

**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, 433.850, 743.737, 807.500 and 811.193; and declaring
5 an emergency.”.

6 Delete lines 13 through 28 and delete pages 2 through 76 and insert:
7

8 **“RETAIL LICENSURE**
9 **OPERATIVE JULY 1, 2017**

10
11 **“SECTION 1. Definitions. As used in sections 1 to 11 of this 2015**
12 **Act:**

13 **“(1)(a) ‘Inhalant delivery system’ means:**

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

16 **“(B) A component of a device described in this paragraph or a sub-**
17 **stance in any form sold for the purpose of being vaporized or**
18 **aerosolized by a device described in this paragraph, whether the com-**
19 **ponent or substance is sold separately or is not sold separately.**

20 **“(b) ‘Inhalant delivery system’ does not include:**

21 **“(A) Any product that has been approved by the United States Food**
22 **and Drug Administration for sale as a tobacco cessation product or for**

1 any other therapeutic purpose, if the product is marketed and sold
2 solely for the approved purpose; and

3 “(B) Tobacco products.

4 “(2) ‘Tobacco products’ means:

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

12 “(b) Cigarettes as defined in ORS 323.010 (1).

13 “SECTION 2. Licensure requirement. (1) A person may not make a
14 retail sale of a tobacco product or an inhalant delivery system in this
15 state unless the person sells the tobacco product or inhalant delivery
16 system at a premises for which a license has been issued under section
17 4 of this 2015 Act.

18 “(2) This section does not prohibit the governing body of a local
19 government from adopting additional licensing requirements for the
20 retail sale of tobacco products or inhalant delivery systems, or from
21 adopting ordinances or rules that further restrict the retail sale of
22 tobacco products or inhalant delivery systems.

23 “SECTION 3. Premises to which Act does not apply. Sections 1 to
24 11 of this 2015 Act do not apply to a person making a retail sale of an
25 inhalant delivery system at a medical marijuana facility registered
26 under ORS 475.314 or a premises for which a retail license has been
27 issued under section 22, chapter 1, Oregon Laws 2015 (Ballot Measure
28 91 (2014)), unless the person makes a retail sale of a component or
29 substance described in section 1 (1)(a)(B) of this 2015 Act that contains
30 nicotine.

1 **“SECTION 4. Licensure qualifications. (1) The Oregon Liquor Control Commission shall license qualified premises for the retail sale of**
2 **tobacco products or inhalant delivery systems.**

3 **“(2)(a) To be qualified for licensure under this section, a premises:**

4 **“(A) Must have a physical address;**

5 **“(B) May not be located at the same address as a residence; and**

6 **“(C) May not be located within 1,000 feet of any part of the premises**
7 **of:**

8 **“(i) A public school for which attendance is compulsory under ORS**
9 **339.020; or**

10 **“(ii) A private or parochial school that teaches children as described**
11 **in ORS 339.030 (1)(a).**

12 **“(b) Paragraph (a)(C) of this subsection does not apply to a premises**
13 **for which a license has been issued under this section before the date**
14 **on which the school is first attended by students unless the commis-**
15 **sion has revoked or refused to renew the license pursuant to section**
16 **7 of this 2015 Act.**

17 **“(3) For the purpose of licensing premises under this section, the**
18 **commission shall adopt rules establishing:**

19 **“(a) The term of licensure;**

20 **“(b) Procedures for applying for and renewing licenses; and**

21 **“(c) Licensure application, issuance and renewal fees that are rea-**
22 **sonably calculated to pay the costs of administering sections 1 to 11**
23 **of this 2015 Act.**

24 **“(4) Amounts collected pursuant to subsection (3)(c) of this section**
25 **shall be deposited in the Tobacco Control Fund established under sec-**
26 **tion 9 of this 2015 Act.**

27 **“(5) The commission may inspect the proposed premises of an ap-**
28 **plicant under this section to ensure compliance with this section and**
29 **rules adopted under this section.**
30

1 **“SECTION 5. Prohibitions. (1) A person that makes retail sales of**
2 **tobacco products or inhalant delivery systems may not:**

3 **“(a) Sell, offer for sale or allow to be sold a tobacco product or an**
4 **inhalant delivery system for free or at a nominal price for the purpose**
5 **of promoting the tobacco product or inhalant delivery system;**

