

Requested by Senator BURDICK

**PROPOSED AMENDMENTS TO
SENATE BILL 998**

1 On page 1 of the printed bill, line 2, after “431A.183” insert “and
2 433.835” and delete the comma and insert “and”.

3 In line 3, delete “, 431A.178 and 431A.180”.

4 Delete lines 5 through 26 and delete pages 2 through 6 and insert:
5

6 **“REGISTRATION**

7 **OPERATIVE JANUARY 1, 2018**
8

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

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

13 **“(2) ‘Premises’ means the real property on which a business that
14 makes retail sales of tobacco products or inhalant delivery systems is
15 located.**

16 **“(3) ‘Tobacco products’ has the meaning given that term in ORS
17 431A.175.**

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

1 **“SECTION 3. Registration requirement.** A person may not make a
2 retail sale of a tobacco product or an inhalant delivery system at or
3 from a premises located in this state unless the person sells the to-
4 bacco product or inhalant delivery system at or from a premises that
5 has been registered under section 5 of this 2017 Act.

6 **“SECTION 4. Premises to which Act does not apply.** Notwith-
7 standing section 3 of this 2017 Act, sections 1 to 12 of this 2017 Act do
8 not apply to a person making a retail sale of an inhalant delivery
9 system at a medical marijuana dispensary registered under ORS
10 475B.450 or at a premises for which a license has been issued under
11 ORS 475B.110, unless the person makes a retail sale of tobacco pro-
12 ducts or an inhalant delivery system that contains nicotine.

13 **“SECTION 5. Registration.** (1) The Department of Revenue shall
14 register, and annually renew the registration of, a person that makes
15 retail sales of tobacco products or inhalant delivery systems at quali-
16 fied premises.

17 **“(2) To be qualified for registration under this section, a premises**
18 **must be a premises that is fixed and permanent.**

19 **“(3) The department shall adopt rules establishing procedures for**
20 **applying for registration and annually renewing a registration under**
21 **this section.**

22 **“(4) A person that makes retail sales of tobacco products or**
23 **inhalant delivery systems must pay a fee to the department at the**
24 **time of applying for registration under this section or renewing a**
25 **registration under this section. The department shall adopt the**
26 **amount of the fee by rule, provided that the fee does not exceed \$50.**
27 **The department shall deposit all fee moneys collected under this sec-**
28 **tion in the suspense account described in section 10 of this 2017 Act.**

29 **“(5) An application submitted under this section and information**
30 **related to applying for registration or renewing a registration under**

1 this section is confidential and not subject to public disclosure under
2 ORS 192.410 to 192.505. However, an application submitted under this
3 section and information related to applying for registration or renew-
4 ing a registration under this section may be shared with the Oregon
5 Health Authority and the Department of Justice.

6 “(6) The Department of Revenue shall publish a list that includes
7 the name of each person registered under this section, the address of
8 each premises registered under this section and any other information
9 that the department determines is relevant to the public with respect
10 to the retail sale of tobacco products and inhalant delivery systems.

11 “SECTION 6. Proof of registration. A person registered under sec-
12 tion 5 of this 2017 Act must keep proof of registration at the registered
13 premises.

14 “SECTION 7. Revocation and refusal to issue or renew registration.

15 (1) The Department of Revenue may revoke, refuse to issue or refuse
16 to renew a registration under section 5 of this 2017 Act if the person
17 that is registered or seeks registration, an individual who participates
18 in the management of the premises that is registered or for which
19 registration is sought or an individual who is employed for the purpose
20 of making retail sales at the premises:

21 “(a) Violates sections 1 to 12 of this 2017 Act, a rule adopted under
22 sections 1 to 12 of this 2017 Act or any other state law or rule or fed-
23 eral law or regulation that governs the retail sale of tobacco products
24 or inhalant delivery systems or state taxation; or

25 “(b) Makes a false statement to the department.

26 “(2) The department may revoke a registration pursuant to this
27 section only if a person or individual described in subsection (1) of this
28 section commits, with respect to a registered premises, five or more
29 violations during a 12-month period.

30 “(3) Except as provided by state tax law or as otherwise identified

1 by the department by rule or order, a decision by the department to
2 revoke, refuse to issue or refuse to renew a registration under this
3 section must be appealed as a contested case under ORS chapter 183.

