

Enrolled House Bill 2546

Sponsored by Representative TAYLOR, Senator STEINER HAYWARD, Representative KENNEMER, Senator MONNES ANDERSON; Representatives BARKER, BARNHART, BOONE, BUCKLEY, DOHERTY, FAGAN, FREDERICK, GALLEGOS, GOMBERG, GORSEK, GREENLICK, HELM, HOLVEY, HOYLE, KENY-GUYER, KOMP, LININGER, LIVELY, MCLAIN, NATHANSON, NOSSE, PILUSO, READ, REARDON, SMITH WARNER, VEGA PEDERSON, WILLIAMSON, WITT, Senator DEVLIN (Presession filed.)

CHAPTER

AN ACT

Relating to inhalants; creating new provisions; amending ORS 163.575, 163.580, 165.800, 165.813, 167.400, 167.401, 167.402, 167.404, 167.407, 339.883, 421.352, 431.840, 431.845, 431.853, 433.835, 433.840, 433.845, 433.847, 433.850, 433.855, 433.870, 441.815, 565.456, 807.500 and 811.193; repealing ORS 192.710, 192.990, 243.345 and 243.350; and declaring an emergency.

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

SALES AND DISTRIBUTION

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

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

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

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

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

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

(1) As used in this section and ORS 431.853:

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

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

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

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

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

(ii) Tobacco products.

(b) "Tobacco products" means:

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

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

(2) It is unlawful:

(a) To distribute, sell or allow to be sold tobacco products or an inhalant delivery system to a person under 18 years of age.

(b) To fail as a retailer of tobacco products to post a notice substantially similar to the notice described in subsection (3) of this section in a location that is clearly visible to the seller and the purchaser of the tobacco products.

(c) To fail as a retailer of inhalant delivery systems to post a notice in a location that is clearly visible to the seller and the purchaser of the inhalant delivery systems that it is unlawful to sell inhalant delivery systems to persons under 18 years of age. The Oregon Health Authority shall adopt by rule the content of the notice required under this paragraph.

(d) To distribute, sell or allow to be sold an inhalant delivery system if the inhalant delivery system is not labeled in accordance with rules adopted by the authority.

(e) To distribute, sell or allow to be sold an inhalant delivery system if the inhalant delivery system is not packaged in child-resistant safety packaging, as required by the authority by rule.

(f) To distribute, sell or allow to be sold an inhalant delivery system if the inhalant delivery system is packaged in a manner that is attractive to minors, as determined by the authority by rule.

(g) To distribute, sell or allow to be sold cigarettes in any form other than a sealed package.

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

NOTICE

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

(4) Rules adopted under subsection (2)(d), (e) and (f) of this section must be consistent with any regulation adopted by the United States Food and Drug Administration related to labeling or packaging requirements for inhalant delivery systems.

SECTION 2. ORS 431.845 is amended to read:

431.845. [(1) The civil penalty for violation of any provision of ORS 431.840 shall not be less than \$100 nor exceed \$500.]

(1) The Oregon Health Authority may impose a civil penalty for each violation of ORS 431.840. A civil penalty imposed under this section may not be less than \$250 or more than \$1,000.

(2)(a) [The] Amounts collected under subsection (1) of this section shall be deposited [to the credit of the General Fund.] **in the Oregon Health Authority Fund established under ORS 413.101. Except as provided in paragraph (b) of this subsection, moneys deposited in the fund under this subsection are continuously appropriated to the authority for carrying out the duties, functions and powers of the authority under ORS 431.840 and 431.853.**

(b) **At the end of each biennium, the authority shall transfer the unobligated moneys collected under subsection (1) of this section remaining in the fund to the Tobacco Use Reduction Account established under ORS 431.832.**

SECTION 3. ORS 431.853 is amended to read:

431.853. (1) The Oregon Health Authority shall:

(a) Coordinate with law enforcement agencies to conduct random, unannounced inspections of [Oregon] wholesalers and retailers of tobacco products **or inhalant delivery systems** to [insure] **ensure** compliance with [Oregon] **the laws of this state** designed to discourage the use of tobacco **products and inhalant delivery systems** by minors, including ORS 163.575, 163.580, 167.400, 167.402 and 431.840; and

(b) Submit a report describing:

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

(B) The extent of success achieved in reducing the availability of tobacco products **and inhalant delivery systems** to minors; and