6 **“(b) Sell, offer for sale or allow to be sold a tobacco product or a**
7 **component or substance described in section 1 (1)(a)(B) of this 2015**
8 **Act at a reduced price if the buyer of the tobacco product, component**
9 **or substance purchases multiple packets of the tobacco product, com-**
10 **ponent or substance during a single transaction; or**

11 **“(c) Redeem a coupon for a tobacco product or an inhalant delivery**
12 **system.**

13 **“(2) A person that makes retail sales of inhalant delivery systems**
14 **and allows customers of the person to sample inhalant delivery system**
15 **products at the premises of the person’s business:**

16 **“(a) Must be primarily engaged in the sale of inhalant delivery**
17 **systems, with at least 75 percent of gross revenues of the business re-**
18 **sulting from the sales of inhalant delivery systems;**

19 **“(b) May not sell tobacco products or alcohol; and**

20 **“(c) May not permit a person under 18 years of age to enter the**
21 **premises.**

22 **“(3) The Oregon Liquor Control Commission is required to verify**
23 **that a person that makes retail sales of inhalant delivery systems and**
24 **allows customers of the person to sample inhalant delivery system**
25 **products at the premises of the person’s business is in compliance with**
26 **subsection (2)(a) of this section only upon receiving a complaint that**
27 **the person is not in compliance with subsection (2)(a) of this section.**

28 **“SECTION 6. Inspections and enforcement. (1) The Oregon Liquor**
29 **Control Commission may inspect a premises licensed under section 4**
30 **of this 2015 Act to ensure compliance with sections 1 to 11 of this 2015**

1 Act and rules adopted under sections 1 to 11 of this 2015 Act.

2 “(2) The state police, sheriffs and other police officers within this
3 state shall assist the commission in enforcing sections 1 to 11 of this
4 2015 Act and rules adopted under sections 1 to 11 of this 2015 Act.

5 **“SECTION 7. Discipline.** Subject to the applicable provisions of ORS
6 chapter 183, the Oregon Liquor Control Commission may revoke, sus-
7 pend or refuse to issue or renew a license under section 4 of this 2015
8 Act if any individual who owns the premises or participates in the
9 management of the premises or any individual who is employed for the
10 purpose of making sales at the premises:

11 “(1) Violates a provision of sections 1 to 11 of this 2015 Act or a rule
12 adopted under sections 1 to 11 of this 2015 Act;

13 “(2) Violates ORS 431.840 or any rule adopted under ORS 431.840;

14 “(3) Violates any applicable state rule, local ordinance or federal
15 law or regulation that imposes a duty on or otherwise governs the
16 retail sale of tobacco products or inhalant delivery systems; or

17 “(4) Makes a false statement to the commission.

18 **“SECTION 8. Civil penalty.** (1) The Oregon Liquor Control Com-
19 mission may impose a civil penalty for each violation of sections 1 to
20 11 of this 2015 Act. A civil penalty imposed under this section may not
21 be more than \$5,000 for each violation.

22 “(2) Amounts collected under subsection (1) of this section shall be
23 deposited in the Tobacco Control Fund established under section 9 of
24 this 2015 Act.

25 **“SECTION 9. Tobacco Control Fund.** There is established the To-
26 bacco Control Fund, separate and distinct from the General Fund.
27 Moneys deposited in the Tobacco Control Fund are continuously ap-
28 propriated to the Oregon Liquor Control Commission for carrying out
29 the duties, functions and powers of the commission under sections 1
30 to 11 of this 2015 Act.

1 **“SECTION 10. Rules.** The Oregon Liquor Control Commission shall
2 adopt rules necessary for the effective administration of sections 1 to
3 11 of this 2015 Act.

4 **“SECTION 11. Intergovernmental agreement.** (1) The Oregon Liquor
5 Control Commission shall enter into an agreement with the Oregon
6 Health Authority for the purposes of administering and enforcing the
7 provisions of ORS 433.835 to 433.875 and rules adopted under ORS
8 433.835 to 433.875 that are related to the regulation of cigar bars, as
9 defined in ORS 433.835, and smoke shops certified under ORS 433.835
10 to 433.875, including those provisions and rules related to the certi-
11 fication process.

12 **“(2)** As part of the agreement entered into under subsection (1) of
13 this section, the authority shall transfer all moneys collected as a fee
14 for certifying shops under ORS 433.835 to 433.875 to the commission.