4 **“SECTION 8. Civil penalty.** (1) The Department of Revenue may
5 impose a civil penalty against a person that is registered or that seeks
6 registration under section 5 of this 2017 Act if the person that is reg-
7 istered or that seeks registration, an individual who participates in the
8 management of the premises that is registered or for which registra-
9 tion is sought or an individual who is employed for the purpose of
10 making retail sales at the premises:

11 **“(a) Violates sections 1 to 12 of this 2017 Act, a rule adopted under**
12 **sections 1 to 12 of this 2017 Act or any other state law or rule or fed-**
13 **eral law or regulation that governs the retail sale of tobacco products**
14 **or inhalant delivery systems or state taxation; or**

15 **“(b) Makes a false statement to the department.**

16 **“(2) A civil penalty imposed under this section may not exceed**
17 **\$1,000 per violation.**

18 **“(3) The department shall deposit the amounts collected under this**
19 **section in the suspense account described in section 10 of this 2017 Act.**

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

24 **“SECTION 9. Seizure and forfeiture of contraband tobacco products**
25 **and contraband inhalant delivery systems.** (1) For purposes of this
26 section, a tobacco product or inhalant delivery system sold or held for
27 sale at or from a premises that is not registered under section 5 of this
28 2017 Act is a contraband tobacco product or contraband inhalant de-
29 livery system.

30 **“(2) A contraband tobacco product or contraband inhalant delivery**

1 system found by the Department of Revenue or a law enforcement
2 agency may be seized immediately by the department or agency and
3 is subject to forfeiture. If seized and forfeited under this section, the
4 contraband tobacco product or the contraband inhalant delivery sys-
5 tem must be destroyed.

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

10 “SECTION 10. Suspense account for administration and enforce-
11 ment. (1) Amounts collected by the Department of Revenue under
12 sections 5 and 8 of this 2017 Act shall be paid to the State Treasurer
13 to be held in a suspense account established under ORS 293.445.

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

17 “(3) Amounts necessary to make payments as described in sub-
18 section (2) of this section are continuously appropriated to the de-
19 partment from the suspense account.

20 “SECTION 11. Rules. The Department of Revenue may adopt rules
21 necessary for the effective administration of sections 1 to 12 of this
22 2017 Act.

23 “SECTION 12. Intergovernmental agreements. The Department of
24 Revenue and the Oregon Health Authority shall share information
25 necessary for the effective administration of sections 1 to 12 of this
26 2017 Act and ORS 431A.175 and 431A.183, including information related
27 to investigations conducted by the authority pursuant to ORS 431A.183
28 or section 15 of this 2017 Act, to ensure that the department may ef-
29 fectively discipline a person under section 7 or 8 of this 2017 Act that
30 is registered or seeks registration under section 5 of this 2017 Act.

1 **“STATE PUBLIC HEALTH AND SAFETY LAWS**
2 **EFFECTIVE 91ST DAY AFTER SINE DIE**

3
4 **“SECTION 13.** ORS 431A.183 is amended to read:

5 “431A.183. *[(1) The Oregon Health Authority shall:]*

6 “*[(a) Coordinate with law enforcement agencies to conduct random, unan-*
7 *nounced inspections of wholesalers and retailers of tobacco products or*
8 *inhalant delivery systems to ensure compliance with the laws of this state de-*
9 *signed to discourage the use of tobacco products and inhalant delivery systems*
10 *by minors, including ORS 163.575, 163.580, 167.400, 167.402 and 431A.175;*
11 *and]*

12 “*[(b) Submit a report describing:]*

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

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

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

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

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

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

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

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

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

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**
6 **the retail sale of tobacco products or inhalant delivery systems for**
7 **purposes related to public health and safety.**

8 **“(2) The authority may not inspect the premises of a business that**
9 **engages in the retail sale of tobacco products or inhalant delivery**
10 **systems for purposes described in this section more than once per**
11 **year, except that the authority may inspect the premises of a business**
12 **that engages in the retail sale of tobacco products or inhalant delivery**
13 **systems more than once per year if the authority has found the busi-**
14 **ness to be noncompliant with a law, rule or regulation described in**
15 **subsection (1) of this section during the preceding inspection.**

16 **“(3) The authority shall adopt rules for the effective administration**
17 **of this section. Rules adopted under this section must be consistent**
18 **with any federal law or regulation relating to the inspection of busi-**
19 **nesses that engage in the retail sale of tobacco products or inhalant**
20 **delivery systems.**

21 **“SECTION 14. ORS 433.835 is amended to read:**

22 **“433.835. As used in ORS 433.835 to 433.875:**

23 **“(1) ‘Cigar bar’ means a business that:**

24 **“(a) Has on-site sales of cigars as defined in ORS 323.500;**

25 **“(b) Has a humidor on the premises;**

26 **“(c) Allows the smoking of cigars on the premises but prohibits the**
27 **smoking, aerosolizing or vaporizing of other inhalants on the premises;**

28 **“(d) Has been issued and operates under a full on-premises sales license**
29 **issued under ORS 471.175;**

30 **“(e) Prohibits persons under 21 years of age from entering the premises**

1 and posts notice of the prohibition;

2 “(f) Does not offer video lottery games as authorized under ORS 461.217;

3 “(g) Has a maximum seating capacity of 40 persons;

4 “(h) Has a ventilation system that exhausts smoke from the business and
5 is designed and terminated in accordance with the state building code stan-
6 dards for the occupancy classification in use; and

7 “(i) Requires all employees to read and sign a document that explains the
8 dangers of exposure to secondhand smoke.

