

B-Engrossed
Senate Bill 1559

Ordered by the Senate February 26
Including Senate Amendments dated February 15 and February 26

Sponsored by Senators MONNES ANDERSON, STEINER HAYWARD (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.

Requires, on and after January 1, 2017, persons selling tobacco products or inhalant delivery systems in this state to be licensed by Department of Revenue. Provides department with power to discipline both licensees and persons selling tobacco products or inhalant delivery systems without license.

Specifies that cities and counties may not require additional license to sell tobacco products or inhalant delivery systems and may not adopt certain other types of ordinance related to premises that sell tobacco products or inhalant delivery systems. **Creates exception. Requires certain types of ordinances related to premises that sell tobacco products or inhalant delivery systems to grandfather in existing premises.**

Modifies provisions related to Oregon Health Authority's power to inspect and impose civil penalties on persons selling tobacco products and inhalant delivery systems.

Requires department to report annually to Legislative Assembly certain information on fees related to licensure.

[Declares emergency, effective on passage.]

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to the regulation of persons who sell products that cannot be sold to persons under the age
3 of 18; creating new provisions; amending ORS 181A.335, 431A.178 and 431A.183; repealing ORS
4 431A.180; and prescribing an effective date.

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

6
7 **LICENSURE**

8 **OPERATIVE JANUARY 1, 2017**

9
10 **SECTION 1. Definitions. As used in sections 1 to 11 of this 2016 Act:**

11 (1) **"Inhalant delivery system"** has the meaning given that term in ORS 431A.175.

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

14 (3) **"Tobacco products"** has the meaning given that term in ORS 431A.175.

15 **SECTION 2. Purposes. The purposes of sections 1 to 11 of this 2016 Act are:**

16 (1) **To build and maintain a database of information related to premises that sell tobacco**
17 **products and inhalant delivery systems;**

18 (2) **To improve enforcement of ORS 431A.175 and rules adopted under ORS 431A.175;**

19 (3) **To improve enforcement of local ordinances and rules, state laws and rules and fed-**
20 **eral laws and regulations that govern the retail sale of tobacco products or inhalant delivery**

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 systems for purposes related to either taxation or public health and safety; and

2 (4) To discourage the consumption of tobacco products and inhalant delivery systems.

3 **SECTION 3. Licensure requirement.** A person may not make a retail sale of a tobacco
4 product or an inhalant delivery system at or from a premises located in this state unless the
5 person sells the tobacco product or inhalant delivery system at or from a premises for which
6 a license has been issued under section 5 of this 2016 Act.

7 **SECTION 4. Premises to which Act does not apply.** Notwithstanding section 3 of this
8 2016 Act, sections 1 to 11 of this 2016 Act do not apply to a person making a retail sale of
9 an inhalant delivery system at a medical marijuana dispensary registered under ORS
10 475B.450 or a premises for which a retail license has been issued under ORS 475B.110 unless
11 the person makes a retail sale of an inhalant delivery system that contains nicotine.

12 **SECTION 5. Licensure.** (1) The Department of Revenue shall issue licenses to, and an-
13 nually renew licenses for, qualified premises that make retail sales of tobacco products or
14 inhalant delivery systems.

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

16 (a) Must be a premises that is fixed and permanent; and

17 (b) May not be located in an area that is zoned exclusively for residential use.

18 (3) For the purpose of licensing premises under this section, the department shall adopt
19 rules establishing:

20 (a) Procedures for applying for and renewing licenses; and

21 (b) Licensure application, issuance and renewal fees.

22 (4) Information regarding a license issued under this section is not confidential. The de-
23 partment shall publicly disclose or publish a list of persons to whom a license has been issued
24 under this section, the addresses of premises for which a license has been issued under this
25 section and any other information included on a license issued under this section.

26 (5) The department shall maintain a database of information related to the issuance of
27 licenses under this section. At a minimum, the database must include the name of each
28 person to whom a license has been issued and the address of each premises for which a li-
29 cense has been issued. For the purpose of conducting inspections under ORS 431A.183, in-
30 formation maintained in the database must be accessible by the Oregon Health Authority at
31 all times.

32 (6) Fees adopted under subsection (3)(b) of this section must be reasonably calculated not
33 to exceed the costs associated with:

34 (a) The department administering sections 1 to 11 of this 2016 Act;

35 (b) The authority conducting inspections under ORS 431A.183; and

36 (c) The authority providing education and outreach pursuant to section 20 of this 2016
37 Act.

38 (7) All moneys collected under this section shall be deposited in the suspense account
39 described in section 9 of this 2016 Act.

40 **SECTION 6. Proof of licensure.** A person to whom a license has been issued under section
41 5 of this 2016 Act shall post proof of licensure in a clear and conspicuous place at the
42 premises for which the license has been issued.

