

Requested by HOUSE COMMITTEE ON HEALTH CARE

**PROPOSED AMENDMENTS TO
A-ENGROSSED SENATE BILL 235**

1 On page 1 of the printed A-engrossed bill, line 2, after the semicolon de-
2 lete the rest of the line and insert “creating new provisions; amending ORS
3 431A.178, 431A.183 and 433.835; repealing ORS 181A.330, 181A.335 and
4 431A.180; and prescribing an effective date.”.

5 Delete lines 4 through 18 and delete page 2 and insert:
6

7 **“LICENSURE**

8 **OPERATIVE JANUARY 1, 2018**
9

10 **“SECTION 1. Definitions. As used in sections 1 to 13 of this 2017**
11 **Act:**

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

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

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

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

21 **“(5) ‘Tobacco products’ has the meaning given that term in ORS**

1 431A.175.

2 **“SECTION 2. Purposes.** The purpose of sections 1 to 13 of this 2017
3 Act is to improve enforcement of local ordinances and rules, state laws
4 and rules and federal laws and regulations that govern the retail sale
5 of tobacco products and inhalant delivery systems.

6 **“SECTION 3. Licensure requirement.** A person may not make a
7 retail sale of a tobacco product or an inhalant delivery system at or
8 from a premises located in this state unless the person sells the to-
9 bacco product or inhalant delivery system at or from a premises for
10 which a license has been issued under section 5 of this 2017 Act.

11 **“SECTION 4. Premises to which Act does not apply.** Notwith-
12 standing section 3 of this 2017 Act, sections 1 to 13 of this 2017 Act do
13 not apply to a person making a retail sale of an inhalant delivery
14 system at a medical marijuana dispensary registered under ORS
15 475B.450 or at a premises for which a license has been issued under
16 ORS 475B.110, unless the person makes a retail sale of an inhalant
17 delivery system that contains nicotine.

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

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

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

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

26 **“(c) Must meet any qualification for engaging in the retail sale of**
27 **tobacco products and inhalant delivery systems enacted as an ordi-**
28 **nance by the governing body of a local public health authority under**
29 **section 17 of this 2017 Act, provided that the department has knowl-**
30 **edge of the qualification pursuant to an agreement entered into under**

1 section 12 of this 2017 Act.

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

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

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

6 “(4) An application submitted under this section and information
7 related to applying for or renewing a license under this section is
8 confidential and not subject to public disclosure under ORS 192.410 to
9 192.505. However, an application submitted under this section and in-
10 formation related to applying for or renewing a license under this
11 section may be shared with the Department of Justice, the Oregon
12 Health Authority or a local public health authority.

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

19 “(6) Fees established under subsection (3)(b) of this section must
20 be reasonably calculated not to exceed the costs associated with the
21 department administering sections 1 to 13 of this 2017 Act.

22 “(7) All moneys collected under this section shall be deposited in the
23 suspense account described in section 10 of this 2017 Act.

24 “SECTION 6. Proof of licensure. A person to whom a license has
25 been issued under section 5 of this 2017 Act must post proof of
26 licensure in a clear and conspicuous place at the premises for which
27 the license has been issued.

28 “SECTION 7. Revocation, suspension, refusal to issue or renew. (1)
29 The Department of Revenue may revoke, suspend or refuse to issue
30 or renew a license issued under section 5 of this 2017 Act if the person

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

5 “(a) Violates sections 1 to 13 of this 2017 Act, a rule adopted under
6 sections 1 to 13 of this 2017 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;

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

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

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

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

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

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

30 **SECTION 8. Civil penalty.** (1) The Department of Revenue may

1 **impose a civil penalty against a person that holds or seeks a license**
2 **issued under section 5 of this 2017 Act if the person that holds or seeks**
3 **the license, an individual who participates in the management of the**
4 **premises for which the license has been or would be issued or an in-**
5 **dividual who is employed for the purpose of making retail sales at the**
6 **premises:**

7 **“(a) Violates sections 1 to 13 of this 2017 Act, a rule adopted under**
8 **sections 1 to 13 of this 2017 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; or**

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

12 **“(2) A civil penalty imposed under this section may not exceed**
13 **\$1,000 per violation.**

14 **“(3) Amounts collected by the department under this section shall**
15 **be deposited in the suspense account described in section 10 of this 2017**
16 **Act.**

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

21 **“(5) If a civil penalty is imposed under this section, a civil penalty**
22 **may not be imposed for the commission of the same act under ORS**
23 **431A.178 or pursuant to an ordinance or rule adopted under section 17**
24 **of this 2017 Act.**

25 **“SECTION 9. Seizure and forfeiture of contraband tobacco products**
26 **and contraband inhalant delivery systems. (1) For purposes of this**
27 **section, a tobacco product or inhalant delivery system sold or held for**
28 **sale at or from a premises for which a license has not been issued**
29 **under section 5 of this 2017 Act is a contraband tobacco product or**
30 **contraband inhalant delivery system.**

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

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

11 “SECTION 10. Suspense account for administration and enforce-
12 ment. (1) Amounts collected by the Department of Revenue under
13 sections 5 and 8 of this 2017 Act shall be paid to the State Treasurer
14 to be held in a suspense account established under ORS 293.445.

