

# Oregon Tobacco Laws

August 2018

Tobacco Prevention and Education Program  
Health Promotion and Chronic Disease Prevention  
Oregon Health Authority  
800 NE Oregon Street, Suite 730  
Portland, OR 97232  
(971) 673-0984  
<http://www.healthoregon.org/morefreshair>

Oregon  
Health  
Authority

# Oregon Tobacco Laws

## Oregon Tobacco Laws

Prepared by  
Ilana Kurtzig, Policy Specialist  
Tara Weston, Policy Specialist

August 2018

Tobacco Prevention and Education Program  
Health Promotion and Chronic Disease Prevention  
Oregon Health Authority  
800 NE Oregon Street, Suite 730  
Portland, OR 97232  
(971) 673-0984  
<http://www.healthoregon.org/morefreshair>

### **Suggested Citation**

Tobacco Prevention and Education Program. *Oregon Tobacco Laws*. Portland, Oregon: Oregon Health Authority, Oregon Public Health Division, 2018.

All material in this report is in the public domain and may be reproduced or copied without permission; citation as to source, however, is appreciated.

## Table of Contents

Introduction	<a href="#">7</a>
Preemption Overview	<a href="#">8</a>
I. Access to Tobacco Products and Youth Possession of Tobacco	<a href="#">10</a>
Location of Vending Machines	<a href="#">10</a>
Restriction on Free Distribution of Tobacco and Nicotine Products	<a href="#">10</a>
Possession of Tobacco or Inhalant Delivery Systems by Minors	<a href="#">12</a>
Retailer Regulations	<a href="#">13</a>
Synar Amendment	<a href="#">15</a>
Sale of Tobacco Products or Inhalant Delivery Systems to Persons Under 21	<a href="#">16</a>
Locating Tobacco Products or Inhalant Delivery Systems in Retail Stores	<a href="#">17</a>
Tobacco Seller Licensing	<a href="#">18</a>
Sales of Tobacco through Mail Order or Internet Sales	<a href="#">19</a>
Out-of-State and Internet Sales of Tobacco	<a href="#">20</a>
Prohibition on Sale of Unpackaged Cigarettes	<a href="#">21</a>
II. Cessation	<a href="#">23</a>
Insurance Coverage for Cessation Programs	<a href="#">23</a>
Oregon Health Plan and Cessation Coverage	<a href="#">24</a>
State Funding for Cessation Programs	<a href="#">26</a>
III. Smoke-, Vapor- and Aerosol-free Environments Laws	<a href="#">28</a>
Oregon’s Indoor Clean Air Act	<a href="#">28</a>
Tobacco-Free Schools	<a href="#">35</a>
Tobacco Use in Behavioral Health Outpatient Programs	<a href="#">35</a>
Landlord-Tenant Disclosure of Smoking Policy	<a href="#">36</a>
Tobacco Free In-home Child Day Care	<a href="#">36</a>
Tobacco Free Correctional Facilities	<a href="#">37</a>
Smoke-free Cars for Kids	<a href="#">38</a>
Tobacco Free State Properties Executive Order	<a href="#">38</a>
IV. Tobacco Taxes, Payments, and Distribution	<a href="#">40</a>
Oregon-Specific Tobacco Taxes	<a href="#">40</a>
Ballot Measure 44 Statute (Use of Tobacco Use Reduction Account-TURA Funds)	<a href="#">48</a>
Tobacco Sold On Tribal Land	<a href="#">49</a>
Tobacco Master Settlement Agreement (TMSA) Financial Provisions	<a href="#">49</a>
Tobacco Enforcement Fund	<a href="#">52</a>
V. Tobacco and Cigarette-Related Product Regulation	<a href="#">55</a>
Reduced-Ignition-Propensity Cigarettes	<a href="#">55</a>

Prohibition on the Sale or Distribution of Novelty Lighters	<a href="#">56</a>
Electronic Cigarettes (E-Cigarettes)	<a href="#">58</a>
VI. Miscellaneous	<a href="#">59</a>
Prohibition of Employer Restrictions on Off-Duty Tobacco Use	<a href="#">59</a>
Supersedeas	<a href="#">59</a>
Littering Law	<a href="#">60</a>
VII. Overviews of Laws and Cases	<a href="#">62</a>
Master Settlement Agreement (MSA) and Smokeless Tobacco Master Settlement Agreement (STMSA)	<a href="#">62</a>
Family Smoking Prevention and Tobacco Control Act	<a href="#">63</a>
Prevent All Cigarette Trafficking Act of 2009 (PACT Act)	<a href="#">63</a>
United States v. Philip Morris USA, Inc.	<a href="#">64</a>
VIII. Laws Comparison Chart	<a href="#">65</a>

# Oregon Tobacco Laws

# Introduction

## Introduction

This document outlines Oregon laws, federal laws, state agency policies 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, policies and court orders have been divided into six groups based on their content. Laws, policies and orders in these subsections include a summary and, where practical, full legal citations. In addition, cursory information about enforcement has been provided.

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

- I. Access to Tobacco Products and Inhalant Delivery Systems (e.g. e-cigarettes) and Youth Possession of Tobacco and Inhalant Delivery Systems
- II. Cessation
- III. Smoke-, Vapor- and Aerosol-free Environments Laws
- IV. Tobacco Taxes, Payments, and Distribution
- V. Tobacco and Cigarette-Related Product Regulation
- VI. Miscellaneous
- VII. Overview of Laws and Cases
- VIII. Laws Comparison Chart

## 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	Max. fine: \$2,000
Class B Violation	Max fine: \$1,000
Class C Violation	Max fine: \$500
Class D Violation	Max fine: \$250
Civil Penalty	Varies based on violation
Unclassified or Specific-Fine Violations	As described in ORS 153.015

## ***Citation***

ORS 153.018, 161.615, 161.635

[https://www.oregonlegislature.gov/bills\\_laws/ors/ors153.html](https://www.oregonlegislature.gov/bills_laws/ors/ors153.html)

[https://www.oregonlegislature.gov/bills\\_laws/ors/ors161.html](https://www.oregonlegislature.gov/bills_laws/ors/ors161.html)

## **Preemption Overview**

The preemption doctrine refers to the idea that a higher authority of law will displace the law of a lower authority of law when the two authorities come into conflict.

Article VI, paragraph 2, of the U.S. Constitution makes federal law "the supreme law of the land," notwithstanding the contrary law any state might have. This is commonly known as the "Supremacy Clause."

When state law and federal law conflict, federal law displaces, or preempts, state law, due to the Supremacy Clause of the Constitution. U.S. Const. art. VI., § 2. Preemption applies regardless of whether the conflicting laws come from legislatures, courts, administrative agencies, or constitutions. For example, the Voting Rights Act, an act of Congress, preempts state constitutions, and FDA regulations may preempt state



# Introduction

court judgments in cases involving prescription drugs.

Citation

U.S. Const. art. VI., § 2.

“This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.”

Oregon state law preempts local jurisdictions on:

## **Regulating vending machines that dispense tobacco products or inhalant delivery systems**

- **ORS 167.775 Local regulation of vending machines.** Cities and counties by ordinance or resolution may not regulate vending machines that dispense tobacco products or inhalant delivery systems and that are in any manner accessible to persons under 21 years of age. [Formerly 167.404]

## **Increasing taxes on cigarettes and other tobacco products**

- **ORS 323.030 Tax imposed; rate; exclusiveness; only one distribution taxed.**

(2) The taxes imposed by ORS 323.005 to 323.482 are in lieu of all other state, county or municipal taxes on the sale or use of cigarettes.
- **ORS 323.640 Tax on distributors in lieu of all other state, county or municipal taxes on sale or use of tobacco.** (1) The taxes imposed by ORS 323.505 are in lieu of all other state, county or municipal taxes on the sale or use of tobacco products.
- (2) Any tobacco product with respect to which a tax has once been imposed under ORS 323.505 shall not be subject upon a subsequent distribution to the taxes imposed by ORS 323.505. [1985 c.816 §44a]

# 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 or inhalant delivery systems from being in any place except an Oregon Liquor Control Commission-licensed establishment that is off limits to persons under 21. Selling tobacco from vending machines in any other location is a Class B violation. Local jurisdictions are preempted from passing stronger laws.

#### *Enforcement*

Law enforcement authorities

#### *Citation*

### **ORS 167.780 Sale or dispensing of tobacco products or inhalant delivery systems by vending machines.**

(1) As used in this section and ORS 167.775, “vending machine” means a device that, upon the insertion of tokens, money or another form of payment, dispenses tobacco products or inhalant delivery systems.

(2) A person may not sell or dispense tobacco products or inhalant delivery systems from a vending machine, except in an establishment where the premises are permanently and entirely off-limits to persons under 21 years of age as required by rules adopted by the Oregon Liquor Control Commission.

(3) A person who violates this section commits a Class B violation. Each day that the person commits the violation constitutes a separate offense. [Formerly 167.402]

**Note:** 167.747 to 167.785 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 167 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

[https://www.oregonlegislature.gov/bills\\_laws/ors/ors167.html](https://www.oregonlegislature.gov/bills_laws/ors/ors167.html)

### **Restriction on Free Distribution of Tobacco and Nicotine 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.

### **Tobacco Control Act, Section 102 – Prohibition Against Free Samples**

# I. Access to Tobacco and Youth Possession of Tobacco

(21 CFR 1140.16(d)). This restriction prohibits the distribution of free samples of newly deemed tobacco products (e.g. e-cigarettes, hookah), as required by section 102 of the Tobacco Control Act.

