

Senate Bill 732

Sponsored by Senators STEINER HAYWARD, BATES, Representative KENY-GUYER; Senator MONNES ANDERSON, Representatives GREENLICK, TAYLOR

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**.

Creates offense of selling tobacco products or tobacco product devices to person under 21 years of age. Punishes by maximum \$2,000 fine.

Raises minimum age at which person may purchase or possess tobacco products and tobacco product devices to 21 years of age.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to age requirement for use of inhalants; creating new provisions; amending ORS 163.505,
3 163.575, 163.580, 165.800, 165.813, 167.400, 167.401, 167.402, 167.404, 167.407, 181.430, 323.718,
4 339.883, 431.840, 431.853, 433.847, 743.737, 807.500 and 811.193; and declaring an emergency.

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

6 **SECTION 1. Sections 2 and 3 of this 2015 Act are added to and made a part of ORS 163.505**
7 **to 163.575.**

8 **SECTION 2. (1) A person commits the offense of selling tobacco products or tobacco**
9 **product devices to a person under 21 years of age if the person knowingly:**

10 (a) **Distributes or sells, or causes to be sold, a tobacco product to a person under 21 years**
11 **of age; or**

12 (b) **Sells or provides to a person under 21 years of age any device designed to contain**
13 **burning tobacco for the purpose of delivering tobacco smoke into the human body.**

14 (2) **Selling tobacco products or tobacco product devices to a person under 21 years of age**
15 **is a Class A violation.**

16 **SECTION 3. (1) A person who sells a device described in section 2 (1)(b) of this 2015 Act**
17 **shall display a sign clearly stating that the sale of the device to persons under 21 years of**
18 **age is prohibited by law.**

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

20 **SECTION 4. ORS 163.505 is amended to read:**

21 163.505. As used in ORS 163.505 to 163.575, unless the context requires otherwise:

22 (1) "Controlled substance" has the meaning given that term in ORS 475.005.

23 (2) "Descendant" includes persons related by descending lineal consanguinity, stepchildren and
24 lawfully adopted children.

25 (3) "Precursor substance" has the meaning given that term in ORS 475.940.

26 (4) "Support" includes, but is not limited to, necessary and proper shelter, food, clothing, medical
27 attention and education.

28 (5) **"Tobacco products" has the meaning given that term in ORS 431.840.**

29 **SECTION 5. ORS 163.575, as amended by section 1, chapter 20, Oregon Laws 2014, is amended**

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 to read:

2 163.575. (1) A person commits the offense of endangering the welfare of a minor if the person
3 knowingly:

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

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

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

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

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

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

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

20 (C) Bongos;

21 (D) Chillums;

22 (E) Ice pipes or chillers;

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

24 (G) Cocaine free basing kits.

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

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

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

32 **SECTION 6.** ORS 163.580 is amended to read:

33 163.580. (1) Any person who sells any of the smoking devices listed in ORS 163.575 [(1)(e)] **(1)(d)**
34 shall display a sign clearly stating that the sale of such devices to persons under 18 years of age
35 is prohibited by law.

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

37 **SECTION 7.** ORS 165.800 is amended to read:

38 165.800. (1) A person commits the crime of identity theft if the person, with the intent to deceive
39 or to defraud, obtains, possesses, transfers, creates, utters or converts to the person's own use the
40 personal identification of another person.

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

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

44 (a) Was under 21 years of age at the time of committing the offense and the person used the
45 personal identification of another person solely for the purpose of purchasing alcohol[;] **or tobacco**

1 **products; or**

2 *[(b) Was under 18 years of age at the time of committing the offense and the person used the per-*
 3 *sonal identification of another person solely for the purpose of purchasing tobacco products; or]*

4 *[(c) (b) Used the personal identification of another person solely for the purpose of misrepre-*
 5 *senting the person’s age to gain access to a:*

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

7 (B) Benefit based on age.

8 (4) As used in this section:

9 (a) “Another person” means an individual, whether living or deceased, an imaginary person or
 10 a firm, association, organization, partnership, business trust, company, corporation, limited liability
 11 company, professional corporation or other private or public entity.

12 (b) “Personal identification” includes, but is not limited to, any written document or electronic
 13 data that does, or purports to, provide information concerning:

14 (A) A person’s name, address or telephone number;

15 (B) A person’s driving privileges;

16 (C) A person’s Social Security number or tax identification number;

17 (D) A person’s citizenship status or alien identification number;

18 (E) A person’s employment status, employer or place of employment;

19 (F) The identification number assigned to a person by a person’s employer;

20 (G) The maiden name of a person or a person’s mother;

21 (H) The identifying number of a person’s depository account at a “financial institution” or “trust
 22 company,” as those terms are defined in ORS 706.008, or a credit card account;

23 (I) A person’s signature or a copy of a person’s signature;

24 (J) A person’s electronic mail name, electronic mail signature, electronic mail address or elec-
 25 tronic mail account;

26 (K) A person’s photograph;

27 (L) A person’s date of birth; and

28 (M) A person’s personal identification number.

