

Requested by Senator MONNES ANDERSON

**PROPOSED AMENDMENTS TO
SENATE BILL 1577**

1 On page 1 of the printed bill, line 2, after “ORS” delete the rest of the
2 line and line 3 and insert “431A.178 and 431A.183; repealing ORS 431A.180;
3 and prescribing an effective date.”.

4 Delete lines 5 through 31 and delete pages 2 and 3 and insert:
5

6 **“TOBACCO RETAILER LICENSURE**
7

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

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

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

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

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

19 **“(5) ‘Tobacco products’ has the meaning given that term in ORS**
20 **431A.175.**

21 **“SECTION 2. Purpose. The purpose of sections 1 to 14 of this 2020**

1 Act is to improve enforcement of local ordinances and rules, state laws
2 and rules and federal laws and regulations that govern the retail sale
3 of tobacco products and inhalant delivery systems.

4 **“SECTION 3. Licensure requirement.** A person may not make a
5 retail sale of a tobacco product or an inhalant delivery system at or
6 from a premises located in this state unless the person sells the to-
7 bacco product or inhalant delivery system at or from a premises li-
8 censed under section 5 of this 2020 Act.

9 **“SECTION 4. Premises to which Act does not apply.** Notwith-
10 standing section 3 of this 2020 Act, sections 1 to 14 of this 2020 Act do
11 not apply to a person making a retail sale of an inhalant delivery
12 system at a medical marijuana dispensary registered under ORS
13 475B.858 or at a premises for which a license has been issued under
14 ORS 475B.105, unless the person makes a retail sale of an inhalant
15 delivery system that contains nicotine.

16 **“SECTION 5. Licensure.** (1) The Department of Revenue shall issue
17 licenses to, and annually renew licenses for, a person that makes retail
18 sales of tobacco products or inhalant delivery systems at qualified
19 premises.

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

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

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

24 **“(c) Must meet any qualification for engaging in the retail sale of**
25 **tobacco products and inhalant delivery systems enacted as an ordi-**
26 **nance by the governing body of a local public health authority under**
27 **section 17 of this 2020 Act, provided that the department has knowl-**
28 **edge of the qualification pursuant to an agreement entered into under**
29 **section 13 of this 2020 Act.**

30 **“(3) For the purpose of licensing premises under this section, the**

1 department shall adopt rules establishing:

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

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

4 “(4) An application submitted under this section and information
5 related to applying for or renewing a license under this section is
6 confidential and not subject to public disclosure under ORS 192.311 to
7 192.478. However, the department may share an application submitted
8 under this section and information related to applying for or renewing
9 a license under this section with the Department of Justice, the
10 Oregon Health Authority or a local public health authority.

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

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

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

22 “SECTION 6. Proof of licensure. A person to which a license has
23 been issued under section 5 of this 2020 Act must post proof of
24 licensure in a clear and conspicuous place at the premises for which
25 the license has been issued.

26 “SECTION 7. Revocation, suspension, refusal to issue or renew. (1)
27 The Department of Revenue may revoke, suspend or refuse to issue
28 or renew a license issued under section 5 of this 2020 Act if the person
29 that holds or seeks the license, an individual who participates in the
30 management of the premises for which the license has been or would

1 be issued or an individual who is employed for the purpose of making
2 retail sales at the premises:

3 “(a) Violates sections 1 to 14 of this 2020 Act, a rule adopted under
4 sections 1 to 14 of this 2020 Act or any other state law or rule or fed-
5 eral law or regulation that governs the retail sale of tobacco products
6 or inhalant delivery systems or state taxation;

7 “(b) Violates an ordinance enacted by the governing body of a local
8 public health authority or a rule adopted by a local public health au-
9 thority that governs the retail sale of tobacco products or inhalant
10 delivery systems; or

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

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

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

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

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

28 **SECTION 8. Civil penalty.** (1) The Department of Revenue may
29 impose a civil penalty against a person that holds or seeks a license
30 issued under section 5 of this 2020 Act if the person that holds or seeks