## *Enforcement*

U.S. Food and Drug Administration

Consumers can call FDA at 1-877-CTP-1373, option 4, send an email to:

[CTPCompliance@FDA.hhs.gov](mailto:CTPCompliance@FDA.hhs.gov) or complete an online form

(<https://www.accessdata.fda.gov/scripts/ptvr/index.cfm>) to report a violation.

## **ORS 180.486 Prohibited conduct; penalty.**

(1) A person may not:

(a) Sell, offer for sale or possess for sale in this state smokeless tobacco products of a tobacco product manufacturer that is not included in the directory developed under ORS 180.477;

(b) Sell, offer for sale or possess for sale in this state smokeless tobacco products of a tobacco product manufacturer that the person acquired at a time when the tobacco product manufacturer was not included in the directory developed under ORS 180.477;

(c) Possess in this state for sale in another jurisdiction smokeless tobacco products of a tobacco product manufacturer that the person acquired at a time when the tobacco product manufacturer was not included in the directory developed under ORS 180.477 and was not in compliance with the Smokeless Tobacco Master Settlement Agreement qualifying statute in the other jurisdiction or with statutes that supplement the qualifying statute in that jurisdiction; or

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

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

(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.

# I. Access to Tobacco and Youth Possession of Tobacco

[https://www.oregonlegislature.gov/bills\\_laws/ors/ors180.html](https://www.oregonlegislature.gov/bills_laws/ors/ors180.html)

## **ORS 323.810 Definitions.**

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.**

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.

[https://www.oregonlegislature.gov/bills\\_laws/ors/ors323.html](https://www.oregonlegislature.gov/bills_laws/ors/ors323.html)

## **Possession of Tobacco or Inhalant Delivery Systems by Minors State**

Oregon law prohibits a person under the age of 18 from possessing tobacco products or inhalant delivery systems.

### *Enforcement*

City, county or state law enforcement authorities

### *Citation*

## **ORS 167.785 Possession of tobacco products or inhalant delivery systems by person under 18 years of age; penalty.**

(1) It is unlawful for a person under 18 years of age to possess tobacco products or inhalant delivery systems.

(2) A person who violates this section commits a Class D violation. [Formerly 167.400]

[https://www.oregonlegislature.gov/bills\\_laws/ors/ors167.html](https://www.oregonlegislature.gov/bills_laws/ors/ors167.html)

## **ORS 431A.175 Definitions.**

(a)(A) “Inhalant delivery system” means:

# I. Access to Tobacco and Youth Possession of Tobacco

(i) A device that can be used to deliver nicotine or cannabinoids in the form of a vapor or aerosol to a person inhaling from the device; or

(ii) A component of a device described in this subparagraph or a substance in any form sold for the purpose of being vaporized or aerosolized by a device described in this subparagraph, whether the component or substance is sold separately or is not sold separately.

(B) “Inhalant delivery system” does not include:

(i) Any product that has been approved by the United States Food and Drug Administration for sale as a tobacco cessation product or for any other therapeutic purpose, if the product is marketed and sold solely for the approved purpose; and

(ii) Tobacco products.

(b) “Tobacco products” means:

(A) Bidis, cigars, cheroots, stogies, periques, granulated, plug cut, crimp cut, ready rubbed and other smoking tobacco, snuff, snuff flour, cavendish, plug and twist tobacco, fine-cut and other chewing tobaccos, shorts, refuse scraps, clippings, cuttings and sweepings of tobacco and other forms of tobacco, prepared in a manner that makes the tobacco suitable for chewing or smoking in a pipe or otherwise, or for both chewing and smoking;

(B) Cigarettes as defined in ORS 323.010 (1); or

(C) A device that:

(i) Can be used to deliver tobacco products to a person using the device; and

(ii) Has not been approved by the United States Food and Drug Administration for sale as a tobacco cessation product or for any other therapeutic purpose, if the product is marketed and sold solely for the approved purpose

[https://www.oregonlegislature.gov/bills\\_laws/ors/ors431a.html](https://www.oregonlegislature.gov/bills_laws/ors/ors431a.html)

## **Retailer Regulations**

### **State**

Oregon law requires retailers to post a notice informing the public that selling tobacco products and inhalant delivery systems to individuals under 21 is prohibited. Oregon law also prohibits the sale of inhalant delivery systems packaged in a manner attractive to minors.

### ***Enforcement***

Oregon Health Authority

### ***Citation***

# I. Access to Tobacco and Youth Possession of Tobacco

## **ORS 431A.175 Unlawful activities; notice; rules**

(2) It is unlawful:

(a) To violate ORS 167.750.

(b) To fail as a retailer of tobacco products to post a notice substantially similar to the notice described in subsection (3) of this section in a location that is clearly visible to the seller and the purchaser of the tobacco products.

(c) To fail as a retailer of inhalant delivery systems to post a notice in a location that is clearly visible to the seller and the purchaser of the inhalant delivery systems that it is unlawful to sell inhalant delivery systems to persons under 21 years of age. The Oregon Health Authority shall adopt by rule the content of the notice required under this paragraph.

(d) To distribute, sell or allow to be sold an inhalant delivery system if the inhalant delivery system is not labeled in accordance with rules adopted by the authority.

(e) To distribute, sell or allow to be sold an inhalant delivery system if the inhalant delivery system is not packaged in child-resistant safety packaging, as required by the authority by rule.

(f) To distribute, sell or allow to be sold an inhalant delivery system if the inhalant delivery system is packaged in a manner that is attractive to minors, as determined by the authority by rule.

(3) The notice required by subsection (2)(b) of this section must be substantially as follows:

---

### NOTICE

The sale of tobacco in any form to persons under 21 years of age is prohibited by law. Any person who sells, or allows to be sold, tobacco to a person under 21 years of age is in violation of Oregon law.

---

[https://www.oregonlegislature.gov/bills\\_laws/ors/ors167.html](https://www.oregonlegislature.gov/bills_laws/ors/ors167.html)

## **ORS 167.770 Display of sign; penalty.**

(1) A person who sells tobacco products or inhalant delivery systems shall display a sign clearly stating that the sale of the tobacco products or inhalant delivery systems to persons under 21 years of age is prohibited by law.

(2) Failure to display a sign required by this section is a Class A violation. [2017 c.701 §3]

# I. Access to Tobacco and Youth Possession of Tobacco

## **ORS 431A.178 Civil penalty for violation of ORS 431A.175.**

(1) The Oregon Health Authority may impose a civil penalty for each violation of ORS 431A.175 A civil penalty imposed under this section may not be less than \$250 or more than \$1,000.

(2) (a) Amounts collected under subsection (1) of this section shall be deposited in the Oregon Health Authority Fund established under ORS 413.101. Except as provided in paragraph (b) of this subsection, moneys deposited in the fund under this subsection are continuously appropriated to the authority for carrying out the duties, functions and powers of the authority under ORS 431A.175 and 431A.183.

(b) At the end of each biennium, the authority shall transfer the unobligated moneys collected under subsection (1) of this section remaining in the fund to the Tobacco Use Reduction Account established under ORS 431A.153. [Formerly 431.845]

[https://www.oregonlegislature.gov/bills\\_laws/ors/ors431A.html](https://www.oregonlegislature.gov/bills_laws/ors/ors431A.html)

## **Synar Amendment**

### **Federal**

(PL 102-321 sec. 1926) STATE LAW REGARDING SALE OF TOBACCO PRODUCTS TO INDIVIDUALS UNDER AGE OF 18

(1) IN GENERAL- Subject to paragraph (2), for fiscal year 1994 and subsequent fiscal years, the Secretary may make a grant under section 1921 only if the State involved has in effect a law providing that it is unlawful for any manufacturer, retailer, or distributor of tobacco products to sell or distribute any such product to any individual under the age of 18.

Applies to all states and the District of Columbia, Puerto Rico, the U.S. Virgin Islands, and six Pacific jurisdictions

### ***Enforcement***

Substance Abuse and Mental Health Services Administration (SAMHSA)

(c) NONCOMPLIANCE OF STATE- Before making a grant under section 1921 to a State for the first applicable fiscal year or any subsequent fiscal year, the Secretary shall make a determination of whether the State has maintained compliance with subsections (a) and (b). If, after notice to the State and an opportunity for a hearing, the Secretary determines that the State is not in compliance with such subsections, the Secretary shall reduce the amount of the allotment under such section for the State for the fiscal year involved by an amount equal to:

(1) in the case of the first applicable fiscal year, 10 percent of the

# I. Access to Tobacco and Youth Possession of Tobacco

- amount determined under section 1933 for the State for the fiscal year;
- (2) in the case of the first fiscal year following such applicable fiscal year, 20 percent of the amount determined under section 1933 for the State for the fiscal year;
- (3) in the case of the second such fiscal year, 30 percent of the amount determined under section 1933 for the State for the fiscal year; and
- (4) in the case of the third such fiscal year or any subsequent fiscal year, 40 percent of the amount determined under section 1933 for the State for the fiscal year.

## **Sale of Tobacco Products or Inhalant Delivery Systems to Persons Under 21 State**

Oregon law prohibits selling or distributing tobacco products, which includes devices that can be used to deliver tobacco, or inhalant delivery systems to individuals under the age of 21.

