

D R A F T

SUMMARY

Imposes tobacco products tax on tobacco substitute that contains nicotine but not tobacco and that is intended to be orally ingested by user. Requires licensing of distributor of tobacco substitute.

Applies to tobacco substitutes distributed on or after January 1, 2018.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to tobacco substitutes; creating new provisions; amending ORS
3 166.715, 323.500, 323.505, 323.515, 323.520, 323.530, 323.535, 323.538, 323.540,
4 323.555, 323.560, 323.565, 323.570, 323.607, 323.612, 323.613, 323.615, 323.630,
5 323.632, 323.640, 323.712, 323.715, 323.724 and 323.740; prescribing an effec-
6 tive date; and providing for revenue raising that requires approval by a
7 three-fifths majority.

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

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

10 323.500. As used in ORS 323.500 to 323.645, unless the context otherwise
11 requires:

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

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

1 cigarette, as defined in ORS 323.010.

2 (3) “Consumer” means any person who purchases tobacco products **or**
3 **tobacco substitutes** in this state for the person’s use or consumption or for
4 any purpose other than for reselling the tobacco products **or tobacco sub-**
5 **stitutes** to another person.

6 (4) “Contraband [*tobacco*] products” means tobacco products **or tobacco**
7 **substitutes** or packages containing tobacco products **or tobacco substi-**
8 **tutes**:

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

10 (b) That do not comply with the requirements of the tobacco products **or**
11 **tobacco substitutes** tax laws of the federal government or of other states;

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

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

16 (5) “Department” means the Department of Revenue.

17 (6) “Distribute” means:

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

21 (b) Making, manufacturing or fabricating tobacco products **or tobacco**
22 **substitutes** in this state for sale, storage, use or consumption in this state;

23 (c) Shipping or transporting tobacco products **or tobacco substitutes** to
24 retail dealers in this state, to be sold, stored, used or consumed by those
25 retail dealers;

26 (d) Storing untaxed [*tobacco*] products in this state that are intended to
27 be for sale, use or consumption in this state;

28 (e) Selling untaxed [*tobacco*] products in this state; or

29 (f) As a consumer, being in possession of untaxed [*tobacco*] products in
30 this state.

31 (7) “Distributor” means:

1 (a) Any person engaged in the business of selling tobacco products **or**
2 **tobacco substitutes** in this state who brings, or causes to be brought, into
3 this state from without the state any tobacco products **or tobacco substi-**
4 **tutes** for sale;

5 (b) Any person who makes, manufactures or fabricates tobacco products
6 **or tobacco substitutes** in this state for sale in this state;

7 (c) Any person engaged in the business of selling tobacco products **or**
8 **tobacco substitutes** without this state who ships or transports tobacco
9 products **or tobacco substitutes** to retail dealers in this state, to be sold
10 by those retail dealers;

11 (d) Any person, including a retail dealer, who sells untaxed [*tobacco*]
12 products in this state; or

13 (e) A consumer in possession of untaxed [*tobacco*] products in this state.

14 (8) “Manufacturer” means a person who manufactures tobacco products
15 **or tobacco substitutes** for sale.

16 (9) “Moist snuff” means:

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

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

21 (10) “Place of business” means any place where tobacco products **or to-**
22 **bacco substitutes** are sold or where tobacco products **or tobacco substi-**
23 **tutes** are manufactured, stored or kept for the purpose of sale or
24 consumption, including any vessel, vehicle, airplane, train or vending ma-
25 chine.

26 (11) “Retail dealer” means any person who is engaged in the business of
27 selling or otherwise dispensing tobacco products **or tobacco substitutes** to
28 consumers. The term also includes the operators of or recipients of revenue
29 from all places such as smoke shops, cigar stores and vending machines,
30 where tobacco products **or tobacco substitutes** are made or stored for ul-
31 timate sale to consumers.

1 (12) "Sale" means any transfer, exchange or barter, in any manner or by
2 any means, for a consideration, and includes and means all sales made by
3 any person. It includes a gift by a person engaged in the business of selling
4 tobacco products **or tobacco substitutes**, for advertising, as a means of
5 evading the provisions of ORS 323.500 to 323.645, or for any other purpose.

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

8 (14) "Tobacco products" means cigars, cheroots, stogies, periques,
9 granulated, plug cut, crimp cut, ready rubbed and other smoking tobacco,
10 snuff, snuff flour, moist snuff, cavendish, plug and twist tobacco, fine-cut and
11 other chewing tobaccos, shorts, refuse scraps, clippings, cuttings and
12 sweepings of tobacco and other kinds and forms of tobacco, prepared in such
13 manner as to be suitable for chewing or smoking in a pipe or otherwise, or
14 both for chewing and smoking, but shall not include cigarettes as defined in
15 ORS 323.010.

