

# Oregon Tobacco Laws and Policies

January 2014

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Oregon  
Health  
Authority

# Oregon Tobacco Laws and Policies

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# Table of Contents

## Oregon Tobacco Laws and Policies

Introduction	7
I. Access to Tobacco and Youth Possession of Tobacco	9
Location of Vending Machines	9
Restriction on Free Distribution of Tobacco Products	9
Purchase or Possession of Tobacco by Minors	12
Retailer Notice about Sales to Minors	13
Sale of Tobacco to Minors	14
Locating Tobacco Products in Retail Stores	15
Tobacco Seller Licensing	16
Sales of Tobacco through Mail Order or Internet Sales	17
Out-of-State and Internet Sales of Tobacco	18
Prohibition on Sale of Unpackaged Cigarettes	18
II. Cessation	20
Cessation Service Coverage for Native Americans	20
Insurance Coverage for Cessation Programs	20
Oregon Health Plan and Cessation Coverage	22
State Funding for Cessation Programs	23
III. Smokefree Environments Laws	25
Oregon's Smokefree Workplace Law	25
Tobacco-Free Schools	31
Tobacco Use in Alcohol- and Other Drug-Program Facilities	32
Landlord-Tenant Disclosure of Smoking Policy	32
Tobacco Free In-home Child Day Care	33
Tobacco Free Correctional Facilities	34
Smoke-free Cars for Kids	34
IV. Tobacco Taxes, Payments, and Distribution	36
Oregon-Specific Tobacco Taxes	36
Ballot Measure 44 Statute (Use of TURA Funds)	37
Tobacco Sold On Tribal Land	38
Master Settlement Agreement (MSA) Financial Provisions	38
Tobacco Enforcement Fund	39
V. Tobacco and Cigarette-Related Product Regulation	41
Reduced-Ignition-Propensity Cigarettes	41
Prohibition on the Sale or Distribution of Novelty Lighters	42
Electronic Cigarettes (E-Cigarettes)	44
VI. Miscellaneous	45
Prohibition of Employer Restrictions on Off-Duty Tobacco Use	45
Supersedeas	45
Littering Law	46

VII. Overviews of Laws and Cases	48
Master Settlement Agreement (MSA) and Smokeless Tobacco Master Settlement Agreement (STMSA)	48
Family Smoking Prevention and Tobacco Control Act	49
Prevent All Cigarette Trafficking Act of 2009 (PACT Act)	49
United States v. Philip Morris USA, Inc.	50
VIII. Laws Comparison Chart	51

# **Oregon Tobacco Laws and Policies**

# Introduction

## Introduction

This document outlines Oregon laws, federal laws, and state and federal court orders related to tobacco control in Oregon. Federal laws and court orders are included when they are more stringent than state law.

### **Format and Content:**

In **subsections I through VI**, the laws and court orders have been divided into six groups based on their content:

- I. Access to Tobacco and Youth Possession of Tobacco
- II. Cessation
- III. Smokefree Environments Laws
- IV. Tobacco Taxes, Payments and Distribution
- V. Tobacco and Cigarette-Related Product Regulation
- VI. Miscellaneous

Laws and orders in these subsections include a brief summary and, where practical, full legal citations. In addition, we have provided cursory information about enforcement. For many of the Oregon laws in these subsections, there is no specific enforcement authority identified in law, which typically means the enforcement of that law becomes a matter for local law enforcement. Individuals or organizations who want to pursue enforcement of these laws should work directly with local authorities.

**Subsections VII and VIII** are (respectively) a brief description of state law, federal law, and sentinel federal level court orders and a comparative compilation of those laws and cases.

### ***Definitions:***

**ORS:** Oregon Revised Statutes; contains statutes and the Oregon Rules of Civil Procedure.

**OAR:** Oregon Administrative Rules; ORS 183.310(9) defines “rule” as “any agency directive, standard, regulation or statement of general applicability that implements, interprets or prescribes law or policy, or describes the procedure or practice requirements of any agency.” The Oregon Administrative Rules are published by the Oregon Secretary of State.

# Introduction

This table outlines the dollar amounts of penalties for infractions against different levels/types of Oregon Law.

<b>VIOLATION TYPE/CLASS</b>	<b>PENALTY</b>
Class A Misdemeanor	Max. fine: \$6,250 Max. prison term: 1 year
Class B Misdemeanor	Max. fine: \$2,500 Max. prison term: 6 months
Class C Misdemeanor	Max. fine: \$1,250 Max. prison term: 30 days
Unclassified Misdemeanor	As provided in the statute defining the crime
Class A Violation	\$720
Class B Violation	\$360
Class C Violation	\$180
Class D Violation	\$90
Unclassified or Specific-Fine Violations	As described in ORS 153.015

***Citation***

ORS 153.018, 161.615, 161.635

# I. Access to Tobacco and Youth Possession of Tobacco

## I. Access to Tobacco and Youth Possession of Tobacco

### Location of Vending Machines

#### State

Oregon law prohibits vending machines that supply tobacco products from being located in any place except an Oregon Liquor Control Commission-licensed establishment that is posted as off limits to minors with a Number I Minor Posting, which states “No Minors Permitted Anywhere on This Premises.” Such establishments include certain bars, taverns, and cocktail lounges. Selling tobacco from vending machines in any other location is a Class B violation. Local jurisdictions are preempted from passing stronger laws.

#### *Enforcement*

Local law enforcement authorities

#### *Citation*

ORS 167.402 Locating tobacco vending machines.

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

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

(3) Violation of subsection (2) of this section is a Class B violation. Each day of violation constitutes a separate offense. [1991 c.970 §2; 1999 c.1051 §162; 2009 c.600 §1]

[http://www.oregonlegislature.gov/bills\\_laws/lawsstatutes/2011ors167.html](http://www.oregonlegislature.gov/bills_laws/lawsstatutes/2011ors167.html)

### Restriction on Free Distribution of Tobacco Products

#### Federal

The federal Family Smoking Prevention and Tobacco Control Act (2009) prohibits all tobacco sampling except the distribution of free samples of smokeless tobacco in qualified adult-only facilities.

# I. Access to Tobacco and Youth Possession of Tobacco

## ***Enforcement***

U.S. Food and Drug Administration

Consumers can call FDA at 1-877-CTP-1373, option 4, to report a violation.

Complaints are forwarded to FDA's Office of Compliance, which will follow up with complainants by phone in one to three business days.

## **State**

Oregon law prohibits the distribution of free tobacco products to people under 18 years old. Free samples of *smokeless tobacco* may not be given to anyone under the age of 21 or distributed in any area in which people under the age of 21 are allowed; a violation of this law is a Class A misdemeanor.

## ***Enforcement***

Local law enforcement authorities

## ***Citation***

ORS 431.840 (1) (a) Free distribution to minors prohibited; restriction on sales; notice.

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

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

[1989 c.764 §1; 2001 c.187 §1]

ORS 431.845 Civil penalty for violation of ORS 431.840.

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

(2) The amounts collected under subsection (1) of this section shall be deposited to the credit of the General Fund. [1989 c.764 §2; 1991 c.970 §6]

[http://www.oregonlegislature.gov/bills\\_laws/lawsstatutes/2011ors431.html](http://www.oregonlegislature.gov/bills_laws/lawsstatutes/2011ors431.html)

ORS 180.486 Prohibited conduct; penalty.

(1) A person may not:

(d) Distribute, in this state, free samples of smokeless tobacco products:

(A) To persons under 21 years of age; or

## I. Access to Tobacco and Youth Possession of Tobacco

(B) In any area, unless access by persons under 21 years of age to that area is prohibited.

(2) A person who sells, offers for sale, distributes, acquires, holds, owns, possesses, transports, imports or causes to be imported smokeless tobacco products that the person knows or should know are intended for sale or distribution in violation of subsection (1) of this section commits a Class A misdemeanor. [2009 c.717 §13]

ORS 180.468 Definitions.

As used in ORS 180.465 to 180.494:

(6) “Smokeless tobacco products” has the meaning given that term in ORS 323.810.

[http://www.oregonlegislature.gov/bills\\_laws/lawsstatutes/2011ors180.html](http://www.oregonlegislature.gov/bills_laws/lawsstatutes/2011ors180.html)

ORS 323.810 Definitions for ORS 323.810 to 323.816.

As used in ORS 323.810 to 323.816:

(7) “Smokeless tobacco products” means moist snuff, as defined in ORS 323.500, or chewing tobacco, as defined in section 5702 of the Internal Revenue Code.

ORS 323.500 Definitions for ORS 323.500 to 323.645.

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

(9) “Moist snuff” means:

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

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

[http://www.oregonlegislature.gov/bills\\_laws/lawsstatutes/2011ors323.html](http://www.oregonlegislature.gov/bills_laws/lawsstatutes/2011ors323.html)

26 U.S.C. § 5702. Definitions

(m) Definitions relating to smokeless tobacco

(3) Chewing tobacco

The term “chewing tobacco” means any leaf tobacco that is not intended to be smoked.

[www.law.cornell.edu/uscode/html/uscode26/usc\\_sec\\_26\\_00005702----000-.html](http://www.law.cornell.edu/uscode/html/uscode26/usc_sec_26_00005702----000-.html)

# I. Access to Tobacco and Youth Possession of Tobacco

## **Purchase or Possession of Tobacco by Minors**

### **State**

Oregon law prohibits a person under the age of 18 from buying or obtaining tobacco products. It is also illegal for a minor to possess tobacco products, except inside a private residence with the consent of the minor's parent or guardian. Any person who violates this law may be required to participate in a tobacco education program, a tobacco use cessation program, or community service that is associated with tobacco-related diseases. Minors acting under the supervision of an adult may engage in "controlled buys" – attempts to purchase tobacco for the purpose of testing retailers' compliance with Oregon's laws concerning retail sales of tobacco.

### ***Enforcement***

Local law enforcement authorities

### ***Citation***

ORS 167.400 Tobacco possession by minors prohibited.

(1) It is unlawful for any person under 18 years of age to possess tobacco products, as defined in ORS 431.840.

(2) Any person who violates subsection (1) of this section commits a Class D violation. [1991 c.970 §1; 1999 c.1051 §161]

ORS 167.401 Tobacco purchase by minors prohibited; exceptions.

(1) Except as provided in subsection (4) of this section, no person under 18 years of age shall purchase, attempt to purchase or acquire tobacco products as defined in ORS 431.840. Except when such minor is in a private residence accompanied by the parent or guardian of the minor and with the consent of such parent or guardian, no person under 18 years of age shall have personal possession of tobacco products.

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

(3)

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

(b) In addition to and not in lieu of any other penalty established by law, a person who is convicted of a second violation of subsection (1) of this section

## I. Access to Tobacco and Youth Possession of Tobacco

through misrepresentation of age may be required to participate in a tobacco education or a tobacco use cessation program or to perform community service related to diseases associated with the consumption of tobacco products, and the court shall order that the person's driving privileges and right to apply for driving privileges be suspended for a period not to exceed one year. If a court has issued an order denying driving privileges under this subsection, the court, upon petition of the person, may withdraw the order at any time the court deems appropriate. The court notification to the Department of Transportation under this subsection may include a recommendation that the person be granted a hardship permit under ORS 807.240 if the person is otherwise eligible for the permit.

