

Enrolled
Senate Bill 587

Sponsored by Senator TAYLOR, Representative SALINAS; Senators GORSEK, MANNING JR, PATTERSON, STEINER HAYWARD, Representatives DEXTER, PRUSAK, REYNOLDS, WILDE (Pre-session filed.)

CHAPTER

AN ACT

Relating to public health; creating new provisions; amending ORS 431A.178 and 431A.183; repealing ORS 167.785 and 431A.180; and prescribing an effective date.

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

TOBACCO RETAILER LICENSURE

SECTION 1. Definitions. As used in sections 1 to 14 of this 2021 Act:

- (1) "Governing body of a local public health authority" has the meaning given that term in ORS 431.003.
- (2) "Inhalant delivery system" has the meaning given that term in ORS 431A.175.
- (3) "Local public health authority" has the meaning given that term in ORS 431.003.
- (4) "Premises" means the real property on which a business that makes retail sales of tobacco products or inhalant delivery systems is located.
- (5) "Tobacco products" has the meaning given that term in ORS 431A.175.

SECTION 2. Purpose. The purpose of sections 1 to 14 of this 2021 Act is to improve enforcement of local ordinances and rules, state laws and rules and federal laws and regulations that govern the retail sale of tobacco products and inhalant delivery systems.

SECTION 3. Licensure requirement. A person may not make a retail sale of a tobacco product or an inhalant delivery system at or from a premises located in this state unless the person sells the tobacco product or inhalant delivery system at or from a premises licensed or otherwise authorized under section 5 or 18 of this 2021 Act.

SECTION 4. Premises to which Act does not apply. Notwithstanding section 3 of this 2021 Act, sections 1 to 14 of this 2021 Act do not apply to a person making a retail sale of an inhalant delivery system at a medical marijuana dispensary registered under ORS 475B.858 or at a premises for which a license has been issued under ORS 475B.105, unless the person makes a retail sale of an inhalant delivery system that contains nicotine.

SECTION 5. Licensure. (1) Except as provided in subsection (8) of this section, the Department of Revenue shall issue licenses to, and annually renew licenses for, a person that makes retail sales of tobacco products or inhalant delivery systems at qualified premises.

- (2) To be qualified for licensure under this section, a premises:
 - (a) Must be a premises that is fixed and permanent;
 - (b) May not be located in an area that is zoned exclusively for residential use; and

(c) Must meet any qualification for engaging in the retail sale of tobacco products and inhalant delivery systems enacted as an ordinance by the governing body of a local public health authority under section 17 of this 2021 Act, provided that the department has knowledge of the qualification pursuant to an agreement entered into under section 13 of this 2021 Act.

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

- (a) Procedures for applying for and renewing licenses; and
- (b) Licensure application, issuance and renewal fees.

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

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

(6) Fees established under subsection (3)(b) of this section must be reasonably calculated to cover but not exceed the costs incurred by the department in administering sections 1 to 14 of this 2021 Act.

(7) All moneys collected under this section shall be deposited in the suspense account described in section 10 of this 2021 Act.

(8) The department may not require a person that makes retail sales of tobacco products or inhalant delivery systems to obtain a license under this section if the person holds a license or other authorization issued by a city or local public health authority pursuant to section 18 of this 2021 Act.

SECTION 6. Proof of licensure. A person to which a license or other authorization has been issued under section 5 or 18 of this 2021 Act must post proof of licensure or other authorization in a clear and conspicuous place at the premises for which the license or other authorization has been issued.

SECTION 7. Revocation, suspension, refusal to issue or renew. (1) The Department of Revenue may revoke, suspend or refuse to issue or renew a license issued under section 5 of this 2021 Act if the person that holds or seeks the license, an individual who participates in the management of the premises for which the license has been or would be issued or an individual who is employed for the purpose of making retail sales at the premises:

(a) Violates sections 1 to 14 of this 2021 Act, a rule adopted under sections 1 to 14 of this 2021 Act or any other state law or rule or federal law or regulation that governs the retail sale of tobacco products or inhalant delivery systems or state taxation;

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

(c) Makes a false statement to the department.

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

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

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

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

(4) The department shall adopt rules to provide that, subject to subsection (2) of this section, a license issued under section 5 of this 2021 Act must be suspended for an amount of time established by the department by rule if a person described in subsection (1) of this section is found to have committed an act described in subsection (1)(a) to (c) of this section three or more times.

