

# House Bill 2640

Sponsored by Representative POST (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**.

Allows third party to provide alcoholic beverages for on-premises consumption at certified smoke shop.

Takes effect on 91st day following adjournment sine die.

## A BILL FOR AN ACT

1  
2 Relating to smoke shops; creating new provisions; amending ORS 433.835 and 433.847; and prescrib-  
3 ing an effective date.

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

5 **SECTION 1. Section 2 of this 2021 Act is added to and made a part of ORS 433.835 to**  
6 **433.875.**

7 **SECTION 2. (1)(a) A smoke shop may allow a third party to provide on the certified**  
8 **premises alcoholic beverages for on-premises consumption.**

9 **(b) Nothing in this subsection authorizes a smoke shop to sell alcoholic beverages for**  
10 **on-premises consumption.**

11 **(2) The Oregon Health Authority may adopt rules to carry out this section.**

12 **SECTION 3. ORS 433.835 is amended to read:**

13 433.835. As used in ORS 433.835 to 433.875:

14 (1) **“Alcoholic beverage” has the meaning given that term in ORS 471.001.**

15 (2) “Cigar bar” means a business that:

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

17 (b) Has a humidor on the premises;

18 (c) Allows the smoking of cigars on the premises but prohibits the smoking, aerosolizing or  
19 vaporizing of other inhalants on the premises;

20 (d) Has been issued and operates under a full on-premises sales license issued under ORS  
21 471.175;

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

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

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

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

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

31 [(2)] (3) “Enclosed area” means the entirety of the space between a floor and a ceiling that is

**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 enclosed on three or more sides by permanent or temporary walls or windows, exclusive of doors  
 2 or passageways, that extend from the floor to the ceiling.

3 [(3)] (4) "Inhalant" means nicotine, a cannabinoid or any other substance that:

4 (a) Is in a form that allows the nicotine, cannabinoid or substance to be delivered into a person's  
 5 respiratory system;

6 (b) Is inhaled for the purpose of delivering the nicotine, cannabinoid or other substance into a  
 7 person's respiratory system; and

8 (c)(A) Is not approved by, or emitted by a device approved by, the United States Food and Drug  
 9 Administration for a therapeutic purpose; or

10 (B) If approved by, or emitted by a device approved by, the United States Food and Drug Ad-  
 11 ministration for a therapeutic purpose, is not marketed and sold solely for that purpose.

12 [(4)(a)] (5)(a) "Place of employment" means an enclosed area under the control of a public or  
 13 private employer, including work areas, employee lounges, vehicles that are operated in the course  
 14 of an employer's business and that are not operated exclusively by one employee, rest rooms, con-  
 15 ference rooms, classrooms, cafeterias, 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 [(5)] (6) "Public place" means an enclosed area open to the public.

19 [(6)] (7) "Smoke shop" means a business that is certified with the Oregon Health Authority as  
 20 a smoke shop pursuant to the rules adopted under ORS 433.847.

21 [(7)] (8) "Smoking instrument" means any cigar, cigarette, pipe or other instrument used to  
 22 smoke tobacco, cannabis or any other inhalant.

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

24 433.847. (1) The Oregon Health Authority shall adopt rules establishing a certification system  
 25 for smoke shops and any rules necessary for the implementation, administration and enforcement  
 26 of ORS 433.835 to 433.875. *[In adopting rules]* **The rules adopted** under this section, *the authority*  
 27 *shall* **must** prohibit the smoking, aerosolizing or vaporizing of inhalants that are not tobacco pro-  
 28 ducts in smoke shops.

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

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

33 (B) Prohibits persons under 21 years of age from entering the premises;

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

36 (D) Does not[:]

37 [(i)] sell or offer food or beverages, including alcoholic beverages[, *for on-premises consumption;*  
 38 *or*]

39 [(ii)] *Allow on-premises consumption of alcoholic beverages*;

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

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

43 (G) Allows the smoking of tobacco product samples only for the purpose of making retail pur-  
 44 chase decisions;

45 (b) On December 31, 2008:

