

House Bill 4129

Sponsored by Representative CLEM (Pre-session 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**.

Increases rate of taxation on cigarettes and tobacco products. Expands definition of tobacco products for purpose of tax to include electronic cigarettes and nicotine solution. Distributes tax revenues from increases in cigarette tax and tobacco products tax to Oregon Health Authority to provide preventive services and innovative, nontraditional health services, including mental health services and treatment for substance use disorders, through coordinated care organizations.

Applies to distributions of cigarettes and tobacco products occurring on or after January 1, 2015.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to taxation of products containing nicotine; creating new provisions; amending ORS
3 323.030, 323.455, 323.500, 323.505 and 323.625; prescribing an effective date; and providing for
4 revenue raising that requires approval by a three-fifths majority.

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

6 **SECTION 1.** ORS 323.030 is amended to read:

7 323.030. (1) Every distributor shall pay a tax upon distributions of cigarettes at the rate of 29
8 mills for the distribution of each cigarette in this state.

9 (2) The taxes imposed by ORS 323.005 to 323.482 are in lieu of all other state, county or mu-
10 nicipal taxes on the sale or use of cigarettes.

11 (3) Any cigarette with respect to which a tax has been prepaid under ORS 323.068 or has oth-
12 erwise once been imposed under ORS 323.005 to 323.482 is not subject upon a subsequent distrib-
13 ution to the taxes imposed by ORS 323.005 to 323.482.

14 (4) In addition to and not in lieu of any other tax imposed under ORS 323.005 to 323.482, every
15 distributor shall pay a tax upon distributions of cigarettes at the rate of 6.5 mills for the distribution
16 of each cigarette in this state.

17 (5) **In addition to and not in lieu of any other tax imposed under ORS 323.005 to 323.482,**
18 **every distributor shall pay a tax upon distributions of cigarettes at the rate of 75 mills for**
19 **the distribution of each cigarette in this state.**

20 **SECTION 2.** ORS 323.030, as amended by section 15, chapter 5, Oregon Laws 2013 (special
21 session), is amended to read:

22 323.030. (1) Every distributor shall pay a tax upon distributions of cigarettes at the rate of 29
23 mills for the distribution of each cigarette in this state.

24 (2) The taxes imposed by ORS 323.005 to 323.482 are in lieu of all other state, county or mu-
25 nicipal taxes on the sale or use of cigarettes.

26 (3) Any cigarette with respect to which a tax has been prepaid under ORS 323.068 or has oth-
27 erwise once been imposed under ORS 323.005 to 323.482 is not subject upon a subsequent distrib-
28 ution to the taxes imposed by ORS 323.005 to 323.482.

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 (4) In addition to and not in lieu of any other tax imposed under ORS 323.005 to 323.482, every
 2 distributor shall pay a tax upon distributions of cigarettes at the rate of seven mills for the dis-
 3 tribution of each cigarette in this state.

4 **(5) In addition to and not in lieu of any other tax imposed under ORS 323.005 to 323.482,**
 5 **every distributor shall pay a tax upon distributions of cigarettes at the rate of 75 mills for**
 6 **the distribution of each cigarette in this state.**

7 **SECTION 3.** ORS 323.030, as amended by sections 15 and 16, chapter 5, Oregon Laws 2013
 8 (special session), is amended to read:

9 323.030. (1) Every distributor shall pay a tax upon distributions of cigarettes at the rate of 29
 10 mills for the distribution of each cigarette in this state.

11 (2) The taxes imposed by ORS 323.005 to 323.482 are in lieu of all other state, county or mu-
 12 nicipal taxes on the sale or use of cigarettes.

13 (3) Any cigarette with respect to which a tax has been prepaid under ORS 323.068 or has oth-
 14 erwise once been imposed under ORS 323.005 to 323.482 is not subject upon a subsequent distrib-
 15 ution to the taxes imposed by ORS 323.005 to 323.482.

16 (4) In addition to and not in lieu of any other tax imposed under ORS 323.005 to 323.482, every
 17 distributor shall pay a tax upon distributions of cigarettes at the rate of 7.5 mills for the distribution
 18 of each cigarette in this state.