15 **“(3)** Moneys transferred under subsection (2) of this section shall
16 be deposited in the Tobacco Control Fund established under section 9
17 of this 2015 Act.

18 **“(4)** In addition to the agreement entered into under subsection (1)
19 of this section, the authority, pursuant to an agreement or otherwise,
20 may assist the commission with the commission’s duties under
21 sections 1 to 11 of this 2015 Act.

22 **“SECTION 12. Temporary provision for initial applicants.** Section
23 4 (2)(a)(C) of this 2015 Act does not apply to a premises that applies for
24 a license under section 4 of this 2015 Act no later than one month after
25 the operative date specified in section 37 of this 2015 Act.

26
27 **“EXCLUSION FROM INDOOR CLEAN AIR ACT**

28
29 **“(Effective Upon Passage)**

1 **“SECTION 13.** If House Bill 2546 becomes law, ORS 433.850, as amended
2 by section 18, chapter ___, Oregon Laws 2015 (Enrolled House Bill 2546), is
3 amended to read:

4 “433.850. (1) An employer:

5 “(a) Shall provide for employees a place of employment that is free of all
6 smoke, aerosols and vapors containing inhalants; and

7 “(b) May not allow employees to smoke, aerosolize or vaporize inhalants
8 at the place of employment.

9 “(2) Notwithstanding subsection (1) of this section:

10 “(a) The owner or person in charge of a hotel or motel may designate up
11 to 25 percent of the sleeping rooms of the hotel or motel as rooms in which
12 the smoking, aerosolizing or vaporizing of inhalants is permitted.

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

16 “(c) The smoking of tobacco products is permitted in a smoke shop.

17 “(d) The smoking of cigars is permitted in a cigar bar that generated on-
18 site retail sales of cigars of at least \$5,000 for the calendar year ending De-
19 cember 31, 2006.

20 **“(e) The aerosolizing or vaporizing of inhalants that do not contain**
21 **cannabinoids is permitted on the premises of a business that holds it-**
22 **self out to the public as being primarily engaged in the business of**
23 **selling inhalant delivery systems, as defined in ORS 431.840, provided**
24 **that the business:**

25 **“(A) Is not located at the same address as a residence;**

26 **“(B) Does not sell tobacco products or alcohol; and**

27 **“(C) Does not permit a person under 18 years of age to enter the**
28 **premises.**

29 “[(e)] (f) A performer may smoke or carry a lighted smoking instrument
30 that does not contain tobacco or marijuana, and may aerosolize or vaporize

1 a substance that does not contain nicotine or a cannabinoid, while perform-
2 ing in a scripted stage, motion picture or television production if:

3 “(A) The production is produced by an organization whose primary pur-
4 pose is producing scripted productions; and

5 “(B) The act of smoking, aerosolizing or vaporizing is an integral part of
6 the production.

7 “[~~f~~] (g) The medical use of marijuana is permitted in the place of em-
8 ployment of a licensee of a professional licensing board as described in ORS
9 475.328.

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

13

14 “(Operative July 1, 2017)

15

16 “**SECTION 14.** If House Bill 2546 becomes law, ORS 433.850, as amended
17 by section 18, chapter ___, Oregon Laws 2015 (Enrolled House Bill 2546), and
18 section 13 of this 2015 Act, is amended to read:

19 “433.850. (1) An employer:

20 “(a) Shall provide for employees a place of employment that is free of all
21 smoke, aerosols and vapors containing inhalants; and

22 “(b) May not allow employees to smoke, aerosolize or vaporize inhalants
23 at the place of employment.

24 “(2) Notwithstanding subsection (1) of this section:

25 “(a) The owner or person in charge of a hotel or motel may designate up
26 to 25 percent of the sleeping rooms of the hotel or motel as rooms in which
27 the smoking, aerosolizing or vaporizing of inhalants is permitted.

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

1 “(c) The smoking of tobacco products is permitted in a smoke shop.

2 “(d) The smoking of cigars is permitted in a cigar bar that generated on-
3 site retail sales of cigars of at least \$5,000 for the calendar year ending De-
4 cember 31, 2006.