29 **SECTION 8.** ORS 165.813 is amended to read:

30 165.813. (1) A person commits the crime of unlawful possession of fictitious identification if the
 31 person possesses a personal identification card containing identification information for a fictitious
 32 person with the intent to use the personal identification card to commit a crime.

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

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

36 *[(a)] was under 21 years of age at the time of committing the offense and the person possessed*
 37 *the personal identification card solely for the purpose of enabling the person to purchase alcohol[:]*
 38 *or tobacco products.*

39 *[(b) Was under 18 years of age at the time of committing the offense and the person possessed the*
 40 *personal identification card solely for the purpose of enabling the person to purchase tobacco*
 41 *products.]*

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

43 167.400. (1) It is unlawful for any person under [18] **21** years of age to possess tobacco products,
 44 as defined in ORS 431.840.

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

1 **SECTION 10.** ORS 167.401 is amended to read:

2 167.401. (1) Except as provided in subsection (4) of this section, *[no]* a person under *[18]* **21** years
3 of age *[shall]* **may not** purchase, attempt to purchase or acquire tobacco products as defined in ORS
4 431.840. Except when *[such minor]* a **person** is in a private residence accompanied by the parent or
5 guardian of the *[minor]* **person** and *[with]* **has** the consent of *[such]* **the** parent or guardian, *[no]* a
6 person under *[18]* **21** years of age *[shall]* **may not** have personal possession of tobacco products.

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

8 (3)(a) In lieu of any other penalty established by law, a person who is convicted for the first time
9 of a violation of subsection (1) of this section may be ordered to participate in a tobacco education
10 program or a tobacco use cessation program or to perform community service related to diseases
11 associated with consumption of tobacco products. A person may be ordered to participate in such
12 a program only once.

13 (b) In addition to and not in lieu of any other penalty established by law, a person who is con-
14 victed of a second violation of subsection (1) of this section through misrepresentation of age may
15 be required to participate in a tobacco education or a tobacco use cessation program or to perform
16 community service related to diseases associated with the consumption of tobacco products, and the
17 court shall order that the person's driving privileges and right to apply for driving privileges be
18 suspended for a period not to exceed one year. If a court has issued an order suspending driving
19 privileges under this subsection, the court, upon petition of the person, may withdraw the order at
20 any time the court deems appropriate. The court notification to the Department of Transportation
21 under this subsection may include a recommendation that the person be granted a hardship permit
22 under ORS 807.240 if the person is otherwise eligible for the permit.

23 (4) A *[minor]* **person under 21 years of age who is** acting under the supervision of an adult
24 may purchase, attempt to purchase or acquire tobacco products for the purpose of testing compli-
25 ance with a federal law, state statute, local law or retailer management policy limiting or regulating
26 the delivery of tobacco products to *[minors]* **persons under 21 years of age.**

27 **SECTION 11.** ORS 167.402 is amended to read:

28 167.402. (1) As used in this section, "vending machine" means a mechanical, electronic or similar
29 device that, upon the insertion of tokens, money or another form of payment, dispenses tobacco
30 products.

31 (2) A person may not sell or dispense tobacco products, as defined in ORS 431.840, from a
32 vending machine, except in an establishment where the premises are posted as permanently and
33 entirely off-limits to *[minors under]* **persons under 21 years of age as required by** rules adopted
34 by the Oregon Liquor Control Commission.

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

37 **SECTION 12.** ORS 167.404 is amended to read:

38 167.404. Cities and counties by ordinance or resolution *[shall]* **may not** regulate vending ma-
39 chines that dispense tobacco products, as defined in ORS 431.840, in any form and that are in any
40 manner accessible to *[minors]* **persons under 21 years of age.**

41 **SECTION 13.** ORS 167.407 is amended to read:

42 167.407. (1) A person having authority over the location of cigarettes and other tobacco products
43 in a retail store may not locate cigarettes or other tobacco products in a location in the store where
44 the cigarettes or other tobacco products are accessible by store customers without assistance by a
45 store employee.

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

3 (3) Subsections (1) and (2) of this section do not apply if the location at which the cigarettes or
4 tobacco products are sold is a store or other establishment at which persons under [18] 21 years of
5 age are prohibited.

