

**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 lines 3 and 4 and insert “181.430, 431.845 and 431.853; and
3 repealing ORS 431.850.”.

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

6 **“LICENSURE**

7 **“OPERATIVE JANUARY 1, 2017**
8

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

10 **“(1) ‘Inhalant delivery system’ has the meaning given that term in**
11 **ORS 431.840.**

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

14 **“(3) ‘Tobacco products’ has the meaning given that term in ORS**
15 **431.840.**

16 **“SECTION 2. Licensure requirement. (1) A person may not make a**
17 **retail sale of a tobacco product or an inhalant delivery system in this**
18 **state unless the person sells the tobacco product or inhalant delivery**
19 **system at a premises for which a license has been issued under section**
20 **4 of this 2015 Act.**

21 **“(2) The governing body of a city or county may not adopt an or-**
22 **dinance:**

1 “(a) That requires a person to have a license issued by the city or
2 county to make a retail sale of a tobacco product or an inhalant de-
3 livery system in addition to the license required by this section; or

4 “(b) That imposes a restriction on a qualification for licensure for
5 purposes of making retail sales of tobacco products or inhalant deliv-
6 ery systems that are not authorized by or pursuant to the statutory
7 laws of this state.

8 “SECTION 3. Premises to which Act does not apply. Sections 1 to
9 9 of this 2015 Act do not apply to a person making a retail sale of an
10 inhalant delivery system at a medical marijuana facility registered
11 under ORS 475.314 or a premises for which a retail license has been
12 issued under section 22, chapter 1, Oregon Laws 2015 (Ballot Measure
13 91 (2014)), unless the person makes a retail sale of a component or
14 substance described in ORS 431.840 (1)(a)(A)(ii) that contains nicotine.

15 “SECTION 4. Licensure. (1) The Department of Revenue shall li-
16 cense qualified premises for the retail sale of tobacco products or
17 inhalant delivery systems.

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

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

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

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

23 “(a) The term of licensure;

24 “(b) Procedures for applying for and renewing licenses; and

25 “(c) Licensure application, issuance and renewal fees that are rea-
26 sonably calculated to pay the costs of administering and enforcing
27 sections 1 to 9 of this 2015 Act by the department and ORS 431.853 by
28 the Oregon Health Authority.

29 “(4) Information on a license issued under this section is not con-
30 fidential. The department shall publicly disclose or publish a list of

1 persons to whom a license has been issued under this section, the ad-
2 dress of a premises for which a license has been issued under this
3 section and any other information set forth on a license issued under
4 this section.

5 “(5) The department shall maintain a database of information re-
6 lated to the issuance of licenses under this section. At a minimum, the
7 database shall include the name of the person who applied for the li-
8 cense or to whom the license has been issued and the address of each
9 premises for which a license has been issued. For the purpose of
10 conducting inspections under ORS 431.853, information maintained in
11 the database must be accessible by the Oregon Health Authority at all
12 times.

13 “(6) All moneys collected under this section shall be deposited in the
14 suspense account described in section 7 of this 2015 Act.

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

19 “SECTION 6. Discipline. (1) The Department of Revenue may revoke
20 or suspend or refuse to renew a license issued under section 4 of this
21 2015 Act if the person to whom the license has been issued, or if an
22 individual who participates in the management of the premises for
23 which the license has been issued or an individual who is employed for
24 the purpose of making sales at the premises:

25 “(a) Violates sections 1 to 9 of this 2015 Act or ORS 431.840 or a rule
26 adopted under sections 1 to 9 of this 2015 Act or ORS 431.840;

27 “(b) Violates a state or local law or rule or federal law or regulation
28 that governs the retail sale of tobacco products or inhalant delivery
29 systems; or

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

1 “(2) Notwithstanding ORS 305.280, a decision by the department to
2 revoke, suspend or refuse to renew a license under this section may
3 be appealed by the person to whom the license has been issued to the
4 magistrate division of the tax court within 30 days of the date of the
5 decision to revoke, suspend or refuse to renew the license, in the
6 manner provided in ORS 305.404 to 305.560.

7 “(3) The department may impose a civil penalty against a person
8 to whom a license has been issued under section 4 of this 2015 Act if
9 the person violates:

10 “(a) Sections 1 to 9 of this 2015 Act or a rule adopted under sections
11 1 to 9 of this 2015 Act; or

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

15 “(4) A civil penalty imposed under this section may not exceed
16 \$1,000 per violation.

17 “(5) Amounts collected by the department under this section shall
18 be deposited in the suspense account described in section 7 of this 2015
19 Act.

20 “SECTION 7. Suspense account. Amounts collected by the Depart-
21 ment of Revenue under sections 4 and 6 of this 2015 Act shall be paid
22 to the State Treasurer to be held in a suspense account established
23 under ORS 293.445. The department may pay expenses related to the
24 administration and enforcement of sections 1 to 9 of this 2015 Act by
25 the department and ORS 431.853 by the Oregon Health Authority out
26 of moneys deposited in the account. Amounts necessary to pay ad-
27 ministrative and enforcement expenses are continuously appropriated
28 to the department from the suspense account.