15 “(2) From moneys held in the suspense account, the department
16 may pay expenses related to the administration and enforcement of
17 sections 1 to 13 of this 2017 Act.

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

21 “SECTION 11. Rules. The Department of Revenue may adopt rules
22 necessary for the effective administration of sections 1 to 13 of this
23 2017 Act.

24 “SECTION 12. Intergovernmental agreements. (1) The Department
25 of Revenue and the Oregon Health Authority shall:

26 “(a) Share information necessary for the effective administration
27 of sections 1 to 13 and 17 of this 2017 Act and ORS 431A.175 and
28 431A.183; and

29 “(b) Enter into an agreement for purposes of collecting fee moneys
30 for the authority pursuant to ORS 431A.183 from each retailer of to-

1 **bacco products or inhalant delivery systems at the same time that the**
2 **department collects fee moneys under section 5 of this 2017 Act from**
3 **the retailer, and transferring the fee moneys to the authority for de-**
4 **posit in the Oregon Health Authority Fund established under ORS**
5 **413.101.**

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

8 **“(a) Share information necessary for the effective administration**
9 **of sections 1 to 13 and 17 of this 2017 Act; and**

10 **“(b) Enter into an agreement for purposes of collecting any fee**
11 **moneys for the local public health authority pursuant to section 17 of**
12 **this 2017 Act from each retailer of tobacco products or inhalant deliv-**
13 **ery systems located within the area over which the local public health**
14 **authority has jurisdiction at the same time that the department col-**
15 **lects fee moneys under section 5 of this 2017 Act from the retailer, and**
16 **transferring the fee moneys to the local public health authority for**
17 **deposit in a fund of the local public health authority.**

18 **“SECTION 13. Suspense account for fee money transfers. (1)**
19 **Amounts collected by the Department of Revenue pursuant to agree-**
20 **ments entered into under section 12 of this 2017 Act shall be paid to**
21 **the State Treasurer to be held in a suspense account established under**
22 **ORS 293.445.**

23 **“(2) From moneys held in the suspense account, the department**
24 **shall make transfers to the Oregon Health Authority and local public**
25 **health authorities as required by section 12 of this 2017 Act.**

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

29

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

1 **business that engages in the wholesale or retail sale of tobacco pro-**
2 **ducts or inhalant delivery systems to ensure compliance with:**

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

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

7 **“(2) The authority shall adopt rules for the effective administration**
8 **of this section. Rules adopted under this section must be consistent**
9 **with any federal law or regulation relating to the inspection of busi-**
10 **nesses that engage in the wholesale or retail sale of tobacco products**
11 **or inhalant delivery systems.**

12 **“(3) The authority shall adopt by rule fees necessary to pay the ex-**
13 **penses of administering and enforcing this section and section 17 of**
14 **this 2017 Act and ORS 431A.175. Pursuant to an agreement entered into**
15 **under section 12 of this 2017 Act, the Department of Revenue shall**
16 **collect the fee moneys for, and transfer the fee moneys to, the au-**
17 **thority. Moneys transferred to the authority under this section must**
18 **be deposited in the Oregon Health Authority Fund established under**
19 **ORS 413.101. Moneys deposited in the fund under this section are con-**
20 **tinuously appropriated to the authority for the purposes of adminis-**
21 **tering and enforcing this section and section 17 of this 2017 Act and**
22 **ORS 431A.175.**

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

24 **“431A.178. [(1) *The Oregon Health Authority may impose a civil penalty for***
25 ***each violation of ORS 431A.175. A civil penalty imposed under this section***
26 ***may not be less than \$250 or more than \$1,000.*]**

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

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

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

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

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

13 “(b) At the end of each biennium, the authority shall transfer the unob-
14 ligated moneys collected under [subsection (1) of] this section remaining in
15 the fund to the Tobacco Use Reduction Account established under ORS
16 431A.153.

17 “(4) If a civil penalty is imposed under this section, a civil penalty
18 may not be imposed for the commission of the same act under section
19 7 or 17 of this 2017 Act.

20 “SECTION 16. (1) As used in this section:

21 “(a) ‘Inhalant delivery system’ has the meaning given that term in
22 ORS 431A.175.

23 “(b) ‘Tobacco products’ has the meaning given that term in ORS
24 431A.175.

