

House Bill 2735

Sponsored by Representative POST

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**.

Transfers duties, functions and powers of Oregon Health Authority related to certification and regulation of smoke shops and cigar bars to Oregon Liquor Control Commission.

Becomes operative January 1, 2018.

Takes effect 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to tobacco products; creating new provisions; amending ORS 433.835, 433.847 and 433.855;
3 and prescribing an effective date.

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

TRANSFER

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8 **SECTION 1. The duties, functions and powers of the Oregon Health Authority relating**
9 **to the certification and regulation of smoke shops and cigar bars, both as defined in ORS**
10 **433.835, are imposed upon, transferred to and vested in the Oregon Liquor Control Commis-**
11 **sion.**

CHANGES TO THE OREGON INDOOR CLEAN AIR ACT

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13
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15 **SECTION 2. ORS 433.835 is amended to read:**

16 433.835. As used in ORS 433.835 to 433.875:

17 *[(1) "Cigar bar" means a business that:]*

18 *[(a) Has on-site sales of cigars as defined in ORS 323.500;]*

19 *[(b) Has a humidior on the premises;]*

20 *[(c) Allows the smoking of cigars on the premises but prohibits the smoking, aerosolizing or*
21 *vaporizing of other inhalants on the premises;]*

22 *[(d) Has been issued and operates under a full on-premises sales license issued under ORS*
23 *471.175;]*

24 *[(e) Prohibits persons under 21 years of age from entering the premises and posts notice of the*
25 *prohibition;]*

26 *[(f) Does not offer video lottery games as authorized under ORS 461.217;]*

27 *[(g) Has a maximum seating capacity of 40 persons;]*

28 *[(h) Has a ventilation system that exhausts smoke from the business and is designed and terminated*
29 *in accordance with the state building code standards for the occupancy classification in use; and]*

30 *[(i) Requires all employees to read and sign a document that explains the dangers of exposure to*

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 *secondhand smoke.*]

2 (1) **“Cigar bar” means a business that is certified with the Oregon Liquor Control Com-**
 3 **mission as a cigar bar pursuant to the rules adopted under section 5 of this 2017 Act.**

4 (2) “Inhalant” means nicotine, a cannabinoid or any other substance that:

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

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

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

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

13 (3)(a) “Place of employment” means an enclosed area under the control of a public or private
 14 employer, including work areas, employee lounges, vehicles that are operated in the course of an
 15 employer’s business and that are not operated exclusively by one employee, rest rooms, conference
 16 rooms, classrooms, cafeterias, hallways, meeting rooms, elevators and stairways.

17 (b) “Place of employment” does not include a private residence unless it is used as a child care
 18 facility as defined in ORS 329A.250 or a facility providing adult day care as defined in ORS 410.490.

19 (4) “Public place” means an enclosed area open to the public.

20 (5) “Smoke shop” means a business that is certified with the [*Oregon Health Authority*] **com-**
 21 **mission** as a smoke shop pursuant to the rules adopted under ORS 433.847.

22 (6) “Smoking instrument” means any cigar, cigarette, pipe or other instrument used to smoke
 23 tobacco, marijuana or any other inhalant.

24 **SECTION 3.** ORS 433.847 is amended to read:

25 433.847. (1) The [*Oregon Health Authority*] **Oregon Liquor Control Commission** shall adopt
 26 rules establishing a certification system for smoke shops. In adopting such rules, the [*authority*]
 27 **commission** shall prohibit the smoking, aerosolizing or vaporizing of inhalants that are not tobacco
 28 products in smoke shops.

29 (2) The [*authority*] **commission** shall issue a smoke shop certification to a business that:

30 (a)(A) Is primarily engaged in the sale, for off-premises consumption or use, of tobacco products
 31 and smoking instruments used to smoke tobacco products, with at least 75 percent of the gross re-
 32 venues of the business resulting from such sales;

33 (B) Prohibits persons under 18 years of age from entering the premises;

34 (C) Does not offer video lottery games as authorized under ORS 461.217, social gaming or betting
 35 on the premises;

36 (D) Does not sell or offer food or beverages and does not sell, offer or allow on-premises con-
 37 sumption of alcoholic beverages;

38 (E) Is a stand-alone business with no other businesses or residential property attached to the
 39 premises;

40 (F) Has a maximum seating capacity of four persons; and

41 (G) Allows the smoking of tobacco product samples only for the purpose of making retail pur-
 42 chase decisions;

43 (b) On December 31, 2008:

44 (A) Met the requirements of paragraph (a)(A) to (D) of this subsection; and

45 (B)(i) Was a stand-alone business with no other businesses or residential property attached; or

1 (ii) Had a ventilation system that exhausted smoke from the business and was designed and
 2 terminated in accordance with the state building code standards for the occupancy classification in
 3 use; or

4 (c)(A) Was certified as a smoke shop under ORS 433.835, as in effect immediately before June
 5 30, 2011, [by the authority] on or before December 31, 2012; and

6 (B) Allows the smoking of cigarettes only if at least 75 percent of the gross revenues of the
 7 business results from the sale of cigarettes.