16 **(15)(a) "Tobacco substitute" means a product that contains nicotine**
17 **and is intended to be orally ingested by a user.**

18 **(b) "Tobacco substitute" does not mean:**

19 **(A) A product containing tobacco;**

20 **(B) An inhalant delivery system as defined in ORS 431A.175; or**

21 **(C) A device the use of which is prescribed by a health professional**
22 **licensed under ORS chapter 677 as indicated for smoking cessation.**

23 [(15)] **(16) "Untaxed [tobacco] products" means tobacco products or to-**
24 **bacco substitutes** for which the tax required under ORS 323.500 to 323.645
25 has not been paid.

26 [(16)] **(17) "Wholesale sales price" means the price paid for untaxed [to-**
27 **bacco] products to or on behalf of a seller by a purchaser of the untaxed**
28 **[tobacco] products.**

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

30 323.505. (1) A tax is hereby imposed upon the distribution of all tobacco
31 products **and tobacco substitutes** in this state. The tax imposed by this

1 section is intended to be a direct tax on the consumer, for which payment
2 upon distribution is required to achieve convenience and facility in the col-
3 lection and administration of the tax. The tax shall be imposed on a dis-
4 tributor at the time the distributor distributes tobacco products **or tobacco**
5 **substitutes.**

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

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

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

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

14 **(d) Sixty-five percent of the wholesale sales price of all tobacco**
15 **substitutes.**

16 (3) For reporting periods beginning on or after July 1, 2022, the rates of
17 tax applicable to moist snuff under subsection (2)(b) of this section shall be
18 adjusted for each biennium according to the cost-of-living adjustment for the
19 calendar year. The Department of Revenue shall recompute the rates for each
20 biennium by adding to the rates in subsection (2)(b) of this section the
21 product obtained by multiplying the rates in subsection (2)(b) of this section
22 by a factor that is equal to 0.25 multiplied by the percentage (if any) by
23 which the monthly averaged U.S. City Average Consumer Price Index for the
24 12 consecutive months ending August 31 of the prior calendar year exceeds
25 the monthly averaged U.S. City Average Consumer Price Index for the 12
26 consecutive months ending August 31, 2020.

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

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

3 **SECTION 3.** ORS 323.515 is amended to read:

4 323.515. The tax imposed by ORS 323.505 does not apply with respect to
5 any tobacco products **or tobacco substitutes** which under the Constitution
6 and laws of the United States may not be made the subject of taxation by
7 the state.

8 **SECTION 4.** ORS 323.520 is amended to read:

9 323.520. (1) Any person engaging or seeking to engage in the sale of to-
10 bacco products **or tobacco substitutes** as a distributor shall file an appli-
11 cation for a distributor's license with the Department of Revenue. The
12 application shall be on a form prescribed by the department. A distributor
13 shall apply for and obtain a license for each place of business at which the
14 distributor engages in the business of distributing tobacco products **or to-**
15 **bacco substitutes**. A fee may not be charged for the license. For the pur-
16 poses of this section, a vending machine in and of itself is not a place of
17 business.

18 (2) A person may not engage in the business of distributing tobacco pro-
19 ducts **or tobacco substitutes** in this state without a license.

20 (3) A person filing an application under this section shall include with
21 the application a written statement certifying that the person will comply
22 with the provisions of ORS 180.483 and 180.486 where applicable.

23 **SECTION 5.** ORS 323.530 is amended to read:

24 323.530. (1) Upon receipt of a completed application, the statement re-
25 quired by ORS 323.520 (3) and any security required by the Department of
26 Revenue under ORS 323.500 to 323.645, the department shall issue a
27 distributor's license to an applicant. A separate license shall be issued for
28 each place of business of the distributor within the state. Each license issued
29 by the department shall include an identification number for the license. A
30 license is valid only for engaging in business as a distributor at the place
31 designated thereon, and it shall at all times be conspicuously displayed at

1 the place for which issued. The license is not transferable and is valid until
2 canceled, suspended or revoked.

3 (2) The department may not issue a license to an applicant if the depart-
4 ment determines or has reason to believe that the applicant will not comply
5 with the provisions of ORS chapter 323 or any other state or federal tobacco
6 products **or tobacco substitutes** tax law.

7 (3) Notwithstanding ORS 305.280, a decision by the department not to is-
8 sue a license to an applicant may be appealed by the applicant to the
9 magistrate division of the tax court within 30 days of the date of the decision
10 of the department in the manner prescribed in ORS 305.404 to 305.560.

11 (4) For purposes of this section, an application to renew a distributor's
12 license shall be considered the same as an application for an initial
13 distributor's license.

