

DRAFT

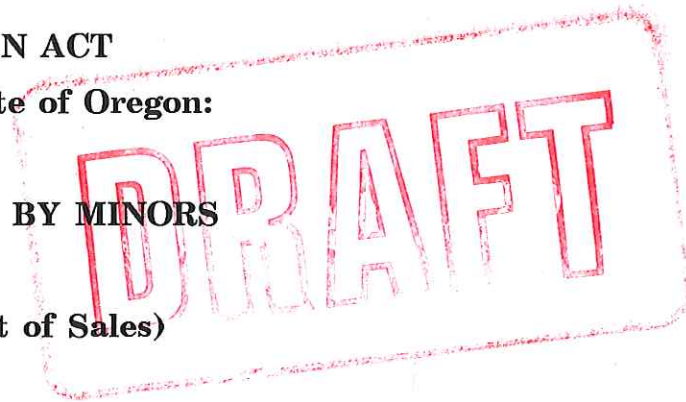
SUMMARY

A BILL FOR AN ACT

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

SALES TO AND USE BY MINORS

(Civil Enforcement of Sales)



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

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

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

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

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

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

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 *both for chewing and smoking, and shall include cigarettes as defined in ORS*
2 *323.010 (1).]*

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

4 **(a)(A) “Electronic delivery device” means:**

5 **(i) An electronic device, such as an e-cigarette, e-cigar, e-pipe or**
6 **e-hookah, that can be used to deliver nicotine or cannabinoids in the**
7 **form of a vapor or aerosol to a person inhaling from the device; or**

8 **(ii) A component of a device described in this paragraph or a sub-**
9 **stance in any form that can be vaporized or aerosolized by a device**
10 **described in this paragraph, whether the component or substance is**
11 **sold separately or is not sold separately.**

12 **(B) “Electronic delivery device” does not include any product that**
13 **has been approved by the United States Food and Drug Administration**
14 **for sale as a tobacco cessation product or any other therapeutic pur-**
15 **pose if the product is marketed and sold solely for the approved pur-**
16 **pose.**

17 **(b) “Tobacco products” means:**

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

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

26 **(2) It is unlawful:**

27 **(a) To distribute, sell or cause to be sold tobacco products or an**
28 **electronic delivery device to a person under 18 years of age;**

29 **(b) To fail as a retailer of tobacco products to post a notice sub-**
30 **stantially similar to the notice described in subsection (3) of this sec-**
31 **tion in a location that is clearly visible to the seller and the purchaser**

DRAFT

1 of the tobacco products;

2 (c) To fail as a retailer of an electronic delivery device to post a
3 notice substantially similar to the notice described in subsection (4)
4 of this section in a location that is clearly visible to the seller and the
5 purchaser of the electronic delivery device;

6 (d) To distribute, sell or cause to be sold an electronic delivery de-
7 vice if the electronic delivery device is not packaged in child-resistant
8 safety packaging as required by the Oregon Health Authority by rule;

9 (e) To distribute, sell or cause to be sold an electronic delivery de-
10 vice if the electronic delivery device is packaged in a manner that is
11 attractive to minors, as determined by the authority by rule; or

12 (f) To distribute, sell or cause to be sold cigarettes in any form
13 other than a sealed package.

14 (3) The notice [*shall*] required by subsection (2)(b) must be substan-
15 tially as follows:

16
17 NOTICE

18 The sale of tobacco in any form to persons under 18 years of age is pro-
19 hibited by law. Any person who knowingly sells, or causes to be sold, tobacco
20 to a person under 18 years of age commits the offense of endangering the
21 welfare of a minor, pursuant to ORS 163.575.

22
23 (4) The notice required by subsection (2)(c) of this section must be
24 substantially as follows:

25
26 NOTICE

27 The sale of electronic smoking devices and substances to be used
28 with such devices is prohibited by law. Any person who knowingly
29 sells, or causes to be sold, such devices or substances to a person un-
30 der 18 years of age commits the offense of endangering the welfare of
31 a minor, pursuant to ORS 163.575.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31

SECTION 2. ORS 431.845 is amended to read:

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

(1) The Oregon Health Authority may impose a civil penalty for each violation of ORS 431.840. A civil penalty imposed under this section may not be less than \$100 or more than \$500.