SECTION 8. Civil penalty. (1) The Department of Revenue may impose a civil penalty against a person that holds or seeks a license issued under section 5 of this 2021 Act if the person that holds or seeks the license, an individual who participates in the management of the premises for which the license has been or would be issued or an individual who is employed for the purpose of making retail sales at the premises:

(a) Violates sections 1 to 14 of this 2021 Act, a rule adopted under sections 1 to 14 of this 2021 Act or any other state law or rule or federal law or regulation that governs the retail sale of tobacco products or inhalant delivery systems or state taxation; or

(b) Makes a false statement to the department.

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

(3) Amounts collected by the department under this section shall be deposited in the General Fund.

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

(5) If a civil penalty is imposed under this section, a civil penalty may not be imposed for the commission of the same act under ORS 431A.178 or pursuant to an ordinance or rule adopted under section 17 of this 2021 Act.

SECTION 9. Seizure and forfeiture of contraband tobacco products and contraband inhalant delivery systems. (1) For purposes of this section, a tobacco product or inhalant delivery system sold or held for sale at or from a premises for which a license has not been issued under section 5 of this 2021 Act is a contraband tobacco product or contraband inhalant delivery system.

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

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

SECTION 10. Suspense account for administration and enforcement. (1) Amounts collected by the Department of Revenue under section 5 of this 2021 Act shall be paid to the State Treasurer to be held in a suspense account established under ORS 293.445.

(2) From moneys held in the suspense account, the department may pay expenses for the administration and enforcement of sections 1 to 14 of this 2021 Act and the collection of fees under sections 1 to 14 of this 2021 Act. Refunds, including refunds of erroneous overpayments or refunds of other moneys received in which the department has no legal interest, shall be paid out of the suspense account.

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

SECTION 11. Rules. The Department of Revenue may adopt rules necessary for the effective administration of sections 1 to 14 of this 2021 Act.

SECTION 12. Fees. The Oregon Health Authority shall adopt by rule fees necessary to pay the expenses of administering and enforcing ORS 431A.175 and 431A.183 and section 17 of this 2021 Act. Pursuant to an agreement entered into under section 13 of this 2021 Act, the Department of Revenue shall collect the fee moneys for, and transfer the fee moneys to, the authority. Moneys transferred to the authority under this section must be deposited in the Oregon Health Authority Fund established under ORS 413.101. Moneys deposited in the fund under this section are continuously appropriated to the authority for the purposes of administering and enforcing ORS 431A.175 and 431A.183 and section 17 of this 2021 Act.

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

(a) Share information necessary for the effective administration of sections 1 to 14 and 17 of this 2021 Act and ORS 431A.175 and 431A.183; and

(b) Enter into an agreement for purposes of collecting fee moneys for the authority pursuant to section 12 of this 2021 Act from each retailer of tobacco products or inhalant delivery systems at the same time that the department collects fee moneys from the retailer under section 5 of this 2021 Act, and transferring the fee moneys collected pursuant to section 12 of this 2021 Act to the authority for deposit in the Oregon Health Authority Fund established under ORS 413.101.

(2) The department and each local public health authority that does not require licensure or other authorization pursuant to section 18 of this 2021 Act shall:

(a) Share information necessary for the effective administration of sections 1 to 14 and 17 of this 2021 Act; and

(b) Enter into an agreement for purposes of collecting any fee moneys for the local public health authority pursuant to section 17 of this 2021 Act from each retailer of tobacco products or inhalant delivery systems located within the area over which the local public health authority has jurisdiction at the same time that the department collects fee moneys from the retailer under section 5 of this 2021 Act, and transferring the fee moneys collected pursuant to section 17 of this 2021 Act to the local public health authority for deposit in a fund of the local public health authority.

(3) The department and each city or local public health authority that requires licensure or other authorization pursuant to section 18 of this 2021 Act shall:

(a) Share information necessary for the effective administration of the licensure or other authorization pursuant to section 18 of this 2021 Act and ORS 323.005 to 323.482, 323.500 to 323.645 and 323.700 to 323.730 and any rules adopted under ORS 323.005 to 323.482, 323.500 to 323.645 or 323.700 to 323.730; and

(b) Enter into an agreement under which the city or local public health authority agrees to enforce standards described in section 17 (2)(a) of this 2021 Act against persons licensed or otherwise authorized by the city or local public health authority under section 18 of this 2021 Act, including through revocation of the license or other authorization of a person that violates the standards or ORS 323.005 to 323.482, 323.500 to 323.645 and 323.700 to 323.730 and any rules adopted under ORS 323.005 to 323.482, 323.500 to 323.645 or 323.700 to 323.730.

