

House Bill 3388

Sponsored by Representative NOSSE

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**.

Provides that person may not make retail sale of tobacco product or inhalant delivery system at or from premises located in this state unless person sells tobacco product or inhalant delivery system at or from premises for which license has been issued. Establishes within Department of Revenue licensing program. Becomes operative January 1, 2018.

Directs department to enter into agreements with Oregon Health Authority and local public health authorities for purpose of disciplining licensees or applicants for licenses that violate laws, ordinances or rules governing retail sale of tobacco products and inhalant delivery systems, and for purpose of collecting and transferring moneys to fund enforcement of those laws, ordinances and rules. Becomes operative January 1, 2018.

Directs Oregon Health Authority to adopt fees necessary to administer and enforce laws and rules governing retail sale of tobacco products and inhalant delivery systems for purposes related to public health and safety.

Directs local public health authorities to conduct certain activities with respect to regulating retail sale of tobacco products and inhalant delivery systems. Directs Oregon Health Authority to oversee activities.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

Relating to public health; creating new provisions; amending ORS 431A.178 and 431A.183; repealing ORS 181A.330, 181A.335 and 431A.180; and prescribing an effective date.

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

LICENSURE

OPERATIVE JANUARY 1, 2018

SECTION 1. Definitions. As used in sections 1 to 13 of this 2017 Act:

(1) **"Governing body of a local public health authority"** has the meaning given that term in **ORS 431.003**.

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

(3) **"Local public health authority"** has the meaning given that term in **ORS 431.003**.

(4) **"Premises"** means the real property on which a business that makes retail sales of tobacco products or inhalant delivery systems is located.

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

SECTION 2. Purposes. The purpose of sections 1 to 13 of this 2017 Act is 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 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 at or from a premises located in this state unless the person sells the tobacco product or inhalant delivery system at or from a premises for which a license has been issued under section 5 of this 2017 Act.

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 **SECTION 4. Premises to which Act does not apply.** Notwithstanding section 3 of this
 2 2017 Act, sections 1 to 13 of this 2017 Act do not apply to a person making a retail sale of
 3 an inhalant delivery system at a medical marijuana dispensary registered under ORS
 4 475B.450 or at a premises for which a license has been issued under ORS 475B.110, unless the
 5 person makes a retail sale of an inhalant delivery system that contains nicotine.

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

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

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

11 (b) May not be located in an area that is zoned exclusively for residential use; and

12 (c) Must meet any qualification for engaging in the retail sale of tobacco products and
 13 inhalant delivery systems enacted as an ordinance by the governing body of a local public
 14 health authority under section 17 of this 2017 Act, provided that the department has knowl-
 15 edge of the qualification pursuant to an agreement entered into under section 12 of this 2017
 16 Act.

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

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

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

21 (4) An application submitted under this section and information related to applying for
 22 or renewing a license under this section is confidential and not subject to public disclosure
 23 under ORS 192.410 to 192.505. However, an application submitted under this section and in-
 24 formation related to applying for or renewing a license under this section may be shared with
 25 the Department of Justice, the Oregon Health Authority or a local public health authority.

26 (5) The Department of Revenue shall publish a list that includes the name of each person
 27 to whom a license has been issued under this section, the address of each premises for which
 28 a license has been issued under this section and any other information that the department
 29 determines is relevant to the public with respect to the retail sale of tobacco products and
 30 inhalant delivery systems.

31 (6) Fees established under subsection (3)(b) of this section must be reasonably calculated
 32 not to exceed the costs associated with the department administering sections 1 to 13 of this
 33 2017 Act.

34 (7) All moneys collected under this section shall be deposited in the suspense account
 35 described in section 10 of this 2017 Act.

36 **SECTION 6. Proof of licensure.** A person to whom a license has been issued under section
 37 5 of this 2017 Act must post proof of licensure in a clear and conspicuous place at the
 38 premises for which the license has been issued.

39 **SECTION 7. Revocation, suspension, refusal to issue or renew.** (1) The Department of
 40 Revenue may revoke, suspend or refuse to issue or renew a license issued under section 5
 41 of this 2017 Act if the person that holds or seeks the license, an individual who participates
 42 in the management of the premises for which the license has been or would be issued or an
 43 individual who is employed for the purpose of making retail sales at the premises:

44 (a) Violates sections 1 to 13 of this 2017 Act, a rule adopted under sections 1 to 13 of this
 45 2017 Act or any other state law or rule or federal law or regulation that governs the retail

1 sale of tobacco products or inhalant delivery systems or state taxation;

2 (b) Violates an ordinance enacted by the governing body of a local public health authority
 3 or a rule adopted by a local public health authority that governs the retail sale of tobacco
 4 products or inhalant delivery systems; or

5 (c) Makes a false statement to the department.

