

SB 1577-9
(LC 290)
2/10/20 (SCT/ps)

Requested by Senator MONNES ANDERSON

**PROPOSED AMENDMENTS TO
SENATE BILL 1577**

1 On page 1 of the printed bill, line 2, after “167.750” insert “, 431A.178”
2 and after “431A.183;” insert “repealing 431A.180;”.

3 After line 4, insert:

4

5 **“FLAVORED INHALANT DELIVERY SYSTEM**
6 **PRODUCT SALES BAN”.**

7

8 On page 3, after line 9, insert:

9

10 **“LICENSURE**

11

12 **“SECTION 5. Definitions. As used in sections 5 to 17 of this 2020**
13 **Act:**

14 **“(1) ‘Governing body of a local public health authority’ has the**
15 **meaning given that term in ORS 431.003.**

16 **“(2) ‘Inhalant delivery system’ has the meaning given that term in**
17 **ORS 431A.175.**

18 **“(3) ‘Local public health authority’ has the meaning given that**
19 **term in ORS 431.003.**

20 **“(4) ‘Premises’ means the real property on which a business that**
21 **makes retail sales of tobacco products or inhalant delivery systems is**

1 located.

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

4 **“SECTION 6. Purpose.** The purpose of sections 5 to 17 of this 2020
5 Act is to improve enforcement of local ordinances and rules, state laws
6 and rules and federal laws and regulations that govern the retail sale
7 of tobacco products and inhalant delivery systems.

8 **“SECTION 7. Licensure requirement.** A person may not make a
9 retail sale of a tobacco product or an inhalant delivery system at or
10 from a premises located in this state unless the person sells the to-
11 bacco product or inhalant delivery system at or from a premises li-
12 censed under section 9 of this 2020 Act.

13 **“SECTION 8. Premises to which Act does not apply.** Notwith-
14 standing section 7 of this 2020 Act, sections 5 to 17 of this 2020 Act do
15 not apply to a person making a retail sale of an inhalant delivery
16 system at a medical marijuana dispensary registered under ORS
17 475B.858 or at a premises for which a license has been issued under
18 ORS 475B.105, unless the person makes a retail sale of an inhalant
19 delivery system that contains nicotine.

20 **“SECTION 9. Licensure.** (1) The Department of Revenue shall issue
21 licenses to, and annually renew licenses for, a person that makes retail
22 sales of tobacco products or inhalant delivery systems at qualified
23 premises.

24 **“(2) To be qualified for licensure under this section, a premises:**

25 **“(a) Must be a premises that is fixed and permanent;**

26 **“(b) May not be located in an area that is zoned exclusively for
27 residential use; and**

28 **“(c) Must meet any qualification for engaging in the retail sale of
29 tobacco products and inhalant delivery systems enacted as an ordi-
30 nance by the governing body of a local public health authority under**

1 section 19 of this 2020 Act, provided that the department has knowl-
2 edge of the qualification pursuant to an agreement entered into under
3 section 16 of this 2020 Act.

4 “(3) For the purpose of licensing premises under this section, the
5 department shall adopt rules establishing:

6 “(a) Procedures for applying for and renewing licenses; and

7 “(b) Licensure application, issuance and renewal fees.

8 “(4) An application submitted under this section and information
9 related to applying for or renewing a license under this section is
10 confidential and not subject to public disclosure under ORS 192.311 to
11 192.478. However, the department may share an application submitted
12 under this section and information related to applying for or renewing
13 a license under this section with the Department of Justice, the
14 Oregon Health Authority or a local public health authority.

15 “(5) The Department of Revenue shall publish a list that includes
16 the name of each person to which a license has been issued under this
17 section, the address of each premises for which a license has been is-
18 sued under this section and any other information that the depart-
19 ment determines is relevant to the public with respect to the retail
20 sale of tobacco products and inhalant delivery systems.

21 “(6) Fees established under subsection (3)(b) of this section must
22 be reasonably calculated not to exceed the costs associated with the
23 department administering sections 5 to 17 of this 2020 Act.

24 “(7) All moneys collected under this section shall be deposited in the
25 suspense account described in section 14 of this 2020 Act.

26 “SECTION 10. Proof of licensure. A person to which a license has
27 been issued under section 9 of this 2020 Act must post proof of
28 licensure in a clear and conspicuous place at the premises for which
29 the license has been issued.

