

Senate Bill 1559

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 **as introduced**.

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.

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

Declares emergency, effective on passage.

A BILL FOR AN ACT

Relating to the regulation of persons who sell products that cannot be sold to persons under the age of 18; creating new provisions; amending ORS 181A.335, 431A.178 and 431A.183; repealing ORS 431A.180; and declaring an emergency.

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

LICENSURE

OPERATIVE JANUARY 1, 2017

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

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

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

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

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

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

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

(3) **To improve enforcement of local ordinances and rules, state laws and rules and federal laws and regulations that govern the retail sale of tobacco products or inhalant delivery systems for purposes related to either taxation or public health and safety; and**

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

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

SECTION 4. Premises to which Act does not apply. Notwithstanding section 3 of this

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

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

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

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

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

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

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

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

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

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

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

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

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

29 (c) The authority providing education and outreach pursuant to section 16 of this 2016
 30 Act.

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

33 **SECTION 6. Proof of licensure.** A person to whom a license has been issued under section
 34 5 of this 2016 Act shall post proof of licensure in a clear and conspicuous place at the
 35 premises for which the license has been issued.

36 **SECTION 7. Discipline.** (1) The Department of Revenue may revoke, suspend or refuse
 37 to issue or renew a license issued under section 5 of this 2016 Act if the person that holds
 38 or seeks the license, an individual who participates in the management of the premises for
 39 which the license has been or would be issued or an individual who is employed for the pur-
 40 pose of making retail sales at the premises:

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

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

45 (c) Violates a state law or rule related to taxation; or

1 (d) Makes a false statement to the department.

2 (2) Notwithstanding ORS 305.280, a decision by the department to revoke, suspend or re-
 3 fuse to issue or renew a license under this section may be appealed by the person that holds
 4 or seeks the license to the magistrate division of the tax court within 30 days of the date
 5 of the decision to revoke, suspend or refuse to issue or renew the license, in the manner
 6 provided in ORS 305.404 to 305.560.

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

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

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

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

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

17 **SECTION 8. Seizure and forfeiture of contraband tobacco products and contraband**
 18 **inhalant delivery systems.** (1) For purposes of this section, a tobacco product or inhalant
 19 delivery system sold at a premises for which a license has not been issued under section 5
 20 of this 2016 Act is a contraband tobacco product or contraband inhalant delivery system.

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

26 (3) Notwithstanding ORS 305.280, a person may appeal a seizure or forfeiture made under
 27 this section to the magistrate division of the tax court within 30 days of the date of the
 28 seizure in the manner provided in ORS 305.404 to 305.560.

29 **SECTION 9. Suspense account.** Amounts collected by the Department of Revenue under
 30 sections 5 and 7 of this 2016 Act shall be paid to the State Treasurer to be held in a suspense
 31 account established under ORS 293.445. The department may pay expenses related to the
 32 administration and enforcement of sections 1 to 11 of this 2016 Act by the department out
 33 of moneys deposited in the account. Additionally, the department may transfer moneys to
 34 the Oregon Health Authority pursuant to the agreement entered into under section 11 of this
 35 2016 Act out of moneys deposited in the account. Amounts necessary to pay administrative
 36 and enforcement expenses are continuously appropriated to the department from the sus-
 37 pense account.

38 **SECTION 10. Rules.** The Department of Revenue shall adopt rules necessary for the ef-
 39 fective administration of sections 1 to 11 of this 2016 Act.

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

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

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

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

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

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

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

8 (b) Providing education and outreach pursuant to section 16 of this 2016 Act.

9
10 **PREEMPTION**
11 **EFFECTIVE ON PASSAGE**
12

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

15 **SECTION 13. Preemption.** A city or county may not adopt an ordinance:

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

19 (2) That prohibits a premises that makes retail sales of tobacco products or inhalant
20 delivery systems from being located at the same address as a pharmacy, as defined in ORS
21 689.005; or

22 (3) That prohibits a premises that makes retail sales of tobacco products or inhalant
23 delivery systems from being located within a certain distance of a school or any real property
24 owned by the city or county.