6 (2) The department may only revoke, suspend or refuse to issue or renew a license pur-
 7 suant to subsection (1)(b) of this section if a local public health authority:

8 (a) Has provided the person that holds or seeks the license, the individual who partic-
 9 ipates in the management of the premises for which the license has been or would be issued
 10 or the individual who is employed for the purpose of making retail sales at the premises with
 11 a process for contesting the violation that is substantially similar to the process provided
 12 under ORS 183.413 to 183.470; and

13 (b) Provides the department with a final order that establishes the person or individual
 14 is in violation of an ordinance that is substantially similar to the requirements for a final
 15 order under ORS 183.470.

16 (3) Except as provided by state tax law or as otherwise identified by the department by
 17 rule or order, a decision by the department to revoke, suspend or refuse to issue or renew
 18 a license under this section may be appealed as a contested case under ORS chapter 183.

19 **SECTION 8. Civil penalty.** (1) The Department of Revenue may impose a civil penalty
 20 against a person that holds or seeks a license issued under section 5 of this 2017 Act if the
 21 person that holds or seeks the license, an individual who participates in the management of
 22 the premises for which the license has been or would be issued or an individual who is em-
 23 ployed for the purpose of making retail sales at the premises:

24 (a) Violates sections 1 to 13 of this 2017 Act, a rule adopted under sections 1 to 13 of this
 25 2017 Act or any other state law or rule or federal law or regulation that governs the retail
 26 sale of tobacco products or inhalant delivery systems or state taxation; or

27 (b) Makes a false statement to the department.

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

29 (3) Amounts collected by the department under this section shall be deposited in the
 30 suspense account described in section 10 of this 2017 Act.

31 (4) Except as provided by state tax law or as otherwise identified by the department by
 32 rule or order, an imposition of a civil penalty under this section may be appealed as a con-
 33 tested case under ORS chapter 183.

34 (5) If a civil penalty is imposed under this section, a civil penalty may not be imposed for
 35 the commission of the same act under ORS 431A.178 or pursuant to an ordinance or rule
 36 adopted under section 17 of this 2017 Act.

37 **SECTION 9. Seizure and forfeiture of contraband tobacco products and contraband**
 38 **inhalant delivery systems.** (1) For purposes of this section, a tobacco product or inhalant
 39 delivery system sold or held for sale at or from a premises for which a license has not been
 40 issued under section 5 of this 2017 Act is a contraband tobacco product or contraband
 41 inhalant delivery system.

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

1 stroyed.

2 (3) Notwithstanding ORS 305.280 or 323.416, a seizure and forfeiture made under this
3 section may be appealed to the magistrate division of the Oregon Tax Court within 30 days
4 of the date of the seizure in the manner provided in ORS 305.404 to 305.560.

5 **SECTION 10. Suspense account for administration and enforcement.** (1) Amounts col-
6 lected by the Department of Revenue under sections 5 and 8 of this 2017 Act shall be paid
7 to the State Treasurer to be held in a suspense account established under ORS 293.445.

8 (2) From moneys held in the suspense account, the department may pay expenses related
9 to the administration and enforcement of sections 1 to 13 of this 2017 Act.

10 (3) Amounts necessary to make payments as described in subsection (2) of this section
11 are continuously appropriated to the department from the suspense account.

12 **SECTION 11. Rules.** The Department of Revenue may adopt rules necessary for the ef-
13 fective administration of sections 1 to 13 of this 2017 Act.

14 **SECTION 12. Intergovernmental agreements.** (1) The Department of Revenue and the
15 Oregon Health Authority shall:

16 (a) Share information necessary for the effective administration of sections 1 to 13 and
17 17 of this 2017 Act and ORS 431A.175 and 431A.183; and

18 (b) Enter into an agreement for purposes of collecting fee moneys for the authority
19 pursuant to ORS 431A.183 from each retailer of tobacco products or inhalant delivery sys-
20 tems at the same time that the department collects fee moneys under section 5 of this 2017
21 Act from the retailer, and transferring the fee moneys to the authority for deposit in the
22 Oregon Health Authority Fund established under ORS 413.101.

23 (2) The Department of Revenue and each local public health authority shall:

24 (a) Share information necessary for the effective administration of sections 1 to 13 and
25 17 of this 2017 Act; and

26 (b) Enter into an agreement for purposes of collecting any fee moneys for the local public
27 health authority pursuant to section 17 of this 2017 Act from each retailer of tobacco pro-
28 ducts or inhalant delivery systems located within the area over which the local public health
29 authority has jurisdiction at the same time that the department collects fee moneys under
30 section 5 of this 2017 Act from the retailer, and transferring the fee moneys to the local
31 public health authority for deposit in a fund of the local public health authority.