14 **SECTION 6.** ORS 323.535 is amended to read:

15 323.535. (1) The Department of Revenue may cancel, suspend or revoke a
16 license issued to a distributor if the distributor fails to:

17 (a) Pay any tax or penalty due under ORS chapter 323;

18 (b) Otherwise comply with any provision of ORS chapter 323 or any rule
19 adopted thereunder; or

20 (c) Comply with any other state or federal tobacco products **or tobacco**
21 **substitutes** tax law.

22 (2) Notwithstanding ORS 305.280, a decision by the department to cancel,
23 suspend or revoke a license may be appealed by the distributor to the
24 magistrate division of the tax court within 30 days of the date of the decision
25 of the department under subsection (1) of this section, in the manner pro-
26 vided in ORS 305.404 to 305.560.

27 **SECTION 7.** ORS 323.538 is amended to read:

28 323.538. (1) A sales invoice for the wholesale sale of tobacco products **or**
29 **tobacco substitutes** in this state, including a sales invoice required under
30 ORS 323.540, shall contain the following:

31 (a) The name and address of the seller, the name and address of the pur-

1 chaser, the date of the sale of tobacco products **or tobacco substitutes**, the
2 quantity and product description of tobacco products **or tobacco**
3 **substitutes**, the price paid for tobacco products **or tobacco substitutes** and
4 any discount applied in determining the price paid for tobacco products **or**
5 **tobacco substitutes**;

6 (b) The applicable license identification number for the distributor;

7 (c) A certified statement by the distributor of the tobacco products **or**
8 **tobacco substitutes** that all taxes due under ORS 323.500 to 323.645 have
9 been or will be paid; and

10 (d) Any other information the Department of Revenue may prescribe by
11 rule.

12 (2) A distributor must provide a copy of the sales invoice to the purchaser
13 of the tobacco product **or tobacco substitute** and the purchaser shall retain
14 a copy of the invoice for five years following the date of purchase.

15 (3) Each purchaser that then sells the tobacco products **or tobacco sub-**
16 **stitutes** to a subsequent purchaser shall provide the subsequent purchaser
17 with a sales invoice that meets the requirements of this section.

18 (4)(a) A purchaser in possession of tobacco products **or tobacco substi-**
19 **tutes** who is unable to present a sales invoice that meets the requirements
20 of this section is presumed to be in possession of tobacco products **or to-**
21 **bacco substitutes** for which the tax imposed under ORS 323.500 to 323.645
22 has not been paid.

23 (b) In the case of a purchaser in possession of untaxed [*tobacco*] products,
24 the tax is due immediately, along with a penalty equal to 100 percent of the
25 tax due. Amounts due under this paragraph may be collected as provided in
26 ORS 323.605.

27 (c) If the purchaser in possession of untaxed [*tobacco*] products is a retail
28 dealer, the Department of Revenue may impose a civil penalty for the pos-
29 session of untaxed [*tobacco*] products. A civil penalty imposed under this
30 paragraph may not exceed \$1,000 per violation. A penalty imposed under this
31 paragraph may be appealed to the magistrate division of the tax court in the

1 time and manner prescribed in ORS 305.404 to 305.560.

2 (5) This section does not apply to a consumer in possession of less than
3 100 cigars or tobacco products **or tobacco substitutes** with a wholesale
4 sales price of less than \$50.

5 **SECTION 8.** ORS 323.540 is amended to read:

6 323.540. (1) Any distributor, and any person dealing in, transporting or
7 storing tobacco products **or tobacco substitutes**, shall keep at each regis-
8 tered place of business complete and accurate records for that place of
9 business, including itemized invoices, of tobacco products **or tobacco sub-**
10 **stitutes** held, purchased, manufactured, brought in or caused to be brought
11 in from without the state or shipped or transported to retail dealers in this
12 state, and of all sales of tobacco products **or tobacco substitutes** made,
13 except sales to consumers.

14 (2) The records required by subsection (1) of this section shall show the
15 names and addresses of purchasers and other pertinent papers and documents
16 relating to the purchase, sale or disposition of tobacco products **or tobacco**
17 **substitutes**.

18 (3) When a licensed distributor sells tobacco products **or tobacco sub-**
19 **stitutes** exclusively to consumers at the address given in the certificate and
20 sells only tobacco products **or tobacco substitutes** for which taxes imposed
21 under ORS 323.500 to 323.645 have been paid prior to sale, an invoice of any
22 individual sale of less than 100 cigars or of tobacco products **or tobacco**
23 **substitutes** with a wholesale sales price of less than \$50 is not required.
24 Itemized invoices of all tobacco products **or tobacco substitutes** transferred
25 to other places of business owned or controlled by that licensed distributor
26 shall be made and retained.

27 (4)(a) All books, records and other papers and documents required by this
28 section to be kept shall be preserved for a period of at least five years after
29 the initial date of the books, records and other papers or documents, or the
30 date of entries appearing therein, unless the Department of Revenue, in
31 writing, authorizes their destruction or disposal at an earlier date.