8 (3) A smoke shop certified under subsection (2)(b) of this section must renew the smoke shop
 9 certification every five years by demonstrating to the satisfaction of the [authority] **commission**
 10 that the smoke shop:

11 (a)(A) Meets the requirements of subsection (2)(a)(A) to (D) of this section; and

12 (B)(i) Is a stand-alone business with no other businesses or residential property attached; or

13 (ii) Has a ventilation system that exhausts smoke from the business and is designed and termi-
 14 nated in accordance with the state building code standards for the occupancy classification in use;
 15 and

16 (b) Allows the smoking of cigarettes only if at least 75 percent of the gross revenues of the
 17 business results from the sale of cigarettes.

18 (4) A smoke shop certified under subsection (2)(c) of this section must renew the smoke shop
 19 certification every five years by demonstrating to the satisfaction of the [authority] **commission**
 20 that the smoke shop:

21 (a) Meets the requirements of ORS 433.835, as in effect immediately before June 30, 2011; and

22 (b) Allows the smoking of cigarettes only if at least 75 percent of the gross revenues of the
 23 business results from the sale of cigarettes.

24 (5) The owner of a smoke shop certified under subsection (2)(b) or (c) of this section may
 25 transfer the certification with ownership of the smoke shop if the transfer is made in accordance
 26 with rules adopted by the [authority] **commission**.

27 (6) A smoke shop certified under subsection (2)(b) of this section may continue to be certified
 28 in a new location under subsection (2)(b) of this section if:

29 (a)(A) The new location occupies no more than 3,500 square feet; or

30 (B) If the old location occupied more than 3,500 square feet, the new location occupies no more
 31 than 110 percent of the space occupied by the old location; and

32 (b) The smoke shop as operated in the new location:

33 (A) Meets the requirements of subsection (2)(a)(A) to (D) of this section;

34 (B)(i) Is a stand-alone business with no other businesses or residential property attached; or

35 (ii) Has a ventilation system that exhausts smoke from the business and is designed and termi-
 36 nated in accordance with the state building code standards for the occupancy classification in use;
 37 and

38 (C) Allows the smoking of cigarettes only if at least 75 percent of the gross revenues of the
 39 business results from the sale of cigarettes.

40 (7) A smoke shop certified under subsection (2)(c) of this section may continue to be certified
 41 in a new location under subsection (2)(c) of this section if:

42 (a)(A) The new location occupies no more than 3,500 square feet; or

43 (B) If the old location occupied more than 3,500 square feet, the new location occupies no more
 44 than 110 percent of the space occupied by the old location; and

45 (b) The smoke shop as operated in the new location:

1 (A) Meets the requirements of ORS 433.835, as in effect immediately before June 30, 2011; and

2 (B) Allows the smoking of cigarettes only if at least 75 percent of the gross revenues of the
3 business results from the sale of cigarettes.

4 (8) Rules adopted under this section must provide that, in order to obtain a smoke shop certi-
5 fication, a business must agree to allow the [authority] **commission** to make unannounced in-
6 spections of the business to determine compliance with ORS 433.835 to 433.875.

7 **SECTION 4. Sections 5 and 6 of this 2017 Act are added to and made a part of ORS 433.835**
8 **to 433.875.**

9 **SECTION 5. (1) The Oregon Liquor Control Commission shall adopt rules establishing a**
10 **certification system for cigar bars. In adopting such rules, the commission shall prohibit the**
11 **smoking, aerosolizing or vaporizing of inhalants that are not cigars as defined in ORS 323.500**
12 **in cigar bars.**

13 (2) The commission shall issue a cigar bar certification to a business that:

14 (a) Has a humididor on the premises;

15 (b) Has a valid full on-premises sales license issued under ORS 471.175;

16 (c) Prohibits persons under 21 years of age from entering the premises;

17 (d) Does not offer video lottery games as authorized under ORS 461.217;

18 (e) Has a maximum seating capacity of 40 persons;

19 (f) Has a ventilation system that exhausts smoke from the business and that is designed
20 and terminated in accordance with the state building code standards for the occupancy
21 classification in use; and

22 (g) Requires all employees to read and sign a document that explains the dangers of ex-
23 posure to secondhand smoke.