(4) A minor acting under the supervision of an adult may purchase, attempt to purchase or acquire tobacco products for the purpose of testing compliance with a federal law, state statute, local law or retailer management policy limiting or regulating the delivery of tobacco products to minors. [1999 c.1077 §8]

[http://www.oregonlegislature.gov/bills\\_laws/lawsstatutes/2011ors167.html](http://www.oregonlegislature.gov/bills_laws/lawsstatutes/2011ors167.html)

### **Retailer Notice about Sales to Minors**

#### **State**

Oregon law requires retailers to post a notice informing the public that selling tobacco products to individuals under 18 is prohibited. Failure to do so will result in a fine ranging from \$100 to \$500.

#### ***Enforcement***

Local law enforcement authorities

#### ***Citation***

ORS 431.840 (1) (b) Free distribution to minors prohibited; restriction on sales; notice.

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

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

# I. Access to Tobacco and Youth Possession of Tobacco

(3) The notice shall be substantially as follows:

---

## NOTICE

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

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[1989 c.764 §1; 2001 c.187 §1]

ORS 431.845 Civil penalty for violation of ORS 431.840.

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

(2) The amounts collected under subsection (1) of this section shall be deposited to the credit of the General Fund. [1989 c.764 §2; 1991 c.970 §6]

[http://www.oregonlegislature.gov/bills\\_laws/lawsstatutes/2011ors431.html](http://www.oregonlegislature.gov/bills_laws/lawsstatutes/2011ors431.html)

### **Sale of Tobacco to Minors State**

Oregon law prohibits selling or distributing tobacco or devices used to burn tobacco to individuals under the age of 18. The minimum fine for each violation is \$100.

### ***Enforcement***

Local law enforcement authorities

### ***Citation***

ORS 163.575 Endangering the welfare of a minor.

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

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

(e) Sells to a person under 18 years of age any device in which tobacco, marijuana, cocaine or any controlled substance, as defined in ORS 475.005, is

# I. Access to Tobacco and Youth Possession of Tobacco

burned and the principal design and use of which is directly or indirectly to deliver tobacco smoke, marijuana smoke, cocaine smoke or smoke from any controlled substance into the human body including but not limited to:

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

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

(C) Bongs;

(D) Chillums;

(E) Ice pipes or chillers;

(F) Cigarette rolling papers and rolling machines; and

(G) Cocaine free basing kits.

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

(3) Endangering the welfare of a minor by violation of subsection (1)(d) of this section or by violation of subsection (1)(e) of this section, involving a device for smoking tobacco, is a Class A violation and the court shall impose a fine of not less than \$100. [1971 c.743 §177; 1973 c.827 §20; 1979 c.744 §8; 1981 c.838 §1; 1983 c.740 §31; 1991 c.970 §5; 1995 c.79 §52; 1999 c.1051 §153]

[http://www.oregonlegislature.gov/bills\\_laws/lawsstatutes/2011ors163.html](http://www.oregonlegislature.gov/bills_laws/lawsstatutes/2011ors163.html)

## **Locating Tobacco Products in Retail Stores State**

Under Oregon law, retail store owners may not place tobacco products in a location where customers can access the product without the assistance of an employee, unless the store is off limits to individuals under 18 years of age. It is a Class B violation to break this law.

### ***Enforcement***

Local law enforcement authorities

### ***Citation***

ORS 167.407 Locating tobacco products where customers can access without store employee prohibited.

# I. Access to Tobacco and Youth Possession of Tobacco

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

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

(3) Subsections (1) and (2) of this section do not apply if the location at which the cigarettes or tobacco products are sold is a store or other establishment at which persons under 18 years of age are prohibited. [2003 c.804 §84]

[http://www.oregonlegislature.gov/bills\\_laws/lawsstatutes/2011ors167.html](http://www.oregonlegislature.gov/bills_laws/lawsstatutes/2011ors167.html)

## **Tobacco Seller Licensing State**

In Oregon, tobacco distributors must obtain licenses in order to distribute tobacco products. Typically, *distributors* sell tobacco to *retailers*, who then sell to the public. Retailers, such as individual stores, are not required to have licenses to sell tobacco products.

### ***Enforcement***

Oregon Department of Revenue

### ***Citation***

OAR 150-323.105. When Distributor's License Required

(1) A distributor's license is required for each place of business at which a person engages in the distribution of cigarettes as defined in ORS 323.015(2). A distributor's license is required for any person distributing cigarettes in Oregon, including:

- (a) every cigarette manufacturer selling cigarettes in this state to persons other than licensed distributors;
- (b) Every person who imports cigarettes into this state for sale;
- (c) Every person who obtains untaxed cigarettes from a cigarette manufacturer for resale; and
- (d) Common carriers engaged in interstate or foreign passenger service, who sell cigarettes on their facilities in Oregon, and persons authorized to sell cigarettes on the facilities of such common carriers. For the purpose of this rule "facilities of a common carrier" are limited to the mobile equipment of the carrier used for the transportation of passengers.

# I. Access to Tobacco and Youth Possession of Tobacco

[http://arcweb.sos.state.or.us/pages/rules/oars\\_100/oar\\_150/150\\_323.html](http://arcweb.sos.state.or.us/pages/rules/oars_100/oar_150/150_323.html)

## **Sales of Tobacco through Mail Order or Internet Sales**

### **Federal**

Pursuant to the PACT Act of 2009, federal law prohibits the sale of untaxed tobacco products through the Internet or by mail order and makes tobacco products nonmailable matter (subject to minor exceptions). Internet- and mail-order sellers may not deliver their merchandise through the U.S. Postal Service, but may continue to use private common carriers and other delivery services. They must also verify the age of customers both at the time of purchase and at the point of delivery.

### ***Enforcement***

The U.S. Bureau of Alcohol, Tobacco, Firearms and Explosives for the most part, with the U.S. Postal Service in charge of the nonmailable matter section of PACT.

### **State**

Oregon law forbids the delivery sale of tobacco products to underage individuals. Delivery sellers must obtain signed written certifications that their customers meet the minimum age, as well as a copy of each customer's valid, government-issued identification showing age or date of birth, prior to shipping any tobacco products. Sellers may only accept payment issued in the name of the prospective purchaser (*i.e.*, a debit/credit card or personal check issued in that individual's name) for each sale, and must use a shipping method that requires a signature and photo identification from the customer or another non-minor individual residing at the same address. All delivery sellers must obtain a distributor's license prior to making delivery sales.

### ***Enforcement***

Oregon Department of Justice

### ***Citation***

ORS 323.703 Delivery sales to persons under legal minimum purchase age prohibited. A person may not make a delivery sale of tobacco to a person who is under the legal minimum purchase age. [2003 c.804 §74]

ORS 323.706 Requirements for persons accepting delivery sale purchase orders. A person accepting a purchase order for a delivery sale, prior to the first mailing,

# I. Access to Tobacco and Youth Possession of Tobacco

shipment or other delivery of tobacco to a consumer, shall comply with:

- (1) The age verification requirements set forth in ORS 323.709;
- (2) The distributor license requirements set forth in ORS 323.712;
- (3) The disclosure requirements set forth in ORS 323.715;
- (4) The mailing or shipping requirements set forth in ORS 323.718;
- (5) The reporting requirements set forth in ORS 323.721; and
- (6) 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. [2003 c.804 §75; 2009 c.717 §23]

[http://www.oregonlegislature.gov/bills\\_laws/lawsstatutes/2011ors323.html](http://www.oregonlegislature.gov/bills_laws/lawsstatutes/2011ors323.html)

## **Out-of-State and Internet Sales of Tobacco State**

Out-of-state and internet sellers of tobacco products to Oregon consumers are subject to the same regulation as sellers located in Oregon. Internet sellers are also subject to federal and state laws governing delivery sales.

*See* **ORS 180.440** at

[http://www.oregonlegislature.gov/bills\\_laws/lawsstatutes/2011ors180.html](http://www.oregonlegislature.gov/bills_laws/lawsstatutes/2011ors180.html) for prohibited conduct.

## **Prohibition on Sale of Unpackaged Cigarettes State**

In Oregon, it is illegal to sell cigarettes that are not in a sealed package. A violation of this law will result in a civil penalty of \$100 to \$500.

### ***Enforcement***

Local law enforcement authorities

### ***Citation***

ORS 431.840 Free distribution to minors prohibited; restriction on sales; notice.

- (1) It shall be unlawful to do any of the following:
  - (c) To sell cigarettes in any form other than a sealed package.

ORS 431.845 Civil penalty for violation of ORS 431.840.

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

## **I. Access to Tobacco and Youth Possession of Tobacco**

(2) The amounts collected under subsection (1) of this section shall be deposited to the credit of the General Fund. [1989 c.764 §2; 1991 c.970 §6]

## II. Cessation

### II. Cessation

#### Cessation Service Coverage for Native Americans

##### State

The Oregon Division of Medical Assistance Programs (DMAP) reimburses American Indian/Alaska Native (AI/AN) providers at their Indian Health Service (IHS) or cost-based rate for tobacco-cessation services. Providers may not report Tobacco Cessation, a specific DMAP prevention program, as a separate encounter if medical, dental, mental health or addiction services were also provided during the appointment.

##### *Enforcement*

Department of Human Services, Division of Medical Assistance Programs

##### *Citation*

OAR 410-146-0140 Tobacco Cessation

(1) The Division of Medical Assistance Programs (DMAP) will reimburse AI/AN providers for tobacco cessation services at the AI/AN provider's IHS or cost-based rate.

(2) AI/AN providers will bill services with procedure codes G9016 for tobacco cessation counseling and S9075 for tobacco cessation treatment, with diagnosis code 305.1 (Tobacco Use Disorder). Refer to Table 146-0085-1.

(3) Refer to OAR 410-130-0190, Tobacco Cessation for specific requirements and treatment limitations.

(4) Providers may not report Tobacco Cessation, a specific DMAP prevention program, as a separate encounter when a medical, dental, mental health or addiction service encounter occurs on the same date of service.

[http://arcweb.sos.state.or.us/pages/rules/oars\\_400/oar\\_410/410\\_146.html](http://arcweb.sos.state.or.us/pages/rules/oars_400/oar_410/410_146.html)

#### Insurance Coverage for Cessation Programs

##### State

Oregon law requires that “health benefit plans” purchased after January 1, 2010, provide at least \$500 in payment, coverage or reimbursement for tobacco-use-cessation programs. This applies only to plan enrollees who are 15 years of age or older. As defined in the law, “health benefit plans” do not include Medicaid, Medicare, disability income, short-term health insurance, insurance for students, or other non-traditional health insurance plans. Nevertheless, some of these programs, such as Medicaid, do provide cessation coverage.

## II. Cessation

### *Enforcement*

Oregon Insurance Board

### *Citation*

ORS 743A.170 Tobacco use cessation programs.

(1) A health benefit plan as defined in ORS 743.730 must provide payment, coverage or reimbursement of at least \$500 for a tobacco use cessation program for a person enrolled in the plan who is 15 years of age or older.