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

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

(a) Only in areas open to the public;

(b) Only during **the** hours that tobacco products **or inhalant delivery systems** are [sold or] distributed **or sold**; and

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

(3) **The Oregon Liquor Control Commission, pursuant to an agreement or otherwise, may assist the authority with the authority's duties under subsection (1)(a) of this section and the enforcement of ORS 431.840.**

SECTION 4. (1) **Except as provided by subsection (2) of this section, the amendments to ORS 431.840, 431.845 and 431.853 by sections 1 to 3 of this 2015 Act apply to conduct occurring on or after the effective date of this 2015 Act.**

(2) **The amendments to ORS 431.840 (3) by section 1 of this 2015 Act apply to notices posted on or after January 1, 2016.**

ENDANGERING THE WELFARE OF A MINOR

SECTION 5. ORS 163.575, as amended by section 1, chapter 20, Oregon Laws 2014, is amended to read:

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

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

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

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

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

(e) **Distributes, sells or allows to be sold an inhalant delivery system, as defined in ORS 431.840, to a person under 18 years of age; or**

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

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

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

(C) Bongs;

(D) Chillums;

(E) Ice pipes or chillers;

(F) Cigarette rolling papers and rolling machines; and

(G) Cocaine free basing kits.

(2) Endangering the welfare of a minor by violation of subsection (1)(a), (b) or (c) of this section, **by violation of subsection (1)(e) of this section if the inhalant delivery system contains or is a substance containing a cannabinoid** or by violation of subsection [(1)(e)] (1)(f) of this section involving other than a device for smoking tobacco, is a Class A misdemeanor.

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

(4) Endangering the welfare of a minor by violation of subsection (1)(e) of this section if the inhalant delivery system does not contain or is not a substance containing a cannabinoid is a Class A violation.

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

SECTION 6. The amendments to ORS 163.575 by section 5 of this 2015 Act apply to conduct occurring on or after the effective date of this 2015 Act.

VIOLATIONS AND REGULATION

SECTION 7. ORS 167.400 is amended to read:

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

(a) **“Inhalant delivery system” has the meaning given that term in ORS 431.840.**

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

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

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

SECTION 8. ORS 167.401 is amended to read:

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

(b) A person under 18 years of age may not possess tobacco products or an inhalant delivery system unless the person is in a private residence accompanied by the parent or guardian of the person and the parent or guardian has consented to the person possessing tobacco products or the inhalant delivery system.

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

(3)(a) In lieu of any other penalty established by law, a person who is convicted for the first time of a violation of subsection (1) of this section may be ordered to participate in [a tobacco] **an education program about using tobacco products or inhalant delivery systems** or a [tobacco use] cessation program **for users of tobacco products or inhalant delivery systems** or to perform community service related to diseases associated with [consumption of tobacco products] **using tobacco products or inhalant delivery systems. Except as provided in paragraph (b) of this subsection, a person may be ordered to participate in [such] a program described in this paragraph only once.**

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

(4) A [minor] **person under 18 years of age who is** acting under the supervision of an adult may purchase, attempt to purchase or acquire tobacco products **or an inhalant delivery system** for the purpose of testing compliance with a federal law, state [statute] **law**, local law or retailer management policy limiting or regulating the delivery of tobacco products **or inhalant delivery systems** to minors.

SECTION 9. ORS 167.402 is amended to read:

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

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

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

SECTION 10. ORS 167.404 is amended to read:

167.404. Cities and counties by ordinance or resolution [shall] **may** not regulate vending machines that dispense tobacco products[, as defined in ORS 431.840, in any form] **or inhalant delivery systems** and that are in any manner accessible to minors.

SECTION 11. ORS 167.407 is amended to read:

167.407. (1) A person having authority over the location of [cigarettes and other] tobacco products **or inhalant delivery systems** in a retail store may not locate [cigarettes or other] **the** tobacco products **or inhalant delivery systems** in a location in the store where the [cigarettes or other] tobacco products **or inhalant delivery systems** are accessible by store customers without assistance by a store employee.

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

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

SECTION 12. ORS 811.193 is amended to read:

811.193. (1)(a) A person commits the offense of smoking, **aerosolizing or vaporizing** in a motor vehicle if the person smokes **or uses an inhalant delivery system** in a motor vehicle while a person under 18 years of age is in the motor vehicle.