5 “(e) The aerosolizing or vaporizing of inhalants that do not contain
6 cannabinoids is permitted on the premises of a business that holds itself out
7 to the public as being primarily engaged in the business of selling inhalant
8 delivery systems, as defined in ORS 431.840, provided that the business[:] **is**
9 **licensed under sections 1 to 11 of this 2015 Act and meets the require-**
10 **ments and obligations described in section 5 (2) of this 2015 Act.**

11 “[*(A) Is not located at the same address as a residence;*]

12 “[*(B) Does not sell tobacco products or alcohol; and*]

13 “[*(C) Does not permit a person under 18 years of age to enter the*
14 *premises.*]

15 “(f) A performer may smoke or carry a lighted smoking instrument that
16 does not contain tobacco or marijuana, and may aerosolize or vaporize a
17 substance that does not contain nicotine or a cannabinoid, while performing
18 in a scripted stage, motion picture or television production if:

19 “(A) The production is produced by an organization whose primary pur-
20 pose is producing scripted productions; and

21 “(B) The act of smoking, aerosolizing or vaporizing is an integral part of
22 the production.

23 “(g) The medical use of marijuana is permitted in the place of employment
24 of a licensee of a professional licensing board as described in ORS 475.328.

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

28

29 **“AGE LIMIT PROVISIONS**

30

1 **“SECTION 15. Series placement. Sections 16 and 17 of this 2015 Act**
2 **are added to and made a part of ORS 163.505 to 163.575.**

3 **“SECTION 16. Violations. (1) As used in this section:**

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

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

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

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

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

16 **“(ii) Tobacco products.**

17 **“(b) ‘Tobacco products’ means:**

18 **“(A) Bidis, cigars, cheroots, stogies, periques, granulated, plug cut,**
19 **crimp cut, ready rubbed and other smoking tobacco, snuff, snuff flour,**
20 **cavendish, plug and twist tobacco, fine-cut and other chewing**
21 **tobaccos, shorts, refuse scraps, clippings, cuttings and sweepings of**
22 **tobacco and other forms of tobacco, prepared in a manner that makes**
23 **the tobacco suitable for chewing or smoking in a pipe or otherwise,**
24 **or for both chewing and smoking; or**

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

26 **“(2) A person commits the offense of selling tobacco products, to-**
27 **bacco product devices or inhalant delivery systems to a person under**
28 **21 years of age if the person knowingly:**

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

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

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

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

10 “SECTION 17. Notice. (1) A person who sells a product, device,
11 component or substance prohibited as described in section 16 of this
12 2015 Act shall display a sign clearly stating that the sale of the prod-
13 uct, device, component or substance to persons under 21 years of age
14 is prohibited by law.

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

16 “SECTION 18. ORS 163.575, as amended by section 1, chapter 20, Oregon
17 Laws 2014, is amended to read:

18 “163.575. (1) A person commits the offense of endangering the welfare of
19 a minor if the person knowingly:

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

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

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

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

30 “[(e)] (d) Sells to a person under 18 years of age any device in which

1 [tobacco,] marijuana, cocaine or any controlled substance, as defined in ORS
2 475.005, is burned and the principal design and use of which is directly or
3 indirectly to deliver [tobacco smoke,] marijuana smoke, cocaine smoke or
4 smoke from any controlled substance into the human body, including but not
5 limited to:

6 “(A) Pipes, water pipes, hookahs, wooden pipes, carburetor pipes, electric
7 pipes, air driven pipes, corncob pipes, meerschaum pipes and ceramic pipes,
8 with or without screens, permanent screens, hashish heads or punctured
9 metal bowls;

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

11 “(C) Bonges;

12 “(D) Chillums;

13 “(E) Ice pipes or chillers;

14 “(F) [Cigarette] Rolling papers and rolling machines; and

15 “(G) Cocaine free basing kits.

16 “(2) Endangering the welfare of a minor [*by violation of subsection (1)(a),*
17 *(b) or (c) of this section, or by violation of subsection (1)(e) of this section in-*
18 *volving other than a device for smoking tobacco,*] is a Class A misdemeanor.

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

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

23 **“SECTION 19.** ORS 163.580 is amended to read:

24 “163.580. (1) Any person who sells any of the smoking devices listed in
25 ORS 163.575 [(1)(e)] **(1)(d)** shall display a sign clearly stating that the sale
26 of such devices to persons under 18 years of age is prohibited by law.