43 **SECTION 7. Discipline.** (1)(a) Subject to paragraph (b) of this subsection, the Department
44 of Revenue may revoke, suspend or refuse to issue or renew a license issued under section
45 5 of this 2016 Act if the person that holds or seeks the license, an individual who participates

1 in the management of the premises for which the license has been or would be issued or an
2 individual who is employed for the purpose of making retail sales at the premises:

3 (A) Violates sections 1 to 11 of this 2016 Act or ORS 431A.175 or a rule adopted under
4 sections 1 to 11 of this 2016 Act or ORS 431A.175;

5 (B) Violates a local ordinance or rule, state law or rule or federal law or regulation that
6 governs the retail sale of tobacco products or inhalant delivery systems;

7 (C) Violates a state law or rule related to taxation; or

8 (D) Makes a false statement to the department.

9 (b) The department may not revoke or suspend a license issued under section 5 of this
10 2016 Act unless the person that holds the license, an individual who participates in the
11 management of the premises for which the license has been issued or an individual who is
12 employed for the purpose of making retail sales at the premises commits, at a minimum,
13 three violations under paragraph (a) of this subsection within a 12-month period.

14 (2)(a) A decision by the department to revoke, suspend or refuse to issue or renew a li-
15 cense under subsection (1)(a)(A), (B) or (D) of this section may be appealed as a contested
16 case under ORS chapter 183.

17 (b) Notwithstanding ORS 305.280, a decision by the department to revoke, suspend or
18 refuse to issue or renew a license for a reason described in subsection (1)(a)(C) of this sec-
19 tion may be appealed by the person that holds or seeks the license to the magistrate division
20 of the Oregon Tax Court within 30 days of the date of the decision to revoke, suspend or
21 refuse to issue or renew the license, in the manner provided in ORS 305.404 to 305.560.

22 (3) The department may impose a civil penalty against a person that holds a license is-
23 sued under section 5 of this 2016 Act if the person violates:

24 (a) Sections 1 to 11 of this 2016 Act or a rule adopted under sections 1 to 11 of this 2016
25 Act; or

26 (b) A local ordinance or rule, state law or rule or federal law or regulation that governs
27 the retail sale of tobacco products or inhalant delivery systems for purposes related to tax-
28 ation.

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

30 (5) Amounts collected by the department under this section shall be deposited in the
31 suspense account described in section 9 of this 2016 Act.

32 **SECTION 8. Seizure and forfeiture of contraband tobacco products and contraband**
33 **inhalant delivery systems.** (1) For purposes of this section, a tobacco product or inhalant
34 delivery system sold or held for sale at or from a premises for which a license has not been
35 issued under section 5 of this 2016 Act is a contraband tobacco product or contraband
36 inhalant delivery system.

37 (2) A contraband tobacco product or contraband inhalant delivery system found by the
38 Department of Revenue or a law enforcement agency may be immediately seized by the de-
39 partment or agency and is subject to forfeiture. If seized and forfeited under this section,
40 the contraband tobacco product or the contraband inhalant delivery system must be de-
41 stroyed.

42 (3) A seizure or forfeiture made under this section may be appealed as a contested case
43 under ORS chapter 183.

44 **SECTION 9. Suspense account.** Amounts collected by the Department of Revenue under
45 sections 5 and 7 of this 2016 Act shall be paid to the State Treasurer to be held in a suspense

1 account established under ORS 293.445. The department may pay expenses related to the
2 administration and enforcement of sections 1 to 11 of this 2016 Act by the department out
3 of moneys deposited in the account. Additionally, the department may transfer moneys to
4 the Oregon Health Authority pursuant to the agreement entered into under section 11 of this
5 2016 Act out of moneys deposited in the account. Amounts necessary to pay administrative
6 and enforcement expenses are continuously appropriated to the department from the sus-
7 pense account.

8 **SECTION 10. Rules.** The Department of Revenue may adopt rules necessary for the ef-
9 fective administration of sections 1 to 11 of this 2016 Act. In adopting rules under this sec-
10 tion, the department shall consider the potential cost of developing and implementing the
11 rules and how that cost will affect the cost to the ultimate consumer of a tobacco product
12 or inhalant delivery system.

13 **SECTION 11. Intergovernmental agreement.** The Department of Revenue and the Oregon
14 Health Authority shall enter into an agreement for purposes of:

15 (1) Sharing information necessary for the effective administration of sections 1 to 11 of
16 this 2016 Act and ORS 431A.175 and 431A.183. As part of the agreement, the department and
17 authority shall share information:

18 (a) Maintained in the database established under section 5 of this 2016 Act;

19 (b) Related to inspections conducted under ORS 431A.183; and

20 (c) Related to any administrative or other proceeding the subject of which is a violation
21 of a local ordinance or rule, state law or rule or federal law or regulation that governs the
22 retail sale of tobacco products or inhalant delivery systems.

