

# Senate Bill 587

Sponsored by Senator TAYLOR, Representative SALINAS (Presession filed.)

## SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Requires Department of Revenue to issue license to qualified retailers of tobacco products and inhalant delivery systems. Defines "tobacco products" and "inhalant delivery system." Allows department to impose civil penalty for specified violations. Continuously appropriates moneys in suspense account to department for specified purposes.

Directs department, Oregon Health Authority and local public health authorities to share information for effective administration of Act and to enter into agreements for purposes of collecting fees imposed by Oregon Health Authority and local public health authorities.

Allows Oregon Health Authority to impose civil penalty for violation of certain state public health and safety laws related to tobacco products and inhalant delivery systems. Continuously appropriates moneys in Oregon Health Authority Fund to authority for purposes of administration and enforcement.

Allows local public health authority to enforce local standards for regulation of sale of tobacco products and inhalant delivery systems or enforce state standards for regulation of sale of tobacco products and inhalant delivery systems. Prohibits city or local public health authority from adopting ordinance, after effective date of Act, to prohibit colocation of retailer of tobacco products or inhalant delivery systems with pharmacy.

Takes effect on 91st day following adjournment sine die.

## A BILL FOR AN ACT

1  
2 Relating to public health; creating new provisions; amending ORS 431A.178 and 431A.183; repealing  
3 ORS 431A.180; and prescribing an effective date.

4 **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:**

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

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

12 (3) "Local public health authority" has the meaning given that term in ORS 431.003.

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

15 (5) "Tobacco products" has the meaning given that term in ORS 431A.175.

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

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

**NOTE:** Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1       **SECTION 4. Premises to which Act does not apply.** Notwithstanding section 3 of this  
2 2021 Act, sections 1 to 14 of this 2021 Act do not apply to a person making a retail sale of  
3 an inhalant delivery system at a medical marijuana dispensary registered under ORS  
4 475B.858 or at a premises for which a license has been issued under ORS 475B.105, unless the  
5 person makes a retail sale of an inhalant delivery system that contains nicotine.

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

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

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

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

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

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

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

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

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

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

32       (6) Fees established under subsection (3)(b) of this section must be reasonably calculated  
33 to cover but not exceed the costs incurred by the department in administering sections 1 to  
34 14 of this 2021 Act.

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

37       **SECTION 6. Proof of licensure.** A person to which a license has been issued under section  
38 5 of this 2021 Act must post proof of licensure in a clear and conspicuous place at the  
39 premises for which the license has been issued.

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

45       (a) Violates sections 1 to 14 of this 2021 Act, a rule adopted under sections 1 to 14 of this

1 2021 Act or any other state law or rule or federal law or regulation that governs the retail  
2 sale of tobacco products or inhalant delivery systems or state taxation;

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

6 (c) Makes a false statement to the department.

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

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

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

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

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

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

30 (a) Violates sections 1 to 14 of this 2021 Act, a rule adopted under sections 1 to 14 of this  
31 2021 Act or any other state law or rule or federal law or regulation that governs the retail  
32 sale of tobacco products or inhalant delivery systems or state taxation; or

33 (b) Makes a false statement to the department.

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

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

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

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

43 **SECTION 9. Seizure and forfeiture of contraband tobacco products and contraband**  
44 **inhalant delivery systems.** (1) For purposes of this section, a tobacco product or inhalant  
45 delivery system sold or held for sale at or from a premises for which a license has not been

1 issued under section 5 of this 2021 Act is a contraband tobacco product or contraband  
2 inhalant delivery system.

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

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

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

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

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

21 **SECTION 11. Rules.** The Department of Revenue may adopt rules necessary for the ef-  
22 fective administration of sections 1 to 14 of this 2021 Act.

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

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

33 (a) Share information necessary for the effective administration of sections 1 to 14 and  
34 17 of this 2021 Act and ORS 431A.175 and 431A.183; and

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

41 (2) The department and each local public health authority shall:

42 (a) Share information necessary for the effective administration of sections 1 to 14 and  
43 17 of this 2021 Act; and

44 (b) Enter into an agreement for purposes of collecting any fee moneys for the local public  
45 health authority pursuant to section 17 of this 2021 Act from each retailer of tobacco pro-

1 ducts or inhalant delivery systems located within the area over which the local public health  
 2 authority has jurisdiction at the same time that the department collects fee moneys from  
 3 the retailer under section 5 of this 2021 Act, and transferring the fee moneys collected pur-  
 4 suant to section 17 of this 2021 Act to the local public health authority for deposit in a fund  
 5 of the local public health authority.

6 (3) The Oregon Health Authority and each local public health authority shall share in-  
 7 formation necessary for the effective administration of sections 1 to 14 and 17 of this 2021  
 8 Act and ORS 431A.175 and 431A.183.

9 **SECTION 14. Suspense account for fee money transfers.** (1) Amounts collected by the  
 10 Department of Revenue pursuant to agreements entered into under section 13 of this 2021  
 11 Act shall be paid to the State Treasurer to be held in a suspense account established under  
 12 ORS 293.445.