(b) As used in this subsection[,]:

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

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

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

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

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

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

SECTION 13. The amendments to ORS 167.400, 167.401, 167.402, 167.404, 167.407 and 811.193 by sections 7 to 12 of this 2015 Act apply to conduct occurring on or after the effective date of this 2015 Act.

OREGON INDOOR CLEAN AIR ACT

SECTION 14. ORS 433.835 is amended to read:

433.835. As used in ORS 433.835 to 433.875:

(1) “Cigar bar” means a business that:

(a) Has on-site sales of cigars as defined in ORS 323.500;

(b) Has a humidor on the premises;

(c) Allows the smoking of cigars on the premises but prohibits the smoking [*of all other tobacco products in any form including, but not limited to, loose tobacco, pipe tobacco, cigarettes as defined in ORS 323.010 and cigarillos as defined by the Oregon Health Authority by rule*], **aerosolizing or vaporizing of other inhalants on the premises;**

(d) Has been issued and operates under a full on-premises sales license issued under ORS 471.175;

(e) Prohibits persons under 21 years of age from entering the premises and posts notice of the prohibition;

(f) Does not offer video lottery games as authorized under ORS 461.217;

(g) Has a maximum seating capacity of 40 persons;

(h) Has a ventilation system that exhausts smoke from the business and is designed and terminated in accordance with the state building code standards for the occupancy classification in use; and

(i) Requires all employees to read and sign a document that explains the dangers of exposure to secondhand smoke.

[(2) “*Enclosed area*” means all space between a floor and a ceiling that is enclosed on three or more sides by permanent or temporary walls or windows, exclusive of doors or passageways, that extend from the floor to the ceiling.]

(2) **“Inhalant” means nicotine, a cannabinoid or any other substance that:**

(a) **Is in a form that allows the nicotine, cannabinoid or substance to be delivered into a person’s respiratory system;**

(b) **Is inhaled for the purpose of delivering the nicotine, cannabinoid or other substance into a person’s respiratory system; and**

(c)(A) **Is not approved by, or emitted by a device approved by, the United States Food and Drug Administration for a therapeutic purpose; or**

(B) **If approved by, or emitted by a device approved by, the United States Food and Drug Administration for a therapeutic purpose, is not marketed and sold solely for that purpose.**

(3)(a) "Place of employment" means *[every]* **an** enclosed area under the control of a public or private employer *[that employees frequent during the course of employment]*, including *[but not limited to]* work areas, employee lounges, vehicles that are operated in the course of an employer's business **and** that are not operated exclusively by one employee, rest rooms, conference rooms, classrooms, cafeterias, hallways, meeting rooms, elevators and stairways.

(b) "Place of employment" does not include a private residence unless it is used as a child care facility as defined in ORS 329A.250 or a facility providing adult day care as defined in ORS 410.490.

(4) "Public place" means *[any]* **an** enclosed area open to the public.

(5) "Smoke shop" means a business that is certified with the **Oregon Health** Authority as a smoke shop pursuant to the rules adopted under ORS 433.847.

(6) "Smoking instrument" means any cigar, cigarette, pipe or other *[smoking equipment]* **instrument used to smoke tobacco, marijuana or any other inhalant.**

SECTION 15. ORS 433.840 is amended to read:

433.840. The people of Oregon find that because exposure to secondhand smoke, **certain exhaled small particulate matter or other exhaled toxins** is known to cause cancer and other chronic diseases such as heart disease, asthma and bronchitis, it is necessary to reduce exposure to *[tobacco]* **such** smoke, **matter or toxins** by prohibiting **the** smoking, **aerosolizing or vaporizing of inhalants** in all public places and places of employment.

SECTION 16. ORS 433.845 is amended to read:

433.845. (1) A person may not smoke, **aerosolize or vaporize an inhalant** or carry *[any]* **a** lighted smoking instrument in a public place or place of employment except *[in areas designated as smoking areas pursuant to]* **as provided in** ORS 433.850.

(2) A person may not smoke, **aerosolize or vaporize an inhalant** or carry *[any]* **a** lighted smoking instrument within 10 feet of the following parts of public places or places of employment:

- (a) Entrances;
- (b) Exits;
- (c) Windows that open; and
- (d) Ventilation intakes that serve an enclosed area.

(3) A person may not smoke, **aerosolize or vaporize an inhalant** or carry *[any]* **a** lighted smoking instrument in a room during the time that jurors are required to use the room.

