

House Bill 2136

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Pre-session filed (at the request of Governor Theodore R. Kulongoski for Department of Human Services)

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**.

Prohibits sale or distribution of tobacco products from vending machines.

A BILL FOR AN ACT

1
2 Relating to vending machines distributing tobacco products; amending ORS 167.402, 323.015, 323.085,
3 323.105, 323.245, 323.500, 323.520 and 476.755; and repealing ORS 167.404, 323.211 and 323.215.

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

5 **SECTION 1.** ORS 167.402 is amended to read:

6 167.402. (1) **As used in this section, "vending machine" means a mechanical, electronic**
7 **or similar device that, upon the insertion of tokens, money or another form of payment,**
8 **dispenses tobacco products.**

9 *[(1)]* (2) *[No person having authority over such placement shall locate a vending machine from*
10 *which]* **A person may not sell or dispense** tobacco products, as defined in ORS 431.840, *[in any*
11 *form are dispensed in any place legally accessible to persons under 18 years of age except taverns and*
12 *cocktail lounges, industrial plants, as defined in ORS 308.408, hotels and motels.]* **from a vending**
13 **machine.**

14 *[(2)]* (3) Violation of subsection *[(1)]* (2) of this section is a Class B violation. Each day of vio-
15 lation constitutes a separate offense.

16 **SECTION 2.** ORS 323.500 is amended to read:

17 323.500. As used in ORS 323.500 to 323.645, unless the context otherwise requires:

18 (1) "Business" means any trade, occupation, activity or enterprise engaged in for the purpose
19 of selling or distributing tobacco products in this state.

20 (2) "Cigar" means a roll for smoking that is of any size or shape and that is made wholly or in
21 part of tobacco, irrespective of whether the tobacco is pure or flavored, adulterated or mixed with
22 any other ingredient, if the roll has a wrapper made wholly or in greater part of tobacco and if 1,000
23 of these rolls collectively weigh more than three pounds. "Cigar" does not include a cigarette, as
24 defined in ORS 323.010.

25 (3) "Consumer" means any person who purchases tobacco products in this state for the person's
26 use or consumption or for any purpose other than for reselling the tobacco products to another
27 person.

28 (4) "Contraband tobacco products" means tobacco products or packages containing tobacco
29 products:

30 (a) That do not comply with the requirements of ORS 323.500 to 323.645;

31 (b) That do not comply with the requirements of the tobacco products tax laws of the federal

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 government or of other states; or

2 (c) That bear trademarks that are counterfeit under ORS 647.135 or other state or federal
3 trademark laws.

4 (5) "Department" means the Department of Revenue.

5 (6) "Distribute" means:

6 (a) Bringing, or causing to be brought, into this state from without this state tobacco products
7 for sale, storage, use or consumption;

8 (b) Making, manufacturing or fabricating tobacco products in this state for sale, storage, use or
9 consumption in this state;

10 (c) Shipping or transporting tobacco products to retail dealers in this state, to be sold, stored,
11 used or consumed by those retail dealers;

12 (d) Storing untaxed tobacco products in this state that are intended to be for sale, use or con-
13 sumption in this state;

14 (e) Selling untaxed tobacco products in this state; or

15 (f) As a consumer, being in possession of untaxed tobacco products in this state.

16 (7) "Distributor" means:

17 (a) Any person engaged in the business of selling tobacco products in this state who brings, or
18 causes to be brought, into this state from without the state any tobacco products for sale;

19 (b) Any person who makes, manufactures or fabricates tobacco products in this state for sale in
20 this state;

21 (c) Any person engaged in the business of selling tobacco products without this state who ships
22 or transports tobacco products to retail dealers in this state, to be sold by those retail dealers;

23 (d) Any person, including a retail dealer, who sells untaxed tobacco products in this state; or

24 (e) A consumer in possession of untaxed tobacco products in this state.

25 (8) "Manufacturer" means a person who manufactures tobacco products for sale.