25
26 **PUBLIC HEALTH AND SAFETY**
27 **EFFECTIVE ON PASSAGE**
28

29 **SECTION 14.** ORS 431A.183 is amended to read:

30 431A.183. [(1) *The Oregon Health Authority shall:*]

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

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

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

38 [(B) *The extent of success achieved in reducing the availability of tobacco products and inhalant*
39 *delivery systems to minors; and]*

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

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

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

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

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

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

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

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

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

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

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

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

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

27 **SECTION 15.** ORS 431A.178 is amended to read:

28 431A.178. ***[(1) The Oregon Health Authority may impose a civil penalty for each violation of ORS***
 29 ***431A.175. A civil penalty imposed under this section may not be less than \$250 or more than \$1,000.]***

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

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

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

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

39 **(3) If a violation concerns the sale of a tobacco product or an inhalant delivery system**
 40 **to a person under 18 years of age, a civil penalty imposed under this section shall be for an**
 41 **amount identified in a penalty schedule adopted by the authority by rule. In adopting a**
 42 **penalty schedule pursuant to this subsection, the authority shall:**

43 **(a) Establish increased penalties for multiple violations occurring within specific time**
 44 **periods as is necessary to deter future violations; and**

45 **(b) Make the penalty schedule consistent with any penalty schedule used by the United**

1 **States Food and Drug Administration to discipline persons selling tobacco products or**
 2 **inhalant delivery systems to persons under 18 years of age.**

3 **(4) The authority may impose a fee on a person that engages in the wholesale or retail**
 4 **sale of tobacco products or inhalant delivery systems if the authority conducts a second or**
 5 **subsequent inspection within a specific time period as set forth in the penalty schedule**
 6 **adopted pursuant to subsection (3) of this section. A fee imposed under this subsection must**
 7 **be reasonably calculated to pay the costs of conducting the inspection.**

8 [(2)(a)] **(5)(a)** Amounts collected under [subsection (1) of] this section shall be deposited in the
 9 Oregon Health Authority Fund established under ORS 413.101. Except as provided in paragraph (b)
 10 of this subsection, moneys deposited in the fund under this subsection are continuously appropriated
 11 to the authority for **the purpose of** carrying out the duties, functions and powers of the authority
 12 under ORS 431A.175 and 431A.183.

13 (b) At the end of each biennium, the authority shall transfer the unobligated moneys collected
 14 under [subsection (1)] of this section remaining in the fund to the Tobacco Use Reduction Account
 15 established under ORS 431A.153.

16 **SECTION 16. (1) The Oregon Health Authority may provide education and outreach to**
 17 **the general public and to owners, managers and employees of businesses that engage in the**
 18 **wholesale or retail sale of tobacco products or inhalant delivery systems about:**

19 **(a) ORS 431A.175 and rules adopted under ORS 431A.175; and**

20 **(b) Local ordinances and rules, state laws and rules and federal laws and regulations that**
 21 **govern the wholesale or retail sale of tobacco products or inhalant delivery systems.**

22 **(2) The authority may enter into one or more agreements with local, state or federal**
 23 **agencies for the purpose of conducting education and outreach under this section.**

24 25 CONFORMING AMENDMENTS

26
27 **SECTION 17.** ORS 181A.335 is amended to read:

28 181A.335. (1) As used in this section, "tobacco products" has the meaning given that term in
 29 ORS 431A.175.

30 (2) The Oregon Health Authority may apply for and accept moneys from the United States
 31 Government or other public or private sources for utilization of those moneys by the Department
 32 of State Police in accordance with any federal restrictions or other funding source restrictions to
 33 carry out the duties, functions and powers of the department under this section. Moneys received
 34 as provided under this subsection [shall] **may** be deposited into the State Treasury to the credit of
 35 the State Police Tobacco Law Enforcement Fund. Moneys that are subject to funding source condi-
 36 tions or restrictions [shall] **may** be placed in separate subaccounts of the fund and accounted for
 37 separately from other fund moneys.

38 (3) The department [shall] **may** establish and administer a program employing retired state po-
 39 lice officers who are active reserve officers for the purpose of enforcing laws designed to discourage
 40 the use of tobacco products by persons under 18 years of age. **If the department establishes and**
 41 **administers a program under this subsection,** the department shall periodically consult with the
 42 authority to maximize program qualification for federal funds to enforce laws designed to discourage
 43 the use of tobacco products by persons under 18 years of age, including but not limited to grants
 44 under P.L. 102-321, section 1926 (42 U.S.C. 300x-26). Service by a retired state police member under
 45 this section is subject to ORS 238.082. The department may not use the services of a retired state

1 police officer under this section to displace an active state police member from the enforcement of
2 laws concerning tobacco products.

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

5
6 **REPEAL**

7
8 **SECTION 18. Repeal. ORS 431A.180 is repealed.**

9
10 **MISCELLANEOUS**

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12 **SECTION 19. Operative date. (1) Sections 1 to 11 of this 2016 Act become operative on**
13 **January 1, 2017.**

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

19 **SECTION 20. Section and unit captions. The section and unit captions used in this 2016**
20 **Act are provided only for the convenience of the reader and do not become part of the stat-**
21 **utory law of this state or express any legislative intent in the enactment of this 2016 Act.**

22 **SECTION 21. Emergency clause. This 2016 Act being necessary for the immediate pres-**
23 **ervation of the public peace, health and safety, an emergency is declared to exist, and this**
24 **2016 Act takes effect on its passage.**