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

28 **“SECTION 20.** ORS 165.800 is amended to read:

29 “165.800. (1) A person commits the crime of identity theft if the person,
30 with the intent to deceive or to defraud, obtains, possesses, transfers, creates,

1 utters or converts to the person's own use the personal identification of an-
2 other person.

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

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

6 “(a) Was under 21 years of age at the time of committing the offense and
7 the person used the personal identification of another person solely for the
8 purpose of purchasing **tobacco products or inhalant delivery systems,**
9 **both as defined in section 16 of this 2015 Act, or** alcohol; **or**

10 “[*b*] Was under 18 years of age at the time of committing the offense and
11 the person used the personal identification of another person solely for the
12 purpose of purchasing tobacco products; or]

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

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

16 “(B) Benefit based on age.

17 “(4) As used in this section:

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

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

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

26 “(B) A person's driving privileges;

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

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

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

30 “(F) The identification number assigned to a person by a person's em-

1 ployer;

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

3 “(H) The identifying number of a person’s depository account at a ‘fi-
4 nancial institution’ or ‘trust company,’ as those terms are defined in ORS
5 706.008, 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
8 mail address or electronic 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 21.** ORS 165.813 is amended to read:

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

17 “(2) Unlawful possession of fictitious identification 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 possessed the personal identification card solely for the purpose
22 of enabling the person to purchase **tobacco products or inhalant delivery**
23 **systems, both as defined in section 16 of this 2015 Act, or** alcohol[; or].

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

27 “**SECTION 22.** ORS 167.400 is amended to read:

28 “167.400. (1) It is unlawful for any person under [*18*] **21** years of age to
29 possess tobacco products[, *as defined in ORS 431.840*] **or inhalant delivery**
30 **systems, both as defined in section 16 of this 2015 Act.**

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

3 **“SECTION 23.** ORS 167.401 is amended to read:

4 “167.401. (1) Except as provided in subsection (4) of this section, [no] a
5 person under [18] **21** years of age [shall] **may not** purchase, attempt to pur-
6 chase or acquire tobacco products [as defined in ORS 431.840] **or inhalant**
7 **delivery systems, both as defined in section 16 of this 2015 Act.** Except
8 when [such minor] **a person** is in a private residence accompanied by the
9 parent or guardian of the [minor] **person** and [with] **has** the consent of
10 [such] **the** parent or guardian, [no] **a** person under [18] **21** years of age
11 [shall] **may not** have personal possession of tobacco products **or inhalant**
12 **delivery systems.**

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

15 “(3)(a) In lieu of any other penalty established by law, a person who is
16 convicted for the first time of a violation of subsection (1) of this section
17 may be ordered to participate in a [tobacco] **nicotine use** education program
18 or a [tobacco] **nicotine** use cessation program or to perform community ser-
19 vice related to diseases associated with consumption of [tobacco products]
20 **nicotine.** A person may be ordered to participate in such a program only
21 once.

22 “(b) In addition to and not in lieu of any other penalty established by law,
23 a person who is convicted of a second violation of subsection (1) of this
24 section through misrepresentation of age may be required to participate in
25 a [tobacco] **nicotine use** education **program** or a [tobacco] **nicotine** use
26 cessation program or to perform community service related to diseases asso-
27 ciated with the consumption of [tobacco products,] **nicotine** and the court
28 shall order that the person’s driving privileges and right to apply for driving
29 privileges be suspended for a period not to exceed one year. If a court has
30 issued an order suspending driving privileges under this subsection, the

1 court, upon petition of the person, may withdraw the order at any time the
2 court deems appropriate. The court notification to the Department of
3 Transportation under this subsection may include a recommendation that the
4 person be granted a hardship permit under ORS 807.240 if the person is oth-
5 erwise eligible for the permit.

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

12 “**SECTION 24.** ORS 167.402 is amended to read:

13 “167.402. (1) As used in this section, ‘vending machine’ means a mechan-
14 ical, electronic or similar device that, upon the insertion of tokens, money
15 or another form of payment, dispenses tobacco products **or inhalant deliv-**
16 **ery systems**.