32 **SECTION 13. Suspense account for fee money transfers.** (1) Amounts collected by the
33 Department of Revenue pursuant to agreements entered into under section 12 of this 2017
34 Act shall be paid to the State Treasurer to be held in a suspense account established under
35 ORS 293.445.

36 (2) From moneys held in the suspense account, the department shall make transfers to
37 the Oregon Health Authority and local public health authorities as required by section 12 of
38 this 2017 Act.

39 (3) Amounts necessary to make transfers as described in subsection (2) of this section
40 are continuously appropriated to the department from the suspense account.

41
42 **STATE PUBLIC HEALTH AND SAFETY LAWS**
43 **EFFECTIVE 91ST DAY AFTER SINE DIE**
44

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

31 **(2) The authority shall adopt rules for the effective administration of this section. Rules**
32 **adopted under this section must be consistent with any federal law or regulation relating to**
33 **the inspection of businesses that engage in the wholesale or retail sale of tobacco products**
34 **or inhalant delivery systems.**

35 **(3) The authority shall adopt by rule fees necessary to pay the expenses of administering**
36 **and enforcing this section and section 17 of this 2017 Act and ORS 431A.175. Pursuant to an**
37 **agreement entered into under section 12 of this 2017 Act, the Department of Revenue shall**
38 **collect the fee moneys for, and transfer the fee moneys to, the authority. Moneys transferred**
39 **to the authority under this section must be deposited in the Oregon Health Authority Fund**
40 **established under ORS 413.101. Moneys deposited in the fund under this section are contin-**
41 **uously appropriated to the authority for the purposes of administering and enforcing this**
42 **section and section 17 of this 2017 Act and ORS 431A.175.**

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

44 431A.178. [(1) *The Oregon Health Authority may impose a civil penalty for each violation of ORS*
45 *431A.175. A civil penalty imposed under this section may not be less than \$250 or more than \$1,000.*]

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

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

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

8 (2) A civil penalty imposed under this section may not be more than \$5,000 per violation.

9 [(2)(a)] (3)(a) Amounts collected under [subsection (1) of] this section shall be deposited in the
10 Oregon Health Authority Fund established under ORS 413.101. Except as provided in paragraph (b)
11 of this subsection, moneys deposited in the fund under this subsection are continuously appropriated
12 to the authority for **the purpose of** carrying out the duties, functions and powers of the authority
13 under ORS 431A.175 and 431A.183.

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

17 (4) If a civil penalty is imposed under this section, a civil penalty may not be imposed for
18 the commission of the same act under section 7 or 17 of this 2017 Act.

19 **SECTION 16.** (1) As used in this section:

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

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

22 (2) The Oregon Health Authority may enter into an agreement with a federal agency to
23 assist in the monitoring and enforcement of federal laws and regulations related to tobacco
24 products or inhalant delivery systems. For purposes of this section, the authority may:

25 (a) Adopt any rule necessary to implement an agreement entered into under this sub-
26 section; and

27 (b) Take any action necessary to fulfill the authority's duties under an agreement en-
28 tered into under this subsection, including permitting employees of the authority to be
29 commissioned as federal officers.

30 (3)(a) The authority may apply for and accept moneys from the federal government or
31 other public or private sources and, in accordance with any federal restriction or other
32 funding source restriction, use those moneys to carry out functions related to preventing the
33 use of tobacco products or inhalant delivery systems by individuals who are not the minimum
34 age required to purchase tobacco products or inhalant delivery systems.

35 (b) Moneys received by the authority under this subsection shall be deposited in the
36 Oregon Health Authority Fund established under ORS 413.101. Moneys deposited in the fund
37 under this subsection are continuously appropriated to the authority. Moneys subject to a
38 federal restriction or other funding source restriction must be deposited in a separate sub-
39 account and accounted for separately from other fund moneys.

40 (4) The authority may enter into an agreement with the Oregon Liquor Control Com-
41 mission or the Department of State Police for purposes of fulfilling the functions of the au-
42 thority under this section.

43
44 **LOCAL REGULATION**
45 **EFFECTIVE 91ST DAY AFTER SINE DIE**

1 **SECTION 17.** (1) As used in this section:

2 (a) “Governing body of a local public health authority” has the meaning given that term
3 in ORS 431.003.

4 (b) “Inhalant delivery system” has the meaning given that term in ORS 431A.175.

5 (c) “Local public health authority” has the meaning given that term in ORS 431.003.

6 (d) “Tobacco products” has the meaning given that term in ORS 431A.175.