(4) The Oregon Health Authority and each local public health authority shall share information necessary for the effective administration of sections 1 to 14 and 17 of this 2021 Act and ORS 431A.175 and 431A.183.

(5) Notwithstanding the confidentiality provisions of ORS 323.403 and 323.595, the department may disclose information received under ORS 323.005 to 323.482 and 323.500 to 323.645 to a city or local public health authority to the extent the department deems necessary.

SECTION 14. Suspense account for fee money transfers. (1) Amounts collected by the Department of Revenue pursuant to agreements entered into under section 13 of this 2021

Act shall be paid to the State Treasurer to be held in a suspense account established under ORS 293.445.

(2) From moneys held in the suspense account, the department shall make transfers to the Oregon Health Authority and local public health authorities as required by section 13 of this 2021 Act.

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

STATE PUBLIC HEALTH AND SAFETY LAWS

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

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

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

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

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

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

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

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

(3) Amounts collected under this section shall be deposited in the General Fund.

(4) If a civil penalty is imposed under this section, a civil penalty may not be imposed for the commission of the same act under section 8 or 17 of this 2021 Act.

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

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

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

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

(2)(a) The authority may enter into an agreement with federal, state and local government agencies, including federal, state and local law enforcement agencies, to assist the authority in carrying out the authority's duties under ORS 431A.175 and to conduct random, unannounced inspections of wholesalers and retailers of tobacco products or inhalant delivery systems to ensure compliance with the laws of this state designed to discourage the use of tobacco products and inhalant delivery systems by persons under 21 years of age, including ORS 167.750, 167.755, 167.760, 167.765, 167.775, 167.780 and 431A.175.

(b) The authority shall ensure that a retailer is inspected as described in this subsection at least once each year. A retailer that is found to be out of compliance with the laws described in paragraph (a) of this subsection may be reinspected as the authority determines necessary.

(c) The authority may adopt rules to carry out paragraph (b) of this subsection.

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

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

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

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

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

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

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

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

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

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

(a) Only in areas open to the public;

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

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

LOCAL REGULATION

SECTION 17. Local regulation. (1) As used in this section:

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

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

(c) **“Local public health authority” has the meaning given that term in ORS 431.003.**

(d) **“Tobacco products” has the meaning given that term in ORS 431A.175.**

(2) Each local public health authority may:

(a) **Enforce, pursuant to an ordinance enacted by the governing body of the local public health authority, standards for regulating the retail sale of tobacco products and inhalant delivery systems for purposes related to public health and safety in addition to the standards described in paragraph (b) of this subsection, including qualifications for engaging in the retail sale of tobacco products or inhalant delivery systems that are in addition to the qualifications described in section 5 of this 2021 Act;**

(b)(A) **Administer and enforce standards established by state law or rule relating to the regulation of the retail sale of tobacco products and inhalant delivery systems for purposes**

related to public health and safety if the local public health authority and the Oregon Health Authority enter into an agreement pursuant to ORS 190.110; or

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

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

(3)(a) A local public health authority may impose on businesses that engage in the retail sale of tobacco products or inhalant delivery systems a fee for paying the expenses of activities described in subsection (2) of this section. Pursuant to an agreement entered into under section 13 of this 2021 Act, the Department of Revenue shall collect the fee moneys for, and transfer the fee moneys to, the local public health authority. Moneys transferred to a local public health authority under this subsection must be deposited in a fund of the local public health authority. Moneys deposited in a fund under this subsection may only be spent by the local public health authority for the purposes of subsection (2) of this section.

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

(4) A local public health authority may impose a civil penalty not to exceed \$5,000 on a business that engages in the retail sale of tobacco products or inhalant delivery systems for violating a standard described in subsection (2) of this section. If a civil penalty is imposed under this section, a civil penalty may not be imposed for the commission of the same act under ORS 431A.178 or section 8 of this 2021 Act.

(5) The Oregon Health Authority shall:

(a) Subject to section 18 of this 2021 Act, ensure that state standards established by state law and rule regarding the regulation of the retail sale of tobacco products and inhalant delivery systems are administered and enforced consistently throughout this state;

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

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

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

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

(6)(a) A city or local public health authority may not adopt an ordinance that prohibits a premises that makes retail sales of tobacco products or inhalant delivery systems from being located at the same address as a pharmacy, as defined in ORS 689.005.

