

A-Engrossed
Senate Bill 1577

Ordered by the Senate February 18
Including Senate Amendments dated February 18

Sponsored by Senator MONNES ANDERSON, Representative HELT, Senator ROBLAN; Senators FREDERICK, MANNING JR, STEINER HAYWARD, TAYLOR (Presession 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.

[Prohibits distributing, selling or allowing to be sold flavored inhalant delivery system products.]

Requires Department of Revenue to issue license to qualified retailers of tobacco products and inhalant delivery systems. Defines "tobacco products" and "inhalant delivery system." Allows department to impose civil penalty for specified violations. Directs department, Oregon Health Authority and local public health authorities to share information for effective administration and enter into agreements for purposes of collecting fees imposed by Oregon Health Authority and local public health authorities.

Allows Oregon Health Authority to impose civil penalty for violation of certain state public health and safety laws related to tobacco products and inhalant delivery systems.

Allows local public health authority to enforce local standards for regulation of sale of tobacco products and inhalant delivery systems or enforce state standards for regulation of sale of tobacco products and inhalant delivery systems.

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.178 and 431A.183; repealing
3 ORS 431A.180; and prescribing an effective date.

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

5
6 **TOBACCO RETAILER LICENSURE**

7
8 **SECTION 1. Definitions. As used in sections 1 to 14 of this 2020 Act:**

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

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

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

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

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

16 **SECTION 2. Purpose. The purpose of sections 1 to 14 of this 2020 Act is to improve**
17 **enforcement of local ordinances and rules, state laws and rules and federal laws and regu-**
18 **lations that govern the retail sale of tobacco products and inhalant delivery systems.**

19 **SECTION 3. Licensure requirement. A person may not make a retail sale of a tobacco**
20 **product or an inhalant delivery system at or from a premises located in this state unless the**
21 **person sells the tobacco product or inhalant delivery system at or from a premises licensed**

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 under section 5 of this 2020 Act.

2 **SECTION 4. Premises to which Act does not apply.** Notwithstanding section 3 of this
3 2020 Act, sections 1 to 14 of this 2020 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.858 or at a premises for which a license has been issued under ORS 475B.105, 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 2020 Act, provided that the department has knowl-
16 edge of the qualification pursuant to an agreement entered into under section 13 of this 2020
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 192.311 to 192.478. However, the department may share an application submitted
25 under this section and information related to applying for or renewing a license under this
26 section with the Department of Justice, the Oregon Health Authority or a local public health
27 authority.

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

33 (6) Fees established under subsection (3)(b) of this section must be reasonably calculated
34 not to exceed the costs associated with the department administering sections 1 to 14 of this
35 2020 Act.

36 (7) All moneys collected under this section shall be deposited in the suspense account
37 described in section 10 of this 2020 Act.

38 **SECTION 6. Proof of licensure.** A person to which a license has been issued under section
39 5 of this 2020 Act must post proof of licensure in a clear and conspicuous place at the
40 premises for which the license has been issued.

41 **SECTION 7. Revocation, suspension, refusal to issue or renew.** (1) The Department of
42 Revenue may revoke, suspend or refuse to issue or renew a license issued under section 5
43 of this 2020 Act if the person that holds or seeks the license, an individual who participates
44 in the management of the premises for which the license has been or would be issued or an
45 individual who is employed for the purpose of making retail sales at the premises:

1 (a) Violates sections 1 to 14 of this 2020 Act, a rule adopted under sections 1 to 14 of this
2 2020 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;

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

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

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

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

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

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

21 **SECTION 8. Civil penalty.** (1) The Department of Revenue may impose a civil penalty
22 against a person that holds or seeks a license issued under section 5 of this 2020 Act if the
23 person that holds or seeks the license, an individual who participates in the management of
24 the premises for which the license has been or would be issued or an individual who is em-
25 ployed for the purpose of making retail sales at the premises:

26 (a) Violates sections 1 to 14 of this 2020 Act, a rule adopted under sections 1 to 14 of this
27 2020 Act or any other state law or rule or federal law or regulation that governs the retail
28 sale of tobacco products or inhalant delivery systems or state taxation; or

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

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

31 (3) Amounts collected by the department under this section shall be deposited in the
32 suspense account described in section 10 of this 2020 Act.