(2) [The] Amounts collected under subsection (1) of this section shall be deposited [to the credit of] **in the State Treasury and credited to the General Fund.**

SECTION 3. ORS 431.853 is amended to read:

431.853. (1) The Oregon Health Authority shall:

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

(b) Submit a report describing:

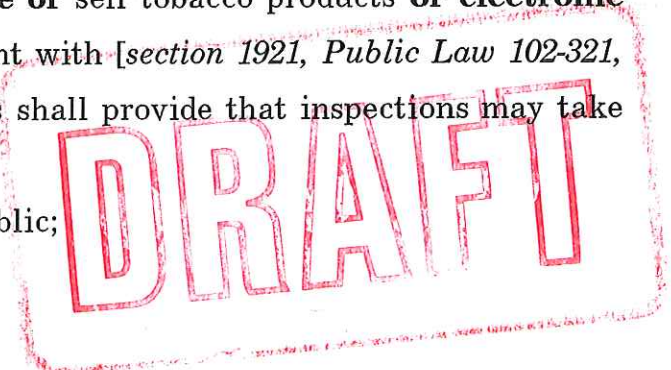
(A) The activities carried out to enforce the laws listed in paragraph (a) of this subsection during the previous fiscal year;

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

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

(2) The [Oregon Health] authority shall adopt rules concerning random inspections of places that **distribute or sell tobacco products or electronic delivery devices that are** consistent with [section 1921, Public Law 102-321, 1992] **42 U.S.C. 300x-21**. The rules shall provide that inspections may take place:

(a) Only in areas open to the public;



1 (b) Only during **the** hours that tobacco products **or electronic delivery**
2 **devices** are sold or distributed; and

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

5
6 **(Endangering the Welfare of a Minor)**
7

8 **SECTION 4.** ORS 163.575, as amended by section 1, chapter 20, Oregon
9 Laws 2014, is amended to read:

10 163.575. (1) A person commits the offense of endangering the welfare of
11 a minor if the person knowingly:

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

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

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

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

22 **(e) Distributes, sells or causes to be sold an electronic delivery de-**
23 **vice, as defined in ORS 431.840, to a person under 18 years of age; or**

24 [*e*] **(f) Sells to a person under 18 years of age any device in which to-**
25 **bacco, marijuana, cocaine or any controlled substance, as defined in ORS**
26 **475.005, is burned and the principal design and use of which is directly or**
27 **indirectly to deliver tobacco smoke, marijuana smoke, cocaine smoke or**
28 **smoke from any controlled substance into the human body including but not**
29 **limited to:**

30 (A) Pipes, water pipes, hookahs, wooden pipes, carburetor pipes, electric
31 pipes, air driven pipes, corncob pipes, meerschaum pipes and ceramic pipes,

1 with or without screens, permanent screens, hashish heads or punctured
2 metal bowls;

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

4 (C) Bonges;

5 (D) Chillums;

6 (E) Ice pipes or chillers;

7 (F) Cigarette rolling papers and rolling machines; and

8 (G) Cocaine free basing kits.

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

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

16 **(4) Endangering the welfare of a minor by violation of subsection**
17 **(1)(e) of this section if the electronic delivery device is not a substance**
18 **containing a cannabinoid is a Class A violation.**

19 [(4)] **(5)** Endangering the welfare of a minor by violation of subsection
20 [(1)(e)] **(1)(f)** of this section involving a device for smoking tobacco is a Class
21 A violation.

22
23 **(Other Violations)**
24

25 **SECTION 5.** ORS 167.400 is amended to read:

26 **NOTE:** This section has two SA notes.

27 167.400. **(1) As used in this section and ORS 167.401, 167.402, 167.404**
28 **and 167.407:**

29 **(a) “Electronic delivery device” has the meaning given that term in**
30 **ORS 431.840.**

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

1 **431.840; and**

2 [(1)] (2) **Except as provided in subsection (3) of this section,** it is
3 unlawful for [any] a person under 18 years of age to possess tobacco
4 products[, as defined in ORS 431.840] **or an electronic delivery device.**

5 [(2)] (3) [Any] A person who violates [subsection (1) of] this section com-
6 mits a Class D violation.

7 **SECTION 6.** ORS 167.401 is amended to read:

8 **NOTE:** This section has an SA note.