1 (b) The department or its authorized representative, upon oral or written
2 demand, may make such examinations of the books, papers, records and
3 equipment required to be kept under this section as it may deem necessary
4 in carrying out the provisions of ORS 323.500 to 323.645.

5 (c) If the department, or any of its agents or employees, are denied free
6 access or are hindered or interfered with in making such examination, the
7 license of the distributor at such premises shall be subject to cancellation,
8 suspension or revocation by the department.

9 **SECTION 9.** ORS 323.555 is amended to read:

10 323.555. Records of all deliveries or shipments of tobacco products **or to-**
11 **bacco substitutes** from any public warehouse of first destination in this
12 state shall be kept by the warehouse and be available to the Department of
13 Revenue for inspection. The records shall show the name and address of the
14 consignee, the date, the quantity of tobacco products **or tobacco substitutes**
15 delivered and any other information the department may require. These re-
16 cords shall be preserved for five years from the date of delivery of the to-
17 bacco products **or tobacco substitutes**.

18 **SECTION 10.** ORS 323.560 is amended to read:

19 323.560. When tobacco products **or tobacco substitutes**, upon which the
20 tax imposed under ORS 323.500 to 323.645 has been reported and paid, are
21 shipped or transported by the distributor to retail dealers outside this state,
22 to be sold by those retail dealers, or are returned to the manufacturer by the
23 distributor or destroyed by the distributor, credit for the paid tax may be
24 made to the distributor.

25 **SECTION 11.** ORS 323.565 is amended to read:

26 323.565. The taxes imposed by ORS 323.500 to 323.645 do not apply to the
27 sale of tobacco products **or tobacco substitutes** by a distributor to a com-
28 mon carrier engaged in interstate or foreign passenger service or to a person
29 authorized to sell tobacco products **or tobacco substitutes** on the facilities
30 of a common carrier. Whenever tobacco products **or tobacco substitutes** are
31 sold by distributors to common carriers engaged in interstate or foreign

1 passenger service for use or sale on facilities of the carriers, or to persons
2 authorized to sell tobacco products **or tobacco substitutes** on those facili-
3 ties, the tax imposed by this section may not be levied with respect to sales
4 of the tobacco products **or tobacco substitutes** by the distributors, but a
5 tax is hereby levied upon the carriers or upon the persons authorized to sell
6 tobacco products **or tobacco substitutes** on the facilities of the carriers,
7 as the case may be, for the privilege of making these sales in Oregon at the
8 same rate that is imposed upon the distribution of tobacco products **or to-**
9 **bacco substitutes** in this state. The common carriers and authorized persons
10 shall pay the tax imposed by this section and file returns with the Depart-
11 ment of Revenue as provided in ORS 323.510.

12 **SECTION 12.** ORS 323.570 is amended to read:

13 323.570. (1) Any transporter desiring to possess or acquire untaxed [*to-*
14 *bacco*] products for transportation or transport upon the highways, roads or
15 streets of this state shall obtain a permit from the Department of Revenue
16 authorizing such transporter to possess or acquire for transportation or
17 transport the untaxed [*tobacco*] products, and shall have the permit in the
18 transporting vehicle during the period of transportation of the tobacco pro-
19 ducts **or tobacco substitutes**. The application for the permit shall be in
20 such form and shall contain such information as may be prescribed by the
21 department. The department may issue a permit for a single load or shipment
22 or for a number of loads or shipments to be transported under specified
23 conditions.

24 (2) Each transporter who shall transport or possess or acquire for the
25 purpose of transporting untaxed [*tobacco*] products upon the highways, roads
26 or streets of this state is required to have within the transporting vehicle
27 invoices or bills of lading covering the shipment of tobacco products **or to-**
28 **bacco substitutes** being transported which shall show the name and address
29 of the consignor or seller, the name and address of the consignee or pur-
30 chaser and the quantity and types of tobacco products **or tobacco substi-**
31 **tutes** transported.

1 **SECTION 13.** ORS 323.607 is amended to read:

2 323.607. If the Department of Revenue finds that an amount of gross pur-
3 chases net of discounts equal to 25 percent or more of the gross purchases
4 net of discounts as reported on the taxpayer's tobacco products **or tobacco**
5 **substitutes** tax return has been omitted from the return, the department
6 may give notice of deficiency as prescribed in ORS 305.265 at any time within
7 five years after the date the return was due or filed, whichever is later.

8 **SECTION 14.** ORS 323.612 is amended to read:

9 323.612. (1) Any contraband [*tobacco*] products found by an authorized
10 representative of the Department of Revenue or any law enforcement agency
11 may be immediately seized and subject to forfeiture. If seized and forfeited
12 under this subsection, the tobacco products **or tobacco substitutes** shall be
13 destroyed.

