

House Bill 2134

Introduced and printed pursuant to House Rule 12.00. 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**.

Expands definition of "tobacco products" for purpose of taxation to include electronic cigarettes and nicotine solution. Applies to distributions of tobacco products occurring on or after January 1, 2016.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to taxation of products intended for nicotine consumption; creating new provisions;
3 amending ORS 323.500; prescribing an effective date; and providing for revenue raising that re-
4 quires approval by a three-fifths majority.

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

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

7 323.500. As used in ORS 323.500 to 323.645, unless the context otherwise requires:

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

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

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

18 (4) "Contraband tobacco products" means tobacco products or packages containing tobacco
19 products:

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

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

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

25 (d) That have been sold, offered for sale or possessed for sale in this state in violation of ORS
26 180.486.

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

28 (6) "Distribute" means:

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

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 (b) Making, manufacturing or fabricating tobacco products in this state for sale, storage, use or
 2 consumption in this state;
- 3 (c) Shipping or transporting tobacco products to retail dealers in this state, to be sold, stored,
 4 used or consumed by those retail dealers;
- 5 (d) Storing untaxed tobacco products in this state that are intended to be for sale, use or con-
 6 sumption in this state;
- 7 (e) Selling untaxed tobacco products in this state; or
- 8 (f) As a consumer, being in possession of untaxed tobacco products in this state.
- 9 (7) “Distributor” means:
- 10 (a) Any person engaged in the business of selling tobacco products in this state who brings, or
 11 causes to be brought, into this state from without the state any tobacco products for sale;
- 12 (b) Any person who makes, manufactures or fabricates tobacco products in this state for sale in
 13 this state;
- 14 (c) Any person engaged in the business of selling tobacco products without this state who ships
 15 or transports tobacco products to retail dealers in this state, to be sold by those retail dealers;
- 16 (d) Any person, including a retail dealer, who sells untaxed tobacco products in this state; or
- 17 (e) A consumer in possession of untaxed tobacco products in this state.
- 18 (8) “Manufacturer” means a person who manufactures tobacco products for sale.
- 19 (9) “Moist snuff” means:
- 20 (a) Any finely cut, ground or powdered tobacco that is not intended to be smoked or placed in
 21 a nasal cavity; or
- 22 (b) Any other product containing tobacco that is intended or expected to be consumed without
 23 being combusted.
- 24 (10) “Place of business” means any place where tobacco products are sold or where tobacco
 25 products are manufactured, stored or kept for the purpose of sale or consumption, including any
 26 vessel, vehicle, airplane, train or vending machine.
- 27 (11) “Retail dealer” means any person who is engaged in the business of selling or otherwise
 28 dispensing tobacco products to consumers. The term also includes the operators of or recipients of
 29 revenue from all places such as smoke shops, cigar stores and vending machines, where tobacco
 30 products are made or stored for ultimate sale to consumers.
- 31 (12) “Sale” means any transfer, exchange or barter, in any manner or by any means, for a con-
 32 sideration, and includes and means all sales made by any person. It includes a gift by a person en-
 33 gaged in the business of selling tobacco products, for advertising, as a means of evading the
 34 provisions of ORS 323.500 to 323.645, or for any other purpose.
- 35 (13) “Taxpayer” includes a distributor or other person required to pay a tax imposed under ORS
 36 323.500 to 323.645.
- 37 (14) “Tobacco products” means cigars, cheroots, stogies, periques, granulated, plug cut, crimp
 38 cut, ready rubbed and other smoking tobacco, snuff, snuff flour, moist snuff, cavendish, plug and
 39 twist tobacco, fine-cut and other chewing tobaccos, shorts, refuse scraps, clippings, cuttings and
 40 sweepings of tobacco, [and] other kinds and forms of tobacco, prepared in such manner as to be
 41 suitable for chewing or smoking in a pipe or otherwise, or both for chewing and smoking, **and vapor**
 42 **products**, but [shall] **does** not include cigarettes as defined in ORS 323.010.
- 43 (15) “Untaxed tobacco products” means tobacco products for which the tax required under ORS
 44 323.500 to 323.645 has not been paid.
- 45 (16) “Vapor product” means:

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

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

5 [(16)] (17) "Wholesale sales price" means the price paid for untaxed tobacco products to or on
6 behalf of a seller by a purchaser of the untaxed tobacco products.

7 **SECTION 2. The amendments to ORS 323.500 by section 1 of this 2015 Act apply to dis-**
8 **tributions of tobacco products occurring on or after January 1, 2016.**

9 **SECTION 3. This 2015 Act takes effect on the 91st day after the date on which the 2015**
10 **regular session of the Seventy-eighth Legislative Assembly adjourns sine die.**

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