9 167.401. (1)(a) Except as provided in subsection (4) of this section, [no] a
10 person under 18 years of age [shall] **may not** purchase, attempt to purchase
11 or acquire tobacco products [as defined in ORS 431.840] **or an electronic**
12 **delivery device.**

13 (b) Except [when such minor is in a private residence accompanied by the
14 parent or guardian of the minor and with the consent of such parent or
15 guardian, no] **as provided in subsection (5) of this section,** a person under
16 18 years of age [shall have personal possession of] **may not possess** tobacco
17 products **or an electronic delivery device.**

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

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

29 (b) In addition to and not in lieu of any other penalty established by law,
30 a person who is convicted of a second violation of subsection (1) of this
31 section through misrepresentation of age may be required to participate in

1 [a tobacco education or a tobacco use cessation program] **a program de-**
 2 **scribed in paragraph (a) of this subsection** or to perform community ser-
 3 vice [related to diseases associated with the consumption of tobacco products]
 4 **as described in paragraph (a) of this subsection**, and the court shall order
 5 that the person's driving privileges [and] **or** right to apply for driving priv-
 6 ileges be suspended for a period not to exceed one year. If a court has issued
 7 an order suspending driving privileges under this subsection, the court, upon
 8 petition of the person, may withdraw the order at any time the court deems
 9 appropriate. The court notification to the Department of Transportation un-
 10 der this subsection may include a recommendation that the person be granted
 11 a hardship permit under ORS 807.240 if the person is otherwise eligible for
 12 the permit.

13 (4) A [minor] **person under the age of 18 who is** acting under the
 14 supervision of an adult may purchase, attempt to purchase or acquire to-
 15 bacco products **or an electronic delivery device** for the purpose of testing
 16 compliance with a federal law, state [statute] **law**, local law or retailer
 17 management policy limiting or regulating the delivery of tobacco products
 18 **or electronic delivery devices** to minors.

19 (5) **A person under the age of 18 years of age may possess tobacco**
 20 **products or an electronic delivery device if the person is in a private**
 21 **residence accompanied by the parent or guardian of the person and the**
 22 **parent or guardian has consented to the person possessing tobacco**
 23 **products or the electronic delivery device.**

24 **SECTION 7.** ORS 167.402 is amended to read:

25 167.402. (1) As used in this section, "vending machine" means a mechan-
 26 ical, electronic or similar device that, upon the insertion of tokens, money
 27 or another form of payment, dispenses tobacco products **or electronic de-**
 28 **livery devices.**

29 (2) A person may not sell or dispense tobacco products[, *as defined in*
 30 *ORS 431.840,*] **or an electronic delivery device** from a vending machine,
 31 except in an establishment where the premises are [*posted as*] permanently

1 and entirely off-limits to minors under rules adopted by the Oregon Liquor
2 Control Commission.

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

6 **SECTION 8.** ORS 167.404 is amended to read:

7 167.404. Cities and counties by ordinance or resolution [*shall*] **may not**
8 regulate vending machines that dispense tobacco products[, *as defined in*
9 *ORS 431.840, in any form*] **or electronic delivery devices** and that are in
10 any manner accessible to minors.

11 **SECTION 9.** ORS 167.407 is amended to read:

12 167.407. (1) A person having authority over the location of [*cigarettes and*
13 *other*] tobacco products **and electronic delivery devices** in a retail store
14 may not locate [*cigarettes or other*] **the tobacco products or electronic de-**
15 **livery devices** in a location in the store where the [*cigarettes or other*] to-
16 bacco products **or electronic delivery devices** are accessible by store
17 customers without assistance by a store employee.

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

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

25
26 **(Affirmative Defenses to Identity Crimes)**
27

28 **SECTION 10.** ORS 165.800 is amended to read:

29 165.800. (1) A person commits the crime of identity theft if the person,
30 with the intent to deceive or to defraud, obtains, possesses, transfers, creates,
31 utters or converts to the person's own use the personal identification of an-

1 other person.

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

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

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

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

12 (c) Used the personal identification of another person solely for the pur-
13 pose of misrepresenting the person's age to gain access to a:

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

15 (B) Benefit based on age.