30 “SECTION 11. Revocation, suspension, refusal to issue or renew. (1)

1 **The Department of Revenue may revoke, suspend or refuse to issue**
2 **or renew a license issued under section 9 of this 2020 Act if the person**
3 **that holds or seeks the license, an individual who participates in the**
4 **management of the premises for which the license has been or would**
5 **be issued or an individual who is employed for the purpose of making**
6 **retail sales at the premises:**

7 **“(a) Violates sections 5 to 17 of this 2020 Act, a rule adopted under**
8 **sections 5 to 17 of this 2020 Act or any other state law or rule or fed-**
9 **eral law or regulation that governs the retail sale of tobacco products**
10 **or inhalant delivery systems or state taxation;**

11 **“(b) Violates an ordinance enacted by the governing body of a local**
12 **public health authority or a rule adopted by a local public health au-**
13 **thority that governs the retail sale of tobacco products or inhalant**
14 **delivery systems; or**

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

16 **“(2) The department may only revoke, suspend or refuse to issue**
17 **or renew a license pursuant to subsection (1)(b) of this section if a**
18 **local public health authority:**

19 **“(a) Has provided the person that holds or seeks the license, the**
20 **individual who participates in the management of the premises for**
21 **which the license has been or would be issued or the individual who**
22 **is employed for the purpose of making retail sales at the premises with**
23 **a process for contesting the violation that is substantially similar to**
24 **the process provided under ORS 183.413 to 183.470; and**

25 **“(b) Provides the department with a final order that establishes the**
26 **person or individual is in violation of an ordinance that is substan-**
27 **tially similar to the requirements for a final order under ORS 183.470.**

28 **“(3) Except as provided by state tax law or as otherwise identified**
29 **by the department by rule or order, a decision by the department to**
30 **revoke, suspend or refuse to issue or renew a license under this section**

1 may be appealed as a contested case under ORS chapter 183.

2 **“SECTION 12. Civil penalty. (1) The Department of Revenue may**
3 **impose a civil penalty against a person that holds or seeks a license**
4 **issued under section 9 of this 2020 Act if the person that holds or seeks**
5 **the license, an individual who participates in the management of the**
6 **premises for which the license has been or would be issued or an in-**
7 **dividual who is employed for the purpose of making retail sales at the**
8 **premises:**

9 **“(a) Violates sections 5 to 17 of this 2020 Act, a rule adopted under**
10 **sections 5 to 17 of this 2020 Act or any other state law or rule or fed-**
11 **eral law or regulation that governs the retail sale of tobacco products**
12 **or inhalant delivery systems or state taxation; or**

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

14 **“(2) A civil penalty imposed under this section may not exceed**
15 **\$1,000 per violation.**

16 **“(3) Amounts collected by the department under this section shall**
17 **be deposited in the suspense account described in section 14 of this 2020**
18 **Act.**

19 **“(4) Except as provided by state tax law or as otherwise identified**
20 **by the department by rule or order, an imposition of a civil penalty**
21 **under this section may be appealed as a contested case under ORS**
22 **chapter 183.**

23 **“(5) If a civil penalty is imposed under this section, a civil penalty**
24 **may not be imposed for the commission of the same act under ORS**
25 **431A.178 or pursuant to an ordinance or rule adopted under section 19**
26 **of this 2020 Act.**

27 **“SECTION 13. Seizure and forfeiture of contraband tobacco pro-**
28 **ducts and contraband inhalant delivery systems. (1) For purposes of**
29 **this section, a tobacco product or inhalant delivery system sold or held**
30 **for sale at or from a premises for which a license has not been issued**

1 under section 9 of this 2020 Act is a contraband tobacco product or
2 contraband inhalant delivery system.

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

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

13 “SECTION 14. Suspense account for administration and enforce-
14 ment. (1) Amounts collected by the Department of Revenue under
15 sections 9 and 12 of this 2020 Act shall be paid to the State Treasurer
16 to be held in a suspense account established under ORS 293.445.

17 “(2) From moneys held in the suspense account, the department
18 may pay expenses related to the administration and enforcement of
19 sections 5 to 17 of this 2020 Act.

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

23 “SECTION 15. Rules. The Department of Revenue may adopt rules
24 necessary for the effective administration of sections 5 to 17 of this
25 2020 Act.

26 “SECTION 15a. The Oregon Health Authority shall adopt by rule
27 fees necessary to pay the expenses of administering and enforcing ORS
28 431A.175 and 431A.183 and section 19 of this 2020 Act. Pursuant to an
29 agreement entered into under section 16 of this 2020 Act, the Depart-
30 ment of Revenue shall collect the fee moneys for, and transfer the fee

1 moneys to, the authority. Moneys transferred to the authority under
2 this section must be deposited in the Oregon Health Authority Fund
3 established under ORS 413.101. Moneys deposited in the fund under
4 this section are continuously appropriated to the authority for the
5 purposes of administering and enforcing ORS 431A.175 and 431A.183
6 and section 19 of this 2020 Act.

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

9 **“(a) Share information necessary for the effective administration**
10 **of sections 5 to 17 and 19 of this 2020 Act and ORS 431A.175 and**
11 **431A.183; and**

12 **“(b) Enter into an agreement for purposes of collecting fee moneys**
13 **for the authority pursuant to section 15a of this 2020 Act from each**
14 **retailer of tobacco products or inhalant delivery systems at the same**
15 **time that the department collects fee moneys under section 9 of this**
16 **2020 Act from the retailer, and transferring the fee moneys collected**
17 **pursuant to section 15a of this 2020 Act to the authority for deposit in**
18 **the Oregon Health Authority Fund established under ORS 413.101.**

19 **“(2) The Department of Revenue and each local public health au-**
20 **thority shall:**

21 **“(a) Share information necessary for the effective administration**
22 **of sections 5 to 17 and 19 of this 2020 Act; and**

23 **“(b) Enter into an agreement for purposes of collecting any fee**
24 **moneys for the local public health authority pursuant to section 19 of**
25 **this 2020 Act from each retailer of tobacco products or inhalant deliv-**
26 **ery systems located within the area over which the local public health**
27 **authority has jurisdiction at the same time that the department col-**
28 **lects fee moneys under section 9 of this 2020 Act from the retailer, and**
29 **transferring the fee moneys collected pursuant to section 19 of this**
30 **2020 Act to the local public health authority for deposit in a fund of**

1 the local public health authority.

