

House Bill 2558

Sponsored by Representative GREENLICK; Representatives BARNHART, SMITH WARNER (Pre-session filed.)

SUMMARY

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

Directs State Board of Pharmacy to adopt rules making nicotine Schedule III controlled substance. Provides for phase-in of penalties by board.

Creates crimes of unlawful possession of nicotine and unlawful distribution of nicotine, effective until rules adopted. Punishes by maximum fine of \$2,000.

Creates crimes of unlawful possession of nicotine, unlawful delivery of nicotine and unlawful manufacture of nicotine. Punishes by maximum fine of \$2,000.

A BILL FOR AN ACT

Relating to nicotine; creating new provisions; amending ORS 163.575, 163.580, 323.500, 323.700, 323.706, 323.709, 323.715, 323.718, 336.067, 421.352, 433.835, 433.850, 475.035, 476.755, 565.456, 809.380 and 809.423; and repealing ORS 167.400, 167.401, 167.402, 167.404, 167.407, 192.710, 192.990, 243.345, 243.350, 323.703, 339.883, 431.840, 431.845, 431.850, 431.853, 433.847 and 811.193.

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

NICOTINE AS SCHEDULE III CONTROLLED SUBSTANCE

SECTION 1. (1)(a) The State Board of Pharmacy shall adopt rules to classify nicotine as a Schedule III controlled substance.

(b) The board may not adopt rules that exempt a product containing nicotine from classification as a Schedule III controlled substance.

(2) Records of transactions involving nicotine or products containing nicotine are subject to inspection by the board and law enforcement agencies. A person required to make or maintain records of transactions involving nicotine or products containing nicotine shall forward the records to the Department of State Police if directed to do so by the department. Failure to forward records as required by this subsection is a Class A violation.

TRANSITIONAL PROVISIONS

SECTION 2. No later than July 1, 2016, the State Board of Pharmacy shall adopt rules or make amendments to the board's rules that are necessary to implement section 1 of this 2015 Act. The board shall provide that rules or amendments to rules required by this section take effect on July 1, 2016.

SECTION 3. For the period beginning on the effective date of this 2015 Act and ending on the date the rules required by section 2 of this 2015 Act take effect:

(1) The State Board of Pharmacy may adopt rules placing requirements and limitations on the sale or transfer of nicotine or products containing nicotine.

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 (2) If the board requires a person who sells or transfers nicotine or products containing
 2 nicotine to make or maintain records relating to the sale or transfer, the records are subject
 3 to inspection by the board and law enforcement agencies. A person required to make or
 4 maintain records pursuant to rules adopted under this section shall forward the records to
 5 the Department of State Police if directed to do so by the department. Failure to make or
 6 maintain records required by rules adopted under this section or to forward records as re-
 7 quired by this subsection is a Class A violation.

8 (3) Notwithstanding subsection (1) of this section, the board may not require a practi-
 9 tioner as defined in ORS 475.005 to make or maintain a record of the sale or transfer of
 10 nicotine or products containing nicotine if the practitioner makes and maintains a record
 11 of the sale or transfer under other applicable laws or rules regarding prescribing and dis-
 12 pensing regulated or controlled substances by practitioners.

13 (4)(a) Except as otherwise provided in paragraphs (b) and (c) of this subsection, a person
 14 commits the crime of unlawful possession of nicotine if the person knowingly possesses more
 15 than 0.1 milligram of nicotine.

16 (b) Paragraph (a) of this subsection does not apply to a person who possesses nicotine
 17 obtained pursuant to a valid prescription issued by a practitioner as defined in ORS 475.005
 18 while acting in the course of professional practice.

19 (c) Paragraph (a) of this subsection does not apply to a practitioner, pharmacist, retail
 20 distributor, wholesaler, manufacturer, warehouse operator or common carrier or an agent
 21 of a practitioner, pharmacist, retail distributor, wholesaler, manufacturer, warehouse oper-
 22 ator or common carrier if the possession is in the regular course of lawful business activ-
 23 ities.

24 (d) Unlawful possession of nicotine is a Class A violation.

