

House Bill 2024

Sponsored by Representative GREENLICK, Senator MONNES ANDERSON (Presession filed.)

SUMMARY

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

Imposes tax on inhalant-form nicotine at point of retail sale, based on percentage of wholesale price. Applies to inhalant-form nicotine sold after January 1, 2018.

Creates offense of selling tobacco products or inhalant delivery systems to person under 21 years of age. Punishes violation by fine. Raises minimum age at which person may purchase or possess tobacco products and inhalant delivery systems to 21 years of age. Adjusts other requirements related to tobacco products and inhalant delivery systems to reflect raised minimum age. Applies to conduct occurring on or after January 1, 2018.

Provides that person may not make retail sale of tobacco product or inhalant delivery system at or from premises located in this state unless person sells tobacco product or inhalant delivery system at or from premises for which license has been issued. Establishes within Department of Revenue licensing program. Becomes operative January 1, 2018.

Increases cigarette tax. Applies increase to cigarettes distributed on or after January 1, 2018, and to existing inventories of cigarettes not yet acquired by consumers as of January 1, 2018. Removes per-unit limitation on cigar tax.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to nicotine; creating new provisions; amending ORS 163.575, 163.580, 165.800, 165.813,
3 167.402, 167.404, 167.407, 181A.335, 323.031, 323.457, 323.505, 323.709, 323.718, 339.257, 339.883,
4 431A.175, 431A.178, 431A.183, 433.847, 743B.013, 807.066, 807.500, 809.380, 809.423 and 811.193;
5 repealing ORS 167.400, 167.401, 181A.330 and 431A.180; prescribing an effective date; and pro-
6 viding for revenue raising that requires approval by a three-fifths majority.

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

TAXATION OF INHALANT-FORM NICOTINE

8
9 **APPLICABLE JANUARY 1, 2018**

SECTION 1. Definitions. As used in sections 1 to 13 of this 2017 Act:

10
11
12 **(1) "Consumer" means any person who purchases inhalant-form nicotine in this state for**
13 **the person's use or consumption or for any purpose other than reselling the inhalant-form**
14 **nicotine to another person.**

15
16 **(2) "Inhalant-form nicotine" means nicotine that:**

17 **(a) Is in a form that allows the nicotine to be delivered into a person's respiratory sys-**
18 **tem;**

19 **(b) Is inhaled for the purpose of delivering the nicotine into a person's respiratory sys-**
20 **tem; and**

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

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

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 (3) "Nicotine retailer" means any person:

2 (a) Who is engaged in the business of selling or otherwise dispensing inhalant-form
3 nicotine to consumers; or

4 (b) Who is required to be licensed under sections 42 to 54 of this 2017 Act.

5 (4) "Sale" means any transfer, exchange or barter, in any manner or by any means, for
6 a consideration, and includes and means all sales made by any person. It includes a gift by
7 a person engaged in the business of selling inhalant-form nicotine, for advertising, as a
8 means of evading the provisions of sections 1 to 13 of this 2017 Act, or for any other purpose.

9 (5) "Taxpayer" includes a nicotine retailer or other person required to collect a tax im-
10 posed under sections 1 to 13 of this 2017 Act.

11 (6) "Untaxed inhalant-form nicotine" means inhalant-form nicotine for which the tax re-
12 quired under sections 1 to 13 of this 2017 Act has not been paid.

13 (7) "Wholesale price" means the price paid for untaxed inhalant-form nicotine by a
14 nicotine retailer at the point of first sale in this state.

15 **SECTION 2. Imposition of tax on retail sale of inhalant-form nicotine.** (1) A tax is hereby
16 imposed upon the retail sale of inhalant-form nicotine in this state. The tax imposed by this
17 section is a direct tax on the consumer, for which payment upon retail sale is required. The
18 tax shall be collected at the point of sale of inhalant-form nicotine by a nicotine retailer at
19 the time at which the retail sale occurs.

20 (2) The tax imposed under this section shall be imposed at the rate of 90 percent of
21 wholesale price.

22 (3) If the tax imposed under this section does not equal an amount calculable to a whole
23 cent, the tax shall be equal to the next higher whole cent.

24 (4) Except as otherwise provided by the Department of Revenue by rule, the amount of
25 the tax shall be separately stated on an invoice, receipt or other similar document that the
26 nicotine retailer provides to the consumer at the time at which the retail sale occurs.

27 (5) A person may not knowingly sell, purchase, install, transfer or possess electronic
28 devices or software programs for the purposes of:

29 (a) Hiding or removing records of retail sales of inhalant-form nicotine; or

30 (b) Falsifying records of retail sales of inhalant-form nicotine.

31 (6) A nicotine retailer may not discount inhalant-form nicotine or offer inhalant-form
32 nicotine for free if the retail sale of the inhalant-form nicotine is made in conjunction with
33 the retail sale of any other item.

34 **SECTION 3. Collection of tax; refund.** (1) Except as otherwise provided in sections 1 to
35 13 of this 2017 Act, the tax imposed upon the consumer under section 2 of this 2017 Act shall
36 be collected at the point of sale and remitted by each nicotine retailer that engages in the
37 retail sale of inhalant-form nicotine. The tax is a tax upon the nicotine retailer that is re-
38 quired to collect the tax, and the nicotine retailer is a taxpayer.

39 (2) The nicotine retailer shall file a return with the Department of Revenue on or before
40 the last day of January, April, July and October of each year for the previous calendar
41 quarter.

42 (3) The nicotine retailer shall pay the tax to the department in the form and manner
43 prescribed by the department, but not later than with each quarterly return, without regard
44 to an extension granted under subsection (5) of this section.

45 (4) Nicotine retailers shall file the returns required under this section regardless of

1 whether any tax is owed.

2 (5) For good cause, the department may extend the time for filing a return under this
3 section. The extension may be granted at any time if a written request is filed with the de-
4 partment during or prior to the period for which the extension may be granted. The depart-
5 ment may not grant an extension of more than 30 days.

6 (6) Interest shall be added at the rate established under ORS 305.220 for each month, or
7 fraction of a month, from the time the return was originally required to be filed to the time
8 of payment.

9 (7) If a nicotine retailer fails to file a return or pay the tax as required by this section,
10 the department shall impose a penalty in the manner provided in ORS 314.400.

11 (8) Except as provided in subsections (9) and (10) of this section, the period prescribed
12 for the department to allow or make a refund of any overpayment of tax paid under sections
13 1 to 13 of this 2017 Act is as provided in ORS 314.415.

14 (9)(a) The department shall first apply any overpayment of tax by a nicotine retailer to
15 any tax imposed under sections 1 to 13 of this 2017 Act that is owed by the nicotine retailer.

16 (b) If after any offset against any delinquent amount the overpayment of tax remains
17 greater than \$1,000, the remaining refund shall be applied as a credit against the next sub-
18 sequent calendar quarter as an estimated payment.

19 (10) The department may not make a refund of, or credit, any overpayment of tax under
20 sections 1 to 13 of this 2017 Act that was credited to the account of a nicotine retailer under
21 subsection (9)(b) of this section if the return for that tax period is not filed within three
22 years after the due date of that return.

23 **SECTION 4. Enforcement.** (1) Every person who collects any amount under section 3 of
24 this 2017 Act shall hold the same in trust for the State of Oregon and for the payment
25 thereof to the Department of Revenue in the manner and at the time provided in section 3
26 of this 2017 Act.

27 (2) At any time a nicotine retailer fails to remit any amount collected, the department
28 may enforce collection by the issuance of a distraint warrant for the collection of the delin-
29 quent amount and all penalties, interest and collection charges accrued thereon. The warrant
30 shall be issued, recorded and proceeded upon in the same manner and shall have the same
31 force and effect as is prescribed with respect to warrants for the collection of delinquent
32 income taxes.

33 (3)(a) In the case of a nicotine retailer that is assessed pursuant to the provisions of ORS
34 305.265 (12) and 314.407 (1), the department may issue a notice of liability to any officer,
35 employee or member of the nicotine retailer within three years from the time of assessment.
36 Within 30 days from the date the notice of liability is mailed to the officer, employee or
37 member, the officer, employee or member shall pay the assessment, plus penalties and in-
38 terest, or advise the department in writing of objections to the liability and, if desired, re-
39 quest a conference. A conference shall be governed by the provisions of ORS 305.265
40 pertaining to a conference requested from a notice of deficiency.

41 (b) After a conference or, if no conference is requested, a determination of the issues
42 considering the written objections, the department shall mail the officer, employee or mem-
43 ber a conference letter affirming, canceling or adjusting the notice of liability. Within 90 days
44 from the date the conference letter is mailed to the officer, employee or member, the officer,
45 employee or member shall pay the assessment, plus penalties and interest, or appeal to the

1 Oregon Tax Court in the manner provided for an appeal from a notice of assessment.

2 (c) If the department does not receive payment or written objection to the notice of li-
3 ability within 30 days after the notice of liability was mailed, the notice of liability becomes
4 final. In that event, the officer, employee or member may appeal the notice of liability to the
5 tax court within 90 days after it became final in the manner provided for an appeal from a
6 notice of assessment.

7 (4)(a) In the case of a failure to file a return on the due date, governed by the provisions
8 of ORS 305.265 (10) and 314.400, the department, in addition to any action described in the
9 provisions of ORS 305.265 (10) and 314.400, may send notices of determination and assessment
10 to any officer, employee or member any time within three years after the assessment. The
11 time of assessment against the officer, employee or member is 30 days after the date the
12 notice of determination and assessment is mailed. Within 30 days from the date the notice
13 of determination and assessment is mailed to the officer, employee or member, the officer,
14 employee or member shall pay the assessment, plus penalties and interest, or advise the
15 department in writing of objections to the assessment and, if desired, request a conference.
16 A conference shall be governed by the provisions of ORS 305.265 pertaining to a conference
17 requested from a notice of deficiency.

