

House Bill 3296

Sponsored by COMMITTEE ON REVENUE

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

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 166.715, 323.500, 323.505,
3 323.515, 323.520, 323.530, 323.535, 323.538, 323.540, 323.555, 323.560, 323.565, 323.570, 323.607,
4 323.612, 323.613, 323.615, 323.630, 323.632, 323.640, 323.712, 323.715, 323.724 and 323.740; pre-
5 scribing an effective date; and providing for revenue raising that requires approval by a three-
6 fifths majority.

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

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

9 323.500. As used in ORS 323.500 to 323.645, unless the context otherwise requires:

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

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

17 (3) "Consumer" means any person who purchases tobacco products **or tobacco substitutes** in
18 this state for the person's use or consumption or for any purpose other than for reselling the to-
19 bacco products **or tobacco substitutes** to another person.

20 (4) "Contraband [*tobacco*] products" means tobacco products **or tobacco substitutes** or pack-
21 ages containing tobacco products **or tobacco substitutes**:

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

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

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

27 (d) That have been sold, offered for sale or possessed for sale in this state in violation of ORS
28 180.486.

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

30 (6) "Distribute" means:

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

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

1 sweepings of tobacco and other kinds and forms of tobacco, prepared in such manner as to be suit-
 2 able for chewing or smoking in a pipe or otherwise, or both for chewing and smoking, but shall not
 3 include cigarettes as defined in ORS 323.010.

4 **(15)(a) “Tobacco substitute” means a product that contains nicotine and is intended to**
 5 **be orally ingested by a user.**

6 **(b) “Tobacco substitute” does not mean:**

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

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

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

11 [(15)] **(16) “Untaxed [tobacco] products” means tobacco products or tobacco substitutes for**
 12 **which the tax required under ORS 323.500 to 323.645 has not been paid.**

13 [(16)] **(17) “Wholesale sales price” means the price paid for untaxed [tobacco] products to or on**
 14 **behalf of a seller by a purchaser of the untaxed [tobacco] products.**

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

16 323.505. (1) A tax is hereby imposed upon the distribution of all tobacco products **and tobacco**
 17 **substitutes** in this state. The tax imposed by this section is intended to be a direct tax on the
 18 consumer, for which payment upon distribution is required to achieve convenience and facility in
 19 the collection and administration of the tax. The tax shall be imposed on a distributor at the time
 20 the distributor distributes tobacco products **or tobacco substitutes.**

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

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

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

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

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

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

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

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

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

45 323.515. The tax imposed by ORS 323.505 does not apply with respect to any tobacco products

1 **or tobacco substitutes** which under the Constitution and laws of the United States may not be
 2 made the subject of taxation by the state.

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

4 323.520. (1) Any person engaging or seeking to engage in the sale of tobacco products **or to-**
 5 **bacco substitutes** as a distributor shall file an application for a distributor's license with the De-
 6 partment of Revenue. The application shall be on a form prescribed by the department. A distributor
 7 shall apply for and obtain a license for each place of business at which the distributor engages in
 8 the business of distributing tobacco products **or tobacco substitutes**. A fee may not be charged for
 9 the license. For the purposes of this section, a vending machine in and of itself is not a place of
 10 business.

11 (2) A person may not engage in the business of distributing tobacco products **or tobacco sub-**
 12 **stitutes** in this state without a license.

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

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

17 323.530. (1) Upon receipt of a completed application, the statement required by ORS 323.520 (3)
 18 and any security required by the Department of Revenue under ORS 323.500 to 323.645, the depart-
 19 ment shall issue a distributor's license to an applicant. A separate license shall be issued for each
 20 place of business of the distributor within the state. Each license issued by the department shall
 21 include an identification number for the license. A license is valid only for engaging in business
 22 as a distributor at the place designated thereon, and it shall at all times be conspicuously displayed
 23 at the place for which issued. The license is not transferable and is valid until canceled, suspended
 24 or revoked.

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

28 (3) Notwithstanding ORS 305.280, a decision by the department not to issue a license to an ap-
 29 plicant may be appealed by the applicant to the magistrate division of the tax court within 30 days
 30 of the date of the decision of the department in the manner prescribed in ORS 305.404 to 305.560.

31 (4) For purposes of this section, an application to renew a distributor's license shall be consid-
 32 ered the same as an application for an initial distributor's license.

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

34 323.535. (1) The Department of Revenue may cancel, suspend or revoke a license issued to a
 35 distributor if the distributor fails to:

- 36 (a) Pay any tax or penalty due under ORS chapter 323;
- 37 (b) Otherwise comply with any provision of ORS chapter 323 or any rule adopted thereunder;

38 or

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

40 (2) Notwithstanding ORS 305.280, a decision by the department to cancel, suspend or revoke a
 41 license may be appealed by the distributor to the magistrate division of the tax court within 30 days
 42 of the date of the decision of the department under subsection (1) of this section, in the manner
 43 provided in ORS 305.404 to 305.560.

