

DRAFT

SUMMARY

Requires, on and after January 1, 2017, persons selling tobacco products or inhalant delivery systems in this state to be licensed by Department of Revenue. Provides department with power to discipline both licensees and persons selling tobacco products or inhalant delivery systems without license.

Specifies that cities and counties may not require additional license to sell tobacco products or inhalant delivery systems and may not adopt certain other types of ordinance related to premises that sell tobacco products or inhalant delivery systems.

Modifies provisions related to Oregon Health Authority's power to inspect and impose civil penalties on persons selling tobacco products and inhalant delivery systems.

Declares emergency, effective on passage.

A BILL FOR AN ACT

Relating to the regulation of persons who sell products that cannot be sold to persons under the age of 18; creating new provisions; amending ORS 181A.335, 431A.178 and 431A.183; repealing ORS 431A.180; and declaring an emergency.

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

LICENSURE

OPERATIVE JANUARY 1, 2017

SECTION 1. Definitions. As used in sections 1 to 11 of this 2016 Act:

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

1 (2) “Premises” means a business that makes retail sales of tobacco
2 products or inhalant delivery systems.

3 (3) “Tobacco products” has the meaning given that term in ORS
4 431A.175.

5 **SECTION 2. Purposes.** The purposes of sections 1 to 11 of this 2016
6 Act are:

7 (1) To build and maintain a database of information related to
8 premises that sell tobacco products and inhalant delivery systems;

9 (2) To improve enforcement of ORS 431A.175 and rules adopted un-
10 der ORS 431A.175;

11 (3) To improve enforcement of local ordinances and rules, state laws
12 and rules and federal laws and regulations that govern the retail sale
13 of tobacco products or inhalant delivery systems for purposes related
14 to either taxation or public health and safety; and

15 (4) To discourage the consumption of tobacco products and inhalant
16 delivery systems.

17 **SECTION 3. Licensure requirement.** A person may not make a re-
18 tail sale of a tobacco product or an inhalant delivery system in this
19 state unless the person sells the tobacco product or inhalant delivery
20 system at a premises for which a license has been issued under section
21 5 of this 2016 Act.

22 **SECTION 4. Premises to which Act does not apply.** Notwithstand-
23 ing section 3 of this 2016 Act, sections 1 to 11 of this 2016 Act do not
24 apply to a person making a retail sale of an inhalant delivery system
25 at a medical marijuana dispensary registered under ORS 475B.450 or a
26 premises for which a retail license has been issued under ORS 475B.110
27 unless the person makes a retail sale of an inhalant delivery system
28 that contains nicotine.

29 **SECTION 5. Licensure.** (1) The Department of Revenue shall issue
30 licenses to, and annually renew licenses for, qualified premises that
31 make retail sales of tobacco products or inhalant delivery systems.

1 (2) To be qualified for licensure under this section, a premises:

2 (a) Must be a premises that is fixed and permanent; and

3 (b) May not be located in an area that is zoned exclusively for res-
4 idential use.

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

7 (a) Procedures for applying for and renewing licenses; and

8 (b) Licensure application, issuance and renewal fees.

9 (4) Information regarding a license issued under this section is not
10 confidential. The department shall publicly disclose or publish a list
11 of persons to whom a license has been issued under this section, the
12 addresses of premises for which a license has been issued under this
13 section and any other information included on a license issued under
14 this section.

15 (5) The department shall maintain a database of information related
16 to the issuance of licenses under this section. At a minimum, the da-
17 tabase must include the name of each person to whom a license has
18 been issued and the address of each premises for which a license has
19 been issued. For the purpose of conducting inspections under ORS
20 431A.183, information maintained in the database must be accessible
21 by the Oregon Health Authority at all times.

22 (6) Fees adopted under subsection (3)(b) of this section must be
23 reasonably calculated not to exceed the costs associated with:

24 (a) The department administering sections 1 to 11 of this 2016 Act;

25 (b) The authority conducting inspections under ORS 431A.183; and

26 (c) The authority providing education and outreach pursuant to
27 section 16 of this 2016 Act.

28 (7) All moneys collected under this section shall be deposited in the
29 suspense account described in section 9 of this 2016 Act.

30 **SECTION 6. Proof of licensure.** A person to whom a license has
31 been issued under section 5 of this 2016 Act shall post proof of

1 licensure in a clear and conspicuous place at the premises for which
2 the license has been issued.

3 **SECTION 7. Discipline.** (1) The Department of Revenue may revoke,
4 suspend or refuse to issue or renew a license issued under section 5
5 of this 2016 Act if the person that holds or seeks the license, an indi-
6 vidual who participates in the management of the premises for which
7 the license has been or would be issued or an individual who is em-
8 ployed for the purpose of making retail sales at the premises:

9 (a) Violates sections 1 to 11 of this 2016 Act or ORS 431A.175 or a
10 rule adopted under sections 1 to 11 of this 2016 Act or ORS 431A.175;

11 (b) Violates a local ordinance or rule, state law or rule or federal
12 law or regulation that governs the retail sale of tobacco products or
13 inhalant delivery systems;

14 (c) Violates a state law or rule related to taxation; or

15 (d) Makes a false statement to the department.