1 the license, an individual who participates in the management of the
2 premises for which the license has been or would be issued or an in-
3 dividual who is employed for the purpose of making retail sales at the
4 premises:

5 “(a) Violates sections 1 to 14 of this 2020 Act, a rule adopted under
6 sections 1 to 14 of this 2020 Act or any other state law or rule or fed-
7 eral law or regulation that governs the retail sale of tobacco products
8 or inhalant delivery systems or state taxation; or

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

10 “(2) A civil penalty imposed under this section may not exceed
11 \$1,000 per violation.

12 “(3) Amounts collected by the department under this section shall
13 be deposited in the suspense account described in section 10 of this 2020
14 Act.

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

19 “(5) If a civil penalty is imposed under this section, a civil penalty
20 may not be imposed for the commission of the same act under ORS
21 431A.178 or pursuant to an ordinance or rule adopted under section 17
22 of this 2020 Act.

23 “SECTION 9. Seizure and forfeiture of contraband tobacco products
24 and contraband inhalant delivery systems. (1) For purposes of this
25 section, a tobacco product or inhalant delivery system sold or held for
26 sale at or from a premises for which a license has not been issued
27 under section 5 of this 2020 Act is a contraband tobacco product or
28 contraband inhalant delivery system.

29 “(2) A contraband tobacco product or contraband inhalant delivery
30 system found by the Department of Revenue or a law enforcement

1 agency may be seized immediately by the department or agency and
2 is subject to forfeiture. If seized and forfeited under this section, the
3 contraband tobacco product or the contraband inhalant delivery sys-
4 tem must be destroyed.

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

9 “SECTION 10. Suspense account for administration and enforce-
10 ment. (1) Amounts collected by the Department of Revenue under
11 sections 5 and 8 of this 2020 Act shall be paid to the State Treasurer
12 to be held in a suspense account established under ORS 293.445.

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

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

19 “SECTION 11. Rules. The Department of Revenue may adopt rules
20 necessary for the effective administration of sections 1 to 14 of this
21 2020 Act.

22 “SECTION 12. Fees. The Oregon Health Authority shall adopt by
23 rule fees necessary to pay the expenses of administering and enforcing
24 ORS 431A.175 and 431A.183 and section 17 of this 2020 Act. Pursuant to
25 an agreement entered into under section 13 of this 2020 Act, the De-
26 partment of Revenue shall collect the fee moneys for, and transfer the
27 fee moneys to, the authority. Moneys transferred to the authority
28 under this section must be deposited in the Oregon Health Authority
29 Fund established under ORS 413.101. Moneys deposited in the fund
30 under this section are continuously appropriated to the authority for

1 the purposes of administering and enforcing ORS 431A.175 and 431A.183
2 and section 17 of this 2020 Act.

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

5 **“(a) Share information necessary for the effective administration**
6 **of sections 1 to 14 and 17 of this 2020 Act and ORS 431A.175 and**
7 **431A.183; and**

8 **“(b) Enter into an agreement for purposes of collecting fee moneys**
9 **for the authority pursuant to section 12 of this 2020 Act from each**
10 **retailer of tobacco products or inhalant delivery systems at the same**
11 **time that the department collects fee moneys under section 5 of this**
12 **2020 Act from the retailer, and transferring the fee moneys collected**
13 **pursuant to section 12 of this 2020 Act to the authority for deposit in**
14 **the Oregon Health Authority Fund established under ORS 413.101.**

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

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

19 **“(b) Enter into an agreement for purposes of collecting any fee**
20 **moneys for the local public health authority pursuant to section 17 of**
21 **this 2020 Act from each retailer of tobacco products or inhalant deliv-**
22 **ery systems located within the area over which the local public health**
23 **authority has jurisdiction at the same time that the department col-**
24 **lects fee moneys under section 5 of this 2020 Act from the retailer, and**
25 **transferring the fee moneys collected pursuant to section 17 of this**
26 **2020 Act to the local public health authority for deposit in a fund of**
27 **the local public health authority.**

