

# Enrolled Senate Bill 754

Sponsored by Senator STEINER HAYWARD, Representatives KENY-GUYER, VIAL, Senator MANNING JR; Senators DEVLIN, MONNES ANDERSON, Representatives ALONSO LEON, BUEHLER, GREENLICK, HUFFMAN, JOHNSON, KENNEMER, MALSTROM, RAYFIELD, SMITH G, SOLLMAN

CHAPTER .....

AN ACT

Relating to products that have a minimum age requirement for purchase; creating new provisions; amending ORS 163.575, 163.580, 165.800, 165.813, 167.400, 167.402, 167.404, 167.407, 181A.335, 323.709, 323.718, 339.257, 339.883, 431A.175, 431A.183, 433.847, 743B.013, 807.066, 807.500, 809.380 and 809.423; repealing ORS 167.401; and declaring an emergency.

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

## VIOLATIONS

**SECTION 1.** As used in ORS 167.400, 167.402, 167.404 and 167.407 and sections 2, 3, 4 and 5 of this 2017 Act:

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

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

**SECTION 2.** (1) A person commits the offense of selling tobacco products or inhalant delivery systems to a person under 21 years of age upon the occurrence of one of the following:

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

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

(c) If the person is a manager or other person who supervises the retail sale of tobacco products or inhalant delivery systems, the person is acting within the course and scope of the person's employment and the person has supervisory authority over a person who violates paragraph (a) or (b) of this subsection; or

(d) If the person is an owner of a business that sells tobacco products or inhalant delivery systems at retail, a violation of paragraph (a) or (b) of this subsection occurs at the business.

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

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

(A) \$250 for the first or second violation; or

(B) \$500 for the third or subsequent violation.

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

(A) \$500 for the first or second violation; or

(B) \$1,000 for the third or subsequent violation.

**SECTION 3.** (1) A person who sells tobacco products or inhalant delivery systems shall display a sign clearly stating that the sale of the tobacco products or inhalant delivery systems to persons under 21 years of age is prohibited by law.

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

**SECTION 4.** (1) Except as provided in subsection (2) of this section, a person under 21 years of age may not purchase or attempt to purchase tobacco products or an inhalant delivery system.

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

**SECTION 5.** For purposes of ORS 431A.175 and section 2 of this 2017 Act, “allows to be sold” includes the negligent omission of an act by a manager or other person who supervises the retail sale of tobacco products or inhalant delivery systems, the commission of which would have prevented the distribution or sale of the tobacco products or inhalant delivery system.

**SECTION 6.** ORS 167.402 is amended to read:

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

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

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

**SECTION 7.** ORS 167.404 is amended to read:

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

**SECTION 8.** ORS 167.407 is amended to read:

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

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

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

**SECTION 9.** ORS 167.400 is amended to read:

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

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

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

[2] (1) It is unlawful for a person under 18 years of age to possess tobacco products or inhalant delivery systems.

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

## OTHER REQUIREMENTS

**SECTION 10.** ORS 431A.175 is amended to read:

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

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

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

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

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

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

(ii) Tobacco products.

(b) "Tobacco products" means:

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

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

**(C) A device that:**

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

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

(2) It is unlawful:

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

**(a) To violate section 2 of this 2017 Act.**

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

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

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

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

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

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

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

NOTICE

The sale of tobacco in any form to persons under [18] **21** years of age is prohibited by law. Any person who sells, or allows to be sold, tobacco to a person under [18] **21** years of age is in violation of Oregon law.

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

**SECTION 11.** ORS 431A.183 is amended to read:

431A.183. (1) The Oregon Health Authority shall:

(a) Coordinate with law enforcement agencies to conduct random, unannounced inspections of wholesalers and retailers of tobacco products or inhalant delivery systems to ensure compliance with the laws of this state designed to discourage the use of tobacco products and inhalant delivery systems by [minors,] **persons under 21 years of age**, including ORS [163.575, 163.580, 167.400,] 167.402, **167.404, 167.407** and 431A.175 **and sections 2, 3 and 4 of this 2017 Act**; and

(b) Submit a report describing:

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

(B) The extent of success achieved in reducing the availability of tobacco products and inhalant delivery systems to [minors] **persons under 21 years of age**; and

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

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

(a) Only in areas open to the public;

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

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

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

**SECTION 12.** ORS 433.847 is amended to read:

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

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

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

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

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

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

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

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

(G) Allows the smoking of tobacco product samples only for the purpose of making retail purchase decisions;

(b) On December 31, 2008:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**SECTION 14.** ORS 339.883 is amended to read:

339.883. (1) As used in this section:

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

[(B) "Facility" does not include a college, university, career or technical education school or community college.]

