

House Bill 3053

Sponsored by Representative CLEM

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 effective date of Act.

Refers Act to people for approval or rejection at special election held on same date as next primary election.

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; providing for revenue raising that requires ap-
4 proval by a three-fifths majority; and providing that this Act shall be referred to the people for
5 their approval or rejection.

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

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

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

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

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

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

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

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

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

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

27 (3) Any cigarette with respect to which a tax has been prepaid under ORS 323.068 or has oth-

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.

erwise once been imposed under ORS 323.005 to 323.482 is not subject upon a subsequent distribution to the taxes imposed by ORS 323.005 to 323.482.

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

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

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

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

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

(3) Any cigarette with respect to which a tax has been prepaid under ORS 323.068 or has otherwise once been imposed under ORS 323.005 to 323.482 is not subject upon a subsequent distribution to the taxes imposed by ORS 323.005 to 323.482.

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

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

SECTION 4. ORS 323.455, as amended by section 18, chapter 5, Oregon Laws 2013 (special session), is amended to read:

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

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

(3) The moneys appropriated to the Department of Transportation under subsection (1) of this section shall be distributed and transferred to the Elderly and Disabled Special Transportation Fund

1 established by ORS 391.800 at the same time as the cigarette tax moneys are distributed to cities
2 and counties under this section.

3 (4) Of the moneys credited to the General Fund under subsection (1) of this section, 51.92 per-
4 cent shall be dedicated to funding the maintenance and expansion of the number of persons eligible
5 for the medical assistance program under ORS chapter 414, or to funding the maintenance of the
6 benefits available under the program, or both, and 5.77 percent shall be credited to the Tobacco Use
7 Reduction Account established under ORS 431.832.

8 (5) All moneys received by the Department of Revenue from the tax imposed by ORS 323.030 (4)
9 shall be paid over to the State Treasurer to be held in a suspense account established under ORS
10 293.445. After the payment of refunds, the balance shall be credited to the Oregon Health Authority
11 Fund established by ORS 413.101 and shall be used to provide the services described in ORS 430.630.

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. (1) In addition to and not in lieu of any other tax, for the privilege of holding**
22 **or storing cigarettes for sale, use or consumption, a floor tax is imposed upon every dealer**
23 **at the rate of 75 mills for each cigarette in the possession of or under the control of the**
24 **dealer in this state at 12:01 a.m. on the effective date of this 2015 Act.**

25 **(2) The tax imposed by this section is due and payable on or before the 20th day following**
26 **the effective date of this 2015 Act. Any amount of tax that is not paid within the time re-**
27 **quired shall bear interest at the rate established under ORS 305.220 per month, or fraction**
28 **of a month, from the date on which the tax is due to be paid, until paid.**

29 **(3) On or before the 20th day following the effective date of this 2015 Act, every dealer**
30 **must file a report with the Department of Revenue in such form as the department may**
31 **prescribe. The report must state the number of cigarettes in the possession of or under the**
32 **control of the dealer in this state at 12:01 a.m. on the effective date of this 2015 Act, and the**
33 **amount of tax due. Each report must be accompanied by a remittance payable to the de-**
34 **partment for the amount of tax due.**

35 **SECTION 6. In addition to and not in lieu of any other tax, for the privilege of distrib-**
36 **uting cigarettes as a distributor and for holding or storing cigarettes for sale, use or con-**
37 **sumption, a floor tax and cigarette adjustment indicia tax is imposed upon every distributor**
38 **in the amount of \$1.875 for each Oregon cigarette tax stamp bearing the designation "25,"**
39 **and in the amount of \$1.50 for each Oregon cigarette tax stamp bearing the designation**
40 **"20," that is affixed to any package of cigarettes in the possession of or under the control**
41 **of the distributor at 12:01 a.m. on the effective date of this 2015 Act.**

42 **SECTION 7. (1) Every distributor must take an inventory as of 12:01 a.m. on the effective**
43 **date of this 2015 Act, of all packages of cigarettes to which are affixed Oregon cigarette tax**
44 **stamps and of all unaffixed Oregon cigarette tax stamps in the possession of or under the**
45 **control of the distributor.**

1 **(2) Every distributor must file a report with the Department of Revenue on or before the**
 2 **20th day following the effective date of this 2015 Act, in such form as the department may**
 3 **prescribe, showing:**

4 **(a) The number of Oregon cigarette tax stamps, with the designations of the stamps, that**
 5 **were affixed to packages of cigarettes in the possession of or under the control of the dis-**
 6 **tributor at 12:01 a.m. on the effective date of this 2015 Act; and**

7 **(b) The number of unaffixed Oregon cigarette tax stamps, with the designations of the**
 8 **stamps, that were in the possession of or under the control of the distributor at 12:01 a.m.**
 9 **on the effective date of this 2015 Act.**

10 **(3) The amount of tax required to be paid with respect to the affixed Oregon cigarette**
 11 **tax stamps shall be computed pursuant to section 6 of this 2015 Act and remitted with the**
 12 **distributor's report. Any amount of tax not paid within the time specified for the filing of**
 13 **the report shall bear interest at the rate established under ORS 305.220 per month, or frac-**
 14 **tion of a month, from the due date of the report until paid.**

15 **SECTION 8.** ORS 323.500 is amended to read:

16 323.500. As used in ORS 323.500 to 323.645, unless the context otherwise requires:

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

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

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

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

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

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

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

34 (d) That have been sold, offered for sale or possessed for sale in this state in violation of ORS
 35 180.486.

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

37 (6) "Distribute" means:

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

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

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

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

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

SECTION 9. ORS 323.505 is amended to read:

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

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

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

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

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

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

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

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

SECTION 10. ORS 323.625 is amended to read:

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

(2) Moneys credited to the Oregon Health Authority Fund under subsection (1) of this

1 section shall be used for the purpose of providing funds to coordinated care organizations
2 under contract with the Oregon Health Authority pursuant to ORS 414.651 and shall be used
3 to provide preventive services and innovative, nontraditional health services, pursuant to
4 ORS 414.065. At least 15 percent of the moneys credited to the Oregon Health Authority Fund
5 under subsection (1) of this section shall be used to provide mental health services or
6 treatment for substance use disorders.

7 SECTION 11. The amendments to ORS 323.030, 323.455, 323.500, 323.505 and 323.625 by
8 sections 1 to 4 and 8 to 10 of this 2015 Act apply to distributions of cigarettes and tobacco
9 products occurring on or after the effective date of this 2015 Act.

10 SECTION 12. This 2015 Act shall be submitted to the people for their approval or re-
11 jection at a special election held throughout this state on the same date as the next primary
12 election.

13 _____