19 **(5) In addition to and not in lieu of any other tax imposed under ORS 323.005 to 323.482,**
 20 **every distributor shall pay a tax upon distributions of cigarettes at the rate of 75 mills for**
 21 **the distribution of each cigarette in this state.**

22 **SECTION 4.** ORS 323.455 is amended to read:

23 323.455. (1) All moneys received by the Department of Revenue from the tax imposed by ORS
 24 323.030 (1) shall be paid over to the State Treasurer to be held in a suspense account established
 25 under ORS 293.445. The department may pay expenses for administration and enforcement of ORS
 26 323.005 to 323.482 out of moneys received from the tax imposed under ORS 323.030 (1). Amounts
 27 necessary to pay administrative and enforcement expenses are continuously appropriated to the de-
 28 partment from the suspense account. After the payment of administrative and enforcement expenses
 29 and refunds, 89.65 percent shall be credited to the General Fund, 3.45 percent is appropriated to the
 30 cities of this state, 3.45 percent is appropriated to the counties of this state and 3.45 percent is
 31 continuously appropriated to the Department of Transportation for the purpose of financing and
 32 improving transportation services for elderly individuals and individuals with disabilities as provided
 33 in ORS 391.800 to 391.830.

34 (2) The moneys appropriated to cities and counties under subsection (1) of this section shall be
 35 paid on a monthly basis within 35 days after the end of the month for which a distribution is made.
 36 Each city shall receive such share of the money appropriated to all cities as its population, as de-
 37 termined under ORS 190.510 to 190.590 last preceding such apportionment, bears to the total popu-
 38 lation of the cities of the state, and each county shall receive such share of the money as its
 39 population, determined under ORS 190.510 to 190.590 last preceding such apportionment, bears to the
 40 total population of the state.

41 (3) The moneys appropriated to the Department of Transportation under subsection (1) of this
 42 section shall be distributed and transferred to the Elderly and Disabled Special Transportation Fund
 43 established by ORS 391.800 at the same time as the cigarette tax moneys are distributed to cities
 44 and counties under this section.

45 (4) Of the moneys credited to the General Fund under [subsection (1)] **subsections (1) and (5)(b)**

1 of this section, 51.92 percent shall be dedicated to funding the maintenance and expansion of the
 2 number of persons eligible for the medical assistance program under ORS chapter 414, or to funding
 3 the maintenance of the benefits available under the program, or both, and 5.77 percent shall be
 4 credited to the Tobacco Use Reduction Account established under ORS 431.832.

5 (5) All moneys received by the Department of Revenue from the tax imposed by ORS 323.030 (4)
 6 shall be paid over to the State Treasurer to be held in a suspense account established under ORS
 7 293.445. After the payment of refunds, the balance shall be credited as follows:

8 (a) 76.92 percent to the Oregon Health Authority Fund established by ORS 413.101, for the
 9 purpose of providing the services described in ORS 430.630.

10 (b) 23.08 percent [*according to the distribution formula provided in subsection (4) of this section.*]
 11 **to the General Fund.**

12 **(6) All moneys received by the Department of Revenue from the tax imposed by ORS**
 13 **323.030 (5) shall be paid over to the State Treasurer to be held in a suspense account estab-**
 14 **lished under ORS 293.445. After the payment of refunds, the balance shall be credited to the**
 15 **Oregon Health Authority Fund established by ORS 413.101, for the purpose of providing funds**
 16 **to coordinated care organizations under contract with the Oregon Health Authority pursuant**
 17 **to ORS 414.651, and shall be used to provide preventive services and innovative, nontradi-**
 18 **tional health services, pursuant to ORS 414.065. At least 15 percent of the moneys credited**
 19 **to the Oregon Health Authority Fund under this subsection shall be used to provide mental**
 20 **health services or treatment for substance use disorders.**

21 **SECTION 5.** ORS 323.455, as amended by section 18, chapter 5, Oregon Laws 2013 (special
 22 session), is amended to read:

