

Senate Bill 998

Sponsored by Senator BOQUIST

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 that has been registered. Establishes registration program within Department of Revenue. Becomes operative January 1, 2018.

Directs department to enter into agreement with Oregon Health Authority to effectively administer program. Becomes operative January 1, 2018.

Modifies laws governing manner in which authority administers and enforces laws and rules governing retail sale of tobacco products and inhalant delivery systems.

Preempts local governments from adopting ordinance or rule that provides for regulation of tobacco products or inhalant delivery systems. Grandfathers in existing ordinances and rules.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to public health; creating new provisions; amending ORS 431A.183; repealing ORS 181A.330,
3 181A.335, 431A.178 and 431A.180; and prescribing an effective date.

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

REGISTRATION

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7 **OPERATIVE JANUARY 1, 2018**

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9 **SECTION 1. Definitions. As used in sections 1 to 12 of this 2017 Act:**

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

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

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

14 **SECTION 2. Purpose. The purpose of sections 1 to 12 of this 2017 Act is to improve**
15 **enforcement of state laws and rules and federal laws and regulations governing the retail**
16 **sale of tobacco products and inhalant delivery systems.**

17 **SECTION 3. Registration requirement. A person may not make a retail sale of a tobacco**
18 **product or an inhalant delivery system at or from a premises located in this state unless the**
19 **person sells the tobacco product or inhalant delivery system at or from a premises that has**
20 **been registered under section 5 of this 2017 Act.**

21 **SECTION 4. Premises to which Act does not apply. Notwithstanding section 3 of this**
22 **2017 Act, sections 1 to 12 of this 2017 Act do not apply to a person making a retail sale of**
23 **an inhalant delivery system at a medical marijuana dispensary registered under ORS**
24 **475B.450 or at a premises for which a license has been issued under ORS 475B.110, unless the**
25 **person makes a retail sale of tobacco products or an inhalant delivery system that contains**
26 **nicotine.**

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 5. Registration.** (1) The Department of Revenue shall register, and annually
2 renew the registration of, a person that makes retail sales of tobacco products or inhalant
3 delivery systems at qualified premises.

4 (2) To be qualified for registration under this section, a premises:

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

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

7 (3) The department shall adopt rules establishing procedures for applying for registration
8 and annually renewing a registration under this section.

9 (4) A person that makes retail sales of tobacco products or inhalant delivery systems
10 must pay a fee to the department at the time of applying for registration under this section
11 or renewing a registration under this section. The department shall adopt the amount of the
12 fee by rule, provided that the fee does not exceed \$25. The department shall deposit all fee
13 moneys collected under this section in the suspense account described in section 10 of this
14 2017 Act.

15 (5) An application submitted under this section and information related to applying for
16 registration or renewing a registration under this section is confidential and not subject to
17 public disclosure under ORS 192.410 to 192.505. However, an application submitted under this
18 section and information related to applying for registration or renewing a registration under
19 this section may be shared with the Oregon Health Authority and the Department of Justice.

20 (6) The department shall publish a list that includes the name of each person registered
21 under this section, the address of each premises registered under this section and any other
22 information that the department determines is relevant to the public with respect to the
23 retail sale of tobacco products and inhalant delivery systems.

24 **SECTION 6. Proof of registration.** A person registered under section 5 of this 2017 Act
25 must post proof of registration under section 5 of this 2017 Act in a clear and conspicuous
26 place at the registered premises.

27 **SECTION 7. Revocation, refusal to register or renew registration.** (1) The Department
28 of Revenue may revoke a registration, refuse to register or refuse to renew a registration
29 under section 5 of this 2017 Act if the person that is registered or seeks registration, an in-
30 dividual who participates in the management of the premises that is registered or for which
31 registration is sought or an individual who is employed for the purpose of making retail sales
32 at the premises:

33 (a) Violates sections 1 to 12 of this 2017 Act, a rule adopted under sections 1 to 12 of this
34 2017 Act or any other state law or rule or federal law or regulation that governs the retail
35 sale of tobacco products or inhalant delivery systems or state taxation; or

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

37 (2) Except as provided by state tax law or as otherwise identified by the department by
38 rule or order, a decision by the department to revoke a registration, refuse to register or
39 refuse to renew a registration under this section must be appealed as a contested case under
40 ORS chapter 183.

41 **SECTION 8. Civil penalty.** (1) The Department of Revenue may impose a civil penalty
42 against a person that is registered or that seeks registration under section 5 of this 2017 Act
43 if the person that is registered or that seeks registration, an individual who participates in
44 the management of the premises that is registered or for which registration is sought or an
45 individual who is employed for the purpose of making retail sales at the premises:

1 (a) Violates sections 1 to 12 of this 2017 Act, a rule adopted under sections 1 to 12 of this
2 2017 Act or any other state law or rule or federal law or regulation that governs the retail
3 sale of tobacco products or inhalant delivery systems or state taxation; or

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

5 (2) Except as provided in subsection (3) of this section, a civil penalty imposed under this
6 section may not exceed \$1,000 per violation.

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

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

13 (b) Make the penalty schedule consistent with any penalty schedule used by the United
14 States Food and Drug Administration to discipline persons selling tobacco products or
15 inhalant delivery systems to persons under 18 years of age.

16 (4) The department shall deposit the amounts collected under this section in the suspense
17 account described in section 10 of this 2017 Act.