14 (2) Notwithstanding ORS 305.280, a seizure and forfeiture made under this
15 section may be appealed to the magistrate division of the tax court within
16 30 days of the date of the seizure in the manner prescribed in ORS 305.404
17 to 305.560.

18 **SECTION 15.** ORS 323.613 is amended to read:

19 323.613. (1) To promote administrative and regulatory efficiency and
20 compliance with laws regulating or taxing tobacco products **and tobacco**
21 **substitutes**, the Department of Revenue may transmit information obtained
22 under ORS 323.500 to 323.645 to the proper officers of governmental units
23 inside and outside Oregon that:

24 (a) Regulate or tax tobacco products **or tobacco substitutes** or enforce
25 laws relating to tobacco products **or tobacco substitutes**; and

26 (b) Reciprocate in the exchange of relevant information.

27 (2) Governmental units that receive information pursuant to this section
28 may use or disclose the information solely for the purpose of administering
29 or enforcing laws regulating or taxing tobacco products **or tobacco substi-**
30 **tutes.**

31 **SECTION 16.** ORS 323.615 is amended to read:

1 323.615. (1) The Director of the Department of Revenue is authorized to
2 enter into a tobacco products **or tobacco substitutes** tax refund agreement
3 with the governing body of any Indian reservation in Oregon. The agreement
4 may provide for a mutually agreed upon amount as a refund to the governing
5 body of any tobacco tax collected under ORS 323.500 to 323.645 in connection
6 with the sale of tobacco products **or tobacco substitutes** to Indians on the
7 Indian reservation, or the use, storage or consumption of tobacco products
8 **or tobacco substitutes** by Indians on the Indian reservation. This provision
9 is in addition to other laws allowing tax refunds.

10 (2) There is continuously appropriated to the director, from the suspense
11 account established under ORS 293.445 and 323.625, the amounts necessary
12 to make the refunds provided by subsection (1) of this section.

13 **SECTION 17.** ORS 323.630 is amended to read:

14 323.630. (1)(a) A civil penalty may be imposed by the Department of Rev-
15 enue on any person who violates any provision of ORS 323.500 to 323.645.

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

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

21 (2) Any person who, in violation of ORS 323.740 (4), prevents entry or
22 examination by the department shall be fined a maximum of \$500 per day for
23 the first seven days and \$1,000 per each additional day thereafter until the
24 department is allowed access.

25 (3) Any person required to obtain a license as a distributor under ORS
26 323.500 to 323.645 who knowingly engages in business as a distributor with-
27 out a license or after a license has been suspended or revoked is guilty of
28 a Class C felony.

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

1 (5) Any transporter who knowingly violates the provisions of ORS 323.570
2 is guilty of a Class C felony.

3 (6) Any person who knowingly violates any provision of ORS 323.500 to
4 323.645, except as otherwise provided in this section, is guilty of a Class A
5 misdemeanor.

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

9 (8) In addition to any other sentence the court may impose upon a con-
10 viction under this section, the court may order the forfeiture of the instru-
11 mentalities used in violating ORS 323.500 to 323.645 and the proceeds
12 resulting from a violation of ORS 323.500 to 323.645.

13 **SECTION 18.** ORS 323.632 is amended to read:

14 323.632. (1) A person commits the crime of unlawful distribution of to-
15 bacco products **or tobacco substitutes** if the person knowingly sells or
16 distributes, possesses or transports for sale or distribution or imports for sale
17 or distribution tobacco products **or tobacco substitutes** that do not comply
18 with ORS 323.500 to 323.645.

19 (2) The offense of unlawful distribution of tobacco products **or tobacco**
20 **substitutes** is classified as follows:

21 (a) If the amount of tobacco products **or tobacco substitutes** tax avoided
22 in committing the offense over a 90-day period totals less than \$1,000, the
23 offense is a Class A misdemeanor.

24 (b) If the amount of tobacco products **or tobacco substitutes** tax avoided
25 in committing the offense over a 90-day period totals \$1,000 or more, but less
26 than \$5,000, the offense is a Class C felony classified as crime category 3 of
27 the sentencing guidelines grid of the Oregon Criminal Justice Commission.

28 (c) If the amount of tobacco products **or tobacco substitutes** tax avoided
29 in committing the offense over a 90-day period totals \$5,000 or more, but less
30 than \$10,000, the offense is a Class C felony classified as crime category 5
31 of the sentencing guidelines grid of the Oregon Criminal Justice Commission.

1 (d) If the amount of tobacco products **or tobacco substitutes** tax avoided
2 in committing the offense over a 90-day period totals \$10,000 or more, the
3 offense is a Class B felony classified as crime category 7 of the sentencing
4 guidelines grid of the Oregon Criminal Justice Commission.