18 (b) After a conference or, if no conference is requested, a determination of the issues
19 considering the written objections, the department shall mail the officer, employee or mem-
20 ber a conference letter affirming, canceling or adjusting the notice of determination and as-
21 sessment. Within 90 days from the date the conference letter is mailed to the officer,
22 employee or member, the officer, employee or member shall pay the assessment, plus pen-
23 alties and interest, or appeal in the manner provided for an appeal from a notice of assess-
24 ment.

25 (c) If the department does not receive payment or written objection to the notice of de-
26 termination and assessment within 30 days after the notice of determination and assessment
27 was mailed, the notice of determination and assessment becomes final. In that event, the
28 officer, employee or member may appeal the notice of determination and assessment to the
29 tax court within 90 days after it became final in the manner provided for an appeal from a
30 notice of assessment.

31 (5)(a) More than one officer or employee of a corporation may be held jointly and se-
32 verally liable for payment of taxes.

33 (b) Notwithstanding the confidentiality provisions of section 12 of this 2017 Act, if more
34 than one officer or employee of a corporation may be held jointly and severally liable for
35 payment of taxes, the department may require any or all of the officers, members or em-
36 ployees who may be held liable to appear before the department for a joint determination of
37 liability. The department shall notify each officer, member or employee of the time and place
38 set for the determination of liability.

39 (c) Each person notified of a joint determination under this subsection shall appear and
40 present such information as is necessary to establish that person's liability or nonliability
41 for payment of taxes to the department. If a person who was notified fails to appear, the
42 department shall make its determination on the basis of all the information and evidence
43 presented. The department's determination is binding on all persons notified and required to
44 appear under this subsection.

45 (d)(A) If an appeal is taken to the tax court pursuant to section 12 of this 2017 Act by

1 any person determined to be liable for unpaid taxes under this subsection, each person re-
 2 quired to appear before the department under this subsection shall be impleaded by the
 3 plaintiff. The department may implead any officer, employee or member who may be held
 4 jointly and severally liable for the payment of taxes. Each person impleaded under this par-
 5 agraph shall be made a party to the action before the tax court and shall make available to
 6 the tax court the information that was presented before the department, as well as other
 7 information that may be presented to the tax court.

8 (B) The tax court may determine that one or more persons impleaded under this para-
 9 graph are liable for unpaid taxes without regard to any earlier determination by the depart-
 10 ment that an impleaded person was not liable for unpaid taxes.

11 (C) If a person required to appear before the tax court under this subsection fails or re-
 12 fuses to appear or bring such information in part or in whole, or is outside the jurisdiction
 13 of the tax court, the tax court shall make its determination on the basis of all the evidence
 14 introduced. Notwithstanding section 12 of this 2017 Act, the evidence constitutes a public
 15 record and shall be available to the parties and the tax court. The determination of the tax
 16 court is binding on all persons made parties to the action under this subsection.

17 (e) This section may not be construed to preclude a determination by the department or
 18 the tax court that more than one officer, employee or member is jointly and severally liable
 19 for unpaid taxes.

20 **SECTION 5. Duty to keep records.** (1) A nicotine retailer shall keep receipts, invoices and
 21 other pertinent records related to retail sales of inhalant-form nicotine in the form required
 22 by the Department of Revenue. Each record shall be preserved for five years from the time
 23 to which the record relates, or for as long as the nicotine retailer retains the inhalant-form
 24 nicotine to which the record relates, whichever is later. During the retention period and at
 25 any time prior to the destruction of records, the department may give written notice to the
 26 nicotine retailer not to destroy records described in the notice without written permission
 27 of the department. Notwithstanding any other provision of law, the department shall pre-
 28 serve reports and returns filed with the department for at least five years.

29 (2) The department or its authorized representative, upon oral or written demand, may
 30 make examinations of the books, papers, records and equipment of persons making retail
 31 sales of inhalant-form nicotine and any other investigations the department deems necessary
 32 to carry out the provisions of sections 1 to 13 of this 2017 Act.

33 **SECTION 6. Authority to require production of records.** (1) The Department of Revenue
 34 has authority, by order or subpoena to be served with the same force and effect and in the
 35 same manner as a subpoena is served in a civil action in the circuit court, or the Oregon
 36 Tax Court, to require the production at any time and place the department designates of any
 37 books, papers, accounts or other information necessary to carry out sections 1 to 13 of this
 38 2017 Act. The department may require the attendance of any person having knowledge in the
 39 premises, and may take testimony and require proof material for the information, with
 40 power to administer oaths to the person.

41 (2) If a person fails to comply with a subpoena or order of the department or to produce
 42 or permit the examination or inspection of any books, papers, records and equipment perti-
 43 nent to an investigation or inquiry under sections 1 to 13 of this 2017 Act, or to testify to
 44 any matter regarding which the person is lawfully interrogated, the department may apply
 45 to the Oregon Tax Court or to the circuit court of the county in which the person resides

1 or where the person is for an order to the person to attend and testify, or otherwise to
 2 comply with the demand or request of the department. The department shall apply to the
 3 court by ex parte motion, upon which the court shall make an order requiring the person
 4 against whom the motion is directed to comply with the request or demand of the depart-
 5 ment within 10 days after the service of the order, or within the additional time granted by
 6 the court, or to justify the failure within that time. The order shall be served upon the per-
 7 son to whom it is directed in the manner required by this state for service of process, which
 8 service is required to confer jurisdiction upon the court. Failure to obey any order issued
 9 by the court under this section is contempt of court. The remedy provided by this section is
 10 in addition to other remedies, civil or criminal, existing under the tax laws or other laws of
 11 this state.

12 **SECTION 7. Disclosure of information.** (1) Notwithstanding the confidentiality provisions
 13 of section 12 of this 2017 Act, the Department of Revenue may disclose information received
 14 under sections 1 to 13 of this 2017 Act to the Oregon Health Authority to carry out the
 15 provisions of ORS 181A.335, 431A.175 and 433.847 and sections 16, 17, 18 and 19 of this 2017
 16 Act.

17 (2) The authority may disclose information obtained pursuant to ORS 181A.335, 431A.175
 18 and 433.847 and sections 16, 17, 18 and 19 of this 2017 Act to the department for the purpose
 19 of carrying out the provisions of sections 1 to 13 of this 2017 Act, provided that the authority
 20 does not disclose personally identifiable information.

21 **SECTION 8. Right to appeal.** Except as otherwise provided in sections 1 to 13 of this 2017
 22 Act, a person aggrieved by an act or determination of the Department of Revenue or its
 23 authorized agent under sections 1 to 13 of this 2017 Act may appeal, within 90 days after the
 24 act or determination, to the Oregon Tax Court in the manner provided in ORS 305.404 to
 25 305.560. These appeal rights are the exclusive remedy available to determine the person's li-
 26 ability for the tax imposed under sections 1 to 13 of this 2017 Act.

27 **SECTION 9. Duty to return excess tax collected.** (1)(a) When an amount represented by
 28 a nicotine retailer at retail to a consumer as constituting the tax imposed under sections 1
 29 to 13 of this 2017 Act is computed upon an amount that is not taxable or is in excess of the
 30 taxable amount and is actually paid by the consumer to the nicotine retailer, the excess tax
 31 paid shall be returned by the nicotine retailer to the consumer upon written notification by
 32 the Department of Revenue or the consumer.

33 (b) The written notification must contain information necessary to determine the validity
 34 of the consumer's claim.

35 (2) If the nicotine retailer does not return the excess tax within 60 days after mailing of
 36 the written notification required under subsection (1) of this section, the consumer may ap-
 37 peal to the department for a refund of the amount of the excess tax, in the manner and
 38 within the time allowed under rules adopted by the department.

39 (3) If excess tax is returned to the consumer by the department, the department may
 40 issue a notice of deficiency for the excess tax to the nicotine retailer in the manner provided
 41 under ORS 305.265.

42 **SECTION 10. Payment of expenses.** For the purpose of compensating nicotine retailers
 43 for expenses incurred in collecting the tax imposed under section 2 of this 2017 Act, each
 44 nicotine retailer is permitted to deduct and retain two percent of the amount of taxes that
 45 are collected by the nicotine retailer from all retail sales of inhalant-form nicotine conducted

1 by the nicotine retailer.

2 **SECTION 11. Duties and powers of Department of Revenue; interagency cooperation.** (1)

3 The Department of Revenue shall administer and enforce sections 1 to 13 of this 2017 Act.
4 The department is authorized to establish rules and procedures for the implementation and
5 enforcement of sections 1 to 13 of this 2017 Act that are consistent with sections 1 to 13 of
6 this 2017 Act and that the department considers necessary and appropriate to administer and
7 enforce sections 1 to 13 of this 2017 Act.

8 (2) The Oregon Health Authority shall enter into an agreement with the department for
9 the purpose of administering and enforcing those provisions of sections 1 to 13 of this 2017
10 Act, and rules or procedures established for the purpose of implementing and enforcing
11 sections 1 to 13 of this 2017 Act, that the authority and the department determine are nec-
12 essary for the effective and efficient administration, implementation and enforcement of
13 sections 1 to 13 of this 2017 Act.

14 **SECTION 12. Application of tax laws.** Except as otherwise provided in sections 1 to 13
15 of this 2017 Act or where the context requires otherwise, the provisions of ORS chapters 305
16 and 314 as to the audit and examination of returns, periods of limitation, determination of
17 and notices of deficiencies, assessments, collections, liens, delinquencies, claims for refund
18 and refunds, conferences, appeals to the Oregon Tax Court, stays of collection pending ap-
19 peal, confidentiality of returns and the penalties relative thereto, and the procedures relating
20 thereto, apply to the determinations of taxes, penalties and interest under sections 1 to 13
21 of this 2017 Act.