17 “(2) A person may not sell or dispense tobacco products[, *as defined in*
18 *ORS 431.840,*] **or inhalant delivery systems, both as defined in section**
19 **16 of this 2015 Act**, from a vending machine, except in an establishment
20 where the premises are posted as permanently and entirely off-limits to [*mi-*
21 *nors under*] **persons under 21 years of age as required by rules adopted**
22 **by the Oregon Liquor Control Commission.**

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

25 “**SECTION 25.** ORS 167.404 is amended to read:

26 “167.404. Cities and counties by ordinance or resolution [*shall*] **may not**
27 **regulate vending machines that dispense tobacco products[, *as defined in***
28 ***ORS 431.840,*] or inhalant delivery systems, both as defined in section**
29 **16 of this 2015 Act**, in any form and that are in any manner accessible to
30 [*minors*] **persons under 21 years of age**.

1 **“SECTION 26.** ORS 167.407 is amended to read:

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

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

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

15 **“SECTION 27.** ORS 181.430 is amended to read:

16 “181.430. (1) As used in this section, ‘tobacco products’ has the meaning
17 given that term in [*ORS 431.840*] **section 16 of this 2015 Act**.

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

28 “(3) The department shall establish and administer a program employing
29 retired state police officers who are active reserve officers for the purpose
30 of enforcing laws designed to discourage the use of tobacco products by

1 persons **who are** under [18 years of] **the legal minimum purchase** age. The
2 department shall periodically consult with the authority to maximize pro-
3 gram qualification for federal funds to enforce laws designed to discourage
4 the use of tobacco products by persons **who are** under [18 years of] **the legal**
5 **minimum purchase** age, including but not limited to grants under P.L.
6 102-321, section 1926 (42 U.S.C. 300x-26). Service by a retired state police
7 member under this section is subject to ORS 238.082. The department may
8 not use the services of a retired state police officer under this section to
9 displace an active state police member from the enforcement of laws con-
10 cerning tobacco products.

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

13 **“SECTION 28.** ORS 323.718 is amended to read:

14 “323.718. (1) Each person accepting a purchase order for a delivery sale,
15 in connection with the delivery sale order, shall:

16 “(a) Include as part of the shipping documents a clear and conspicuous
17 statement providing as follows: ‘TOBACCO: OREGON LAW PROHIBITS
18 SHIPPING TO INDIVIDUALS UNDER [18] **21** AND REQUIRES THE PAY-
19 MENT OF ALL APPLICABLE TAXES’; and

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

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

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

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

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

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

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

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

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

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

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

19 “(2) If the person accepting a purchase order for a delivery sale delivers
20 the tobacco without using a delivery service or the United States Postal
21 Service, the person shall comply with all requirements of ORS 323.700 to
22 323.730 that apply to a delivery service and shall be in violation of this sec-
23 tion if the person fails to comply with all requirements applicable to a de-
24 livery service.

25 **“SECTION 29.** ORS 339.883 is amended to read:

26 “339.883. (1) A facility [*shall*] **may** not permit any person under [18] **21**
27 years of age to possess tobacco products[, *as defined in ORS 431.840,*] **or**
28 **inhalant delivery systems, both as defined in section 16 of this 2015**
29 **Act**, while the person is present on facility grounds or in facility buildings
30 or attending facility-sponsored activities.

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

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

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

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

11 “**SECTION 30.** ORS 431.840, as amended by section 2, chapter 20, Oregon
12 Laws 2014, is amended to read:

13 “431.840. (1) It shall be unlawful to do any of the following:

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

17 “(b) To fail as a retailer to post a notice substantially similar to that set
18 forth in subsection (3) of this section in a location clearly visible to the
19 seller and the purchaser that sale of tobacco products **and inhalant delivery**
20 **systems** to persons under [18] **21** years of age is prohibited.

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

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

30 “(2) As used in this section and ORS 431.853, ‘inhalant delivery sys-

1 **tem’ and ‘tobacco products’ have the meanings given those terms in**
2 **section 16 of this 2015 Act.**

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

4 “

5 NOTICE

6 The sale of tobacco in any form **and inhalant delivery systems** to per-
7 sons under [18] **21** years of age is prohibited by law. Any person who know-
8 ingly sells, or causes to be sold, tobacco **or an inhalant delivery system**
9 to a person under [18] **21** years of age commits the offense of [*endangering*
10 *the welfare of a minor, pursuant to ORS 163.575*] **selling tobacco products,**
11 **tobacco product devices or inhalant delivery systems to a person under**
12 **21 years of age, pursuant to section 16 of this 2015 Act.**

