

CHAPTER 990

AN ACT

HB 2828

Relating to tobacco; creating new provisions; and amending ORS 433.835, 433.850, 433.855, 433.870 and 433.990.

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

SECTION 1. ORS 433.835 is amended to read: 433.835. As used in ORS 433.835 to 433.875:

(1) **“Enclosed area” means all space between a floor and a ceiling that is enclosed on all sides by solid walls or windows, exclusive of doors or passageways, that extend from the floor to the ceiling, including all space therein screened by partitions that do not extend to the ceiling.**

(2) **“Place of employment” means every enclosed area under the control of a public or private employer that employees frequent during the course of employment, including but not limited to work areas, employee lounges, rest rooms, conference rooms, classrooms, cafeterias and hallways. “Place of employment” does not include a private residence unless it is used as a child care facility as defined in ORS 657A.250, a facility providing adult day care as defined in ORS 410.490 or a health care facility as defined in ORS 442.015.**

[(1)] (3) **“Public place” means any enclosed indoor area open to and frequented by the public, except those public places subject to ORS 441.815, including but not limited to restaurants, as defined in ORS 624.010, [bowling centers,] retail stores, banks, commercial establishments, educational facilities, nursing homes, auditoriums, arenas, meeting rooms and grocery stores.**

[(2)] (4) **“Smoking instrument” means any cigar, cigarette, pipe or other smoking equipment.**

SECTION 2. ORS 433.850 is amended to read:

433.850. [(1) Pursuant to rules adopted by the Health Division, a proprietor or person in charge of a public place may designate areas in which smoking is permitted.]

[(2) No public place may be designated in its entirety as a smoking area except:]

[(a) Cocktail lounges and taverns.]

[(b) Enclosed offices or rooms occupied exclusively by smokers, even though the offices or rooms may be visited by nonsmokers.]

[(c) Rooms or halls being used for private social functions where the seating arrangements are under the control of the sponsor of the function.]

[(d) Retail businesses primarily engaged in the sale of tobacco or tobacco products.]

[(e) Restaurants with seating capacity for 30 or fewer patrons or restaurants with air filtration systems meeting the standards established pursuant to ORS 433.855.]

[(3) Notwithstanding any other provisions of ORS 433.835 to 433.875 and 433.990 (5), in the case of res-

taurants, as defined in ORS 624.010, or bowling centers, nothing in ORS 433.835 to 433.875 and 433.990 (5) is intended to prevent the owner or person in charge from expanding or contracting the size of the smoking area to meet the requirements of patrons.]

(1) **Except as provided in subsection (2) of this section, an employer shall provide a place of employment that is free of tobacco smoke for all employees.**

(2) **The following areas are not subject to the smoking restrictions in subsection (1) of this section:**

(a) **Retail businesses primarily engaged in the sale of tobacco or tobacco products.**

(b) **Restaurants posted as off-limits to minors or areas of restaurants posted as off-limits to minors under rules adopted by the Oregon Liquor Control Commission.**

(c) **Bars or taverns posted as off-limits to minors under rules adopted by the Oregon Liquor Control Commission.**

(d) **Rooms or halls being used by a charitable, fraternal or religious organization to conduct bingo games under a license issued pursuant to ORS 464.270.**

(e) **Bowling centers.**

(f) **Rooms designated by the owner or person in charge of a hotel or motel as rooms in which smoking is permitted.**

(g) **Employee lounges designated by an employer for smoking if:**

(A) **The lounge is not accessible to minors;**

(B) **The air in the lounge is exhausted directly to the outside by an exhaust fan and not recirculated to other parts of the building;**

(C) **The lounge is in compliance with ventilation standards established by rule by the Health Division;**

(D) **The lounge is located in a nonwork area where no employee is required to enter as part of the employee’s work responsibilities. For purposes of this paragraph, “work responsibilities” does not include custodial or maintenance work carried out in a lounge when it is unoccupied; and**

(E) **There are sufficient nonsmoking lounges to accommodate nonsmokers.**

[(4)] (3) [The proprietor or person in charge of a public place] **An employer, except in those places described in subsection (2) of this section, shall post appropriate signs.**

SECTION 3. Section 4 of this 2001 Act is added to and made a part of ORS 433.835 to 433.875.

SECTION 4. (1) **A local government may not prohibit smoking in any areas listed in ORS 433.850 (2) unless the local government prohibition was passed before July 1, 2001.**

(2) **As used in this section, “local government” means any county, district, municipality, port or political subdivision of this state.**

SECTION 5. ORS 433.870 is amended to read:
433.870. The regulations authorized by ORS [433.835 to 433.875] **433.855, 433.860 and 433.865** [and 433.990 (5)] are in addition to and not in lieu of any other law regulating smoking.

SECTION 6. ORS 433.855 is amended to read:
433.855. (1) The Health Division, in accordance with the provisions of ORS 183.310 to 183.550:

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

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

(c) May impose a civil penalty not to exceed the amount specified in ORS 433.990 (5) for each violation of a rule of the division applicable to ORS 433.850 [(2) or (4)], to be collected in the manner provided in ORS 441.705 to 441.745. All penalties recovered shall be paid into the State Treasury and credited to the General Fund.

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

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

(4) When a county has received delegation of the duties and responsibilities under ORS 446.425,

448.100 and 624.510, or contracted with the Health Division under ORS 190.110, the county shall be responsible for enforcing the provisions of ORS 433.835 to 433.875 and 433.990 (5) that are applicable to those licensed facilities and shall have the same authority as the Health Division for such enforcement.

SECTION 7. ORS 433.990 is amended to read:

433.990. (1) Violation of ORS 433.004 or 433.008, 433.255, 433.260 or 433.715 is a Class A misdemeanor.

(2) Violation of ORS 433.010 is punishable, upon conviction, by imprisonment in the custody of the Department of Corrections for not more than three years.

(3) Violation of ORS 603.059 is a Class D violation. If the nuisance is not removed within five days after the first offense, it is considered a second offense and every like neglect of each succeeding five days thereafter is considered an additional offense.

(4) Violation of ORS 433.035 is punishable upon conviction by a fine of not less than \$10 nor more than \$100, or by imprisonment for not less than 10 days nor more than 30 days, or by both.

(5) Violation of ORS 433.850 [(2) or (4)] is a Class D violation punishable by fines totaling not more than [~~\$100~~] **\$50 per day, not to exceed \$1,000** in any 30-day period.

(6) Violation of ORS 433.345 or 433.365 or failure to obey any lawful order of the Assistant Director for Health issued under ORS 433.350 is a misdemeanor.

(7) Any organizer, as defined in ORS 433.735, violating ORS 433.745 is punishable, upon conviction, by a fine of not more than \$10,000.

Approved by the Governor August 17, 2001

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