

**PROPOSED AMENDMENTS TO
A-ENGROSSED SENATE BILL 663**

1 On page 1 of the printed A-engrossed bill, line 2, after “ORS” delete the
2 rest of the line and delete lines 3 and 4 and insert “433.850; repealing ORS
3 431.845, 431.850 and 431.853; and declaring an emergency.”.

4 Delete lines 6 through 17 and delete pages 2 through 20 and insert:
5

6 **“RETAIL LICENSURE**
7 **OPERATIVE JULY 1, 2017**
8

9 **“SECTION 1. Definitions. As used in sections 1 to 12 of this 2015**
10 **Act:**

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

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

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

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

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

1 **“(B) Tobacco products.**

2 **“(2) ‘Premises’ means a business that makes retail sales of tobacco**
3 **products or inhalant delivery systems.**

4 **“(3) ‘Tobacco products’ means:**

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

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

13 **“SECTION 2. Licensure requirement. (1) A person may not make a**
14 **retail sale of a tobacco product or an inhalant delivery system in this**
15 **state unless the person sells the tobacco product or inhalant delivery**
16 **system at a premises for which a license has been issued under section**
17 **4 of this 2015 Act.**

18 **“(2) The governing body of a city or county may not adopt an or-**
19 **dinance that requires a person to have a license issued by the city or**
20 **county to make a retail sale of a tobacco product or an inhalant de-**
21 **livery system in addition to the license required by this section.**

22 **“SECTION 3. Premises to which Act does not apply. Sections 1 to**
23 **12 of this 2015 Act do not apply to a person making a retail sale of an**
24 **inhalant delivery system at a medical marijuana facility registered**
25 **under ORS 475.314 or a premises for which a retail license has been**
26 **issued under section 22, chapter 1, Oregon Laws 2015 (Ballot Measure**
27 **91 (2014)), unless the person makes a retail sale of a component or**
28 **substance described in section 1 (1)(a)(B) of this 2015 Act that contains**
29 **nicotine.**

30 **“SECTION 4. Licensure. (1) The Department of Revenue shall li-**

1 cense qualified premises for the retail sale of tobacco products or
2 inhalant delivery systems.

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

4 **“(a) May not be a premises that is mobile; and**

5 **“(b) May not be located at the same address as a residence.**

6 **“(3) For the purpose of licensing premises under this section, the**
7 **department shall adopt rules establishing:**

8 **“(a) The term of licensure;**

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

10 **“(c) Licensure application, issuance and renewal fees that are rea-**
11 **sonably calculated to pay the costs of administering sections 1 to 12**
12 **of this 2015 Act.**

13 **“(4) Information on a license issued under this section is not con-**
14 **fidential. The department may publicly disclose or publish a list of**
15 **persons to whom a license has been issued under this section, the ad-**
16 **dress of a premises for which a license has been issued under this**
17 **section and any other information set forth on a license issued under**
18 **this section.**

19 **“(5) The department shall maintain a database of information re-**
20 **lated to the issuance of licenses under this section. At a minimum, the**
21 **database shall include the name of the person who applied for the li-**
22 **cence or to whom the license has been issued and the address of each**
23 **premises for which a license has been issued. For the purpose of**
24 **conducting inspections under section 7 of this 2015 Act, information**
25 **maintained in the database must be accessible by the Oregon Health**
26 **Authority at all times.**

27 **“(6) All moneys collected under this section shall be deposited in the**
28 **suspense account described in section 10 of this 2015 Act.**

29 **“(7) The department may inspect the proposed premises of an ap-**
30 **plicant under this section to ensure compliance with this section and**

1 rules adopted under this section.

2 **“SECTION 5. Proof of licensure. A person to whom a license has**
3 **been issued under section 4 of this 2015 Act shall post proof of**
4 **licensure in a clear and conspicuous place at the premises for which**
5 **the license has been issued.**

6 **“SECTION 6. Sampling. (1) A person that makes retail sales of**
7 **inhalant delivery systems may allow customers of the person to sam-**
8 **ple inhalant delivery system products at the premises for which the**
9 **person has been issued a license under section 4 of this 2015 Act if the**
10 **person:**

11 **“(a) Is primarily engaged in the sale of inhalant delivery systems,**
12 **with at least 75 percent of gross revenues of the business resulting**
13 **from the sales of inhalant delivery systems;**

14 **“(b) Does not sell or offer to customers food, drink, tobacco pro-**
15 **ducts or alcohol and does not allow on-premises consumption of to-**
16 **bacco products or alcohol;**

17 **“(c) Does not permit persons under 18 years of age to enter the**
18 **premises; and**

