

**PROPOSED AMENDMENTS TO
SENATE BILL 417**

1 On page 1 of the printed bill, line 2, after the semicolon insert “creating
2 new provisions; amending ORS 433.850;”.

3 Delete lines 5 through 27 and delete pages 2 and 3 and insert:
4

5 **“RETAIL LICENSURE**
6 **OPERATIVE JULY 1, 2017**
7

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

10 **“(1)(a) ‘Inhalant delivery system’ means:**

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

13 **“(B) A component of a device described in this paragraph or a sub-**
14 **stance in any form sold for the purpose of being vaporized or**
15 **aerosolized by a device described in this paragraph, whether the com-**
16 **ponent or substance is sold separately or is not sold separately.**

17 **“(b) ‘Inhalant delivery system’ does not include:**

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

22 **“(B) Tobacco products.**

1 “(2) ‘Tobacco products’ means:

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

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

10 “SECTION 2. Licensure requirement. A person may not make a
11 retail sale of a tobacco product or an inhalant delivery system in this
12 state unless the person sells the tobacco product or inhalant delivery
13 system at a premises for which a license has been issued under section
14 4 of this 2015 Act.

15 “SECTION 3. Premises to which Act does not apply. Sections 1 to
16 11 of this 2015 Act do not apply to a person making a retail sale of an
17 inhalant delivery system at a medical marijuana facility registered
18 under ORS 475.314 or a premises for which a retail license has been
19 issued under section 22, chapter 1, Oregon Laws 2015 (Ballot Measure
20 91 (2014)), unless the person makes a retail sale of a component or
21 substance described in section 1 (1)(a)(B) of this 2015 Act that contains
22 nicotine.

23 “SECTION 4. Licensure qualifications. (1) The Oregon Liquor Con-
24 trol Commission shall license qualified premises for the retail sale of
25 tobacco products or inhalant delivery systems.

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

27 “(A) Must have a physical address;

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

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

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

3 **“(i) A public school for which attendance is compulsory under ORS**
4 **339.020; or**

5 **“(ii) A private or parochial school that teaches children as described**
6 **in ORS 339.030 (1)(a).**

7 **“(b) Paragraph (a)(D) of this subsection does not apply to a prem-**
8 **ises for which a license has been issued under this section before the**
9 **date on which the school is first attended by students unless the**
10 **commission has revoked or refused to renew the license pursuant to**
11 **section 7 of this 2015 Act.**

12 **“(3) For the purpose of licensing premises under this section, the**
13 **commission shall adopt rules establishing:**

14 **“(a) The term of licensure;**

15 **“(b) Procedures for applying for and renewing licenses; and**

16 **“(c) Licensure application, issuance and renewal fees that are rea-**
17 **sonably calculated to pay the costs of administering sections 1 to 11**
18 **of this 2015 Act.**

19 **“(4) Amounts collected pursuant to subsection (3)(c) of this section**
20 **shall be deposited in the Tobacco Control Fund established under sec-**
21 **tion 9 of this 2015 Act.**

22 **“(5) The commission may inspect the proposed premises of an ap-**
23 **plicant under this section to ensure compliance with this section and**
24 **rules adopted under this section.**

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

27 **“(a) Sell, offer for sale or allow to be sold a tobacco product or an**
28 **inhalant delivery system for free or at a nominal price for the purpose**
29 **of promoting the tobacco product or inhalant delivery system;**

30 **“(b) Sell, offer for sale or allow to be sold a tobacco product or a**

1 component or substance described in section 1 (1)(a)(B) of this 2015
2 Act at a reduced price if the buyer of the tobacco product, component
3 or substance purchases multiple packets of the tobacco product, com-
4 ponent or substance during a single transaction; or

5 “(c) Redeem a coupon for a tobacco product or an inhalant delivery
6 system.