### ***Enforcement***

City, county and state law enforcement authorities

#### **431A.183 Random inspections of sellers of tobacco and inhalant delivery systems; rules.** (1) The Oregon Health Authority shall:

(a) Coordinate with law enforcement agencies to conduct random, unannounced inspections of wholesalers and retailers of tobacco products or inhalant delivery systems to ensure compliance with the laws of this state designed to discourage the use of tobacco products and inhalant delivery systems by persons under 21 years of age, including ORS 167.750, 167.755, 167.760, 167.765, 167.775, 167.780 and 431A.175; and

(b) Submit a report describing:

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

(B) The extent of success achieved in reducing the availability of tobacco products and inhalant delivery systems to persons under 21 years of age; and

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

(2) The authority shall adopt rules for conducting random inspections of establishments that distribute or sell tobacco products or inhalant delivery systems.

(3) The Oregon Liquor Control Commission, pursuant to an agreement or otherwise, may assist the authority with the authority's duties under subsection (1)(a) of this section and the enforcement of ORS 431A.175. [Formerly 431.853; 2017 c.701



# I. Access to Tobacco and Youth Possession of Tobacco

§11]

[https://www.oregonlegislature.gov/bills\\_laws/ors/ors431A.html](https://www.oregonlegislature.gov/bills_laws/ors/ors431A.html)

## *Citation*

### **ORS 167.755 Selling tobacco products or inhalant delivery systems to person under 21 years of age; penalties.**

(1) A person commits the offense of selling tobacco products or inhalant delivery systems to a person under 21 years of age upon the occurrence of one of the following:

(a) The person knowingly distributes or sells, or allows to be sold, to a person under 21 years of age, tobacco products;

(b) The person knowingly distributes or sells, or allows to be sold, to a person under 21 years of age, an inhalant delivery system;

(c) If the person is a manager or other person who supervises the retail sale of tobacco products or inhalant delivery systems, the person is acting within the course and scope of the person's employment and the person has supervisory authority over a person who violates paragraph (a) or (b) of this subsection; or

(d) If the person is an owner of a business that sells tobacco products or inhalant delivery systems at retail, a violation of paragraph (a) or (b) of this subsection occurs at the business.

(2)(a) Violation of subsection (1)(a) or (b) of this section is a specific fine violation punishable by a fine not to exceed \$50.

(b) Violation of subsection (1)(c) of this section is a specific fine violation punishable by a fine not to exceed:

(A) \$250 for the first or second violation; or

(B) \$500 for the third or subsequent violation.

(c) Violation of subsection (1)(d) of this section is a specific fine violation punishable by a fine not to exceed:

(A) \$500 for the first or second violation; or

(B) \$1,000 for the third or subsequent violation. [2017 c.701 §2]

### **Locating Tobacco Products or Inhalant Delivery Systems in Retail Stores State**

Under Oregon law, retail store owners may not place tobacco products or inhalant delivery systems in a location where customers can access the product without the assistance of an employee, unless the store is always off limits to individuals under 21 years of age. Violation of this section is a Class B violation. Each day that the person commits the violation constitutes a separate offense.

# I. Access to Tobacco and Youth Possession of Tobacco

## *Enforcement*

City, county and state law enforcement authorities

## *Citation*

### **ORS 167.765 Retail store location of tobacco products or inhalant delivery systems; penalty.**

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

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

(3) This section does not apply to a person if the location at which the tobacco products or inhalant delivery systems are sold is a store or other establishment that prohibits persons under 21 years of age from entering the store or establishment. [Formerly 167.407]

[https://www.oregonlegislature.gov/bills\\_laws/ors/ors167.html](https://www.oregonlegislature.gov/bills_laws/ors/ors167.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. \*Some local jurisdictions in Oregon require retailers of tobacco products and inhalant delivery systems to obtain licenses in order to sell these products.

## *Enforcement*

Oregon Department of Revenue

## *Citation*

### **OAR 150-323-0360 When Tobacco Product Distributor's License Required**

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 323.500. A tobacco product distributor's license is required for any person distributing tobacco products in Oregon, including:

# I. Access to Tobacco and Youth Possession of Tobacco

- (1) Bringing or causing to be brought, into this state, tobacco products for sale, storage, use or consumption;
- (2) Making, manufacturing, or fabricating tobacco products in this state for sale, storage, use or consumption in this state;
- (3) Shipping or transporting tobacco products to retail dealers in this state, to be sold, stored, used or consumed by those retail dealers in this state;
- (4) Storing untaxed tobacco products in this state that are intended to be for sale, use or consumption in this state; or
- (5) Selling untaxed tobacco products in this state

<https://secure.sos.state.or.us/oard/viewSingleRule.action?ruleVrsnRsn=21777>

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

### **Federal**

Pursuant to the Prevent All Cigarette Trafficking Act of 2009, federal law prohibits the sale of untaxed tobacco products through the Internet or by mail order and makes tobacco products ineligible to be sent via mail (with few 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 non-mailable matter section of PACT.

### **State**

Oregon law prohibits 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***

# I. Access to Tobacco and Youth Possession of Tobacco

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, 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]

[https://www.oregonlegislature.gov/bills\\_laws/ors/ors323.html](https://www.oregonlegislature.gov/bills_laws/ors/ors323.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.

## **ORS 180.440 Prohibited conduct; penalty.**

- (1) A person may not:
  - (a) Affix a stamp to a package or other container of cigarettes of a tobacco product manufacturer or brand family that is not included in the directory developed under ORS 180.425;
  - (b) Sell, offer for sale or possess for sale cigarettes of a tobacco product manufacturer or brand family that the person acquired at a time when the tobacco product manufacturer or brand family was not included in the directory developed under ORS 180.425; or
  - (c) Possess in this state for sale in another jurisdiction cigarettes of a tobacco

# I. Access to Tobacco and Youth Possession of Tobacco

product manufacturer or brand family that the person acquired at a time when the tobacco product manufacturer or brand family was not included in the directory developed under ORS 180.425 and was not in compliance with the Master Settlement Agreement qualifying statute in the other jurisdiction or with statutes that supplement the qualifying statute in that jurisdiction.

(2) A person who sells, offers for sale, distributes, acquires, holds, owns, possesses, transports, imports or causes to be imported cigarettes 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. [2003 c.801 §11; 2009 c.70 §1]

[https://www.oregonlegislature.gov/bills\\_laws/ors/ors180.html](https://www.oregonlegislature.gov/bills_laws/ors/ors180.html)

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

### **Federal**

The Tobacco Control Act prohibits the sale of cigarette packages containing fewer than 20 cigarettes, including single cigarettes, known as “loosies”.

### *Enforcement*

Food and Drug Administration

### **State**

It is illegal to sell cigarettes that are not in a sealed package. A violation of this law can result in a civil penalty.

### *Enforcement*

Oregon Health Authority

### *Citation*

#### **ORS 431A.175 Unlawful activities; notice; rules.**

(2) It is unlawful:

(g) To distribute, sell or allow to be sold cigarettes in any form other than a sealed package.

#### **ORS 431A.178 Civil penalty for violation of ORS 431A.175.**

(1) The Oregon Health Authority may impose a civil penalty for each violation of ORS 431A.175. A civil penalty imposed under this section may not be less than \$250 or more than \$1,000.

(2)(a) Amounts collected under subsection (1) of this section shall be deposited in

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

the Oregon Health Authority Fund established under ORS 413.101. Except as provided in paragraph (b) of this subsection, moneys deposited in the fund under this subsection are continuously appropriated to the authority for carrying out the duties, functions and powers of the authority under ORS 431A.175 and 431A.183

(b) At the end of each biennium, the authority shall transfer the unobligated moneys collected under subsection (1) of this section remaining in the fund to the Tobacco Use Reduction Account established under ORS 431A.153. [Formerly 431.845]

[https://www.oregonlegislature.gov/bills\\_laws/ors/ors431a.html](https://www.oregonlegislature.gov/bills_laws/ors/ors431a.html)

## II. Cessation

### II. Cessation

#### 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. 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.

##### *Enforcement*

Oregon Insurance Board

##### *Citation*

#### **ORS 743A.170 Tobacco use cessation programs.**

(1) A health benefit plan as defined in ORS 743B.005 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.

(3) This section is exempt from ORS 743A.001. [2009 c.503 §2]

[https://www.oregonlegislature.gov/bills\\_laws/ors/ors743A.html](https://www.oregonlegislature.gov/bills_laws/ors/ors743A.html)

#### **ORS 743B.005 Definitions.**

For purposes of ORS 743.004, 743.007, 743.022, 743.535, 743B.003 to 743B.127 and 743B.128:

(16)(a) “Health benefit plan” means any:

(A) Hospital expense, medical expense or hospital or medical expense policy or certificate;

(B) Subscriber contract of a health care service contractor as defined in ORS 750.005; or

(C) 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, to the extent that the plan is subject to state regulation.

(b) “Health benefit plan” does not include:

## II. Cessation

- (A) Coverage for accident only, specific disease or condition only, credit or disability income;
- (B) Coverage of Medicare services pursuant to contracts with the federal government;
- (C) Medicare supplement insurance policies;
- (D) Coverage of TRICARE services pursuant to contracts with the federal government;
- (E) 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;
- (F) Separately offered long term care insurance, including, but not limited to, coverage of nursing home care, home health care and community-based care;
- (G) Independent, noncoordinated, hospital-only indemnity insurance or other fixed indemnity insurance;
- (H) Short term health insurance policies that are in effect for periods of three months or less, including the term of a renewal of the policy;
- (I) Dental only coverage;
- (J) Vision only coverage;
- (K) Stop-loss coverage that meets the requirements of ORS 742.065;
- (L) Coverage issued as a supplement to liability insurance;
- (M) Insurance arising out of a workers' compensation or similar law;
- (N) Automobile medical payment insurance or insurance under which benefits are payable with or without regard to fault and that is statutorily required to be contained in any liability insurance policy or equivalent self-insurance; or
- (O) Any employee welfare benefit plan that is exempt from state regulation because of the federal Employee Retirement Income Security Act of 1974, as amended.

