

Senate Bill 235

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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 establish, administer and enforce program for regulating retail sale of tobacco products and inhalant delivery systems. Directs Oregon Health Authority to oversee and coordinate establishment, administration and enforcement of programs.

Takes effect 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

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 a license has been issued under section 5 of this 2017 Act.

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

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

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

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

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

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

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

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

32 (6) Fees established under subsection (3)(b) of this section must be reasonably calculated
33 not to exceed the costs associated with the department administering sections 1 to 13 of this
34 2017 Act.

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

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

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

45 (a) Violates sections 1 to 13 of this 2017 Act, a rule adopted under sections 1 to 13 of this

1 2017 Act or any other state law or rule or federal law or regulation that governs the retail
2 sale of tobacco products or inhalant delivery systems or state taxation;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 the contraband tobacco product or the contraband inhalant delivery system must be de-
2 stroyed.

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

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

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

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

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

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

17 (a) Share information necessary for the effective administration of sections 1 to 13 and
18 17 of this 2017 Act and ORS 431A.175 and 431A.183; and

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

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

25 (a) Share information necessary for the effective administration of sections 1 to 13 of this
26 2017 Act and the program established by the local public health authority under section 17
27 of this 2017 Act; and

28 (b) Enter into an agreement for purposes of collecting any fee moneys for the authority
29 pursuant to section 17 of this 2017 Act from each retailer of tobacco products or inhalant
30 delivery systems located within the area over which the local public health authority has
31 jurisdiction at the same time that the department collects fee moneys under section 5 of this
32 2017 Act from the retailer, and transferring the fee moneys to the local public health au-
33 thority for deposit in a fund of the local public health authority.

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

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

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

43
44 STATE PUBLIC HEALTH AND SAFETY LAWS
45 EFFECTIVE 91ST DAY AFTER SINE DIE

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

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

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

[(b) Submit a report describing:]

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

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

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

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

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

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

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

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

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

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

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

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

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

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

431A.178. *[(1) The Oregon Health Authority may impose a civil penalty for each violation of ORS*

1 431A.175. A civil penalty imposed under this section may not be less than \$250 or more than \$1,000.]

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

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

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

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

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

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

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

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

22 (a) **“Inhalant delivery system” has the meaning given that term in ORS 431A.175.**

23 (b) **“Tobacco products” has the meaning given that term in ORS 431A.175.**

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

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

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

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

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

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

45

**LOCAL PUBLIC HEALTH AUTHORITY PROGRAMS
EFFECTIVE 91ST DAY AFTER SINE DIE**

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

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

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

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

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

(2) Each local public health authority shall establish, administer and enforce a program for regulating the retail sale of tobacco products and inhalant delivery systems in the area subject to the jurisdiction of the local public health authority. A program established under this section:

(a) Must incorporate standards and protocols established by state law or rule relating to the regulation of the retail sale of tobacco products and inhalant delivery systems for purposes related to public health and safety;

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

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

(3) A local public health authority may impose on businesses that engage in the retail sale of tobacco products or inhalant delivery systems a fee for paying the expenses of establishing, administering and enforcing a program established under this section. Pursuant to an agreement entered into under section 12 of this 2017 Act, the Department of Revenue shall collect the fee moneys for, and transfer the fee moneys to, the local public health authority. Moneys transferred to a local public health authority under this subsection must be deposited in a fund of the local public health authority. Moneys deposited in a fund under this subsection may only be spent by the local public health authority for the purposes of establishing, administering and enforcing a program established under this section.

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

(5) The Oregon Health Authority shall oversee and coordinate the establishment, administration and enforcement of programs established under this section.

REPEALS

EFFECTIVE 91ST DAY AFTER SINE DIE