(2) As used in this section, “tobacco use cessation program” means a program recommended by a physician that follows the United States Public Health Service guidelines for tobacco use cessation. “Tobacco use cessation program” includes education and medical treatment components designed to assist a person in ceasing the use of tobacco products. [2009 c.503 §2]

[http://www.oregonlegislature.gov/bills\\_laws/lawsstatutes/2011ors743A.html](http://www.oregonlegislature.gov/bills_laws/lawsstatutes/2011ors743A.html)

ORS 743.730 Definitions for ORS 743.730 to 743.773. For purposes of ORS 743.730 to 743.773:

(19)

(a) “Health benefit plan” means any hospital expense, medical expense or hospital or medical expense policy or certificate, health care service contractor or health maintenance organization subscriber contract, any plan provided by a multiple employer welfare arrangement or by another benefit arrangement defined in the federal Employee Retirement Income Security Act of 1974, as amended.

(b) “Health benefit plan” does not include coverage for accident only, specific disease or condition only, credit, disability income, coverage of Medicare services pursuant to contracts with the federal government, Medicare supplement insurance policies, coverage of CHAMPUS services pursuant to contracts with the federal government, benefits delivered through a flexible spending arrangement established pursuant to section 125 of the Internal Revenue Code of 1986, as amended, when the benefits are provided in addition to a group health benefit plan, long term care insurance, hospital indemnity only, short term health insurance policies (the duration of which does not exceed six months including renewals), student accident and health insurance policies, dental only, vision only, a policy of stop-loss coverage that meets the requirements of ORS 742.065, coverage issued as a supplement to liability insurance, insurance arising out of a workers’ compensation or similar law, automobile medical payment insurance or insurance under which benefits are payable with or without regard to fault and that

## II. Cessation

is statutorily required to be contained in any liability insurance policy or equivalent self-insurance.

(c) Nothing in this subsection shall be construed to regulate any employee welfare benefit plan that is exempt from state regulation because of the federal Employee Retirement Income Security Act of 1974, as amended. [1991 c.916 §3; 1993 c.18 §157; 1993 c.615 §25; 1993 c.649 §8; 1993 c.744 §31; 1995 c.603 §§1,36; 1997 c.716 §§1,2; 1999 c.547 §8; 1999 c.987 §6; 2001 c.943 §6; 2003 c.364 §112; 2005 c.744 §38; 2007 c.389 §1; 2009 c.595 §1135]

[http://www.oregonlegislature.gov/bills\\_laws/lawsstatutes/2011ors743.html](http://www.oregonlegislature.gov/bills_laws/lawsstatutes/2011ors743.html)

### **Oregon Health Plan and Cessation Coverage State**

The Oregon Health Plan covers basic, intensive, and telephonic tobacco-cessation treatment. Basic treatment includes a brief conversation (six minutes) to discuss the patient's concerns and provide support to help the patient stop smoking. Intensive tobacco cessation treatment includes up to ten treatment sessions every three-month period, access to tobacco cessation products (such as nicotine patches and oral medications), and group counseling. Telephone calls by a trained counselor may be conducted in place of in-person encounters. The Tobacco Use Disorder code is the principal diagnosis code when a patient participates in a tobacco cessation program.

### ***Enforcement***

Oregon Department of Human Services

### ***Citation***

OAR 410-130-0190 Tobacco Cessation

(1) Tobacco treatment interventions may include one or more of these services: basic, intensive, and telephone calls.

(2) Basic tobacco cessation treatment includes the following services:

(a) Ask -- systematically identify all tobacco users -- usually done at each visit;

(b) Advise -- strongly urge all tobacco users to quit using;

(c) Assess -- the tobacco user's willingness to attempt to quit using tobacco within 30 days;

(d) Assist -- with brief behavioral counseling, treatment materials and the recommendation/prescription of tobacco cessation therapy products (e.g., nicotine patches, oral medications intended for tobacco cessation treatment and gum);

(e) Arrange -- follow-up support and/or referral to more intensive treatments,

## II. Cessation

if needed.

(3) When providing basic treatment, include a brief discussion to address client concerns and provide the support, encouragement, and counseling needed to assist with tobacco cessation efforts. These brief interventions, less than 6 minutes, generally are provided during a visit for other conditions, and additional billing is not appropriate.

(4) Intensive tobacco cessation treatment is on the Health Services Commission's Prioritized List of Health Services and is covered if a documented quit date has been established. This treatment is limited to ten sessions every three months. Treatment is reserved for those clients who are not able to quit using tobacco with the basic intervention measures.

(5) Intensive tobacco cessation treatment includes the following services:

(a) Multiple treatment encounters (up to ten in a 3 month period);

(b) Behavioral and tobacco cessation therapy products (e.g., nicotine patches, oral medications intended for tobacco cessation treatment and gum);

(c) Individual or group counseling, six minutes or greater.

(6) Telephone calls: DMAP may reimburse a telephone call intended as a replacement for face-to-face contact with clients who are in intensive treatment as it is considered a reasonable adjunct to, or replacement for, scheduled counseling sessions:

(a) The call must last six to ten minutes and provides support and follow-up counseling;

(b) The call must be conducted by the provider or other trained staff under the direction or supervision of the provider;

(c) Enter proper documentation of the service in the client's chart.

(7) Diagnosis Code ICD-9-CM 305.1 (Tobacco Use Disorder):

(a) Use as the principal diagnosis code when the client is enrolled in a tobacco cessation program or if the primary purpose of the visit is for tobacco cessation services;

(b) Use as a secondary diagnosis code when the primary purpose of this visit is not for tobacco cessation or when the tobacco use is confirmed during the visit.

(8) Billing Information: Managed care plans may have tobacco cessation services and programs. This rule does not limit or prescribe services a Prepaid Health Plan provides to clients receiving the Basic Health Care Package.

[http://arcweb.sos.state.or.us/pages/rules/oars\\_400/oar\\_410/410\\_130.html](http://arcweb.sos.state.or.us/pages/rules/oars_400/oar_410/410_130.html)

### **State Funding for Cessation Programs**

#### **State**

Oregon law states that a portion of Oregon's Master Settlement Agreement funds

## II. Cessation

may be used to pay for tobacco cessation programs, but MSA funds have never been allocated for this purpose.

### *Citation*

#### **ORS 431.831 Smoking cessation program reimbursement; rules.**

(1) The Department of Human Services shall develop a program to reimburse smoking cessation program providers for services provided to residents of this state who are not insured for smoking cessation costs.

(2) The department shall adopt rules for the program established under subsection (1) of this section that include but are not limited to criteria for provider and participant eligibility and other program specifications. The rules shall establish a maximum reimbursement limit for each participant.

(3) Costs for smoking cessation programs funded under subsection (1) of this section are eligible for reimbursement from funds received by the State of Oregon from tobacco products manufacturers under the Master Settlement Agreement of 1998. [1999 c.1025 §1; 2009 c.595 §591]

[http://www.oregonlegislature.gov/bills\\_laws/lawsstatutes/2011ors431.html](http://www.oregonlegislature.gov/bills_laws/lawsstatutes/2011ors431.html)

## III. Smokefree Environments Laws

### III. Smokefree Environments Laws

#### **Oregon's Smokefree Workplace Law**

##### **State**

The Oregon Indoor Clean Air Act (ICAA) prohibits smoking in most public places and places of employment. Additionally, smoking is not permitted within ten feet of any entrance, exit, window, or air-intake vent. Exceptions to these restrictions include smoking in certified smoke shops, certified cigar bars, and up to 25 percent of motel/hotel rooms; and smoking of non-commercial tobacco for American Indian ceremonial purposes. All public places and workplaces affected by the law must post appropriate signage.

During the 2011 legislative session HB 2726 was passed, which amended the Indoor Clean Air Act (ICAA) and changed the requirements for certification of smoke shops.

Under the new law, different certification criteria applies depending on when an application for smoke shop certification is received by the Oregon Health Authority (OHA). A business that applied for smoke shop certification before the effective date of HB 2726, or June 30, 2011, must continue to meet the requirements of ORS 433.835(5), as in effect immediately before June 30, 2011. New smoke shops (those applying after 12/31/12) will be limited to a maximum seating capacity of four persons, may not sell or offer food or beverages for on-premises consumption, and may allow smoking only for the purpose of sampling for making retail purchase decisions.

OHA is responsible for enforcement. The ICAA is a complaint-driven law; OHA may respond to complaints, inspect public places, and issue citations and penalties for violating the law. Multiple offenses may result in circuit court involvement. All penalty payments are credited to the Tobacco Use Reduction Account (TURA).

##### ***Enforcement***

Oregon Health Authority and county health departments (delegated)

##### ***Citation***

OREGON INDOOR CLEAN AIR ACT

ORS 433.835 Definitions for ORS 433.835 to 433.875.

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

### III. Smokefree Environments Laws

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 Department of Human Services 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 prohibition;

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

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

(h) Has a ventilation system that is certified by the assistant to the State Fire Marshal described in ORS 476.060 for the jurisdiction in which the cigar bar is located as adequate to remove the cigar smoke in the cigar bar and vents the smoke from the cigar bar in a manner that prevents the smoke from entering any other establishment; and

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

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

(3) “Place of employment” means every enclosed area under the control of a public or private employer that employees frequent during the course of employment, including but not limited to work areas, employee lounges, vehicles that are operated in the course of an employer’s business that are not operated exclusively by one employee, rest rooms, conference rooms, classrooms, cafeterias, hallways, meeting rooms, elevators and stairways. “Place of employment” does not include a private residence unless it is used as a child care facility as defined in ORS 657A.250 or a facility providing adult day care as defined in ORS 410.490.

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

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

(6) “Smoking instrument” means any cigar, cigarette, pipe or other smoking equipment. [1981 c.384 §2; 2001 c.990 §1; 2007 c.602 §1; 2009 c.595 §684]

ORS 433.840 Policy.

The people of Oregon find that because exposure to secondhand smoke is known to cause cancer and other chronic diseases such as heart disease, asthma and bronchitis, it is necessary to reduce exposure to tobacco smoke by prohibiting smoking in all public places and places of employment. [1981 c.384 §1; 2007 c.602 §2]

ORS 433.845 Smoking prohibited except in designated areas.

### III. Smokefree Environments Laws

(1) A person may not smoke or carry any lighted smoking instrument in a public place or place of employment except in areas designated as smoking areas pursuant to ORS 433.850.

(2) A person may not smoke or carry any lighted smoking instrument within 10 feet of the following parts of public places or places of employment:

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

(3) A person may not smoke or carry any lighted smoking instrument in a room during the time that jurors are required to use the room. [1981 c.384 §3; 1985 c.752 §1; 2007 c.602 §3]

ORS 433.847 Smoke shop certification; rules.

(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 years of age from entering the premises;

(C) Does not offer video lottery games as authorized under ORS 461.217 (Video lottery game regulation), 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

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

(b) On December 31, 2008:

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

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

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

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

### III. Smokefree Environments Laws

(B) Met the requirements of ORS 433.835 (Definitions for ORS 433.835 to 433.875) (5), as in effect immediately before June 30, 2011, at the time of application;

(C) Was certified as a smoke shop under ORS 433.835(Definitions for ORS 433.835 to 433.875) (5), as in effect immediately before June 30, 2011, by the authority on or before December 31, 2012; and

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

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

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

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

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

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

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

(a) Meets the requirements of ORS 433.835 (Definitions for ORS 433.835 to 433.875) (5), as in effect immediately before June 30, 2011; and

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

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

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

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

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

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

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

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

(ii) Has a ventilation system that exhausts smoke from the business and is

### III. Smokefree Environments Laws

designed and terminated in accordance with the state building code standards for the occupancy classification in use; and

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

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

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

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

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

(A) Meets the requirements of ORS 433.835 (Definitions for ORS 433.835 to 433.875) (5), as in effect immediately before June 30, 2011; and

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

(8) The rules adopted under subsection (1) of this section must provide that, in order to obtain a smoke shop certification, a business must agree to allow the authority to make unannounced inspections of the business to determine compliance with ORS 433.835 (Definitions for ORS 433.835 to 433.875) to 433.875 (Short title).