(c) For purposes of this subsection, renewal of a short-term health insurance policy includes the issuance of a new short-term health insurance policy by an insurer to a policyholder within 60 days after the expiration of a policy previously issued by the insurer to the policyholder.

[https://www.oregonlegislature.gov/bills\\_laws/ors/ors743b.html](https://www.oregonlegislature.gov/bills_laws/ors/ors743b.html)

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

In 2014, the US Affordable Care Act (ACA) required non-grandfathered health insurance plans to cover without cost sharing tobacco cessation services recommended in the US Preventive Services Task Force guidelines. This includes screening for tobacco use, and coverage for at least two cessation attempts per year.



## II. Cessation

Four counseling sessions (at least 10 minutes each) and FDA-approved cessation medications should be offered for each cessation attempt. The Oregon rules pertaining to tobacco cessation described here are aligned with this national requirement.

### **State**

The Oregon Health Plan covers basic, intensive, and telephonic tobacco-cessation treatment. Basic treatment includes a brief conversation 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, 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

## II. Cessation

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: the Division 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-10-CM (F17.200-F17.299; Nicotine Dependence):

- (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: Coordinated care organizations and 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 OHP benefits.

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

#### ***Citation***

#### **ORS 431A.150 Smoking cessation program reimbursement; rules.**

(1) The Oregon Health Authority 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 authority shall adopt rules for the program established under subsection (1) of this section that include but are not limited to criteria for provider and

## II. Cessation

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. [Formerly 431.831]

[https://www.oregonlegislature.gov/bills\\_laws/ors/ors431a.html](https://www.oregonlegislature.gov/bills_laws/ors/ors431a.html)

# III. Smoke, Vapor and Aerosol-free Environments Laws

## III. Smoke-, Vapor- and Aerosol-free Environments Laws

### **Oregon's Indoor Clean Air Act**

#### **State**

The Oregon Indoor Clean Air Act (ICAA) prohibits smoking, vaporizing or aerosolizing in most public places and places of employment. Additionally, smoking, vaporizing or aerosolizing is not permitted within ten feet of any entrance, exit, window that opens 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 signs.

The ICAA is a complaint-driven law; OHA may respond to complaints, inspect public places and issue citations and penalties for violating the law.

#### ***Enforcement***

Oregon Health Authority and Local Public Health Authorities (LPHAs) (delegated)

#### ***Citation***

### **OREGON INDOOR CLEAN AIR ACT**

#### **ORS 433.835 Definitions.**

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 aerosolizing or vaporizing of other inhalants on the premises;
  - (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 exhausts smoke from the business and is designed and terminated in accordance with the state building code standards for the occupancy classifications in use; and
  - (i) Requires all employees to read and sign a document that explains the dangers of exposure to secondhand smoke.

### **III. Smoke, Vapor and Aerosol-free Environments Laws**

(2) “Enclosed area” means the entirety of the 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) “Inhalant” means nicotine, a cannabinoid or any other substance that:

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

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

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

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

(4)(a) “Place of employment” means an enclosed area under the control of a public or private employer, including 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.

(b) “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.

(5) “Public place” means an enclosed area open to the public.

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

(7) “Smoking instrument” means any cigar, cigarette, pipe or other instrument used to smoke tobacco, marijuana or any other inhalant. [1981 c.384 §2; 2001 c.990 §1; 2007 c.602 §1; 2009 c.595 §684; 2011 c.601 §1; 2015 c.158 §14; 2017 c.21 §108; 2017 c.732 §1]

#### **ORS 433.840 Policy.**

The people of Oregon find that because exposure to secondhand smoke, certain exhaled small particulate matter or other exhaled toxins is known to cause cancer and other chronic diseases such as heart disease, asthma and bronchitis, it is necessary to reduce exposure to such smoke, matter or toxins by prohibiting the smoking, aerosolizing or vaporizing of inhalants in all public places and places of employment. [1981 c.384 §1; 2007 c.602 §2; 2015 c.158 §15]

#### **ORS 433.845 Prohibition on aerosolizing, smoking or vaporizing in public**

### **III. Smoke, Vapor and Aerosol-free Environments Laws**

**place or place of employment.**

(1) A person may not smoke, aerosolize or vaporize an inhalant or carry a lighted smoking instrument in a public place or place of employment except as provided in ORS 433.850.

(2) A person may not smoke, aerosolize or vaporize an inhalant or carry a 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, aerosolize or vaporize an inhalant or carry a 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; 2015 c.158 §16]

**ORS 433.847 Smoke shop certification; rules.**

(1) The Oregon Health Authority shall adopt rules establishing a certification system for smoke shops. In adopting such rules, the authority shall prohibit the smoking, aerosolizing or vaporizing of inhalants that are not tobacco products in smoke shops.

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

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

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

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

(D) Does not sell or offer food or beverages and does not sell, offer or allow on-premises consumption of 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

### **III. Smoke, Vapor and Aerosol-free Environments Laws**

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

(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, 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

### **III. Smoke, Vapor and Aerosol-free Environments Laws**

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

(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, 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) Rules adopted under 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 to 433.875 (Short title). [2011 c.601 §3; 2015 c.51 §1; 2015 c.158 §17; 2017 c.701 §12]

#### **ORS 433.850 Prohibition on aerosolizing, smoking or vaporizing in place of employment; exceptions; posting signs.**

(1) An employer:

(a) Shall provide for employees a place of employment that is free of all smoke, aerosols and vapors containing inhalants; and

(b) May not allow employees to smoke, aerosolize or vaporize inhalants at the place of employment.

(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, aerosolizing or vaporizing of inhalants 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) The smoking of tobacco products is permitted in a smoke shop.

(d) The smoking of cigars is permitted in a cigar bar that generated on-site retail



### **III. Smoke, Vapor and Aerosol-free Environments Laws**

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 or marijuana, and may aerosolize or vaporize a substance that does not contain nicotine or a cannabinoid, while performing in a scripted stage, motion picture or television production if:

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

(B) The act of smoking, aerosolizing or vaporizing is an integral part of the production.

(f) The medical use of marijuana is permitted in the place of employment of a licensee of a professional licensing board as described in ORS 475B.919.

(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; 2015 c.158 §18; 2017 c.21 §109]

#### **ORS 433.855 Duties of Oregon Health Authority; civil penalties; 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;

(b) Is responsible for ensuring compliance with ORS 433.835 to 433.875 and rules adopted under ORS 433.835 to 433.875; and

(c) May impose a civil penalty not to exceed \$500 per day for each violation of ORS 433.845 or 433.850 or a rule adopted under ORS 433.835 to 433.875.

Penalties imposed under this paragraph must be collected in the manner provided in ORS 441.705 to 441.745. All monies recovered under this paragraph shall be paid into the State Treasury and credited to:

(A) The Tobacco Use Reduction Account established under ORS 431A.153, if the violation concerns nicotine; or

(B) The Oregon Health Authority Fund established under ORS 413.101, if the violation concerns an inhalant other than nicotine.

(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. This subsection does not limit the power of the authority to enforce the requirements of any other provision of law.

(3) In public places which the authority regularly inspects, the authority shall check

## **III. Smoke, Vapor and Aerosol-free Environments Laws**

for compliance with the provisions of ORS 433.835 to 433.875. In other public places and places of employment, the authority shall respond to complaints, notifying the proprietor or person in charge of the requirements of ORS 433.835 to 433.875. If repeated complaints are received, authority may take appropriate action to ensure compliance.

(4) When a county has assumed responsibility of the duties and responsibilities under ORS 446.425 and 448.100, or contracted with the authority under ORS 190.110, the county is responsible for enforcing the provisions of ORS 433.835 to 433.875 and has 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; 2015 c.158 §19]

### **ORS 433.860 Enforcement.**

The Oregon Health Authority or local public health authority, as defined in ORS 431.003, may institute an action in the circuit court of the county where the violation occurred to enjoin repeated violations of ORS 433.850. [1981 c.384 §7; 2009 c.595 §687; 2015 c.736 §84]

### **ORS 433.870 Regulation in addition to other aerosolizing, smoking or vaporizing regulations.**

ORS 433.835 to 433.875 and rules adopted under ORS 433.835 to 433.875 are in addition to and not in lieu of any other law regulating the smoking, aerosolizing or vaporizing of inhalants. [1981 c.384 §11; 2001 c.104 §164; 2001 c.990 §5; 2007 c.602 §6; 2015 c.158 §20]

### **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 \$4,000 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]

[https://www.oregonlegislature.gov/bills\\_laws/ors/ors433.html](https://www.oregonlegislature.gov/bills_laws/ors/ors433.html)

## **III. Smoke, Vapor and Aerosol-free Environments Laws**

### **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

(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 Behavioral Health Outpatient Programs**

#### **State**

Outpatient programs may not allow tobacco use on program grounds.

#### *Enforcement*

Oregon Health Authority, Health Systems Division

## **III. Smoke, Vapor and Aerosol-free Environments Laws**

### *Citation*

#### **OAR 309-019-0205 Building Requirements in Behavioral Health Programs**

(6) Outpatient programs may not allow tobacco use in program facilities and on program grounds.

<https://secure.sos.state.or.us/oard/displayDivisionRules.action?selectedDivision=1016>

#### **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 such situations straddle the line between ownership and rental.

### *Enforcement*

Private legal action

### *Citation*

#### **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 90.850 for space in a facility as defined in ORS 90.100. [2009 c.127 §2]

[https://www.oregonlegislature.gov/bills\\_laws/ors/ors479.html](https://www.oregonlegislature.gov/bills_laws/ors/ors479.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.