13 “

14 **“SECTION 31.** ORS 431.853 is amended to read:

15 “431.853. (1) The Oregon Health Authority shall:

16 “(a) Coordinate with law enforcement agencies to conduct random, unan-
17 nounced inspections of Oregon wholesalers and retailers of tobacco products
18 **or inhalant delivery systems to ensure** [*to insure*] compliance with Oregon
19 laws designed to discourage the use of [*tobacco by minors*] **nicotine by per-**
20 **sons under 21 years of age,** including ORS [*163.575, 163.580,*] 167.400,
21 167.402 and 431.840 **and sections 16 and 17 of this 2015 Act;** and

22 “(b) Submit a report describing:

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

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

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

29 “(2) The Oregon Health Authority shall adopt rules concerning random
30 inspections of places that sell tobacco products **and inhalant delivery sys-**

1 **tems** consistent with section 1921, Public Law 102-321, 1992. The rules shall
2 provide that inspections may take place:

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

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

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

8 **“SECTION 32.** ORS 433.847 is amended to read:

9 “433.847. (1) The Oregon Health Authority shall adopt rules establishing
10 a certification system for smoke shops.

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

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

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

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

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

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

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

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

27 “(b) On December 31, 2008:

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

30 “(B)(i) Was a stand-alone business with no other businesses or residential

1 property attached; or

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

5 “(c)(A) Filed an application for certification as a smoke shop before June
6 30, 2011;

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

9 “(C) Was certified as a smoke shop under ORS 433.835 (5), as in effect
10 immediately before June 30, 2011, by the authority on or before December
11 31, 2012; and

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

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

17 “(a)(A) Meets the requirements of subsection (2)(a)(A) to (D) of this sec-
18 tion; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

30 “(A) Meets the requirements of ORS 433.835 (5), as in effect immediately

1 before June 30, 2011; and

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

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

8 **“SECTION 33.** ORS 743.737 is amended to read:

9 “743.737. (1) A health benefit plan issued to a small employer:

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

12 “(b) May:

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

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

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

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

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

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

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

30 “(c) The number of enrollees covered under the plan is less than the

1 number or percentage of enrollees required by participation requirements
2 under the plan.

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

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

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

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

15 “(C) May not cancel coverage under the plans for 90 days after the date
16 of the notice required under subparagraph (A) of this paragraph if coverage
17 is discontinued in a specified service area because of an inability to reach
18 an agreement with the health care providers or organization of health care
19 providers to provide services under the plans within the service area; and

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

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

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

30 “(B) May not cancel coverage under the plan for 90 days after the date

1 of the notice required under subparagraph (A) of this paragraph; and

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

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

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

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

17 “(A) Offer in writing to each small employer covered by the plan, all
18 other health benefit plans that the carrier offers to small employers in the
19 specified service area.

20 “(B) Issue any such plans pursuant to the provisions of ORS 743.733 to
21 743.737.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

30 “(b) The carrier provides at least 30 days’ advance written notice, in the

1 form and manner prescribed by the department, to each plan enrollee who
2 would be affected by the rescission of coverage; and

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

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

15 “(b) A carrier may not deny a small employer’s application for coverage
16 under a health benefit plan based on participation or contribution require-
17 ments but may require small employers that do not meet participation or
18 contribution requirements to enroll during the open enrollment period be-
19 ginning November 15 and ending December 15.

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

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

25 “(b)(A) The variations in premium rates charged during a rating period
26 for health benefit plans issued to small employers shall be based solely on
27 the factors specified in subparagraph (B) of this paragraph. A carrier may
28 elect which of the factors specified in subparagraph (B) of this paragraph
29 apply to premium rates for health benefit plans for small employers. All
30 other factors must be applied in the same actuarially sound way to all small

1 employer health benefit plans.

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

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

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

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

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

16 “(c) Except as provided in paragraph (b) of this subsection, the variation
17 in premium rates between different health benefit plans offered by a carrier
18 to small employers must be based solely on objective differences in plan de-
19 sign or coverage, age, [tobacco] **nicotine** use and family composition and
20 must not include differences based on the risk characteristics of groups as-
21 sumed to select a particular health benefit plan.

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

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

30 “(B) Any adjustment attributable to changes in age and differences in

1 family composition.