7 “(2) A person that makes retail sales of inhalant delivery systems
8 and allows customers of the person to sample inhalant delivery system
9 products at the premises of the person’s business:

10 “(a) Must be primarily engaged in the sale of inhalant delivery
11 systems, with at least 75 percent of gross revenues of the business re-
12 sulting from the sales of inhalant delivery systems;

13 “(b) May not sell tobacco products; and

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

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

20 **“(2) The state police, sheriffs and other police officers within this
21 state shall assist the commission in enforcing sections 1 to 11 of this
22 2015 Act and rules adopted under sections 1 to 11 of this 2015 Act. A
23 member of the state police, a sheriff or any other police officer who
24 has notice, knowledge or reasonable ground of suspicion of a violation
25 of a provision of sections 1 to 11 of this 2015 Act or of a rule adopted
26 under sections 1 to 11 of this 2015 Act shall immediately notify the
27 district attorney of the county in which the violation occurred and
28 furnish the district attorney with all information related to the vio-
29 lation, including the name and address of any witness to the violation.**

30 **“SECTION 7. Discipline. Subject to the applicable provisions of ORS**

1 chapter 183, the Oregon Liquor Control Commission may revoke, sus-
2 pend or refuse to issue or renew a license under section 4 of this 2015
3 Act if any individual who owns the premises or participates in the
4 management of the premises or any individual who is employed for the
5 purpose of making sales at the premises:

6 “(1) Violates a provision of sections 1 to 11 of this 2015 Act or a rule
7 adopted under sections 1 to 11 of this 2015 Act;

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

9 “(3) Violates any applicable state rule, local ordinance or federal
10 law or regulation that imposes a duty on or otherwise governs the
11 retail sale of tobacco products or inhalant delivery systems; or

12 “(4) Makes a false statement to the commission.

13 **“SECTION 8. Civil penalty.** (1) The Oregon Liquor Control Com-
14 mission may impose a civil penalty for each violation of sections 1 to
15 11 of this 2015 Act. A civil penalty imposed under this section may not
16 be more than \$5,000 for each violation.

17 “(2) Amounts collected under subsection (1) of this section shall be
18 deposited in the Tobacco Control Fund established under section 9 of
19 this 2015 Act.

20 **“SECTION 9. Tobacco Control Fund.** There is established the To-
21 bacco Control Fund, separate and distinct from the General Fund.
22 Moneys deposited in the Tobacco Control Fund are continuously ap-
23 propriated to the Oregon Liquor Control Commission for carrying out
24 the duties, functions and powers of the commission under sections 1
25 to 11 of this 2015 Act.

26 **“SECTION 10. Rules.** The Oregon Liquor Control Commission shall
27 adopt rules necessary for the effective administration of sections 1 to
28 11 of this 2015 Act.

29 **“SECTION 11. Intergovernmental agreement.** (1) The Oregon Liquor
30 Control Commission shall enter into an agreement with the Oregon

1 **Health Authority for the purposes of administering and enforcing the**
2 **provisions of ORS 433.835 to 433.875 and rules adopted under ORS**
3 **433.835 to 433.875 that are related to the regulation of cigar bars, as**
4 **defined in ORS 433.835, and smoke shops certified under ORS 433.835**
5 **to 433.875, including those provisions and rules related to the certi-**
6 **fication process.**

7 **“(2) As part of the agreement entered into under subsection (1) of**
8 **this section, the authority shall transfer all moneys collected as a fee**
9 **for certifying shops under ORS 433.835 to 433.875 to the commission.**

10 **“(3) Moneys transferred under subsection (2) of this section shall**
11 **be deposited in the Tobacco Control Fund established under section 9**
12 **of this 2015 Act.**

13 **“(4) In addition to the agreement entered into under subsection (1)**
14 **of this section, the authority, pursuant to an agreement or otherwise,**
15 **may assist the commission with the commission’s duties under**
16 **sections 1 to 11 of this 2015 Act.**