19 **“(d) Has a maximum seating capacity of four persons.**

20 **“(2) The Department of Revenue is required to verify that a person**
21 **is in compliance with this section only upon receiving a complaint that**
22 **the person is not in compliance with this section.**

23 **“SECTION 7. Inspections and enforcement. (1) The Department of**
24 **Revenue may inspect a premises licensed under section 4 of this 2015**
25 **Act to ensure compliance with:**

26 **“(a) Sections 1 to 12 of this 2015 Act or a rule adopted under sections**
27 **1 to 12 of this 2015 Act; or**

28 **“(b) A state law or rule or federal law or regulation that governs**
29 **the retail sale of tobacco products or inhalant delivery systems for**
30 **purposes related to taxation.**

1 **“(2) The Oregon Health Authority may inspect a premises licensed**
2 **under section 4 of this 2015 Act to ensure compliance with:**

3 **“(a) ORS 431.840 or a rule adopted under ORS 431.840; or**

4 **“(b) A state law or rule or federal law or regulation that governs**
5 **the retail sale of tobacco products or inhalant delivery systems for**
6 **purposes related to public health and safety.**

7 **“(3) The authority may enter into one or more agreements with**
8 **state or federal agencies for the purpose of conducting inspections**
9 **under this section.**

10 **“(4) To the extent practicable, the authority shall conduct in-**
11 **spections under this section in a uniform and cost-effective manner.**
12 **To ensure that the authority conducts inspections in a uniform and**
13 **cost-effective manner, the authority shall minimize the number of**
14 **agreements that the authority enters into pursuant to subsection (3)**
15 **of this section.**

16 **“SECTION 8. Discipline. (1) The Department of Revenue may revoke**
17 **or suspend or refuse to issue or renew a license under section 4 of this**
18 **2015 Act if the person to whom the license has been issued, or if an**
19 **individual who participates in the management of the premises for**
20 **which the license has been issued or an individual who is employed for**
21 **the purpose of making sales at the premises:**

22 **“(a) Violates sections 1 to 12 of this 2015 Act or a rule adopted under**
23 **sections 1 to 12 of this 2015 Act;**

24 **“(b) Violates a state law or rule or federal law or regulation that**
25 **governs the retail sale of tobacco products or inhalant delivery sys-**
26 **tems for purposes related to taxation; or**

27 **“(c) Makes a false statement to the department.**

28 **“(2) Subject to the applicable provisions of ORS chapter 183, the**
29 **Oregon Health Authority may revoke or suspend a license under sec-**
30 **tion 4 of this 2015 Act if the person to whom the license has been is-**

1 sued, or if an individual who participates in the management of the
2 premises for which the license has been issued or an individual who
3 is employed for the purpose of making sales at the premises:

4 “(a) Violates ORS 431.840 or a rule adopted under ORS 431.840; or

5 “(b) Violates a state law or rule or federal law or regulation that
6 governs the retail sale of tobacco products or inhalant delivery sys-
7 tems for purposes related to public health and safety.

8 **“SECTION 9. Civil penalty.** (1) The Department of Revenue may
9 impose a civil penalty against a person to whom a license has been
10 issued under section 4 of this 2015 Act if the person violates:

11 “(a) Sections 1 to 12 of this 2015 Act or a rule adopted under sections
12 1 to 12 of this 2015 Act; or

13 “(b) A state law or rule or federal law or regulation that governs
14 the retail sale of tobacco products or inhalant delivery systems for
15 purposes related to taxation.

16 “(2) The Oregon Health Authority may impose a civil penalty
17 against a person to whom a license has been issued under section 4
18 of this 2015 Act if the person violates:

19 “(a) ORS 431.840 or a rule adopted under ORS 431.840; or

20 “(b) A state law or rule or federal law or regulation that governs
21 the retail sale of tobacco products or inhalant delivery systems for
22 purposes related to public health and safety.

23 “(3) Except as provided in subsection (4) of this section, a civil
24 penalty imposed under this section may not be more than \$1,000 per
25 violation.