25 (5)(a) A person commits the crime of unlawful distribution of nicotine if the person sells
 26 or otherwise transfers nicotine:

27 (A) In violation of a rule of the board; or

28 (B) To a person other than:

29 (i) A person with a valid prescription for nicotine issued by a practitioner as defined in
 30 ORS 475.005 while acting in the course of professional practice; or

31 (ii) A practitioner, pharmacist, retail distributor, wholesaler, manufacturer, warehouse
 32 operator or common carrier or an agent of a practitioner, pharmacist, retail distributor,
 33 wholesaler, manufacturer, warehouse operator or common carrier in the regular course of
 34 lawful business activities.

35 (b) Unlawful distribution of nicotine is a Class A violation.

36
 37 **CRIMES**

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 39 **SECTION 4.** Sections 5 to 8 of this 2015 Act are added to and made a part of ORS 475.752
 40 to 475.980.

41 **SECTION 5.** (1) It is unlawful for any person knowingly or intentionally to possess
 42 nicotine unless the nicotine was obtained directly from, or pursuant to, a valid prescription
 43 or order of a practitioner while acting in the course of professional practice, or except as
 44 otherwise authorized by ORS 475.005 to 475.285 and 475.752 to 475.980.

45 (2) Notwithstanding ORS 475.752, unlawful possession of nicotine is a Class A violation.

1 **SECTION 6.** (1) Except as otherwise authorized by ORS 475.005 to 475.285 and 475.752 to
2 475.980, it is unlawful for any person to deliver nicotine.

3 (2) Notwithstanding ORS 475.752, unlawful delivery of nicotine is a Class A violation.

4 **SECTION 7.** (1) Except as otherwise authorized by ORS 475.005 to 475.285 and 475.752 to
5 475.980, it is unlawful for any person to manufacture nicotine.

6 (2) Notwithstanding ORS 475.752, unlawful manufacture of nicotine is a Class A violation.

7
8 **REPEALS**

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10 **SECTION 8.** ORS 167.400, 167.401, 167.402, 167.404, 167.407, 192.710, 192.990, 243.345, 243.350,
11 323.703, 339.883, 431.840, 431.845, 431.850, 431.853, 433.847 and 811.193 are repealed.

12
13 **CONFORMING AMENDMENTS**

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

17 163.575. (1) A person commits the offense of endangering the welfare of a minor if the person
18 knowingly:

- 19 (a) Induces, causes or permits an unmarried person under 18 years of age to witness an act of
- 20 sexual conduct or sadomasochistic abuse as defined by ORS 167.060;
- 21 (b) Permits a person under 18 years of age to enter or remain in a place where unlawful activity
- 22 involving controlled substances is maintained or conducted;
- 23 (c) Induces, causes or permits a person under 18 years of age to participate in gambling as de-
- 24 fined by ORS 167.117; **or**

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

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

- 31 (A) Pipes, water pipes, hookahs, wooden pipes, carburetor pipes, electric pipes, air driven pipes,
- 32 corncob pipes, meerschaum pipes and ceramic pipes, with or without screens, permanent screens,
- 33 hashish heads or punctured metal bowls;
- 34 (B) Carburation tubes and devices, including carburation masks;
- 35 (C) Bongos;
- 36 (D) Chillums;
- 37 (E) Ice pipes or chillers;
- 38 (F) Cigarette rolling papers and rolling machines; and
- 39 (G) Cocaine free basing kits.

40 (2) **Except as provided in subsections (3) and (4) of this section**, endangering the welfare
41 of a minor *[by violation of subsection (1)(a), (b) or (c) of this section, or by violation of subsection (1)(e)*
42 *of this section involving other than a device for smoking tobacco,]* is a Class A misdemeanor.

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

45 **(3) Endangering the welfare of a minor by violation of subsection (1)(b) of this section**

1 **involving nicotine is a Class A violation.**

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

4 **SECTION 10.** ORS 163.580 is amended to read:

5 163.580. (1) Any person who sells any of the smoking devices listed in ORS 163.575 [(1)(e)] **(1)(d)**
6 shall display a sign clearly stating that the sale of such devices to persons under 18 years of age
7 is prohibited by law.