9 “**(2) ‘Enclosed area’ means the entirety of the space between a floor
10 and a ceiling that is enclosed on three or more sides by permanent or
11 temporary walls or windows, exclusive of doors or passageways, that
12 extend from the floor to the ceiling.**

13 “[~~(2)~~] **(3)** ‘Inhalant’ means nicotine, a cannabinoid or any other substance
14 that:

15 “(a) Is in a form that allows the nicotine, cannabinoid or substance to
16 be delivered into a person’s respiratory system;

17 “(b) Is inhaled for the purpose of delivering the nicotine, cannabinoid or
18 other substance into a person’s respiratory system; and

19 “(c)(A) Is not approved by, or emitted by a device approved by, the United
20 States Food and Drug Administration for a therapeutic purpose; or

21 “(B) If approved by, or emitted by a device approved by, the United States
22 Food and Drug Administration for a therapeutic purpose, is not marketed
23 and sold solely for that purpose.

24 “[~~(3)(a)~~] **(4)(a)** ‘Place of employment’ means an enclosed area under the
25 control of a public or private employer, including work areas, employee
26 lounges, vehicles that are operated in the course of an employer’s business
27 and that are not operated exclusively by one employee, rest rooms, confer-
28 ence rooms, classrooms, cafeterias, hallways, meeting rooms, elevators and
29 stairways.

30 “(b) ‘Place of employment’ does not include a private residence unless it

1 is used as a child care facility as defined in ORS 329A.250 or a facility pro-
2 viding adult day care as defined in ORS 410.490.

3 “[4] (5) ‘Public place’ means an enclosed area open to the public.

4 “[5] (6) ‘Smoke shop’ means a business that is certified with the Oregon
5 Health Authority as a smoke shop pursuant to the rules adopted under ORS
6 433.847.

7 “[6] (7) ‘Smoking instrument’ means any cigar, cigarette, pipe or other
8 instrument used to smoke tobacco, marijuana or any other inhalant.

9 **“SECTION 15. (1) As used in this section:**

10 **“(a) ‘Inhalant delivery system’ has the meaning given that term in**
11 **ORS 431A.175.**

12 **“(b) ‘Tobacco products’ has the meaning given that term in ORS**
13 **431A.175.**

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

18 **“(a) Adopt any rule necessary to implement an agreement entered**
19 **into under this subsection; and**

20 **“(b) Take any action necessary to fulfill the authority’s duties un-**
21 **der an agreement entered into under this subsection, including per-**
22 **mitting employees of the authority to be commissioned as federal**
23 **officers.**

24 **“(3)(a) The authority may apply for and accept moneys from the**
25 **federal government or other public or private sources and, in accord-**
26 **ance with any federal restriction or other funding source restriction,**
27 **use those moneys to carry out functions related to preventing the use**
28 **of tobacco products or inhalant delivery systems by individuals who**
29 **are not the minimum age required to purchase tobacco products or**
30 **inhalant delivery systems.**

1 **Portland State University under ORS 190.510 to 190.610.**

2
3 **“REPEALS**

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

5
6 **“SECTION 17. Repeal. ORS 181A.330 and 181A.335 are repealed.**

7
8 **“MISCELLANEOUS**

9
10 **“SECTION 18. Abolishment of State Police Tobacco Law Enforce-**
11 **ment Fund. The State Police Tobacco Law Enforcement Fund is abol-**
12 **ished. On the effective date of this 2017 Act, moneys in the fund shall**
13 **be transferred to the State Treasurer for deposit in the General Fund**
14 **and shall be available for general governmental purposes.**

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

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

24 **“SECTION 20. Section and unit captions. The section and unit cap-**
25 **tions used in this 2017 Act are provided only for the convenience of the**
26 **reader and do not become part of the statutory law of this state or**
27 **express any legislative intent in the enactment of this 2017 Act.**

28 **“SECTION 21. Effective date. This 2017 Act takes effect on the 91st**
29 **day after the date on which the 2017 regular session of the Seventy-**
30 **ninth Legislative Assembly adjourns sine die.”.**