24 **SECTION 6. The Oregon Liquor Control Commission, in accordance with the provisions**
25 **of ORS chapter 183:**

26 (1) Shall adopt rules necessary to implement the provisions of ORS 433.847 and section 5
27 of this 2017 Act;

28 (2) Is responsible for ensuring compliance with ORS 433.847 and section 5 of this 2017 Act
29 and rules adopted under ORS 433.847 and section 5 of this 2017 Act; and

30 (3) May impose a civil penalty not to exceed \$500 per day for each violation of ORS 433.847
31 or section 5 of this 2017 Act or a rule adopted under ORS 433.847 or section 5 of this 2017
32 Act. Penalties imposed under this subsection must be imposed in the manner provided in
33 ORS 183.745. All moneys recovered under this subsection shall be paid into the State Treas-
34 ury and credited to the Tobacco Use Reduction Account established under ORS 431A.153.

35 **SECTION 7.** ORS 433.855 is amended to read:

36 433.855. (1) The Oregon Health Authority, in accordance with the provisions of ORS chapter 183:

37 (a) Shall adopt rules necessary to implement the provisions of ORS [433.835 to 433.875] **433.835,**
38 **433.840, 433.845, 433.850 and 433.860;**

39 (b) Is responsible for ensuring compliance with ORS [433.835 to 433.875] **433.835, 433.840,**
40 **433.845, 433.850 and 433.860** and rules adopted under ORS [433.835 to 433.875] **433.835, 433.840,**
41 **433.845, 433.850 and 433.860;** and

42 (c) May impose a civil penalty not to exceed \$500 per day for each violation of ORS [433.845
43 or 433.850] **433.835, 433.840, 433.845, 433.850 and 433.860** or a rule adopted under ORS [433.835 to
44 433.875] **433.835, 433.840, 433.845, 433.850 and 433.860.** Penalties imposed under this paragraph must
45 be collected in the manner provided in ORS 441.705 to 441.745. All moneys recovered under this

1 paragraph shall be paid into the State Treasury and credited to:

2 (A) The Tobacco Use Reduction Account established under ORS 431A.153, if the violation con-
 3 cerns nicotine; or

4 (B) The Oregon Health Authority Fund established under ORS 413.101, if the violation concerns
 5 an inhalant other than nicotine.

6 (2) In carrying out its duties under this section, the authority is not authorized to require any
 7 changes in ventilation or barriers in a public place or place of employment. This subsection does
 8 not limit the power of the authority to enforce the requirements of any other provision of law.

9 (3) In public places that the authority regularly inspects, the authority shall check for compli-
 10 ance with the provisions of ORS [433.835 to 433.875] **433.835, 433.840, 433.845, 433.850 and 433.860**.
 11 In other public places and places of employment, the authority shall respond to complaints, notifying
 12 the proprietor or person in charge of the requirements of ORS [433.835 to 433.875] **433.835, 433.840,**
 13 **433.845, 433.850 and 433.860**. If repeated complaints are received, the authority may take appropri-
 14 ate action to ensure compliance.

15 (4) When a county has assumed responsibility of the duties and responsibilities under ORS
 16 446.425 and 448.100, or contracted with the authority under ORS 190.110, the county is responsible
 17 for enforcing the provisions of ORS [433.835 to 433.875] **433.835, 433.840, 433.845, 433.850 and**
 18 **433.860** and has the same enforcement power as the authority.

19
 20 **TRANSFER PROVISIONS**
 21 **(Records, Property, Employees)**

22
 23 **SECTION 8. (1) The Director of the Oregon Health Authority shall:**

24 (a) **Deliver to the Oregon Liquor Control Commission all records and property within the**
 25 **jurisdiction of the director that relate to the duties, functions and powers transferred by**
 26 **section 1 of this 2017 Act; and**

27 (b) **Transfer to the Oregon Liquor Control Commission those employees engaged prima-**
 28 **riarily in the exercise of the duties, functions and powers transferred by section 1 of this 2017**
 29 **Act.**

30 (2) **The Oregon Liquor Control Commission shall take possession of the records and**
 31 **property, and shall take charge of the employees and employ them in the exercise of the**
 32 **duties, functions and powers transferred by section 1 of this 2017 Act, without reduction of**
 33 **compensation but subject to change or termination of employment or compensation as pro-**
 34 **vided by law.**

35 (3) **The Governor shall resolve any dispute between the Oregon Health Authority and the**
 36 **Oregon Liquor Control Commission relating to transfers of records, property and employees**
 37 **under this section, and the Governor's decision is final.**

38
 39 **(Unexpended Revenues)**

40
 41 **SECTION 9. (1) The unexpended balances of amounts authorized to be expended by the**
 42 **Oregon Health Authority for the biennium beginning July 1, 2017, from revenues dedicated,**
 43 **continuously appropriated, appropriated or otherwise made available for the purpose of ad-**
 44 **ministering and enforcing the duties, functions and powers transferred by section 1 of this**
 45 **2017 Act are transferred to and are available for expenditure by the Oregon Liquor Control**

1 Commission for the biennium beginning July 1, 2017, for the purpose of administering and
 2 enforcing the duties, functions and powers transferred by section 1 of this 2017 Act.