7 (2) Each local public health authority:

8 (a) Shall enforce standards established by state law or rule relating to the regulation of
9 the retail sale of tobacco products and inhalant delivery systems for purposes related to
10 public health and safety;

11 (b) May enforce, pursuant to an ordinance enacted by the governing body of the local
12 public health authority, standards for regulating the retail sale of tobacco products and
13 inhalant delivery systems for purposes related to public health and safety in addition to the
14 standards described in paragraph (a) of this subsection, including qualifications for engaging
15 in the retail sale of tobacco products or inhalant delivery systems that are in addition to the
16 qualifications described in section 5 of this 2017 Act; and

17 (c) May use outreach and educational services to provide businesses that engage in the
18 retail sale of tobacco products or inhalant delivery systems with information pertaining to
19 local ordinances and rules, state laws and rules and federal laws and regulations regulating
20 the retail sale of tobacco products and inhalant delivery systems.

21 (3) A local public health authority may impose on businesses that engage in the retail
22 sale of tobacco products or inhalant delivery systems a fee for paying the expenses of activ-
23 ities described in subsection (2) of this section. Pursuant to an agreement entered into under
24 section 12 of this 2017 Act, the Department of Revenue shall collect the fee moneys for, and
25 transfer the fee moneys to, the local public health authority. Moneys transferred to a local
26 public health authority under this subsection must be deposited in a fund of the local public
27 health authority. Moneys deposited in a fund under this subsection may only be spent by the
28 local public health authority for the purposes of subsection (2) of this section.

29 (4) A local public health authority may impose a civil penalty not to exceed \$5,000 on a
30 business that engages in the retail sale of tobacco products or inhalant delivery systems for
31 violating a standard described in subsection (2) of this section. If a civil penalty is imposed
32 under this section, a civil penalty may not be imposed for the commission of the same act
33 under ORS 431A.178 or section 7 of this 2017 Act.

34 (5) A local public health authority may:

35 (a) Perform the duties described in this section in accordance with ORS 431.413 (2) or (3);
36 or

37 (b) Enter into an agreement with the Oregon Health Authority under ORS 190.110 to
38 administer and enforce, within the jurisdiction of the local public health authority, the
39 standards and processes established by state law and rule regarding the regulation of the
40 retail sale of tobacco products and inhalant delivery systems.

41 (6) The Oregon Health Authority shall:

42 (a) Ensure that state standards established by state law and rule regarding the regu-
43 lation of the retail sale of tobacco products and inhalant delivery systems are administered
44 and enforced consistently throughout this state;

45 (b) Establish a database or other mechanism for collecting information from local public

1 health authorities and the general public regarding the regulation of the retail sale of to-
2 bacco products and inhalant delivery systems for purposes related to public health and
3 safety, including any information related to complaints about a person that makes retail
4 sales of tobacco products or inhalant delivery systems;

5 (c) Provide technical assistance to local public health authorities regarding the regulation
6 of the retail sale of tobacco products and inhalant delivery systems;

7 (d) Assess the effectiveness of state and local programs for regulating the retail sale of
8 tobacco products and inhalant delivery systems; and

9 (e) Adopt any rules necessary to implement or administer the duties of the Oregon
10 Health Authority under this section.

11
12 **REPEALS**

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

14
15 **SECTION 18. Repeal.** ORS 181A.330, 181A.335 and 431A.180 are repealed.

16
17 **MISCELLANEOUS**

18
19 **SECTION 19. Abolishment of State Police Tobacco Law Enforcement Fund.** The State
20 Police Tobacco Law Enforcement Fund is abolished. On the effective date of this 2017 Act,
21 moneys in the fund shall be transferred to the State Treasurer for deposit in the General
22 Fund, and the moneys shall be available for general governmental purposes.

23 **SECTION 20. Applicability.** The amendments to ORS 431A.178 by section 15 of this 2017
24 Act apply to violations for conduct occurring on or after the effective date of this 2017 Act.

25 **SECTION 21. Operative date.** (1) Sections 1 to 13 of this 2017 Act become operative on
26 January 1, 2018.

27 (2) The Department of Revenue, the Oregon Health Authority and local public health
28 authorities may take any action before the operative date specified in subsection (1) of this
29 section that is necessary to enable the department, the Oregon Health Authority and local
30 public health authorities to exercise, on and after the operative date specified in subsection
31 (1) of this section, all the duties, functions and powers conferred on the department, the
32 Oregon Health Authority and local public health authorities by sections 1 to 13 of this 2017
33 Act.

34 **SECTION 22. Section and unit captions.** The section and unit captions used in this 2017
35 Act are provided only for the convenience of the reader and do not become part of the stat-
36 utory law of this state or express any legislative intent in the enactment of this 2017 Act.

37 **SECTION 23. Effective date.** This 2017 Act takes effect on the 91st day after the date on
38 which the 2017 regular session of the Seventy-ninth Legislative Assembly adjourns sine die.
39