17 **“SECTION 12. Temporary provision for initial applicants. Section**
18 **4 (2)(a)(D) of this 2015 Act does not apply to a premises that applies**
19 **for a license under section 4 of this 2015 Act no later than one month**
20 **after the operative date specified in section 15 of this 2015 Act.**

21

22 **“EXCLUSION FROM INDOOR CLEAN AIR ACT**

23

24 **“(Effective Upon Passage)**

25

26 **“SECTION 13. If House Bill 2546 becomes law, ORS 433.850, as amended**
27 **by section 18, chapter ___, Oregon Laws 2015 (Enrolled House Bill 2546), is**
28 **amended to read:**

29 **“433.850. (1) An employer:**

30 **“(a) Shall provide for employees a place of employment that is free of all**

1 smoke, aerosols and vapors containing inhalants; and

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

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

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

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

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

12 “(d) The smoking of cigars is permitted in a cigar bar that generated on-
13 site retail sales of cigars of at least \$5,000 for the calendar year ending De-
14 cember 31, 2006.

15 “(e) **The aerosolizing or vaporizing of inhalants that do not contain**
16 **cannabinoids is permitted on the premises of a business that makes**
17 **retail sales of inhalant delivery systems, as defined in ORS 431.840,**
18 **provided that the business:**

19 “(A) **Is not located at the same address as a residence; and**

20 “(B) **Does not permit a person under 18 years of age to enter the**
21 **premises.**

22 “[e] (f) A performer may smoke or carry a lighted smoking instrument
23 that does not contain tobacco or marijuana, and may aerosolize or vaporize
24 a substance that does not contain nicotine or a cannabinoid, while perform-
25 ing in a scripted stage, motion picture or television production if:

26 “(A) The production is produced by an organization whose primary pur-
27 pose is producing scripted productions; and

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

30 “[f] (g) The medical use of marijuana is permitted in the place of em-

1 ployment of a licensee of a professional licensing board as described in ORS
2 475.328.

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

6

7

“(Operative July 1, 2017)”

8

9 **“SECTION 14.** If House Bill 2546 becomes law, ORS 433.850, as amended
10 by section 18, chapter ___, Oregon Laws 2015 (Enrolled House Bill 2546), and
11 section 13 of this 2015 Act, is amended to read:

12 “433.850. (1) An employer:

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

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

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

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

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

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

25 “(d) The smoking of cigars is permitted in a cigar bar that generated on-
26 site retail sales of cigars of at least \$5,000 for the calendar year ending De-
27 cember 31, 2006.

28 “(e) The aerosolizing or vaporizing of inhalants that do not contain
29 cannabinoids is permitted on the premises of a business that makes retail
30 sales of inhalant delivery systems, as defined in ORS 431.840, provided that

1 the business[:] is licensed under sections 1 to 11 of this 2015 Act and
2 meets the requirements and obligations described in section 5 (2) of
3 this 2015 Act.

4 “[A] *Is not located at the same address as a residence; and*]

5 “[B] *Does not permit a person under 18 years of age to enter the*
6 *premises.*]

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

11 “(A) The production is produced by an organization whose primary pur-
12 pose is producing scripted productions; and

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

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

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

20

21 **“MISCELLANEOUS**

22

23 **“SECTION 15. Operative date. (1) Sections 1 to 11 of this 2015 Act**
24 **and the amendments to ORS 433.850 by section 14 of this 2015 Act be-**
25 **come operative on July 1, 2017.**

26 **“(2) The Oregon Liquor Control Commission may take any action**
27 **before the operative date specified in subsection (1) of this section that**
28 **is necessary to enable the commission to exercise, on and after the**
29 **operative date specified in subsection (1) of this section, all the duties,**
30 **functions and powers conferred on the commission by sections 1 to 11**

1 of this 2015 Act.

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

11 **“(2) The commission shall submit a report:**

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

14 **“(b) To the Legislative Assembly in the manner provided by ORS**
15 **192.245 on or before February 1, 2017.**

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

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

24