29 “SECTION 8. Rules. The Department of Revenue shall adopt rules
30 necessary for the effective administration of sections 1 to 9 of this 2015

1 **Act.**

2 **“SECTION 9. Intergovernmental agreement. The Department of**
3 **Revenue and the Oregon Health Authority shall enter into an agree-**
4 **ment for purposes of:**

5 **“(1) Sharing information necessary for the effective administration**
6 **of sections 1 to 9 of this 2015 Act and ORS 431.840 and 431.853. As part**
7 **of the agreement, the department and authority shall share informa-**
8 **tion:**

9 **“(a) Maintained in the database established under section 4 of this**
10 **2015 Act;**

11 **“(b) Related to inspections conducted under ORS 431.853; and**

12 **“(c) Related to any administrative proceeding the subject of which**
13 **is a violation of a state or local law or rule or federal law or regulation**
14 **that governs the retail sale of tobacco products or inhalant delivery**
15 **systems.**

16 **“(2) Transferring moneys collected under section 4 of this 2015 Act**
17 **from the department to the authority for the purpose of funding in-**
18 **spections conducted under ORS 431.853.**

19

20

“INSPECTIONS

21

“EFFECTIVE ON PASSAGE

22

23 **“SECTION 10. ORS 431.853 is amended to read:**

24 **“431.853. [(1) *The Oregon Health Authority shall:*]**

25 **“[(a) *Coordinate with law enforcement agencies to conduct random, unan-***
26 ***nounced inspections of Oregon wholesalers and retailers of tobacco products***
27 ***to insure compliance with Oregon laws designed to discourage the use of to-***
28 ***bacco by minors including ORS 163.575, 163.580, 167.400, 167.402 and 431.840;***
29 ***and]***

30 **“[(b) *Submit a report describing:*]**

1 “[A] *The activities carried out to enforce the laws listed in paragraph (a)*
2 *of this subsection during the previous fiscal year;*]

3 “[B] *The extent of success achieved in reducing the availability of tobacco*
4 *products to minors; and]*

5 “[C] *The strategies to be utilized for enforcing the laws listed in paragraph*
6 *(a) of this subsection during the year following the report.]*

7 “[2] *The Oregon Health Authority shall adopt rules concerning random*
8 *inspections of places that sell tobacco products consistent with section 1921,*
9 *Public Law 102-321, 1992. The rules shall provide that inspections may take*
10 *place:]*

11 “[a] *Only in areas open to the public;*]

12 “[b] *Only during hours that tobacco products are sold or distributed;*
13 *and]*

14 “[c] *No more frequently than once a month in any single establishment*
15 *unless a compliance problem exists or is suspected.]*

16 **“(1) The Oregon Health Authority may inspect the premises of a**
17 **business that engages in the wholesale or retail sale of tobacco pro-**
18 **ducts or inhalant delivery systems to ensure compliance with:**

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

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

23 **“(2) The authority may enter into one or more agreements with**
24 **local, state or federal agencies for the purpose of conducting in-**
25 **spections under this section.**

26 **“(3) To the extent practicable, the authority shall conduct in-**
27 **spections under this section in a uniform and cost-effective manner.**
28 **To ensure that the authority conducts inspections in a uniform and**
29 **cost-effective manner, the authority shall minimize the number of**
30 **agreements that the authority enters into pursuant to subsection (2)**

1 of this section.

2 “(4) The authority shall adopt rules for the effective administration
3 of this section. Rules adopted under this subsection must be consistent
4 with any federal law or rule relating to the inspection of businesses
5 that engage in the wholesale or retail sale of tobacco products or
6 inhalant delivery systems.

7 “(5) The authority shall report on the administration of this sec-
8 tion, and on agreements entered into pursuant to subsection (3) of this
9 section, to the Legislative Assembly in the manner required by ORS
10 192.245 on or before February 1 of each odd-numbered year.

11 “SECTION 11. ORS 431.845 is amended to read:

12 “431.845. *[(1) The civil penalty for violation of any provision of ORS 431.840*
13 *shall not be less than \$100 nor exceed \$500.]*

14 “*[(2) The amounts collected under subsection (1) of this section shall be*
15 *deposited to the credit of the General Fund.]*

16 “(1) The Oregon Health Authority may impose a civil penalty
17 against a person that engages in the wholesale or retail sale of tobacco
18 products or inhalant delivery systems as those terms are defined in
19 ORS 431.840, if the person violates:

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

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

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

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

30 “(a) For the first violation, issue notice to the person that subse-

1 **quent violations will result in disciplinary action; and**

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

4 **“(A) For the second violation occurring within a 12-month period,**
5 **\$250;**

6 **“(B) For the third violation occurring within a 24-month period,**
7 **\$500;**

8 **“(C) For the fourth violation occurring within a 24-month period,**
9 **\$500;**

10 **“(D) For the fifth violation occurring within a 36-month period,**
11 **\$5,000; and**

12 **“(E) For the sixth or subsequent violation occurring within a**
13 **48-month period, \$11,000.**

14 **“(4) The authority may not impose a civil penalty against a person**
15 **under subsection (3)(b) of this section for committing a violation as**
16 **described in subsection (1) of this section if the United States Food and**
17 **Drug Administration has previously imposed a civil penalty against**
18 **the person for the violation.**

19 **“(5) The authority may impose a fee that is reasonably calculated**
20 **to pay the costs of conducting an inspection related to a violation de-**
21 **scribed in subsection (3)(b) of this section if the authority has provided**
22 **notice under subsection (3)(a) of this section and is conducting a sub-**
23 **sequent inspection within a period of time described in subsection**
24 **(3)(b) of this section.**

25 **“(6) Amounts collected by the authority under this section shall be**
26 **deposited in the Oregon Health Authority Fund established under ORS**
27 **413.101 and are continuously appropriated to the authority for the**
28 **purpose of carrying out the duties, functions and powers of the au-**
29 **thority under this section.**

30

1 **“SECTION 16. Section and unit captions. The section and unit 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.”.**

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