22 **SECTION 13. Disposition of revenues.** (1) All moneys received by the Department of Re-
23 venue under sections 1 to 13 of this 2017 Act shall be deposited in the State Treasury and
24 credited to a suspense account established under ORS 293.445. The department may pay ex-
25 penses for the administration and enforcement of sections 1 to 13 of this 2017 Act out of
26 moneys received from the tax imposed under section 2 of this 2017 Act. Amounts necessary
27 to pay administrative and enforcement expenses are continuously appropriated to the de-
28 partment from the suspense account.

29 (2) After the payment of administrative and enforcement expenses and refunds or credits
30 arising from erroneous overpayments, the department shall credit the balance of the moneys
31 received by the department under this section to the General Fund.

32
33 (Applicability)

34
35 **SECTION 14.** Sections 1 to 13 of this 2017 Act apply to inhalant-form nicotine sold on or
36 after January 1, 2018.

37
38 **VIOLATIONS OF AGE RESTRICTIONS**
39 **APPLICABLE JANUARY 1, 2018**
40

41 **SECTION 15. Definitions.** As used in ORS 167.402, 167.404 and 167.407 and sections 16, 17,
42 18 and 19 of this 2017 Act:

43 (1) "Inhalant delivery system" has the meaning given that term in ORS 431A.175.

44 (2) "Tobacco products" has the meaning given that term in ORS 431A.175.

45 **SECTION 16. Sales to minors; penalties.** (1) A person commits the offense of selling to-

1 **acco products or inhalant delivery systems to a person under 21 years of age upon the oc-**
 2 **currence of one of the following:**

3 (a) **The person knowingly distributes or sells, or allows to be sold, to a person under 21**
 4 **years of age, tobacco products;**

5 (b) **The person knowingly distributes or sells, or allows to be sold, to a person under 21**
 6 **years of age, an inhalant delivery system;**

7 (c) **If the person is a manager or other person who supervises the retail sale of tobacco**
 8 **products or inhalant delivery systems, the person is acting within the course and scope of**
 9 **the person’s employment and the person has supervisory authority over a person who vio-**
 10 **lates paragraph (a) or (b) of this subsection; or**

11 (d) **If the person is an owner of a business that sells tobacco products or inhalant deliv-**
 12 **ery systems at retail, a violation of paragraph (a) or (b) of this subsection occurs at the**
 13 **business.**

14 (2)(a) **Violation of subsection (1)(a) or (b) of this section is a specific fine violation**
 15 **punishable by a fine not to exceed \$50.**

16 (b) **Violation of subsection (1)(c) of this section is a specific fine violation punishable by**
 17 **a fine not to exceed:**

18 (A) **\$500 for the first or second violation occurring during a two-year period; or**

19 (B) **\$1,000 for the third or subsequent violation occurring during a two-year period.**

20 (c) **Violation of subsection (1)(d) of this section is a specific fine violation punishable by**
 21 **a fine not to exceed:**

22 (A) **\$1,000 for the first or second violation occurring during a two-year period; or**

23 (B) **\$5,000 for the third or subsequent violation occurring during a two year period.**

24 **SECTION 17. Display of sign. (1) A person who sells tobacco products or inhalant delivery**
 25 **systems shall display a sign clearly stating that the sale of the tobacco products or inhalant**
 26 **delivery systems to persons under 21 years of age is prohibited by law.**

27 (2) **Failure to display a sign required by this section is a Class A violation.**

28 **SECTION 18. Purchase by minor. (1) Except as provided in subsection (2) of this section,**
 29 **a person under 21 years of age may not purchase, attempt to purchase or possess tobacco**
 30 **products or an inhalant delivery system. If a law enforcement officer, or a teacher, employer**
 31 **or other individual with supervisory authority over the person, has probable cause to believe**
 32 **that the person is in violation of this section, the law enforcement officer, or the teacher,**
 33 **employer or other individual with supervisory authority over the person, shall confiscate the**
 34 **tobacco products or inhalant delivery system.**

35 (2) **A person under 21 years of age who is acting under the supervision of a person 21**
 36 **years of age or older may purchase or attempt to purchase tobacco products or an inhalant**
 37 **delivery system for the purpose of testing compliance with a federal law, state law, local law**
 38 **or retailer policy limiting or regulating the distribution or sale of tobacco products or**
 39 **inhalant delivery systems to persons who are under the legal minimum purchase age.**

40 **SECTION 19. Negligent omission included. For purposes of ORS 431A.175 and section 16**
 41 **of this 2017 Act, “allows to be sold” includes the negligent omission of an act by a manager**
 42 **or other person who supervises the retail sale of tobacco products or inhalant delivery sys-**
 43 **tems, the commission of which would have prevented the distribution or sale of the tobacco**
 44 **products or inhalant delivery system.**

45 **SECTION 20. ORS 167.402 is amended to read:**

1 167.402. (1) As used in this section **and ORS 167.404**, “vending machine” means a [*mechanical,*
2 *electronic or similar*] device that, upon the insertion of tokens, money or another form of payment,
3 dispenses tobacco products or inhalant delivery systems.

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

8 (3) A person who violates this section commits a Class B violation. Each day that the person
9 commits the violation constitutes a separate offense.

10 **SECTION 21.** ORS 167.404 is amended to read:

11 167.404. Cities and counties by ordinance or resolution may not regulate vending machines that
12 dispense tobacco products or inhalant delivery systems and that are in any manner accessible to
13 [*minors*] **persons under 21 years of age.**

14 **SECTION 22.** ORS 167.407 is amended to read:

15 167.407. (1) A person having authority over the location of tobacco products or inhalant delivery
16 systems in a retail store may not locate the tobacco products or inhalant delivery systems in a lo-
17 cation in the store where the tobacco products or inhalant delivery systems are accessible by store
18 customers without assistance by a store employee.

19 (2) Violation of this section is a Class B violation. Each day that the person commits the vio-
20 lation constitutes a separate offense.

21 (3) This section does not apply to a person if the location at which the tobacco products or
22 inhalant delivery systems are sold is a store or other establishment [*at which persons under 18 years*
23 *of age are prohibited*] **that prohibits persons under 21 years of age from entering the store or**
24 **establishment.**

25 **SECTION 23.** ORS 811.193 is amended to read:

26 811.193. [(1)(a)] (1) A person commits the offense of smoking, aerosolizing or vaporizing in a
27 motor vehicle if the person smokes or uses an inhalant delivery system in a motor vehicle while a
28 person under [*18*] **21** years of age is in the motor vehicle.

29 [(b)] (2) As used in this [*subsection*] **section:**

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

32 [(B)] (b) “Uses an inhalant delivery system” means to use an inhalant delivery system, as de-
33 fined in ORS 431A.175, in a manner that creates an aerosol or vapor.

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

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

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

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

40
41 **(Other Requirements)**

42
43 **SECTION 24.** ORS 431A.175 is amended to read:

44 431A.175. (1) As used in this section and ORS 431A.183:

45 (a)(A) “Inhalant delivery system” means:

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

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

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

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

10 (ii) Tobacco products.

11 (b) "Tobacco products" means:

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

17 (B) Cigarettes as defined in ORS 323.010 (1)[.]; **or**

18 (C) **A device that:**

19 (i) **Can be used to deliver tobacco products to a person using the device; and**

20 (ii) **Has not been approved by the United States Food and Drug Administration for sale**
21 **as a tobacco cessation product or for any other therapeutic purpose, if the product is mar-**
22 **keted and sold solely for the approved purpose.**

23 (2) It is unlawful:

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

26 (a) **To violate section 16 of this 2017 Act.**

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

30 (c) To fail as a retailer of inhalant delivery systems to post a notice in a location that is clearly
31 visible to the seller and the purchaser of the inhalant delivery systems that it is unlawful to sell
32 inhalant delivery systems to persons under *[18]* **21** years of age. The Oregon Health Authority shall
33 adopt by rule the content of the notice required under this paragraph.

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

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

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

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

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

42
43
44 NOTICE

45 The sale of tobacco in any form to persons under *[18]* **21** years of age is prohibited by law. Any

1 person who sells, or allows to be sold, tobacco to a person under [18] 21 years of age is in violation
2 of Oregon law.

3
4
5 (4) Rules adopted under subsection (2)(d), (e) and (f) of this section must be consistent with any
6 regulation adopted by the United States Food and Drug Administration related to labeling or pack-
7 aging requirements for inhalant delivery systems.

8 **SECTION 25.** ORS 433.847 is amended to read:

9 433.847. (1) The Oregon Health Authority shall adopt rules establishing a certification system
10 for smoke shops. In adopting such rules, the authority shall prohibit the smoking, aerosolizing or
11 vaporizing of inhalants that are not tobacco products in smoke shops.

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

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

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

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

19 (D) Does not sell or offer food or beverages and does not sell, offer or allow on-premises con-
20 sumption of alcoholic beverages;

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

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

24 (G) Allows the smoking of tobacco product samples only for the purpose of making retail pur-
25 chase decisions;

26 (b) On December 31, 2008:

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

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

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

32 (c)(A) Was certified as a smoke shop under ORS 433.835, as in effect immediately before June
33 30, 2011, by the authority on or before December 31, 2012; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

32 (8) Rules adopted under this section must provide that, in order to obtain a smoke shop certi-
 33 fication, a business must agree to allow the authority to make unannounced inspections of the
 34 business to determine compliance with ORS 433.835 to 433.875.