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

36 (5) If a civil penalty is imposed under this section, a civil penalty may not be imposed for
37 the commission of the same act under ORS 431A.178 or pursuant to an ordinance or rule
38 adopted under section 17 of this 2020 Act.

39 **SECTION 9. Seizure and forfeiture of contraband tobacco products and contraband**
40 **inhalant delivery systems.** (1) For purposes of this section, a tobacco product or inhalant
41 delivery system sold or held for sale at or from a premises for which a license has not been
42 issued under section 5 of this 2020 Act is a contraband tobacco product or contraband
43 inhalant delivery system.

44 (2) A contraband tobacco product or contraband inhalant delivery system found by the
45 Department of Revenue or a law enforcement agency may be seized immediately by the de-

1 department or agency and is subject to forfeiture. If seized and forfeited under this section,
2 the contraband tobacco product or the contraband inhalant delivery system must be de-
3 stroyed.

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

7 **SECTION 10. Suspense account for administration and enforcement.** (1) Amounts col-
8 lected by the Department of Revenue under sections 5 and 8 of this 2020 Act shall be paid
9 to the State Treasurer to be held in a suspense account established under ORS 293.445.

10 (2) From moneys held in the suspense account, the department may pay expenses related
11 to the administration and enforcement of sections 1 to 14 of this 2020 Act.

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

14 **SECTION 11. Rules.** The Department of Revenue may adopt rules necessary for the ef-
15 fective administration of sections 1 to 14 of this 2020 Act.

16 **SECTION 12. Fees.** The Oregon Health Authority shall adopt by rule fees necessary to
17 pay the expenses of administering and enforcing ORS 431A.175 and 431A.183 and section 17
18 of this 2020 Act. Pursuant to an agreement entered into under section 13 of this 2020 Act,
19 the Department of Revenue shall collect the fee moneys for, and transfer the fee moneys to,
20 the authority. Moneys transferred to the authority under this section must be deposited in
21 the Oregon Health Authority Fund established under ORS 413.101. Moneys deposited in the
22 fund under this section are continuously appropriated to the authority for the purposes of
23 administering and enforcing ORS 431A.175 and 431A.183 and section 17 of this 2020 Act.

24 **SECTION 13. Intergovernmental agreements.** (1) The Department of Revenue and the
25 Oregon Health Authority shall:

26 (a) Share information necessary for the effective administration of sections 1 to 14 and
27 17 of this 2020 Act and ORS 431A.175 and 431A.183; and

28 (b) Enter into an agreement for purposes of collecting fee moneys for the authority
29 pursuant to section 12 of this 2020 Act from each retailer of tobacco products or inhalant
30 delivery systems at the same time that the department collects fee moneys under section 5
31 of this 2020 Act from the retailer, and transferring the fee moneys collected pursuant to
32 section 12 of this 2020 Act to the authority for deposit in the Oregon Health Authority Fund
33 established under ORS 413.101.

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

35 (a) Share information necessary for the effective administration of sections 1 to 14 and
36 17 of this 2020 Act; and

37 (b) Enter into an agreement for purposes of collecting any fee moneys for the local public
38 health authority pursuant to section 17 of this 2020 Act from each retailer of tobacco pro-
39 ducts or inhalant delivery systems located within the area over which the local public health
40 authority has jurisdiction at the same time that the department collects fee moneys under
41 section 5 of this 2020 Act from the retailer, and transferring the fee moneys collected pur-
42 suant to section 17 of this 2020 Act to the local public health authority for deposit in a fund
43 of the local public health authority.

44 (3) The Oregon Health Authority and each local public health authority shall share in-
45 formation necessary for the effective administration of sections 1 to 14 and 17 of this 2020

1 Act and ORS 431A.175 and 431A.183.

2 **SECTION 14. Suspense account for fee money transfers.** (1) Amounts collected by the
3 Department of Revenue pursuant to agreements entered into under section 13 of this 2020
4 Act shall be paid to the State Treasurer to be held in a suspense account established under
5 ORS 293.445.