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

9 **SECTION 11.** ORS 323.500 is amended to read:

10 323.500. As used in ORS 323.500 to 323.645, unless the context otherwise requires:

11 (1) "Business" means any trade, occupation, activity or enterprise engaged in for the purpose
12 of selling or distributing tobacco products in this state.

13 (2) "Cigar" means a roll for smoking that is of any size or shape and that is made wholly or in
14 part of tobacco, irrespective of whether the tobacco is pure or flavored, adulterated or mixed with
15 any other ingredient, if the roll has a wrapper made wholly or in greater part of tobacco and if 1,000
16 of these rolls collectively weigh more than three pounds. "Cigar" does not include a cigarette, as
17 defined in ORS 323.010.

18 (3) "Consumer" means any person who purchases tobacco products in this state for the person's
19 use or consumption or for any purpose other than for reselling the tobacco products to another
20 person.

21 (4) "Contraband tobacco products" means tobacco products or packages containing tobacco
22 products:

23 (a) That do not comply with the requirements of ORS 323.500 to 323.645;

24 (b) That do not comply with the requirements of the tobacco products tax laws of the federal
25 government or of other states;

26 (c) That bear trademarks that are counterfeit under ORS 647.135 or other state or federal
27 trademark laws; or

28 (d) That have been sold, offered for sale or possessed for sale in this state in violation of ORS
29 180.486.

30 (5) "Department" means the Department of Revenue.

31 (6) "Distribute" means:

32 (a) Bringing, or causing to be brought, into this state from without this state tobacco products
33 for sale, storage, use or consumption;

34 (b) Making, manufacturing or fabricating tobacco products in this state for sale, storage, use or
35 consumption in this state;

36 (c) Shipping or transporting tobacco products to retail dealers in this state, to be sold, stored,
37 used or consumed by those retail dealers;

38 (d) Storing untaxed tobacco products in this state that are intended to be for sale, use or con-
39 sumption in this state;

40 (e) Selling untaxed tobacco products in this state; or

41 (f) As a consumer, being in possession of untaxed tobacco products in this state.

42 (7) "Distributor" means:

43 (a) Any person engaged in the business of selling tobacco products in this state who brings, or
44 causes to be brought, into this state from without the state any tobacco products for sale;

45 (b) Any person who makes, manufactures or fabricates tobacco products in this state for sale in

1 this state;

2 (c) Any person engaged in the business of selling tobacco products without this state who ships
3 or transports tobacco products to retail dealers in this state, to be sold by those retail dealers;

4 (d) Any person, including a retail dealer, who sells untaxed tobacco products in this state; or

5 (e) A consumer in possession of untaxed tobacco products in this state.

6 (8) "Manufacturer" means a person who manufactures tobacco products for sale.

7 (9) "Moist snuff" means:

8 (a) Any finely cut, ground or powdered tobacco that is not intended to be smoked or placed in
9 a nasal cavity; or

10 (b) Any other product containing tobacco that is intended or expected to be consumed without
11 being combusted.

12 (10) "Place of business" means any place where tobacco products are sold or where tobacco
13 products are manufactured, stored or kept for the purpose of sale or consumption, including any
14 vessel, vehicle, airplane[,] or train [*or vending machine*].

15 (11) "Retail dealer" means any person who is engaged in the business of selling or otherwise
16 dispensing tobacco products to consumers. [*The term also includes the operators of or recipients of*
17 *revenue from all places such as smoke shops, cigar stores and vending machines, where tobacco pro-*
18 *ducts are made or stored for ultimate sale to consumers.*]

19 (12) "Sale" means any transfer, exchange or barter, in any manner or by any means, for a con-
20 sideration, and includes and means all sales made by any person. It includes a gift by a person en-
21 gaged in the business of selling tobacco products, for advertising, as a means of evading the
22 provisions of ORS 323.500 to 323.645, or for any other purpose.

23 (13) "Taxpayer" includes a distributor or other person required to pay a tax imposed under ORS
24 323.500 to 323.645.