16 (4) As used in this section:

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

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

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

25 (B) A person's driving privileges;

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

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

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

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

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

DRAFT

1 (H) The identifying number of a person's depository account at a "finan-
2 cial institution" or "trust company," as those terms are defined in ORS
3 706.008, or a credit card account;

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

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

7 (K) A person's photograph;

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

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

DRAFT

10 **SECTION 11.** ORS 165.813 is amended to read:

11 165.813. (1) A person commits the crime of unlawful possession of ficti-
12 tious identification if the person possesses a personal identification card
13 containing identification information for a fictitious person with the intent
14 to use the personal identification card to commit a crime.

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

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

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

21 (b) Was under 18 years of age at the time of committing the offense and
22 the person possessed the personal identification card solely for the purpose
23 of enabling the person to purchase tobacco products **or an electronic de-**
24 **livery device, as those terms are defined in ORS 431.840.**

25 **SECTION 12.** ORS 807.500 is amended to read:

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

1 under the vehicle code.

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

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

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

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

13
14 **(Requirements for Schools, Youth Correction**
15 **Facilities and Juvenile Detention Facilities)**

16
17 **SECTION 13.** ORS 339.883 is amended to read:

18 339.883. (1) A facility shall not permit any person under 18 years of age
19 to possess tobacco products[, *as defined in ORS 431.840,*] **or an electronic**
20 **delivery device** while the person is present on facility grounds or in facility
21 buildings or attending facility-sponsored activities.

22 (2) [*The*] A facility must have a written [*policies*] **policy** prohibiting the
23 possession of tobacco products **and electronic delivery devices** as described
24 in subsection (1) of this section [*by persons under 18 years of age*]. [*The*] A
25 facility must have written plans to implement [*such policies*] **the policy**.

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

29 (4) As used in this section, "facility" means public or private schools,
30 youth correction facilities or juvenile detention facilities. "Facility" does not
31 include colleges or universities, career and technical education schools or

1 community colleges.

2

3

USE IN PUBLIC PLACES

4

5

(Oregon Indoor Clean Air Act)

6

7

SECTION 14. ORS 433.835 is amended to read:

8

433.835. As used in ORS 433.835 to 433.875:

9

(1) "Cigar bar" means a business that:

10

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

11

(b) Has a humidor on the premises;

12

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

16

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

18

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

20

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

21

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

22

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

25

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

27

(2)(a) "Electronic delivery device" means an electronic device, such as an e-cigarette, e-cigar, e-pipe or e-hookah, that can be used to deliver nicotine or cannabinoids in the form of a vapor or aerosol to a person inhaling from the device.

31

(b) "Electronic delivery device" does not include any product that

1 **has been approved by the United States Food and Drug Administration**
2 **for sale as a tobacco cessation product or any other therapeutic pur-**
3 **pose if the product is marketed and sold solely for the approved pur-**
4 **pose.**

5 [(2)] (3) "Enclosed area" means all space between a floor and a ceiling
6 that is enclosed on three or more sides by permanent or temporary walls or
7 windows, exclusive of doors or passageways, that extend from the floor to
8 the ceiling.

9 [(3)] (4)(a) "Place of employment" means every enclosed area under the
10 control of a public or private employer that employees frequent during the
11 course of employment, including but not limited to work areas, employee
12 lounges, vehicles that are operated in the course of an employer's business
13 that are not operated exclusively by one employee, rest rooms, conference
14 rooms, classrooms, cafeterias, hallways, meeting rooms, elevators and stair-
15 ways.

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

19 [(4)] (5) "Public place" means any enclosed area open to the public.

20 [(5)] (6) "Smoke shop" means a business that is certified with the au-
21 thority as a smoke shop pursuant to the rules adopted under ORS 433.847.

22 [(6)] (7) "Smoking instrument" means any cigar, cigarette, pipe or other
23 smoking equipment.

24 (8) **"Use an electronic delivery device" means to use an electronic**
25 **delivery device in a manner that creates a vapor or aerosol.**

26 **SECTION 15.** ORS 433.840 is amended to read:

27 433.840. The people of Oregon find that because exposure to secondhand
28 smoke is known to cause cancer and other chronic diseases such as heart
29 disease, asthma and bronchitis, it is necessary to reduce exposure to tobacco
30 smoke by prohibiting smoking in all public places and places of employment.

