

A-Engrossed Senate Bill 663

Ordered by the Senate April 24
Including Senate Amendments dated April 24

Sponsored by Senator MONNES ANDERSON, Representatives GREENLICK, WHISNANT; Senators BATES, HANSELL, KNOPP, KRUSE, SHIELDS, STEINER HAYWARD, Representatives BUEHLER, HAYDEN, KENNEMER, KENY-GUYER, LIVELY, NATHANSON, NOSSE, SMITH WARNER, WEIDNER

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

[Changes governmental framework for conducting public health activities in this state and for providing public health services to residents of this state.]

[Provides mechanism by which local health departments may implement provisions of Act separately and at different times.]

[Becomes operative January 1, 2016.]

Requires premises where person makes retail sales of tobacco products and inhalant delivery systems to be licensed by Oregon Liquor Control Commission. Requires imposition of fees on licensees that are reasonably calculated to pay for administering provisions of Act.

Prohibits certain types of retail sales of tobacco products and inhalant delivery systems.

Establishes Tobacco Control Fund and continuously appropriates moneys in fund to commission for purposes of administering provisions of Act.

Allows vaporizing and aerosolizing of certain inhalants at businesses that are primarily engaged in business of selling inhalant delivery systems.

Creates offense of selling tobacco products, tobacco product devices or inhalant delivery systems to person under 21 years of age. Punishes by maximum of \$2,000 fine.

Raises minimum age at which person may purchase or possess tobacco products and tobacco product devices to 21 years of age.

Provides that licensure requirements become operative July 1, 2017.

Declares emergency, effective on passage.

A BILL FOR AN ACT

Relating to public health; creating new provisions; amending ORS 163.575, 163.580, 165.800, 165.813, 167.400, 167.401, 167.402, 167.404, 167.407, 181.430, 323.718, 339.883, 431.840, 431.853, 433.847, 433.850, 743.737, 807.500 and 811.193; and declaring an emergency.

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

RETAIL LICENSURE

OPERATIVE JULY 1, 2017

SECTION 1. Definitions. As used in sections 1 to 11 of this 2015 Act:

(1)(a) "Inhalant delivery system" means:

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

(B) A component of a device described in this paragraph or a substance in any form sold for the purpose of being vaporized or aerosolized by a device described in this paragraph, whether the component or substance is sold separately or is not sold separately.

(b) "Inhalant delivery system" does not include:

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 (A) Any product that has been approved by the United States Food and Drug Adminis-
2 tration for sale as a tobacco cessation product or for any other therapeutic purpose, if the
3 product is marketed and sold solely for the approved purpose; and

4 (B) Tobacco products.

5 (2) "Tobacco products" means:

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

11 (b) Cigarettes as defined in ORS 323.010 (1).

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

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

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

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

28 (2)(a) To be qualified for licensure under this section, a premises:

29 (A) Must have a physical address;

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

31 (C) May not be located within 1,000 feet of any part of the premises of:

32 (i) A public school for which attendance is compulsory under ORS 339.020; or

33 (ii) A private or parochial school that teaches children as described in ORS 339.030 (1)(a).

34 (b) Paragraph (a)(C) of this subsection does not apply to a premises for which a license
35 has been issued under this section before the date on which the school is first attended by
36 students unless the commission has revoked or refused to renew the license pursuant to
37 section 7 of this 2015 Act.

38 (3) For the purpose of licensing premises under this section, the commission shall adopt
39 rules establishing:

40 (a) The term of licensure;

41 (b) Procedures for applying for and renewing licenses; and

42 (c) Licensure application, issuance and renewal fees that are reasonably calculated to pay
43 the costs of administering sections 1 to 11 of this 2015 Act.

44 (4) Amounts collected pursuant to subsection (3)(c) of this section shall be deposited in
45 the Tobacco Control Fund established under section 9 of this 2015 Act.