25 “(2) The Oregon Health Authority may enter into an agreement
26 with a federal agency to assist in the monitoring and enforcement of
27 federal laws and regulations related to tobacco products or inhalant
28 delivery systems. For purposes of this section, the authority may:

29 “(a) Adopt any rule necessary to implement an agreement entered
30 into under this subsection; and

1 **“(b) Take any action necessary to fulfill the authority’s duties un-**
2 **der an agreement entered into under this subsection, including per-**
3 **mitting employees of the authority to be commissioned as federal**
4 **officers.**

5 **“(3)(a) The authority may apply for and accept moneys from the**
6 **federal government or other public or private sources and, in accord-**
7 **ance with any federal restriction or other funding source restriction,**
8 **use those moneys to carry out functions related to preventing the use**
9 **of tobacco products or inhalant delivery systems by individuals who**
10 **are not the minimum age required to purchase tobacco products or**
11 **inhalant delivery systems.**

12 **“(b) Moneys received by the authority under this subsection shall**
13 **be deposited in the Oregon Health Authority Fund established under**
14 **ORS 413.101. Moneys deposited in the fund under this subsection are**
15 **continuously appropriated to the authority. Moneys subject to a fed-**
16 **eral restriction or other funding source restriction must be deposited**
17 **in a separate subaccount and accounted for separately from other fund**
18 **moneys.**

19 **“(4) The authority may enter into an agreement with the Oregon**
20 **Liquor Control Commission or the Department of State Police for**
21 **purposes of fulfilling the functions of the authority under this section.**

22

23 **“LOCAL REGULATION**

24 **EFFECTIVE 91ST DAY AFTER SINE DIE**

25

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

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

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

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

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

5 “(2) Each local public health authority:

6 “(a) Shall enforce standards established by state law or rule relating
7 to the regulation of the retail sale of tobacco products and inhalant
8 delivery systems for purposes related to public health and safety;

9 “(b) May enforce, pursuant to an ordinance enacted by the govern-
10 ing body of the local public health authority, standards for regulating
11 the retail sale of tobacco products and inhalant delivery systems for
12 purposes related to public health and safety in addition to the stan-
13 dards described in paragraph (a) of this subsection, including quali-
14 fications for engaging in the retail sale of tobacco products or inhalant
15 delivery systems that are in addition to the qualifications described in
16 section 5 of this 2017 Act; and

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

22 “(3) A local public health authority may impose on businesses that
23 engage in the retail sale of tobacco products or inhalant delivery sys-
24 tems a fee for paying the expenses of activities described in subsection
25 (2) of this section. Pursuant to an agreement entered into under sec-
26 tion 12 of this 2017 Act, the Department of Revenue shall collect the
27 fee moneys for, and transfer the fee moneys to, the local public health
28 authority. Moneys transferred to a local public health authority under
29 this subsection must be deposited in a fund of the local public health
30 authority. Moneys deposited in a fund under this subsection may only

1 be spent by the local public health authority for the purposes of sub-
2 section (2) of this section.

3 “(4) A local public health authority may impose a civil penalty not
4 to exceed \$5,000 on a business that engages in the retail sale of tobacco
5 products or inhalant delivery systems for violating a standard de-
6 scribed in subsection (2) of this section. If a civil penalty is imposed
7 under this section, a civil penalty may not be imposed for the com-
8 mission of the same act under ORS 431A.178 or section 7 of this 2017
9 Act.

10 “(5) A local public health authority may:

11 “(a) Perform the duties described in this section in accordance with
12 ORS 431.413 (2) or (3); or

13 “(b) Enter into an agreement with the Oregon Health Authority
14 under ORS 190.110 to administer and enforce, within the jurisdiction
15 of the local public health authority, the standards and processes es-
16 tablished by state law and rule regarding the regulation of the retail
17 sale of tobacco products and inhalant delivery systems.

18 “(6) The Oregon Health Authority shall:

19 “(a) Ensure that state standards established by state law and rule
20 regarding the regulation of the retail sale of tobacco products and
21 inhalant delivery systems are administered and enforced consistently
22 throughout this state;

23 “(b) Establish a database or other mechanism for collecting infor-
24 mation from local public health authorities and the general public re-
25 garding the regulation of the retail sale of tobacco products and
26 inhalant delivery systems for purposes related to public health and
27 safety, including any information related to complaints about a person
28 that makes retail sales of tobacco products or inhalant delivery sys-
29 tems;

30 “(c) Provide technical assistance to local public health authorities

1 regarding the regulation of the retail sale of tobacco products and
2 inhalant delivery systems;

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

6 “(e) Adopt any rules necessary to implement or administer the du-
7 ties of the Oregon Health Authority under this section.

