

B-Engrossed
Senate Bill 300

Ordered by the Senate June 26
Including Senate Amendments dated April 16 and June 26

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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.

Permits Department of Revenue to enter and examine premises of person or business licensed to distribute or sell cigarettes or tobacco products or that department reasonably believes is used to distribute or sell cigarettes or tobacco products. **Requires department personnel to have reasonable cause to believe that individual is present in premises before seeking entry.**

Allows department to impose on person who prevents entry or examination maximum fine of **[\$1,000] \$500 per day for first seven days and \$1,000 per each additional day thereafter.**

Continuously appropriates moneys to department from suspense account held by State Treasurer for purpose of administering cigarette and tobacco product tax programs.

Requires amount charged by federal government for processing offset request to be added to taxes, interest and penalties owed by taxpayer to state.

A BILL FOR AN ACT

1
2 Relating to taxation; creating new provisions; amending ORS 305.612, 323.455, 323.480, 323.625,
3 323.630 and 401.804; and appropriating money.

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

5 **SECTION 1.** ORS 323.455 is amended to read:

6 323.455. (1) All moneys received by the Department of Revenue from the tax imposed by ORS
7 323.030 (1) shall be paid over to the State Treasurer to be held in a suspense account established
8 under ORS 293.445. **The department may pay expenses for administration of ORS 323.005 to**
9 **323.482 out of moneys received from the tax imposed under ORS 323.030 (1). Amounts nec-**
10 **essary to pay administrative expenses are continuously appropriated to the department from**
11 **the suspense account.** After the payment of **administrative expenses and** refunds, 89.65 percent
12 shall be credited to the General Fund, 3.45 percent is appropriated to the cities of this state, 3.45
13 percent is appropriated to the counties of this state and 3.45 percent is continuously appropriated
14 to the Department of Transportation for the purpose of financing and improving transportation ser-
15 vices for elderly individuals and individuals with disabilities as provided in ORS 391.800 to 391.830.

16 (2) The moneys so appropriated to cities and counties shall be paid on a monthly basis within
17 35 days after the end of the month for which a distribution is made. Each city shall receive such
18 share of the money appropriated to all cities as its population, as determined under ORS 190.510 to
19 190.590 last preceding such apportionment, bears to the total population of the cities of the state,
20 and each county shall receive such share of the money as its population, determined under ORS
21 190.510 to 190.590 last preceding such apportionment, bears to the total population of the state.

22 (3) The moneys appropriated to the Department of Transportation under subsection (1) of this

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 shall be distributed and transferred to the Elderly and Disabled Special Transportation Fund
2 established by ORS 391.800 at the same time as the cigarette tax moneys are distributed to cities
3 and counties under this section.

4 (4) Of the moneys credited to the General Fund under this section 51.92 percent shall be dedi-
5 cated to funding the maintenance and expansion of the number of persons eligible for medical as-
6 sistance under the Oregon Health Plan, or to funding the maintenance of the benefits available
7 under the Oregon Health Plan, or both, and 5.77 percent shall be credited to the Tobacco Use Re-
8 duction Account established under ORS 431.832.

9 **SECTION 2.** ORS 323.625 is amended to read:

10 323.625. All moneys received by the Department of Revenue under ORS 323.500 to 323.645 shall
11 be deposited in the State Treasury and credited to a suspense account established under ORS
12 293.445. **The department may pay expenses for administration of ORS 323.500 to 323.645 out**
13 **of moneys received from the taxes imposed under ORS 323.505 and 323.565. Amounts neces-**
14 **sary to pay administrative expenses are continuously appropriated to the department from**
15 **the suspense account.** After the payment of **administrative expenses** and refunds or credits
16 arising from erroneous overpayments, the balance of the money shall be credited to the General
17 Fund. Of the amount credited to the General Fund under this section 41.54 percent shall be dedi-
18 cated to funding the maintenance and expansion of the number of persons eligible for medical as-
19 sistance under the Oregon Health Plan, or to funding the maintenance of the benefits available
20 under the Oregon Health Plan, or both, and 4.62 percent shall be credited to the Tobacco Use Re-
21 duction Account established under ORS 431.832.

