

## SENATE AMENDMENTS TO SENATE BILL 1577

By COMMITTEE ON HEALTH CARE

February 18

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

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

### “TOBACCO RETAILER LICENSURE

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6  
7 “SECTION 1. Definitions. As used in sections 1 to 14 of this 2020 Act:

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

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

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

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

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

15 “SECTION 2. Purpose. The purpose of sections 1 to 14 of this 2020 Act is to improve  
16 enforcement of local ordinances and rules, state laws and rules and federal laws and regu-  
17 lations that govern the retail sale of tobacco products and inhalant delivery systems.

18 “SECTION 3. Licensure requirement. A person may not make a retail sale of a tobacco  
19 product or an inhalant delivery system at or from a premises located in this state unless the  
20 person sells the tobacco product or inhalant delivery system at or from a premises licensed  
21 under section 5 of this 2020 Act.

22 “SECTION 4. Premises to which Act does not apply. Notwithstanding section 3 of this  
23 2020 Act, sections 1 to 14 of this 2020 Act do not apply to a person making a retail sale of  
24 an inhalant delivery system at a medical marijuana dispensary registered under ORS  
25 475B.858 or at a premises for which a license has been issued under ORS 475B.105, unless the  
26 person makes a retail sale of an inhalant delivery system that contains nicotine.

27 “SECTION 5. Licensure. (1) The Department of Revenue shall issue licenses to, and an-  
28 nually renew licenses for, a person that makes retail sales of tobacco products or inhalant  
29 delivery systems at qualified premises.

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

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

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

33 “(c) Must meet any qualification for engaging in the retail sale of tobacco products and  
34 inhalant delivery systems enacted as an ordinance by the governing body of a local public  
35 health authority under section 17 of this 2020 Act, provided that the department has knowl-

1 edge of the qualification pursuant to an agreement entered into under section 13 of this 2020  
2 Act.

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

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

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

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

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

18 “(6) Fees established under subsection (3)(b) of this section must be reasonably calculated  
19 not to exceed the costs associated with the department administering sections 1 to 14 of this  
20 2020 Act.

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

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

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

31 “(a) Violates sections 1 to 14 of this 2020 Act, a rule adopted under sections 1 to 14 of this  
32 2020 Act or any other state law or rule or federal law or regulation that governs the retail  
33 sale of tobacco products or inhalant delivery systems or state taxation;

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

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

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

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

45 “(b) Provides the department with a final order that establishes the person or individual

1 is in violation of an ordinance that is substantially similar to the requirements for a final  
2 order under ORS 183.470.

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

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

11 “(a) Violates sections 1 to 14 of this 2020 Act, a rule adopted under sections 1 to 14 of this  
12 2020 Act or any other state law or rule or federal law or regulation that governs the retail  
13 sale of tobacco products or inhalant delivery systems or state taxation; or

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

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

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

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

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

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

29 “(2) A contraband tobacco product or contraband inhalant delivery system found by the  
30 Department of Revenue or a law enforcement agency may be seized immediately by the de-  
31 partment or agency and is subject to forfeiture. If seized and forfeited under this section,  
32 the contraband tobacco product or the contraband inhalant delivery system must be de-  
33 stroyed.

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

37 “**SECTION 10. Suspense account for administration and enforcement.** (1) Amounts col-  
38 lected by the Department of Revenue under sections 5 and 8 of this 2020 Act shall be paid  
39 to the State Treasurer to be held in a suspense account established under ORS 293.445.

40 “(2) From moneys held in the suspense account, the department may pay expenses re-  
41 lated to the administration and enforcement of sections 1 to 14 of this 2020 Act.

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

44 “**SECTION 11. Rules.** The Department of Revenue may adopt rules necessary for the ef-  
45 fective administration of sections 1 to 14 of this 2020 Act.

1       “**SECTION 12. Fees.** The Oregon Health Authority shall adopt by rule fees necessary to  
2 pay the expenses of administering and enforcing ORS 431A.175 and 431A.183 and section 17  
3 of this 2020 Act. Pursuant to an agreement entered into under section 13 of this 2020 Act,  
4 the Department of Revenue shall collect the fee moneys for, and transfer the fee moneys to,  
5 the authority. Moneys transferred to the authority under this section must be deposited in  
6 the Oregon Health Authority Fund established under ORS 413.101. Moneys deposited in the  
7 fund under this section are continuously appropriated to the authority for the purposes of  
8 administering and enforcing ORS 431A.175 and 431A.183 and section 17 of this 2020 Act.

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

11       “(a) Share information necessary for the effective administration of sections 1 to 14 and  
12 17 of this 2020 Act and ORS 431A.175 and 431A.183; and

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

19       “(2) The Department of Revenue and each local public health authority shall:

20       “(a) Share information necessary for the effective administration of sections 1 to 14 and  
21 17 of this 2020 Act; and

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

29       “(3) The Oregon Health Authority and each local public health authority shall share in-  
30 formation necessary for the effective administration of sections 1 to 14 and 17 of this 2020  
31 Act and ORS 431A.175 and 431A.183.

32       “**SECTION 14. Suspense account for fee money transfers.** (1) Amounts collected by the  
33 Department of Revenue pursuant to agreements entered into under section 13 of this 2020  
34 Act shall be paid to the State Treasurer to be held in a suspense account established under  
35 ORS 293.445.

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

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

41  
42                                   “STATE PUBLIC HEALTH AND SAFETY LAWS

43  
44       “**SECTION 15.** ORS 431A.178 is amended to read:

45       “431A.178. [(1) The Oregon Health Authority may impose a civil penalty for each violation of ORS

1 431A.175. A civil penalty imposed under this section may not be less than \$250 or more than \$1,000.]