1 (5) The commission may inspect the proposed premises of an applicant under this section
2 to ensure compliance with this section and rules adopted under this section.

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

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

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

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

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

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

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 premises.

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

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

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

32 **SECTION 7. Discipline.** Subject to the applicable provisions of ORS chapter 183, the
33 Oregon Liquor Control Commission may revoke, suspend or refuse to issue or renew a li-
34 cense under section 4 of this 2015 Act if any individual who owns the premises or participates
35 in the management of the premises or any individual who is employed for the purpose of
36 making sales at the premises:

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

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

40 (3) Violates any applicable state rule, local ordinance or federal law or regulation that
41 imposes a duty on or otherwise governs the retail sale of tobacco products or inhalant de-
42 livery systems; or

43 (4) Makes a false statement to the commission.

44 **SECTION 8. Civil penalty.** (1) The Oregon Liquor Control Commission may impose a civil
45 penalty for each violation of sections 1 to 11 of this 2015 Act. A civil penalty imposed under

1 this section may not be more than \$5,000 for each violation.

2 (2) Amounts collected under subsection (1) of this section shall be deposited in the To-
3 bacco Control Fund established under section 9 of this 2015 Act.

4 **SECTION 9. Tobacco Control Fund.** There is established the Tobacco Control Fund, sep-
5 arate and distinct from the General Fund. Moneys deposited in the Tobacco Control Fund
6 are continuously appropriated to the Oregon Liquor Control Commission for carrying out the
7 duties, functions and powers of the commission under sections 1 to 11 of this 2015 Act.

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

10 **SECTION 11. Intergovernmental agreement.** (1) The Oregon Liquor Control Commission
11 shall enter into an agreement with the Oregon Health Authority for the purposes of admin-
12 istering and enforcing the provisions of ORS 433.835 to 433.875 and rules adopted under ORS
13 433.835 to 433.875 that are related to the regulation of cigar bars, as defined in ORS 433.835,
14 and smoke shops certified under ORS 433.835 to 433.875, including those provisions and rules
15 related to the certification process.

16 (2) As part of the agreement entered into under subsection (1) of this section, the au-
17 thority shall transfer all moneys collected as a fee for certifying shops under ORS 433.835 to
18 433.875 to the commission.

19 (3) Moneys transferred under subsection (2) of this section shall be deposited in the To-
20 bacco Control Fund established under section 9 of this 2015 Act.

21 (4) In addition to the agreement entered into under subsection (1) of this section, the
22 authority, pursuant to an agreement or otherwise, may assist the commission with the
23 commission's duties under sections 1 to 11 of this 2015 Act.

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

27
28 **EXCLUSION FROM INDOOR CLEAN AIR ACT**

29
30 **(Effective Upon Passage)**

31
32 **SECTION 13.** If House Bill 2546 becomes law, ORS 433.850, as amended by section 18, chapter
33 ____, Oregon Laws 2015 (Enrolled House Bill 2546), is amended to read:

34 433.850. (1) An employer:

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

37 (b) May not allow employees to smoke, aerosolize or vaporize inhalants at the place of employ-
38 ment.

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

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

43 (b) Smoking of noncommercial tobacco products for ceremonial purposes is permitted in spaces
44 designated for traditional ceremonies in accordance with the American Indian Religious Freedom
45 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-site retail sales of cigars
3 of at least \$5,000 for the calendar year ending December 31, 2006.

4 (e) **The aerosolizing or vaporizing of inhalants that do not contain cannabinoids is per-**
5 **mitted on the premises of a business that holds itself out to the public as being primarily**
6 **engaged in the business of selling inhalant delivery systems, as defined in ORS 431.840, pro-**
7 **vided that the business:**

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

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

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

11 [(e)] (f) A performer may smoke or carry a lighted smoking instrument that does not contain
12 tobacco or marijuana, and may aerosolize or vaporize a substance that does not contain nicotine or
13 a cannabinoid, while performing in a scripted stage, motion picture or television production if:

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

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

17 [(f)] (g) The medical use of marijuana is permitted in the place of employment of a licensee of
18 a professional licensing board as described in ORS 475.328.