6 **SECTION 14.** ORS 181.430 is amended to read:

7 181.430. (1) As used in this section, "tobacco products" has the meaning given that term in ORS
8 431.840.

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

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

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

28 **SECTION 15.** ORS 323.718 is amended to read:

29 323.718. (1) Each person accepting a purchase order for a delivery sale, in connection with the
30 delivery sale order, shall:

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

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

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

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

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

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

45 (II) Is at least the legal minimum purchase age, except that proof of age is required only if the

1 individual appears to be under 27 years of age.

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

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

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

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

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

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

18 **SECTION 16.** ORS 339.883 is amended to read:

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

22 (2) The facility must have written policies prohibiting the possession of tobacco products de-
 23 scribed in subsection (1) of this section by persons under *[18]* **21** years of age. The facility must have
 24 written plans to implement such policies.

25 (3) This section does not apply to any person for whom a tobacco or nicotine product has been
 26 lawfully prescribed.

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

30 **SECTION 17.** ORS 431.840, as amended by section 2, chapter 20, Oregon Laws 2014, is amended
 31 to read:

32 431.840. (1) It shall be unlawful to do any of the following:

33 (a) To distribute free tobacco products to persons under *[18]* **21** years of age as part of a mar-
 34 keting strategy to encourage the use of tobacco products.

35 (b) To fail as a retailer to post a notice substantially similar to that set forth in subsection (3)
 36 of this section in a location clearly visible to the seller and the purchaser that sale of tobacco
 37 products to persons under *[18]* **21** years of age is prohibited.

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

39 (2) As used in this section, “tobacco products” means bidis, cigars, cheroots, stogies, periques,
 40 granulated, plug cut, crimp cut, ready rubbed and other smoking tobacco, snuff, snuff flour,
 41 cavendish, plug and twist tobacco, fine-cut and other chewing tobaccos, shorts, refuse scraps, clip-
 42 pings, cuttings and sweepings of tobacco and other kinds and forms of tobacco, prepared in such
 43 manner as to be suitable for chewing or smoking in a pipe or otherwise, or both for chewing and
 44 smoking, and shall include cigarettes as defined in ORS 323.010 (1).

45 (3) The notice shall be substantially as follows:

NOTICE

The sale of tobacco in any form to persons under [18] 21 years of age is prohibited by law. Any person who knowingly sells, or causes to be sold, tobacco to a person under [18] 21 years of age commits the offense of [*endangering the welfare of a minor, pursuant to ORS 163.575*] **selling tobacco products to a person under 21 years of age, pursuant to section 2 of this 2015 Act.**

SECTION 18. 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 to [*insure*] **ensure** compliance with Oregon laws designed to discourage the use of tobacco by [*minors*] **persons under 21 years of age**, including ORS [*163.575, 163.580,*] 167.400, 167.402 and 431.840 **and sections 2 and 3 of this 2015 Act**; and

(b) Submit a report describing:

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

(B) The extent of success achieved in reducing the availability of tobacco products 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 sell tobacco products consistent with section 1921, Public Law 102-321, 1992. The rules shall provide that inspections may take place:

(a) Only in areas open to the public;

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

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

SECTION 19. ORS 433.847 is amended to read:

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

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

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

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

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

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

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

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

1 (G) Allows smoking only for the purpose of sampling tobacco products for making retail pur-
2 chase decisions;

3 (b) On December 31, 2008:

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

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

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

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

10 (B) Met the requirements of ORS 433.835 (5), as in effect immediately before June 30, 2011, at
11 the time of application;

12 (C) Was certified as a smoke shop under ORS 433.835 (5), as in effect immediately before June
13 30, 2011, by the authority on or before December 31, 2012; and

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

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

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

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

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

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

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

29 (a) Meets the requirements of ORS 433.835 (5), as in effect immediately before June 30, 2011; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9 (A) Meets the requirements of ORS 433.835 (5), as in effect immediately before June 30, 2011;
10 and

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

13 (8) The rules adopted under subsection (1) of this section must provide that, in order to obtain
14 a smoke shop certification, a business must agree to allow the authority to make unannounced in-
15 spections of the business to determine compliance with ORS 433.835 to 433.875.

16 **SECTION 20.** ORS 743.737 is amended to read:

17 743.737. (1) A health benefit plan issued to a small employer:

18 (a) Must cover essential health benefits consistent with 42 U.S.C. 300gg-11.

19 (b) May:

20 (A) Require an affiliation period that does not exceed two months for an enrollee or 90 days for
21 a late enrollee;

22 (B) Impose an exclusion period for specified covered services, as established under ORS 743.745,
23 applicable to all individuals enrolling for the first time in the small employer health benefit plan;
24 or

25 (C) Not apply a preexisting condition exclusion to any enrollee.