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

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

## 18 STATE PUBLIC HEALTH AND SAFETY LAWS

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 20  
 21 **SECTION 15.** ORS 431A.178 is amended to read:

22 431A.178. [(1) *The Oregon Health Authority may impose a civil penalty for each violation of ORS*  
 23 *431A.175. A civil penalty imposed under this section may not be less than \$250 or more than \$1,000.*]

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

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

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

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

32 [(2)(a) *Amounts collected under subsection (1) of this section shall be deposited in the Oregon*  
 33 *Health Authority Fund established under ORS 413.101. Except as provided in paragraph (b) of this*  
 34 *subsection, moneys deposited in the fund under this subsection are continuously appropriated to the*  
 35 *authority for carrying out the duties, functions and powers of the authority under ORS 431A.175 and*  
 36 *431A.183.*]

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

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

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

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

44 431A.183. (1)(a) The Oregon Health Authority may enter into an agreement with federal agencies  
 45 to assist the authority in monitoring and enforcing federal laws and regulations related to tobacco

1 products or inhalant delivery systems.

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

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

7 (2)(a) The authority may enter into an agreement with federal, state and local government  
8 agencies, including federal, state and local law enforcement agencies, to assist the authority in  
9 carrying out the authority's duties under ORS 431A.175 and to conduct random, unannounced in-  
10 spections of wholesalers and retailers of tobacco products or inhalant delivery systems to ensure  
11 compliance with the laws of this state designed to discourage the use of tobacco products and  
12 inhalant delivery systems by persons under 21 years of age, including ORS 167.750, 167.755, 167.760,  
13 167.765, 167.775, 167.780 and 431A.175.

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

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

19 (3)(a) If the authority enters into an agreement with the Department of State Police under sub-  
20 section (2) of this section, the department may employ retired state police officers who are active  
21 reserve officers. Service by a retired state police officer under this paragraph is subject to ORS  
22 238.082.

23 (b) The department may not use the services of a retired state police officer to displace an ac-  
24 tive state police member.

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

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

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

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

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

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

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

44 (6) The authority shall adopt rules for conducting random inspections of establishments that  
45 distribute or sell tobacco products or inhalant delivery systems. The rules shall provide that in-

1 inspections may take place:

2 (a) Only in areas open to the public;

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

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

7  
8 **LOCAL REGULATION**

9  
10 **SECTION 17. (1) As used in this section:**

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

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

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

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

16 (2) **Each local public health authority may:**

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

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

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

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

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

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

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

1 under this section, a civil penalty may not be imposed for the commission of the same act  
2 under ORS 431A.178 or section 8 of this 2021 Act.

3 (5) The Oregon Health Authority shall:

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

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

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

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

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

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

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

23  
24 **REPEAL**

25  
26 **SECTION 18. Repeal.** ORS 431A.180 is repealed.

27  
28 **MISCELLANEOUS**

29  
30 **SECTION 19. Continuity.** A local public health authority that, on or before the operative  
31 date specified in section 22 of this 2021 Act, enforces standards described in section 17 (2)(a)  
32 of this 2021 Act pursuant to an ordinance enacted by the governing body of a local health  
33 authority may continue to enforce the standards on and after the operative date specified in  
34 section 22 of this 2021 Act.

35 **SECTION 20. Applicability.** The amendments to ORS 431A.178 by section 15 of this 2021  
36 Act apply to violations for conduct occurring on or after the operative date specified in sec-  
37 tion 22 of this 2021 Act.

38  
39 **CAPTIONS**

40  
41 **SECTION 21. Unit and section captions.** The unit and section captions used in this 2021  
42 Act are provided only for the convenience of the reader and do not become part of the stat-  
43 utory law of this state or express any legislative intent in the enactment of this 2021 Act.

44  
45 **OPERATIVE AND EFFECTIVE DATES**

1       **SECTION 22. Operative date.** (1) Sections 1 to 14 and 17 of this 2021 Act, the amendments  
2 to ORS 431A.178 and 431A.183 by sections 15 and 16 of this 2021 Act and the repeal of ORS  
3 431A.180 by section 18 of this 2021 Act become operative on January 1, 2022.

4       (2) The Department of Revenue, the Oregon Health Authority and local public health  
5 authorities may take any action before the operative date specified in subsection (1) of this  
6 section that is necessary to enable the department, the Oregon Health Authority and local  
7 public health authorities to exercise, on and after the operative date specified in subsection  
8 (1) of this section, all the duties, functions and powers conferred on the department, the  
9 Oregon Health Authority and local public health authorities by sections 1 to 14 and 17 of this  
10 2021 Act, the amendments to ORS 431A.178 and 431A.183 by sections 15 and 16 of this 2021  
11 Act and the repeal of ORS 431A.180 by section 18 of this 2021 Act.

12       **SECTION 23.** This 2021 Act takes effect on the 91st day after the date on which the 2021  
13 regular session of the Eighty-first Legislative Assembly adjourns sine die.

14