

House Bill 2037

Sponsored by Representative CLEM; Representative NOSSE (Presession 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 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 seven mills for the dis-
17 tribution 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 16, 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 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 3. ORS 323.455 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 established by ORS 391.800 at the same time as the cigarette tax moneys are distributed to cities and counties under this section.

(4) Of the moneys credited to the General Fund under subsection (1) of this section, 51.92 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 5.77 percent shall be credited to the Tobacco Use Reduction Account established under ORS 431A.153.

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

(6) All moneys received by the Department of Revenue from the tax imposed by ORS 323.030 (5) shall be paid over to the State Treasurer to be held in a suspense account established under ORS 293.445. After the payment of refunds, the balance shall be credited to the Oregon Health Authority Fund established by ORS 413.101, for the purpose of providing funds to coordinated care organizations under contract with the Oregon Health Authority pursuant

1 to ORS 414.651, and shall be used to provide preventive services and innovative, nontradi-
2 tional health services, pursuant to ORS 414.065. At least 15 percent of the moneys credited
3 to the Oregon Health Authority Fund under this subsection shall be used to provide mental
4 health services or treatment for substance use disorders.

5 **SECTION 4.** (1) In addition to and not in lieu of any other tax, for the privilege of holding
6 or storing cigarettes for sale, use or consumption, a floor tax is imposed upon every dealer
7 at the rate of 75 mills for each cigarette in the possession of or under the control of the
8 dealer in this state at 12:01 a.m. on the effective date of this 2017 Act.

9 (2) The tax imposed by this section is due and payable on or before the 20th day following
10 the effective date of this 2017 Act. Any amount of tax that is not paid within the time re-
11 quired shall bear interest at the rate established under ORS 305.220 per month, or fraction
12 of a month, from the date on which the tax is due to be paid, until paid.

13 (3) On or before the 20th day following the effective date of this 2017 Act, every dealer
14 must file a report with the Department of Revenue in such form as the department may
15 prescribe. The report must state the number of cigarettes in the possession of or under the
16 control of the dealer in this state at 12:01 a.m. on the effective date of this 2017 Act, and the
17 amount of tax due. Each report must be accompanied by a remittance payable to the de-
18 partment for the amount of tax due.

19 **SECTION 5.** In addition to and not in lieu of any other tax, for the privilege of distrib-
20 uting cigarettes as a distributor and for holding or storing cigarettes for sale, use or con-
21 sumption, a floor tax and cigarette adjustment indicia tax is imposed upon every distributor
22 in the amount of \$1.875 for each Oregon cigarette tax stamp bearing the designation "25,"
23 and in the amount of \$1.50 for each Oregon cigarette tax stamp bearing the designation
24 "20," that is affixed to any package of cigarettes in the possession of or under the control
25 of the distributor at 12:01 a.m. on the effective date of this 2017 Act.

26 **SECTION 6.** (1) Every distributor must take an inventory as of 12:01 a.m. on the effective
27 date of this 2017 Act, of all packages of cigarettes to which are affixed Oregon cigarette tax
28 stamps and of all unaffixed Oregon cigarette tax stamps in the possession of or under the
29 control of the distributor.

30 (2) Every distributor must file a report with the Department of Revenue on or before the
31 20th day following the effective date of this 2017 Act, in such form as the department may
32 prescribe, showing:

33 (a) The number of Oregon cigarette tax stamps, with the designations of the stamps, that
34 were affixed to packages of cigarettes in the possession of or under the control of the dis-
35 tributor at 12:01 a.m. on the effective date of this 2017 Act; and

36 (b) The number of unaffixed Oregon cigarette tax stamps, with the designations of the
37 stamps, that were in the possession of or under the control of the distributor at 12:01 a.m.
38 on the effective date of this 2017 Act.

39 (3) The amount of tax required to be paid with respect to the affixed Oregon cigarette
40 tax stamps shall be computed pursuant to section 5 of this 2017 Act and remitted with the
41 distributor's report. Any amount of tax not paid within the time specified for the filing of
42 the report shall bear interest at the rate established under ORS 305.220 per month, or frac-
43 tion of a month, from the due date of the report until paid.

