

# House Bill 4073

Sponsored by Representative OLSON; Representatives BARKER, BARTON, BENTZ, BERGER, BOONE, BUCKLEY, CAMERON, CONGER, DAVIS, DOHERTY, ESQUIVEL, FREDERICK, GELSER, GOMBERG, HANNA, HOYLE, HUFFMAN, JENSON, JOHNSON, KENNEMER, KENY-GUYER, KOTEK, KRIEGER, LIVELY, MCKEOWN, NATHANSON, PARRISH, READ, RICHARDSON, SPRENGER, WEIDNER, WHISNANT, WHITSETT, Senators CLOSE, GIROD, KNOPP, KRUSE, PROZANSKI, ROBLAN, ROSENBAUM, STEINER HAYWARD, THOMSEN (Presession filed.)

## SUMMARY

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

Defines "vapor product." Amends laws related to consumption of tobacco products by minors to include references to consumption of vapor products by minors, including crime of endangering welfare of minor and other criminal offenses and civil penalties related to use or acquisition of tobacco by minor.

## A BILL FOR AN ACT

Relating to use of nicotine by minors; creating new provisions; and amending ORS 163.575, 163.580, 165.800, 165.813, 167.400, 167.401, 167.402, 167.404, 167.407, 339.883, 431.840, 431.853 and 807.500.

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

## DEFINITION AND DISTRIBUTION

**SECTION 1.** ORS 431.840 is amended to read:

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

(a) **"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 kinds and forms of tobacco, prepared in such manner as to be suitable for chewing or smoking in a pipe or otherwise, or both for chewing and smoking; and**

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

(b)(A) **"Vapor product" means:**

(i) **An electronic device designed to heat nicotine solutions and other solutions for the purpose of producing vapor to be inhaled by the user of the device; or**

(ii) **Nicotine solution in any form designed to be used with a device described in subparagraph (i) of this subparagraph.**

(B) **"Vapor product" does not include any product that is regulated by the United States Food and Drug Administration under chapter V of the Federal Food, Drug, and Cosmetic Act, on or before the effective date of this 2014 Act.**

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

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

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

4 (c) **To fail as a retailer of vapor products to post a notice substantially similar to that**  
5 **set forth in subsection (4) of this section in a location clearly visible to the seller and the**  
6 **purchaser that sale of vapor products to persons under 18 years of age is prohibited.**

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

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

14 (3) The notice [shall] **described in subsection (2)(b) of this section must** be substantially as  
15 follows:

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18 NOTICE

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

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24 (4) **The notice described in subsection (2)(c) of this section must be substantially as fol-**  
25 **lows:**

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28 NOTICE

29 **The sale of electronic cigarettes and other devices used to vaporize nicotine solutions,**  
30 **and the sale of nicotine solution cartridges, to persons under 18 years of age is prohibited**  
31 **by law. Any person who knowingly sells, or causes to be sold, such devices or cartridges to**  
32 **a person under 18 years of age commits the crime of endangering the welfare of a minor,**  
33 **pursuant to ORS 163.575.**

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36 **SECTION 2.** ORS 431.853 is amended to read:

37 431.853. (1) The Oregon Health Authority shall:

38 (a) Coordinate with law enforcement agencies to conduct random, unannounced inspections of  
39 Oregon wholesalers and retailers of tobacco products **and vapor products** to [insure] **ensure** com-  
40 pliance with Oregon laws designed to discourage the use of [tobacco] **such products** by minors, in-  
41 cluding ORS 163.575, 163.580, 167.400, 167.402 and 431.840; and

42 (b) Submit a report describing:

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

45 (B) The extent of success achieved in reducing the availability of tobacco products **and vapor**

1 **products** to minors; and

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

4 (2) The Oregon Health Authority shall adopt rules concerning random inspections of places that  
 5 sell tobacco products **or vapor products that are** consistent with [section 1921, Public Law 102-321,  
 6 1992] **42 U.S.C. 300x-21**. The rules shall provide that inspections may take place:

7 (a) Only in areas open to the public;

8 (b) Only during hours that tobacco products **or vapor products** are sold or distributed; and

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

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 12 **VIOLATIONS**

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 14 **SECTION 3.** ORS 163.575 is amended to read:

15 163.575. (1) A person commits the crime of endangering the welfare of a minor if the person  
 16 knowingly:

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

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

21 (c) Induces, causes or permits a person under 18 years of age to participate in gambling as de-  
 22 fined by ORS 167.117; [or]

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

25 **(e) Distributes, sells or causes to be sold a vapor product, as defined in ORS 431.840, to**  
 26 **a person under 18 years of age; or**

27 [(e)] **(f)** Sells to a person under 18 years of age any device in which tobacco, marijuana, cocaine  
 28 or any controlled substance, as defined in ORS 475.005, is burned and the principal design and use  
 29 of which is directly or indirectly to deliver tobacco smoke, marijuana smoke, cocaine smoke or  
 30 smoke from any 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) Carburetion tubes and devices, including carburetion masks;

35 (C) Bongs;

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) Endangering the welfare of a minor by violation of subsection (1)(a), (b), (c) or [(e)] **(f)** of this  
 41 section, involving other than a device for smoking tobacco, is a Class A misdemeanor.

42 (3) Endangering the welfare of a minor by violation of subsection (1)(d) **or (e)** of this section or  
 43 by violation of subsection [(1)(e)] **(1)(f)** of this section, involving a device for smoking tobacco, is a  
 44 Class A violation.

45 **SECTION 4.** ORS 167.400 is amended to read:

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

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

3 (b) **“Vapor product” has the meaning given that term in ORS 431.840.**

4 [(1)] (2) It is unlawful for [any] a person under 18 years of age to possess tobacco products[, as  
5 defined in ORS 431.840] **or a vapor product.**

6 [(2)] (3) [Any] A person who violates subsection [(1)] (2) of this section commits a Class D vio-  
7 lation.

8 **SECTION 5.** ORS 167.401 is amended to read:

9 167.401. (1) Except as provided in subsection (4) of this section, [no] a person under 18 years of  
10 age [shall] **may not** purchase, attempt to purchase or acquire tobacco products [as defined in ORS  
11 431.840] **or a vapor product.** Except when such minor is in a private residence accompanied by the  
12 parent or guardian of the minor and with the consent of such parent or guardian, [no] a person  
13 under 18 years of age [shall] **may not** have personal possession of tobacco products **or a vapor**  
14 **product.**

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

16 (3)(a) In lieu of any other penalty established by law, a person who is convicted for the first time  
17 of a violation of subsection (1) of this section may be ordered to participate in [a tobacco] **an** edu-  
18 cation program **related to tobacco or nicotine use** or a [tobacco use cessation] program **related**  
19 **to tobacco or nicotine use cessation** or to perform community service related to diseases associ-  
20 ated with consumption of tobacco products **and nicotine. Except as provided in paragraph (b)**  
21 **of this subsection,** a person may be ordered to participate in such a program only once.

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

34 (4) A minor acting under the supervision of an adult may purchase, attempt to purchase or ac-  
35 quire tobacco products **or vapor products** for the purpose of testing compliance with a federal law,  
36 state statute, local law or retailer management policy limiting or regulating the delivery of tobacco  
37 products **and vapor products** to minors.

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

39 167.402. (1) As used in this section, “vending machine” means a mechanical, electronic or similar  
40 device that, upon the insertion of tokens, money or another form of payment, dispenses tobacco  
41 products **or vapor products.**

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

1 (3) Violation of subsection (2) of this section is a Class B violation. Each day of violation con-  
2 stitutes a separate offense.

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

4 167.404. Cities and counties by ordinance or resolution [*shall*] **may** not regulate vending ma-  
5 chines that dispense tobacco products[, *as defined in ORS 431.840,*] **or vapor products** in any form  
6 and that are in any manner accessible to minors.