22 **SECTION 3.** Section 4 of this 2009 Act is added to and made a part of ORS chapter 323.

23 **SECTION 4.** (1) As used in this section, "premises" means a place of business:

24 (a) That is licensed under this chapter; or

25 (b) That the Department of Revenue has reasonable cause to believe is used for the sale
26 or distribution of cigarettes or tobacco products.

27 (2) The Department of Revenue may enter and examine the premises of any person or
28 business at any time an individual is present. If the department seeks entry under this sec-
29 tion outside of regular business hours, this section requires that department personnel have
30 reasonable cause to believe that an individual is present in the premises. The department
31 may enter and examine:

32 (a) All areas used in or by the business operated at the premises, regardless of whether
33 patrons are permitted to be present in those areas; and

34 (b) Areas not located at the premises that reasonably appear to be used by the person
35 or business to store items listed in subsection (3) of this section.

36 (3) The department may examine:

37 (a) Business records related to the sale or distribution of cigarettes or tobacco products;

38 (b) Books, papers, records or equipment reasonably necessary to comply with the pro-
39 visions of this chapter; and

40 (c) Cigarettes or tobacco products.

41 (4) A person may not interfere with or hinder an entry or examination by the department
42 under this section.

43 (5) This section does not authorize the department to enter or examine an area used for
44 residential purposes, unless the area is located on a lot or parcel not zoned for residential
45 use or where residential use is not allowed as a nonconforming use.

1 **SECTION 5.** ORS 323.480 is amended to read:

2 323.480. (1)(a) A civil penalty may be imposed by the Department of Revenue on any person who
3 violates any provision of ORS 323.005 to 323.482.

4 (b) A civil penalty imposed under this subsection may not exceed \$1,000 per violation.

5 (c) A penalty imposed under this section may be appealed to the magistrate division of the tax
6 court. Appeal of a magistrate decision may be made as provided in ORS 305.445 and 305.501.

7 **(2) Any person who, in violation of section 4 (4) of this 2009 Act, prevents entry or ex-**
8 **amination by the department shall be fined a maximum of \$500 per day for the first seven**
9 **days and \$1,000 per each additional day thereafter until the department is allowed access.**

10 [(2)] (3) Any person required to obtain a license as a distributor under ORS 323.005 to 323.482
11 who knowingly engages in business as a distributor without a license or after a license has been
12 suspended or revoked is guilty of a Class C felony.

13 [(3)] (4) Any person required to make, render, sign or verify any report under ORS 323.005 to
14 323.482 who makes any false report with the intent to defraud is guilty of a Class C felony.

15 [(4)(a)] (5)(a) Any transporter who knowingly violates the provisions of ORS 323.225 is guilty
16 of a Class C felony.

17 (b) This subsection does not apply to a transporter who transports or possesses or acquires for
18 the purpose of transporting fewer than 60,000 cigarettes.

19 [(5)] (6) Any person who knowingly violates any provisions of ORS 323.005 to 323.482, except
20 as otherwise provided in this section, is guilty of a Class A misdemeanor.

21 [(6)] (7) Any person who files a fraudulent refund claim under ORS 323.320 is guilty of a Class
22 C felony.

23 [(7)] (8) Any person who, with intent to defraud, makes, alters, forges or utters a false receipt
24 or invoice recording a sale of cigarettes in this state is guilty of a Class C felony.

25 [(8)] (9) In addition to any other sentence the court may impose upon a conviction under this
26 section, the court may order the forfeiture of the instrumentalities used in violating ORS 323.005 to
27 323.482 and the proceeds resulting from a violation of ORS 323.005 to 323.482.

28 **SECTION 6.** ORS 323.630 is amended to read:

29 323.630. (1)(a) A civil penalty may be imposed by the Department of Revenue on any person who
30 violates any provision of ORS 323.500 to 323.645.