26 (9) "Place of business" means any place where tobacco products are sold or where tobacco
27 products are manufactured, stored or kept for the purpose of sale or consumption, including any
28 vessel, vehicle, airplane[, *train or vending machine*] **or train.**

29 (10) "Retail dealer" means any person who is engaged in the business of selling or otherwise
30 dispensing tobacco products to consumers. The term also includes the operators of or recipients of
31 revenue from all places such as smoke shops[, *cigar stores and vending machines*] **and cigar bars,**
32 **as those terms are defined in ORS 433.835,** where tobacco products are made or stored for ulti-
33 mate sale to consumers.

34 (11) "Sale" means any transfer, exchange or barter, in any manner or by any means, for a con-
35 sideration, and includes and means all sales made by any person. It includes a gift by a person en-
36 gaged in the business of selling tobacco products, for advertising, as a means of evading the
37 provisions of ORS 323.500 to 323.645, or for any other purpose.

38 (12) "Taxpayer" includes a distributor or other person required to pay a tax imposed under ORS
39 323.500 to 323.645.

40 (13) "Tobacco products" means cigars, cheroots, stogies, periques, granulated, plug cut, crimp
41 cut, ready rubbed and other smoking tobacco, snuff, snuff flour, cavendish, plug and twist tobacco,
42 fine-cut and other chewing tobaccos, shorts, refuse scraps, clippings, cuttings and sweepings of to-
43 bacco and other kinds and forms of tobacco, prepared in such manner as to be suitable for chewing
44 or smoking in a pipe or otherwise, or both for chewing and smoking, but shall not include cigarettes
45 as defined in ORS 323.010.

1 (14) “Untaxed tobacco products” means tobacco products for which the tax required under ORS
2 323.500 to 323.645 has not been paid.

3 (15) “Wholesale sales price” means the price paid for untaxed tobacco products to or on behalf
4 of a seller by a purchaser of the untaxed tobacco products.

5 **SECTION 3.** ORS 323.015 is amended to read:

6 323.015. As used in ORS 323.005 to 323.482, unless the context requires otherwise:

7 (1) “Distribution” includes:

8 (a) The sale in this state of untaxed cigarettes.

9 (b) The use or consumption in this state of untaxed cigarettes.

10 (c) The receipt or retention in this state of untaxed cigarettes at a place of business where
11 cigarettes are customarily sold or offered for sale to consumers.

12 *[(d) The placing of cigarettes in vending machines in this state.]*

13 *[(e)]* (d) The use or consumption by the first person in possession in this state of untaxed ciga-
14 rettes transported to the state in quantities of more than 199 in a single shipment.

15 *[(f)]* (e) Donations of sample cigarettes or gift cartons by the manufacturers of the cigarettes,
16 except sample packages containing not more than five cigarettes and labeled as “sample,” “not for
17 sale” or with similar wording.

18 *[(g)]* (f) The possession in this state of untaxed cigarettes that were transported to this state in
19 quantities of more than 199, unless the person in possession of the untaxed cigarettes is in pos-
20 session of the untaxed cigarettes in order to transport the cigarettes to a location outside this state.

21 (2) “Distributor” includes:

22 (a) Any person who distributes cigarettes.

23 (b) Any person who sells or accepts orders for cigarettes that are to be transported from a point
24 outside this state to a consumer within this state.

25 (c) Notwithstanding the provisions of ORS 323.010 (5), any dealer who serves as the dealer’s own
26 distributor or who buys directly from a manufacturer for resale in this state shall be deemed to be
27 both a distributor and a dealer under ORS 323.005 to 323.482.

28 (3) “Distributor engaged in business in this state” includes any of the following:

29 (a) Any distributor maintaining, occupying or using, permanently or temporarily, directly or in-
30 directly, or through a subsidiary or agent, by whatever name called, an office, place of distribution,
31 sales or sample room or place, warehouse or storage place or any other place of business.

32 (b) A distributor having a representative, agent, salesperson, canvasser or solicitor operating in
33 this state under the authority of the distributor or its subsidiary for the purpose of selling, deliver-
34 ing, or the taking of orders for cigarettes.