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

21
22 (Operative July 1, 2017)

23
24 **SECTION 14.** If House Bill 2546 becomes law, ORS 433.850, as amended by section 18, chapter
25 ____, Oregon Laws 2015 (Enrolled House Bill 2546), and section 13 of this 2015 Act, is amended to
26 read:

27 433.850. (1) An employer:

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

30 (b) May not allow employees to smoke, aerosolize or vaporize inhalants at the place of employ-
31 ment.

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

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

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

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

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

42 (e) The aerosolizing or vaporizing of inhalants that do not contain cannabinoids is permitted on
43 the premises of a business that holds itself out to the public as being primarily engaged in the
44 business of selling inhalant delivery systems, as defined in ORS 431.840, provided that the
45 business[:] **is licensed under sections 1 to 11 of this 2015 Act and meets the requirements and**

1 **obligations described in section 5 (2) of this 2015 Act.**

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

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

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

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

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

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

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

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

15
16 **AGE LIMIT PROVISIONS**

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

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

21 **(a)(A) “Inhalant delivery system” means:**

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

24 **(ii) A component of a device described in this subparagraph or a substance in any form**
25 **sold for the purpose of being vaporized or aerosolized by a device described in this subpara-**
26 **graph, whether the component or substance is sold separately or is not sold separately.**

27 **(B) “Inhalant delivery system” does not include:**

28 **(i) Any product that has been approved by the United States Food and Drug Adminis-**
29 **tration for sale as a tobacco cessation product or for any other therapeutic purpose, if the**
30 **product is marketed and sold solely for the approved purpose; and**

31 **(ii) Tobacco products.**

32 **(b) “Tobacco products” means:**

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

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

39 **(2) A person commits the offense of selling tobacco products, tobacco product devices or**
40 **inhalant delivery systems to a person under 21 years of age if the person knowingly:**

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

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

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

3 (3) Selling tobacco products, tobacco product devices or inhalant delivery systems to a
4 person under 21 years of age is a Class A violation.

5 **SECTION 17. Notice.** (1) A person who sells a product, device, component or substance
6 prohibited as described in section 16 of this 2015 Act shall display a sign clearly stating that
7 the sale of the product, device, component or substance to persons under 21 years of age is
8 prohibited by law.

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

10 **SECTION 18.** ORS 163.575, as amended by section 1, chapter 20, Oregon Laws 2014, is amended
11 to read:

12 163.575. (1) A person commits the offense of endangering the welfare of a minor if the person
13 knowingly:

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

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

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

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

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

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

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

30 (C) Bonges;

31 (D) Chillums;

32 (E) Ice pipes or chillers;

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

34 (G) Cocaine free basing kits.

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

38 [(3) Endangering the welfare of a minor by violation of subsection (1)(d) of this section is a Class
39 A violation.]

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

42 **SECTION 19.** ORS 163.580 is amended to read:

43 163.580. (1) Any person who sells any of the smoking devices listed in ORS 163.575 [(1)(e)] (1)(d)
44 shall display a sign clearly stating that the sale of such devices to persons under 18 years of age
45 is prohibited by law.

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

2 **SECTION 20.** ORS 165.800 is amended to read:

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

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

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

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

12 *[(b) Was under 18 years of age at the time of committing the offense and the person used the per-*
13 *sonal identification of another person solely for the purpose of purchasing tobacco products; or]*

14 *[(c)]* (b) Used the personal identification of another person solely for the purpose of misrepre-
15 senting the person's age to gain access to a:

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

17 (B) Benefit based on age.

