

# House Bill 2537

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Pre-session filed (at the request of House Interim Committee on Revenue)

## 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**.

Creates definition of "smokeless tobacco products" for purposes of weight-based tax. Applies to distributions of smokeless tobacco products occurring on or after July 1, 2010.

Takes effect on 91st day following adjournment sine die.

## A BILL FOR AN ACT

1  
2 Relating to smokeless tobacco products; creating new provisions; amending ORS 323.500, 323.505 and  
3 323.810; and prescribing an effective date.

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

5 **SECTION 1.** ORS 323.500 is amended to read:

6 323.500. As used in ORS 323.500 to 323.645, unless the context otherwise requires:

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

9 (2) "**Chewing tobacco**" means **loose leaf, plug or twist tobacco, tobacco bites or bits or**  
10 **other whole or coarsely shredded leaf tobacco that is intended to be placed in the oral cavity**  
11 **and consumed without being combusted.**

12 [(2)] (3) "Cigar" means a roll for smoking that is of any size or shape and that is made wholly  
13 or in part of tobacco, irrespective of whether the tobacco is pure or flavored, adulterated or mixed  
14 with any other ingredient, if the roll has a wrapper made wholly or in greater part of tobacco and  
15 if 1,000 of these rolls collectively weigh more than three pounds. "Cigar" does not include a ciga-  
16 rette, as defined in ORS 323.010.

17 [(3)] (4) "Consumer" means any person who purchases tobacco products in this state for the  
18 person's use or consumption or for any purpose other than for reselling the tobacco products to  
19 another person.

20 [(4)] (5) "Contraband tobacco products" means tobacco products or packages containing tobacco  
21 products:

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

23 (b) That do not comply with the requirements of the tobacco products tax laws of the federal  
24 government or of other states;

25 (c) That bear trademarks that are counterfeit under ORS 647.135 or other state or federal  
26 trademark laws; or

27 (d) That have been sold, offered for sale or possessed for sale in this state in violation of ORS  
28 180.486.

29 [(5)] (6) "Department" means the Department of Revenue.

30 [(6)] (7) "Distribute" means:

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

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

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

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

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

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

11 [(7)] (8) "Distributor" means:

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

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

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

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

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

20 [(8)] (9) "Manufacturer" means a person who manufactures tobacco products for sale.

21 [(9)] (10) "Moist snuff" means:

22 (a) [Any] **Snus or any other** finely cut, ground or powdered tobacco that is not intended to be  
23 smoked or placed in a nasal cavity; or

24 (b) **Pouches, lozenges, tobacco gum, strips, orbs, sticks or** any other product containing  
25 **finely cut, ground or powdered** tobacco that is intended or expected to be consumed without being  
26 combusted.

27 [(10)] (11) "Place of business" means any place where tobacco products are sold or where to-  
28 bacco products are manufactured, stored or kept for the purpose of sale or consumption, including  
29 any vessel, vehicle, airplane, train or vending machine.

30 [(11)] (12) "Retail dealer" means any person who is engaged in the business of selling or other-  
31 wise dispensing tobacco products to consumers. The term also includes the operators of or recipients  
32 of revenue from all places such as smoke shops, cigar stores and vending machines, where tobacco  
33 products are made or stored for ultimate sale to consumers.

34 [(12)] (13) "Sale" means any transfer, exchange or barter, in any manner or by any means, for  
35 a consideration, and includes and means all sales made by any person. It includes a gift by a person  
36 engaged in the business of selling tobacco products, for advertising, as a means of evading the pro-  
37 visions of ORS 323.500 to 323.645, or for any other purpose.

38 (14) **"Smokeless tobacco products" means snuff, dry snuff, snuff flour, moist snuff,**  
39 **chewing tobacco, shorts, refuse scraps, clippings, cuttings and sweepings of tobacco and all**  
40 **other kinds or forms of tobacco, prepared in such a manner as to be suitable for consump-**  
41 **tion, either orally or through the nasal cavity, without being combusted.**

42 [(13)] (15) "Taxpayer" includes a distributor or other person required to pay a tax imposed under  
43 ORS 323.500 to 323.645.