35 **SECTION 26.** ORS 323.718 is amended to read:

36 323.718. (1) Each person accepting a purchase order for a delivery sale, in connection with the
 37 delivery sale order, shall:

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

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

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

45 (i) The consumer placing the delivery sale order, or another individual of at least the legal

1 minimum purchase age who resides at the residence of the consumer, to sign to accept delivery of
 2 the shipping container; and

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

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

7 (II) Is at least the legal minimum purchase age, except that proof of age is required only if the
 8 individual appears to be under [27] **30** years of age.

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

12 (i) The consumer placing the delivery sale order, or another individual of at least the legal
 13 minimum purchase age residing at the residence of the consumer, to sign to accept delivery of the
 14 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] **30** years of age.

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

25 **SECTION 27.** ORS 339.883 is amended to read:

26 339.883. (1) As used in this section:

27 [(a)(A) "*Facility*" means a public or private school, youth correction facility or juvenile detention
 28 facility.]

29 [(B) "*Facility*" does not include a college, university, career or technical education school or com-
 30 munity college.]

31 **(a) "Facility" means a public or private school, college, community college, university,
 32 career school, technical education school, youth correction facility or juvenile detention fa-
 33 cility.**

34 (b) "Inhalant delivery system" has the meaning given that term in ORS 431A.175.

35 (c) "Tobacco products" has the meaning given that term in ORS 431A.175.

36 (2) A facility shall not permit [any] a person under [18] **21** years of age to possess tobacco pro-
 37 ducts or inhalant delivery systems while the person is present on facility grounds or in facility
 38 buildings or attending facility-sponsored activities.

39 (3) A facility must have a written policy prohibiting the possession of tobacco products and
 40 inhalant delivery systems by persons under [18] **21** years of age under the conditions described in
 41 subsection (2) of this section. The facility must have a written plan to implement the policy.

42 (4) This section does not apply to a person for whom a tobacco or nicotine product or a sub-
 43 stance to be used with an inhalant delivery system has been lawfully prescribed.

44
 45

(Affirmative Defenses for Identity Crimes)

SECTION 28. 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[,], **tobacco products as defined in ORS 431A.175 or inhalant delivery systems as defined in ORS 431A.175;**
or

[(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 431A.175; or]

[(c)] (b) 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 29. 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

1 with the offense[:]

2 [(a)] was under 21 years of age at the time of committing the offense and the person possessed
3 the personal identification card solely for the purpose of enabling the person to purchase alcohol;
4 or], **tobacco products as defined in ORS 431A.175 or inhalant delivery systems as defined in**
5 **ORS 431A.175.**

6 [(b) Was under 18 years of age at the time of committing the offense and the person possessed the
7 personal identification card solely for the purpose of enabling the person to purchase tobacco products
8 or inhalant delivery systems, as those terms are defined in ORS 431A.175.]

9 **SECTION 30.** ORS 807.500 is amended to read:

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

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

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

19 [(a)] was under 21 years of age at the time of committing the offense and the person produced
20 an identification card, license or permit solely for the purpose of enabling the person to purchase
21 alcohol[: or], **tobacco products as defined in ORS 431A.175 or inhalant delivery systems as**
22 **defined in ORS 431A.175.**

23 [(b) Was under 18 years of age at the time of committing the offense and the person produced an
24 identification card, license or permit solely for the purpose of enabling the person to purchase tobacco
25 products or inhalant delivery systems, as those terms are defined in ORS 431A.175.]

26
27 **(Conforming Amendments)**

28
29 **SECTION 31.** ORS 163.575 is amended to read:

30 163.575. (1) A person commits the offense of endangering the welfare of a minor if the person
31 knowingly:

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

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

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

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

40 [(e) Distributes, sells or allows to be sold an inhalant delivery system, as defined in ORS 431A.175,
41 to a person under 18 years of age; or]

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

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

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

5 (C) Bonges;

6 (D) Chillums;

7 (E) Ice pipes or chillers;

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

9 (G) Cocaine free basing kits.

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

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

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

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

21 **SECTION 32.** ORS 163.580 is amended to read:

22 163.580. (1) A person who sells any of the smoking devices listed in ORS 163.575 [(1)(f)] **(1)(d)**
 23 shall display a sign clearly stating that the sale of such devices to persons under 18 years of age
 24 is prohibited by law.

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

26 **SECTION 33.** ORS 181A.335 is amended to read:

27 181A.335. (1) As used in this section, “tobacco products” has the meaning given that term in
 28 ORS 431A.175.

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

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

1 concerning tobacco products.

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

3 **SECTION 34.** ORS 323.709 is amended to read:

4 323.709. A person may not mail or ship tobacco in connection with a delivery sale order unless
5 the person, before mailing or shipping the tobacco, does all of the following:

6 (1) Obtains a certification from the prospective consumer that includes a written statement
7 signed by the prospective consumer that:

8 (a) Certifies the prospective consumer's address and that the prospective consumer is at least
9 the legal minimum purchase age; and

10 (b) Confirms that the prospective consumer understands that signing another person's name to
11 the certification is illegal, that the sale of tobacco to individuals under the legal minimum purchase
12 age is illegal and that the purchase of tobacco by individuals under the legal minimum purchase age
13 is illegal [*under ORS 167.401*];

14 (2) Verifies the information contained in the certification against a commercially available da-
15 tabase of government-collected information showing the age or date of birth of the individual placing
16 the order and obtains a photocopy or other image of a valid, government-issued identification stating
17 the age or date of birth of the individual placing the order;

18 (3) Provides a notice to the prospective consumer, via electronic mail or other means, that meets
19 the requirements of ORS 323.715; and

20 (4) In the case of an order for tobacco placed through an Internet website, receives payment for
21 the delivery sale from the prospective purchaser by a credit or debit card that has been issued in
22 the name of the prospective purchaser or by a personal check issued by the prospective purchaser.

23 **SECTION 35.** ORS 339.257 is amended to read:

24 339.257. (1) The principal or a designee of the principal of a secondary school shall provide
25 documentation of enrollment status on a form provided by the Department of Transportation to any
26 student at least 15 years of age and under 18 years of age who is properly enrolled in the school,
27 whose driving privileges are suspended under ORS 809.423 [(3)] (2) and who needs the documentation
28 in order to apply for issuance or reinstatement of driving privileges. The form shall be available at
29 the administrative offices of the school district for a student who applies for issuance or rein-
30 statement of driving privileges during school holidays.

31 (2) A school district board may establish a policy authorizing the superintendent of the school
32 district or the board to notify the department of the withdrawal from school of a student who is at
33 least 15 years of age and under 18 years of age. For purposes of this subsection, a student shall
34 be considered to have withdrawn from school after more than 10 consecutive school days of unex-
35 cused absences or 15 school days total of unexcused absences during a single semester. A policy
36 adopted under this subsection shall include a provision allowing a student to appeal a decision to
37 notify the department.

38 (3) The governing body of a private school may establish a policy authorizing a representative
39 of the school to notify the department of a student's withdrawal. Terms and conditions of the policy
40 shall be the same as those described in subsection (2) of this section for a school district board.

41 **SECTION 36.** ORS 743B.013 is amended to read:

42 743B.013. (1) A health benefit plan issued to a small employer:

43 (a) Other than a grandfathered health plan, must cover essential health benefits consistent with
44 42 U.S.C. 300gg-11.

45 (b) May require an affiliation period that does not exceed two months for an enrollee or 90 days

1 for a late enrollee.

2 (c) May not apply a preexisting condition exclusion to any enrollee.

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

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

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

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

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

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

15 (e) The carrier discontinues both offering and renewing all of its small employer health benefit
16 plans in this state or in a specified service area within this state. In order to discontinue plans un-
17 der this paragraph, the carrier:

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

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

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

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

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

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

34 (C) Must offer in writing to each small employer covered by the plan, all other small employer
35 health benefit plans that the carrier offers to small employers in the specified service area. The
36 carrier shall issue any such plans pursuant to the provisions of ORS 743B.010 to 743B.013. The
37 carrier shall offer the plans at least 90 days prior to discontinuation.

38 (g) The carrier discontinues both offering and renewing a health benefit plan, other than a
39 grandfathered health plan, for all small employers in this state or in a specified service area within
40 this state, other than a plan discontinued under paragraph (f) of this subsection.

41 (h) The carrier discontinues both offering and renewing a grandfathered health plan for all small
42 employers in this state or in a specified service area within this state, other than a plan discontin-
43 ued under paragraph (f) of this subsection.

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

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

3 (B) Issue any such plans pursuant to the provisions of ORS 743B.010 to 743B.013.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

42 (7)(a) A carrier may continue to enforce reasonable employer participation and contribution re-
43 quirements on small employers. However, participation and contribution requirements shall be ap-
44 plied uniformly among all small employer groups with the same number of eligible employees
45 applying for coverage or receiving coverage from the carrier. In determining minimum participation

1 requirements, a carrier shall count only those employees who are not covered by an existing group
2 health benefit plan, Medicaid, Medicare, TRICARE, Indian Health Service or a publicly sponsored
3 or subsidized health plan, including but not limited to the medical assistance program under ORS
4 chapter 414.

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

9 (8) Premium rates for small employer health benefit plans, except grandfathered health plans,
10 shall be subject to the following provisions:

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

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

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

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

23 (ii) The level at which enrolled employees and their dependents [*18 years of age and older*] en-
24 gage in tobacco use, except that the rate may not vary by more than 1.5 to one; and

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

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

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

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

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

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

42 (9) Premium rates for grandfathered health plans shall be subject to requirements prescribed by
43 the department by rule.