31 **SECTION 16.** ORS 433.845 is amended to read:

1 433.845. (1) A person may not smoke [or], carry [any] a lighted smoking
2 instrument **or use an electronic delivery device** in a public place or place
3 of employment except in areas designated [as smoking areas] **for those ac-**
4 **tivities** pursuant to ORS 433.850.

5 (2) A person may not smoke [or], carry [any] a lighted smoking instru-
6 ment **or use an electronic delivery device** within 10 feet of the following
7 parts of public places or places of employment:

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

DRAFT

12 (3) A person may not smoke [or], carry [any] a lighted smoking instru-
13 ment **or use an electronic delivery device** in a room during the time that
14 jurors are required to use the room.

15 **SECTION 17.** ORS 433.850 is amended to read:

16 433.850. (1) An employer shall provide a place of employment that is free
17 of tobacco smoke **and vapors or aerosols created by electronic delivery**
18 **devices** for all employees.

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

20 (a) The owner or person in charge of a hotel or motel may designate up
21 to 25 percent of the sleeping rooms of the hotel or motel as rooms in which
22 smoking **or using an electronic delivery device** is permitted.

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

26 (c) Smoking is permitted in a smoke shop.

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

29 (e) A performer may smoke [or], carry a lighted smoking instrument that
30 does not contain tobacco **or use an electronic delivery device to vaporize**
31 **or aerosolize a substance that does not contain nicotine or a**

1 **cannabinoid** while performing in a scripted stage, motion picture or tele-
2 vision production if:

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

5 (B) Smoking **or using an electronic delivery device** is an integral part
6 of the production.

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

10
11 **(Public Meetings)**

DRAFT

12
13 **SECTION 18.** ORS 192.710 is amended to read:

14 192.710. (1) No person shall smoke [*or*], carry [*any*] **a** lighted smoking in-
15 strument **or use an electronic delivery device** in a room where a public
16 meeting is being held or is to continue after a recess. For purposes of this
17 subsection, a public meeting is being held from the time the agenda or
18 meeting notice indicates the meeting is to commence regardless of the time
19 it actually commences.

20 (2) As used in this section:

21 (a) "Public meeting" means any regular or special public meeting or
22 hearing of a public body to exercise or advise in the exercise of any power
23 of government in buildings or rooms rented, leased or owned by the State
24 of Oregon or by any county, city or other political subdivision in the state
25 regardless of whether a quorum is present or is required.

26 (b) "Public body" means the state or any department, agency, board or
27 commission of the state or any county, city or other political subdivision in
28 the state.

29 (c) "Smoking instrument" means any cigar, cigarette, pipe or other
30 smoking equipment.

31 (d) "Use an electronic delivery device" has the meaning given that

1 term in ORS 433.835.

2

3

(Places of Employment)

4

5 **SECTION 19.** ORS 243.345 is amended to read:

6 243.345. The Legislative Assembly finds that because the smoking of to-
7 bacco creates a health hazard, it is necessary to protect the public health
8 by restricting smoking in places of employment operated by the State of
9 Oregon.

10 **SECTION 20.** ORS 243.350 is amended to read:

11 243.350. (1) As used in this section: “electronic delivery device” and
12 “use an electronic delivery device” have the meanings given those
13 terms in ORS 433.835.

14 [(1)] (2) In accordance with the provisions of ORS chapter 183, the Per-
15 sonnel Division shall adopt rules restricting smoking **and using electronic**
16 **delivery devices** in places of employment operated by departments or agen-
17 cies of [*the State of Oregon*] **this state**. The rules of the division shall:

18 (a) Set standards for the designation of areas in a place of employment
19 where smoking **or using an electronic delivery device** is permitted, in-
20 cluding standards for ventilation and physical barriers.

21 (b) Require departments or agencies to designate areas in the place of
22 employment where smoking **and using electronic delivery devices** is per-
23 mitted pursuant to the standards of the division.

24 (c) Require departments or agencies supplying employees with lounges to
25 provide [*smoke-free*] lounge areas for [*nonsmoking*] employees **who do not**
26 **smoke or use electronic delivery devices**.

27 (d) Prohibit smoking in a place of employment in any area not designated
28 as an area where smoking is permitted.