6 (2) From moneys held in the suspense account, the department shall make transfers to
7 the Oregon Health Authority and local public health authorities as required by section 13 of
8 this 2020 Act.

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

11
12 **STATE PUBLIC HEALTH AND SAFETY LAWS**

13
14 **SECTION 15.** ORS 431A.178 is amended to read:

15 431A.178. [(1) *The Oregon Health Authority may impose a civil penalty for each violation of ORS*
16 *431A.175. A civil penalty imposed under this section may not be less than \$250 or more than \$1,000.*]

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

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

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

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

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

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

33 (4) **If a civil penalty is imposed under this section, a civil penalty may not be imposed for**
34 **the commission of the same act under section 8 or 17 of this 2020 Act.**

35 **SECTION 16.** ORS 431A.183 is amended to read:

36 431A.183. (1)(a) The Oregon Health Authority may enter into an agreement with federal agencies
37 to assist the authority in monitoring and enforcing federal laws and regulations related to tobacco
38 products or inhalant delivery systems.

39 (b) The authority may commission employees of the authority as federal officers for the purpose
40 of carrying out the duties prescribed under an agreement entered into under paragraph (a) of this
41 subsection.

42 (c) The authority may adopt rules and take any action necessary to carry out the authority's
43 duties as established under an agreement entered into under paragraph (a) of this subsection.

44 (2)(a) The authority may enter into an agreement with federal, state and local government
45 agencies, including federal, state and local law enforcement agencies, to assist the authority in

1 carrying out the authority's duties under ORS 431A.175 and to conduct random, unannounced in-
2 spections of wholesalers and retailers of tobacco products or inhalant delivery systems to ensure
3 compliance with the laws of this state designed to discourage the use of tobacco products and
4 inhalant delivery systems by persons under 21 years of age, including ORS 167.750, 167.755, 167.760,
5 167.765, 167.775, 167.780 and 431A.175.

6 **(b) The authority shall ensure that a retailer is inspected as described in this subsection**
7 **at least once each year.**

8 (3)(a) If the authority enters into an agreement with the Department of State Police under sub-
9 section (2) of this section, the department may employ retired state police officers who are active
10 reserve officers. Service by a retired state police officer under this paragraph is subject to ORS
11 238.082.

12 (b) The department may not use the services of a retired state police officer to displace an ac-
13 tive state police member.

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

19 (b) Moneys received by the authority under paragraph (a) of this subsection shall be deposited
20 in the Oregon Health Authority Fund established under ORS 413.101. Moneys subject to a federal
21 restriction or other funding source restriction must be accounted for separately from other fund
22 moneys.

23 (5)(a) The authority shall submit a written report each biennium to the Governor and to the
24 appropriate committee or interim committee of the Legislative Assembly to which matters of public
25 health are assigned.

26 (b) The report submitted under this subsection must contain information describing:

27 (A) The activities carried out to enforce the laws listed in subsection (2) of this section during
28 the previous biennium;

29 (B) The extent of success achieved in reducing the availability of tobacco products and inhalant
30 delivery systems to persons under 21 years of age; and

31 (C) The strategies to be utilized for enforcing the laws listed in subsection (2) of this section
32 during the biennium following the report.

33 (6) The authority shall adopt rules for conducting random inspections of establishments that
34 distribute or sell tobacco products or inhalant delivery systems. The rules shall provide that in-
35 spections may take place:

36 (a) Only in areas open to the public;

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

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

41
42 **LOCAL REGULATION**

43
44 **SECTION 17. (1) As used in this section:**

45 **(a) "Governing body of a local public health authority" has the meaning given that term**

1 in ORS 431.003.