SECTION 17. ORS 433.847 is amended to read:

433.847. (1) The Oregon Health Authority shall adopt rules establishing a certification system for smoke shops. **In adopting such rules, the authority shall prohibit the smoking, aerosolizing or vaporizing of inhalants that are not tobacco products in smoke shops.**

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

(a)(A) Is primarily engaged in the sale, **for off-premises consumption or use**, of tobacco products and smoking instruments *[intended for off-premises consumption or use]* **used to smoke tobacco products**, with at least 75 percent of the gross revenues of the business resulting from such sales;

(B) Prohibits persons under 18 years of age from entering the premises;

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

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

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

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

(G) Allows **the** smoking **of tobacco product samples** only for the purpose of *[sampling tobacco products for]* making retail purchase decisions;

(b) On December 31, 2008:

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

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

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

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

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

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

[(D)] (B) Allows **the** smoking of cigarettes only if at least 75 percent of the gross revenues of the business results from the sale of cigarettes.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 18. ORS 433.850 is amended to read:

433.850. (1) An employer:

(a) Shall provide **for employees** a place of employment that is free of *[tobacco smoke for all employees.]* **all smoke, aerosols and vapors containing inhalants; and**

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

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

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

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

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

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

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

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

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

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

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

SECTION 19. ORS 433.855 is amended to read:

433.855. (1) The Oregon Health Authority, in accordance with the provisions of ORS chapter 183:

(a) Shall adopt rules necessary to implement the provisions of ORS 433.835 to 433.875 *[and 433.990 (5)]*;

(b) *[Shall be]* **Is** responsible for **ensuring** compliance with *[such rules]* **ORS 433.835 to 433.875 and rules adopted under ORS 433.835 to 433.875**; and

(c) May impose a civil penalty not to exceed \$500 per day for each violation of *[a rule of the authority applicable to]* ORS 433.845 or 433.850*[, to]* **or a rule adopted under ORS 433.835 to 433.875. Penalties imposed under this paragraph must** be collected in the manner provided in ORS 441.705 to 441.745. All *[penalties]* **moneys recovered under this paragraph** shall be paid into the State Treasury and credited to:

(A) The Tobacco Use Reduction Account established under ORS 431.832*[.]*, **if the violation concerns nicotine; or**

(B) **The Oregon Health Authority Fund established under ORS 413.101, if the violation concerns an inhalant other than nicotine.**

(2) In carrying out its duties under this section, the authority is not authorized to require any changes in ventilation or barriers in *[any]* **a** public place or place of employment. *[However, nothing in]* This subsection *[is intended to]* **does not** limit the power of the authority to *[impose any]* **enforce the requirements [under] of** any other provision of law.

(3) In public places *[which]* **that** the authority regularly inspects, the authority shall check for compliance with the provisions of ORS 433.835 to 433.875 *[and 433.990 (5)]*. In other public places

and places of employment, the authority shall respond [*in writing or orally by telephone*] to complaints, notifying the proprietor or person in charge of [*responsibilities of the proprietor or person in charge under ORS 433.835 to 433.875 and 433.990 (5)*] **the requirements of ORS 433.835 to 433.875**. If repeated complaints are received, the authority may take appropriate action to ensure compliance.

(4) When a county has [*received delegation*] **assumed responsibility** of the duties and responsibilities under ORS 446.425 and 448.100, or contracted with the authority under ORS 190.110, the county [*shall be*] **is** responsible for enforcing the provisions of ORS 433.835 to 433.875 [*and 433.990 (5)*] and [*shall have*] **has** the same enforcement power as the authority.

SECTION 20. ORS 433.870 is amended to read:

433.870. [*The rules authorized by ORS 433.855 and 433.860*] **ORS 433.835 to 433.875 and rules adopted under ORS 433.835 to 433.875** are in addition to and not in lieu of any other law regulating **the smoking, aerosolizing or vaporizing of inhalants**.

SECTION 21. The amendments to ORS 433.835, 433.840, 433.845, 433.847, 433.850, 433.855 and 433.870 by sections 14 to 20 of this 2015 Act apply to conduct occurring on or after the operative date specified in section 36 of this 2015 Act.