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

45 323.538. (1) A sales invoice for the wholesale sale of tobacco products **or tobacco substitutes**

1 in this state, including a sales invoice required under ORS 323.540, shall contain the following:

2 (a) The name and address of the seller, the name and address of the purchaser, the date of the
 3 sale of tobacco products **or tobacco substitutes**, the quantity and product description of tobacco
 4 products **or tobacco substitutes**, the price paid for tobacco products **or tobacco substitutes** and
 5 any discount applied in determining the price paid for tobacco products **or 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 tobacco substitutes** that
 8 all taxes due under ORS 323.500 to 323.645 have been or will be paid; and

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

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

13 (3) Each purchaser that then sells the tobacco products **or tobacco substitutes** to a subsequent
 14 purchaser shall provide the subsequent purchaser with a sales invoice that meets the requirements
 15 of this section.

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

20 (b) In the case of a purchaser in possession of untaxed [*tobacco*] products, the tax is due imme-
 21 diately, along with a penalty equal to 100 percent of the tax due. Amounts due under this paragraph
 22 may be collected as provided in ORS 323.605.

23 (c) If the purchaser in possession of untaxed [*tobacco*] products is a retail dealer, the Department
 24 of Revenue may impose a civil penalty for the possession of untaxed [*tobacco*] products. A civil
 25 penalty imposed under this paragraph may not exceed \$1,000 per violation. A penalty imposed under
 26 this paragraph may be appealed to the magistrate division of the tax court in the time and manner
 27 prescribed in ORS 305.404 to 305.560.

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

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

31 323.540. (1) Any distributor, and any person dealing in, transporting or storing tobacco products
 32 **or tobacco substitutes**, shall keep at each registered place of business complete and accurate re-
 33 cords for that place of business, including itemized invoices, of tobacco products **or tobacco sub-**
 34 **stitutes** held, purchased, manufactured, brought in or caused to be brought in from without the
 35 state or shipped or transported to retail dealers in this state, and of all sales of tobacco products
 36 **or tobacco substitutes** made, except sales to consumers.

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

40 (3) When a licensed distributor sells tobacco products **or tobacco substitutes** exclusively to
 41 consumers at the address given in the certificate and sells only tobacco products **or tobacco sub-**
 42 **stitutes** for which taxes imposed under ORS 323.500 to 323.645 have been paid prior to sale, an in-
 43 voice of any individual sale of less than 100 cigars or of tobacco products **or tobacco substitutes**
 44 with a wholesale sales price of less than \$50 is not required. Itemized invoices of all tobacco pro-
 45 ducts **or tobacco substitutes** transferred to other places of business owned or controlled by that

1 licensed distributor shall be made and retained.

2 (4)(a) All books, records and other papers and documents required by this section to be kept
3 shall be preserved for a period of at least five years after the initial date of the books, records and
4 other papers or documents, or the date of entries appearing therein, unless the Department of Re-
5 venue, in writing, authorizes their destruction or disposal at an earlier date.

6 (b) The department or its authorized representative, upon oral or written demand, may make
7 such examinations of the books, papers, records and equipment required to be kept under this sec-
8 tion as it may deem necessary in carrying out the provisions of ORS 323.500 to 323.645.

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

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

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

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

20 323.560. When tobacco products **or tobacco substitutes**, upon which the tax imposed under
21 ORS 323.500 to 323.645 has been reported and paid, are shipped or transported by the distributor to
22 retail dealers outside this state, to be sold by those retail dealers, or are returned to the manufac-
23 turer by the distributor or destroyed by the distributor, credit for the paid tax may be made to the
24 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 sale of tobacco pro-
27 ducts **or tobacco substitutes** by a distributor to a common carrier engaged in interstate or foreign
28 passenger service or to a person authorized to sell tobacco products **or tobacco substitutes** on the
29 facilities of a common carrier. Whenever tobacco products **or tobacco substitutes** are sold by dis-
30 tributors to common carriers engaged in interstate or foreign passenger service for use or sale on
31 facilities of the carriers, or to persons authorized to sell tobacco products **or tobacco**
32 **substitutes** on those facilities, the tax imposed by this section may not be levied with respect to
33 sales of the tobacco products **or tobacco substitutes** by the distributors, but a tax is hereby levied
34 upon the carriers or upon the persons authorized to sell tobacco products **or tobacco substitutes**
35 on the facilities of the carriers, as the case may be, for the privilege of making these sales in Oregon
36 at the same rate that is imposed upon the distribution of tobacco products **or tobacco substitutes**
37 in this state. The common carriers and authorized persons shall pay the tax imposed by this section
38 and file returns with the Department of Revenue as provided in ORS 323.510.

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

40 323.570. (1) Any transporter desiring to possess or acquire untaxed [*tobacco*] products for trans-
41 portation or transport upon the highways, roads or streets of this state shall obtain a permit from
42 the Department of Revenue authorizing such transporter to possess or acquire for transportation
43 or transport the untaxed [*tobacco*] products, and shall have the permit in the transporting vehicle
44 during the period of transportation of the tobacco products **or tobacco substitutes**. The application
45 for the permit shall be in such form and shall contain such information as may be prescribed by the

1 department. The department may issue a permit for a single load or shipment or for a number of
2 loads or shipments to be transported under specified conditions.