44 **SECTION 7.** ORS 323.500 is amended to read:

45 323.500. As used in ORS 323.500 to 323.645, unless the context otherwise requires:

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

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

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

11 (4) "Contraband tobacco products" means tobacco products or packages containing tobacco
12 products:

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

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

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

18 (d) That have been sold, offered for sale or possessed for sale in this state in violation of ORS
19 180.486.

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

21 (6) "Distribute" means:

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

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

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

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

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

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

32 (7) "Distributor" means:

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

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

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

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

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

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

42 (9) "Moist snuff" means:

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

45 (b) Any other product containing tobacco that is intended or expected to be consumed without

1 being combusted.

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

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

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

13 (13) "Taxpayer" includes a distributor or other person required to pay a tax imposed under ORS
 14 323.500 to 323.645.

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

21 (15) "Untaxed tobacco products" means tobacco products for which the tax required under ORS
 22 323.500 to 323.645 has not been paid.

23 **(16) "Vapor product" means:**

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

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

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

30 **SECTION 8.** ORS 323.505 is amended to read:

31 323.505. (1) A tax is hereby imposed upon the distribution of all tobacco products in this state.
 32 The tax imposed by this section is intended to be a direct tax on the consumer, for which payment
 33 upon distribution is required to achieve convenience and facility in the collection and administration
 34 of the tax. The tax shall be imposed on a distributor at the time the distributor distributes tobacco
 35 products.

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

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

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

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

44 (3) For reporting periods beginning on or after July 1, 2022, the rates of tax applicable to moist
 45 snuff under subsection (2)(b) of this section shall be adjusted for each biennium according to the

1 cost-of-living adjustment for the calendar year. The Department of Revenue shall recompute the
 2 rates for each biennium by adding to the rates in subsection (2)(b) of this section the product ob-
 3 tained by multiplying the rates in subsection (2)(b) of this section by a factor that is equal to 0.25
 4 multiplied by the percentage (if any) by which the monthly averaged U.S. City Average Consumer
 5 Price Index for the 12 consecutive months ending August 31 of the prior calendar year exceeds the
 6 monthly averaged U.S. City Average Consumer Price Index for the 12 consecutive months ending
 7 August 31, 2020.

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

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

14 **SECTION 9.** ORS 323.625 is amended to read:

15 323.625. (1) All moneys received by the Department of Revenue under ORS 323.500 to 323.645
 16 shall be deposited in the State Treasury and credited to a suspense account established under ORS
 17 293.445. The department may pay expenses for administration and enforcement of ORS 323.500 to
 18 323.645 out of moneys received from the taxes imposed under ORS 323.505 and 323.565. Amounts
 19 necessary to pay administrative and enforcement expenses are continuously appropriated to the de-
 20 partment from the suspense account. After the payment of administrative and enforcement expenses
 21 and refunds or credits arising from erroneous overpayments, the balance of the money shall be
 22 credited to the General Fund. Of the amount credited to the General Fund under this section 41.54
 23 percent shall be dedicated to funding the maintenance and expansion of the number of persons eli-
 24 gible for the medical assistance program under ORS chapter 414, or to funding the maintenance of
 25 the benefits available under the program, or both, [and] 4.62 percent shall be credited to the To-
 26 bacco Use Reduction Account established under ORS 431A.153[.] **and _____ percent shall be**
 27 **credited, for the purposes specified in subsection (2) of this section, to the Oregon Health**
 28 **Authority Fund established by ORS 413.101.**

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

36 **SECTION 10.** The amendments to ORS 323.030, 323.455, 323.500, 323.505 and 323.625 by
 37 sections 1 to 3 and 7 to 9 of this 2017 Act apply to distributions of cigarettes and tobacco
 38 products occurring on or after the effective date of this 2017 Act.

39 **SECTION 11.** This 2017 Act shall be submitted to the people for their approval or re-
 40 jection at a special election held throughout this state on the same date as the next primary
 41 election.