28 **“(3) The Oregon Health Authority and each local public health au-**
29 **thority shall share information necessary for the effective adminis-**
30 **tration of sections 1 to 14 and 17 of this 2020 Act and ORS 431A.175 and**

1 **431A.183.**

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

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

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

13

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

15

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

17 *“431A.178. [(1) The Oregon Health Authority may impose a civil penalty for*
18 *each violation of ORS 431A.175. A civil penalty imposed under this section*
19 *may not be less than \$250 or more than \$1,000.]*

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

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

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

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

30 **“[(2)(a)] (3)(a) Amounts collected under [subsection (1) of] this section**

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

6 “(b) At the end of each biennium, the authority shall transfer the unob-
7 ligated moneys collected under [*subsection (1) of*] this section remaining in
8 the fund to the Tobacco Use Reduction Account established under ORS
9 431A.153.

10 “(4) **If a civil penalty is imposed under this section, a civil penalty**
11 **may not be imposed for the commission of the same act under section**
12 **8 or 17 of this 2020 Act.**

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

14 “431A.183. (1)(a) The Oregon Health Authority may enter into an agree-
15 ment with federal agencies to assist the authority in monitoring and en-
16 forcing federal laws and regulations related to tobacco products or inhalant
17 delivery systems.

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

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

24 “(2)(a) The authority may enter into an agreement with federal, state and
25 local government agencies, including federal, state and local law enforcement
26 agencies, to assist the authority in carrying out the authority’s duties under
27 ORS 431A.175 and to conduct random, unannounced inspections of whole-
28 salers and retailers of tobacco products or inhalant delivery systems to en-
29 sure compliance with the laws of this state designed to discourage the use
30 of tobacco products and inhalant delivery systems by persons under 21 years

1 of age, including ORS 167.750, 167.755, 167.760, 167.765, 167.775, 167.780 and
2 431A.175.

3 **“(b) The authority shall ensure that a retailer is inspected as de-**
4 **scribed in this subsection at least once each year.**

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

9 “(b) The department may not use the services of a retired state police
10 officer to displace an active state police member.

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

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

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

24 “(b) The report submitted under this subsection must contain information
25 describing:

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

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

30 “(C) The strategies to be utilized for enforcing the laws listed in sub-

1 section (2) of this section during the biennium following the report.

2 “(6) The authority shall adopt rules for conducting random inspections
3 of establishments that distribute or sell tobacco products or inhalant deliv-
4 ery systems. The rules shall provide that inspections may take place:

5 “(a) Only in areas open to the public;

6 “(b) Only during the hours that tobacco products or inhalant delivery
7 systems are distributed or sold; and

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

10

11

“LOCAL REGULATION

12

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

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

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

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

20 **“(d) ‘Tobacco products’ has the meaning given that term in ORS**
21 **431A.175.**

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

23 **“(a) Enforce, pursuant to an ordinance enacted by the governing**
24 **body of the local public health authority, standards for regulating the**
25 **retail sale of tobacco products and inhalant delivery systems for pur-**
26 **poses related to public health and safety in addition to the standards**
27 **described in paragraph (b) of this subsection, including qualifications**
28 **for engaging in the retail sale of tobacco products or inhalant delivery**
29 **systems that are in addition to the qualifications described in section**
30 **5 of this 2020 Act;**

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

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

8 **“(c) Use outreach and educational services to provide businesses**
9 **that engage in the retail sale of tobacco products or inhalant delivery**
10 **systems with information pertaining to local ordinances and rules,**
11 **state laws and rules and federal laws and regulations regulating the**
12 **retail sale of tobacco products and inhalant delivery systems.**