29 [(2)] (3) The rules adopted by the division [*pursuant to subsection (1) of*]
30 **under** this section [*shall*] **do** not apply to enclosed offices occupied exclu-
31 sively by [*smokers*] **individuals who smoke or use electronic delivery**

1 **devices**, even though the offices may be visited by [*nonsmokers*] **individuals**
2 **who do not smoke or use electronic delivery devices.**

3 [(3)] (4) Nothing in this section is intended to prevent departments or
4 agencies from prohibiting smoking **or using electronic delivery devices** in
5 the entire area of the place of employment.

6
7 (Hospitals)

DRAFT

8
9 **SECTION 21.** ORS 441.815 is amended to read:

10 441.815. (1) As used in this section[.]:

11 (a) "Hospital" has the meaning given the term in ORS 442.015.

12 (b) **"Use an electronic delivery device" has the meaning given that**
13 **term in ORS 433.835.**

14 (2) The administrator or person in charge of a hospital may not permit
15 a person to smoke tobacco **or use an electronic delivery device:**

16 (a) In the hospital; or

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

19 (3) The Director of the Oregon Health Authority may impose a civil pen-
20 alty of not more than \$500 per day on a person for violation of subsection
21 (2) of this section. Civil penalties imposed against a person under this sub-
22 section may not exceed \$2,000 in any 30-day period. Civil penalties imposed
23 under this subsection shall be imposed in the manner provided by ORS
24 183.745.

25 (4) The Oregon Health Authority may adopt rules necessary for the ad-
26 ministration of this section.

27

28 **CONFORMING AMENDMENTS**

29

30 **SECTION 22.** ORS 163.580 is amended to read:

31 163.580. (1) [*Any*] A person who sells any of the smoking devices listed in

1 ORS 163.575 [(1)(e)] (1)(f) shall display a sign clearly stating that the sale
2 of such devices to persons under 18 years of age is prohibited by law.

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

4 **SECTION 23.** ORS 433.847 is amended to read:

5 433.847. (1) The Oregon Health Authority shall adopt rules establishing
6 a certification system for smoke shops.

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

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

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

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

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

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

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

19 (G) Allows smoking only for the purpose of sampling tobacco products for
20 making retail purchase decisions;

21 (b) On December 31, 2008:

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

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

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

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

31 (B) Met the requirements of ORS 433.835 [(5)] (6), as in effect immediately

1 before June 30, 2011, at the time of application;

2 (C) Was certified as a smoke shop under ORS 433.835 [(5)] (6), as in effect
3 immediately before June 30, 2011, by the authority on or before December
4 31, 2012; and

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

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

10 (a)(A) Meets the requirements of subsection (2)(a)(A) to (D) of this sec-
11 tion; and

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

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

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

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

22 (a) Meets the requirements of ORS 433.835 [(5)] (6), as in effect imme-
23 diately before June 30, 2011; and

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

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

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

1 (a)(A) The new location occupies no more than 3,500 square feet; or
2 (B) If the old location occupied more than 3,500 square feet, the new lo-
3 cation occupies no more than 110 percent of the space occupied by the old
4 location; and

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

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

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

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

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

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

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

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

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

22 (A) Meets the requirements of ORS 433.835 [(5)] (6), as in effect imme-
23 diately before June 30, 2011; and