25 (14) "Tobacco products" means cigars, cheroots, stogies, periques, granulated, plug cut, crimp
26 cut, ready rubbed and other smoking tobacco, snuff, snuff flour, moist snuff, cavendish, plug and
27 twist tobacco, fine-cut and other chewing tobaccos, shorts, refuse scraps, clippings, cuttings and
28 sweepings of tobacco and other kinds and forms of tobacco, prepared in such manner as to be suit-
29 able for chewing or smoking in a pipe or otherwise, or both for chewing and smoking, but shall not
30 include cigarettes as defined in ORS 323.010.

31 (15) "Untaxed tobacco products" means tobacco products for which the tax required under ORS
32 323.500 to 323.645 has not been paid.

33 (16) "Wholesale sales price" means the price paid for untaxed tobacco products to or on behalf
34 of a seller by a purchaser of the untaxed tobacco products.

35 **SECTION 12.** ORS 323.700 is amended to read:

36 323.700. As used in ORS 323.700 to 323.730:

37 (1) "Consumer" means an individual who is not a licensed distributor of tobacco or a licensed
38 tobacco retailer.

39 (2) "Delivery sale":

40 (a) Means a sale of tobacco to a consumer in this state in which:

41 (A) The purchaser submits the order for the sale by means of a telephone or other method of
42 voice transmission, a delivery service or the Internet or other online service; or

43 (B) The tobacco is delivered by use of a delivery service.

44 (b) Includes any sale of tobacco described in paragraph (a) of this subsection, regardless of
45 whether the seller is located within Indian country or is otherwise within or outside of this state.

(c) Does not include any sale to a licensed distributor or licensed tobacco retailer in this state.

(3) "Delivery service" means any person that is engaged in the commercial delivery of letters, packages or other containers.

(4) "Indian country" has the meaning given that term in 18 U.S.C. 1151.

[(5) "*Legal minimum purchase age*" means the minimum age at which an individual may purchase tobacco in this state.]

[(6)] (5) "Mail" means the use of the United States Postal Service for delivery of letters, packages or other containers.

[(7)] (6) "Person accepting a purchase order for a delivery sale" means a person who fills a tobacco purchase order given by a consumer and processes the order for mail, shipping or other delivery, or who contracts with another party to provide delivery service.

[(8)] (7) "Purchase order" means a written or electronic document authorizing a seller to provide goods.

[(9)] (8) "Sale of tobacco to a consumer" means any sale of tobacco to an individual in this state, unless the individual is licensed as a distributor or retailer of tobacco by the Department of Revenue.

[(10)] (9) "Shipping container" means a container in which tobacco is packaged in connection with a delivery sale.

[(11)] (10) "Shipping documents" means bills of lading, airbills or any other documents used to evidence the undertaking by a delivery service to deliver letters, packages or other containers.

[(12)] (11) "Tobacco" means cigarettes, as defined in ORS 323.010, or tobacco products, as defined in ORS 323.500.

SECTION 13. ORS 323.706 is amended to read:

323.706. A person accepting a purchase order for a delivery sale, prior to the first mailing, shipment or other delivery of tobacco to a consumer, shall comply with:

[(1) *The age verification requirements set forth in ORS 323.709;*]

[(2)] (1) The distributor license requirements set forth in ORS 323.712;

[(3)] (2) The disclosure requirements set forth in ORS 323.715;

[(4)] (3) The mailing or shipping requirements set forth in ORS 323.718;

[(5)] (4) The reporting requirements set forth in ORS 323.721; and

[(6)] (5) All other laws of this state applicable to sales of tobacco that occur entirely within Oregon, including but not limited to ORS 323.005 to 323.482, 323.500 to 323.645, 323.806 and 323.816.

SECTION 14. 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*

1 *order and obtains a photocopy or other image of a valid, government-issued identification stating the*
 2 *age or date of birth of the individual placing the order;]*

3 [(3)] (2) Provides a notice to the prospective consumer, via electronic mail or other means, that
 4 meets the requirements of ORS 323.715; and

5 [(4)] (3) In the case of an order for tobacco placed through an Internet website, receives pay-
 6 ment for the delivery sale from the prospective purchaser by a credit or debit card that has been
 7 issued in the name of the prospective purchaser or by a personal check issued by the prospective
 8 purchaser.