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

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

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

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

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

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

## AFFIRMATIVE DEFENSES FOR IDENTITY CRIMES

**SECTION 15.** 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 16.** ORS 165.813 is amended to read:

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

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

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

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

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

**SECTION 17.** ORS 807.500 is amended to read:

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

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

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

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

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

## CONFORMING AMENDMENTS

**SECTION 18.** ORS 163.575 is amended to read:

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

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

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

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

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

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

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



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

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

(C) Bonges;

(D) Chillums;

(E) Ice pipes or chillers;

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

(G) Cocaine free basing kits.

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

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

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

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

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

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

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

**SECTION 20.** ORS 181A.335 is amended to read:

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

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

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

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

**SECTION 21.** ORS 323.709 is amended to read:

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

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

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

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

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

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

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

**SECTION 22.** ORS 339.257 is amended to read:

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

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

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

**SECTION 23.** ORS 743B.013 is amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(iii) Adjustments to reflect differences in family composition.

(C) A carrier shall apply the carrier's schedule of premium rate variations as approved by the department and in accordance with this paragraph. Except as otherwise provided in this section, the

premium rate established by a carrier for a small employer health benefit plan shall apply uniformly to all employees of the small employer enrolled in that plan.

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

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

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

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

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

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

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

(b) The authority of the carrier to adjust rates and premiums, and the extent to which the carrier considers age, tobacco use, family composition and geographic factors in establishing and adjusting rates and premiums; and

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

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

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

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

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

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

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

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

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

**SECTION 24.** ORS 807.066 is amended to read:

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

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

(b) The person has received a General Educational Development (GED) certificate from a community college and provides the department with proof of the certificate satisfactory to the department; or

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

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

(B) Enrolled in a community college and making satisfactory progress toward a General Educational Development (GED) certificate or high school diploma;

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

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

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

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

(a) Has graduated from high school and provides the department with proof of graduation satisfactory to the department;

(b) Has received a General Educational Development (GED) certificate from a community college and provides the department with proof of the certificate satisfactory to the department;

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

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

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

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

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

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

**SECTION 25.** ORS 809.380 is amended to read:

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

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

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

(3) Upon expiration of the suspension, the Department of Transportation shall reissue, upon request of the person, the suspended driving privileges and any license or driver permit that evidences

the driving privileges. The reissuance shall be without requalification by the person except that the department may require the person to furnish evidence satisfactory to the department that the person is qualified to continue to exercise driving privileges in this state before the department reissues the driving privileges.

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

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

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

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

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

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

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

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

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

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

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

(i) The department issued the suspension without error because the person was not in compliance with financial responsibility requirements as of the date of the department's letter of verification under ORS 806.150 or at the time of an accident described in ORS 806.200, but the department later determines that the person reasonably and in good faith believed that the person was in compliance with financial responsibility requirements on the date of the department's letter of verification or at the time of the accident.

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

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

(L) The department issued the suspension without error because the department received a notice to suspend from a court under ORS 809.210 or 809.220, but the department later determines that the person in fact was in compliance with the requirements of the court prior to the effective date of the suspension.

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

(a) Has graduated from high school and provides the department with proof of graduation satisfactory to the department; or

(b) Has received a General Educational Development (GED) certificate from a community college and provides the department with proof of the certificate satisfactory to the department.

**SECTION 26.** ORS 809.423 is amended to read:

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

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

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

## REPEAL

**SECTION 27.** ORS 167.401 is repealed.

## APPLICABILITY

**SECTION 28.** Sections 2 to 5 of this 2017 Act, the amendments to ORS 163.575, 163.580, 165.800, 165.813, 167.400, 167.402, 167.404, 167.407, 181A.335, 323.709, 323.718, 339.257, 339.883, 431A.175, 431A.183, 433.847, 743B.013, 807.066, 807.500, 809.380 and 809.423 by sections 6 to 26 of this 2017 Act and the repeal of ORS 167.401 by section 27 of this 2017 Act apply to conduct occurring on or after January 1, 2018.

## UNIT CAPTIONS

**SECTION 29.** The unit captions used in this 2017 Act are provided only for the convenience of the reader and do not become part of the statutory law of this state or express any legislative intent in the enactment of this 2017 Act.

## EMERGENCY CLAUSE

**SECTION 30.** This 2017 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2017 Act takes effect on its passage.



**Passed by Senate March 23, 2017**

**Repassed by Senate July 6, 2017**

.....  
Lori L. Brocker, Secretary of Senate

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Peter Courtney, President of Senate

**Passed by House July 6, 2017**

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Tina Kotek, Speaker of House

**Received by Governor:**

.....M.,....., 2017

**Approved:**

.....M.,....., 2017

.....  
Kate Brown, Governor

**Filed in Office of Secretary of State:**

.....M.,....., 2017

.....  
Dennis Richardson, Secretary of State