44 [(14)] (16) "Tobacco products" means cigars, cheroots, stogies, periques, granulated, plug cut,  
45 crimp cut, ready rubbed, **cavendish** and other smoking tobacco, [*snuff, snuff flour, moist snuff,*

1 *cavendish, plug and twist tobacco, fine-cut and other chewing tobaccos, shorts, refuse scraps, clippings,*  
 2 *cuttings and sweepings of tobacco* **smokeless tobacco products** and other kinds and forms of to-  
 3 bacco, prepared in such manner as to be suitable for chewing or smoking in a pipe or otherwise,  
 4 or both for chewing and smoking[, *but shall*]. **“Tobacco products”** does not include cigarettes as  
 5 defined in ORS 323.010.

6 [(15)] (17) “Untaxed tobacco products” means tobacco products for which the tax required under  
 7 ORS 323.500 to 323.645 has not been paid.

8 [(16)] (18) “Wholesale sales price” means the price paid for untaxed tobacco products to or on  
 9 behalf of a seller by a purchaser of the untaxed tobacco products.

10 **SECTION 2.** ORS 323.505 is amended to read:

11 323.505. (1) A tax is hereby imposed upon the distribution of all tobacco products in this state.  
 12 The tax imposed by this section is intended to be a direct tax on the consumer, for which payment  
 13 upon distribution is required to achieve convenience and facility in the collection and administration  
 14 of the tax. The tax shall be imposed on a distributor at the time the distributor distributes tobacco  
 15 products.

16 (2) The tax imposed under this section shall be imposed at the rate of:

17 (a) Sixty-five percent of the wholesale sales price of cigars, but not to exceed 50 cents per cigar;

18 (b) One dollar and seventy-eight cents per ounce based on the net weight determined by the  
 19 manufacturer, in the case of [*moist snuff*] **smokeless tobacco products other than dry snuff**, ex-  
 20 cept that the minimum tax under this paragraph is \$2.14 per retail container; [*or*]

21 **(c) Sixty-five percent of the wholesale sales price of dry snuff; or**

22 [*(c)*] **(d) Sixty-five percent of the wholesale sales price of all tobacco products that are not cigars**  
 23 **or [*moist snuff*] smokeless tobacco products.**

24 (3) For reporting periods beginning on or after July 1, 2019, the rates of tax applicable to [*moist*  
 25 *snuff*] **smokeless tobacco products** under subsection (2)(b) of this section shall be adjusted for each  
 26 biennium according to the cost-of-living adjustment for the calendar year. The Department of Re-  
 27 venue shall recompute the rates for each biennium by adding to the rates in subsection (2)(b) of this  
 28 section the product obtained by multiplying the rates in subsection (2)(b) of this section by a factor  
 29 that is equal to 0.25 multiplied by the percentage (if any) by which the monthly averaged U.S. City  
 30 Average Consumer Price Index for the 12 consecutive months ending August 31 of the prior calendar  
 31 year exceeds the monthly averaged U.S. City Average Consumer Price Index for the 12 consecutive  
 32 months ending August 31, 2017.

33 (4) If the tax imposed under this section does not equal an amount calculable to a whole cent,  
 34 the tax shall be equal to the next higher whole cent. However, the amount remitted to the Depart-  
 35 ment of Revenue by the taxpayer for each quarter shall be equal only to 98.5 percent of the total  
 36 taxes due and payable by the taxpayer for the quarter.

37 (5) No tobacco product shall be subject to the tax if the base product or other intermediate form  
 38 thereof has previously been taxed under this section.

39 **SECTION 3. The amendments to ORS 323.500 and 323.505 by sections 1 and 2 of this 2011**  
 40 **Act apply to distributions occurring on or after July 1, 2010.**

41 **SECTION 4.** ORS 323.810 is amended to read:

42 323.810. As used in ORS 323.810 to 323.816:

43 (1) “Adjusted for inflation” means increased in accordance with the formula for inflation ad-  
 44 justment set forth in Exhibit F to the Smokeless Tobacco Master Settlement Agreement.