23 (2) Transferring moneys collected under section 5 of this 2016 Act from the department
24 to the authority for the purposes of:

25 (a) Funding inspections conducted under ORS 431A.183; and

26 (b) Providing education and outreach pursuant to section 20 of this 2016 Act.

27
28 **PREEMPTION**

29 **EFFECTIVE 91ST DAY AFTER SINE DIE**

30
31 **SECTION 12. Series placement.** Section 13 of this 2016 Act is added to and made a part
32 of sections 1 to 11 of this 2016 Act.

33 **SECTION 13. Preemption.** (1) A city or county may not adopt an ordinance:

34 (a) That requires a person to have a license issued by the city or county to make a retail
35 sale of a tobacco product or an inhalant delivery system in addition to the license required
36 by section 3 of this 2016 Act;

37 (b) That prohibits a premises that makes retail sales of tobacco products or inhalant
38 delivery systems from being located at the same address as a pharmacy, as defined in ORS
39 689.005; or

40 (c) That prohibits a premises that makes retail sales of tobacco products or inhalant
41 delivery systems, and that occupies 5,000 or more square feet, from being located within a
42 certain distance of a school or any real property owned by the city or county.

43 (2) An ordinance adopted by a city or county that prohibits a premises that makes retail
44 sales of tobacco products or inhalant delivery systems from being located within a certain
45 distance of a school or any real property owned by the city or county may not apply to any

1 premises that makes retail sales of tobacco products or inhalant delivery systems that is
2 located within the prohibited distance on or before the date on which the city or county
3 adopts the ordinance.

4
5 **TEMPORARY LIMIT ON FEES AND REPORT ON FEES**
6 **EFFECTIVE 91ST DAY AFTER SINE DIE**
7

8 **SECTION 14. Temporary Fee Provision.** Notwithstanding section 5 (6) of this 2016 Act,
9 the Department of Revenue may not charge a fee under section 5 of this 2016 Act for
10 licensure application or issuance that exceeds \$300 if the premises that makes the retail sale
11 of tobacco products or inhalant delivery systems:

12 (1) Engages in the retail sale of tobacco products or inhalant delivery systems on the
13 operative date specified in section 23 of this 2016 Act; and

14 (2) Submits an application to be licensed pursuant to section 5 of this 2016 Act on or
15 before the operative date specified in section 23 of this 2016 Act.

16 **SECTION 15. Sunset.** Section 14 of this 2016 Act is repealed on February 1, 2017.

17 **SECTION 16. Series Placement.** Section 17 of this 2016 Act is added to and made a part
18 of sections 1 to 11 of this 2016 Act.

19 **SECTION 17. Annual Report.** (1) On or before January 1 of each year, the Department
20 of Revenue shall report to the interim legislative committees related to business and health
21 on fees adopted under section 5 of this 2016 Act. The report must include the amount of li-
22 cense application, issuance and renewal fees collected in the previous 12 months and an ex-
23 planation of how the fees are reasonably calculated not to exceed the costs associated with:

- 24 (a) The department administering sections 1 to 11 of this 2016 Act;
25 (b) The Oregon Health Authority conducting inspections under ORS 431A.183; and
26 (c) The authority providing education and outreach pursuant to section 20 of this 2016
27 Act.

28 (2) The report required by this section shall be made in the manner provided by ORS
29 192.245.

30 (3) The authority shall assist the department in preparing the report required by this
31 section.

32
33 **PUBLIC HEALTH AND SAFETY**
34 **EFFECTIVE 91ST DAY AFTER SINE DIE**
35

36 **SECTION 18.** ORS 431A.183 is amended to read:

37 431A.183. [(1) *The Oregon Health Authority shall:*]

38 [(a) *Coordinate with law enforcement agencies to conduct random, unannounced inspections of*
39 *wholesalers and retailers of tobacco products or inhalant delivery systems to ensure compliance with*
40 *the laws of this state designed to discourage the use of tobacco products and inhalant delivery systems*
41 *by minors, including ORS 163.575, 163.580, 167.400, 167.402 and 431A.175; and]*

42 [(b) *Submit a report describing:*]

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

45 [(B) *The extent of success achieved in reducing the availability of tobacco products and inhalant*

1 *delivery systems to minors; and]*

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

4 *[(2) The authority shall adopt rules concerning random inspections of places that distribute or sell*
5 *tobacco products or inhalant delivery systems that are consistent with any federal law or regulation*
6 *relating to the inspection of such places. The rules shall provide that inspections may take place:]*