18 (5) Except as provided by state tax law or as otherwise identified by the department by
19 rule or order, an imposition of a civil penalty under this section must be appealed as a con-
20 tested case under ORS chapter 183.

21 **SECTION 9. Seizure and forfeiture of contraband tobacco products and contraband**
22 **inhalant delivery systems.** (1) For purposes of this section, a tobacco product or inhalant
23 delivery system sold or held for sale at or from a premises that is not registered under sec-
24 tion 5 of this 2017 Act is a contraband tobacco product or contraband inhalant delivery sys-
25 tem.

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

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

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

37 (2) From moneys held in the suspense account, the department may pay expenses related
38 to the administration and enforcement of sections 1 to 12 of this 2017 Act.

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

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

43 **SECTION 12. Intergovernmental agreements.** The Department of Revenue and the
44 Oregon Health Authority shall share information necessary for the effective administration
45 of sections 1 to 12 of this 2017 Act and ORS 431A.175 and 431A.183, including information

1 related to investigations conducted by the authority pursuant to ORS 431A.183 or section 14
 2 of this 2017 Act to ensure that the department may effectively discipline a person under
 3 section 7 or 8 of this 2017 Act that is registered or seeks registration under section 5 of this
 4 2017 Act.

5
 6 **STATE PUBLIC HEALTH AND SAFETY LAWS**
 7 **EFFECTIVE 91ST DAY AFTER SINE DIE**
 8

9 **SECTION 13.** ORS 431A.183 is amended to read:

10 431A.183. *[(1) The Oregon Health Authority shall:]*

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

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

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

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

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

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

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

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

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

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

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

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

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

38 **(2) The authority may not inspect the premises of a business that engages in the retail**
 39 **sale of tobacco products or inhalant delivery systems for purposes described in this section**
 40 **more than once per year, except that the authority may inspect the premises of a business**
 41 **that engages in the retail sale of tobacco products or inhalant delivery systems more than**
 42 **once per year if the authority has found the business to be noncompliant with a law, rule**
 43 **or regulation described in subsection (1) of this section during the preceding inspection.**

44 **(3) The authority shall adopt rules for the effective administration of this section. Rules**
 45 **adopted under this section must be consistent with any federal law or regulation relating to**

1 the inspection of businesses that engage in the retail sale of tobacco products or inhalant
2 delivery systems.

3 **SECTION 14.** (1) As used in this section:

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

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

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

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

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

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

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

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

27 28 PREEMPTION

29 EFFECTIVE 91ST DAY AFTER SINE DIE

30
31 **SECTION 15. Preemption.** (1) For purposes of this section, "inhalant delivery system" and
32 "tobacco products" have the meanings given those terms in ORS 431A.175.

33 (2) This section is intended to establish that the state has the exclusive right to regulate
34 the retail sale of tobacco products and inhalant delivery systems.

35 (3) Except as provided in subsection (4) of this section, a county or city, or other unit
36 of local government, may not adopt an ordinance or rule that provides for the regulation of
37 tobacco products or inhalant delivery systems, or that imposes a condition on a premises
38 that makes retail sales of tobacco products or inhalant delivery systems, including conditions
39 related to the type of premises that may make retail sales of tobacco products or inhalant
40 delivery systems, or related to where a person may locate a premises that makes retail sales
41 of tobacco products or inhalant delivery systems, except to the extent that the ordinance or
42 rule provides for the enforcement of a state law or rule or federal law or regulation that
43 governs the retail sale of tobacco products or inhalant delivery systems.

44 (4) This section does not apply to an ordinance or rule that provides for the regulation
45 of tobacco products or inhalant delivery systems, including an ordinance or rule related to

1 authorizing a person to make a retail sale of tobacco products or inhalant delivery systems,
2 before the effective date of this 2017 Act, provided that the city or county, or other unit of
3 local government, provides the Department of Revenue all information necessary for the ef-
4 fective administration of sections 1 to 12 of this 2017 Act, and provides the Oregon Health
5 Authority all information necessary for the effective administration of ORS 431A.183 and
6 section 14 of this 2017 Act.

7
8 **REPEALS**

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

10
11 **SECTION 16. Repeal.** ORS 181A.330, 181A.335, 431A.178 and 431A.180 are repealed.

12
13 **MISCELLANEOUS**

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15 **SECTION 17. Abolishment of State Police Tobacco Law Enforcement Fund.** The State
16 Police Tobacco Law Enforcement Fund is abolished. On the effective date of this 2017 Act,
17 moneys in the fund shall be transferred to the State Treasurer for deposit in the General
18 Fund and shall be available for general governmental purposes.

19 **SECTION 18. Operative date.** (1) Sections 1 to 12 of this 2017 Act become operative on
20 January 1, 2018.

21 (2) The Department of Revenue and the Oregon Health Authority may take any action
22 before the operative date specified in subsection (1) of this section that is necessary to enable
23 the department and authority to exercise, on and after the operative date specified in sub-
24 section (1) of this section, all the duties, functions and powers conferred on the department
25 and authority by sections 1 to 12 of this 2017 Act.

26 **SECTION 19. Section and unit captions.** The section and unit captions used in this 2017
27 Act are provided only for the convenience of the reader and do not become part of the stat-
28 utory law of this state or express any legislative intent in the enactment of this 2017 Act.

29 **SECTION 20. Effective date.** This 2017 Act takes effect on the 91st day after the date on
30 which the 2017 regular session of the Seventy-ninth Legislative Assembly adjourns sine die.