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.

## **III. Smoke, Vapor and Aerosol-free Environments Laws**

### *Enforcement*

Oregon Child Care Division

### *Citation*

#### **Registered Family Child Care Homes**

##### **OAR 414-205-0100 Health**

(2) The home must be a healthy environment for children.

(a) No person shall smoke or carry any lighted smoking instrument, including an e-cigarette or vaporizer in the family child care home or within ten feet of any entrance, exit, or window that opens or any ventilation intake that serves an enclosed area, during child care hours or when child care children are present. No person shall smoke, carry any lighted smoking instrument, including an e-cigarette, or vaporizer 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 tobacco or smoking paraphernalia.

### *Enforcement*

Oregon Department of Corrections

### *Citation*

#### **OAR 291-105-0015 Rules of Misconduct**

(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)

## **III. Smoke, Vapor and Aerosol-free Environments Laws**

### **Smoke Free Cars for Kids**

#### **State**

Smoking, aerosolizing or vaporizing in a motor vehicle with a minor under the age of 18 present is a secondary traffic violation. Individuals can be fined for smoking, aerosolizing or vaporizing in a vehicle when youth are present.

#### ***Enforcement***

Oregon State Police

#### ***Citation***

**ORS 811.193 Smoking, aerosolizing or vaporizing in motor vehicle when child is present; penalty.**

(1)(a) A person commits the offense of smoking, aerosolizing or vaporizing in a motor vehicle if the person smokes or uses an inhalant delivery system in a motor vehicle while a person under 18 years of age is in the motor vehicle.

(b) As used in this subsection:

(A) “Smokes” means to inhale, exhale, burn or carry a lighted cigarette, cigar, pipe, weed, plant, regulated narcotic or other combustible substance; and

(B) “Uses an inhalant delivery system” means to use an inhalant delivery system, as defined in ORS 431A.175, in a manner that creates an aerosol or vapor.

(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, aerosolizing or vaporizing 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. [2013 c.361 §2; 2015 c.158 §12]

[https://www.oregonlegislature.gov/bills\\_laws/ors/ors811.html](https://www.oregonlegislature.gov/bills_laws/ors/ors811.html)

### **Tobacco Free State Properties Executive Order**

In August 2012, Governor John Kitzhaber signed the Tobacco-free State Properties Executive Order. The Order required all state agencies to implement tobacco-free campus policies.

#### ***Enforcement***

## **III. Smoke, Vapor and Aerosol-free Environments Laws**

Self-enforced on the properties

[https://www.oregon.gov/gov/Documents/executive\\_orders/eo\\_12-13.pdf](https://www.oregon.gov/gov/Documents/executive_orders/eo_12-13.pdf)

## IV. Tobacco Taxes, Payments, and Distribution

### IV. Tobacco Taxes, Payments and Distribution

#### Oregon-Specific Tobacco Taxes

Oregon tax code defines and taxes four types of tobacco products:

1. Cigarettes
2. Cigars
3. Moist snuff
4. Other Tobacco Products

In 2015, the legislature defined inhalant delivery systems (including e-cigarettes) as tobacco products for the purposes of the Indoor Clean Air Act (ICAA), but not for taxation.

Historically, legislators and advocates focused primarily on cigarette taxes because of the significant public health burden cigarettes place on people in Oregon and because of the potential tax revenue. Legislators have paid less attention to other tobacco products (OTP).

#### Cigarettes

In Oregon, distributors pay the excise taxes on cigarettes. by purchasing tax stamps from the Oregon Department of Revenue (DOR) and applying them to unstamped packs of cigarettes purchased from manufacturers or importers.

The Oregon legislature passed the first tobacco excise tax in 1966—a \$.04/pack tax on cigarettes. The legislature distributed the revenue from this tax to counties to reduce property taxes (50%), and to city and county general funds (25% each). Between 1971 and 1989, the legislature increased this tax three times, resulting in a **\$.28/pack** tax on cigarettes in 1989. Since 1989, the legislature has passed multiple tobacco tax bills, but instead of simply directing the revenue to counties to reduce property taxes, the legislature, with input from various health system and public health organizations, began directing portions of the tobacco tax revenue to support treatment and prevention efforts.

Since 1989, the legislature has adjusted cigarette taxes five times:

- **1993**—Temporary (2 year) \$.10/pack tax on cigarettes with all additional revenue going to the Oregon Health Plan. Strongly supported by Oregon Association of Hospitals and Health Systems.
  - \$.28/pack + \$.10/pack = **\$.38/pack**
  - Of the additional \$.10/pack:
    - 75.57% went to State General Fund
    - 7.14% each to



## IV. Tobacco Taxes, Payments, and Distribution

- Counties
- Cities
- ODOT (elderly and disabled transportation via Special Transportation Fund (STF))
  - This temporary tax was renewed each biennium until 2003.
- **1996**—BM 44 was put on the ballot by health systems affiliates and the American Cancer Society. It passed, raising the cigarette tax by \$.30/pack. All additional revenue was directed to the Oregon Health Plan (OHP), including 10% for the creation of the Tobacco Prevention and Education Program (TPEP) in 1997 via establishment of Tobacco Use Reduction Account.
  - \$.28/pack + \$.10/pack + \$.30/pack = **\$.68/pack**
  - Of the permanent \$.58/pack tax:
    - 89.65% goes to the State General Fund, of which
      - 51.92% goes to OHP
      - 5.77% goes to Tobacco Use Reduction Account (TURA)
        - ORS 431A.153
      - The rest, 42.31%, remains in the General Fund
    - 3.45% each to:
      - Counties
      - Cities
      - ODOT-STF
  - Currently enshrined in Oregon Tax Law as **ORS 323.030 (1)**
- **2002**—BM 20 passed, adding \$.60/pack on to existing taxes
  - \$.28/pack + \$.10/pack + \$.30/pack + \$.60/pack = **\$1.28/pack**
    - Distribution of the additional \$.60/pack tax:
      - 18.64% for State General Fund
      - 72.66% for OHP
      - 2.9% for TURA/TPEP
      - 1.93% each to Cities, Counties, and ODOT-STF
  - Currently enshrined in Oregon Tax Law as **ORS 323.031**
- **2004**—The temporary \$.10/pack tax enacted in 1993 sun-setted on Dec 31, 1993
  - BM 30, which proposed to continue the 1993 temporary tax, did not pass.
  - \$1.28/pack - \$.10/pack = **\$1.18/pack**
- **2013**—The Oregon legislature passed HB 3601, which raised the cigarette tax rate \$.13/pack on 1/1/14, then another \$.01/pack on 1/1/16 and another \$.01/pack on 1/1/18.

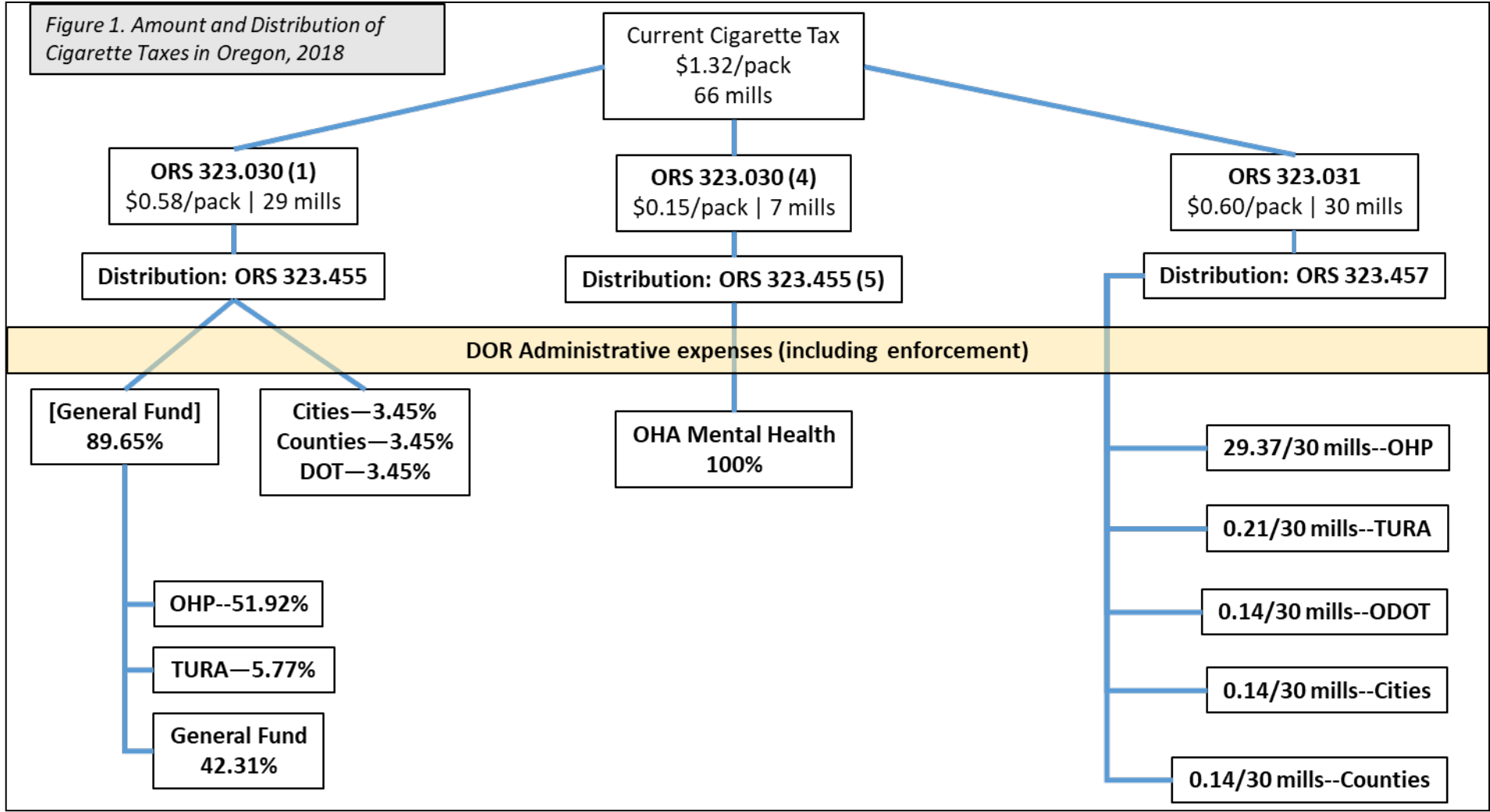
## IV. Tobacco Taxes, Payments, and Distribution