9 **SECTION 15.** ORS 323.715 is amended to read:

10 323.715. The notice required under ORS 323.709 [(3)] (2) shall include[:]

11 [(1) A prominent and clearly legible statement that tobacco sales to persons under the legal mini-
 12 mum purchase age are illegal;]

13 [(2) A prominent and clearly legible statement that sales of tobacco are restricted to those individ-
 14 uals who provide verifiable proof of age in accordance with ORS 323.709; and]

15 [(3)] a prominent and clearly legible statement that sales of cigarettes are subject to tax under
 16 ORS 323.005 to 323.482 and that sales of other tobacco products are subject to tax under ORS
 17 323.500 to 323.645, and an explanation of how the applicable tax has been paid or is to be paid.

18 **SECTION 16.** ORS 323.718 is amended to read:

19 323.718. (1) Each person accepting a purchase order for a delivery sale, in connection with the
 20 delivery sale order, shall[:]

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

24 [(b)] use a method of mail, shipping or other delivery of tobacco described in this [paragraph]
 25 **subsection** as follows:

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

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

31 [(ii)] (B) Proof, in the form of a valid, government-issued identification bearing a photograph of
 32 the individual who signs to accept delivery of the shipping container, demonstrating that the indi-
 33 vidual who signs to accept delivery[:]

34 [(I)] is either the consumer or another individual residing at the residence of the consumer.[:
 35 and]

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

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

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

44 [(ii)] (B) Proof, in the form of a valid, government-issued identification bearing a photograph of
 45 the individual who signs to accept delivery of the shipping container, demonstrating that the indi-

vidual 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 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 17. ORS 336.067 is amended to read:

336.067. (1) In public schools special emphasis shall be given to instruction in:

(a) Honesty, morality, courtesy, obedience to law, respect for the national flag, the Constitution of the United States and the Constitution of the State of Oregon, respect for parents and the home, the dignity and necessity of honest labor and other lessons that tend to promote and develop an upright and desirable citizenry.

(b) Respect for all humans, regardless of race, color, creed, national origin, religion, age, sex or disability.

(c) Acknowledgment of the dignity and worth of individuals and groups and their participative roles in society.

(d) Humane treatment of animals.

(e) The effects of tobacco, alcohol, drugs and **other** controlled substances upon the human system.

(2) The Superintendent of Public Instruction shall prepare an outline with suggestions that will best accomplish the purpose of this section, and shall incorporate the outline in the courses of study for all public schools.

SECTION 18. ORS 421.352 is amended to read:

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

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

SECTION 19. ORS 433.835 is amended to read:

433.835. As used in ORS 433.835 to 433.875:

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

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

[(b) Has a humidor on the premises;]

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

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

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

1 prohibition;]

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

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

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

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

8 [(2)] (1) “Enclosed area” means all space between a floor and a ceiling that is enclosed on three
9 or more sides by permanent or temporary walls or windows, exclusive of doors or passageways, that
10 extend from the floor to the ceiling.

11 [(3)] (2)(a) “Place of employment” means every enclosed area under the control of a public or
12 private employer that employees frequent during the course of employment, including but not limited
13 to work areas, employee lounges, vehicles that are operated in the course of an employer’s business
14 that are not operated exclusively by one employee, rest rooms, conference rooms, classrooms, cafe-
15 terias, hallways, meeting rooms, elevators and stairways.

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

18 [(4)] (3) “Public place” means any enclosed area open to the public.

19 [(5) “Smoke shop” means a business that is certified with the authority as a smoke shop pursuant
20 to the rules adopted under ORS 433.847.]

21 [(6)] (4) “Smoking instrument” means any cigar, cigarette, pipe or other smoking equipment.

22 **SECTION 20.** ORS 433.850 is amended to read:

23 433.850. (1) An employer shall provide a place of employment that is free of tobacco smoke for
24 all employees.