[2011 c.601 §3]

Note: Section 5, chapter 601, Oregon Laws 2011, provides:

Sec. 5. Section 3 of this 2011 Act [433.847 (Smoke shop certification)] and the amendments to ORS 433.835 (Definitions for ORS 433.835 to 433.875) by section 1 of this 2011 Act apply to:

(1) Businesses certified as smoke shops before, on or after the effective date of this 2011 Act [June 30, 2011].

(2) Applications for certification as a smoke shop submitted before, on or after the effective date of this 2011 Act. [2011 c.601 §5]

ORS 433.850 Smoke free place of employment required; exceptions; posting signs.

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

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

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

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

(c) Smoking is permitted in a smoke shop.

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

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

### III. Smokefree Environments Laws

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

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

(3) An employer, except in those places described in subsection (2) of this section, shall post signs that provide notice of the provisions of ORS 433.835 to 433.875. [1981 c.384 §4,5; 2001 c.104 §161; 2001 c.990 §2; 2007 c.602 §4; 2011 c. 234 §1]

ORS 433.855 Duties of Oregon Health Authority; rules; limitations; compliance checks.

(1) The Oregon Health Authority, in accordance with the provisions of ORS chapter 183:

(a) Shall adopt rules necessary to implement the provisions of ORS 433.835 to 433.875 and 433.990 (5);

(b) Shall be responsible for compliance with such rules; and

(c) May impose a civil penalty not to exceed \$500 per day for each violation of a rule of the authority applicable to ORD 433.845 or 433.850, to be collected in the manner provided in ORS 441.705 to 441.745. All penalties recovered shall be paid into the State Treasury and credited to the Tobacco Use Reduction Account established under ORS 431.832.

(2) In carrying out its duties under this section, the Oregon Health Authority is not authorized to require any changes in ventilation or barriers in any public place or place of employment. However, nothing in this subsection is intended to limit the authority of the department to impose any requirements under any other provision of law.

(3) In public places which the Oregon Health Authority regularly inspects, the authority shall check for compliance with the provisions of ORS 433.835 to 433.875 and 433.990 (5). In other public places and places of employment, the Oregon Health Authority shall respond in writing or orally by telephone to complaints, notifying the proprietor or person in charge of responsibilities of the proprietor or person in charge under ORS 433.835 to 433.875 and 433.990 (5). If repeated complaints are received, the Oregon Health Authority may take appropriate action to ensure compliance.

(4) When a county has received delegation of the duties and responsibilities under ORS 446.425 and 448.100, or contracted with the authority under ORS 190.110, the county shall be responsible for enforcing the provisions of ORS 433.835 to 433.875 and 433.990(5) and shall have the same enforcement power as the authority.

[1981 c.384 §6; 1991 c.734 §21; 2001 c.104 §162; 2001 c.990 §6; 2003 c.309 §6; 2007 c.445 §36; 2007 c.602 §5; 2009 c.595 §686; 2011 c. 597§84a]

ORS 433.860 Enforcement

The Oregon Health Authority or local board of health may institute an action in the circuit court of the county where the violation occurred to enjoin repeated violations

## III. Smokefree Environments Laws

of ORS 433.850 (Smoke free place of employment required). [1981 c.384 §7; 2009 c.595 §687]

ORS 433.870 Regulation in addition to other smoking regulations  
The rules authorized by ORS 433.855 (Duties of Oregon Health Authority) and 433.860 (Enforcement) are in addition to and not in lieu of any other law regulating smoking. [1981 c.384 §11; 2001 c.104 §164; 2001 c.990 §5; 2007 c.602 §6]

ORS 433.990 (Penalties)

(5) Violation of ORS 433.850 is a Class A violation. Fines imposed against a single employer under this subsection may not exceed \$4000 in any 30-day period.

[1973 c.779 §46; 1979 c.492 §6; 1979 c.828 §13; subsection (5) enacted as 1981 c.384 §10; 1987 c.320 §232; 1987 c.600 §16; 1999 c.1051 §182; 2001 c.104 §166; 2001 c.636 §5; 2001 c.990 §7; 2007 c.445 §30; 2007 c.602 §7; 2009 c.595 §688; 2011 c.597 §8]

[http://www.oregonlegislature.gov/bills\\_laws/lawsstatutes/2011ors433.html](http://www.oregonlegislature.gov/bills_laws/lawsstatutes/2011ors433.html)

### **Tobacco-Free Schools**

#### **State**

State law forbids the use of tobacco products anywhere on school property or at school-sponsored events, including during non-school hours. This restriction includes all vehicles and facilities that are used by a school.

#### ***Enforcement***

Oregon Department of Education and school districts

#### ***Citation***

OAR 581-021-0110 Tobacco-Free Schools

(1) For the purpose of this rule "tobacco" is defined to include any lighted or unlighted cigarette, cigar, pipe, bidi, clove cigarette, and any other smoking product, and spit tobacco, also known as smokeless, dip, chew, and snuff, in any form.

(2) No student, staff member, or school visitor is permitted to smoke, inhale, dip, or chew or sell tobacco at any time, including non-school hours

(a) In any building, facility, or vehicle owned, leased, rented, or chartered by the school district, school, or public charter school; or

(b) On school grounds, athletic grounds, or parking lots.

(3) No student is permitted to possess a tobacco product:

(a) In any building, facility, or vehicle owned, leased, rented, or chartered by the school district, school, or public charter school; or

## III. Smokefree Environments Laws

(b) On school grounds, athletic grounds, or parking lots.

(4) By January 1, 2006, school districts must establish policies and procedures to implement and enforce this rule for students, staff and visitors.

(5) For purposes of this rule, the term "school district" includes the Oregon School for the Deaf (OSD) and the Oregon School for the Blind (OSB). The Oregon School for the Deaf and the Oregon School for the Blind must establish, in cooperation with the Oregon Department of Education, policies and procedures to implement and enforce this rule for students, staff and visitors by June 30, 2006.

[http://arcweb.sos.state.or.us/pages/rules/oars\\_500/oar\\_581/581\\_021.html](http://arcweb.sos.state.or.us/pages/rules/oars_500/oar_581/581_021.html)

### **Tobacco Use in Alcohol- and Other Drug-Program Facilities**

#### **State**

Tobacco use is not permitted in alcohol or other drug-treatment program facilities in Oregon. Additionally, outpatient programs may not allow tobacco use on program grounds.

#### ***Enforcement***

Oregon Department of Human Services, Addictions and Mental Health Division

#### ***Citation***

OAR 309-032-1540 Program Specific Service Standards

In addition to individualized service and support planning and coordination, providers of each of the following program-specific service areas must ensure the following requirements listed for that service are met.

(15) Building Requirements for Alcohol and Other Drug Programs:

(f) Tobacco Use: Outpatient programs must not allow tobacco use in program facilities and on program grounds. Residential programs must not allow tobacco use in program facilities.

[http://arcweb.sos.state.or.us/pages/rules/oars\\_300/oar\\_309/309\\_032.html](http://arcweb.sos.state.or.us/pages/rules/oars_300/oar_309/309_032.html)

### **Landlord-Tenant Disclosure of Smoking Policy**

#### **State**

State law requires that rental agreements entered on or after January 1, 2010 include a disclosure of the smoking policy for the premises on which the rental unit is located. This requirement does not apply to rental agreements in which the owner of a manufactured home or floating home is renting space in a park or moorage because

### III. Smokefree Environments Laws

such situations straddle the line between ownership and rental.

#### *Enforcement*

Private legal action

#### *Citation*

ORS 90.220

(5) Except as provided in this subsection, the rental agreement must include a disclosure of the smoking policy for the premises that complies with ORS 479.305. A disclosure of smoking policy is not required in a rental agreement subject to ORS 90.505 to 90.840 for space in a facility as defined in ORS 90.100.

[Formerly 90.240; 2009 c.127 §3; 2009 c.431 §10]

[http://www.oregonlegislature.gov/bills\\_laws/lawsstatutes/2011ors090.html](http://www.oregonlegislature.gov/bills_laws/lawsstatutes/2011ors090.html)

ORS 479.305 Smoking policy disclosure.

(1) Except as provided in subsection (2) of this section, the rental agreement for a dwelling unit regulated under ORS chapter 90 must include a disclosure of the smoking policy for the premises on which the dwelling unit is located. The disclosure must state whether smoking is prohibited on the premises, allowed on the entire premises or allowed in limited areas on the premises. If the smoking policy allows smoking in limited areas on the premises, the disclosure must identify the areas on the premises where smoking is allowed.

(2) This section does not apply to a rental agreement subject to ORS 90.505 to 90.840 for space in a facility as defined in ORS 90.100. [2009 c.127 §2]

Note: Section 5, chapter 127, Oregon Laws 2009, provides:

Sec. 5. Section 2 of this 2009 Act [479.305] and the amendments to ORS 90.220 by section 3 of this 2009 Act apply to rental agreements that a tenant enters into on or after the effective date of this 2009 Act [January 1, 2010]. [2009 c.127 §5]

[http://www.oregonlegislature.gov/bills\\_laws/lawsstatutes/2011ors479.html](http://www.oregonlegislature.gov/bills_laws/lawsstatutes/2011ors479.html)

#### **Tobacco Free In-home Child Day Care State**

Many daycare environments are workplaces and therefore fall under the Oregon Indoor Clean Air Act as environments that are required to be smokefree.

## III. Smokefree Environments Laws

Additionally, Registered in-home child day care provider homes and cars are required to be tobacco free during the time that clients or children are present.

### ***Enforcement***

Oregon Child Care Division

### ***Citation***

OAR 414-205-0100 Health

(1) The home must be a healthy environment for children. (a) No person shall smoke or use smokeless tobacco in the family child care home during the hours the child care business is conducted. No person shall smoke or use smokeless tobacco in motor vehicles while child care children are passengers.

[http://arcweb.sos.state.or.us/pages/rules/oars\\_400/oar\\_414/414\\_205.html](http://arcweb.sos.state.or.us/pages/rules/oars_400/oar_414/414_205.html)

### **Tobacco Free Correctional Facilities**

#### **State**

Inmates in State of Oregon correctional facilities are not allowed to possess or use tobacco products.

### ***Enforcement***

Oregon Department of Corrections

### ***Citation***

OAR 291-105-0015 (e) 1.11 Contraband II: An inmate commits Contraband II if he/she possesses contraband other than that listed in Contraband I (OAR 291-105-0015(d)(A)–(G) and Contraband III (291-105-0015(f) and it creates a threat to the safety, security or orderly operation of the facility, including but not limited to:

(A) 1.11.01 Tobacco or smoking paraphernalia, unauthorized medication, items of barter (such as jewelry or canteen items not purchased by the inmate), checks, money under \$10, or unauthorized sexually explicit material.