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

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

30

<p>Section 1 Amending ORS 431.840</p>	<p>This is the primary statute with respect to the prohibition on sales to minors. It contains the most changes to current law, including:</p> <ul style="list-style-type: none"> (1) Conforming language to current legislative form and style. (2) Defining “electronic delivery device.” (3) Making <i>any</i> distribution or sale of tobacco products to minors subject to civil penalty, not just distribution of free tobacco for marketing purposes. (4) Applying that same prohibition to electronic delivery devices. (5) Requiring child-resistant safety packaging for electronic delivery devices. (6) Prohibiting the packaging of electronic delivery devices in a manner that is attractive to minors. (NOTE: This is facially constitutional under the <i>Robertson</i> framework, but may be applied in an unconstitutional way). (7) Requiring notice of criminal liability for selling electronic delivery devices to minors.
<p>Section 2 Amending ORS 431.845</p>	<p>This statute sets forth the civil penalty for violating ORS 431.840. Currently, the only changes made to the statute are those that update the language so that it conforms to current legislative form and style.</p>
<p>Section 3 Amending ORS 431.853</p>	<p>This statute authorizes the Oregon Health Authority to conduct investigations of wholesalers and retailers of tobacco products. It has been updated to similarly authorize investigations of wholesalers and retailers of electronic delivery devices.</p> <p>QUESTIONS FOR OHA: (1) To whom is the report required by subsection (1)(b) submitted? How often? In what form? (2) If rules adopted under subsection (2) are to be consistent with federal law, why specifically address the form and manner of the investigations as described in paragraphs (a) to (c) of that subsection?</p>
<p>Section 4 Amending ORS 163.575</p>	<p>This statute sets forth the crime for endangering the welfare of a minor. Because electronic delivery devices can be used for the purpose of inhaling cannabinoid concentrates, the amendments to this statute impose different penalties for different types of electronic delivery devices.</p>
<p>Sections 5 and 6 Amending ORS 167.400 and 167.401</p>	<p>These statutes establish violations for minors who possess, purchase or attempt to purchase tobacco products. The amendments merely update the statutes so that they impose the same prohibitions on electronic delivery devices.</p> <p>NOTE: The prohibition against possession in ORS 167.401 is essentially the same as the prohibition against possession in ORS 167.400 except that the penalty imposed by ORS 167.401</p>

	is greater than the penalty imposed under ORS 167.400 and that there is no exception to the offense of possession under ORS 167.400. The policy behind these two statutes seems incongruous.
Sections 7 and 8 Amending ORS 167.402 and 167.404	These statutes concern the sale of tobacco products through vending machines. They have been updated to apply equally to electronic delivery devices. NOTE: ORS 167.404 prohibits the local governments from adopting more stringent ordinances.
Section 9 Amending ORS 167.407	This statute requires tobacco products to be placed behind the counter or in another location not accessible by store customers. It has been updated to apply equally to electronic delivery devices.
Sections 10 through 12 Amending ORS 165.800, 165.813 and 807.500	These statutes create identity crimes. Affirmative defenses to those crimes currently include minors using a form of identification to purchase or attempt to purchase tobacco products. The statutes have been updated to apply equally to electronic delivery devices.
Section 13 Amending ORS 339.883	This statute imposes a requirement on schools, youth correction facilities and juvenile detention facilities to prohibit the possession of tobacco products by persons under 18 years of age. It has been updated to apply equally to electronic delivery devices.
Section 14 Amending ORS 433.835	This is the definitional section for the Oregon Indoor Clean Air Act (OICAA). For purposes of updating the Act, two new definitions have been included: (1) Electronic delivery device is defined here in the same way that is defined in ORS 431.840, except that it is unnecessary to include the second part of the definition here. (2) Use of an electronic delivery device is defined to clarify that by "use" the law means "use in manner that creates a vapor or aerosol cloud.
Section 15 Amending ORS 433.840	This is the statement of Legislative intent with regard to the implementation of the OICAA. It is unnecessary to update this statute in this bill; however, if amendment to this statute is desired, it would be best if a member of the Legislation Assembly sent me some language. I have not amended the statute in this draft.
Sections 16 and 17 Amending ORS 433.845 and 433.850	Other sections of the OICAA that require amending are the general prohibitions section and the general exemptions section. No other sections require amendment.
Section 18 Amending ORS 192.710	This statute prohibits smoking at a public meeting. It has been updated to equally apply to use of an electronic delivery device. NOTE: Given that the prohibition in this statute applies to

	public meetings held “in a room” it accomplishes nothing more than the OICAA accomplishes.
Section 19 Amending ORS 243.345	See comments for section 15 above.
Section 20 Amending ORS 243.350	<p>This statute prohibits smoking in state owned/operated buildings. It has been updated to apply equally to the use of electronic delivery devices.</p> <p>NOTE: Given the implementation of the OICAA, this statute, like ORS 192.710, seems redundant. However, it does provide for enforcement by the Personnel Division.</p>
Section 21 Amending ORS 441.815	This statute requires hospital administrators to prohibit smoking in hospitals. It has been updated to apply equally to the use of electronic delivery devices.
Sections 22 and 23 Amending ORS 163.580 and 433.847	These are conforming amendments and must be made for purposes of updating internal ORS references.