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

26 (a) The owner or person in charge of a hotel or motel may designate up to 25 percent of the
27 sleeping rooms of the hotel or motel as rooms in which smoking is permitted.

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

31 [(c) Smoking is permitted in a smoke shop.]

32 [(d) Smoking is permitted in a cigar bar that generated on-site retail sales of cigars of at least
33 \$5,000 for the calendar year ending December 31, 2006.]

34 [(e)] (c) A performer may smoke or carry a lighted smoking instrument that does not contain
35 tobacco while performing in a scripted stage, motion picture or television production if:

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

38 (B) Smoking is an integral part of the production.

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

41 **SECTION 21.** ORS 475.035 is amended to read:

42 475.035. (1) In arriving at any decision on changes in or addition to classification when changes
43 or additions are proposed by the federal Drug Enforcement Administration or by any other reliable
44 source, the State Board of Pharmacy shall review the scientific knowledge available regarding the
45 substance, its pharmacological effects, patterns of use and misuse, and potential consequences of

1 abuse, and consider the judgment of individuals with training and experience with the substance.

2 (2) Whenever the board determines that a change in or an addition to the schedule of a con-
 3 trolled substance is justified, the board by rule may order the change and fix the effective date
 4 thereof.

5 (3) If a substance is an ingredient of a controlled substance, the ingredient shall be considered
 6 to be in the same schedule as that controlled substance. Substances which are precursors of the
 7 ingredient shall not be subject to control solely because they are precursors of the ingredient. The
 8 use of the term “precursor” in this subsection does not control and is not controlled by the use of
 9 the term “precursor” in ORS 475.752 to 475.980.

10 (4) The board shall administer ORS 475.005 to 475.285 and 475.752 to 475.980 in accordance with
 11 ORS chapter 183.

12 (5) Authority to control under this section does not extend [*to tobacco or*] to alcoholic beverages
 13 as defined in ORS 471.001.

14 **SECTION 22.** ORS 476.755 is amended to read:

15 476.755. As used in ORS 476.755 to 476.790 and 476.995:

16 (1) “Cigarette” means a roll for smoking:

17 (a) That is made wholly of tobacco, or of tobacco and any other substance, regardless of size,
 18 shape or flavoring or adulteration by or mixing with other ingredients, the wrapper of which is made
 19 of paper or other nontobacco materials; and

20 (b) That, because of its appearance, the type of tobacco used in the filler or its packaging and
 21 labeling, is likely to be offered to or purchased by consumers as a cigarette.

22 (2) “Distribute” means to do any of the following:

23 (a) Sell cigarettes or deliver cigarettes for sale by another person to consumers.

24 (b) Receive or retain more than 199 cigarettes at a place of business where the person receiving
 25 or retaining the cigarettes customarily sells cigarettes or offers cigarettes for sale to consumers.

26 [*(c) Place cigarettes in vending machines.*]

27 [*(d)*] (c) Sell or accept orders for cigarettes that are to be transported from a point outside this
 28 state to a consumer within this state.

29 [*(e)*] (d) Buy cigarettes directly from a manufacturer or wholesale dealer for resale in this state.

30 [*(f) Give cigarettes as a sample, prize, gift or other promotion.*]

31 (3) “Manufacturer” means:

32 (a) An entity that produces, or causes the production of, cigarettes for sale in this state;

33 (b) An importer or first purchaser of cigarettes that intends to resell within this state cigarettes
 34 that were produced for sale outside this state; or

35 (c) A successor to an entity, importer or first purchaser described in paragraph (a) or (b) of this
 36 subsection.

37 (4) “Packaging” includes, but is not limited to, cigarette soft packs, boxes, cartons and cases.

38 (5) “Quality control and assurance program” means laboratory procedures implemented to en-
 39 sure that operator bias, systematic and nonsystematic methodological errors and equipment-related
 40 problems do not affect the results of testing.

41 (6) “Reduced ignition propensity” means meeting the fire safety performance standard described
 42 in ORS 476.770 (6).

43 (7) “Repeatability” means the range of values within which the repeat results of ignition pro-
 44 pensity testing by a single laboratory will fall 95 percent of the time.