- 1 (A) Met the requirements of paragraph (a)(A) to (D) of this subsection; and  
 2 (B)(i) Was a stand-alone business with no other businesses or residential property attached; or  
 3 (ii) Had a ventilation system that exhausted smoke from the business and was designed and  
 4 terminated in accordance with the state building code standards for the occupancy classification in  
 5 use; or  
 6 (c)(A) Was certified as a smoke shop under ORS 433.835, as in effect immediately before June  
 7 30, 2011, by the authority on or before December 31, 2012;  
 8 (B) Allows the smoking of cigarettes only if at least 75 percent of the gross revenues of the  
 9 business results from the sale of cigarettes; **and**  
 10 [(C) Does not:]  
 11 [(i) Sell or offer alcoholic beverages for on-premises consumption; or]  
 12 [(ii) Allow on-premises consumption of alcoholic beverages; and]  
 13 [(D)] (C) Prohibits persons under 21 years of age from entering the premises.  
 14 (3) A smoke shop certified under subsection (2)(b) of this section must renew the smoke shop  
 15 certification every five years by demonstrating to the satisfaction of the authority that the smoke  
 16 shop:  
 17 (a)(A) Meets the requirements of subsection (2)(a)(A) to (D) of this section; and  
 18 (B)(i) Is a stand-alone business with no other businesses or residential property attached; or  
 19 (ii) Has a ventilation system that exhausts smoke from the business and is designed and termi-  
 20 nated in accordance with the state building code standards for the occupancy classification in use;  
 21 and  
 22 (b) Allows the smoking of cigarettes only if at least 75 percent of the gross revenues of the  
 23 business results from the sale of cigarettes.  
 24 (4) A smoke shop certified under subsection (2)(c) of this section must renew the smoke shop  
 25 certification every five years by demonstrating to the satisfaction of the authority that the smoke  
 26 shop:  
 27 (a) Meets the requirements of ORS 433.835, as in effect immediately before June 30, 2011;  
 28 (b) Allows the smoking of cigarettes only if at least 75 percent of the gross revenues of the  
 29 business results from the sale of cigarettes; **and**  
 30 [(c) Does not:]  
 31 [(A) Sell or offer alcoholic beverages for on-premises consumption; or]  
 32 [(B) Allow on-premises consumption of alcoholic beverages; and]  
 33 [(d)] (c) Prohibits persons under 21 years of age from entering the premises.  
 34 (5) The owner of a smoke shop certified under subsection (2)(b) or (c) of this section may  
 35 transfer the certification with ownership of the smoke shop if the transfer is made in accordance  
 36 with rules adopted by the authority.  
 37 (6) A smoke shop certified under subsection (2)(b) of this section may continue to be certified  
 38 in a new location under subsection (2)(b) of this section if:  
 39 (a)(A) The new location occupies no more than 3,500 square feet; or  
 40 (B) If the old location occupied more than 3,500 square feet, the new location occupies no more  
 41 than 110 percent of the space occupied by the old location; and  
 42 (b) The smoke shop as operated in the new location:  
 43 (A) Meets the requirements of subsection (2)(a)(A) to (D) of this section;  
 44 (B)(i) Is a stand-alone business with no other businesses or residential property attached; or  
 45 (ii) Has a ventilation system that exhausts smoke from the business and is designed and termi-

1 nated in accordance with the state building code standards for the occupancy classification in use;  
2 and

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

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

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

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

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

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

12 (B) Allows the smoking of cigarettes only if at least 75 percent of the gross revenues of the  
13 business results from the sale of cigarettes; **and**

14 *[(C) Does not:]*

15 *[(i) Sell or offer alcoholic beverages for on-premises consumption; or]*

16 *[(ii) Allow on-premises consumption of alcoholic beverages; and]*

17 *[(D)] (C) Prohibits persons under 21 years of age from entering the premises.*

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

21 (9)(a) Subject to ORS chapter 183, the authority may revoke or refuse to issue or renew a cer-  
22 tification to a smoke shop for a violation of any provision of ORS 433.835 to 433.875 or a violation  
23 of any rule adopted under ORS 433.835 to 433.875.

24 (b) If the authority revokes the certification or denies the renewal of the certification of a smoke  
25 shop that was certified under subsection (2)(b) or (c) of this section, the authority may not issue a  
26 new certification to the smoke shop under subsection (2)(b) or (c) of this section.

27 **SECTION 5. (1) Section 2 of this 2021 Act and the amendments to ORS 433.835 and 433.847**  
28 **by sections 3 and 4 of this 2021 Act become operative on January 1, 2022.**

29 **(2) The Oregon Health Authority may take any action before the operative date specified**  
30 **in subsection (1) of this section that is necessary to enable the authority to exercise, on and**  
31 **after the operative date specified in subsection (1) of this section, all of the duties, functions**  
32 **and powers conferred on the authority by section 2 of this 2021 Act and the amendments to**  
33 **ORS 433.835 and 433.847 by sections 3 and 4 of this 2021 Act.**

34 **SECTION 6. This 2021 Act takes effect on the 91st day after the date on which the 2021**  
35 **regular session of the Eighty-first Legislative Assembly adjourns sine die.**

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