23 323.455. (1) All moneys received by the Department of Revenue from the tax imposed by ORS
 24 323.030 (1) shall be paid over to the State Treasurer to be held in a suspense account established
 25 under ORS 293.445. The department may pay expenses for administration and enforcement of ORS
 26 323.005 to 323.482 out of moneys received from the tax imposed under ORS 323.030 (1). Amounts
 27 necessary to pay administrative and enforcement expenses are continuously appropriated to the de-
 28 partment from the suspense account. After the payment of administrative and enforcement expenses
 29 and refunds, 89.65 percent shall be credited to the General Fund, 3.45 percent is appropriated to the
 30 cities of this state, 3.45 percent is appropriated to the counties of this state and 3.45 percent is
 31 continuously appropriated to the Department of Transportation for the purpose of financing and
 32 improving transportation services for elderly individuals and individuals with disabilities as provided
 33 in ORS 391.800 to 391.830.

34 (2) The moneys appropriated to cities and counties under subsection (1) of this section shall be
 35 paid on a monthly basis within 35 days after the end of the month for which a distribution is made.
 36 Each city shall receive such share of the money appropriated to all cities as its population, as de-
 37 termined under ORS 190.510 to 190.590 last preceding such apportionment, bears to the total popu-
 38 lation of the cities of the state, and each county shall receive such share of the money as its
 39 population, determined under ORS 190.510 to 190.590 last preceding such apportionment, bears to the
 40 total population of the state.

41 (3) The moneys appropriated to the Department of Transportation under subsection (1) of this
 42 section shall be distributed and transferred to the Elderly and Disabled Special Transportation Fund
 43 established by ORS 391.800 at the same time as the cigarette tax moneys are distributed to cities
 44 and counties under this section.

45 (4) Of the moneys credited to the General Fund under subsection (1) of this section, 51.92 per-

1 cent shall be dedicated to funding the maintenance and expansion of the number of persons eligible
 2 for the medical assistance program under ORS chapter 414, or to funding the maintenance of the
 3 benefits available under the program, or both, and 5.77 percent shall be credited to the Tobacco Use
 4 Reduction Account established under ORS 431.832.

5 (5) All moneys received by the Department of Revenue from the tax imposed by ORS 323.030 (4)
 6 shall be paid over to the State Treasurer to be held in a suspense account established under ORS
 7 293.445. After the payment of refunds, the balance shall be credited to the Oregon Health Authority
 8 Fund established by ORS 413.101 and shall be used to provide the services described in ORS 430.630.

9 (6) All moneys received by the Department of Revenue from the tax imposed by ORS
 10 323.030 (5) shall be paid over to the State Treasurer to be held in a suspense account estab-
 11 lished under ORS 293.445. After the payment of refunds, the balance shall be credited to the
 12 Oregon Health Authority Fund established by ORS 413.101, for the purpose of providing funds
 13 to coordinated care organizations under contract with the Oregon Health Authority pursuant
 14 to ORS 414.651, and shall be used to provide preventive services and innovative, nontradi-
 15 tional health services, pursuant to ORS 414.065. At least 15 percent of the moneys credited
 16 to the Oregon Health Authority Fund under this subsection shall be used to provide mental
 17 health services or treatment for substance use disorders.

18 **SECTION 6.** (1) In addition to and not in lieu of any other tax, for the privilege of holding
 19 or storing cigarettes for sale, use or consumption, a floor tax is imposed upon every dealer
 20 at the rate of 75 mills for each cigarette in the possession of or under the control of the
 21 dealer in this state at 12:01 a.m. on January 1, 2015.

22 (2) The tax imposed by this section is due and payable on or before January 20, 2015. Any
 23 amount of tax that is not paid within the time required shall bear interest at the rate es-
 24 tablished under ORS 305.220 per month, or fraction of a month, from the date on which the
 25 tax is due to be paid, until paid.

26 (3) On or before January 20, 2015, every dealer must file a report with the Department
 27 of Revenue in such form as the department may prescribe. The report must state the num-
 28 ber of cigarettes in the possession of or under the control of the dealer in this state at 12:01
 29 a.m. on January 1, 2015, and the amount of tax due. Each report must be accompanied by a
 30 remittance payable to the department for the amount of tax due.