45 (8) “Retail dealer” means a person, other than a manufacturer or wholesale dealer, that engages

1 in distributing cigarettes.

2 (9) "Sell" means to transfer, or agree to transfer, title or possession for a monetary or non-
3 monetary consideration.

4 (10) "Variety" means a type of cigarette marketed by the manufacturer as being distinct from
5 other types of cigarettes on the basis of brand name, length, filter, wrapping, flavoring or other
6 characteristics as the State Fire Marshal may provide by rule.

7 (11) "Wholesale dealer" means a person that distributes cigarettes to[:]

8 [(a)] a retail dealer or other person for resale[: or].

9 [(b) *A person that owns, operates or maintains cigarette vending machines on premises owned or*
10 *operated by another person.*]

11 **SECTION 23.** ORS 565.456 is amended to read:

12 565.456. (1) The State Fair Council is established as a public corporation and shall exercise and
13 carry out all powers, rights and privileges that are expressly conferred upon the council, are implied
14 by law or are incident to such powers, rights and privileges. The council is an independent public
15 corporation with a statewide mission and purposes and without territorial boundaries. The council
16 is a governmental entity performing governmental functions and exercising governmental powers
17 but, except as otherwise provided by law, is not a unit of local or municipal government or a state
18 agency for purposes of state statutes or constitutional provisions.

19 (2) Unless otherwise provided by law, the council is not subject to ORS chapter 182, 183, 240,
20 270, 273, 276, 279A, 279B, 279C, 283, 291, 292 or 293 or ORS 35.550 to 35.575, 183.710 to 183.725,
21 183.745, 183.750, 190.430, 190.490, 200.035, 236.605 to 236.640, 243.303, 243.305, 243.315, 243.325 to
22 243.335, [243.345, 243.350,] 243.696, 279.835 to 279.855, 282.010 to 282.150, 291.050 to 291.060 or
23 656.017 (2).

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

25 (a) To conduct a state fair to be known as the Oregon State Fair for the education and enter-
26 tainment of Oregon residents and for the promotion, preservation, growth and prosperity of the in-
27 dustries and interests traditionally represented in state fair activities such as agriculture, stock
28 raising, horticulture, youth group involvement in agricultural, stock-raising and horticultural activ-
29 ities, viticulture, manufacturing, metal fabrication, technology and artistic, creative and cultural
30 pursuits; and

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

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

SECTION 24. 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 com-

1 pliance with financial responsibility requirements on the date of the department's letter of verifica-
 2 tion or at the time of the accident.

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

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

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

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

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

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

20 **SECTION 25.** ORS 809.423 is amended to read:

21 809.423. (1) Upon request by a school superintendent or a school district board under ORS
 22 339.254, the Department of Transportation shall suspend the driving privileges of a person. The
 23 suspension shall be for the amount of time stated in the request. A person is entitled to adminis-
 24 trative review under ORS 809.440 of a suspension under this subsection.

25 *[(2) Upon receipt of notification of a court order that a person's driving privileges be suspended for*
 26 *violation of ORS 167.401, the department shall suspend the driving privileges of the person subject to*
 27 *the order for the time specified in the order. A person is entitled to administrative review under ORS*
 28 *809.440 of a suspension under this subsection.]*

29 [(3)] (2) Upon receipt of a notice under ORS 339.257 that a person under 18 years of age has
 30 withdrawn from school, the department shall notify the person that driving privileges will be sus-
 31 pended on the 30th day following the date of the notice unless the person presents documentation
 32 that complies with ORS 807.066. A suspension under this subsection shall continue until the person
 33 reaches 18 years of age or until the person presents documentation that complies with ORS 807.066.
 34 Appeals of a suspension under this subsection shall be as provided by a school district or private
 35 school under a policy adopted in accordance with ORS 339.257.

36
 37 **CAPTIONS**

38
 39 **SECTION 26.** **The unit captions used in this 2015 Act are provided only for the conven-**
 40 **ience of the reader and do not become part of the statutory law of this state or express any**
 41 **legislative intent in the enactment of this 2015 Act.**