AMENDMENTS TO OTHER STATUTES

SECTION 22. ORS 339.883 is amended to read:

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

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

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

(b) **“Inhalant delivery system” has the meaning given that term in ORS 431.840.**

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

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

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

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

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

SECTION 23. ORS 441.815 is amended to read:

441.815. (1) **As used in this section,:**

(a) **“Hospital” has the meaning given [the] that term in ORS 442.015.**

(b) **“Inhalant delivery system” has the meaning given that term in ORS 431.840.**

(2) The administrator or person in charge of a hospital may not permit a person to smoke tobacco **or use an inhalant delivery system in a manner that creates an aerosol or vapor:**

(a) In the hospital; or

(b) Within 10 feet of a doorway, open window or ventilation intake of the hospital.

(3) The Director of the Oregon Health Authority may impose a civil penalty of not more than \$500 per day on a person for violation of subsection (2) of this section. Civil penalties imposed against a person under this subsection may not exceed \$2,000 in any 30-day period. Civil penalties imposed under this subsection shall be imposed in the manner provided by ORS 183.745.

(4) The Oregon Health Authority may adopt rules necessary for the administration of this section.

SECTION 24. The amendments to ORS 339.883 and 441.815 by sections 22 and 23 of this 2015 Act apply to conduct occurring on or after the effective date of this 2015 Act.

AFFIRMATIVE DEFENSES TO IDENTITY CRIMES

SECTION 25. ORS 165.800 is amended to read:

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

(2) Identity theft is a Class C felony.

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

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

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

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

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

(B) Benefit based on age.

(4) As used in this section:

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

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

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

(B) A person's driving privileges;

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

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

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

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

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

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

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

(J) A person's electronic mail name, electronic mail signature, electronic mail address or electronic mail account;

(K) A person's photograph;

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

(M) A person's personal identification number.

SECTION 26. ORS 165.813 is amended to read:

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

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

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

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

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

SECTION 27. ORS 807.500 is amended to read:

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

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

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

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

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

SECTION 28. The amendments to ORS 165.800, 165.813 and 807.500 by sections 25 to 27 of this 2015 Act apply to conduct occurring before, on or after the effective date of this 2015 Act.

REPORT

SECTION 29. (1) After July 1, 2018, the Oregon Health Authority shall make a report on the laws and rules of this state related to the regulation of inhalant delivery systems, as defined in ORS 431.840, and inhalants, as defined in ORS 433.835, that are used with inhalant delivery systems. The authority shall include in the report:

(a) A review of medical research conducted on inhalant delivery systems and of health impacts associated with the use of inhalant delivery systems; and

(b) A review of any federal law or regulation related to regulating inhalant delivery systems, including any applicable regulations related to the labeling and packaging of inhalant delivery systems adopted by the United States Food and Drug Administration.

(2) The authority shall review the consistency of the laws and rules of this state with respect to those federal laws and regulations and determine where the laws and rules of this state are inconsistent or duplicative.

(3) For the purpose of facilitating review by the Legislative Assembly of the laws and rules of this state related to the regulation of inhalant delivery systems and inhalants that are used with inhalant delivery systems, the authority shall report the authority's findings:

(a) To the Legislative Assembly in the manner required by ORS 192.245 on or before February 1, 2019; and

(b) To the committees of the Legislative Assembly related to health during the 2019 regular session of the Legislative Assembly.

REPEALS

SECTION 30. ORS 192.710, 192.990, 243.345 and 243.350 are repealed.

SECTION 31. Section 29 of this 2015 Act is repealed on January 2, 2020.

CONFORMING AMENDMENTS

SECTION 32. ORS 163.580 is amended to read:

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

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

SECTION 33. ORS 421.352 is amended to read:

421.352. (1) The provisions of ORS chapters 182, 183, 240, 270, 273, 276, 279A, 279B, 279C, 283, 291, 292 and 293 and ORS 35.550 to 35.575, 183.710 to 183.725, 183.745, 183.750, 184.345, 190.430, 190.490, 200.035, 236.605 to 236.640, 243.303, 243.305, 243.315, 243.325 to 243.335, ~~[243.345, 243.350,]~~ 243.696, 279.835 to 279.855, 282.010 to 282.150, 283.085 to 283.092 and 656.017 (2) do not apply to Oregon Corrections Enterprises.

(2) Oregon Corrections Enterprises is not subject to any provision of law enacted after December 2, 1999, that governs state agencies generally unless the provision specifically provides that it applies to Oregon Corrections Enterprises.