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

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

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

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

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

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

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

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

21 **“431A.183. (1)(a) The Oregon Health Authority may enter into an agreement with federal agen-**  
22 **cies to assist the authority in monitoring and enforcing federal laws and regulations related to to-**  
23 **bacco products or inhalant delivery systems.**

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

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

29 **“(2)(a) The authority may enter into an agreement with federal, state and local government**  
30 **agencies, including federal, state and local law enforcement agencies, to assist the authority in**  
31 **carrying out the authority’s duties under ORS 431A.175 and to conduct random, unannounced in-**  
32 **spections of wholesalers and retailers of tobacco products or inhalant delivery systems to ensure**  
33 **compliance with the laws of this state designed to discourage the use of tobacco products and**  
34 **inhalant delivery systems by persons under 21 years of age, including ORS 167.750, 167.755, 167.760,**  
35 **167.765, 167.775, 167.780 and 431A.175.**

36 **“(b) The authority shall ensure that a retailer is inspected as described in this subsection**  
37 **at least once each year.**

38 **“(3)(a) If the authority enters into an agreement with the Department of State Police under**  
39 **subsection (2) of this section, the department may employ retired state police officers who are active**  
40 **reserve officers. Service by a retired state police officer under this paragraph is subject to ORS**  
41 **238.082.**

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

44 **“(4)(a) The authority may apply for and accept moneys from the federal government or other**  
45 **public or private sources and, in accordance with any federal restrictions or other funding source**

1 restrictions, use those moneys to carry out the duties and functions related to preventing the use  
2 of tobacco products or inhalant delivery systems by persons who are not of the minimum age to  
3 purchase tobacco products or inhalant delivery systems.

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

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

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

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

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

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

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

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

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

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

## 26 27 “LOCAL REGULATION

28  
29 “**SECTION 17. (1) As used in this section:**

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

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

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

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

35 “(2) Each local public health authority may:

36 “(a) Enforce, pursuant to an ordinance enacted by the governing body of the local public  
37 health authority, standards for regulating the retail sale of tobacco products and inhalant  
38 delivery systems for purposes related to public health and safety in addition to the standards  
39 described in paragraph (b) of this subsection, including qualifications for engaging in the re-  
40 tail sale of tobacco products or inhalant delivery systems that are in addition to the quali-  
41 fications described in section 5 of this 2020 Act;

42 “(b)(A) Administer and enforce standards established by state law or rule relating to the  
43 regulation of the retail sale of tobacco products and inhalant delivery systems for purposes  
44 related to public health and safety if the local public health authority and the Oregon Health  
45 Authority enter into an agreement pursuant to ORS 190.110; or

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

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

7       “(3)(a) A local public health authority may impose on businesses that engage in the retail  
8 sale of tobacco products or inhalant delivery systems a fee for paying the expenses of activ-  
9 ities described in subsection (2) of this section. Pursuant to an agreement entered into under  
10 section 13 of this 2020 Act, the Department of Revenue shall collect the fee moneys for, and  
11 transfer the fee moneys to, the local public health authority. Moneys transferred to a local  
12 public health authority under this subsection must be deposited in a fund of the local public  
13 health authority. Moneys deposited in a fund under this subsection may only be spent by the  
14 local public health authority for the purposes of subsection (2) of this section.

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

17       “(4) A local public health authority may impose a civil penalty not to exceed \$5,000 on a  
18 business that engages in the retail sale of tobacco products or inhalant delivery systems for  
19 violating a standard described in subsection (2) of this section. If a civil penalty is imposed  
20 under this section, a civil penalty may not be imposed for the commission of the same act  
21 under ORS 431A.178 or section 8 of this 2020 Act.

22       “(5) The Oregon Health Authority shall:

23       “(a) Ensure that state standards established by state law and rule regarding the regu-  
24 lation of the retail sale of tobacco products and inhalant delivery systems are administered  
25 and enforced consistently throughout this state;

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

31       “(c) Provide technical assistance to local public health authorities regarding the regu-  
32 lation of the retail sale of tobacco products and inhalant delivery systems;

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

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

36  
37                                       **“REPEAL**

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39       **“SECTION 18. Repeal. ORS 431A.180 is repealed.**

40  
41                                       **“MISCELLANEOUS**

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43       **“SECTION 19. Continuity. A city, local governing body or local public health authority**  
44 **that, on or before the operative date specified in section 21 of this 2020 Act, enforces stan-**  
45 **dards described in section 17 (2)(a) of this 2020 Act may continue to enforce the standards**

1 on and after the operative date specified in section 21 of this 2020 Act.

2 “**SECTION 20. Applicability.** The amendments to ORS 431A.178 by section 15 of this 2020  
3 Act apply to violations for conduct occurring on or after the operative date specified in sec-  
4 tion 21 of this 2020 Act.

5 “**SECTION 21. Operative date.** (1) Sections 1 to 14 and 17 of this 2020 Act, the amend-  
6 ments to ORS 431A.178 and 431A.183 by sections 15 and 16 of this 2020 Act and the repeal of  
7 ORS 431A.180 by section 18 of this 2020 Act become operative on January 1, 2021.

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

16 “**SECTION 22. Unit and section captions.** The unit and section captions used in this 2020  
17 Act are provided only for the convenience of the reader and do not become part of the stat-  
18 utory law of this state or express any legislative intent in the enactment of this 2020 Act.

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

21