18 (4) As used in this section:

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

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

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

25 (B) A person's driving privileges;

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

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

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

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

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

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

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

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

36 (K) A person's photograph;

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

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

39 **SECTION 21.** ORS 165.813 is amended to read:

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

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

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

1 [(a)] was under 21 years of age at the time of committing the offense and the person possessed
2 the personal identification card solely for the purpose of enabling the person to purchase **tobacco**
3 **products or inhalant delivery systems, both as defined in section 16 of this 2015 Act, or**
4 alcohol[; or].

5 [(b) Was under 18 years of age at the time of committing the offense and the person possessed the
6 personal identification card solely for the purpose of enabling the person to purchase tobacco
7 products.]

8 **SECTION 22.** ORS 167.400 is amended to read:

9 167.400. (1) It is unlawful for any person under [18] **21** years of age to possess tobacco
10 products[, as defined in ORS 431.840] **or inhalant delivery systems, both as defined in section**
11 **16 of this 2015 Act.**

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

13 **SECTION 23.** ORS 167.401 is amended to read:

14 167.401. (1) Except as provided in subsection (4) of this section, [no] a person under [18] **21** years
15 of age [shall] **may not** purchase, attempt to purchase or acquire tobacco products [as defined in
16 ORS 431.840] **or inhalant delivery systems, both as defined in section 16 of this 2015 Act.** Ex-
17 cept when [such minor] a **person** is in a private residence accompanied by the parent or guardian
18 of the [minor] **person** and [with] **has** the consent of [such] **the** parent or guardian, [no] a person
19 under [18] **21** years of age [shall] **may not** have personal possession of tobacco products **or inhalant**
20 **delivery systems.**

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

22 (3)(a) In lieu of any other penalty established by law, a person who is convicted for the first time
23 of a violation of subsection (1) of this section may be ordered to participate in a [tobacco] **nicotine**
24 **use** education program or a [tobacco] **nicotine** use cessation program or to perform community
25 service related to diseases associated with consumption of [tobacco products] **nicotine.** A person may
26 be ordered to participate in such a program only once.

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

38 (4) A [minor] **person under 21 years of age who is** acting under the supervision of an adult
39 may purchase, attempt to purchase or acquire tobacco products **or inhalant delivery systems** for
40 the purpose of testing compliance with a federal law, state statute, local law or retailer management
41 policy limiting or regulating the delivery of tobacco products **or inhalant delivery systems** to
42 [minors] **persons under 21 years of age.**

43 **SECTION 24.** ORS 167.402 is amended to read:

44 167.402. (1) As used in this section, "vending machine" means a mechanical, electronic or similar
45 device that, upon the insertion of tokens, money or another form of payment, dispenses tobacco

1 products **or inhalant delivery systems**.

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

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

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

10 167.404. Cities and counties by ordinance or resolution [*shall*] **may** not regulate vending ma-
11 chines that dispense tobacco products[, *as defined in ORS 431.840,*] **or inhalant delivery systems,**
12 **both as defined in section 16 of this 2015 Act**, in any form and that are in any manner accessible
13 to [*minors*] **persons under 21 years of age**.

14 **SECTION 26.** ORS 167.407 is amended to read:

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

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

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

25 **SECTION 27.** ORS 181.430 is amended to read:

26 181.430. (1) As used in this section, "tobacco products" has the meaning given that term in [*ORS*
27 *431.840*] **section 16 of this 2015 Act**.

28 (2) The Oregon Health Authority may apply for and accept moneys from the United States
29 Government or other public or private sources for utilization of those moneys by the Department
30 of State Police in accordance with any federal restrictions or other funding source restrictions to
31 carry out the duties, functions and powers of the department under this section. Moneys received
32 as provided under this subsection shall be deposited into the State Treasury to the credit of the
33 State Police Tobacco Law Enforcement Fund. Moneys that are subject to funding source conditions
34 or restrictions shall be placed in separate subaccounts of the fund and accounted for separately from
35 other fund moneys.