(b) A city or local public health authority that, on or before the effective date of this 2021 Act, adopted an ordinance described in paragraph (a) of this subsection may continue to enforce the ordinance on and after the effective date of this 2021 Act.

(7) Except as provided in section 18 of this 2021 Act, a city or local public health authority may not require a person that makes retail sales of tobacco products or inhalant delivery systems to hold a license or other authorization issued by the city or local public health authority in addition to the license issued under section 5 of this 2021 Act.

SECTION 18. Continuity. A city or local public health authority that, on or before January 1, 2021, and pursuant to an ordinance adopted by the governing body of the city or local public health authority, enforced standards described in section 17 (2)(a) of this 2021 Act and required that a person that makes retail sales of tobacco products or inhalant delivery systems in an area subject to the jurisdiction of the city or local public health authority hold

a license or other authorization issued by the city or local public health authority may continue to enforce the standards and require the license or other authorization on and after the operative date specified in section 24 of this 2021 Act.

REPEAL

SECTION 19. Repeal. ORS 167.785 and 431A.180 are repealed.

APPLICABILITY

SECTION 20. Applicability. The amendments to ORS 431A.178 by section 15 of this 2021 Act apply to violations for conduct occurring on or after the operative date specified in section 24 of this 2021 Act.

FISCAL PROVISIONS

SECTION 21. Notwithstanding any other law limiting expenditures, the limitation on expenditures established by section 2 (4), chapter __, Oregon Laws 2021 (Enrolled Senate Bill 5537), for the biennium beginning July 1, 2021, as the maximum limit for payment of expenses from fees, moneys or other revenues, including Miscellaneous Receipts and reimbursements from federal service agreements, but excluding lottery funds and federal funds not described in this section, collected or received by the Department of Revenue, for the Business Division, is increased by \$1,174,046, for the implementation of sections 1 to 14 of this 2021 Act.

SECTION 22. Notwithstanding any other law limiting expenditures, the limitation on expenditures established by section 2 (1), chapter __, Oregon Laws 2021 (Enrolled House Bill 5024), for the biennium beginning July 1, 2021, as the maximum limit for payment of expenses from fees, moneys or other revenues, including Miscellaneous Receipts, tobacco tax receipts, marijuana tax receipts, beer and wine tax receipts, provider taxes and Medicare receipts, but excluding lottery funds and federal funds not described in this section, collected or received by the Oregon Health Authority, for Health Systems, Health Policy and Analytics, and Public Health, is increased by \$2,061,726.

CAPTIONS

SECTION 23. Unit and section captions. The unit and section captions used in this 2021 Act are provided only for the convenience of the reader and do not become part of the statutory law of this state or express any legislative intent in the enactment of this 2021 Act.

OPERATIVE AND EFFECTIVE DATES

SECTION 24. Operative date. (1) Sections 1 to 14 and 17 of this 2021 Act, the amendments to ORS 431A.178 and 431A.183 by sections 15 and 16 of this 2021 Act and the repeal of ORS 167.785 and 431A.180 by section 19 of this 2021 Act become operative on January 1, 2022.

(2) The Department of Revenue, the Oregon Health Authority and local public health authorities may take any action before the operative date specified in subsection (1) of this section that is necessary to enable the department, the Oregon Health Authority and local public health authorities to exercise, on and after the operative date specified in subsection (1) of this section, all the duties, functions and powers conferred on the department, the Oregon Health Authority and local public health authorities by sections 1 to 14 and 17 of this 2021 Act, the amendments to ORS 431A.178 and 431A.183 by sections 15 and 16 of this 2021 Act and the repeal of ORS 167.785 and 431A.180 by section 19 of this 2021 Act.

SECTION 25. This 2021 Act takes effect on the 91st day after the date on which the 2021 regular session of the Eighty-first Legislative Assembly adjourns sine die.

Passed by Senate June 21, 2021

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Lori L. Brocker, Secretary of Senate

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Peter Courtney, President of Senate

Passed by House June 24, 2021

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Tina Kotek, Speaker of House

Received by Governor:

.....M,....., 2021

Approved:

.....M,....., 2021

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Kate Brown, Governor

Filed in Office of Secretary of State:

.....M,....., 2021

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Shemia Fagan, Secretary of State