16 (2) Notwithstanding ORS 305.280, a decision by the department to
17 revoke, suspend or refuse to issue or renew a license under this section
18 may be appealed by the person that holds or seeks the license to the
19 magistrate division of the tax court within 30 days of the date of the
20 decision to revoke, suspend or refuse to issue or renew the license, in
21 the manner provided in ORS 305.404 to 305.560.

22 (3) The department may impose a civil penalty against a person that
23 holds a license issued under section 5 of this 2016 Act if the person
24 violates:

25 (a) Sections 1 to 11 of this 2016 Act or a rule adopted under sections
26 1 to 11 of this 2016 Act; or

27 (b) A local ordinance or rule, state law or rule or federal law or
28 regulation that governs the retail sale of tobacco products or inhalant
29 delivery systems for purposes related to taxation.

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

1 (5) Amounts collected by the department under this section shall
2 be deposited in the suspense account described in section 9 of this 2016
3 Act.

4 SECTION 8. Seizure and forfeiture of contraband tobacco products
5 and contraband inhalant delivery systems. (1) For purposes of this
6 section, a tobacco product or inhalant delivery system sold at a
7 premises for which a license has not been issued under section 5 of this
8 2016 Act is a contraband tobacco product or contraband inhalant de-
9 livery system.

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

16 (3) Notwithstanding ORS 305.280, a person may appeal a seizure or
17 forfeiture made under this section to the magistrate division of the tax
18 court within 30 days of the date of the seizure in the manner provided
19 in ORS 305.404 to 305.560.

20 SECTION 9. Suspense account. Amounts collected by the Depart-
21 ment of Revenue under sections 5 and 7 of this 2016 Act shall be paid
22 to the State Treasurer to be held in a suspense account established
23 under ORS 293.445. The department may pay expenses related to the
24 administration and enforcement of sections 1 to 11 of this 2016 Act by
25 the department out of moneys deposited in the account. Additionally,
26 the department may transfer moneys to the Oregon Health Authority
27 pursuant to the agreement entered into under section 11 of this 2016
28 Act out of moneys deposited in the account. Amounts necessary to pay
29 administrative and enforcement expenses are continuously appropri-
30 ated to the department from the suspense account.

31 SECTION 10. Rules. The Department of Revenue shall adopt rules

1 necessary for the effective administration of sections 1 to 11 of this
2 2016 Act.

3 SECTION 11. Intergovernmental agreement. The Department of
4 Revenue and the Oregon Health Authority shall enter into an agree-
5 ment for purposes of:

6 (1) Sharing information necessary for the effective administration
7 of sections 1 to 11 of this 2016 Act and ORS 431A.175 and 431A.183. As
8 part of the agreement, the department and authority shall share in-
9 formation:

10 (a) Maintained in the database established under section 5 of this
11 2016 Act;

12 (b) Related to inspections conducted under ORS 431A.183; and

13 (c) Related to any administrative proceeding the subject of which
14 is a violation of a local ordinance or rule, state law or rule or federal
15 law or regulation that governs the retail sale of tobacco products or
16 inhalant delivery systems.

17 (2) Transferring moneys collected under section 5 of this 2016 Act
18 from the department to the authority for the purposes of:

19 (a) Funding inspections conducted under ORS 431A.183; and

20 (b) Providing education and outreach pursuant to section 16 of this
21 2016 Act.

22
23 **PREEMPTION**
24 **EFFECTIVE ON PASSAGE**
25

26 SECTION 12. Series placement. Section 13 of this 2016 Act is added
27 to and made a part of sections 1 to 11 of this 2016 Act.

28 SECTION 13. Preemption. A city or county may not adopt an ordi-
29 nance:

30 (1) That requires a person to have a license issued by the city or
31 county to make a retail sale of a tobacco product or an inhalant de-

livery system in addition to the license required by section 3 of this 2016 Act;

(2) 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; or

(3) That prohibits a premises that makes retail sales of tobacco products or inhalant delivery systems from being located within a certain distance of a school or any real property owned by the city or county.

PUBLIC HEALTH AND SAFETY
EFFECTIVE ON PASSAGE

SECTION 14. ORS 431A.183 is amended to read:

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

[(a) *Coordinate with law enforcement agencies 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 minors, including ORS 163.575, 163.580, 167.400, 167.402 and 431A.175; and*]

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

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

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

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

[(2) *The authority shall adopt rules concerning random inspections of places that distribute or sell tobacco products or inhalant delivery systems that are consistent with any federal law or regulation relating to the inspection of such*

places. 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.]

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

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

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

(b) A local ordinance or rule, 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) The authority may enter into one or more agreements with local, state or federal agencies, including the Oregon Liquor Control Commission, for the purpose of conducting inspections under this section.

(3) To the extent practicable, the authority shall conduct inspections under this section in a uniform and cost-effective manner.

(4) The authority shall adopt rules for the effective administration of this section. Rules adopted under this subsection must be consistent with any federal law or regulation relating to the inspection of businesses that engage in the wholesale or retail sale of tobacco products or inhalant delivery systems.