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

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

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

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

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

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

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

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

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

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

5 (D) Must discontinue offering or renewing, or offering and renewing, all health benefit plans
6 issued by the carrier in the small employer market in this state or in the specified service area.

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

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

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

14 (C) Must offer in writing to each small employer covered by the plan, all other small employer
15 health benefit plans that the carrier offers to small employers in the specified service area. The
16 carrier shall issue any such plans pursuant to the provisions of ORS 743.733 to 743.737. The carrier
17 shall offer the plans at least 90 days prior to discontinuation.

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

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

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

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

28 (B) Issue any such plans pursuant to the provisions of ORS 743.733 to 743.737.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

34 (8) Premium rates for small employer health benefit plans shall be subject to the following pro-
35 visions:

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

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

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

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

3 (ii) The level at which enrolled employees and their dependents [18] **21** years of age and older
4 engage in tobacco use, except that the rate may not vary by more than 1.5 to one; and

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

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

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

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

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

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

22 (e) Premium rates for small employer health benefit plans shall comply with the requirements
23 of this section.

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

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

27 (b) The authority of the carrier to adjust rates and premiums, and the extent to which the car-
28 rier will consider age, tobacco use, family composition and geographic factors in establishing and
29 adjusting rates and premiums; and

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

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

37 (b) A carrier offering a small employer health benefit plan shall file with the department at least
38 once every 12 months an actuarial certification that the carrier is in compliance with ORS 743.733
39 to 743.737 and that the rating methods of the carrier are actuarially sound. Each certification shall
40 be in a uniform form and manner and shall contain such information as specified by the department.
41 A copy of each certification shall be retained by the carrier at its principal place of business. A
42 carrier is not required to file the actuarial certification under this paragraph if the department has
43 approved the carrier's rate filing within the preceding 12-month period.

44 (c) A carrier shall make the information and documentation described in paragraph (a) of this
45 subsection available to the department upon request. Except as provided in ORS 743.018 and except

1 in cases of violations of ORS 743.733 to 743.737, the information shall be considered proprietary and
 2 trade secret information and shall not be subject to disclosure to persons outside the department
 3 except as agreed to by the carrier or as ordered by a court of competent jurisdiction.

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

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

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

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

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

17 (16) This section does not require a carrier to actively market, offer, issue or accept applications
 18 for a grandfathered health plan or from a small employer not eligible for coverage under such a
 19 plan.

20 **SECTION 21.** ORS 807.500 is amended to read:

21 807.500. (1) A person commits the offense of unlawful production of identification cards, licenses,
 22 permits, forms or camera cards if the person, without the authority of the Department of Transpor-
 23 tation, advertises for the production of, produces in any way or causes to be produced any facsimiles
 24 of the identification cards, licenses, permits, forms or camera cards upon which the department is-
 25 sues identification cards, licenses or driver permits under the vehicle code.

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

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

30 [(a)] was under 21 years of age at the time of committing the offense and the person produced
 31 an identification card, license or permit solely for the purpose of enabling the person to purchase
 32 alcohol[:;] or **tobacco products**.

33 [(b) Was under 18 years of age at the time of committing the offense and the person produced an
 34 identification card, license or permit solely for the purpose of enabling the person to purchase tobacco
 35 products.]

36 **SECTION 22.** ORS 811.193 is amended to read:

37 811.193. (1)(a) A person commits the offense of smoking in a motor vehicle if the person smokes
 38 in a motor vehicle while a person under [18] **21** years of age is in the motor vehicle.

39 (b) As used in this subsection, "smokes" means to inhale, exhale, burn or carry a lighted ciga-
 40 rette, cigar, pipe, weed, plant, regulated narcotic or other combustible substance.

41 (2) Notwithstanding ORS 810.410, a police officer may enforce this section only if the police of-
 42 ficer has already stopped and detained the driver operating the motor vehicle for a separate traffic
 43 violation or other offense.

44 (3) Smoking in a motor vehicle is a:

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

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

2 **SECTION 23.** Sections 2 and 3 of this 2015 Act and the amendments to ORS 163.505,
3 163.575, 163.580, 165.800, 165.813, 167.400, 167.401, 167.402, 167.404, 167.407, 181.430, 323.718,
4 339.883, 431.840, 431.853, 433.847, 743.737, 807.500 and 811.193 by sections 4 to 22 of this 2015
5 Act apply to conduct occurring on or after the effective date of this 2015 Act.

6 **SECTION 24.** This 2015 Act being necessary for the immediate preservation of the public
7 peace, health and safety, an emergency is declared to exist, and this 2015 Act takes effect
8 on its passage.

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