coverage to all eligi-
28 ble employees of a small employer and to all dependents of the eligible em-
29 ployees to the extent the employer chooses to offer coverage to dependents.

30 “(14) All small employer health benefit plans shall contain special en-

1 rollment periods during which eligible employees and dependents may enroll
2 for coverage, as provided by federal law and rules adopted by the department.

3 “(15) A small employer health benefit plan may not impose annual or
4 lifetime limits on the dollar amount of essential health benefits.

5 “(16) This section does not require a carrier to actively market, offer, is-
6 sue or accept applications for a grandfathered health plan or from a small
7 employer not eligible for coverage under such a plan.

8 **“SECTION 20.** ORS 807.500 is amended to read:

9 “807.500. (1) A person commits the offense of unlawful production of
10 identification cards, licenses, permits, forms or camera cards if the person,
11 without the authority of the Department of Transportation, advertises for the
12 production of, produces in any way or causes to be produced any facsimiles
13 of the identification cards, licenses, permits, forms or camera cards upon
14 which the department issues identification cards, licenses or driver permits
15 under the vehicle code.

16 “(2) The offense described in this section, unlawful production of iden-
17 tification cards, licenses, permits, forms or camera cards, is a Class C felony.

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

20 “[*a*] was under 21 years of age at the time of committing the offense and
21 the person produced an identification card, license or permit solely for the
22 purpose of enabling the person to purchase **tobacco products or inhalant**
23 **delivery systems, both as defined in section 2 of this 2015 Act, or**
24 alcohol[; or].

25 “[*b*] *Was under 18 years of age at the time of committing the offense and*
26 *the person produced an identification card, license or permit solely for the*
27 *purpose of enabling the person to purchase tobacco products.]*

28 **“SECTION 21.** ORS 811.193 is amended to read:

29 “811.193. (1)(a) A person commits the offense of smoking in a motor ve-
30 hicle if the person smokes in a motor vehicle while a person under [18] **21**

1 years of age is in the motor vehicle.

2 “(b) As used in this subsection, ‘smokes’ means to inhale, exhale, burn
3 or carry a lighted cigarette, cigar, pipe, weed, plant, regulated narcotic or
4 other combustible substance.

5 “(2) Notwithstanding ORS 810.410, a police officer may enforce this sec-
6 tion only if the police officer has already stopped and detained the driver
7 operating the motor vehicle for a separate traffic violation or other offense.

8 “(3) Smoking in a motor vehicle is a:

9 “(a) Class D traffic violation for a first offense.

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

11 **“SECTION 22. Sections 2 and 3 of this 2015 Act and the amendments**
12 **to ORS 163.575, 163.580, 165.800, 165.813, 167.400, 167.401, 167.402, 167.404,**
13 **167.407, 181.430, 323.718, 339.883, 431.840, 431.853, 433.847, 743.737, 807.500**
14 **and 811.193 by sections 4 to 21 of this 2015 Act apply to conduct oc-**
15 **curing on or after the effective date of this 2015 Act.**

16 **“SECTION 23. This 2015 Act being necessary for the immediate**
17 **preservation of the public peace, health and safety, an emergency is**
18 **declared to exist, and this 2015 Act takes effect on its passage.”.**

19