- Currently (2018), the cigarette tax is:
  - $\$1.18 + \$0.13/\text{pack} + \$0.01/\text{pack} + \$0.01/\text{pack} = \mathbf{\$1.33/\text{pack}}$
- All 100% of the additional tax goes to OHP-Mental Health
- HB 3601 also adjusted the distribution of the \$.60/pack tax in ORS 323.030 (2).
- The additional \$.15/pack tax is currently enshrined in Oregon Law as **ORS 323.030 (4)**

Table 1 below summarizes the current distributions of Oregon’s cigarette taxes. Figure 1 on the following page contains a diagram of the distributions for cigarette taxes.

Table 1 – Current (2018) distribution of existing cigarette taxes.			
	Percent of individual tax	Percent of all cigarette taxes	Dollars per pack
<b>ORS 323.030 (1)</b>			
General Fund	37.93	16.54	0.2200
Oregon Health Plan	46.55	20.30	0.2700
Tobacco Use Reduction Account	5.17	2.26	0.0300
Cities	3.45	1.50	0.0200
Counties	3.45	1.50	0.0200
Department of Transportation	3.45	1.50	0.0200
<b>Total</b>	<b>100.00</b>		<b>0.5800</b>
<b>ORS 323.030 (4)</b>			
Oregon Health Plan (mental health)	100.00	11.28	0.150*
<b>Total</b>	<b>100.00</b>		<b>0.15</b>
<b>OR 323.031 (2)</b>			
Oregon Health Plan	97.90	44.17	0.5874
Cities	0.47	0.21	0.0028
Counties	0.47	0.21	0.0028
Department of Transportation	0.47	0.21	0.0028
Tobacco Use Reduction Account	0.70	0.32	0.0042
<b>Total</b>	<b>100.00</b>		<b>0.6000</b>
<b>Grand total</b>		<b>100</b>	<b>1.3300</b>
*This is the tax amount that will be in place in 2018. Currently (2017), it is \$.14.			

# IV. Tobacco Taxes, Payments, and Distribution



## IV. Tobacco Taxes, Payments, and Distribution

### *Enforcement*

Department of Revenue

### *Citations*

#### **ORS 323.030 Tax imposed; rate; exclusiveness; only one distribution taxed.**

(1) Every distributor shall pay a tax upon distributions of cigarettes at the rate of 29 mills for the distribution of each cigarette in this state.

(2) The taxes imposed by ORS 323.005 to 323.482 are in lieu of all other state, county or municipal taxes on the sale or use of cigarettes.

(3) Any cigarette with respect to which a tax has been prepaid under ORS 323.068 or has otherwise once been imposed under ORS 323.005 to 323.482 is not subject upon a subsequent distribution to the taxes imposed by ORS 323.005 to 323.482.

(4) In addition to and not in lieu of any other tax imposed under ORS 323.005 to 323.482, every distributor shall pay a tax upon distributions of cigarettes at the rate of seven mills for the distribution of each cigarette in this state.

#### **ORS 323.031 Additional tax imposed; rate.**

(1) Notwithstanding ORS 323.030 (2) and in addition to and not in lieu of any other tax, every distributor shall pay a tax upon distributions of cigarettes at the rate of 30 mills for the distribution of each cigarette in this state.

(2) Any cigarette for which a tax has once been imposed under ORS 323.005 to 323.482 may not be subject upon a subsequent distribution to the taxes imposed by ORS 323.005 to 323.482.

#### **ORS 323.455 Distribution of certain cigarette tax revenues.**

(1) All moneys received by the Department of Revenue from the tax imposed by ORS 323.030 (1) shall be paid over to the State Treasurer to be held in a suspense account established under ORS 293.445. The department may pay expenses for administration and enforcement of ORS 323.005 to 323.482 out of moneys received from the tax imposed under ORS 323.030 (1). Amounts necessary to pay administrative and enforcement expenses are continuously appropriated to the department from the suspense account. After the payment of administrative and enforcement expenses and refunds, 89.65 percent shall be credited to the General Fund, 3.45 percent is appropriated to the cities of this state, 3.45 percent is appropriated to the counties of this state and 3.45 percent is continuously appropriated to the Department of Transportation for the purpose of financing and improving transportation services for elderly individuals and individuals with disabilities as provided in ORS 391.800 to 391.830.

(2) The moneys appropriated to cities and counties under subsection (1) of this

## IV. Tobacco Taxes, Payments, and Distribution

section shall be paid on a monthly basis within 35 days after the end of the month for which a distribution is made. Each city shall receive such share of the money appropriated to all cities as its population, as determined under ORS 190.510 to 190.590 last preceding such apportionment, bears to the total population of the cities of the state, and each county shall receive such share of the money as its population, determined under ORS 190.510 to 190.590 last preceding such apportionment, bears to the total population of the state.

(3) The moneys appropriated to the Department of Transportation under subsection (1) of this section shall be distributed and transferred to the Elderly and Disabled Special Transportation Fund established by ORS 391.800 at the same time as the cigarette tax moneys are distributed to cities and counties under this section.

(4) Of the moneys credited to the General Fund under subsection (1) of this section, 51.92 percent shall be dedicated to funding the maintenance and expansion of the number of persons eligible for the medical assistance program under ORS chapter 414, or to funding the maintenance of the benefits available under the program, or both, and 5.77 percent shall be credited to the Tobacco Use Reduction Account established under ORS 431A.153.

(5) All moneys received by the Department of Revenue from the tax imposed by ORS 323.030 (4) shall be paid over to the State Treasurer to be held in a suspense account established under ORS 293.445. After the payment of refunds, the balance shall be credited to the Oregon Health Authority Fund established by ORS 413.101 and shall be used to provide the services described in ORS 430.630.

### **ORS 323.457 Distribution of additional tax proceeds.**

(1) Moneys received under ORS 323.031 shall be paid over to the State Treasurer to be held in a suspense account established under ORS 293.445. After the payment of refunds:

(a) 29.37/30 of the moneys shall be credited to the Oregon Health Plan Fund established under ORS 414.109;

(b) 0.14/30 of the moneys are continuously appropriated to the Oregon Department of Administrative Services for distribution to the cities of this state;

(c) 0.14/30 of the moneys are continuously appropriated to the Oregon Department of Administrative Services for distribution to the counties of this state;

(d) 0.14/30 of the moneys are continuously appropriated to the Department of Transportation to be distributed and transferred to the Elderly and Disabled Special Transportation Fund established under ORS 391.800; and

(e) 0.21/30 of the moneys shall be credited to the Tobacco Use Reduction Account established under ORS 431A.153.

(2)(a) Moneys distributed to cities and counties under this section shall be distributed to each city or county using the proportions used for distributions made

## IV. Tobacco Taxes, Payments, and Distribution

under ORS 323.455.

(b) Moneys shall be distributed to cities, counties and the Elderly and Disabled Special Transportation Fund at the same time moneys are distributed to cities, counties and the Elderly and Disabled Special Transportation Fund under ORS 323.455.

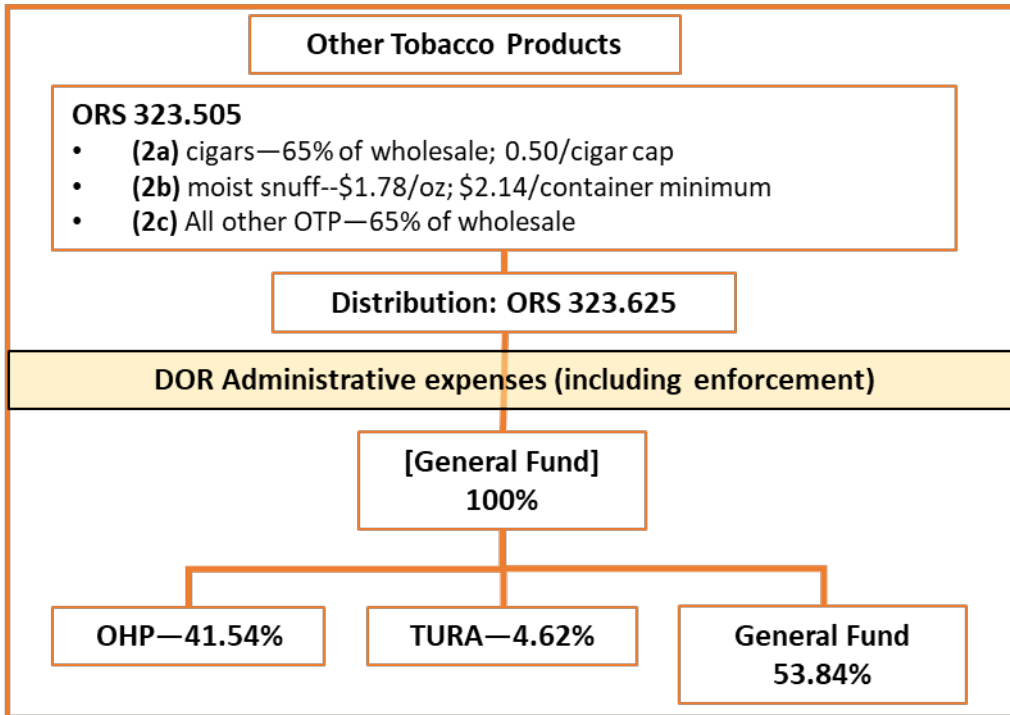
### Other Tobacco Products (OTP)

Until 2009, all OTP in Oregon were taxed at 65% of the wholesale price. In addition, the tax on cigars includes a tax cap of \$.50/cigar. Figure 2 below displays the current (2018) distribution of OTP revenues.