[http://arcweb.sos.state.or.us/pages/rules/oars\\_200/oar\\_291/291\\_105.html](http://arcweb.sos.state.or.us/pages/rules/oars_200/oar_291/291_105.html)

### **Smoke-free Cars for Kids**

#### **State**

### III. Smokefree Environments Laws

Smoking in a motor vehicle with a minor under the age of 18 present is a secondary traffic violation. Individuals can be fined up to \$250 for first offense and up to \$500 for second or subsequent offenses for smoking in a vehicle when youth are present.

#### ***Enforcement***

Oregon State Police

#### ***Citation***

ORS 811.193

Chapter 361, Oregon Laws 2013 (Senate Bill 444) creates a new offense to add to OAR 735-072-0035 (Driver Improvement Offenses)

Section 1. Section 2 of this 2013 Act is added to and made part of the Oregon Vehicle Code.

#### Section 2.

(1)(a) A person commits the offense of smoking in a motor vehicle if the person smokes in a motor vehicle while a person under 18 years of age is in the motor vehicle.

(b) As used in this subsection, “smokes” means to inhale, exhale, burn or carry a lighted cigarette, cigar, pipe, weed, plant, regulated narcotic or other combustible substance.

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

(3) Smoking in a motor vehicle is a:

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

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

[http://www.oregonlegislature.gov/bills\\_laws/lawsstatutes/2013orLaw0361.pdf](http://www.oregonlegislature.gov/bills_laws/lawsstatutes/2013orLaw0361.pdf)

## IV. Tobacco Taxes, Payments, and Distribution

### IV. Tobacco Taxes, Payments, and Distribution

#### Oregon-Specific Tobacco Taxes

Oregon's per pack cigarette tax is \$1.18. In the October 2013 special session, lawmakers passed an escalated increase in cigarette taxes.

- 13 cents in 2013-2015 (\$1.31 tax)
- 14 cents in 2015-2017 (\$1.45 tax)
- 15 cents in 2017-2019 (\$1.60 tax)

Other tobacco products (OTPs), except for cigars and moist snuff, are taxed at 65 percent of the wholesale price. Under Oregon tax law, moist snuff includes any finely cut, ground or powdered tobacco that is not intended to be smoked or placed in a nasal cavity, as well as any other tobacco-containing product that is intended or expected to be consumed without being combusted.

Cigars are taxed at 65 percent of the wholesale price, up to a maximum of 50 cents per cigar. The tax on moist snuff is \$1.78 per ounce based on net weight, as determined by the manufacturer, with a minimum tax of \$2.14 per retail container. Beginning on July 1, 2022, the Department of Revenue will raise the tax on moist snuff every two years.

#### *Citation*

Oregon Tobacco Tax Code: ORS 323.030, 323.031, 323.500, 323.505

### DISTRIBUTION OF STATE TAX REVENUE

#### Distribution of Cigarette Taxes

Recipient Fund	Amount Per Pack	Dollar Amount for 2013-2015 Biennium*
General Fund	23 cents	\$75.4 Million
Oregon Health Plan	87 cents	\$267.3 Million
Tobacco Use Reduction Account (TURA)	4 cents	\$10.7 Million
Cities	2 cents	\$7.1 Million
Counties	2 cents	\$7.1 Million
Public Transit	2 cents	\$7.1 Million
Mental Health	10 cents	\$22.7 Million
<b>Total</b>	<b>\$1.31</b>	<b>\$397.4 Million</b>

\*Based on December 2013 Economic and Revenue Forecast from the Oregon Office of Economic Analysis. Note: Beginning January 1, 2014 taxes per pack were raised \$0.13 to a total of \$1.31 per pack. The distribution of the \$0.13 increase is split \$0.10 to Mental Health, \$0.013 to the state

## IV. Tobacco Taxes, Payments, and Distribution

general fund, \$0.002 to Tobacco Use Reduction and \$0.016 to the Health Plan. Amounts per pack for each recipient will not add to the total of \$1.31 due to rounding conventions.

### *Citation*

ORS 323.455, 323.457

### **Distribution of Other Tobacco Products Taxes**

Recipient Fund	Percent of Allocation	Dollar Amount for 2013-2015 Biennium*
General Fund	53.84 percent	\$59.4 Million
Oregon Health Plan	41.54 percent	\$45.8 Million
Tobacco Use Reduction Account (TURA)	4.62 percent	\$5.1 Million
Total	100 percent	\$110.3 Million

\*Based on December 2013 revenue forecast.

### *Citation*

ORS 323

[http://www.oregonlegislature.gov/bills\\_laws/lawsstatutes/2011ors323.html](http://www.oregonlegislature.gov/bills_laws/lawsstatutes/2011ors323.html)

### **Ballot Measure 44 Statute (Use of TURA Funds)**

#### **State**

Oregon law mandates that money from the TURA be used to fund tobacco prevention and education programs. The Department of Human Services awards grants to programs that educate the public about the risks associated with tobacco use, records the grant allocations, and presents the report to the Governor every two years.

### *Enforcement*

State Treasurer

### *Citation*

ORS 431.832 Tobacco Use Reduction Account established.

(1) There is established in the General Fund the Tobacco Use Reduction Account.

(2) Amounts credited to the Tobacco Use Reduction Account are continuously appropriated to the Department of Human Services for the funding of prevention and education programs designed to reduce cigarette and tobacco use. [1997 c.2 §13; 2009 c.595 §592]

ORS 431.834 Department to adopt rules; contents.

## IV. Tobacco Taxes, Payments, and Distribution

The Department of Human Services shall develop and adopt rules for awarding grants to programs for educating the public on the risk of tobacco use, including but not limited to:

- (1) Educating children on the health hazards and consequences of tobacco use; and
- (2) Promoting enrollment in smoking cessation programs and programs that prevent smoking-related diseases including cancer and other diseases of the heart, lungs and mouth. [1997 c.2 §14; 2009 c.595 §593]

ORS 431.836 Department to prepare report.

During each biennium, the Department of Human Services shall prepare a report regarding the awarding of grants from the Tobacco Use Reduction Account and the formation of public-private partnerships in connection with the receipt of funds from the account. The department shall present the report to the Governor and to those committees of the Legislative Assembly to which matters of public health are assigned. [1997 c.2 §15; 2009 c.595 §594]

[http://www.oregonlegislature.gov/bills\\_laws/lawsstatutes/2011ors431.html](http://www.oregonlegislature.gov/bills_laws/lawsstatutes/2011ors431.html)

### **Tobacco Sold On Tribal Land State**

As sovereign nations, Oregon's federally recognized tribes are not required to sell taxed tobacco. However, eight of the nine federally recognized tribes in Oregon have entered into compacts with the state, whereby they have agreed to sell only Oregon-taxed cigarettes. In return, the State of Oregon provides each of these tribes with a population-based allocation from tobacco-tax revenue. Cow Creek is the only federally recognized tribe in Oregon that has not entered into a cigarette tax compact with the state. No Oregon tribes manufacture or sell their own tobacco.

### **Master Settlement Agreement (MSA) Financial Provisions**

Pursuant to the Master Settlement Agreement, settling states will receive more than \$206 billion from the tobacco industry over 25 years. All money paid to the state under the MSA is deposited into the Tobacco Settlement Funds Account, which is an account in the General Fund.

Oregon receives approximately \$181,000,000 per biennium in MSA funds. Until 2013, most of these funds will be used to pay back general appropriation bonds purchased by the state in 2003. Some funds are also dedicated to OHSU bonds and to the Tobacco Enforcement Fund. For the 2009-2011 biennium, Oregon allocated \$139

## IV. Tobacco Taxes, Payments, and Distribution

million to the Oregon Appropriation Bond Fund, \$32 million to the OHSU Bond Fund, and \$30 million to DHS for the Oregon Health Plan. The Department of Administrative Services will distribute these funds from the Tobacco Settlement Funds Account.

### **Tobacco Enforcement Fund State**

The Tobacco Enforcement Fund was established for the purpose of funding the Oregon Department of Justice's enforcement of the MSA. The Tobacco Enforcement Fund consists of money that is transferred from the Tobacco Settlement Funds Account, as well as recovered expenses from MSA enforcement proceedings. Money from the Tobacco Settlement Funds Account is allotted to the Tobacco Enforcement Fund every biennium pursuant to ORS 293.537.

### ***Enforcement***

Oregon Department of Administrative Services

### ***Citation***

ORS 293.537 Tobacco Settlement Funds Account; sources; uses; investment.

(1) The Tobacco Settlement Funds Account is established as an account in the General Fund. Except as provided in section 2, chapter 11, Oregon Laws 2003, the account shall consist of all moneys paid to this state under the Master Settlement Agreement of 1998.

(2) Before July 1 of each odd-numbered year, the Department of Justice shall submit for approval to the Oregon Department of Administrative Services the estimated costs that will be incurred by the Department of Justice in the subsequent biennium in enforcing the provisions of ORS 180.400 to 180.455, 323.106 and 323.806. On July 1 of each odd-numbered year, a sum equal to the amount approved by the Oregon Department of Administrative Services shall be transferred from the Tobacco Settlement Funds Account to the Tobacco Enforcement Fund established under ORS 180.205. If the Department of Justice determines during a biennium that it needs funds for purposes described in this subsection in addition to the amount approved by the Oregon Department of Administrative Services, the Department of Justice may request transfer of additional moneys from the Tobacco Settlement Funds Account and the additional amount approved by the Oregon Department of Administrative Services shall be transferred to the Tobacco Enforcement Fund.

[2001 c.977 §1,2,3; 2002 s.s.5 c.2 §17; 2003 c.11 §8; 2003 c.801 §24; 2007 c.853 §1]

[http://www.oregonlegislature.gov/bills\\_laws/lawsstatutes/2011ors293.html](http://www.oregonlegislature.gov/bills_laws/lawsstatutes/2011ors293.html)

## IV. Tobacco Taxes, Payments, and Distribution

ORS 180.205 Tobacco Enforcement Fund.

(1) The Tobacco Enforcement Fund is established separate and distinct from the General Fund. The Tobacco Enforcement Fund shall consist of:

- (a) Moneys deposited into the fund under ORS 180.450; and
- (b) Moneys transferred to the fund under ORS 293.537.

(2) Moneys in the Tobacco Enforcement Fund are continuously appropriated to the Department of Justice for the purpose of enforcing the provisions of ORS 180.400 to 180.455, 323.106 and 323.806. Moneys in the fund are not subject to allotment under ORS 291.234 to 291.260.

ORS 180.450 Judicial review; civil remedies; rules.

(3) In any action brought by the state to enforce ORS 180.410, 180.415, 180.420, 180.430, 180.435, 180.440 or 323.806, or any rule adopted under this section or ORS 180.445, the state may recover the costs of investigation, expert witness fees, costs of the action and reasonable attorney fees. Moneys recovered under this subsection shall be deposited into the Tobacco Enforcement Fund established under ORS 180.205.

(4) If a court determines that a person has violated any provision of ORS 180.410, 180.415, 180.420, 180.430, 180.435 or 180.440, or any rule adopted under this section or ORS 180.445, the court shall order any profits, gain, gross receipts or other benefit from the violation to be disgorged and paid to the Tobacco Enforcement Fund established under ORS 180.205.