13 **“(3)(a) A local public health authority may impose on businesses**
14 **that engage in the retail sale of tobacco products or inhalant delivery**
15 **systems a fee for paying the expenses of activities described in sub-**
16 **section (2) of this section. Pursuant to an agreement entered into un-**
17 **der section 13 of this 2020 Act, the Department of Revenue shall collect**
18 **the fee moneys for, and transfer the fee moneys to, the local public**
19 **health authority. Moneys transferred to a local public health author-**
20 **ity under this subsection must be deposited in a fund of the local**
21 **public health authority. Moneys deposited in a fund under this sub-**
22 **section may only be spent by the local public health authority for the**
23 **purposes of subsection (2) of this section.**

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

27 **“(4) A local public health authority may impose a civil penalty not**
28 **to exceed \$5,000 on a business that engages in the retail sale of tobacco**
29 **products or inhalant delivery systems for violating a standard de-**
30 **scribed in subsection (2) of this section. If a civil penalty is imposed**

1 under this section, a civil penalty may not be imposed for the com-
2 mission of the same act under ORS 431A.178 or section 8 of this 2020
3 Act.

4 “(5) The Oregon Health Authority shall:

5 “(a) Ensure that state standards established by state law and rule
6 regarding the regulation of the retail sale of tobacco products and
7 inhalant delivery systems are administered and enforced consistently
8 throughout this state;

9 “(b) Establish a database or other mechanism for collecting infor-
10 mation from local public health authorities and the general public re-
11 garding the regulation of the retail sale of tobacco products and
12 inhalant delivery systems for purposes related to public health and
13 safety, including any information related to complaints about a person
14 that makes retail sales of tobacco products or inhalant delivery sys-
15 tems;

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

19 “(d) Assess the effectiveness of state and local programs for regu-
20 lating the retail sale of tobacco products and inhalant delivery sys-
21 tems; and

22 “(e) Adopt any rules necessary to implement or administer the
23 provisions of this section.

24

25

“REPEAL

26

27 “SECTION 18. Repeal. ORS 431A.180 is repealed.

28

29

“MISCELLANEOUS

30

1 **SECTION 19. Continuity.** A city, local governing body or local
2 public health authority that, on or before the operative date specified
3 in section 21 of this 2020 Act, enforces standards described in section
4 17 (2)(a) of this 2020 Act may continue to enforce the standards on and
5 after the operative date specified in section 21 of this 2020 Act.

6 **SECTION 20. Applicability.** The amendments to ORS 431A.178 by
7 section 15 of this 2020 Act apply to violations for conduct occurring
8 on or after the operative date specified in section 21 of this 2020 Act.

9 **SECTION 21. Operative date.** (1) Sections 1 to 14 and 17 of this 2020
10 Act, the amendments to ORS 431A.178 and 431A.183 by sections 15 and
11 16 of this 2020 Act and the repeal of ORS 431A.180 by section 18 of this
12 2020 Act become operative on January 1, 2021.

13 **(2)** The Department of Revenue, the Oregon Health Authority and
14 local public health authorities may take any action before the opera-
15 tive date specified in subsection (1) of this section that is necessary
16 to enable the department, the Oregon Health Authority and local
17 public health authorities to exercise, on and after the operative date
18 specified in subsection (1) of this section, all the duties, functions and
19 powers conferred on the department, the Oregon Health Authority and
20 local public health authorities by sections 1 to 14 and 17 of this 2020
21 Act, the amendments to ORS 431A.178 and 431A.183 by sections 15 and
22 16 of this 2020 Act and the repeal of ORS 431A.180 by section 18 of this
23 2020 Act.

24 **SECTION 22. Unit and section captions.** The unit and section cap-
25 tions used in this 2020 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 2020 Act.

28 **SECTION 23. Effective date.** This 2020 Act takes effect on the 91st
29 day after the date on which the 2020 regular session of the Eightieth
30 Legislative Assembly adjourns sine die.”.

