

## HB 2084 STAFF MEASURE SUMMARY

### House Committee On Revenue

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**Prepared By:** Kyle Easton, Economist

**Sub-Referral To:** Joint Committee On Ways and Means

**Meeting Dates:** 3/9

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#### WHAT THE MEASURE DOES:

Requires Department of Revenue (DOR) to establish and maintain a list of persons that sell or accept orders for cigarettes, inhalant delivery systems or tobacco products that are to be transported from a point outside Oregon to a point within Oregon if person does not require consumer within Oregon to verify age or fails to pay a tax imposed on the person for making a sale of cigarettes, inhalant delivery systems or tobacco products. Requires DOR to make list available to all common carriers transporting property within Oregon. Prohibits common carrier from transporting cigarettes, inhalant delivery systems or tobacco products from point outside Oregon to point inside Oregon if person making sale of product is on DOR's list. Common carriers that transport cigarettes, inhalant delivery systems or tobacco products of a seller on DOR's list are made jointly responsible, with person making sale, for paying any civil penalty imposed or tax owed.

#### ISSUES DISCUSSED:

##### EFFECT OF AMENDMENT:

No amendment.

##### BACKGROUND:

The federal Prevent All Cigarette Trafficking Act (PACT Act - S. 1147) of 2009 became effective June 30, 2010. The PACT Act amended provisions of the Jenkins Act regarding the shipment and packaging of tobacco products, compliance with state licensing requirements, and the filing of certain reports. Changes to law contained in the PACT Act require individuals and businesses making interstate sales of cigarettes or smokeless tobacco products to comply with state tax laws and register with the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATFE). State, local or tribal governments are required to report to ATFE all known delivery sellers who have failed to register, failed to make required reports, or have been found to fail to comply with established laws and regulations. The bill gave administrative enforcement authority to ATFE including criminal and civil fine authority. The bill also prohibited the use of the United States Postal Service (USPS) to mail certain tobacco products (cigars allowed to be mailed, but most cigarette and OTP products may not be mailed via USPS). Currently, limits do exist on shipping and payment of online cigarette and tobacco sales. For example, UPS will not ship cigarettes and will only ship Other Tobacco Products (OTP) from shippers who are licensed and authorized to ship tobacco products. The major credit card companies and PayPal limit online payments for cigarettes and OTP.

The PACT Act contains preemptive language that effectively prohibits components of HB 2084 from being enacted.

Section 2A.(5) of the PACT Act preempts states:

No State, local, or tribal government, nor any political authority of 2 or more State, local, or tribal governments, may enact or enforce any law or regulation relating to delivery sales that restricts deliveries of cigarettes or smokeless tobacco to consumers by common carriers or other delivery services on behalf of delivery sellers by—

“(i) requiring that the common carrier or other delivery service verify the age or identity of the consumer accepting the delivery by requiring the person who signs to accept delivery of the shipping container to provide proof, in the form of a valid, government issued identification bearing a photograph of the individual, that the person is at least

the minimum age required for the legal sale or purchase of tobacco products, as determined by either State or local law at the place of delivery; “

(ii) requiring that the common carrier or other delivery service obtain a signature from the consumer accepting the delivery; “

(iii) requiring that the common carrier or other delivery service verify that all applicable taxes have been paid; “

(iv) requiring that packages delivered by the common carrier or other delivery service contain any particular labels, notice, or markings; or “

(v) prohibiting common carriers or other delivery services from making deliveries on the basis of whether the delivery seller is or is not identified on any list of delivery sellers maintained and distributed by any entity other than the Federal Government.