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

8 167.407. (1) A person having authority over the location of [*cigarettes and other*] tobacco pro-  
9 ducts **and vapor products** in a retail store may not locate [*cigarettes or other tobacco*] **those** pro-  
10 ducts in a location in the store where the [*cigarettes or other tobacco*] products are accessible by  
11 store customers without assistance by a store employee.

12 (2) Violation of subsection (1) of this section is a Class B violation. Each day of violation con-  
13 stitutes a separate offense.

14 (3) Subsections (1) and (2) of this section do not apply if the location at which the [*cigarettes*  
15 *or*] tobacco products **and vapor products** are sold is a store or other establishment at which per-  
16 sons under 18 years of age are prohibited.

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18 **AFFIRMATIVE DEFENSES TO IDENTITY CRIMES**

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20 **SECTION 9.** ORS 165.800 is amended to read:

21 165.800. (1) A person commits the crime of identity theft if the person, with the intent to deceive  
22 or to defraud, obtains, possesses, transfers, creates, utters or converts to the person's own use the  
23 personal identification of another person.

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

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

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

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

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

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

35 (B) Benefit based on age.

36 (4) As used in this section:

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

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

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

43 (B) A person's driving privileges;

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

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

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

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

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

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

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

7 (J) A person's electronic mail name, electronic mail signature, electronic mail address or elec-  
8 tronic mail account;

9 (K) A person's photograph;

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

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

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

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

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

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

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

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

25 **SECTION 11.** ORS 807.500 is amended to read:

26 807.500. (1) A person commits the offense of unlawful production of identification cards, licenses,  
27 permits, forms or camera cards if the person, without the authority of the Department of Transpor-  
28 tation, advertises for the production of, produces in any way or causes to be produced any facsimiles  
29 of the identification cards, licenses, permits, forms or camera cards upon which the department is-  
30 sues identification cards, licenses or driver permits under the vehicle code.

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

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

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

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

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42 **REQUIREMENTS FOR SCHOOLS, YOUTH CORRECTION**  
43 **FACILITIES AND JUVENILE DETENTION FACILITIES**  
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45 **SECTION 12.** ORS 339.883 is amended to read:

1 339.883. (1) A facility shall not permit any person under 18 years of age to possess tobacco  
2 products **or a vapor product**, as **those terms are** defined in ORS 431.840, while the person is  
3 present on facility grounds or in facility buildings or attending facility-sponsored activities.

4 (2) The facility must have written policies prohibiting the possession of [*tobacco*] products de-  
5 scribed in subsection (1) of this section by persons under 18 years of age. The facility must have  
6 written plans to implement such policies.

7 (3) This section does not apply to any person for whom a tobacco **product** or nicotine  
8 [*product*] has been lawfully prescribed.

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

12  
13 **CONFORMING AMENDMENTS**

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15 **SECTION 13.** ORS 163.580 is amended to read:

16 163.580. (1) [*Any*] **A** person who sells any of the smoking devices listed in ORS 163.575 [(1)(e)]  
17 **(1)(f)** shall display a sign clearly stating that the sale of such devices to persons under 18 years of  
18 age is prohibited by law.

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

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21 **APPLICABILITY**

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23 **SECTION 14.** (1) **The amendments to ORS 163.575, 167.400, 167.401, 167.402, 167.404, 167.407**  
24 **and 431.840 by sections 1 and 3 to 8 of this 2014 Act apply to conduct occurring on or after**  
25 **the effective date of this 2014 Act.**

26 (2) **The amendments to ORS 165.800, 165.813 and 807.500 by sections 9 to 11 of this 2014**  
27 **Act apply to conduct occurring before, on or after the effective date of this 2014 Act.**

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29 **UNIT CAPTIONS**

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31 **SECTION 15.** **The unit captions used in this 2014 Act are provided only for the conven-**  
32 **ience of the reader and do not become part of the statutory law of this state or express any**  
33 **legislative intent in the enactment of this 2014 Act.**