31 **SECTION 7.** In addition to and not in lieu of any other tax, for the privilege of distrib-
 32 uting cigarettes as a distributor and for holding or storing cigarettes for sale, use or con-
 33 sumption, a floor tax and cigarette adjustment indicia tax is imposed upon every distributor
 34 in the amount of \$1.875 for each Oregon cigarette tax stamp bearing the designation "25,"
 35 and in the amount of \$1.50 for each Oregon cigarette tax stamp bearing the designation
 36 "20," that is affixed to any package of cigarettes in the possession of or under the control
 37 of the distributor at 12:01 a.m. on January 1, 2015.

38 **SECTION 8.** (1) Every distributor must take an inventory as of 12:01 a.m. on January 1,
 39 2015, of all packages of cigarettes to which are affixed Oregon cigarette tax stamps and of
 40 all unaffixed Oregon cigarette tax stamps in the possession of or under the control of the
 41 distributor.

42 (2) Every distributor must file a report with the Department of Revenue on or before
 43 January 20, 2015, in such form as the department may prescribe, showing:

44 (a) The number of Oregon cigarette tax stamps, with the designations of the stamps, that
 45 were affixed to packages of cigarettes in the possession of or under the control of the dis-

1 **tributor at 12:01 a.m. on January 1, 2015; and**

2 **(b) The number of unaffixed Oregon cigarette tax stamps, with the designations of the**
3 **stamps, that were in the possession of or under the control of the distributor at 12:01 a.m.**
4 **on January 1, 2015.**

5 **(3) The amount of tax required to be paid with respect to the affixed Oregon cigarette**
6 **tax stamps shall be computed pursuant to section 7 of this 2014 Act and remitted with the**
7 **distributor's report. Any amount of tax not paid within the time specified for the filing of**
8 **the report shall bear interest at the rate established under ORS 305.220 per month, or frac-**
9 **tion of a month, from the due date of the report until paid.**

10 **SECTION 9.** ORS 323.500 is amended to read:

11 323.500. As used in ORS 323.500 to 323.645, unless the context otherwise requires:

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

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

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

22 (4) "Contraband tobacco products" means tobacco products or packages containing tobacco
23 products:

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

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

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

29 (d) That have been sold, offered for sale or possessed for sale in this state in violation of ORS
30 180.486.

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

32 (6) "Distribute" means:

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

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

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

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

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

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

43 (7) "Distributor" means:

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

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

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

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

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

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

8 (9) "Moist snuff" means:

9 (a) Any finely cut, ground or powdered tobacco that is not intended to be smoked or placed in
10 a nasal cavity; or

11 (b) Any other product containing tobacco that is intended or expected to be consumed without
12 being combusted.

13 (10) "Place of business" means any place where tobacco products are sold or where tobacco
14 products are manufactured, stored or kept for the purpose of sale or consumption, including any
15 vessel, vehicle, airplane, train or vending machine.

16 (11) "Retail dealer" means any person who is engaged in the business of selling or otherwise
17 dispensing tobacco products to consumers. The term also includes the operators of or recipients of
18 revenue from all places such as smoke shops, cigar stores and vending machines, where tobacco
19 products are made or stored for ultimate sale to consumers.

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

24 (13) "Taxpayer" includes a distributor or other person required to pay a tax imposed under ORS
25 323.500 to 323.645.

26 (14) "Tobacco products" means cigars, cheroots, stogies, periques, granulated, plug cut, crimp
27 cut, ready rubbed and other smoking tobacco, snuff, snuff flour, moist snuff, cavendish, plug and
28 twist tobacco, fine-cut and other chewing tobaccos, shorts, refuse scraps, clippings, cuttings and
29 sweepings of tobacco, [and] other kinds and forms of tobacco, prepared in such manner as to be
30 suitable for chewing or smoking in a pipe or otherwise, or both for chewing and smoking, **and vapor**
31 **products**, but [shall] **does** not include cigarettes as defined in ORS 323.010.

32 (15) "Untaxed tobacco products" means tobacco products for which the tax required under ORS
33 323.500 to 323.645 has not been paid.