[2003 c.801 §10]

[http://www.oregonlegislature.gov/bills\\_laws/lawsstatutes/2011ors180.html](http://www.oregonlegislature.gov/bills_laws/lawsstatutes/2011ors180.html)

# V. Tobacco and Cigarette-Related Product Regulation

## V. Tobacco and Cigarette-Related Product Regulation

For the most part, tobacco products are regulated at the federal level, including broad sweeping federal authority over cigarettes given to the Federal Drug Administration by Congress in 2009. However, Oregon does have some additional product related laws that are stronger than federal law.

### **Reduced-Ignition-Propensity Cigarettes**

#### **State**

Only reduced-ignition-propensity, fire-standard compliant cigarettes may be sold in Oregon. The State Fire Marshal determines which cigarettes meet this standard. Additionally, the Fire Marshal is authorized to seize and destroy cigarettes that do not meet the standard and may inspect the inventory of cigarette manufacturers, wholesale or retail dealers and transporters as necessary to ensure compliance. Violations are punishable by civil penalties, which will be credited to the Cigarette Fire Safety Fund.

#### ***Enforcement***

State Fire Marshal or representative

#### ***Citation***

ORS 476.760 Prohibition against distributing or offering certain cigarettes; improper packaging markings; seizure and forfeiture; interagency agreements; inspections; rules.

(1) A person may not distribute or offer to sell a cigarette within this state unless the cigarette is of a variety the State Fire Marshal has determined to have reduced ignition propensity.

(3) The State Fire Marshal, an authorized representative of the State Fire Marshal or any law enforcement agency may immediately seize and subject to forfeiture any cigarettes distributed or offered for sale in violation of subsection (1) of this section and any packaging, and cigarettes contained in that packaging, that violates subsection (2) of this section. The State Fire Marshal shall destroy cigarettes and packaging seized and forfeited under this subsection. However, prior to destroying cigarettes or packaging seized under this subsection, the State Fire Marshal shall allow the true holder of the trademark rights in the cigarette variety to inspect the cigarettes and packaging.

(5)(a) The State Fire Marshal or an authorized representative, upon oral or written demand, may inspect the inventory of cigarette manufacturers, wholesale or retail dealers and transporters as the State Fire Marshal or an authorized representative deems necessary to ensure compliance with this section. The State Fire Marshal may

## V. Tobacco and Cigarette-Related Product Regulation

adopt rules to require reports, in a form prescribed by the State Fire Marshal, by cigarette manufacturers, wholesale or retail dealers and transporters for the purpose of ensuring compliance with this section.

ORS 476.770 Determination of cigarette variety ignition propensity; reduced ignition propensity standard; listing; cigarette design; rules.

(1) For each variety of cigarette sold or proposed for sale in this state, the State Fire Marshal shall determine whether that variety of cigarette has reduced ignition propensity.

(2) Any cigarette variety certified by a manufacturer under ORS 476.780 shall be determined to have reduced ignition propensity.

ORS 476.780 Cigarette variety certification by manufacturer; retesting; record retention; unfavorable determination by State Fire Marshal.

(1) A manufacturer shall submit a written certification attesting that each variety of cigarette listed in the certification has been subjected to ignition propensity testing described in ORS 476.770 and meets the fire safety performance standard described in ORS 476.770 (6).

[http://www.oregonlegislature.gov/bills\\_laws/lawsstatutes/2011ors476.html](http://www.oregonlegislature.gov/bills_laws/lawsstatutes/2011ors476.html)

### **Prohibition on the Sale or Distribution of Novelty Lighters**

#### **State**

Oregon law prohibits selling, offering for sale or distributing novelty lighters. It is also illegal to manufacture, import, or possess novelty lighters in inventory for the purpose of sale or distribution. Exceptions apply to lighters manufactured before January 1, 1980, and those that are permanently altered to prevent flame or other causes of combustion. Violations are subject to a civil penalty of up to \$500 per day for retail sellers or distributors, \$1,000 per day for wholesalers, and \$10,000 per day for manufacturers or importers. The State Fire Marshal determines which lighters are novelty lighters and is authorized to inspect facilities, inventory, and records related to the manufacture, import, wholesale, storage, sale, or distribution of lighters.

#### ***Enforcement***

State Fire Marshal or representative

#### ***Citation***

## V. Tobacco and Cigarette-Related Product Regulation

ORS 476.831 Definitions for ORS 476.831 to 476.856.

As used in ORS 476.831 to 476.856:

(6) “Novelty lighter”:

(a) Means a lighter that has misleading design, audio effects or visual effects, or that has other features of a type that would reasonably be expected to make the lighter appealing or attractive to a child less than 10 years of age.

(b) Does not mean:

(A) A lighter manufactured before January 1, 1980; or

(B) A lighter that has been rendered permanently incapable of producing a flame or otherwise causing combustion.

ORS 476.836 Identification of novelty lighters; rules; disposition of contraband lighters.

(2) The State Fire Marshal shall establish and maintain a list of lighters, and of classes and types of lighters, that the State Fire Marshal has determined to be novelty lighters. The State Fire Marshal shall make the list available to the public in electronic form or in other forms selected by the State Fire Marshal.

ORS 476.841 Prohibition against sale or distribution of novelty lighters; civil penalties.

(1) A person may not sell, offer for sale or distribute a novelty lighter in this state. A person may not manufacture a novelty lighter in this state, or import a novelty lighter into this state, for the purpose of selling or distributing the novelty lighter within this state. A person may not possess a novelty lighter in inventory for the purpose of selling or distributing the novelty lighter within this state.

(2) The State Fire Marshal may impose a civil penalty against a person who violates subsection (1) of this section. The civil penalty may not exceed:

(a) \$10,000 if the person is a manufacturer or importer of lighters.

(b) \$1,000 if the person is a wholesaler of lighters or distributes lighters by means other than distribution directly to consumers.

(c) \$500 if the person is:

(A) A retail seller of lighters; or

(B) A person distributing lighters, if the person is other than a manufacturer, importer or wholesaler.

(3) If a person continues to violate this section after the State Fire Marshal gives the person written notice of the violation, each day that the violation continues is a separate offense subject to a civil penalty.

[http://www.oregonlegislature.gov/bills\\_laws/lawsstatutes/2011ors476.html](http://www.oregonlegislature.gov/bills_laws/lawsstatutes/2011ors476.html)

## V. Tobacco and Cigarette-Related Product Regulation

### **Electronic Cigarettes (E-Cigarettes)**

#### **State**

E-cigarettes are devices designed to mimic the look and experience of smoking a cigarette. Each e-cigarette contains a battery-operated heating element and a cartridge filled with a nicotine-containing liquid that may be flavored. The heating element vaporizes the liquid, which users inhale and exhale like smoke. E-cigarettes are not FDA approved.

In 2009, the Oregon DOJ reached legal settlements with three retailers and an agreement with e-cigarette company Sottera, Inc., the national distributor of NJOY brand e-cigarettes, which prohibit them from selling or distributing e-cigarettes in the state until the products meet federal and state regulatory standards. On August 9, 2010, the DOJ settled a case that it filed in Marion County Court against Florida-based e-cigarette company Smoking Everywhere for making false health claims and targeting children. The settlement agreement includes an express admission by the company that it violated Oregon's Unlawful Trade Practices Act, requires the company to pay more than \$95,000 to the DOJ, and permanently bars the company from doing business in the state. Additionally, the agreement requires Smoking Everywhere's president to pay \$25,000 and refrain from transacting any business in Oregon related to e-cigarettes, tobacco products, nicotine delivery devices, drugs, or drug delivery devices of any kind.

## VI. Miscellaneous

### VI. Miscellaneous

#### **Prohibition of Employer Restrictions on Off-Duty Tobacco Use**

##### **State**

Oregon law prohibits employers from requiring that employees refrain from using legal tobacco products during nonworking hours on non-employer property, except when the restriction relates to a genuine occupational requirement or a collective bargaining agreement prohibits off-duty tobacco use.

##### ***Enforcement***

Private legal action

##### ***Citation***

ORS 659A.315 Restricting use of tobacco in nonworking hours prohibited; exceptions.

(1) It is an unlawful employment practice for any employer to require, as a condition of employment, that any employee or prospective employee refrain from using lawful tobacco products during nonworking hours, except when the restriction relates to a bona fide occupational requirement.

(2) Subsection (1) of this section does not apply if an applicable collective bargaining agreement prohibits off-duty use of tobacco products.

[http://www.oregonlegislature.gov/bills\\_laws/lawsstatutes/2011ors659A.html](http://www.oregonlegislature.gov/bills_laws/lawsstatutes/2011ors659A.html)

#### **Supersedeas**

##### **State**

A supersedeas is a bond that suspends a judgment creditor's power to levy execution, usually pending appeal. Oregon law limits the supersedeas bond amount in tobacco litigations to \$150 million, and provides that the supersedeas will suspend a financial judgment pending appeal.

##### ***Citation***

ORS 19.312 Supersedeas undertaking in certain actions against tobacco product manufacturer.

(1) The provisions of this section apply only to civil actions against a tobacco product manufacturer as defined in ORS 323.800, or against an affiliate or successor of a tobacco product manufacturer, in which:

(a) The tobacco product manufacturer is subject to the requirements of ORS 323.806; and

## VI. Miscellaneous

(b) The state is not a plaintiff.

(2) In any civil action described in subsection (1) of this section, the supersedeas undertaking required of the tobacco product manufacturer, or of an affiliate or successor of the tobacco product manufacturer, as a condition of a stay of judgment throughout all appeals or discretionary appellate review, shall be established in the manner provided by the laws and court rules of this state applicable to supersedeas undertakings, but the amount of the supersedeas undertaking may not exceed \$150 million.

(3) If at any time after the posting of the supersedeas undertaking pursuant to the provisions of this section the court determines that a tobacco product manufacturer, affiliate or successor, outside of the ordinary course of its business, is purposely dissipating or diverting assets for the purpose of avoiding payment on final judgment in the action, the court may condition continuance of the stay on an order requiring that the tobacco product manufacturer, affiliate or successor post a supersedeas undertaking in an amount up to the full amount of the judgment.

(4) The provisions of this section apply to any supersedeas undertaking required for a judgment entered by a court of this state and to any security required as a condition of staying enforcement of a foreign judgment under the provisions of ORS 24.135 (2).

[http://www.oregonlegislature.gov/bills\\_laws/lawsstatutes/2011ors019.html](http://www.oregonlegislature.gov/bills_laws/lawsstatutes/2011ors019.html)

### **Littering Law**

#### **State**

Oregon law prohibits littering. Cigarette butts are considered litter and may not be deposited or discarded on public property or the private property of another. Individuals who throw, or permit others to throw, cigarette butts from their vehicles commit the offense of littering. Violations of the littering law are Class C misdemeanors.

#### ***Enforcement***

Local law enforcement authorities

#### ***Citation***

ORS 164.805 Offensive littering.

(1) A person commits the crime of offensive littering if the person creates an objectionable stench or degrades the beauty or appearance of property or detracts from the natural cleanliness or safety of property by intentionally:

(a) Discarding or depositing any rubbish, trash, garbage, debris or other refuse

## VI. Miscellaneous

upon the land of another without permission of the owner, or upon any public way or in or upon any public transportation facility;

...or

(c) Permitting any rubbish, trash, garbage, debris or other refuse to be thrown from a vehicle that the person is operating. This subsection does not apply to a person operating a vehicle transporting passengers for hire subject to regulation by the Interstate Commerce Commission or the Department of Transportation or a person operating a school bus described under ORS 801.460.