26 “(4) If the violation concerns the sale of tobacco products or an
27 inhalant delivery system to a person under 18 years of age, the au-
28 thority shall:

29 “(a) For the first violation, issue notice to the person that subse-
30 quent violations will result in disciplinary action; and

1 **“(b) For subsequent violations, impose against the person a civil**
2 **penalty in the following amounts:**

3 **“(A) For the second violation occurring within a 12-month period,**
4 **\$250;**

5 **“(B) For the third violation occurring within a 24-month period,**
6 **\$500;**

7 **“(C) For the fourth violation occurring within a 24-month period,**
8 **\$500;**

9 **“(D) For the fifth violation occurring within a 36-month period,**
10 **\$5,000; and**

11 **“(E) For the sixth or subsequent violation occurring within a**
12 **48-month period, \$11,000.**

13 **“(5) The authority may impose a fee that is reasonably calculated**
14 **to pay the costs of conducting an inspection related to a violation de-**
15 **scribed in subsection (4)(b) of this section if the authority has provided**
16 **notice under subsection (4)(a) of this section and is conducting a sub-**
17 **sequent inspection within a period of time described in subsection**
18 **(4)(b) of this section.**

19 **“(6) Amounts collected by the department under this section shall**
20 **be deposited in the suspense account described in section 10 of this 2015**
21 **Act.**

22 **“(7) Amounts collected by the authority under this section shall be**
23 **deposited in the Oregon Health Authority Fund established under ORS**
24 **413.101 and are continuously appropriated to the authority for the**
25 **purpose of carrying out the duties, functions and powers of the au-**
26 **thority under sections 1 to 12 of this 2015 Act.**

27 **“SECTION 10. Suspense account. Amounts collected by the De-**
28 **partment of Revenue under sections 4 and 9 of this 2015 Act shall be**
29 **paid to the State Treasurer to be held in a suspense account estab-**
30 **lished under ORS 293.445. The department may pay expenses related**

1 to the administration and enforcement of sections 1 to 12 of this 2015
2 Act out of moneys deposited in the account. Amounts necessary to
3 pay administrative and enforcement expenses are continuously appro-
4 priated to the department from the suspense account.

5 **“SECTION 11. Rules.** (1) Except as provided in subsection (2) of this
6 section, the Department of Revenue shall adopt rules necessary for the
7 effective administration of sections 1 to 12 of this 2015 Act.

8 **“(2) The Oregon Health Authority shall adopt rules necessary for**
9 **the effective administration of section 7 of this 2015 Act. Rules**
10 **adopted under this subsection must be consistent with any federal law**
11 **or rule relating to the inspection of businesses that make retail sales**
12 **of tobacco products or inhalant delivery systems.**

13 **“SECTION 12. Intergovernmental agreement.** The Department of
14 Revenue and the Oregon Health Authority shall enter into an agree-
15 ment for purposes of conducting inspections under section 7 of this
16 2015 Act. As part of that agreement, the department shall transmit
17 any moneys from the suspense account described in section 10 of this
18 2015 Act to the authority that are necessary for the authority to con-
19 duct inspections under section 7 of this 2015 Act and impose discipli-
20 nary action as described in sections 8 and 9 of this 2015 Act.

21
22 **“EXCLUSION FROM INDOOR CLEAN AIR ACT**

23
24 **“(Effective January 1, 2016)**

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 holds it-**
17 **self out to the public as being primarily engaged in the business of**
18 **selling inhalant delivery systems, as defined in ORS 431.840, provided**
19 **that the business:**

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

21 “(B) **Does not sell or offer to customers food, drink, tobacco pro-**
22 **ducts or alcohol and does not allow on-premises consumption of to-**
23 **bacco products or alcohol;**

24 “(C) **Does not permit persons under 18 years of age to enter the**
25 **premises; and**

26 “(D) **Has a maximum seating capacity of four persons.**

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

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

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

5 “[~~(f)~~] (g) The medical use of marijuana is permitted in the place of em-
6 ployment of a licensee of a professional licensing board as described in ORS
7 475.328.

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

11

12 “(Operative July 1, 2017)

13

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

17 “433.850. (1) An employer:

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

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

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

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

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

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

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

1 site retail sales of cigars of at least \$5,000 for the calendar year ending De-
2 cember 31, 2006.

3 “(e) The aerosolizing or vaporizing of inhalants that do not contain
4 cannabinoids is permitted on the premises of a business that holds itself out
5 to the public as being primarily engaged in the business of selling inhalant
6 delivery systems, as defined in ORS 431.840, provided that the business[:] **is**
7 **licensed under sections 1 to 12 of this 2015 Act and meets the require-**
8 **ments described in section 6 of this 2015 Act.**

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

10 “[*(B) Does not sell or offer to customers food, drink, tobacco products or*
11 *alcohol and does not allow on-premises consumption of tobacco products or*
12 *alcohol;*]

13 “[*(C) Does not permit persons under 18 years of age to enter the premises;*
14 *and]*

15 “[*(D) Has a maximum seating capacity of four persons.*]

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

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

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

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

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

29

30

“REPEALS

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

5 **“SECTION 19. Emergency clause. This 2015 Act being necessary for**
6 **the immediate preservation of the public peace, health and safety, an**
7 **emergency is declared to exist, and this 2015 Act takes effect on its**
8 **passage.”.**

9