5 (3) Tobacco products **or tobacco substitutes** sold, distributed, possessed,
6 transported or imported in violation of subsection (1) of this section are
7 contraband and subject to seizure and forfeiture. If seized and forfeited under
8 this subsection, the tobacco products **or tobacco substitutes** shall be de-
9 stroyed.

10 (4) In addition to any other sentence the court may impose upon a con-
11 viction under this section, the court may order the forfeiture of the instru-
12 mentalities used in violating this section and the proceeds resulting from a
13 violation of this section.

14 (5) As used in this section, “tobacco products **or tobacco substitutes**
15 tax” means the amount of tax due under ORS 323.500 to 323.645, if the tax
16 were timely paid upon first distribution of the tobacco products **or tobacco**
17 **substitutes** in this state.

18 **SECTION 19.** ORS 323.640 is amended to read:

19 323.640. (1) The taxes imposed by ORS 323.505 are in lieu of all other
20 state, county or municipal taxes on the sale or use of tobacco products **or**
21 **tobacco substitutes**.

22 (2) Any tobacco product with respect to which a tax has once been im-
23 posed under ORS 323.505 shall not be subject upon a subsequent distribution
24 to the taxes imposed by ORS 323.505.

25 **SECTION 20.** ORS 323.712 is amended to read:

26 323.712. (1) Each person seeking to engage in delivery sales of tobacco
27 **or tobacco substitutes** to purchasers in this state shall apply for and ob-
28 tain:

29 (a) A cigarette distributor’s license under ORS 323.105, if the person in-
30 tends to engage in cigarette delivery sales; and

31 (b) A tobacco products **or tobacco substitutes** distributor’s license under

1 ORS 323.520, if the person intends to engage in tobacco products **or tobacco**
2 **substitutes** delivery sales.

3 (2) A person may not engage in delivery sales in this state without first
4 obtaining each applicable distributor's license under subsection (1) of this
5 section.

6 **SECTION 21.** ORS 323.715 is amended to read:

7 323.715. The notice required under ORS 323.709 (3) shall include:

8 (1) A prominent and clearly legible statement that tobacco sales to per-
9 sons under the legal minimum purchase age are illegal;

10 (2) A prominent and clearly legible statement that sales of tobacco are
11 restricted to those individuals who provide verifiable proof of age in ac-
12 cordance with ORS 323.709; and

13 (3) A prominent and clearly legible statement that sales of cigarettes are
14 subject to tax under ORS 323.005 to 323.482 and that sales of other tobacco
15 products **or tobacco substitutes** are subject to tax under ORS 323.500 to
16 323.645, and an explanation of how the applicable tax has been paid or is to
17 be paid.

18 **SECTION 22.** ORS 323.724 is amended to read:

19 323.724. (1) A person that accepts a purchase order for a delivery sale of
20 cigarettes may not make a delivery sale of cigarettes to a person in this state
21 if the packages in which the cigarettes are contained do not bear the proper
22 tax stamps required to be affixed to the packages of cigarettes under ORS
23 323.005 to 323.482.

24 (2) A person that accepts a purchase order for a delivery sale of tobacco
25 products **or tobacco substitutes** may not make a delivery sale of tobacco
26 products **or tobacco substitutes** in this state if the sales invoice for the
27 delivery sale does not comply with ORS 323.538.

28 **SECTION 23.** ORS 323.740 is amended to read:

29 323.740. (1) As used in this section, "premises" means a place of business:

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

31 (b) That the Department of Revenue has reasonable cause to believe is

1 used for the sale or distribution of cigarettes [*or*], tobacco products **or tobacco**
2 **substitutes**.

3 (2) The Department of Revenue may enter and examine the premises of
4 any person or business at any time an individual is present. If the depart-
5 ment seeks entry under this section outside of regular business hours, this
6 section requires that department personnel have reasonable cause to believe
7 that an individual is present in the premises. The department may enter and
8 examine:

9 (a) All areas used in or by the business operated at the premises, re-
10 gardless of whether patrons are permitted to be present in those areas; and

11 (b) Areas not located at the premises that reasonably appear to be used
12 by the person or business to store items listed in subsection (3) of this sec-
13 tion.

14 (3) The department may examine:

15 (a) Business records related to the sale or distribution of cigarettes [*or*],
16 tobacco products **or tobacco substitutes**;

17 (b) Books, papers, records or equipment reasonably necessary to comply
18 with the provisions of this chapter; and

19 (c) Cigarettes [*or*], tobacco products **or tobacco substitutes**.