(3) Offensive littering is a Class C misdemeanor. [1971 c.743 §283; 1975 c.344 §2; 1983 c.338 §897; 1985 c.420 §20; 2007 c.71 §52]

[http://www.oregonlegislature.gov/bills\\_laws/lawsstatutes/2011ors164.html](http://www.oregonlegislature.gov/bills_laws/lawsstatutes/2011ors164.html)

## VII. Overviews of Laws and Cases

### VII. Overviews of Laws and Cases

#### **Master Settlement Agreement (MSA) and Smokeless Tobacco Master Settlement Agreement (STMSA)**

The Master Settlement Agreement (MSA) was reached in 1998 to settle litigation brought by the Attorneys General of 46 states and 6 U.S. jurisdictions against the tobacco industry. The four largest U.S. tobacco manufacturers originally signed the agreement; two smaller manufacturers joined later. The MSA is a binding agreement that settles the states' claims against the participating manufacturers for recovery of tobacco-related health care costs. It also exempts the manufacturers from private tort liability for harms due to tobacco use. In exchange, the MSA restricts the participating manufacturers' marketing practices and requires them to make annual payments to the states, which the states will use to cover their smoking-related health care costs and to compensate private parties who are injured by tobacco use.

The Smokeless Tobacco Master Settlement Agreement (STMSA) was concluded at the same time as the MSA. The STMSA is an agreement between the settling states/jurisdictions and the U.S. Tobacco Company (USTC), the nation's largest manufacturer of smokeless tobacco. It sets forth marketing and advertising restrictions identical to those in the MSA, and also bans the distribution of free samples to sports teams. USTC was required to make payments for 10 years to the American Legacy Foundation and a one-time payment to the National Association of Attorneys General. Unlike the MSA, however, the STMSA does not require participating manufacturers to make annual payments to the states. Currently, USTC is the only smokeless tobacco signatory to the STMSA.

To prevent nonparticipating manufacturers (those who are not parties to the MSA or STMSA) from gaining a significant market advantage, Oregon law requires that nonparticipating manufacturers either comply with provisions of the relevant Agreement or make annual escrow payments to the state. The escrow payments will be used to pay for any health-related costs incurred by the state or its citizens due to tobacco use for which the manufacturer is responsible; payments that are not used within 25 years will be refunded. Due to recent litigation, *nonparticipating smokeless tobacco manufacturers* who choose to comply with the conditions of the STMSA instead of making escrow payments are no longer required to abide by the restrictions on lobbying and legal challenges set forth in Sections III(m) and V. Other provisions of the Oregon law (ORS 323.816) are still being disputed in state court (*Conwood Co., LLC v. Kroger*).

#### ***Citation***

## VII. Overviews of Laws and Cases

ORS 323.800-816

[http://www.oregonlegislature.gov/bills\\_laws/lawsstatutes/2011ors323.html](http://www.oregonlegislature.gov/bills_laws/lawsstatutes/2011ors323.html)

### **Family Smoking Prevention and Tobacco Control Act**

The Family Smoking Prevention and Tobacco Control Act was signed into law on June 22, 2009. The Act gives the FDA comprehensive authority to regulate the manufacture, marketing, and sale of tobacco and imposes a user fee on tobacco companies to help fund FDA's new responsibilities. The Act also reduces the scope of federal preemption of state regulation in the area of cigarette advertising, requires tobacco companies to disclose the full contents of their products and results of any health studies, strengthens the required package-label warnings, and prescribes certain marketing and advertising restrictions.

In August 2009, several tobacco companies collectively brought suit in the U.S. District Court for the Western District of Kentucky to challenge the constitutionality of various provisions of the Act (*Commonwealth Brands, Inc. v. United States*, 678 F. Supp. 2d 512 (W.D. Ky. 2010)). The companies alleged that the new law violates their free speech and due process rights, and that it takes their property without providing compensation. The court struck down as unconstitutional 1) the ban on color graphics in labels and advertising and 2) the ban on claims implying that a tobacco product is safer due to FDA regulation. All other challenged provisions were upheld and neither party has appealed the decision.

### **Prevent All Cigarette Trafficking Act of 2009 (PACT Act)**

The PACT Act was signed into law on March 31, 2010. It requires Internet and mail-order merchants of tobacco products to pay all applicable federal, state, local or tribal tobacco taxes; comply with the state and local laws that govern the jurisdictions in which their customers are located; and verify the age of purchasers at the times of purchase and delivery. The Act provides states, localities, and tribes with some authority to enforce its provisions.

## VII. Overviews of Laws and Cases

### **United States v. Philip Morris USA, Inc.**

[449 F. Supp. 2d 1 (D.D.C. 2006), 566 F.3d 1095 (D.C. Cir. 2009)]

In 1999, the U.S. Department of Justice filed a case against the major American cigarette manufacturers (“tobacco industry”) in the U.S. District Court for the District of Columbia. DOJ alleged that the industry violated the Racketeer Influenced and Corrupt Organizations (RICO) Act by conspiring to defraud the public. DOJ charged that the industry had knowingly produced dangerous and addictive products, and had misled the public about the associated risks.

In 2006, the District Court found the industry guilty of RICO violations and ordered, among other things, that the industry cease all racketeering activity, make corrective disclosures, and refrain from making false, misleading, or deceptive representations about cigarettes. However, the court denied the government’s request for disgorgement of the industry’s profits, finding that this was not an appropriate remedy under RICO. Both parties appealed the ruling to the D.C. Circuit Court of Appeals, which affirmed the finding of liability and denial of disgorgement, but partially vacated the judgment and remanded the case to the District Court in 2009. A petition to have the case heard by the U.S. Supreme Court was denied without comment. The case is currently on remand to the District Court, but the prior judgment is final with respect to the issues of liability and disgorgement.

## VIII. Laws Comparison Chart

### VIII. Laws Comparison Chart

Legal Provision	MSA (1998) <sup>∞</sup> & STMSA (1998) <sup>∞</sup>	Family Smoking Prevention and Tobacco Control Act (2009)	Prevent All Cigarette Trafficking Act of 2009 (PACT Act)	<i>United States v. Philip Morris USA, Inc.</i> (RICO case)	Oregon State Law
<b>Sales</b>					
<b>Minimum age for sale or purchase of tobacco products</b>	N/A	It is illegal to sell cigarettes or smokeless tobacco to a person under the age of 18. (CFR § 1140.14(a)).	Determined by the applicable law at the place of delivery	N/A	It is illegal for retailers to sell cigarettes or smokeless tobacco to a person under the age of 18, and also for an underage person to purchase tobacco products. (ORS 163.575, 167.401)
<b>Verification of purchaser's age</b>	N/A	Cigarette and smokeless tobacco retailers must check photo ID to verify that a purchaser is 18 years of age.	Delivery seller must verify the age of a purchaser prior to accepting a delivery sale order, and require the purchaser or another adult meeting the minimum age to sign for delivery and provide proof of age with a valid government-issued photo ID.	N/A	Delivery seller must verify the age of a purchaser via written certification and photo ID, and use a delivery method that requires a signature from the consumer or an adult living at the same residence.
<b>Vending machines and self-service displays</b>	N/A	Cigarettes and smokeless tobacco may not be sold through vending machines or self-service displays except in facilities that are off limits to minors (<18). In all other venues, retailers may only sell in a direct, face-to-face exchange.	N/A	N/A	Cigarettes and smokeless tobacco may not be sold through vending machines or self-service displays except in facilities that are off limits to minors (<21). In all other venues, retailers may only sell in a direct, face-to-face exchange.

## VIII. Laws Comparison Chart

VIII. Laws Comparison Chart					
Legal Provision	MSA (1998) <sup>∞</sup> & STMSA (1998) <sup>∞</sup>	Family Smoking Prevention and Tobacco Control Act (2009)	Prevent All Cigarette Trafficking Act of 2009 (PACT Act)	<i>United States v. Philip Morris USA, Inc.</i> (RICO case)	Oregon State Law
<b>Cigarette package size; minimum sale quantity</b>	N/A	No sales of cigarette packages that contain fewer than 20 cigarettes. It is prohibited to break apart a package of cigarettes or smokeless tobacco in order to sell or distribute in a quantity smaller than the smallest package size.	N/A	N/A	Cigarettes may only be sold in a sealed package.
<b>Cigarette flavoring</b>	N/A	No flavors other than menthol may be used in cigarettes, including in the “component parts” (filter, paper, etc.).	N/A	N/A	N/A
<b>Other restrictions</b>	N/A	N/A	Cigarettes, roll-your-own tobacco, and STPs are nonmailable matter except: within AK or HI, for business purposes between tobacco businesses, by individuals for noncommercial purposes, or for consumer testing by manufacturers or the federal government.	N/A	Retailers must post a notice informing the public that selling tobacco products to individuals under 18 is prohibited.

## VIII. Laws Comparison Chart

VIII. Laws Comparison Chart					
Legal Provision	MSA (1998) <sup>∞</sup> & STMSA (1998) <sup>∞</sup>	Family Smoking Prevention and Tobacco Control Act (2009)	Prevent All Cigarette Trafficking Act of 2009 (PACT Act)	<i>United States v. Philip Morris USA, Inc.</i> (RICO case)	Oregon State Law
<b>Advertising, Marketing, &amp; Labeling</b>					
<b>Marketing Tactics</b>					
<b>Targeting youth</b>	Manufacturers are enjoined from targeting youth with advertisement, promotion, marketing, or taking any action in order to initiate, maintain or increase the incidence of tobacco use by youth in any settling state.	FDA regulations are tailored to restrict advertising and promotional practices that are most likely to be seen or heard by youth and to entice them into tobacco use.	N/A, but one of the purposes of PACT is to prevent and reduce youth access to cigarettes and smokeless tobacco through illegal Internet or contraband sales.	No remedies specifically relating to youth marketing were prescribed.	Illegal to give free samples to youth to encourage tobacco-product use.
<b>Use of graphics in tobacco advertising</b>	Cartoon characters may not be used in the advertisement, promotion, packaging, or labeling of tobacco products, or in the names of stadiums or arenas	Only black text on a white background may be used in print and video advertising and labeling of cigarettes and smokeless tobacco. Audio advertising is limited to words only.**	N/A	N/A	N/A
<b>Media promotion</b>	No payments are permitted to promote tobacco products in movies, TV shows, theater or live performances, videos, or video games.	N/A	N/A	N/A	N/A