45 (2) “Affiliate” means a person who directly or indirectly owns or controls, is owned or con-

1 trolled by or is under common ownership or control with another person. For purposes of defining  
2 “affiliate”:

3 (a) “Owns,” “is owned” and “ownership” mean ownership of an equity interest, or the equivalent  
4 thereof, of 10 percent or more; and

5 (b) “Person” means an individual, partnership, committee, association, corporation or any other  
6 organization or group of persons.

7 (3) “Qualified escrow fund” means an escrow arrangement with a federally or state chartered  
8 financial institution having no affiliation with any tobacco product manufacturer and having assets  
9 of at least \$1 billion, where such arrangement requires that such financial institution hold the  
10 escrowed funds’ principal for the benefit of releasing parties and prohibits the tobacco product  
11 manufacturer who is placing the funds into escrow from using, accessing or directing the use of the  
12 escrowed funds’ principal except as consistent with ORS 323.816 (2)(b).

13 (4) “Released claims” has the meaning given that term in section II(gg) of the Smokeless To-  
14 bacco Master Settlement Agreement.

15 (5) “Releasing parties” has the meaning given that term in section II(ii) of the Smokeless To-  
16 bacco Master Settlement Agreement.

17 (6) “Smokeless Tobacco Master Settlement Agreement” means the settlement agreement **with**  
18 **that title** (and related documents) entered into on November 23, 1998, by the State of Oregon and  
19 leading United States tobacco product manufacturers.

20 (7) “Smokeless tobacco products” means moist snuff **or chewing tobacco**, as **those terms are**  
21 defined in ORS 323.500[, *or chewing tobacco, as defined in section 5702 of the Internal Revenue*  
22 *Code*].

23 (8)(a) “Tobacco product manufacturer” means an entity that, after September 28, 2009, directly  
24 (and not exclusively through any affiliate):

25 (A) Manufactures smokeless tobacco products anywhere that such manufacturer intends to be  
26 sold in the United States, including smokeless tobacco products intended to be sold in the United  
27 States through an importer (except where such importer is an Original Participating Manufacturer,  
28 as defined in section II(cc) of the Smokeless Tobacco Master Settlement Agreement), that will be  
29 responsible for the payments under the Smokeless Tobacco Master Settlement Agreement with re-  
30 spect to such smokeless tobacco products as a result of the provisions of section VI(b) of the  
31 Smokeless Tobacco Master Settlement Agreement and that pays the taxes specified in section II(w)  
32 of the Smokeless Tobacco Master Settlement Agreement, and provided that the manufacturer of such  
33 smokeless tobacco products does not market or advertise such smokeless tobacco products in the  
34 United States);

35 (B) Is the first purchaser anywhere for resale in the United States of smokeless tobacco products  
36 manufactured anywhere that the manufacturer does not intend to be sold in the United States; or

37 (C) Becomes a successor of an entity described in subparagraph (A) or (B) of this paragraph.

38 (b) “Tobacco product manufacturer” does not include an affiliate of a tobacco product man-  
39 ufacturer unless such affiliate is itself a tobacco product manufacturer under paragraph (a) of this  
40 subsection.

41 (9) “Units sold” means the number of individual **unit** containers of smokeless tobacco products  
42 sold in the State of Oregon by the applicable tobacco product manufacturer (whether directly or  
43 through a distributor, retailer or similar intermediary or intermediaries) during the year in question,  
44 as measured by excise taxes collected by the State of Oregon. The Department of Revenue [*shall*]  
45 **may** adopt such rules as are necessary to ascertain the amount of state excise tax paid on the

1 smokeless tobacco products of such tobacco product manufacturer for each year. A unit container  
2 shall contain [3.2] 1.2 ounces of moist snuff, as defined in ORS 323.500, or 3.0 ounces of chewing  
3 tobacco, as defined in ORS 323.500.

4 **SECTION 5. This 2011 Act takes effect on the 91st day after the date on which the 2011**  
5 **session of the Seventy-sixth Legislative Assembly adjourns sine die.**

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