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

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

2 (b) The authority of the carrier to adjust rates and premiums, and the extent to which the car-
 3 rier considers age, tobacco use, family composition and geographic factors in establishing and ad-
 4 justing rates and premiums; and

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

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

12 (b) A carrier offering a small employer health benefit plan shall file with the department at least
 13 once every 12 months an actuarial certification that the carrier is in compliance with ORS 743B.010
 14 to 743B.013 and that the rating methods of the carrier are actuarially sound. Each certification shall
 15 be in a uniform form and manner and shall contain such information as specified by the department.
 16 A copy of each certification shall be retained by the carrier at its principal place of business. A
 17 carrier is not required to file the actuarial certification under this paragraph if the department has
 18 approved the carrier's rate filing within the preceding 12-month period.

19 (c) A carrier shall make the information and documentation described in paragraph (a) of this
 20 subsection available to the department upon request. Except as provided in ORS 743.018 and except
 21 in cases of violations of ORS 743B.010 to 743B.013, the information shall be considered proprietary
 22 and trade secret information and shall not be subject to disclosure to persons outside the depart-
 23 ment except as agreed to by the carrier or as ordered by a court of competent jurisdiction.

24 (12) A carrier shall not provide any financial or other incentive to any insurance producer that
 25 would encourage the insurance producer to sell health benefit plans of the carrier to small employer
 26 groups based on a small employer group's anticipated claims experience.

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

29 (14) A carrier must include a provision that offers coverage to all eligible employees of a small
 30 employer and to all dependents of the eligible employees to the extent the employer chooses to offer
 31 coverage to dependents.

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

35 (16) A small employer health benefit plan may not impose annual or lifetime limits on the dollar
 36 amount of essential health benefits.

37 **SECTION 37.** ORS 807.066 is amended to read:

38 807.066. (1) Subject to subsection (2) of this section, the Department of Transportation may not
 39 issue driving privileges to a person who is under 18 years of age unless:

40 (a) The person has graduated from high school and provides the department with proof of
 41 graduation satisfactory to the department;

42 (b) The person has received a General Educational Development (GED) certificate from a com-
 43 munity college and provides the department with proof of the certificate satisfactory to the depart-
 44 ment; or

45 (c) The person's parent or legal guardian certifies that the person is:

1 (A) Enrolled in a school of this state, or any other state or any other country;

2 (B) Enrolled in a community college and making satisfactory progress toward a General Edu-
3 cational Development (GED) certificate or high school diploma;

4 (C) Being taught by a private teacher, legal guardian or parent in compliance with ORS 339.035;

5 (D) Exempted from school attendance requirements due to circumstances beyond the control of
6 the person; or

7 (E) Exempt under ORS 339.030 (2) from the requirement to attend school.

8 (2) The department may not issue driving privileges to a person who is under 18 years of age
9 and whose driving privileges are suspended under ORS 809.423 [(3)] (2) for withdrawing from school
10 unless the person:

11 (a) Has graduated from high school and provides the department with proof of graduation sat-
12 isfactory to the department;

13 (b) Has received a General Educational Development (GED) certificate from a community col-
14 lege and provides the department with proof of the certificate satisfactory to the department;

15 (c) Provides the department with a form provided by the department and signed by the principal,
16 or the designee of the principal, of the school attended by the person that declares that the person
17 is enrolled in a school of this state, or any other state or any other country;

18 (d) Provides the department with a form provided by the department and signed by the author-
19 ized representative of the community college attended by the person that declares that the person
20 is making satisfactory progress toward a General Educational Development (GED) certificate;

21 (e) Provides the department with a form provided by the department and signed by the author-
22 ized representative of the community college attended by the person that declares that the person
23 is making satisfactory progress toward a high school diploma;

24 (f) Provides the department with a form provided by the department and signed by the author-
25 ized representative of the education service district or school district having jurisdiction over the
26 area of the person's residence that declares that the person is being taught by a private teacher,
27 legal guardian or parent in compliance with ORS 339.035;

28 (g) Provides the department with documentation satisfactory to the department that indicates
29 that the person is exempted from school attendance requirements due to circumstances beyond the
30 control of the person; or

31 (h) Provides the department with documentation satisfactory to the department that the person
32 is exempt under ORS 339.030 (2) from the requirement to attend school.

33 **SECTION 38.** ORS 809.380 is amended to read:

34 809.380. All of the following apply to a person whose driving privileges have been suspended:

35 (1) The period of suspension shall last as long as provided for that particular suspension by law.

36 (2) During the period of suspension, the person is not entitled to exercise any driving privileges
37 in this state except as provided under this subsection. Unless otherwise specifically provided by law,
38 a person whose driving privileges are suspended may obtain, if the person qualifies, a hardship
39 driver permit under ORS 807.240, and exercise driving privileges under the driver permit.

40 (3) Upon expiration of the suspension, the Department of Transportation shall reissue, upon re-
41 quest of the person, the suspended driving privileges and any license or driver permit that evidences
42 the driving privileges. The reissuance shall be without requalification by the person except that the
43 department may require the person to furnish evidence satisfactory to the department that the per-
44 son is qualified to continue to exercise driving privileges in this state before the department reissues
45 the driving privileges.

1 (4) The department may not issue any driving privileges in contradiction to this section.

2 (5) If the person fails to surrender to the department any license or driver permit issued as ev-
3 idence of driving privileges that are suspended, the person is subject to the penalties under ORS
4 809.500.

5 (6) No reinstatement of suspended driving privileges will be made by the department until the
6 fee for reinstatement of suspended driving privileges established under ORS 807.370 is paid to or
7 waived by the department. The department may waive the reinstatement fee for any of the following
8 reasons:

9 (a) The suspension occurred under ORS 809.419 for failure to take an examination upon request
10 of the department under ORS 807.340.

11 (b) The suspension occurred under ORS 809.419 for failure to obtain required medical clearance
12 upon request of the department under ORS 807.070 or 807.090.

13 (c) The suspension occurred under ORS 809.419 for incompetence to drive a motor vehicle or
14 having a mental or physical condition or impairment that affects the person's ability to safely op-
15 erate a motor vehicle.

16 (d) The suspension occurred under ORS 809.419 upon notification by the superintendent of a
17 hospital under ORS 807.700 that a person should not drive.

18 (e) The suspension occurred under ORS 809.419 upon notification by a court under ORS 810.375
19 that a person charged with a traffic offense has been found guilty except for insanity.

20 (f) The department committed an error in issuing the suspension.

21 (g) The suspension was the result of an error committed by an insurance company in issuing or
22 failing to issue a certification of insurance or in canceling a certification of insurance filed with the
23 department under ORS 806.270.

24 (h) The department issued the suspension without error because the person failed to respond as
25 required under ORS 806.160 or to furnish proof of exemption under ORS 806.210 from the filing re-
26 quirement of ORS 806.200, but the department later determines that the person in fact was in com-
27 pliance with financial responsibility requirements as of the date of the department's letter of
28 verification under ORS 806.150 or at the time of an accident described in ORS 806.200.

29 (i) The department issued the suspension without error because the person was not in compli-
30 ance with financial responsibility requirements as of the date of the department's letter of verifica-
31 tion under ORS 806.150 or at the time of an accident described in ORS 806.200, but the department
32 later determines that the person reasonably and in good faith believed that the person was in com-
33 pliance with financial responsibility requirements on the date of the department's letter of verifica-
34 tion or at the time of the accident.

35 (j) The suspension was the result of an error committed by an insurance company in notifying
36 the department regarding the correctness of a certification under ORS 806.150.

37 (k) The suspension occurred because the person failed to make future responsibility filings but
38 the department later determines that the reason for the failure was that the person was a military
39 reservist or a member of a national guard unit that was ordered to active military duty to a location
40 outside of the United States. The effective date of the military orders must be prior to the effective
41 date of a suspension issued by the department for failure to make a future responsibility filing.

42 (L) The department issued the suspension without error because the department received a no-
43 tice to suspend from a court under ORS 809.210 or 809.220, but the department later determines that
44 the person in fact was in compliance with the requirements of the court prior to the effective date
45 of the suspension.

1 (7) The department shall waive the reinstatement fee for a person whose driving privileges were
2 suspended under ORS 809.423 [(3)] (2) if the person:

3 (a) Has graduated from high school and provides the department with proof of graduation sat-
4 isfactory to the department; or

5 (b) Has received a General Educational Development (GED) certificate from a community col-
6 lege and provides the department with proof of the certificate satisfactory to the department.

7 **SECTION 39.** ORS 809.423 is amended to read:

8 809.423. (1) Upon request by a school superintendent or a school district board under ORS
9 339.254, the Department of Transportation shall suspend the driving privileges of a person. The
10 suspension shall be for the amount of time stated in the request. A person is entitled to adminis-
11 trative review under ORS 809.440 of a suspension under this subsection.

12 [(2) Upon receipt of notification of a court order that a person's driving privileges be suspended for
13 violation of ORS 167.401, the department shall suspend the driving privileges of the person subject to
14 the order for the time specified in the order. A person is entitled to administrative review under ORS
15 809.440 of a suspension under this subsection.]

16 [(3)] (2) Upon receipt of a notice under ORS 339.257 that a person under 18 years of age has
17 withdrawn from school, the department shall notify the person that driving privileges will be sus-
18 pended on the 30th day following the date of the notice unless the person presents documentation
19 that complies with ORS 807.066. A suspension under this subsection shall continue until the person
20 reaches 18 years of age or until the person presents documentation that complies with ORS 807.066.
21 Appeals of a suspension under this subsection shall be as provided by a school district or private
22 school under a policy adopted in accordance with ORS 339.257.

23
24 (Repeals)

25
26 **SECTION 40.** ORS 167.400 and 167.401 are repealed.