35 **SECTION 4.** ORS 323.085 is amended to read:

36 323.085. (1) Unless the contrary is established, it shall be presumed that all cigarettes acquired
37 by a distributor are untaxed cigarettes, and that all cigarettes manufactured in this state or trans-
38 ported to this state, and no longer in the possession of the distributor, have been distributed.

39 (2) All taxes paid pursuant to the provisions of ORS 323.005 to 323.482 are intended to be direct
40 taxes on the retail consumer for which required prepayment, through the purchase and affixation
41 of tax stamps, is only to achieve convenience and facility in the collection and administration of the
42 tax. When the tax is paid by any person other than the retail consumer, the payment shall be con-
43 sidered an advance payment to be added to the price of the cigarette and recovered from the retail
44 consumer. *[Except for a person selling cigarettes through a vending machine or machines,]* Any person
45 selling cigarettes at retail shall state or separately display in the retail premises a notice of the

1 amount of the tax included in the selling price and charged or payable pursuant to ORS 323.005 to
 2 323.482. The provisions of this subsection do not affect the method of prepayment of the tax as
 3 provided by ORS 323.005 to 323.482.

4 **SECTION 5.** ORS 323.105 is amended to read:

5 323.105. (1) Any person engaging or seeking to engage in the sale of cigarettes as a distributor
 6 shall file an application for a distributor’s license with the Department of Revenue. The application
 7 shall be on a form prescribed by the department.

8 (2) A distributor shall apply for and obtain a license for each place of business at which the
 9 distributor engages in the business of distributing cigarettes. A fee may not be charged for the li-
 10 cense. *[For the purposes of this section, a vending machine in and of itself is not a place of*
 11 *business.]*

12 (3) A person may not engage in the business of distributing cigarettes to other persons in this
 13 state without a license.

14 **SECTION 6.** ORS 323.520 is amended to read:

15 323.520. (1) Any person engaging or seeking to engage in the sale of tobacco products as a dis-
 16 tributor shall file an application for a distributor’s license with the Department of Revenue. The
 17 application shall be on a form prescribed by the department. A distributor shall apply for and obtain
 18 a license for each place of business at which the distributor engages in the business of distributing
 19 tobacco products. A fee may not be charged for the license. *[For the purposes of this section, a*
 20 *vending machine in and of itself is not a place of business.]*

21 (2) A person may not engage in the business of distributing tobacco products in this state
 22 without a license.

23 **SECTION 7.** ORS 323.245 is amended to read:

24 323.245. (1) Whenever the Department of Revenue discovers any cigarettes subject to tax under
 25 ORS 323.005 to 323.482 and with respect to which the tax has not been paid or prepaid, if prepay-
 26 ment is required under ORS 323.068, it is hereby authorized and empowered forthwith to seize and
 27 take possession of the untaxed cigarettes together with any *[vending machine or]* receptacle in which
 28 they are held for sale and any vehicle in which they are being transported. The seized cigarettes,
 29 *[vending machine,]* receptacle or vehicle, not including money contained in the *[vending machine*
 30 *or]* receptacle, shall be forfeited to the state, and the clear proceeds shall be deposited with the
 31 State Treasury in the Common School Fund. The department may, within a reasonable time there-
 32 after, by public notice at least 20 days before the date of sale, sell the forfeited *[vending*
 33 *machines,]* receptacles and vehicles at public sale. Forfeited cigarettes constitute contraband ciga-
 34 rettes subject to ORS 323.248.

35 (2) Notwithstanding the provisions of subsection (1) of this section, the person from whom ciga-
 36 rettes were seized may redeem any *[vending machine,]* receptacle or vehicle seized at the time the
 37 cigarettes are seized, within 20 days from the date of seizure, by the payment of the tax due together
 38 with a penalty of 100 percent thereof and the costs incurred in the seizure proceeding, which total
 39 payment may not be less than \$100. The seizure, sale or redemption does not relieve the person from
 40 fine or imprisonment as provided for violation of any provision of ORS 323.005 to 323.482.

