

House Bill 3534

Sponsored by Representative KENY-GUYER, Senator STEINER HAYWARD, Representative GREENLICK

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Requires premises where person makes retail sales of tobacco products and inhalant delivery systems to be licensed by Oregon Liquor Control Commission. Requires imposition of fees on licensees that are reasonably calculated to pay for administering provisions of Act.

Prohibits certain types of retail sales of tobacco products and inhalant delivery systems.

Establishes Tobacco Control Fund and continuously appropriates moneys in fund to Oregon Liquor Control Commission for purposes of administering provisions of Act.

Exempts shops primarily in business of selling inhalant delivery systems from prohibition against using inhalant delivery systems indoors if certain criteria are met.

Provides that licensure requirements become operative July 1, 2017.

Declares emergency, effective on passage.

A BILL FOR AN ACT

Relating to public health; creating new provisions; amending ORS 433.850; and declaring an emergency.

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

RETAIL LICENSURE

OPERATIVE JULY 1, 2017

SECTION 1. Definitions. As used in sections 1 to 11 of this 2015 Act:

(1)(a) "Inhalant delivery system" means:

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

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

(b) "Inhalant delivery system" does not include:

(A) 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

(B) Tobacco products.

(2) "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; or

(b) Cigarettes as defined in ORS 323.010 (1).

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 **SECTION 2. Licensure requirement.** A person may not make a retail sale of a tobacco
 2 product or an inhalant delivery system in this state unless the person sells the tobacco
 3 product or inhalant delivery system at a premises for which a license has been issued under
 4 section 4 of this 2015 Act.

5 **SECTION 3. Premises to which Act does not apply.** Sections 1 to 11 of this 2015 Act do
 6 not apply to a person making a retail sale of an inhalant delivery system at a medical
 7 marijuana facility registered under ORS 475.314 or a premises for which a retail license has
 8 been issued under section 22, chapter 1, Oregon Laws 2015 (Ballot Measure 91 (2014)), unless
 9 the person makes a retail sale of a component or substance described in section 1 (1)(a)(B)
 10 of this 2015 Act that contains nicotine.

11 **SECTION 4. Licensure qualifications.** (1) The Oregon Liquor Control Commission shall
 12 license qualified premises for the retail sale of tobacco products or inhalant delivery systems.

13 (2)(a) To be qualified for licensure under this section, a premises:

14 (A) Must have a physical address;

15 (B) May not be located at the same address as a residence;

16 (C) May not be a drug outlet, as defined in ORS 689.005, or located at the same address
 17 as a drug outlet; and

18 (D) May not be located within 1,000 feet of any part of the premises of:

19 (i) A public school for which attendance is compulsory under ORS 339.020; or

20 (ii) A private or parochial school that teaches children as described in ORS 339.030 (1)(a).

21 (b) Paragraph (a)(D) of this subsection does not apply to a premises for which a license
 22 has been issued under this section before the date on which the school is first attended by
 23 students unless the commission has revoked or refused to renew the license pursuant to
 24 section 7 of this 2015 Act.

25 (3) For the purpose of licensing premises under this section, the commission shall adopt
 26 rules establishing:

27 (a) The term of licensure;

28 (b) Procedures for applying for and renewing licenses; and

29 (c) Licensure application, issuance and renewal fees that are reasonably calculated to pay
 30 the costs of administering sections 1 to 11 of this 2015 Act.

31 (4) Amounts collected pursuant to subsection (3)(c) of this section shall be deposited in
 32 the Tobacco Control Fund established under section 9 of this 2015 Act.

33 (5) The commission may inspect the proposed premises of an applicant under this section
 34 to ensure compliance with this section and rules adopted under this section.

35 **SECTION 5. Prohibitions.** (1) A person that makes retail sales of tobacco products or
 36 inhalant delivery systems may not:

37 (a) Sell, offer for sale or allow to be sold a tobacco product or an inhalant delivery system
 38 for free or at a nominal price for the purpose of promoting the tobacco product or inhalant
 39 delivery system;

40 (b) Sell, offer for sale or allow to be sold a tobacco product or a component or substance
 41 described in section 1 (1)(a)(B) of this 2015 Act at a reduced price if the buyer of the tobacco
 42 product, component or substance purchases multiple packets of the tobacco product, com-
 43 ponent or substance during a single transaction; or

44 (c) Redeem a coupon for a tobacco product or an inhalant delivery system.

45 (2) A person that makes retail sales of inhalant delivery systems and allows customers

1 of the person to sample inhalant delivery system products at the premises of the person's
 2 business:

3 (a) Must be primarily engaged in the sale of inhalant delivery systems, with at least 75
 4 percent of gross revenues of the business resulting from the sales of inhalant delivery sys-
 5 tems;

6 (b) May not sell tobacco products or alcohol; and

7 (c) May not permit a person under 18 years of age to enter the premises.