7 *[(a) Only in areas open to the public;]*

8 *[(b) Only during the hours that tobacco products or inhalant delivery systems are distributed or*
9 *sold; and]*

10 *[(c) No more frequently than once a month in any single establishment unless a compliance problem*
11 *exists or is suspected.]*

12 *[(3) The Oregon Liquor Control Commission, pursuant to an agreement or otherwise, may assist*
13 *the authority with the authority's duties under subsection (1)(a) of this section and the enforcement of*
14 *ORS 431A.175.]*

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

18 **(a) ORS 431A.175 or a rule adopted under ORS 431A.175; or**

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

22 **(2) The authority may enter into one or more agreements with local, state or federal**
23 **agencies, including the Oregon Liquor Control Commission, for the purpose of conducting**
24 **inspections under this section.**

25 **(3) To the extent practicable, the authority shall conduct inspections under this section**
26 **in a uniform and cost-effective manner.**

27 **(4) The authority shall adopt rules for the effective administration of this section. Rules**
28 **adopted under this subsection must be consistent with any federal law or regulation relating**
29 **to the inspection of businesses that engage in the wholesale or retail sale of tobacco products**
30 **or inhalant delivery systems.**

31 **(5) The authority shall report on the administration of this section, and on agreements**
32 **entered into pursuant to subsection (2) of this section, to the Legislative Assembly in the**
33 **manner required by ORS 192.245 on or before February 1 of each odd-numbered year.**

34 **SECTION 19. ORS 431A.178 is amended to read:**

35 *431A.178. [(1) The Oregon Health Authority may impose a civil penalty for each violation of ORS*
36 *431A.175. A civil penalty imposed under this section may not be less than \$250 or more than \$1,000.]*

37 **(1) The Oregon Health Authority may impose a civil penalty against a person that en-**
38 **gages in the wholesale or retail sale of tobacco products or inhalant delivery systems, as**
39 **those terms are defined in ORS 431A.175, if the person violates:**

40 **(a) ORS 431A.175 or a rule adopted under ORS 431A.175; or**

41 **(b) A local ordinance or rule, state law or rule or federal law or regulation that governs**
42 **the wholesale or retail sale of tobacco products or inhalant delivery systems for purposes**
43 **related to public health and safety.**

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

lice officers who are active reserve officers for the purpose of enforcing laws designed to discourage the use of tobacco products by persons under 18 years of age. **If the department establishes and administers a program under this subsection**, the department shall periodically consult with the authority to maximize program qualification for federal funds to enforce laws designed to discourage the use of tobacco products by persons under 18 years of age, including but not limited to grants under P.L. 102-321, section 1926 (42 U.S.C. 300x-26). Service by a retired state police member under this section is subject to ORS 238.082. The department may not use the services of a retired state police officer under this section to displace an active state police member from the enforcement of laws concerning tobacco products.

(4) **If the department establishes and administers a program under subsection (3) of this section**, the department shall adopt rules for carrying out subsection (3) of this section.

REPEAL

SECTION 22. Repeal. ORS 431A.180 is repealed.

MISCELLANEOUS

SECTION 23. Operative date. (1) Sections 1 to 11 of this 2016 Act become operative on January 1, 2017.

(2) **The Department of Revenue and the Oregon Health Authority may take any action before the operative date specified in subsection (1) of this section that is necessary to enable the department and authority to exercise, on and after the operative date specified in subsection (1) of this section, all the duties, functions and powers conferred on the department and authority by sections 1 to 11 of this 2016 Act.**

SECTION 24. Section and unit captions. The section and unit captions used in this 2016 Act are provided only for the convenience of the reader and do not become part of the statutory law of this state or express any legislative intent in the enactment of this 2016 Act.

SECTION 25. Expenditure limitation. Notwithstanding any other law limiting expenditures, the limitation on expenditures established by section 2 (1), chapter 838, Oregon Laws 2015, for the biennium beginning July 1, 2015, as the maximum limit for payment of expenses from fees, moneys or other revenues, including Miscellaneous Receipts, tobacco tax receipts, provider taxes, Medicare receipts and federal funds for indirect cost recovery, Supplemental Security Income recoveries, Women, Infants and Children Program food rebates, the Coordinated School Health Program, the Edward Byrne Memorial State and Local Law Enforcement Assistance Grant Program, homeland security and emergency preparedness and response services, but excluding lottery funds and federal funds not described in section 2, chapter 838, Oregon Laws 2015, collected or received by the Oregon Health Authority, for programs, is increased by \$742,267 for conducting inspections and providing education and outreach related to the licensing program established by this 2016 Act.

SECTION 26. Effective date. This 2016 Act takes effect on the 91st day after the date on which the 2016 regular session of the Seventy-eighth Legislative Assembly adjourns sine die.