36 (3) The department shall establish and administer a program employing retired state police of-
37 ficers who are active reserve officers for the purpose of enforcing laws designed to discourage the
38 use of tobacco products by persons **who are** under [*18 years of*] **the legal minimum purchase** age.
39 The department shall periodically consult with the authority to maximize program qualification for
40 federal funds to enforce laws designed to discourage the use of tobacco products by persons **who**
41 **are** under [*18 years of*] **the legal minimum purchase** age, including but not limited to grants under
42 P.L. 102-321, section 1926 (42 U.S.C. 300x-26). Service by a retired state police member under this
43 section is subject to ORS 238.082. The department may not use the services of a retired state police
44 officer under this section to displace an active state police member from the enforcement of laws
45 concerning tobacco products.

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

2 **SECTION 28.** ORS 323.718 is amended to read:

3 323.718. (1) Each person accepting a purchase order for a delivery sale, in connection with the
4 delivery sale order, shall:

5 (a) Include as part of the shipping documents a clear and conspicuous statement providing as
6 follows: "TOBACCO: OREGON LAW PROHIBITS SHIPPING TO INDIVIDUALS UNDER [18] 21
7 AND REQUIRES THE PAYMENT OF ALL APPLICABLE TAXES"; and

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

10 (A) Unless subparagraph (B) of this paragraph applies, use a method of shipping or other deliv-
11 ery that obligates the delivery service to require:

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

15 (ii) Proof, in the form of a valid, government-issued identification bearing a photograph of the
16 individual who signs to accept delivery of the shipping container, demonstrating that the individual
17 who signs to accept delivery:

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

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

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

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

27 (ii) Proof, in the form of a valid, government-issued identification bearing a photograph of the
28 individual who signs to accept delivery of the shipping container, demonstrating that the individual
29 who signs to accept delivery:

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

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

33 (2) If the person accepting a purchase order for a delivery sale delivers the tobacco without
34 using a delivery service or the United States Postal Service, the person shall comply with all re-
35 quirements of ORS 323.700 to 323.730 that apply to a delivery service and shall be in violation of
36 this section if the person fails to comply with all requirements applicable to a delivery service.

37 **SECTION 29.** ORS 339.883 is amended to read:

38 339.883. (1) A facility [shall] **may** not permit any person under [18] 21 years of age to possess
39 tobacco products[, as defined in ORS 431.840,] **or inhalant delivery systems, both as defined in**
40 **section 16 of this 2015 Act**, while the person is present on facility grounds or in facility buildings
41 or attending facility-sponsored activities.

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

45 (3) This section does not apply to any person for whom a [tobacco or] nicotine **cessation** product

1 has been lawfully prescribed.

2 (4)(a) As used in this section, “facility” means public or private schools, youth correction facil-
3 ities or juvenile detention facilities.

4 (b) “Facility” does not include colleges or universities, career and technical education schools
5 or community colleges.

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

8 431.840. (1) It shall be unlawful to do any of the following:

9 (a) To distribute free tobacco products **or inhalant delivery systems** to persons under [18] 21
10 years of age as part of a marketing strategy to encourage the use of tobacco products **or inhalant**
11 **delivery systems**.

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

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

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

22 (2) As used in this section and ORS 431.853, “inhalant delivery system” and “tobacco
23 products” have the meanings given those terms in section 16 of this 2015 Act.

24 (3) The notice shall be substantially as follows:
25

26 NOTICE

27 The sale of tobacco in any form **and inhalant delivery systems** to persons under [18] 21 years
28 of age is prohibited by law. Any person who knowingly sells, or causes to be sold, tobacco **or an**
29 **inhalant delivery system** to a person under [18] 21 years of age commits the offense of [endanger-
30 *ing the welfare of a minor, pursuant to ORS 163.575*] **selling tobacco products, tobacco product**
31 **devices or inhalant delivery systems to a person under 21 years of age, pursuant to section**
32 **16 of this 2015 Act.**
33
34

35 **SECTION 31.** ORS 431.853 is amended to read:

36 431.853. (1) The Oregon Health Authority shall:

37 (a) Coordinate with law enforcement agencies to conduct random, unannounced inspections of
38 Oregon wholesalers and retailers of tobacco products **or inhalant delivery systems to ensure [to**
39 **insure]** compliance with Oregon laws designed to discourage the use of [tobacco by minors] **nicotine**
40 **by persons under 21 years of age**, including ORS [163.575, 163.580,] 167.400, 167.402 and 431.840
41 **and sections 16 and 17 of this 2015 Act;** and
42

43 (b) Submit a report describing:

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

1 (B) The extent of success achieved in reducing the availability of [*tobacco*] products **containing**
2 **nicotine** to minors; and

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

5 (2) The Oregon Health Authority shall adopt rules concerning random inspections of places that
6 sell tobacco products **and inhalant delivery systems** consistent with section 1921, Public Law
7 102-321, 1992. The rules shall provide that inspections may take place:

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

9 (b) Only during hours that tobacco products **or inhalant delivery systems** are sold or distrib-
10 uted; and

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

13 **SECTION 32.** ORS 433.847 is amended to read:

14 433.847. (1) The Oregon Health Authority shall adopt rules establishing a certification system
15 for smoke shops.

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

17 (a)(A) Is primarily engaged in the sale of tobacco products and smoking instruments intended for
18 off-premises consumption or use, with at least 75 percent of the gross revenues of the business re-
19 sulting from such sales;

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

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

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

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

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

28 (G) Allows smoking only for the purpose of sampling tobacco products for making retail pur-
29 chase decisions;

30 (b) On December 31, 2008:

31 (A) Met the requirements of paragraph (a)(A) to (D) of this subsection; and

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

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

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

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

39 (C) Was certified as a smoke shop under ORS 433.835 (5), as in effect immediately before June
40 30, 2011, by the authority on or before December 31, 2012; and

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

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

1 (a)(A) Meets the requirements of subsection (2)(a)(A) to (D) of this section; and

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

3 (ii) Has a ventilation system that exhausts smoke from the business and is designed and termi-
4 nated in accordance with the state building code standards for the occupancy classification in use;
5 and

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

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

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

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

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

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

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

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

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

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

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

25 (ii) Has a ventilation system that exhausts smoke from the business and is designed and termi-
26 nated in accordance with the state building code standards for the occupancy classification in use;
27 and

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

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

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

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

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

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

37 and

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

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

43 **SECTION 33.** ORS 743.737 is amended to read:

44 743.737. (1) A health benefit plan issued to a small employer:

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

1 (b) May:

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

4 (B) Impose an exclusion period for specified covered services, as established under ORS 743.745,
5 applicable to all individuals enrolling for the first time in the small employer health benefit plan;
6 or

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

8 (2) Late enrollees in a small employer health benefit plan may be subjected to a group eligibility
9 waiting period that does not exceed 90 days.

10 (3) Each small employer health benefit plan shall be renewable with respect to all eligible
11 enrollees at the option of the policyholder, small employer or contract holder unless:

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

13 (b) The policyholder, small employer or contract holder or, with respect to coverage of individ-
14 ual enrollees, an enrollee or a representative of an enrollee engages in fraud or makes an inten-
15 tional misrepresentation of a material fact as prohibited by the terms of the plan.

16 (c) The number of enrollees covered under the plan is less than the number or percentage of
17 enrollees required by participation requirements under the plan.

18 (d) The small employer fails to comply with the contribution requirements under the health
19 benefit plan.

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

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

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

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

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

34 (f) The carrier discontinues offering and renewing a small employer health benefit plan in a
35 specified service area within this state because of an inability to reach an agreement with the health
36 care providers or organization of health care providers to provide services under the plan within the
37 service area. In order to discontinue a plan under this paragraph, the carrier:

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

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

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

45 (g) The carrier discontinues offering or renewing, or offering and renewing, a health benefit

1 plan, other than a grandfathered health plan, for all small employers in this state or in a specified
2 service area within this state, other than a plan discontinued under paragraph (f) of this subsection.