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

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

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

5 (2) Each local public health authority may:

6 (a) Enforce, pursuant to an ordinance enacted by the governing body of the local public
7 health authority, standards for regulating the retail sale of tobacco products and inhalant
8 delivery systems for purposes related to public health and safety in addition to the standards
9 described in paragraph (b) of this subsection, including qualifications for engaging in the re-
10 tail sale of tobacco products or inhalant delivery systems that are in addition to the quali-
11 fications described in section 5 of this 2020 Act;

12 (b)(A) Administer and enforce standards established by state law or rule relating to the
13 regulation of the retail sale of tobacco products and inhalant delivery systems for purposes
14 related to public health and safety if the local public health authority and the Oregon Health
15 Authority enter into an agreement pursuant to ORS 190.110; or

16 (B) Perform the duties described in this section in accordance with ORS 431.413 (2) or (3);
17 and

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

22 (3)(a) A local public health authority may impose on businesses that engage in the retail
23 sale of tobacco products or inhalant delivery systems a fee for paying the expenses of activ-
24 ities described in subsection (2) of this section. Pursuant to an agreement entered into under
25 section 13 of this 2020 Act, the Department of Revenue shall collect the fee moneys for, and
26 transfer the fee moneys to, the local public health authority. Moneys transferred to a local
27 public health authority under this subsection must be deposited in a fund of the local public
28 health authority. Moneys deposited in a fund under this subsection may only be spent by the
29 local public health authority for the purposes of subsection (2) of this section.

30 (b) The governing body of a local public health authority may, pursuant to ORS 431.415,
31 establish a schedule for the fees described in paragraph (a) of this subsection.

32 (4) A local public health authority may impose a civil penalty not to exceed \$5,000 on a
33 business that engages in the retail sale of tobacco products or inhalant delivery systems for
34 violating a standard described in subsection (2) of this section. If a civil penalty is imposed
35 under this section, a civil penalty may not be imposed for the commission of the same act
36 under ORS 431A.178 or section 8 of this 2020 Act.

37 (5) The Oregon Health Authority shall:

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

41 (b) Establish a database or other mechanism for collecting information from local public
42 health authorities and the general public regarding the regulation of the retail sale of to-
43 bacco products and inhalant delivery systems for purposes related to public health and
44 safety, including any information related to complaints about a person that makes retail
45 sales of tobacco products or inhalant delivery systems;

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

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

5 (e) Adopt any rules necessary to implement or administer the provisions of this section.
6

7 REPEAL

8
9 SECTION 18. Repeal. ORS 431A.180 is repealed.
10

11 MISCELLANEOUS

12
13 SECTION 19. Continuity. A city, local governing body or local public health authority
14 that, on or before the operative date specified in section 21 of this 2020 Act, enforces stan-
15 dards described in section 17 (2)(a) of this 2020 Act may continue to enforce the standards
16 on and after the operative date specified in section 21 of this 2020 Act.

17 SECTION 20. Applicability. The amendments to ORS 431A.178 by section 15 of this 2020
18 Act apply to violations for conduct occurring on or after the operative date specified in sec-
19 tion 21 of this 2020 Act.

20 SECTION 21. Operative date. (1) Sections 1 to 14 and 17 of this 2020 Act, the amendments
21 to ORS 431A.178 and 431A.183 by sections 15 and 16 of this 2020 Act and the repeal of ORS
22 431A.180 by section 18 of this 2020 Act become operative on January 1, 2021.

23 (2) The Department of Revenue, the Oregon Health Authority and local public health
24 authorities may take any action before the operative date specified in subsection (1) of this
25 section that is necessary to enable the department, the Oregon Health Authority and local
26 public health authorities to exercise, on and after the operative date specified in subsection
27 (1) of this section, all the duties, functions and powers conferred on the department, the
28 Oregon Health Authority and local public health authorities by sections 1 to 14 and 17 of this
29 2020 Act, the amendments to ORS 431A.178 and 431A.183 by sections 15 and 16 of this 2020
30 Act and the repeal of ORS 431A.180 by section 18 of this 2020 Act.

31 SECTION 22. Unit and section captions. The unit and section captions used in this 2020
32 Act are provided only for the convenience of the reader and do not become part of the stat-
33 utory law of this state or express any legislative intent in the enactment of this 2020 Act.

34 SECTION 23. Effective date. This 2020 Act takes effect on the 91st day after the date on
35 which the 2020 regular session of the Eightieth Legislative Assembly adjourns sine die.
36