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

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

26 **SECTION 24.** ORS 166.715 is amended to read:

27 166.715. As used in ORS 166.715 to 166.735, unless the context requires
28 otherwise:

29 (1) "Documentary material" means any book, paper, document, writing,
30 drawing, graph, chart, photograph, phonograph record, magnetic tape, com-
31 puter printout, other data compilation from which information can be ob-

1 tained or from which information can be translated into usable form, or
2 other tangible item.

3 (2) "Enterprise" includes any individual, sole proprietorship, partnership,
4 corporation, business trust or other profit or nonprofit legal entity, and in-
5 cludes any union, association or group of individuals associated in fact al-
6 though not a legal entity, and both illicit and licit enterprises and
7 governmental and nongovernmental entities.

8 (3) "Investigative agency" means the Department of Justice or any district
9 attorney.

10 (4) "Pattern of racketeering activity" means engaging in at least two in-
11 cidents of racketeering activity that have the same or similar intents, re-
12 sults, accomplices, victims or methods of commission or otherwise are
13 interrelated by distinguishing characteristics, including a nexus to the same
14 enterprise, and are not isolated incidents, provided at least one of such in-
15 cidents occurred after November 1, 1981, and that the last of such incidents
16 occurred within five years after a prior incident of racketeering activity.
17 Notwithstanding ORS 131.505 to 131.525 or 419A.190 or any other provision
18 of law providing that a previous prosecution is a bar to a subsequent prose-
19 cution, conduct that constitutes an incident of racketeering activity may be
20 used to establish a pattern of racketeering activity without regard to
21 whether the conduct previously has been the subject of a criminal prose-
22 cution or conviction or a juvenile court adjudication, unless the prosecution
23 resulted in an acquittal or the adjudication resulted in entry of an order
24 finding the youth not to be within the jurisdiction of the juvenile court.

25 (5) "Person" means any individual or entity capable of holding a legal or
26 beneficial interest in real or personal property.

27 (6) "Racketeering activity" includes conduct of a person committed both
28 before and after the person attains the age of 18 years, and means to commit,
29 to attempt to commit, to conspire to commit, or to solicit, coerce or intim-
30 idate another person to commit:

31 (a) Any conduct that constitutes a crime, as defined in ORS 161.515, under

1 any of the following provisions of the Oregon Revised Statutes:

2 (A) ORS 59.005 to 59.451, 59.710 to 59.830, 59.991 and 59.995, relating to
3 securities;

4 (B) ORS 162.015, 162.025 and 162.065 to 162.085, relating to bribery and
5 perjury;

6 (C) ORS 162.235, 162.265 to 162.305, 162.325, 162.335, 162.355 and 162.365,
7 relating to obstructing governmental administration;

8 (D) ORS 162.405 to 162.425, relating to abuse of public office;

9 (E) ORS 162.455, relating to interference with legislative operation;

10 (F) ORS 163.095 to 163.115, 163.118, 163.125 and 163.145, relating to crimi-
11 nal homicide;

12 (G) ORS 163.160 to 163.205, relating to assault and related offenses;

13 (H) ORS 163.225 and 163.235, relating to kidnapping;

14 (I) ORS 163.275, relating to coercion;

15 (J) ORS 163.665 to 163.693, relating to sexual conduct of children;

16 (K) ORS 164.015, 164.043, 164.045, 164.055, 164.057, 164.075 to 164.095,
17 164.098, 164.125, 164.135, 164.140, 164.215, 164.225 and 164.245 to 164.270, re-
18 lating to theft, burglary, criminal trespass and related offenses;

19 (L) ORS 164.315 to 164.335, relating to arson and related offenses;

20 (M) ORS 164.345 to 164.365, relating to criminal mischief;

21 (N) ORS 164.395 to 164.415, relating to robbery;

22 (O) ORS 164.865, 164.875 and 164.868 to 164.872, relating to unlawful re-
23 cording or labeling of a recording;

24 (P) ORS 165.007 to 165.022, 165.032 to 165.042 and 165.055 to 165.070, re-
25 lating to forgery and related offenses;

26 (Q) ORS 165.080 to 165.109, relating to business and commercial offenses;

27 (R) ORS 165.540 and 165.555, relating to communication crimes;

28 (S) ORS 166.180, 166.190, 166.220, 166.250, 166.270, 166.275, 166.410, 166.450
29 and 166.470, relating to firearms and other weapons;

30 (T) ORS 164.377 (2) to (4), as punishable under ORS 164.377 (5)(b), 167.007
31 to 167.017, 167.057, 167.062 to 167.080, 167.090, 167.122 to 167.137, 167.147,

1 167.164, 167.167, 167.212, 167.355, 167.365, 167.370, 167.428, 167.431 and 167.439,
2 relating to prostitution, obscenity, sexual conduct, gambling, computer
3 crimes involving the Oregon State Lottery, animal fighting, forcible recovery
4 of a fighting bird and related offenses;

5 (U) ORS 171.990, relating to legislative witnesses;