8 **SECTION 6. Inspections and enforcement.** (1) The Oregon Liquor Control Commission
 9 may inspect a premises licensed under section 4 of this 2015 Act to ensure compliance with
 10 sections 1 to 11 of this 2015 Act and rules adopted under sections 1 to 11 of this 2015 Act.

11 (2) The state police, sheriffs and other police officers within this state shall assist the
 12 commission in enforcing sections 1 to 11 of this 2015 Act and rules adopted under sections 1
 13 to 11 of this 2015 Act.

14 **SECTION 7. Discipline.** Subject to the applicable provisions of ORS chapter 183, the
 15 Oregon Liquor Control Commission may revoke, suspend or refuse to issue or renew a li-
 16 cense under section 4 of this 2015 Act if any individual who owns the premises or participates
 17 in the management of the premises or any individual who is employed for the purpose of
 18 making sales at the premises:

19 (1) Violates a provision of sections 1 to 11 of this 2015 Act or a rule adopted under
 20 sections 1 to 11 of this 2015 Act;

21 (2) Violates ORS 431.840 or any rule adopted under ORS 431.840;

22 (3) Violates any applicable state rule, local ordinance or federal law or regulation that
 23 imposes a duty on or otherwise governs the retail sale of tobacco products or inhalant de-
 24 livery systems; or

25 (4) Makes a false statement to the commission.

26 **SECTION 8. Civil penalty.** (1) The Oregon Liquor Control Commission may impose a civil
 27 penalty for each violation of sections 1 to 11 of this 2015 Act. A civil penalty imposed under
 28 this section may not be more than \$5,000 for each violation.

29 (2) Amounts collected under subsection (1) of this section shall be deposited in the To-
 30 bacco Control Fund established under section 9 of this 2015 Act.

31 **SECTION 9. Tobacco Control Fund.** There is established the Tobacco Control Fund, sep-
 32 arate and distinct from the General Fund. Moneys deposited in the Tobacco Control Fund
 33 are continuously appropriated to the Oregon Liquor Control Commission for carrying out the
 34 duties, functions and powers of the commission under sections 1 to 11 of this 2015 Act.

35 **SECTION 10. Rules.** The Oregon Liquor Control Commission shall adopt rules necessary
 36 for the effective administration of sections 1 to 11 of this 2015 Act.

37 **SECTION 11. Intergovernmental agreement.** (1) The Oregon Liquor Control Commission
 38 shall enter into an agreement with the Oregon Health Authority for the purposes of admin-
 39 istering and enforcing the provisions of ORS 433.835 to 433.875 and rules adopted under ORS
 40 433.835 to 433.875 that are related to the regulation of cigar bars, as defined in ORS 433.835,
 41 and smoke shops certified under ORS 433.835 to 433.875, including those provisions and rules
 42 related to the certification process.

43 (2) As part of the agreement entered into under subsection (1) of this section, the au-
 44 thority shall transfer all moneys collected as a fee for certifying shops under ORS 433.835 to
 45 433.875 to the commission.

1 (3) Moneys transferred under subsection (2) of this section shall be deposited in the To-
2 bacco Control Fund established under section 9 of this 2015 Act.

3 (4) In addition to the agreement entered into under subsection (1) of this section, the
4 authority, pursuant to an agreement or otherwise, may assist the commission with the
5 commission's duties under sections 1 to 11 of this 2015 Act.

6 **SECTION 12. Temporary provision for initial applicants.** Section 4 (2)(a)(D) of this 2015
7 Act does not apply to a premises that applies for a license under section 4 of this 2015 Act
8 no later than one month after the operative date specified in section 15 of this 2015 Act.
9

10 **EXCLUSION FROM INDOOR CLEAN AIR ACT**

11
12 **(Effective Upon Passage)**

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14 **SECTION 13.** If House Bill 2546 becomes law, ORS 433.850, as amended by section 18, chapter
15 ____, Oregon Laws 2015 (Enrolled House Bill 2546), is amended to read:

16 433.850. (1) An employer:

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

19 (b) May not allow employees to smoke, aerosolize or vaporize inhalants at the place of employ-
20 ment.

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

22 (a) The owner or person in charge of a hotel or motel may designate up to 25 percent of the
23 sleeping rooms of the hotel or motel as rooms in which the smoking, aerosolizing or vaporizing of
24 inhalants is permitted.

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

28 (c) The smoking of tobacco products is permitted in a smoke shop.