27
28 (Applicability)

29
30 **SECTION 41.** Sections 16 to 19 of this 2017 Act, the amendments to ORS 163.575, 163.580,
31 165.800, 165.813, 167.402, 167.404, 167.407, 181A.335, 323.709, 323.718, 339.257, 339.883, 431A.175,
32 433.847, 743B.013, 807.066, 807.500, 809.380, 809.423 and 811.193 by sections 20 to 39 of this 2017
33 Act and the repeal of ORS 167.400 and 167.401 by section 40 of this 2017 Act apply to conduct
34 occurring on or after January 1, 2018.

35
36 **LICENSURE OF PREMISES AT WHICH TOBACCO PRODUCTS OR**
37 **INHALANT DELIVERY SYSTEMS ARE SOLD**
38 **OPERATIVE JANUARY 1, 2018**
39

40 **SECTION 42. Definitions.** As used in sections 42 to 54 of this 2017 Act:

41 (1) "Governing body of a local public health authority" has the meaning given that term
42 in ORS 431.003.

43 (2) "Inhalant delivery system" has the meaning given that term in ORS 431A.175.

44 (3) "Local public health authority" has the meaning given that term in ORS 431.003.

45 (4) "Premises" means the real property on which a business that makes retail sales of

1 tobacco products or inhalant delivery systems is located.

2 (5) "Tobacco products" has the meaning given that term in ORS 431A.175.

3 **SECTION 43. Purpose.** The purpose of sections 42 to 54 of this 2017 Act is to improve
4 enforcement of local ordinances and rules, state laws and rules and federal laws and regu-
5 lations that govern the retail sale of tobacco products and inhalant delivery systems.

6 **SECTION 44. Licensure requirement.** A person may not make a retail sale of a tobacco
7 product or an inhalant delivery system at or from a premises located in this state unless the
8 person sells the tobacco product or inhalant delivery system at or from a premises for which
9 a license has been issued under section 46 of this 2017 Act.

10 **SECTION 45. Premises to which Act does not apply.** Notwithstanding section 44 of this
11 2017 Act, sections 42 to 54 of this 2017 Act do not apply to a person making a retail sale of
12 an inhalant delivery system at a medical marijuana dispensary registered under ORS
13 475B.450 or at a premises for which a license has been issued under ORS 475B.110, unless the
14 person makes a retail sale of an inhalant delivery system that contains nicotine.

15 **SECTION 46. Licensure.** (1) The Department of Revenue shall issue licenses to, and an-
16 nually renew licenses for, a person that makes retail sales of tobacco products or inhalant
17 delivery systems at qualified premises.

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

19 (a) Must be a premises that is fixed and permanent;

20 (b) May not be located in an area that is zoned exclusively for residential use; and

21 (c) Must meet any qualification for engaging in the retail sale of tobacco products and
22 inhalant delivery systems enacted as an ordinance by the governing body of a local public
23 health authority under section 58 of this 2017 Act, provided that the department has knowl-
24 edge of the qualification pursuant to an agreement entered into under section 53 of this 2017
25 Act.

26 (3) For the purpose of licensing premises under this section, the department shall adopt
27 rules establishing:

28 (a) Procedures for applying for and renewing licenses; and

29 (b) Licensure application, issuance and renewal fees.

30 (4) An application submitted under this section and information related to applying for
31 or renewing a license under this section is confidential and not subject to public disclosure
32 under ORS 192.410 to 192.505. However, an application submitted under this section and in-
33 formation related to applying for or renewing a license under this section may be shared with
34 the Oregon Health Authority or a local public health authority.

35 (5) The department shall publish a list that includes the name of each person to whom
36 a license has been issued under this section, the address of each premises for which a license
37 has been issued under this section and any other information that the department deter-
38 mines is relevant to the public with respect to the retail sale of tobacco products and
39 inhalant delivery systems.

40 (6) Fees established under subsection (3)(b) of this section must be reasonably calculated
41 not to exceed the costs associated with the department administering sections 42 to 54 of this
42 2017 Act.

43 (7) All moneys collected under this section shall be deposited in the suspense account
44 described in section 51 of this 2017 Act.

45 **SECTION 47. Proof of licensure.** A person to whom a license has been issued under sec-

tion 46 of this 2017 Act must post proof of licensure in a clear and conspicuous place at the premises for which the license has been issued.

SECTION 48. Revocation, suspension, refusal to issue or renew. (1) The Department of Revenue may revoke, suspend or refuse to issue or renew a license issued under section 46 of this 2017 Act if the person that holds or seeks the license, an individual who participates in the management of the premises for which the license has been or would be issued or an individual who is employed for the purpose of making retail sales at the premises:

(a) Violates sections 42 to 54 of this 2017 Act, a rule adopted under sections 42 to 54 of this 2017 Act or any other state law or rule or federal law or regulation that governs the retail sale of tobacco products or inhalant delivery systems or state taxation;

(b) Violates an ordinance enacted by the governing body of a local public health authority or a rule adopted by a local public health authority that governs the retail sale of tobacco products or inhalant delivery systems; or

(c) Makes a false statement to the department.

(2) The department may revoke, suspend or refuse to issue or renew a license pursuant to subsection (1)(b) of this section only if a local public health authority:

(a) Has provided the person that holds or seeks the license, the individual who participates in the management of the premises for which the license has been or would be issued or the individual who is employed for the purpose of making retail sales at the premises with a process for contesting the violation that is substantially similar to the process provided under ORS 183.413 to 183.470; and

(b) Provides the department with a final order that establishes the person or individual is in violation of an ordinance that is substantially similar to the requirements for a final order under ORS 183.470.

(3) Except as provided by state tax law or as otherwise identified by the department by rule or order, a decision by the department to revoke, suspend or refuse to issue or renew a license under this section may be appealed as a contested case under ORS chapter 183.

SECTION 49. Civil penalty. (1) The Department of Revenue may impose a civil penalty against a person that holds or seeks a license issued under section 46 of this 2017 Act if the person that holds or seeks the license, an individual who participates in the management of the premises for which the license has been or would be issued or an individual who is employed for the purpose of making retail sales at the premises:

(a) Violates sections 42 to 54 of this 2017 Act, a rule adopted under sections 42 to 54 of this 2017 Act or any other state law or rule or federal law or regulation that governs the retail sale of tobacco products or inhalant delivery systems or state taxation; or

(b) Makes a false statement to the department.

(2) A civil penalty imposed under this section may not exceed \$1,000 per violation.

(3) Amounts collected by the department under this section shall be deposited in the suspense account described in section 51 of this 2017 Act.

(4) Except as provided by state tax law or as otherwise identified by the department by rule or order, an imposition of a civil penalty under this section may be appealed as a contested case under ORS chapter 183.

(5) If a civil penalty is imposed under this section, a civil penalty may not be imposed for the commission of the same act under ORS 431A.178 or pursuant to a program established under section 58 of this 2017 Act.

1 **SECTION 50. Seizure and forfeiture of contraband tobacco products and contraband**
 2 **inhalant delivery systems.** (1) For purposes of this section, a tobacco product or inhalant
 3 delivery system sold or held for sale at or from a premises for which a license has not been
 4 issued under section 46 of this 2017 Act is a contraband tobacco product or contraband
 5 inhalant delivery system.

6 (2) A contraband tobacco product or contraband inhalant delivery system found by the
 7 Department of Revenue or a law enforcement agency may be seized immediately by the de-
 8 partment or agency and is subject to forfeiture. If seized and forfeited under this section,
 9 the contraband tobacco product or the contraband inhalant delivery system must be de-
 10 stroyed.

11 (3) Notwithstanding ORS 305.280 or 323.416, a seizure and forfeiture made under this
 12 section may be appealed to the magistrate division of the Oregon Tax Court within 30 days
 13 of the date of the seizure in the manner provided in ORS 305.404 to 305.560.

14 **SECTION 51. Suspense account for administration and enforcement.** (1) Amounts col-
 15 lected by the Department of Revenue under sections 46 and 49 of this 2017 Act shall be paid
 16 to the State Treasurer to be held in a suspense account established under ORS 293.445.

17 (2) From moneys held in the suspense account, the department may pay expenses related
 18 to the administration and enforcement of sections 42 to 54 of this 2017 Act.

19 (3) Amounts necessary to make payments as described in subsection (2) of this section
 20 are continuously appropriated to the department from the suspense account.

21 **SECTION 52. Rules.** The Department of Revenue may adopt rules necessary for the ef-
 22 fective administration of sections 42 to 54 of this 2017 Act.

23 **SECTION 53. Intergovernmental agreements.** (1) The Department of Revenue and the
 24 Oregon Health Authority shall:

25 (a) Share information necessary for the effective administration of sections 42 to 54 and
 26 58 of this 2017 Act and ORS 431A.175 and 431A.183; and

27 (b) Enter into an agreement for purposes of collecting fee moneys for the authority
 28 pursuant to ORS 431A.183 from each retailer of tobacco products or inhalant delivery sys-
 29 tems at the same time that the department collects fee moneys under section 46 of this 2017
 30 Act from the retailer, and transferring the fee moneys to the authority for deposit in the
 31 Oregon Health Authority Fund established under ORS 413.101.

32 (2) The Department of Revenue and each local public health authority shall:

33 (a) Share information necessary for the effective administration of sections 42 to 54 of
 34 this 2017 Act and the program established by the local public health authority under section
 35 58 of this 2017 Act; and

36 (b) Enter into an agreement for purposes of collecting any fee moneys for the authority
 37 pursuant to section 58 of this 2017 Act from each retailer of tobacco products or inhalant
 38 delivery systems located within the area over which the local public health authority has
 39 jurisdiction at the same time that the department collects fee moneys under section 46 of
 40 this 2017 Act from the retailer, and transferring the fee moneys to the local public health
 41 authority for deposit in a fund of the local public health authority.