34 (16) "Vapor product" means:

35 (a) **An electronic device designed to heat nicotine solutions and other solutions for the**
36 **purpose of producing a vapor to be inhaled by the user of the device; or**

37 (b) **A nicotine solution in any form designed to be used with a device described in para-**
38 **graph (a) of this subsection.**

39 [(16)] (17) "Wholesale sales price" means the price paid for untaxed tobacco products to or on
40 behalf of a seller by a purchaser of the untaxed tobacco products.

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

42 323.505. (1) A tax is hereby imposed upon the distribution of all tobacco products in this state.
43 The tax imposed by this section is intended to be a direct tax on the consumer, for which payment
44 upon distribution is required to achieve convenience and facility in the collection and administration
45 of the tax. The tax shall be imposed on a distributor at the time the distributor distributes tobacco

1 products.

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

3 (a) [*Sixty-five*] **81.25** percent of the wholesale sales price of cigars, but not to exceed [50] **62.5**
4 cents per cigar;

5 (b) [*One dollar and seventy-eight*] **Two dollars and twenty-three** cents per ounce based on the
6 net weight determined by the manufacturer, in the case of moist snuff, except that the minimum tax
7 under this paragraph is [*\$2.14*] **\$2.68** per retail container; or

8 (c) [*Sixty-five*] **81.25** percent of the wholesale sales price of all tobacco products that are not
9 cigars or moist snuff.

10 (3) For reporting periods beginning on or after July 1, 2022, the rates of tax applicable to moist
11 snuff under subsection (2)(b) of this section shall be adjusted for each biennium according to the
12 cost-of-living adjustment for the calendar year. The Department of Revenue shall recompute the
13 rates for each biennium by adding to the rates in subsection (2)(b) of this section the product ob-
14 tained by multiplying the rates in subsection (2)(b) of this section by a factor that is equal to 0.25
15 multiplied by the percentage (if any) by which the monthly averaged U.S. City Average Consumer
16 Price Index for the 12 consecutive months ending August 31 of the prior calendar year exceeds the
17 monthly averaged U.S. City Average Consumer Price Index for the 12 consecutive months ending
18 August 31, 2020.

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

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

25 **SECTION 11.** ORS 323.625 is amended to read:

26 323.625. (1) All moneys received by the Department of Revenue under ORS 323.500 to 323.645
27 shall be deposited in the State Treasury and credited to a suspense account established under ORS
28 293.445. The department may pay expenses for administration and enforcement of ORS 323.500 to
29 323.645 out of moneys received from the taxes imposed under ORS 323.505 and 323.565. Amounts
30 necessary to pay administrative and enforcement expenses are continuously appropriated to the de-
31 partment from the suspense account. After the payment of administrative and enforcement expenses
32 and refunds or credits arising from erroneous overpayments, the balance of the money shall be
33 credited to the General Fund. Of the amount credited to the General Fund under this section 41.54
34 percent shall be dedicated to funding the maintenance and expansion of the number of persons eli-
35 gible for the medical assistance program under ORS chapter 414, or to funding the maintenance of
36 the benefits available under the program, or both, [*and*] 4.62 percent shall be credited to the To-
37 bacco Use Reduction Account established under ORS 431.832[.] **and _____ percent shall be**
38 **credited, for the purposes specified in subsection (2) of this section, to the Oregon Health**
39 **Authority Fund established by ORS 413.101.**

40 (2) **Moneys credited to the Oregon Health Authority Fund under subsection (1) of this**
41 **section shall be used for the purpose of providing funds to coordinated care organizations**
42 **under contract with the Oregon Health Authority pursuant to ORS 414.651 and shall be used**
43 **to provide preventive services and innovative, nontraditional health services, pursuant to**
44 **ORS 414.065. At least 15 percent of the moneys credited to the Oregon Health Authority Fund**
45 **under subsection (1) of this section shall be used to provide mental health services or**

1 **treatment for substance use disorders.**

2 **SECTION 12. The amendments to ORS 323.030, 323.455, 323.500, 323.505 and 323.625 by**
3 **sections 1 to 5 and 9 to 11 of this 2014 Act apply to distributions of cigarettes and tobacco**
4 **products occurring on or after January 1, 2015.**

5 **SECTION 13. This 2014 Act takes effect on the 91st day after the date on which the 2014**
6 **regular session of the Seventy-seventh Legislative Assembly adjourns sine die.**

7