3 (h) The carrier discontinues renewing or offering and renewing a grandfathered health plan for
4 all small employers in this state or in a specified service area within this state, other than a plan
5 discontinued under paragraph (f) of this subsection.

6 (i) With respect to plans that are being discontinued under paragraph (g) or (h) of this sub-
7 section, the carrier must:

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

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

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

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

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

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

18 (B) Impair the carrier's ability to meet contractual obligations.

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

22 (L) In the case of a health benefit plan that is offered in the small employer market only to one
23 or more bona fide associations, the membership of an employer in the association ceases and the
24 termination of coverage is not related to the health status of any enrollee.

25 (4) A carrier may modify a small employer health benefit plan at the time of coverage renewal.
26 The modification is not a discontinuation of the plan under subsection (3)(e), (g) and (h) of this sec-
27 tion.

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

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

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

32 (B) Makes an intentional misrepresentation of a material fact as prohibited by the terms of the
33 plan;

34 (b) The carrier provides at least 30 days' advance written notice, in the form and manner pre-
35 scribed by the department, to the enrollee; and

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

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

40 (a) The small employer or a representative of the small employer:

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

42 (B) Makes an intentional misrepresentation of a material fact as prohibited by the terms of the
43 plan;

44 (b) The carrier provides at least 30 days' advance written notice, in the form and manner pre-
45 scribed by the department, to each plan enrollee who would be affected by the rescission of cover-

1 age; and

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

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

12 (b) A carrier may not deny a small employer's application for coverage under a health benefit
13 plan based on participation or contribution requirements but may require small employers that do
14 not meet participation or contribution requirements to enroll during the open enrollment period
15 beginning November 15 and ending December 15.

16 (8) Premium rates for small employer health benefit plans shall be subject to the following pro-
17 visions:

18 (a) Each carrier must file with the department the initial geographic average rate and any
19 changes in the geographic average rate with respect to each health benefit plan issued by the car-
20 rier to small employers.

21 (b)(A) The variations in premium rates charged during a rating period for health benefit plans
22 issued to small employers shall be based solely on the factors specified in subparagraph (B) of this
23 paragraph. A carrier may elect which of the factors specified in subparagraph (B) of this paragraph
24 apply to premium rates for health benefit plans for small employers. All other factors must be ap-
25 plied in the same actuarially sound way to all small employer health benefit plans.

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

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

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

32 (iii) Adjustments to reflect differences in family composition.

33 (C) A carrier shall apply the carrier's schedule of premium rate variations as approved by the
34 department and in accordance with this paragraph. Except as otherwise provided in this section, the
35 premium rate established by a carrier for a small employer health benefit plan shall apply uniformly
36 to all employees of the small employer enrolled in that plan.

37 (c) Except as provided in paragraph (b) of this subsection, the variation in premium rates be-
38 tween different health benefit plans offered by a carrier to small employers must be based solely on
39 objective differences in plan design or coverage, age, [*tobacco*] **nicotine** use and family composition
40 and must not include differences based on the risk characteristics of groups assumed to select a
41 particular health benefit plan.

42 (d) A carrier may not increase the rates of a health benefit plan issued to a small employer more
43 than once in a 12-month period. Annual rate increases shall be effective on the plan anniversary
44 date of the health benefit plan issued to a small employer. The percentage increase in the premium
45 rate charged to a small employer for a new rating period may not exceed the sum of the following:

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

3 (B) Any adjustment attributable to changes in age and differences in family composition.

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

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

8 (a) The full array of health benefit plans that are offered to small employers by the carrier;

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

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

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

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

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

31 (11) A carrier shall not provide any financial or other incentive to any insurance producer that
32 would encourage the insurance producer to market and sell health benefit plans of the carrier to
33 small employer groups based on a small employer group's anticipated claims experience.