8

9 “OREGON INDOOR CLEAN AIR ACT

10

11 “SECTION 17a. ORS 433.835 is amended to read:

12 “433.835. As used in ORS 433.835 to 433.875:

13 “(1) ‘Cigar bar’ means a business that:

14 “(a) Has on-site sales of cigars as defined in ORS 323.500;

15 “(b) Has a humidor on the premises;

16 “(c) Allows the smoking of cigars on the premises but prohibits the
17 smoking, aerosolizing or vaporizing of other inhalants on the premises;

18 “(d) Has been issued and operates under a full on-premises sales license
19 issued under ORS 471.175;

20 “(e) Prohibits persons under 21 years of age from entering the premises
21 and posts notice of the prohibition;

22 “(f) Does not offer video lottery games as authorized under ORS 461.217;

23 “(g) Has a maximum seating capacity of 40 persons;

24 “(h) Has a ventilation system that exhausts smoke from the business and
25 is designed and terminated in accordance with the state building code stan-
26 dards for the occupancy classification in use; and

27 “(i) Requires all employees to read and sign a document that explains the
28 dangers of exposure to secondhand smoke.

29 “(2) ‘Enclosed area’ means the entirety of the space between a floor
30 and a ceiling that is enclosed on three or more sides by permanent or

1 **temporary walls or windows, exclusive of doors or passageways, that**
2 **extend from the floor to the ceiling.**

3 “[2] (3) ‘Inhalant’ means nicotine, a cannabinoid or any other substance
4 that:

5 “(a) Is in a form that allows the nicotine, cannabinoid or substance to
6 be delivered into a person’s respiratory system;

7 “(b) Is inhaled for the purpose of delivering the nicotine, cannabinoid or
8 other substance into a person’s respiratory system; and

9 “(c)(A) Is not approved by, or emitted by a device approved by, the United
10 States Food and Drug Administration for a therapeutic purpose; or

11 “(B) If approved by, or emitted by a device approved by, the United States
12 Food and Drug Administration for a therapeutic purpose, is not marketed
13 and sold solely for that purpose.

14 “[3](a) (4)(a) ‘Place of employment’ means an enclosed area under the
15 control of a public or private employer, including work areas, employee
16 lounges, vehicles that are operated in the course of an employer’s business
17 and that are not operated exclusively by one employee, rest rooms, confer-
18 ence rooms, classrooms, cafeterias, hallways, meeting rooms, elevators and
19 stairways.

20 “(b) ‘Place of employment’ does not include a private residence unless it
21 is used as a child care facility as defined in ORS 329A.250 or a facility pro-
22 viding adult day care as defined in ORS 410.490.

23 “[4] (5) ‘Public place’ means an enclosed area open to the public.

24 “[5] (6) ‘Smoke shop’ means a business that is certified with the Oregon
25 Health Authority as a smoke shop pursuant to the rules adopted under ORS
26 433.847.

27 “[6] (7) ‘Smoking instrument’ means any cigar, cigarette, pipe or other
28 instrument used to smoke tobacco, marijuana or any other inhalant.

29

30

“REPEALS

1 **EFFECTIVE 91ST DAY AFTER SINE DIE**

2
3 **“SECTION 18. Repeal. ORS 181A.330, 181A.335 and 431A.180 are re-**
4 **pealed.**

5
6 **“MISCELLANEOUS**

7
8 **“SECTION 19. Abolishment of State Police Tobacco Law Enforce-**
9 **ment Fund. The State Police Tobacco Law Enforcement Fund is abol-**
10 **ished. On the effective date of this 2017 Act, moneys in the fund shall**
11 **be transferred to the State Treasurer for deposit in the General Fund,**
12 **and the moneys shall be available for general governmental purposes.**

13 **“SECTION 20. Applicability. The amendments to ORS 431A.178 by**
14 **section 15 of this 2017 Act apply to violations for conduct occurring**
15 **on or after the effective date of this 2017 Act.**

16 **“SECTION 21. Operative date. (1) Sections 1 to 13 of this 2017 Act**
17 **become operative on January 1, 2018.**

18 **“(2) The Department of Revenue, the Oregon Health Authority and**
19 **local public health authorities may take any action before the opera-**
20 **tive date specified in subsection (1) of this section that is necessary**
21 **to enable the department, the Oregon Health Authority and local**
22 **public health authorities to exercise, on and after the operative date**
23 **specified in subsection (1) of this section, all the duties, functions and**
24 **powers conferred on the department, the Oregon Health Authority and**
25 **local public health authorities by sections 1 to 13 of this 2017 Act.**

26 **“SECTION 22. Section and unit captions. The section and unit cap-**
27 **tions used in this 2017 Act are provided only for the convenience of the**
28 **reader and do not become part of the statutory law of this state or**
29 **express any legislative intent in the enactment of this 2017 Act.**

30 **“SECTION 23. Effective date. This 2017 Act takes effect on the 91st**

1 **day after the date on which the 2017 regular session of the Seventy-**
2 **ninth Legislative Assembly adjourns sine die.”.**

3