SECTION 34. ORS 565.456 is amended to read:

565.456. (1) The State Fair Council is established as a public corporation and shall exercise and carry out all powers, rights and privileges that are expressly conferred upon the council, are implied by law or are incident to such powers, rights and privileges. The council is an independent public corporation with a statewide mission and purposes and without territorial boundaries. The council is a governmental entity performing governmental functions and exercising governmental powers but, except as otherwise provided by law, is not a unit of local or municipal government or a state agency for purposes of state statutes or constitutional provisions.

(2) Unless otherwise provided by law, the council is not subject to ORS chapter 182, 183, 240, 270, 273, 276, 279A, 279B, 279C, 283, 291, 292 or 293 or ORS 35.550 to 35.575, 183.710 to 183.725, 183.745, 183.750, 190.430, 190.490, 200.035, 236.605 to 236.640, 243.303, 243.305, 243.315, 243.325 to 243.335, ~~[243.345, 243.350,]~~ 243.696, 279.835 to 279.855, 282.010 to 282.150, 291.050 to 291.060 or 656.017 (2).

(3) The mission and purposes of the council are:

(a) To conduct a state fair to be known as the Oregon State Fair for the education and entertainment of Oregon residents and for the promotion, preservation, growth and prosperity of the industries and interests traditionally represented in state fair activities such as agriculture, stock raising, horticulture, youth group involvement in agricultural, stock-raising and horticultural activities, viticulture, manufacturing, metal fabrication, technology and artistic, creative and cultural pursuits; and

(b) To promote Oregon tourism related to the Oregon State Fair and fairground properties and facilities, and promote and further the preservation, growth and prosperity of other industries and activities important to the state economy by conducting the Oregon State Fair and using fairground properties and facilities.

(4) To help fulfill the council's mission and purposes, the council shall encourage residents in all parts of this state to participate in or attend the Oregon State Fair. The council may take any necessary or expedient actions to ensure that fairground properties and facilities are adequate and in good repair. The council shall operate the fairground properties and facilities as an exposition center, encourage the full utilization of the properties and facilities for revenue generation and make expenditures for the construction, repair, remodeling, maintenance, insurance and other needs of the fairground properties and facilities. Subject to any limitations established under this chapter, the council may take other actions the council deems necessary or expedient to ensure the financial viability of the Oregon State Fair and the exposition center or to promote the Oregon State Fair, Oregon tourism and other industries related to fairground business operations or fairground properties and facilities.

RULEMAKING DATES

SECTION 35. (1)(a) Except as provided by paragraph (b) of this subsection, the Oregon Health Authority shall adopt the rules required by the amendments to ORS 431.840 and 431.853 by sections 1 and 3 of this 2015 Act no later than January 1, 2016.

(b) The authority shall adopt the rules required by the amendments to ORS 431.840 (2)(d), (e) and (f) by section 1 of this 2015 Act no later than July 1, 2016.

(2) A facility, as defined in ORS 339.883, shall amend the policy described in ORS 339.883 to account for the amendments to ORS 339.883 by section 22 of this 2015 Act no later than January 1, 2016.

OPERATIVE DATE

SECTION 36. (1) The amendments to statutes by sections 14 to 20 of this 2015 Act become operative on January 1, 2016.

(2) The Oregon Health Authority may take any action before the operative date specified in subsection (1) of this section that is necessary to enable the authority to exercise, on and after the operative date specified in subsection (1) of this section, all the duties, powers and functions conferred on the authority by the amendments to statutes by sections 14 to 20 of this 2015 Act.

CAPTIONS

SECTION 37. The unit captions used in this 2015 Act are provided only for the convenience of the reader and do not become part of the statutory law of this state or express any legislative intent in the enactment of this 2015 Act.

EMERGENCY CLAUSE

SECTION 38. This 2015 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2015 Act takes effect on its passage.

Passed by House March 2, 2015

Repassed by House May 14, 2015

.....
Timothy G. Sekerak, Chief Clerk of House

.....
Tina Kotek, Speaker of House

Passed by Senate May 11, 2015

.....
Peter Courtney, President of Senate

Received by Governor:

.....M.,....., 2015

Approved:

.....M.,....., 2015

.....
Kate Brown, Governor

Filed in Office of Secretary of State:

.....M.,....., 2015

.....
Jeanne P. Atkins, Secretary of State