

# Senate Bill 417

Sponsored by Senator STEINER HAYWARD; Senators BATES, MONNES ANDERSON, Representatives HELM, TAYLOR (Pre-session filed.)

## SUMMARY

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

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.

Becomes operative January 1, 2016.

Declares emergency, effective on passage.

## A BILL FOR AN ACT

1  
2 Relating to retail sale of products used to deliver substances into a person's respiratory system; and  
3 declaring an emergency.

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

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

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

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

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

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

13 (A) **Any product that has been approved by the United States Food and Drug Adminis-**  
14 **tration for sale as a tobacco cessation product or for any other therapeutic purpose, if the**  
15 **product is marketed and sold solely for the approved purpose; and**

16 (B) **Tobacco products.**

17 (2) **"Tobacco products" means:**

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

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

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

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

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

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

10       (A) Must have a physical address;

11       (B) May not be a drug outlet, as defined in ORS 689.005, or located at the same address  
12 as a drug outlet; and

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

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

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

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

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

22       (a) The term of licensure;

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

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

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

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

30       **SECTION 5. Prohibitions.** A person who makes retail sales of tobacco products or  
31 inhalant delivery systems may not:

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

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

39       (3) Redeem a coupon for a tobacco product or an inhalant delivery system.

40       **SECTION 6. Inspections.** The Oregon Liquor Control Commission may inspect a premises  
41 licensed under section 4 of this 2015 Act to ensure compliance with sections 1 to 11 of this  
42 2015 Act and rules adopted under sections 1 to 11 of this 2015 Act.

43       **SECTION 7. Discipline.** Subject to the applicable provisions of ORS chapter 183, the  
44 Oregon Liquor Control Commission may revoke, suspend or refuse to issue or renew a li-  
45 cense under section 4 of this 2015 Act if any individual who owns the premises or participates

1 in the management of the premises or any individual who is employed for the purpose of  
 2 making sales at the premises:

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

5 (2) Violates ORS 431.840;

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

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

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

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

15 **SECTION 9. Tobacco Control Fund.** (1) There is established the Tobacco Control Fund,  
 16 separate and distinct from the General Fund. Except as provided in subsection (2) of this  
 17 section, moneys deposited in the Tobacco Control Fund are continuously appropriated to the  
 18 Oregon Liquor Control Commission for carrying out the duties, functions and powers of the  
 19 commission under sections 1 to 11 of this 2015 Act.

20 (2) At the end of each biennium, the commission shall transfer the unobligated moneys  
 21 remaining in the fund to the Tobacco Use Reduction Account established under ORS 431.832.

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

24 **SECTION 11. Intergovernmental agreement.** The Oregon Health Authority, pursuant to  
 25 an agreement or otherwise, may assist the Oregon Liquor Control Commission with the  
 26 commission's duties under sections 1 to 11 of this 2015 Act.

27 **SECTION 12. Temporary provision for initial applicants.** Section 4 (2)(a)(C) of this 2015  
 28 Act does not apply to a premises that applies for a license under section 4 of this 2015 Act  
 29 no later than one month after the operative date specified in section 13 of this 2015 Act.

30 **SECTION 13. Operative date.** (1) Sections 1 to 11 of this 2015 Act become operative on  
 31 January 1, 2016.

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

36 **SECTION 14. Section captions.** The section captions used in this 2015 Act are provided  
 37 only for the convenience of the reader and do not become part of the statutory law of this  
 38 state or express any legislative intent in the enactment of this 2015 Act.

39 **SECTION 15. Emergency clause.** This 2015 Act being necessary for the immediate pres-  
 40 ervation of the public peace, health and safety, an emergency is declared to exist, and this  
 41 2015 Act takes effect on its passage.