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

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

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

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

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

15 “(10)(a) Each carrier shall maintain at its principal place of business a
16 complete and detailed description of its rating practices and renewal under-
17 writing practices relating to its small employer health benefit plans, includ-
18 ing information and documentation that demonstrate that its rating methods
19 and practices are based upon commonly accepted actuarial practices and are
20 in accordance with sound actuarial principles.

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

30 “(c) A carrier shall make the information and documentation described

1 in paragraph (a) of this subsection available to the department upon request.
2 Except as provided in ORS 743.018 and except in cases of violations of ORS
3 743.733 to 743.737, the information shall be considered proprietary and trade
4 secret information and shall not be subject to disclosure to persons outside
5 the department except as agreed to by the carrier or as ordered by a court
6 of competent jurisdiction.

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

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

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

17 “(14) All small employer health benefit plans shall contain special en-
18 rollment periods during which eligible employees and dependents may enroll
19 for coverage, as provided by federal law and rules adopted by the department.

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

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

25 **“SECTION 34.** ORS 807.500 is amended to read:

26 “807.500. (1) A person commits the offense of unlawful production of
27 identification cards, licenses, permits, forms or camera cards if the person,
28 without the authority of the Department of Transportation, advertises for the
29 production of, produces in any way or causes to be produced any facsimiles
30 of the identification cards, licenses, permits, forms or camera cards upon

1 which the department issues identification cards, licenses or driver permits
2 under the vehicle code.

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

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

7 “[*a*] was under 21 years of age at the time of committing the offense and
8 the person produced an identification card, license or permit solely for the
9 purpose of enabling the person to purchase **tobacco products or inhalant**
10 **delivery systems, both as defined in section 16 of this 2015 Act, or**
11 alcohol[; *or*].

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

15 **“SECTION 35.** ORS 811.193 is amended to read:

16 “811.193. (1)(a) A person commits the offense of smoking in a motor ve-
17 hicle if the person smokes in a motor vehicle while a person under [18] **21**
18 years of age is in the motor vehicle.

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

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

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

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

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

28

29 **“MISCELLANEOUS**

30

1 **SECTION 36. Applicability.** Sections 16 and 17 of this 2015 Act and
2 the amendments to ORS 163.575, 163.580, 165.800, 165.813, 167.400, 167.401,
3 167.402, 167.404, 167.407, 181.430, 323.718, 339.883, 431.840, 431.853, 433.847,
4 743.737, 807.500 and 811.193 by sections 18 to 35 of this 2015 Act apply
5 to conduct occurring on or after the effective date of this 2015 Act.

6 **SECTION 37. Operative date.** (1) Sections 1 to 11 of this 2015 Act
7 and the amendments to ORS 433.850 by section 14 of this 2015 Act be-
8 come operative on July 1, 2017.

9 **(2)** The Oregon Liquor Control Commission may take any action
10 before the operative date specified in subsection (1) of this section that
11 is necessary to enable the commission to exercise, on and after the
12 operative date specified in subsection (1) of this section, all the duties,
13 functions and powers conferred on the commission by sections 1 to 11
14 of this 2015 Act.

15 **SECTION 38. Report.** (1) The Oregon Liquor Control Commission
16 shall make a report on any action taken by the commission pursuant
17 to section 37 (2) of this 2015 Act that was necessary to enable the
18 commission to exercise, on and after the operative date specified in
19 section 37 (1) of this 2015 Act, the duties, functions and powers con-
20 ferred on the commission by sections 1 to 11 of this 2015 Act. The
21 commission may include in its report recommendations for legislation
22 to better enable the commission to exercise those duties, functions and
23 powers.

24 **(2)** The commission shall submit a report:

25 **(a)** To an interim committee of the Legislative Assembly related
26 to health on or before September 15, 2016; and

27 **(b)** To the Legislative Assembly in the manner provided by ORS
28 192.245 on or before February 1, 2017.

29 **SECTION 39. Unit and section captions.** The unit and section cap-
30 tions used in this 2015 Act are provided only for the convenience of the

1 reader and do not become part of the statutory law of this state or
2 express any legislative intent in the enactment of this 2015 Act.

3 **“SECTION 40. Emergency clause. This 2015 Act being necessary for**
4 **the immediate preservation of the public peace, health and safety, an**
5 **emergency is declared to exist, and this 2015 Act takes effect on its**
6 **passage.”.**

7