34 (12) For purposes of this section, the date a small employer health benefit plan is continued shall
35 be the anniversary date of the first issuance of the health benefit plan.

36 (13) A carrier must include a provision that offers coverage to all eligible employees of a small
37 employer and to all dependents of the eligible employees to the extent the employer chooses to offer
38 coverage to dependents.

39 (14) All small employer health benefit plans shall contain special enrollment periods during
40 which eligible employees and dependents may enroll for coverage, as provided by federal law and
41 rules adopted by the department.

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

44 (16) This section does not require a carrier to actively market, offer, issue or accept applications
45 for a grandfathered health plan or from a small employer not eligible for coverage under such a

1 plan.

2 **SECTION 34.** ORS 807.500 is amended to read:

3 807.500. (1) A person commits the offense of unlawful production of identification cards, licenses,
4 permits, forms or camera cards if the person, without the authority of the Department of Transpor-
5 tation, advertises for the production of, produces in any way or causes to be produced any facsimiles
6 of the identification cards, licenses, permits, forms or camera cards upon which the department is-
7 sues identification cards, licenses or driver permits under the vehicle code.

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

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

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

16 [(b) Was under 18 years of age at the time of committing the offense and the person produced an
17 identification card, license or permit solely for the purpose of enabling the person to purchase tobacco
18 products.]

19 **SECTION 35.** ORS 811.193 is amended to read:

20 811.193. (1)(a) A person commits the offense of smoking in a motor vehicle if the person smokes
21 in a motor vehicle while a person under [18] **21** years of age is in the motor vehicle.

22 (b) As used in this subsection, “smokes” means to inhale, exhale, burn or carry a lighted ciga-
23 rette, cigar, pipe, weed, plant, regulated narcotic or other combustible substance.

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

27 (3) Smoking in a motor vehicle is a:

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

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

30
31 **MISCELLANEOUS**

32
33 **SECTION 36. Applicability.** Sections 16 and 17 of this 2015 Act and the amendments to
34 ORS 163.575, 163.580, 165.800, 165.813, 167.400, 167.401, 167.402, 167.404, 167.407, 181.430, 323.718,
35 339.883, 431.840, 431.853, 433.847, 743.737, 807.500 and 811.193 by sections 18 to 35 of this 2015
36 Act apply to conduct occurring on or after the effective date of this 2015 Act.

37 **SECTION 37. Operative date.** (1) Sections 1 to 11 of this 2015 Act and the amendments
38 to ORS 433.850 by section 14 of this 2015 Act become operative on July 1, 2017.

39 (2) The Oregon Liquor Control Commission may take any action before the operative date
40 specified in subsection (1) of this section that is necessary to enable the commission to ex-
41 ercise, on and after the operative date specified in subsection (1) of this section, all the du-
42 ties, functions and powers conferred on the commission by sections 1 to 11 of this 2015 Act.

43 **SECTION 38. Report.** (1) The Oregon Liquor Control Commission shall make a report on
44 any action taken by the commission pursuant to section 37 (2) of this 2015 Act that was
45 necessary to enable the commission to exercise, on and after the operative date specified in

1 section 37 (1) of this 2015 Act, the duties, functions and powers conferred on the commission
2 by sections 1 to 11 of this 2015 Act. The commission may include in its report recommen-
3 dations for legislation to better enable the commission to exercise those duties, functions
4 and powers.

5 (2) The commission shall submit a report:

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

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

10 SECTION 39. Unit and section captions. The unit and section captions used in this 2015
11 Act are provided only for the convenience of the reader and do not become part of the stat-
12 utory law of this state or express any legislative intent in the enactment of this 2015 Act.

13 SECTION 40. Emergency clause. This 2015 Act being necessary for the immediate pres-
14 ervation of the public peace, health and safety, an emergency is declared to exist, and this
15 2015 Act takes effect on its passage.

16