31 (b) A civil penalty imposed under this subsection may not exceed \$1,000 per violation.

32 (c) A penalty imposed under this subsection may be appealed to the magistrate division of the
33 tax court in the time and manner prescribed in ORS 305.404 to 305.560.

34 **(2) Any person who, in violation of section 4 (4) of this 2009 Act, prevents entry or ex-**
35 **amination by the department shall be fined a maximum of \$500 per day for the first seven**
36 **days and \$1,000 per each additional day thereafter until the department is allowed access.**

37 [(2)] (3) Any person required to obtain a license as a distributor under ORS 323.500 to 323.645
38 who knowingly engages in business as a distributor without a license or after a license has been
39 suspended or revoked is guilty of a Class C felony.

40 [(3)] (4) Any person required to make, render, sign or verify any report under ORS 323.500 to
41 323.645 who makes any false report with the intent to defraud is guilty of a Class C felony.

42 [(4)] (5) Any transporter who knowingly violates the provisions of ORS 323.570 is guilty of a
43 Class C felony.

44 [(5)] (6) Any person who knowingly violates any provision of ORS 323.500 to 323.645, except as
45 otherwise provided in this section, is guilty of a Class A misdemeanor.

1 [(6)] (7) Any person who, with intent to defraud, makes, alters, forges or utters a false receipt
2 or invoice recording a sale of tobacco products in this state is guilty of a Class C felony.

3 [(7)] (8) In addition to any other sentence the court may impose upon a conviction under this
4 section, the court may order the forfeiture of the instrumentalities used in violating ORS 323.500 to
5 323.645 and the proceeds resulting from a violation of ORS 323.500 to 323.645.

6 **SECTION 7.** ORS 401.804 is amended to read:

7 401.804. (1) Unless the context requires otherwise, the provisions of ORS chapters 305, 314 and
8 316 as to the audit and examination of reports and returns, determination of deficiencies, assess-
9 ments, claims for refunds, penalties, interest, jeopardy assessments, warrants, conferences and ap-
10 peals to the Oregon Tax Court, and procedures relating thereto, shall apply to ORS 401.792 to
11 401.804 the same as if the tax were a tax imposed upon or measured by net income. All such pro-
12 visions apply to the subscriber liable for the tax and to the provider required to collect the tax. As
13 to any amount collected and required to be remitted to the Department of Revenue, the tax shall
14 be considered a tax upon the provider required to collect the tax and that provider shall be con-
15 sidered a taxpayer.

16 (2) **Notwithstanding ORS 314.835 and 314.840, the Department of Revenue may disclose**
17 **information received under ORS 401.792 to 401.804 to the Public Utility Commission to carry**
18 **out the provisions of chapter 290, Oregon Laws 1987.**

19 (3) **The Public Utility Commission may disclose information obtained pursuant to chapter**
20 **290, Oregon Laws 1987, to the Department of Revenue to administer the tax imposed under**
21 **ORS 401.792 to 401.804.**

22 **SECTION 8.** ORS 305.612 is amended to read:

23 305.612. (1) The Director of the Department of Revenue may enter into an intergovernmental
24 agreement with the United States Financial Management Service and the Internal Revenue Service
25 for the purpose of engaging in the reciprocal offset of federal tax refunds in payment of liquidated
26 state tax obligations and the offset of state tax refunds in payment of liquidated federal tax obli-
27 gations.

28 (2) The director may pay a fee charged by the federal government for the processing of an offset
29 request. The fee may be deducted from amounts remitted to the state by the federal government
30 pursuant to an intergovernmental agreement. **The amount of the fee charged by the federal**
31 **government shall be added to the taxes, interest and penalties owed by the taxpayer to the**
32 **state.**

33 (3) The Department of Revenue may by rule establish a fee to be charged to the federal gov-
34 ernment for the provision of state offset services.

35 (4) All moneys received by the department in payment of charges made pursuant to subsection
36 (3) of this section shall be deposited in a department miscellaneous receipts account established
37 under ORS 279A.290.

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