- 2009—HB 2672 passed, increasing the tax on moist snuff and changing the tax from an ad valorem tax to a specific, weight-based tax with a minimum tax.
  - Prior to HB 2672, the state tax on moist snuff was 65% of the sales price
  - HB 2672 changed this to \$1.78/oz with minimum tax of \$2.14 per retail container
  - HB 2672 also prohibited distribution of free moist snuff tobacco samples to people under 21.
  - HB 2672 also required smokeless tobacco manufacturers to abide by the same marketing prohibitions imposed on cigarette manufacturers by the 1998 TMSA.
    - Can't target kids
    - No outdoor, bill board or public transportation ads
  - HB 2672 also kept the state tax rate for all other non-cigarette tobacco products at 65% of the wholesale sales price
  - Currently enshrined in Oregon Tax Law as **ORS 323.505 (2)(a-c)**
  - Distribution (323.625): All proceeds go into the General Fund, of which:
    - 41.54% is dedicated to OHP
    - 4.62% goes into TURA

## IV. Tobacco Taxes, Payments, and Distribution

Figure 2. Amount and Distribution of Tobacco Product Taxes in Oregon, 2018



### Citations

#### ORS 323.505 Tax imposed on distribution; rate.

(1) A tax is hereby imposed upon the distribution of all tobacco products in this state. The tax imposed by this section is intended to be a direct tax on the consumer, for which payment upon distribution is required to achieve convenience and facility in the collection and administration of the tax. The tax shall be imposed on a distributor at the time the distributor distributes tobacco products.

(2) The tax imposed under this section shall be imposed at the rate of:

(a) Sixty-five percent of the wholesale sales price of cigars, but not to exceed 50 cents per cigar;

(b) One dollar and seventy-eight cents per ounce based on the net weight determined by the manufacturer, in the case of moist snuff, except that the minimum tax under this paragraph is \$2.14 per retail container; or

(c) Sixty-five percent of the wholesale sales price of all tobacco products that are not cigars or moist snuff.

(3) For reporting periods beginning on or after July 1, 2022, the rates of tax applicable to moist snuff under subsection (2)(b) of this section shall be adjusted for each biennium according to the cost-of-living adjustment for the calendar year. The Department of Revenue shall recompute the rates for each biennium by adding to the rates in subsection (2)(b) of this section the product obtained by multiplying the rates

## IV. Tobacco Taxes, Payments, and Distribution

in subsection (2)(b) of this section by a factor that is equal to 0.25 multiplied by the percentage (if any) by which the monthly averaged U.S. City Average Consumer Price Index for the 12 consecutive months ending August 31 of the prior calendar year exceeds the monthly averaged U.S. City Average Consumer Price Index for the 12 consecutive months ending August 31, 2020.

(4) If the tax imposed under this section does not equal an amount calculable to a whole cent, the tax shall be equal to the next higher whole cent. However, the amount remitted to the Department of Revenue by the taxpayer for each quarter shall be equal only to 98.5 percent of the total taxes due and payable by the taxpayer for the quarter.

(5) No tobacco product shall be subject to the tax if the base product or other intermediate form thereof has previously been taxed under this section.

### **ORS 323.625 Disposition of moneys.**

All moneys received by the Department of Revenue under ORS 323.500 to 323.645 shall be deposited in the State Treasury and credited to a suspense account established under ORS 293.445. The department may pay expenses for administration and enforcement of ORS 323.500 to 323.645 out of moneys received from the taxes imposed under ORS 323.505 and 323.565. Amounts necessary to pay administrative and enforcement expenses are continuously appropriated to the department from the suspense account. After the payment of administrative and enforcement expenses and refunds or credits arising from erroneous overpayments, the balance of the money shall be credited to the General Fund. Of the amount credited to the General Fund under this section 41.54 percent shall be dedicated to funding the maintenance and expansion of the number of persons eligible for the medical assistance program under ORS chapter 414, or to funding the maintenance of the benefits available under the program, or both, and 4.62 percent shall be credited to the Tobacco Use Reduction Account established under ORS 431A.153.

[https://www.oregonlegislature.gov/bills\\_laws/ors/ors323.html](https://www.oregonlegislature.gov/bills_laws/ors/ors323.html)

### **Ballot Measure 44 Statute: Use of Tobacco Use Reduction Account (TURA Funds) State**

Oregon law mandates that money from the TURA be used to fund tobacco prevention and education programs. The Oregon Health Authority 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



## IV. Tobacco Taxes, Payments, and Distribution

### *Citation*

#### **ORS 431A.153 Tobacco Use Reduction Account.**

- (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 Oregon Health Authority for the funding of prevention and education programs designed to reduce cigarette and tobacco use. [Formerly 431.832]

#### **ORS 431A.155 Oregon Health Authority to adopt rules for awarding grants.**

The Oregon Health Authority 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. [Formerly 431.834]

#### **ORS 431A.158 Department to prepare report.**

During each biennium, the Oregon Health Authority 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 authority shall present the report to the Governor and to those committees of the Legislative Assembly to which matters of public health are assigned. [Formerly 431.836]

[https://www.oregonlegislature.gov/bills\\_laws/ors/ors431A.html](https://www.oregonlegislature.gov/bills_laws/ors/ors431A.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 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 a cigarette tax compact with the state. No Oregon tribe manufactures or sells their own tobacco.

### **Tobacco Master Settlement Agreement (TMSA) Financial Provisions**

Pursuant to the Tobacco Master Settlement Agreement, settling states will receive more than \$206 billion from the tobacco industry over 25 years. All money paid to the

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

state under the TMSA is deposited into the Tobacco Settlement Funds Account, which is an account in the General Fund.

Each year, Oregon receives funds from the 1998 Tobacco Master Settlement Agreement (TMSA). The actual amount of revenue received varies from year to year, depending on a set formula that includes a wide variety of variables such as inflation or changes in cigarette sales volumes that are spelled out in the TMSA. While the TMSA payments do not have an end date, they have been trending down over time because of the formulas used to calculate payments.

In addition to these formulaic funding guidelines, the tobacco manufacturers participating in the TMSA (commonly referred to as Participating Manufacturers, or PMs), can dispute a portion of each state's annual payments if they think that the state is not diligently enforcing their required Escrow Statutes. The disputed portion is typically about 15% of the annual payment. To date, the PMs disputed every annual payment to every participating state. In response, each state has defended their Escrow Statute enforcement practices in front of an arbitration panel to recuperate the disputed funds. This process takes many years. Oregon recuperated the disputed portion of the 2003 payment in 2013. Mostly recently, in May 2017, Oregon completed arbitration for the disputed portions of the 2004-2015 payments which amounted to \$63.2 million.

In addition to the annual payments, since 2008, Oregon has also received an annual "Strategic Contribution Payment." This payment provides compensation for Oregon's litigation efforts related to the development of the TMSA. The last strategic contribution payment was received in April 2017.

Upon receipt, TMSA funds are deposited into the Oregon Tobacco Settlement Funds Account (TSFA). Each biennium, the legislature determines how the projected TSFA revenues for the upcoming biennium will be allocated.

Aside from the interest earned from TSFA, which goes into the General Fund, there are no statutory priorities, restrictions, dedications or contractual obligations for the TMSA funds. However, the balance in the TSFA is never fully allocated by the Legislature because a reserve balance is set aside for cash flow purposes to pay the next biennium's debt service payment (revenue needed prior to the next scheduled April payment). In addition, while there are no statutory dedications or restrictions, the legislature has effectively restricted some of the money by securitizing TMSA revenue for the OHSU-Oregon Opportunity bonds, which will be retired in the 2023-2025 biennium.

## IV. Tobacco Taxes, Payments, and Distribution

The legislature's TSFA allocations are displayed in Table 1 below. As Table 1 indicates, the 2017-19 legislature allocated almost three-quarters (\$154.8M) of the available funds (\$204.5M) to the Oregon Health Plan, about \$31M to the OHSU Oregon Opportunity Bonds, about \$14M to OHA for mental health services, and \$3.6M to the Department of Education for physical education. Unlike the past two legislatures (2013-15, 2015-17), the current legislature did not direct TSFA funds to OHA-PHD for tobacco prevention.