41 (3) Notwithstanding the provisions of subsection (1) of this section, the owner of a seized
 42 *[vending machine,]* receptacle or vehicle shall have the right of redemption provided in subsection
 43 (2) of this section for a period of 60 days from the date of the seizure if the owner claims that right
 44 prior to the redemption provided for in subsection (2) of this section.

45 *[(4) Notwithstanding the provisions of subsections (1), (2) and (3) of this section, the owner of a*

1 *vending machine that is seized for failure to comply with ORS 323.211 may redeem the seized vending*
 2 *machine within a period of 60 days from the date of the seizure by the payment of \$25 plus costs of*
 3 *\$15 or the actual costs incurred in the seizure proceedings, whichever is greater.]*

4 **SECTION 8.** ORS 476.755 is amended to read:

5 476.755. As used in ORS 476.755 to 476.790 and 476.995:

6 (1) "Cigarette" means a roll for smoking:

7 (a) That is made wholly of tobacco, or of tobacco and any other substance, regardless of size,
 8 shape or flavoring or adulteration by or mixing with other ingredients, the wrapper of which is made
 9 of paper or other nontobacco materials; and

10 (b) That, because of its appearance, the type of tobacco used in the filler or its packaging and
 11 labeling, is likely to be offered to or purchased by consumers as a cigarette.

12 (2) "Distribute" means to do any of the following:

13 (a) Sell cigarettes or deliver cigarettes for sale by another person to consumers.

14 (b) Receive or retain more than 199 cigarettes at a place of business where the person receiving
 15 or retaining the cigarettes customarily sells cigarettes or offers cigarettes for sale to consumers.

16 *[(c) Place cigarettes in vending machines.]*

17 *[(d)]* (c) Sell or accept orders for cigarettes that are to be transported from a point outside this
 18 state to a consumer within this state.

19 *[(e)]* (d) Buy cigarettes directly from a manufacturer or wholesale dealer for resale in this state.

20 *[(f)]* (e) Give cigarettes as a sample, prize, gift or other promotion.

21 (3) "Manufacturer" means:

22 (a) An entity that produces, or causes the production of, cigarettes for sale in this state;

23 (b) An importer or first purchaser of cigarettes that intends to resell within this state cigarettes
 24 that were produced for sale outside this state; or

25 (c) A successor to an entity, importer or first purchaser described in paragraph (a) or (b) of this
 26 subsection.

27 (4) "Packaging" includes, but is not limited to, cigarette soft packs, boxes, cartons and cases.

28 (5) "Quality control and assurance program" means laboratory procedures implemented to en-
 29 sure that operator bias, systematic and nonsystematic methodological errors and equipment-related
 30 problems do not affect the results of testing.

31 (6) "Reduced ignition propensity" means meeting the fire safety performance standard described
 32 in ORS 476.770 (6).

33 (7) "Repeatability" means the range of values within which the repeat results of ignition pro-
 34 pensity testing by a single laboratory will fall 95 percent of the time.

35 (8) "Retail dealer" means a person, other than a manufacturer or wholesale dealer, that engages
 36 in distributing cigarettes.

37 (9) "Sell" means to transfer, or agree to transfer, title or possession for a monetary or non-
 38 monetary consideration.

39 (10) "Variety" means a type of cigarette marketed by the manufacturer as being distinct from
 40 other types of cigarettes on the basis of brand name, length, filter, wrapping, flavoring or other
 41 characteristics as the State Fire Marshal may provide by rule.

42 (11) "Wholesale dealer" means a person that distributes cigarettes to[:]

43 *[(a)]* a retail dealer or other person for resale; *or]*

44 *[(b) A person that owns, operates or maintains cigarette vending machines on premises owned or*
 45 *operated by another person].*

1

SECTION 9. ORS 167.404, 323.211 and 323.215 are repealed.

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