## VIII. Laws Comparison Chart

VIII. Laws Comparison Chart					
Legal Provision	MSA (1998) <sup>∞</sup> & STMSA (1998) <sup>∞</sup>	Family Smoking Prevention and Tobacco Control Act (2009)	Prevent All Cigarette Trafficking Act of 2009 (PACT Act)	<i>United States v. Philip Morris USA, Inc.</i> (RICO case)	Oregon State Law
<b>Transit and outdoor advertising</b>	Transit advertising and most outdoor advertising are prohibited, including: billboards, signs and placards in arenas, stadiums, shopping malls, and video game arcades.	N/A	N/A	N/A	N/A
<b>Combination products</b>	N/A	Cigarettes and smokeless tobacco products may not be marketed in combination with any other product regulated by the FDA.	N/A	N/A	N/A
<b>Third-party advertisement of tobacco products</b>	Tobacco companies may not authorize third parties to use or advertise tobacco brand names.	N/A	N/A	N/A	N/A
<b>Gifts with purchase</b>	No gifts or other items may be offered <i>to youths</i> in exchange for purchasing a tobacco product. Gifts may not be distributed through the mail without proof of age.	No gifts or other items may be provided in exchange for purchasing cigarettes or a smokeless tobacco product.	N/A	N/A	N/A
<b>Tobacco brand-name merchandise</b>	No distribution or sale of non-tobacco merchandise with tobacco brand-name logos except at the site of permitted brand-name sponsorships.	Non-tobacco items may not bear the brand name, logo, symbol, motto, or recognizable color or pattern of colors identifiable with any cigarette or smokeless tobacco brand.	N/A	N/A	N/A

## VIII. Laws Comparison Chart

### VIII. Laws Comparison Chart

Legal Provision	MSA (1998) <sup>∞</sup> & STMSA (1998) <sup>∞</sup>	Family Smoking Prevention and Tobacco Control Act (2009)	Prevent All Cigarette Trafficking Act of 2009 (PACT Act)	<i>United States v. Philip Morris USA, Inc.</i> (RICO case)	Oregon State Law
<b>Sampling</b>	No free samples of tobacco products may be distributed except in "adult-only facilities."	No free samples of tobacco products may be distributed, except smokeless tobacco in a "qualified adult-only facility." Sampling is prohibited to any sports team or entertainment group, or at any sporting or entertainment event.	N/A	N/A	Free tobacco products ("sampling") may not be distributed to people under 18 as part of a marketing strategy that encourages tobacco use. Additionally, free samples of smokeless tobacco may not be given to anyone under the age of 21 or distributed in any area in which people under the age of 21 are allowed.
<b>New brand names</b>	Future cigarette or smokeless tobacco brands may not be named after recognized non-tobacco brand or trade names, nationally recognized sports teams, entertainment groups, or celebrities.	N/A	N/A	N/A	N/A
<b>Racketeering</b>	N/A	N/A	N/A	Cigarette manufacturers*** were found guilty of racketeering by federal courts; they must refrain from any acts of racketeering relating to the manufacturing, promotion, health consequences, or sale of cigarettes.	N/A

## VIII. Laws Comparison Chart

VIII. Laws Comparison Chart					
Legal Provision	MSA (1998) <sup>∞</sup> & STMSA (1998) <sup>∞</sup>	Family Smoking Prevention and Tobacco Control Act (2009)	Prevent All Cigarette Trafficking Act of 2009 (PACT Act)	<i>United States v. Philip Morris USA, Inc.</i> (RICO case)	Oregon State Law
<b>False representations</b>	Manufacturers may not misrepresent the health consequences of using tobacco products.	A tobacco product is considered "misbranded" if its labeling is false or misleading in any way.	N/A	Cigarette manufacturers*** may not make any material false, misleading, or deceptive representation concerning cigarettes.	N/A
<b>Sponsorship</b>					
<b>Types of events</b>	No brand-name sponsorship of concerts°, team sports, events with a significant youth audience, or events where the paid participants or contestants are underage.	No cigarette or smokeless tobacco brand-name sponsorship of a team or any athletic, musical, artistic, other social, or cultural events. Corporate sponsorship is permitted only if it does not include the brand name of a domestic tobacco product.	N/A	N/A	N/A
<b>Frequency</b>	One brand-name sponsorship per year.	No limit for <i>corporate</i> sponsorships. (See provision for "Types of Events").	N/A	N/A	N/A
<b>Health Claims &amp; Warnings</b>					
<b>Terms such as "light," "low tar" or "mild"</b>	N/A	May not be used on cigarette or smokeless tobacco packages, labeling, or advertising.	N/A	Defendant companies must cease using any express or implied health message or health descriptor, such as light or low tar, for any cigarette brand	N/A

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Legal Provision	MSA (1998) <sup>∞</sup> & STMSA (1998) <sup>∞</sup>	Family Smoking Prevention and Tobacco Control Act (2009)	Prevent All Cigarette Trafficking Act of 2009 (PACT Act)	<i>United States v. Philip Morris USA, Inc.</i> (RICO case)	Oregon State Law
<b>Statements regarding FDA endorsement or approval</b>	N/A	Cigarette and smokeless tobacco product packaging or advertising may not include any express or implied statement that would mislead consumers into believing that the product is (1) approved by the FDA, (2) endorsed by the FDA, (3) deemed safe by the FDA, or (4) less harmful due to FDA regulation.**	N/A	N/A	N/A
<b>Health warnings in labeling and advertising</b>	N/A	<i>Cigarette</i> packages and advertising must bear 1 of 9 specified health warnings, covering 50% of the front and rear panels of the package and at least 20% of the area in an advertisement. Color graphic image warnings are required by 9/22/2012. <i>Smokeless tobacco</i> packages and advertising must bear 1 of 4 specified health warnings, covering 30% each of the two principal display panels of the package and at least 20% of the area in an advertisement.	N/A	N/A	N/A

## VIII. Laws Comparison Chart

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Legal Provision	MSA (1998) <sup>∞</sup> & STMSA (1998) <sup>∞</sup>	Family Smoking Prevention and Tobacco Control Act (2009)	Prevent All Cigarette Trafficking Act of 2009 (PACT Act)	<i>United States v. Philip Morris USA, Inc.</i> (RICO case)	Oregon State Law
<b>Disclosures by manufacturers</b>	N/A	HHS Secretary will determine whether tobacco product manufacturers are required to include tar and nicotine yields on package labels or in cigarette advertisements, and may also require disclosure of other cigarette or tobacco product constituents.	N/A	Cigarette manufacturers*** must make corrective disclosures about addiction, adverse health effects, manipulation of cigarette design and composition to maximize addictiveness, and light and low tar cigarettes.	N/A
<b>State &amp; Local Authority</b>					
<b>Advertising restrictions</b>	N/A	State and local governments may (within the bounds of the First Amendment) impose specific bans on the time, place, and manner of cigarette advertising and promotion, but may not regulate the content of advertising and promotions. State/local governments may also limit other tobacco product advertising and promotion.	N/A	N/A	N/A

## VIII. Laws Comparison Chart

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Legal Provision	MSA (1998) <sup>∞</sup> & STMSA (1998) <sup>∞</sup>	Family Smoking Prevention and Tobacco Control Act (2009)	Prevent All Cigarette Trafficking Act of 2009 (PACT Act)	<i>United States v. Philip Morris USA, Inc.</i> (RICO case)	Oregon State Law
<b>More stringent regulations</b>	N/A	State and local governments may enact more stringent regulations on the sale, distribution, possession, use, availability, advertising, promotion, or taxation of tobacco products.	N/A	N/A	N/A
<b>Reporting</b>	States may require periodic progress reports from tobacco companies while outdoor and transit advertising is being eliminated.	State and local governments may require reporting of information to the state or create fire safety regulations, but may not enact their own restrictions on tobacco product standards, premarket review, adulteration, misbranding, labeling, registration, good manufacturing standards, or modified-risk tobacco products.	State tobacco tax reporting requirements apply to sale and advertisement of STPs, entities that ship or transfer cigarettes or STPs, and the shipment of cigarettes or smokeless tobacco into a local or tribal jurisdiction that taxes the sale or use of these products.	N/A	The State Fire Marshal may adopt rules to require reports by cigarette manufacturers, wholesale or retail dealers and transporters for the purpose of ensuring compliance with reduced ignition propensity standards.

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Legal Provision	MSA (1998) <sup>∞</sup> & STMSA (1998) <sup>∞</sup>	Family Smoking Prevention and Tobacco Control Act (2009)	Prevent All Cigarette Trafficking Act of 2009 (PACT Act)	<i>United States v. Philip Morris USA, Inc.</i> (RICO case)	Oregon State Law
<b>Applicability of state, local, and tribal laws</b>	The settling states did not waive or release any claims of criminal liability under federal, state, or local law; nor did they waive or release any claims on behalf of Indian tribes.	No state or subdivision thereof may enact or enforce any requirement that differs from this Act if it pertains to tobacco product standards, premarket review, adulteration, misbranding, labeling, registration, good manufacturing standards, or modified risk tobacco products. However, states and subdivisions may set fire safety standards for tobacco products and regulate the sale, distribution, possession, information reporting to the State, exposure to, access to, the advertising and promotion of, or use of, tobacco products by individuals of any age.	Delivery sellers must comply with all state, local, and tribal laws pertaining to the sale of cigarettes and STPs as if the sales occurred entirely within the jurisdiction of delivery. PACT does not inhibit the coordination of law enforcement by states or other jurisdictions with respect to interstate sales or seizures of tobacco products.	N/A	Localities are preempted from passing stronger laws regarding location of vending machines.

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<b>Effect on state-tribal arrangements</b>	N/A	Does not affect any action pending in Federal, State, or tribal court; any agreement, consent decree, or contract of any kind; limit or otherwise affect any State, tribal, or local taxation of tobacco products; or expand, contract, or otherwise modify or amend the existing limitations on State government authority over tribal restricted fee or trust lands.	PACT does not affect agreements or limitations relating to the taxation of cigarettes or STPs sold in Indian country.	N/A	N/A
<b>Enforcement</b>					
<b>State enforcement</b>	State Attorneys General enforce the provisions.	No authority unless delegated by FDA.	Attorneys general of states, localities, and tribes may bring enforcement actions in U.S. district court.	N/A	Comprehensive
<b>Federal Enforcement</b>	National Association of Attorneys General (not federal government)	HHS - FDA	ATF may enter the business premises of delivery sellers to inspect records and inventory.	Courts	None

IMPORTANT NOTE: Federal law does not displace or supersede state laws unless a federal law specifically preempts states from making laws on the same subject matter. Otherwise, the federal and state legal regimes exist separately and simultaneously, and are typically enforced by different entities.

N/A = Not Addressed

<sup>∞</sup> The MSA and STMSA are only binding on signatories to the agreements ("participating manufacturers").

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\* This is not a comprehensive list of federal or Oregonian tobacco laws. It is intended to be used as a tool for understanding the overlap of certain federal and state legal provisions concerning tobacco.

\*\* The ban on color and graphics in tobacco labels and advertising and the ban on claims implying that a tobacco product is safer because of FDA regulation and approval were struck down in *Commonwealth Brands v. U.S.A.* (West. Dist. Ky. Jan. 5, 2010). The district court found that these provisions violate the First Amendment by overly restricting tobacco companies' speech. This case has not yet been appealed, but the district court's ruling is only binding in Kentucky.

\*\*\* Eight cigarette manufacturers were parties to the RICO case: Philip Morris USA, R.J. Reynolds Tobacco Company, Brown & Williamson Tobacco Company, Lorillard Tobacco Company, The Liggett Group, Inc., American Tobacco Company, Philip Morris Companies (Altria), and British American Tobacco Company.

°Exception: Brown & Williamson Co. may sponsor *either* the GPC country music festival *or* the Kool jazz festival (subject to limit of one per year).