42 **SECTION 54. Suspense account for fee money transfers.** (1) Amounts collected by the
 43 Department of Revenue pursuant to agreements entered into under section 53 of this 2017
 44 Act shall be paid to the State Treasurer to be held in a suspense account established under
 45 ORS 293.445.

1 **(2) From moneys held in the suspense account, the department shall make transfers to**
2 **the Oregon Health Authority and local public health authorities as required by section 53 of**
3 **this 2017 Act.**

4 **(3) Amounts necessary to make transfers as described in subsection (2) of this section**
5 **are continuously appropriated to the department from the suspense account.**

6
7 **(State Public Health and Safety Laws**
8 **Effective 91st Day After Sine Die)**
9

10 **SECTION 55.** ORS 431A.183 is amended to read:

11 431A.183. *[(1) The Oregon Health Authority shall:]*

12 *[(a) Coordinate with law enforcement agencies to conduct random, unannounced inspections of*
13 *wholesalers and retailers of tobacco products or inhalant delivery systems to ensure compliance with*
14 *the laws of this state designed to discourage the use of tobacco products and inhalant delivery systems*
15 *by minors, including ORS 163.575, 163.580, 167.400, 167.402 and 431A.175; and]*

16 *[(b) Submit a report describing:]*

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

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

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

23 *[(2) The authority shall adopt rules concerning random inspections of places that distribute or sell*
24 *tobacco products or inhalant delivery systems that are consistent with any federal law or regulation*
25 *relating to the inspection of such places. The rules shall provide that inspections may take place:]*

26 *[(a) Only in areas open to the public;]*

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

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

31 *[(3) The Oregon Liquor Control Commission, pursuant to an agreement or otherwise, may assist*
32 *the authority with the authority's duties under subsection (1)(a) of this section and the enforcement of*
33 *ORS 431A.175.]*

34 **(1) The Oregon Health Authority may inspect the premises of a business that engages in**
35 **the wholesale or retail sale of tobacco products or inhalant delivery systems to ensure**
36 **compliance with:**

37 **(a) ORS 431A.175 or a rule adopted under ORS 431A.175; or**

38 **(b) A state law or rule or federal law or regulation that governs the wholesale or retail**
39 **sale of tobacco products or inhalant delivery systems for purposes related to public health**
40 **and safety.**

41 **(2) The authority shall adopt rules for the effective administration of this section. Rules**
42 **adopted under this section must be consistent with any federal law or regulation relating to**
43 **the inspection of businesses that engage in the wholesale or retail sale of tobacco products**
44 **or inhalant delivery systems.**

45 **(3) The authority shall adopt by rule fees necessary to pay the expenses of administering**

1 and enforcing this section and section 58 of this 2017 Act and ORS 431A.175. Pursuant to an
 2 agreement entered into under section 53 of this 2017 Act, the Department of Revenue shall
 3 collect the fee moneys for, and transfer the fee moneys to, the authority. Moneys transferred
 4 to the authority under this section must be deposited in the Oregon Health Authority Fund
 5 established under ORS 413.101. Moneys deposited in the fund under this section are contin-
 6 uously appropriated to the authority for the purposes of administering and enforcing this
 7 section and section 58 of this 2017 Act and ORS 431A.175.

8 **SECTION 56.** ORS 431A.178 is amended to read:

9 431A.178. [(1) *The Oregon Health Authority may impose a civil penalty for each violation of ORS*
 10 *431A.175. A civil penalty imposed under this section may not be less than \$250 or more than \$1,000.*]

11 **(1) The Oregon Health Authority may impose a civil penalty against a person that en-**
 12 **gages in the wholesale or retail sale of tobacco products or inhalant delivery systems, as**
 13 **those terms are defined in ORS 431A.175, if the person violates:**

14 **(a) ORS 431A.175 or a rule adopted under ORS 431A.175; or**

15 **(b) A state law or rule or federal law or regulation that governs the wholesale or retail**
 16 **sale of tobacco products or inhalant delivery systems for purposes related to public health**
 17 **and safety.**

18 **(2) A civil penalty imposed under this section may not be more than \$5,000 per violation.**

19 [(2)(a)] **(3)(a)** Amounts collected under [*subsection (1) of*] this section shall be deposited in the
 20 Oregon Health Authority Fund established under ORS 413.101. Except as provided in paragraph (b)
 21 of this subsection, moneys deposited in the fund under this subsection are continuously appropriated
 22 to the authority for **the purpose of** carrying out the duties, functions and powers of the authority
 23 under ORS 431A.175 and 431A.183.

24 (b) At the end of each biennium, the authority shall transfer the unobligated moneys collected
 25 under [*subsection (1) of*] this section remaining in the fund to the Tobacco Use Reduction Account
 26 established under ORS 431A.153.

27 **(4) If a civil penalty is imposed under this section, a civil penalty may not be imposed for**
 28 **the commission of the same act under section 48 of this 2017 Act or pursuant to a program**
 29 **established under section 58 of this 2017 Act.**

30 **SECTION 57.** (1) As used in this section:

31 **(a) “Inhalant delivery system” has the meaning given that term in ORS 431A.175.**

32 **(b) “Tobacco products” has the meaning given that term in ORS 431A.175.**

33 **(2) The Oregon Health Authority may enter into an agreement with a federal agency to**
 34 **assist in the monitoring and enforcement of federal laws and regulations related to tobacco**
 35 **products or inhalant delivery systems. For purposes of this section, the authority may:**

36 **(a) Adopt any rule necessary to implement an agreement entered into under this sub-**
 37 **section; and**

38 **(b) Take any action necessary to fulfill the authority’s duties under an agreement en-**
 39 **tered into under this subsection, including permitting employees of the authority to be**
 40 **commissioned as federal officers.**

41 **(3)(a) The authority may apply for and accept moneys from the federal government or**
 42 **other public or private sources and, in accordance with any federal restriction or other**
 43 **funding source restriction, use those moneys to carry out functions related to preventing the**
 44 **use of tobacco products or inhalant delivery systems by individuals who are not the minimum**
 45 **age required to purchase tobacco products or inhalant delivery systems.**

1 (b) Moneys received by the authority under this subsection shall be deposited in the
2 Oregon Health Authority Fund established under ORS 413.101. Moneys deposited in the fund
3 under this subsection are continuously appropriated to the authority. Moneys subject to a
4 federal restriction or other funding source restriction must be deposited in a separate sub-
5 account and accounted for separately from other fund moneys.

6 (4) The authority may enter into an agreement with the Oregon Liquor Control Com-
7 mission or the Department of State Police for purposes of fulfilling the functions of the au-
8 thority under this section.

9
10 (Local Public Health Authority Programs
11 Effective 91st Day After Sine Die)

12
13 **SECTION 58.** (1) As used in this section:

14 (a) "Governing body of a local public health authority" has the meaning given that term
15 in ORS 431.003.

16 (b) "Inhalant delivery system" has the meaning given that term in ORS 431A.175.

17 (c) "Local public health authority" has the meaning given that term in ORS 431.003.

18 (d) "Tobacco products" has the meaning given that term in ORS 431A.175.

19 (2) Each local public health authority shall establish, administer and enforce a program
20 for regulating the retail sale of tobacco products and inhalant delivery systems in the area
21 subject to the jurisdiction of the local public health authority. A program established under
22 this section:

23 (a) Must incorporate standards and protocols established by state law or rule relating to
24 the regulation of the retail sale of tobacco products and inhalant delivery systems for pur-
25 poses related to public health and safety;

26 (b) May incorporate, pursuant to an ordinance enacted by the governing body of the local
27 public health authority, standards and protocols for regulating the retail sale of tobacco
28 products and inhalant delivery systems for purposes related to public health and safety in
29 addition to the standards and protocols described in paragraph (a) of this subsection, in-
30 cluding qualifications for engaging in the retail sale of tobacco products or inhalant delivery
31 systems in addition to the qualifications described in section 46 of this 2017 Act; and

32 (c) May incorporate the use of outreach and educational services to provide businesses
33 that engage in the retail sale of tobacco products or inhalant delivery systems with infor-
34 mation pertaining to local ordinances and rules, state laws and rules and federal laws and
35 regulations regulating the retail sale of tobacco products and inhalant delivery systems.

36 (3) A local public health authority may impose on businesses that engage in the retail
37 sale of tobacco products or inhalant delivery systems a fee for paying the expenses of es-
38 tablishing, administering and enforcing a program established under this section. Pursuant
39 to an agreement entered into under section 53 of this 2017 Act, the Department of Revenue
40 shall collect the fee moneys for, and transfer the fee moneys to, the local public health au-
41 thority. Moneys transferred to a local public health authority under this subsection must be
42 deposited in a fund of the local public health authority. Moneys deposited in a fund under this
43 subsection may be spent by the local public health authority only for the purposes of estab-
44 lishing, administering and enforcing a program established under this section.