**Table 1: SB 5539 Enrolled Allocation Compared with Oregon Tobacco Settlement Funds Account Allocation History (\$ in millions)**

Allocation/Biennia (in millions)	2001- 2003	2003- 2005	2005- 2007	2007- 2009	2009- 2011	2011- 2013	2013- 2015	2015- 2017	2017-19 (SB 5539)
State Appropriation Bonds	--	\$41.7	\$86.4	\$112. 0	\$138.9	\$144. 6	\$28.8	--	--
OHA-OHP	\$229.	\$42.2	\$9.0	--	\$6.5	\$30.0	116.1	\$101.8	\$154.8
OHSU- Oregon Opportunity bonds	--	\$9.7	\$31.8	\$31.8	\$28.5	\$31.2	\$31.1	\$30.9	\$30.9
State General Fund	\$99.2	--	--	\$6.0	--	--	--	--	--
OHA - Mental	--	--	--	--	--	--	--	\$16.0	\$13.8
OHA-PHD	\$1.9	--	--	--	--	--	\$4.0	\$4.1	--
ODE-Phys. Ed.	--	--	--	--	--	--	\$4.0	\$4.1	\$3.6
DOJ-Tobacco Enforcement	--	\$0.7	\$0.7	\$0.9	\$1.0	\$1.2	\$1.3	\$1.3	\$1.3*
Business Oregon	\$5.0	--	--	--	--	--	--	--	--
State Treasurer - Bond Fees	--	--	--	\$0.07	\$0.09	\$0.02	\$0.01	\$0.02	--
<b>Total Biennial</b>	<b>\$335.</b>	<b>\$94.3</b>	<b>\$127.</b>	<b>\$150.</b>	<b>\$175.1</b>	<b>\$207.</b>	<b>\$185.</b>	<b>\$158.2</b>	<b>\$204.5</b>

Sources: [TMSA Budget Information Report](#), Oregon Legislative Fiscal Office. August 2016; [SB 5539 Enrolled](#)

\*SB 5539 does not specify this amount, but does state that the other distributions will be made in addition to transfers for the Tobacco Enforcement Fund. The LFO Report assumes that this cost for 2017-19 will be the same as it was for 2015-17.

### *Citation*

**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.

## IV. Tobacco Taxes, Payments, and Distribution

(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.

(3) Except as provided in subsection (2) of this section, all moneys in the Tobacco Settlement Funds Account are continuously appropriated to the Oregon Department of Administrative Services to be expended as directed by the Legislative Assembly.

(4) All moneys in the Tobacco Settlement Funds Account shall be invested as provided in ORS 293.701 to 293.790. [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]

### **Tobacco Enforcement Fund State**

The Tobacco Enforcement Fund was established to fund the enforcement of the TMSA by the Oregon Department of Justice. 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.

## IV. Tobacco Taxes, Payments, and Distribution

(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.

(3) Except as provided in subsection (2) of this section, all moneys in the Tobacco Settlement Funds Account are continuously appropriated to the Oregon Department of Administrative Services to be expended as directed by the Legislative Assembly.

(4) All moneys in the Tobacco Settlement Funds Account shall be invested as provided in ORS 293.701 to 293.790.

[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]

**Note:** 293.537 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 293 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

[https://www.oregonlegislature.gov/bills\\_laws/ors/ors293.html](https://www.oregonlegislature.gov/bills_laws/ors/ors293.html)

### **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, 180.451 and 180.491; 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, 180.465 to 180.494, 323.106, 323.806 and 323.810 to 323.816. Moneys in the fund are not subject to allotment under ORS 291.234 to 291.260. [2003 c.801 §23; 2009 c.717 §27; 2017 c.687 §13]

### **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,

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

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]

[https://www.oregonlegislature.gov/bills\\_laws/ors/ors180.html](https://www.oregonlegislature.gov/bills_laws/ors/ors180.html)

## V. Tobacco and Cigarette-Related Product Regulation

Tobacco products are generally regulated at the federal level, including federal authority over cigarettes given to the Federal Drug Administration by Congress in 2009. However, Oregon has 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 State 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.
- (2) Cigarette packaging may not bear a marking or other device identifying the packaged cigarettes as having reduced ignition propensity other than a packaging marking approved for use with those cigarettes by the State Fire Marshal under ORS 476.785. This subsection does not apply if the cigarettes are in interstate commerce and not intended for distribution in this state.
- (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

## V. Tobacco and Cigarette-Related Product Regulation

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 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.

(b) As used in this subsection, “transporter” has the meaning given that term in ORS 323.010. [2007 c.34 §2]

### **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).

[https://www.oregonlegislature.gov/bills\\_laws/ors/ors476.html](https://www.oregonlegislature.gov/bills_laws/ors/ors476.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 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.



## V. Tobacco and Cigarette-Related Product Regulation

### *Enforcement*

State Fire Marshal or representative

### *Citation*

#### **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.

## V. Tobacco and Cigarette-Related Product Regulation

(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.

[https://www.oregonlegislature.gov/bills\\_laws/ors/ors476.html](https://www.oregonlegislature.gov/bills_laws/ors/ors476.html)

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

#### **Federal**

The Family Smoking Prevention Tobacco Control Act of 2009 granted the U.S. Food & Drug Administration (FDA) the authority to regulate all tobacco products, but only required the FDA to regulate cigarettes, cigarette tobacco, smokeless tobacco, and roll your own tobacco. To regulate all other products, the agency was required to issue a rule which “deems” those products to be within the FDA’s authority.

On May 5, 2016, the FDA issued its final deeming regulation to bring all tobacco products, including e-cigarettes, cigars, pipe tobacco, and hookah under its authority. This final deeming regulation establishes an important foundation for protecting the public’s health.

#### **What tobacco products does the FDA regulate?**

The deeming regulation allows the FDA to regulate any product that is “made or derived from tobacco that is intended for human consumption.” This includes cigars, e-cigarettes, hookah, pipe tobacco, dissolvable tobacco products, and any other product containing tobacco, or nicotine derived from tobacco. The regulation also deems any future tobacco products that meet the statutory definition of “tobacco product” under the Act to be within the FDA’s authority. This ensures all new and emerging tobacco products will be subject to requirements and restrictions in place without having to go through an additional deeming rulemaking process.

## 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.

[Formerly 659.380; 2005 c.199 §3]

[https://www.oregonlegislature.gov/bills\\_laws/ors/ors659A.html](https://www.oregonlegislature.gov/bills_laws/ors/ors659A.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

(b) The state is not a plaintiff.

(2) In any civil action described in subsection (1) of this section, the supersedeas

## VI. Miscellaneous

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).

[2003 c.804 §87; 2005 c.22 §9]

[https://www.oregonlegislature.gov/bills\\_laws/ors/ors019.html](https://www.oregonlegislature.gov/bills_laws/ors/ors019.html)

### **Littering Law**

#### **State**

Oregon law prohibits littering. Cigarette butts are considered litter and may not be deposited or discarded on public property or 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***

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

...or

## VI. Miscellaneous

(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; 2015 c.138 §2]

[https://www.oregonlegislature.gov/bills\\_laws/ors/ors164.html](https://www.oregonlegislature.gov/bills_laws/ors/ors164.html)

## VII. Overview of Laws and Cases

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

The Tobacco Master Settlement Agreement (TMSA) was reached in 1998 to settle litigation brought by the Attorneys General of 46 states and six 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 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*).

## VII. Overview of Laws and Cases

### *Citation*

ORS 323.800-816

[https://www.oregonlegislature.gov/bills\\_laws/ors/ors323.html](https://www.oregonlegislature.gov/bills_laws/ors/ors323.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 grants 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 reduces the scope of federal preemption of state regulation in cigarette advertising, requires tobacco companies to disclose the full contents of their products as well as results of any health studies, strengthens the required package-label warnings and prescribes certain marketing and advertising restrictions.

### **FDA Deeming Rule**

The U.S. Food and Drug Administration Deeming Rule extends the FDA's regulatory authority to all tobacco products, including e-cigarettes, all cigars (including premium), hookah (also called waterpipe tobacco), pipe tobacco, nicotine gels, and dissolvables which did not previously fall under the FDA's authority. It requires health warnings on roll-your-own tobacco, cigarette tobacco, and certain newly regulated tobacco products, and bans free samples. As a result, manufacturers of newly regulated tobacco products, which were not on the market as of February 15, 2007, must demonstrate their products meet the applicable public health standard set by the law. Manufacturers must also receive authorization from the FDA prior to marketing these new products.

The FDA Deeming Rule restricts youth access to newly regulated tobacco products by: 1) not allowing products to be sold to those younger than 18 and requiring age verification via photo ID; and 2) not allowing tobacco products to be sold in vending machines (unless in an adult-only facility).

### **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. Overview 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 (DOJ) 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 and inhalant delivery systems</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, smokeless tobacco or inhalant delivery systems to a person under the age of 21, and also for an underage person to purchase tobacco products or an inhalant delivery system.
<b>Verification of purchaser's age</b>	N/A	Cigarette and smokeless tobacco retailers must Verify the age of purchasers who are under the age of 27 by means of photographic identification that contains the bearer's date of birth (21 CFR 1140.14(b)),	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 individuals under the age of 18 at all times. In all other venues, retailers may only sell in a direct, face-to-face exchange.	N/A	N/A	Cigarettes, smokeless tobacco or inhalant delivery systems may not be sold through vending machines or self- service displays except in facilities that are off limits to persons under 21 at all times. 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. This includes single cigarette sales. 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 or inhalant delivery systems to individuals under 21 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. This includes products covered by the FDA Deeming Rule, including inhalant delivery systems (e.g. e-cigarettes).	N/A	N/A	Free tobacco products ("sampling") may not be distributed to people under 21 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

## 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>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>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.	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>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

### 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>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.

## 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>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.

## 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>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").

# 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
-----------------	---	--	--	---	------------------

\* This is not a comprehensive list of federal or Oregon 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.

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