6 (V) ORS 260.575 and 260.665, relating to election offenses;

7 (W) ORS 314.075, relating to income tax;

8 (X) ORS 180.440 (2) and 180.486 (2) and ORS chapter 323, relating to cig-
9 arette [*and*], tobacco products **and tobacco substitute** taxes and the direc-
10 tories developed under ORS 180.425 and 180.477;

11 (Y) ORS 411.630, 411.675, 411.690 and 411.840, relating to public assistance
12 payments or medical assistance benefits, and ORS 411.990 (2) and (3);

13 (Z) ORS 462.140, 462.415 and 462.420 to 462.520, relating to racing;

14 (AA) ORS 463.995, relating to boxing, mixed martial arts and enter-
15 tainment wrestling, as defined in ORS 463.015;

16 (BB) ORS 471.305, 471.360, 471.392 to 471.400, 471.403, 471.404, 471.405,
17 471.425, 471.442, 471.445, 471.446, 471.485, 471.490 and 471.675, relating to al-
18 coholic liquor, and any of the provisions of ORS chapter 471 relating to li-
19 censes issued under the Liquor Control Act;

20 (CC) ORS 475.005 to 475.285 and 475.752 to 475.980, relating to controlled
21 substances;

22 (DD) ORS 480.070, 480.210, 480.215, 480.235 and 480.265, relating to ex-
23 plosives;

24 (EE) ORS 819.010, 819.040, 822.100, 822.135 and 822.150, relating to motor
25 vehicles;

26 (FF) ORS 658.452 or 658.991 (2) to (4), relating to labor contractors;

27 (GG) ORS chapter 706, relating to banking law administration;

28 (HH) ORS chapter 714, relating to branch banking;

29 (II) ORS chapter 716, relating to mutual savings banks;

30 (JJ) ORS chapter 723, relating to credit unions;

31 (KK) ORS chapter 726, relating to pawnbrokers;

- 1 (LL) ORS 166.382 and 166.384, relating to destructive devices;
2 (MM) ORS 165.074;
3 (NN) ORS 86A.095 to 86A.198, relating to mortgage bankers and mortgage
4 brokers;
5 (OO) ORS chapter 496, 497 or 498, relating to wildlife;
6 (PP) ORS 163.355 to 163.427, relating to sexual offenses;
7 (QQ) ORS 166.015, relating to riot;
8 (RR) ORS 166.155 and 166.165, relating to intimidation;
9 (SS) ORS chapter 696, relating to real estate and escrow;
10 (TT) ORS chapter 704, relating to outfitters and guides;
11 (UU) ORS 165.692, relating to making a false claim for health care pay-
12 ment;
13 (VV) ORS 162.117, relating to public investment fraud;
14 (WW) ORS 164.170 or 164.172;
15 (XX) ORS 647.140, 647.145 or 647.150, relating to trademark counterfeiting;
16 (YY) ORS 164.886;
17 (ZZ) ORS 167.312 and 167.388;
18 (AAA) ORS 164.889;
19 (BBB) ORS 165.800; or
20 (CCC) ORS 163.263, 163.264 or 163.266.
21 (b) Any conduct defined as “racketeering activity” under 18 U.S.C. 1961
22 (1)(B), (C), (D) and (E).
23 (7) “Unlawful debt” means any money or other thing of value constituting
24 principal or interest of a debt that is legally unenforceable in the state in
25 whole or in part because the debt was incurred or contracted:
26 (a) In violation of any one of the following:
27 (A) ORS chapter 462, relating to racing;
28 (B) ORS 167.108 to 167.164, relating to gambling; or
29 (C) ORS 82.010 to 82.170, relating to interest and usury.
30 (b) In gambling activity in violation of federal law or in the business of
31 lending money at a rate usurious under federal or state law.

1 (8) Notwithstanding contrary provisions in ORS 174.060, when this section
2 references a statute in the Oregon Revised Statutes that is substantially
3 different in the nature of its essential provisions from what the statute was
4 when this section was enacted, the reference shall extend to and include
5 amendments to the statute.

6 **SECTION 25. The amendments to ORS 166.715, 323.500, 323.505,**
7 **323.515, 323.520, 323.530, 323.535, 323.538, 323.540, 323.555, 323.560, 323.565,**
8 **323.570, 323.607, 323.612, 323.613, 323.615, 323.630, 323.632, 323.640, 323.712,**
9 **323.715, 323.724 and 323.740 by sections 1 to 24 of this 2017 Act apply to**
10 **tobacco substitutes distributed on or after January 1, 2018.**

11 **SECTION 26. This 2017 Act takes effect on the 91st day after the**
12 **date on which the 2017 regular session of the Seventy-ninth Legislative**
13 **Assembly adjourns sine die.**

14