45 (4) A local public health authority may impose a civil penalty not to exceed \$5,000 on a

1 **business that engages in the retail sale of tobacco products or inhalant delivery systems for**
2 **violating a standard or protocol that is part of a program established under this section. If**
3 **a civil penalty is imposed under this section, a civil penalty may not be imposed for the**
4 **commission of the same act under ORS 431A.178 or section 48 of this 2017 Act.**

5 (5) **The Oregon Health Authority shall oversee and coordinate the establishment, admin-**
6 **istration and enforcement of programs established under this section.**

7
8 (Repeals
9 Effective 91st Day After Sine Die)

10
11 **SECTION 59. ORS 181A.330 and 431A.180 are repealed.**

12
13 (Miscellaneous)

14
15 **SECTION 60. Applicability. The amendments to ORS 431A.178 by section 56 of this 2017**
16 **Act apply to conduct occurring on or after the effective date of this 2017 Act.**

17 **SECTION 61. Operative date. (1) Sections 42 to 54 of this 2017 Act become operative on**
18 **January 1, 2018.**

19 (2) **The Department of Revenue, the Oregon Health Authority and local public health**
20 **authorities may take any action before the operative date specified in subsection (1) of this**
21 **section that is necessary to enable the department, the Oregon Health Authority and local**
22 **public health authorities to exercise, on and after the operative date specified in subsection**
23 **(1) of this section, all the duties, functions and powers conferred on the department, the**
24 **Oregon Health Authority and local public health authorities by sections 42 to 54 of this 2017**
25 **Act.**

26
27 **TAXATION OF CIGARETTES AND CIGARS**
28 **APPLICABLE JANUARY 1, 2018**

29
30 **SECTION 62. ORS 323.031 is amended to read:**

31 323.031. (1) **Notwithstanding ORS 323.030 (2) and in addition to and not in lieu of any other tax,**
32 **every distributor shall pay a tax upon distributions of cigarettes at the rate of [30] 80 mills for the**
33 **distribution of each cigarette in this state.**

34 (2) **Any cigarette for which a tax has once been imposed under ORS 323.005 to 323.482 may not**
35 **be subject upon a subsequent distribution to the taxes imposed by ORS 323.005 to 323.482.**

36 **SECTION 63. ORS 323.457 is amended to read:**

37 323.457. (1) **Moneys received under ORS 323.031 shall be paid over to the State Treasurer to be**
38 **held in a suspense account established under ORS 293.445. After the payment of refunds:**

39 (a) **[29.37/30] 78.33/80 of the moneys shall be credited to the Oregon Health Plan Fund estab-**
40 **lished under ORS 414.109;**

41 (b) **[0.14/30] 0.37/80 of the moneys are continuously appropriated to the Oregon Department of**
42 **Administrative Services for distribution to the cities of this state;**

43 (c) **[0.14/30] 0.37/80 of the moneys are continuously appropriated to the Oregon Department of**
44 **Administrative Services for distribution to the counties of this state;**

45 (d) **[0.14/30] 0.37/80 of the moneys are continuously appropriated to the Department of Trans-**

1 portation to be distributed and transferred to the Elderly and Disabled Special Transportation Fund
2 established under ORS 391.800; and

3 (e) [0.21/30] **0.56/80** of the moneys shall be credited to the Tobacco Use Reduction Account es-
4 tablished under ORS 431A.153.

5 (2)(a) Moneys distributed to cities and counties under this section shall be distributed to each
6 city or county using the proportions used for distributions made under ORS 323.455.

7 (b) Moneys shall be distributed to cities, counties and the Elderly and Disabled Special Trans-
8 portation Fund at the same time moneys are distributed to cities, counties and the Elderly and
9 Disabled Special Transportation Fund under ORS 323.455.

10 **SECTION 64. Dealer floor tax.** (1) **In addition to and not in lieu of any other tax, for the**
11 **privilege of holding or storing cigarettes for sale, use or consumption, a floor tax is imposed**
12 **upon every dealer at the rate of 50 mills for each cigarette in the possession of or under the**
13 **control of the dealer in this state at 12:01 a.m. on January 1, 2018.**

14 (2) **The tax imposed by this section is due and payable on or before January 20, 2018. Any**
15 **amount of tax that is not paid within the time required shall bear interest at the rate es-**
16 **tablished under ORS 305.220 per month, or fraction of a month, from the date on which the**
17 **tax is due to be paid, until paid.**

18 (3) **By January 20, 2018, every dealer shall file a report with the Department of Revenue**
19 **in a form prescribed by the department. The report must state the number of cigarettes in**
20 **the possession of or under the control of the dealer in this state at 12:01 a.m. on January**
21 **1, 2018, and the amount of tax due. Each report must be accompanied by a remittance pay-**
22 **able to the department for the amount of tax due.**

23 (4) **As used in this section, “dealer” has the meaning given that term in ORS 323.010.**

24 **SECTION 65. Distributor floor tax and cigarette adjustment indicia tax.** **Notwithstanding**
25 **ORS 323.030 (3), for the privilege of distributing cigarettes as a distributor, as defined in ORS**
26 **323.015, and for holding or storing cigarettes for sale, use or consumption, a floor tax and**
27 **cigarette adjustment indicia tax are imposed upon every distributor in the amount of \$1.25**
28 **for each Oregon cigarette tax stamp bearing the designation “25,” and in the amount of \$1**
29 **for each Oregon cigarette tax stamp bearing the designation “20,” that is affixed to any**
30 **package of cigarettes in the possession of or under the control of the distributor at 12:01 a.m.**
31 **on January 1, 2018.**

32 **SECTION 66. Inventory.** (1) **Every distributor, as defined in ORS 323.015, shall take an**
33 **inventory as of 12:01 a.m. on January 1, 2018, of all packages of cigarettes to which are af-**
34 **fixed Oregon cigarette tax stamps and of all unaffixed Oregon cigarette tax stamps in the**
35 **possession of or under the control of the distributor.**

36 (2) **Every distributor shall file a report with the Department of Revenue by January 20,**
37 **2018, in a form prescribed by the department, showing:**

38 (a) **The number of Oregon cigarette tax stamps, with the designations of the stamps, that**
39 **were affixed to packages of cigarettes in the possession of or under the control of the dis-**
40 **tributor at 12:01 a.m. on January 1, 2018; and**

41 (b) **The number of unaffixed Oregon cigarette tax stamps, with the designations of the**
42 **stamps, that were in the possession of or under the control of the distributor at 12:01 a.m.**
43 **on January 1, 2018.**

44 (3) **The amount of tax required to be paid with respect to the affixed Oregon cigarette**
45 **tax stamps shall be computed pursuant to section 66 of this 2017 Act and remitted with the**

1 distributor's report. Any amount of tax not paid within the time specified for the filing of
 2 the report shall bear interest at the rate established under ORS 305.220 per month, or frac-
 3 tion of a month, from the due date of the report until paid.

4 **SECTION 67. Disposition of revenue.** All moneys received by the Department of Revenue
 5 from the taxes imposed by sections 64 and 65 of this 2017 Act shall be paid over to the State
 6 Treasurer to be held in a suspense account established under ORS 293.445. After payment
 7 of refunds, the balance shall be credited to the General Fund.

8
 9 **(Removal of Limit on Cigar Tax)**

10
 11 **SECTION 68.** ORS 323.505 is amended to read:

12 323.505. (1) A tax is hereby imposed upon the distribution of all tobacco products in this state.
 13 The tax imposed by this section is intended to be a direct tax on the consumer, for which payment
 14 upon distribution is required to achieve convenience and facility in the collection and administration
 15 of the tax. The tax shall be imposed on a distributor at the time the distributor distributes tobacco
 16 products.

17 (2) The tax imposed under this section shall be imposed at the rate of:

18 [(a) *Sixty-five percent of the wholesale sales price of cigars, but not to exceed 50 cents per cigar*];

19 [(b)] (a) One dollar and seventy-eight cents per ounce based on the net weight determined by
 20 the manufacturer, in the case of moist snuff, except that the minimum tax under this paragraph is
 21 \$2.14 per retail container; or

22 [(c)] (b) Sixty-five percent of the wholesale sales price of all tobacco products that are not [*ci-*
 23 *gars or*] moist snuff.

24 (3) For reporting periods beginning on or after July 1, 2022, the rates of tax applicable to moist
 25 snuff under subsection [(2)(b)] (2)(a) of this section shall be adjusted for each biennium according
 26 to the cost-of-living adjustment for the calendar year. The Department of Revenue shall recompute
 27 the rates for each biennium by adding to the rates in subsection [(2)(b)] (2)(a) of this section the
 28 product obtained by multiplying the rates in subsection [(2)(b)] (2)(a) of this section by a factor that
 29 is equal to 0.25 multiplied by the percentage (if any) by which the monthly averaged U.S. City Av-
 30 erage Consumer Price Index for the 12 consecutive months ending August 31 of the prior calendar
 31 year exceeds the monthly averaged U.S. City Average Consumer Price Index for the 12 consecutive
 32 months ending August 31, 2020.

33 (4) If the tax imposed under this section does not equal an amount calculable to a whole cent,
 34 the tax shall be equal to the next higher whole cent. However, the amount remitted to the Depart-
 35 ment of Revenue by the taxpayer for each quarter shall be equal only to 98.5 percent of the total
 36 taxes due and payable by the taxpayer for the quarter.

37 (5) No tobacco product shall be subject to the tax if the base product or other intermediate form
 38 thereof has previously been taxed under this section.

39
 40 **(Applicability)**

41
 42 **SECTION 69.** (1) Sections 64 to 66 of this 2017 Act and the amendments to ORS 323.031
 43 and 323.457 by sections 62 and 63 of this 2017 Act apply to distributions of cigarettes occur-
 44 ring on or after January 1, 2018.

45 (2) The amendments to ORS 323.505 by section 68 of this 2017 Act apply to distributions

1 of cigars occurring on or after January 1, 2018.

2

3

SECTION AND UNIT CAPTIONS

4

5 **SECTION 70. Section and unit captions.** The section and unit captions used in this 2017
6 Act are provided only for the convenience of the reader and do not become part of the stat-
7 utory law of this state or express any legislative intent in the enactment of this 2017 Act.

8

9

EFFECTIVE DATE

10

11 **SECTION 71. Effective date.** This 2017 Act takes effect on the 91st day after the date on
12 which the 2017 regular session of the Seventy-ninth Legislative Assembly adjourns sine die.

13