2 “(3) The Oregon Health Authority and each local public health au-
3 thority shall share information necessary for the effective adminis-
4 tration of sections 5 to 17 and 19 of this 2020 Act and ORS 431A.175 and
5 431A.183.

6 **“SECTION 17. Suspense account for fee money transfers. (1)**
7 **Amounts collected by the Department of Revenue pursuant to agree-**
8 **ments entered into under section 16 of this 2020 Act shall be paid to**
9 **the State Treasurer to be held in a suspense account established under**
10 **ORS 293.445.**

11 “(2) From moneys held in the suspense account, the department
12 shall make transfers to the Oregon Health Authority and local public
13 health authorities as required by section 16 of this 2020 Act.

14 “(3) Amounts necessary to make transfers as described in sub-
15 section (2) of this section are continuously appropriated to the de-
16 partment from the suspense account.

17

18 **“STATE PUBLIC HEALTH AND SAFETY LAWS**

19

20 **“SECTION 18.** ORS 431A.178 is amended to read:

21 *“431A.178. [(1) The Oregon Health Authority may impose a civil penalty for*
22 *each violation of ORS 431A.175. A civil penalty imposed under this section*
23 *may not be less than \$250 or more than \$1,000.]*

24 **“(1) The Oregon Health Authority may impose a civil penalty**
25 **against a person that engages in the wholesale or retail sale of tobacco**
26 **products or inhalant delivery systems, as those terms are defined in**
27 **ORS 431A.175, if the person violates:**

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

29 **“(b) A state law or rule or federal law or regulation that governs**
30 **the wholesale or retail sale of tobacco products or inhalant delivery**

1 **systems for purposes related to public health and safety.**

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

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

10 **“(b) At the end of each biennium, the authority shall transfer the unob-**
11 **ligated moneys collected under [subsection (1) of] this section remaining in**
12 **the fund to the Tobacco Use Reduction Account established under ORS**
13 **431A.153.**

14 **“(4) If a civil penalty is imposed under this section, a civil penalty**
15 **may not be imposed for the commission of the same act under section**
16 **12 or 19 of this 2020 Act.**

17

18 **“LOCAL REGULATION**

19

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

21 **“(a) ‘Governing body of a local public health authority’ has the**
22 **meaning given that term in ORS 431.003.**

23 **“(b) ‘Inhalant delivery system’ has the meaning given that term in**
24 **ORS 431A.175.**

25 **“(c) ‘Local public health authority’ has the meaning given that**
26 **term in ORS 431.003.**

27 **“(d) ‘Tobacco products’ has the meaning given that term in ORS**
28 **431A.175.**

29 **“(2) Each local public health authority may:**

30 **“(a) Enforce, pursuant to an ordinance enacted by the governing**

1 **body of the local public health authority, standards for regulating the**
2 **retail sale of tobacco products and inhalant delivery systems for pur-**
3 **poses related to public health and safety in addition to the standards**
4 **described in paragraph (b) of this subsection, including qualifications**
5 **for engaging in the retail sale of tobacco products or inhalant delivery**
6 **systems that are in addition to the qualifications described in section**
7 **9 of this 2020 Act;**

8 **“(b)(A) Administer and enforce standards established by state law**
9 **or rule relating to the regulation of the retail sale of tobacco products**
10 **and inhalant delivery systems for purposes related to public health and**
11 **safety if the local public health authority and the Oregon Health Au-**
12 **thority enter into an agreement pursuant to ORS 190.110; or**

13 **“(B) Perform the duties described in this section in accordance with**
14 **ORS 431.413 (2) or (3); and**

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

20 **“(3) A local public health authority may impose on businesses that**
21 **engage in the retail sale of tobacco products or inhalant delivery sys-**
22 **tems a fee for paying the expenses of activities described in subsection**
23 **(2) of this section. Pursuant to an agreement entered into under sec-**
24 **tion 16 of this 2020 Act, the Department of Revenue shall collect the**
25 **fee moneys for, and transfer the fee moneys to, the local public health**
26 **authority. Moneys transferred to a local public health authority under**
27 **this subsection must be deposited in a fund of the local public health**
28 **authority. Moneys deposited in a fund under this subsection may only**
29 **be spent by the local public health authority for the purposes of sub-**
30 **section (2) of this section.**

1 In line 10, delete "5" and insert "25".

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