(5) The authority shall report on the administration of this section, and on agreements entered into pursuant to subsection (2) of this section, to the Legislative Assembly in the manner required by ORS

1 **192.245 on or before February 1 of each odd-numbered year.**

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

3 *431A.178. [(1) The Oregon Health Authority may impose a civil penalty for*
4 *each violation of ORS 431A.175. A civil penalty imposed under this section*
5 *may not be less than \$250 or more than \$1,000.]*

6 **(1) The Oregon Health Authority may impose a civil penalty against**
7 **a person that engages in the wholesale or retail sale of tobacco pro-**
8 **ducts or inhalant delivery systems, as those terms are defined in ORS**
9 **431A.175, if the person violates:**

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

11 **(b) A local ordinance or rule, state law or rule or federal law or**
12 **regulation that governs the wholesale or retail sale of tobacco pro-**
13 **ducts or inhalant delivery systems for purposes related to public**
14 **health and safety.**

15 **(2) Except as provided in subsection (3) of this section, a civil pen-**
16 **alty imposed under this section may not be more than \$1,000 per vio-**
17 **lation.**

18 **(3) If a violation concerns the sale of a tobacco product or an**
19 **inhalant delivery system to a person under 18 years of age, a civil**
20 **penalty imposed under this section shall be for an amount identified**
21 **in a penalty schedule adopted by the authority by rule. In adopting**
22 **a penalty schedule pursuant to this subsection, the authority shall:**

23 **(a) Establish increased penalties for multiple violations occurring**
24 **within specific time periods as is necessary to deter future violations;**
25 **and**

26 **(b) Make the penalty schedule consistent with any penalty schedule**
27 **used by the United States Food and Drug Administration to discipline**
28 **persons selling tobacco products or inhalant delivery systems to per-**
29 **sons under 18 years of age.**

30 **(4) The authority may impose a fee on a person that engages in the**
31 **wholesale or retail sale of tobacco products or inhalant delivery sys-**

1 **tems if the authority conducts a second or subsequent inspection**
 2 **within a specific time period as set forth in the penalty schedule**
 3 **adopted pursuant to subsection (3) of this section. A fee imposed under**
 4 **this subsection must be reasonably calculated to pay the costs of**
 5 **conducting the inspection.**

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

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

15 **SECTION 16. (1) The Oregon Health Authority may provide educa-**
 16 **tion and outreach to the general public and to owners, managers and**
 17 **employees of businesses that engage in the wholesale or retail sale of**
 18 **tobacco products or inhalant delivery systems about:**

19 (a) ORS 431A.175 and rules adopted under ORS 431A.175; and

20 (b) Local ordinances and rules, state laws and rules and federal laws
 21 and regulations that govern the wholesale or retail sale of tobacco
 22 products or inhalant delivery systems.

23 (2) The authority may enter into one or more agreements with lo-
 24 cal, state or federal agencies for the purpose of conducting education
 25 and outreach under this section.

27 CONFORMING AMENDMENTS

28
 29 **SECTION 17.** ORS 181A.335 is amended to read:

30 181A.335. (1) As used in this section, “tobacco products” has the meaning
 31 given that term in ORS 431A.175.

(2) The Oregon Health Authority may apply for and accept moneys from the United States Government or other public or private sources for utilization of those moneys by the Department of State Police in accordance with any federal restrictions or other funding source restrictions to carry out the duties, functions and powers of the department under this section. Moneys received as provided under this subsection *[shall]* **may** be deposited into the State Treasury to the credit of the State Police Tobacco Law Enforcement Fund. Moneys that are subject to funding source conditions or restrictions *[shall]* **may** be placed in separate subaccounts of the fund and accounted for separately from other fund moneys.

(3) The department *[shall]* **may** establish and administer a program employing retired state police officers who are active reserve officers for the purpose of enforcing laws designed to discourage the use of tobacco products by persons under 18 years of age. **If the department establishes and administers a program under this subsection,** the department shall periodically consult with the authority to maximize program qualification for federal funds to enforce laws designed to discourage the use of tobacco products by persons under 18 years of age, including but not limited to grants under P.L. 102-321, section 1926 (42 U.S.C. 300x-26). Service by a retired state police member under this section is subject to ORS 238.082. The department may not use the services of a retired state police officer under this section to displace an active state police member from the enforcement of laws concerning tobacco products.

(4) **If the department establishes and administers a program under subsection (3) of this section,** the department shall adopt rules for carrying out subsection (3) of this section.

REPEAL

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

MISCELLANEOUS

SECTION 19. Operative date. (1) Sections 1 to 11 of this 2016 Act become operative on January 1, 2017.

(2) The Department of Revenue and the Oregon Health Authority may take any action before the operative date specified in subsection (1) of this section that is necessary to enable the department and authority 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 and authority by sections 1 to 11 of this 2016 Act.

SECTION 20. Section and unit captions. The section and unit captions used in this 2016 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 2016 Act.

SECTION 21. Emergency clause. This 2016 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2016 Act takes effect on its passage.