3 (2) The expenditure classifications, if any, established by Acts authorizing or limiting
 4 expenditures by the Oregon Health Authority remain applicable to expenditures by the
 5 Oregon Liquor Control Commission under this section.

6
 7 (Action, Proceeding, Prosecution)

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 9 **SECTION 10.** The transfer of duties, functions and powers to the Oregon Liquor Control
 10 Commission by section 1 of this 2017 Act does not affect any action, proceeding or prose-
 11 cution involving or with respect to the duties, functions and powers begun before and pend-
 12 ing at the time of the transfer, except that the Oregon Liquor Control Commission is
 13 substituted for the Oregon Health Authority in the action, proceeding or prosecution.

14
 15 (Liability, Duty, Obligation)

16
 17 **SECTION 11.** (1) Nothing in sections 1, 4 to 6 and 8 to 13 of this 2017 Act or in the
 18 amendments to ORS 433.835, 433.847 and 433.855 by sections 2, 3 and 7 of this 2017 Act re-
 19 lieves a person of a liability, duty or obligation accruing under or with respect to the duties,
 20 functions and powers transferred by section 1 of this 2017 Act. The Oregon Liquor Control
 21 Commission may undertake the collection or enforcement of any such liability, duty or obli-
 22 gation.

23 (2) The rights and obligations of the Oregon Health Authority legally incurred under
 24 contracts, leases and business transactions executed, entered into or begun before the op-
 25 erative date of section 1 of this 2017 Act accruing under or with respect to the duties, func-
 26 tions and powers transferred by section 1 of this 2017 Act are transferred to the Oregon
 27 Liquor Control Commission. For the purpose of succession to these rights and obligations,
 28 the Oregon Liquor Control Commission is a continuation of the Oregon Health Authority and
 29 not a new authority.

30
 31 (Rules)

32
 33 **SECTION 12.** Notwithstanding the transfer of duties, functions and powers by section 1
 34 of this 2017 Act, the rules of the Oregon Health Authority with respect to such duties,
 35 functions or powers that are in effect on the operative date of section 1 of this 2017 Act
 36 continue in effect until superseded or repealed by rules of the Oregon Liquor Control Com-
 37 mission. References in the rules of the Oregon Health Authority to the Oregon Health Au-
 38 thority, or to an officer or employee of the Oregon Health Authority, are considered to be
 39 references to the Oregon Liquor Control Commission or an officer or employee of the Oregon
 40 Liquor Control Commission.

41 **SECTION 13.** Whenever, in any uncodified law or resolution of the Legislative Assembly
 42 or in any rule, document, record or proceeding authorized by the Legislative Assembly, in
 43 the context of the duties, functions and powers transferred by section 1 of this 2017 Act,
 44 reference is made to the Oregon Health Authority, or an officer or employee of the Oregon
 45 Health Authority, whose duties, functions or powers are transferred by section 1 of this 2017

1 Act, the reference is considered to be a reference to the Oregon Liquor Control Commission
2 or an officer or employee of the Oregon Liquor Control Commission who by this 2017 Act is
3 charged with carrying out the duties, functions and powers.

4
5 **OPERATIVE DATE**

6
7 **SECTION 14.** (1) Sections 1, 5 and 6 of this 2017 Act and the amendments to ORS 433.835,
8 433.847 and 433.855 by sections 2, 3 and 7 of this 2017 Act become operative on January 1,
9 2018.

10 (2) The Oregon Health Authority and the Oregon Liquor Control Commission may take
11 any action before the operative date specified in subsection (1) of this section that is neces-
12 sary to enable the authority and the commission to exercise, on and after the operative date
13 specified in subsection (1) of this section, all the duties, powers and functions conferred on
14 the authority and the commission by sections 1, 5 and 6 of this 2017 Act and the amendments
15 to ORS 433.835, 433.847 and 433.855 by sections 2, 3 and 7 of this 2017 Act.

16
17 **UNIT CAPTIONS**

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19 **SECTION 15.** The unit captions used in this 2017 Act are provided only for the conven-
20 ience of the reader and do not become part of the statutory law of this state or express any
21 legislative intent in the enactment of this 2017 Act.

22
23 **EFFECTIVE DATE**

24
25 **SECTION 16.** This 2017 Act takes effect on the 91st day after the date on which the 2017
26 regular session of the Seventy-ninth Legislative Assembly adjourns sine die.