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

31 **(e) The aerosolizing or vaporizing of inhalants that do not contain cannabinoids is per-**
32 **mitted on the premises of a business that holds itself out to the public as being primarily**
33 **engaged in the business of selling inhalant delivery systems, as defined in ORS 431.840, pro-**
34 **vided that the business:**

35 **(A) Is not located at the same address as a residence;**

36 **(B) Does not sell tobacco products or alcohol; and**

37 **(C) Does not permit a person under 18 years of age to enter the premises.**

38 [(e)] (f) A performer may smoke or carry a lighted smoking instrument that does not contain
39 tobacco or marijuana, and may aerosolize or vaporize a substance that does not contain nicotine or
40 a cannabinoid, while performing in a scripted stage, motion picture or television production if:

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

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

44 [(f)] (g) The medical use of marijuana is permitted in the place of employment of a licensee of
45 a professional licensing board as described in ORS 475.328.

1 (3) An employer, except in those places described in subsection (2) of this section, shall post
2 signs that provide notice of the provisions of ORS 433.835 to 433.875.

3
4 (Operative July 1, 2017)

5
6 **SECTION 14.** If House Bill 2546 becomes law, ORS 433.850, as amended by section 18, chapter
7 ____, Oregon Laws 2015 (Enrolled House Bill 2546), and section 13 of this 2015 Act, is amended to
8 read:

9 433.850. (1) An employer:

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

12 (b) May not allow employees to smoke, aerosolize or vaporize inhalants at the place of employ-
13 ment.

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

15 (a) The owner or person in charge of a hotel or motel may designate up to 25 percent of the
16 sleeping rooms of the hotel or motel as rooms in which the smoking, aerosolizing or vaporizing of
17 inhalants is permitted.

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

21 (c) The smoking of tobacco products is permitted in a smoke shop.

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

24 (e) The aerosolizing or vaporizing of inhalants that do not contain cannabinoids is permitted on
25 the premises of a business that holds itself out to the public as being primarily engaged in the
26 business of selling inhalant delivery systems, as defined in ORS 431.840, provided that the
27 business[.] **is licensed under sections 1 to 11 of this 2015 Act and meets the requirements and**
28 **obligations described in section 5 (2) of this 2015 Act.**

29 [(A) *Is not located at the same address as a residence;*]

30 [(B) *Does not sell tobacco products or alcohol; and*]

31 [(C) *Does not permit a person under 18 years of age to enter the premises.*]

32 (f) A performer may smoke or carry a lighted smoking instrument that does not contain tobacco
33 or marijuana, and may aerosolize or vaporize a substance that does not contain nicotine or a
34 cannabinoid, while performing in a scripted stage, motion picture or television production if:

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

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

38 (g) The medical use of marijuana is permitted in the place of employment of a licensee of a
39 professional licensing board as described in ORS 475.328.

40 (3) An employer, except in those places described in subsection (2) of this section, shall post
41 signs that provide notice of the provisions of ORS 433.835 to 433.875.

42
43 **MISCELLANEOUS**

44
45 **SECTION 15. Operative date.** (1) Sections 1 to 11 of this 2015 Act and the amendments

1 to ORS 433.850 by section 14 of this 2015 Act become operative on July 1, 2017.

2 (2) The Oregon Liquor Control Commission may take any action before the operative date
3 specified in subsection (1) of this section that is necessary to enable the commission to ex-
4 ercise, on and after the operative date specified in subsection (1) of this section, all the du-
5 ties, functions and powers conferred on the commission by sections 1 to 11 of this 2015 Act.

6 **SECTION 16. Report.** (1) The Oregon Liquor Control Commission shall make a report on
7 any action taken by the commission pursuant to section 15 (2) of this 2015 Act that was
8 necessary to enable the commission to exercise, on and after the operative date specified in
9 section 15 (1) of this 2015 Act, the duties, functions and powers conferred on the commission
10 by sections 1 to 11 of this 2015 Act. The commission may include in its report recommen-
11 dations for legislation to better enable the commission to exercise those duties, functions
12 and powers.

13 (2) The commission shall submit a report:

14 (a) To an interim committee of the Legislative Assembly related to health on or before
15 September 15, 2016; and

16 (b) To the Legislative Assembly in the manner provided by ORS 192.245 on or before
17 February 1, 2017.

18 **SECTION 17. Unit and section captions.** The unit and section captions used in this 2015
19 Act are provided only for the convenience of the reader and do not become part of the stat-
20 utory law of this state or express any legislative intent in the enactment of this 2015 Act.

21 **SECTION 18. Emergency clause.** This 2015 Act being necessary for the immediate pres-
22 ervation of the public peace, health and safety, an emergency is declared to exist, and this
23 2015 Act takes effect on its passage.
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