3 (2) Each transporter who shall transport or possess or acquire for the purpose of transporting
4 untaxed [*tobacco*] products upon the highways, roads or streets of this state is required to have
5 within the transporting vehicle invoices or bills of lading covering the shipment of tobacco products
6 **or tobacco substitutes** being transported which shall show the name and address of the consignor
7 or seller, the name and address of the consignee or purchaser and the quantity and types of tobacco
8 products **or tobacco substitutes** transported.

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

10 323.607. If the Department of Revenue finds that an amount of gross purchases net of discounts
11 equal to 25 percent or more of the gross purchases net of discounts as reported on the taxpayer's
12 tobacco products **or tobacco substitutes** tax return has been omitted from the return, the depart-
13 ment may give notice of deficiency as prescribed in ORS 305.265 at any time within five years after
14 the date the return was due or filed, whichever is later.

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

16 323.612. (1) Any contraband [*tobacco*] products found by an authorized representative of the De-
17 partment of Revenue or any law enforcement agency may be immediately seized and subject to
18 forfeiture. If seized and forfeited under this subsection, the tobacco products **or tobacco substitutes**
19 shall be destroyed.

20 (2) Notwithstanding ORS 305.280, a seizure and forfeiture made under this section may be ap-
21 pealed to the magistrate division of the tax court within 30 days of the date of the seizure in the
22 manner prescribed in ORS 305.404 to 305.560.

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

24 323.613. (1) To promote administrative and regulatory efficiency and compliance with laws reg-
25 ulating or taxing tobacco products **and tobacco substitutes**, the Department of Revenue may
26 transmit information obtained under ORS 323.500 to 323.645 to the proper officers of governmental
27 units inside and outside Oregon that:

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

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

31 (2) Governmental units that receive information pursuant to this section may use or disclose the
32 information solely for the purpose of administering or enforcing laws regulating or taxing tobacco
33 products **or tobacco substitutes**.

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

35 323.615. (1) The Director of the Department of Revenue is authorized to enter into a tobacco
36 products **or tobacco substitutes** tax refund agreement with the governing body of any Indian res-
37 ervation in Oregon. The agreement may provide for a mutually agreed upon amount as a refund to
38 the governing body of any tobacco tax collected under ORS 323.500 to 323.645 in connection with
39 the sale of tobacco products **or tobacco substitutes** to Indians on the Indian reservation, or the
40 use, storage or consumption of tobacco products **or tobacco substitutes** by Indians on the Indian
41 reservation. This provision is in addition to other laws allowing tax refunds.

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

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

1 323.630. (1)(a) A civil penalty may be imposed by the Department of Revenue on any person who
 2 violates any provision of ORS 323.500 to 323.645.

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

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

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

9 (3) Any person required to obtain a license as a distributor under ORS 323.500 to 323.645 who
 10 knowingly engages in business as a distributor without a license or after a license has been sus-
 11 pended or revoked is guilty of a Class C felony.

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

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

16 (6) Any person who knowingly violates any provision of ORS 323.500 to 323.645, except as oth-
 17 erwise provided in this section, is guilty of a Class A misdemeanor.

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

21 (8) In addition to any other sentence the court may impose upon a conviction under this section,
 22 the court may order the forfeiture of the instrumentalities used in violating ORS 323.500 to 323.645
 23 and the proceeds resulting from a violation of ORS 323.500 to 323.645.

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

25 323.632. (1) A person commits the crime of unlawful distribution of tobacco products **or tobacco**
 26 **substitutes** if the person knowingly sells or distributes, possesses or transports for sale or distrib-
 27 ution or imports for sale or distribution tobacco products **or tobacco substitutes** that do not com-
 28 ply with ORS 323.500 to 323.645.

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

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

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

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

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

44 (3) Tobacco products **or tobacco substitutes** sold, distributed, possessed, transported or im-
 45 ported in violation of subsection (1) of this section are contraband and subject to seizure and

1 forfeiture. If seized and forfeited under this subsection, the tobacco products **or tobacco substitutes**
2 shall be destroyed.

3 (4) In addition to any other sentence the court may impose upon a conviction under this section,
4 the court may order the forfeiture of the instrumentalities used in violating this section and the
5 proceeds resulting from a violation of this section.

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

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

10 323.640. (1) The taxes imposed by ORS 323.505 are in lieu of all other state, county or municipal
11 taxes on the sale or use of tobacco products **or tobacco substitutes**.

12 (2) Any tobacco product with respect to which a tax has once been imposed under ORS 323.505
13 shall not be subject upon a subsequent distribution to the taxes imposed by ORS 323.505.

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

15 323.712. (1) Each person seeking to engage in delivery sales of tobacco **or tobacco substitutes**
16 to purchasers in this state shall apply for and obtain:

17 (a) A cigarette distributor’s license under ORS 323.105, if the person intends to engage in ciga-
18 rette delivery sales; and

19 (b) A tobacco products **or tobacco substitutes** distributor’s license under ORS 323.520, if the
20 person intends to engage in tobacco products **or tobacco substitutes** delivery sales.

21 (2) A person may not engage in delivery sales in this state without first obtaining each appli-
22 cable distributor’s license under subsection (1) of this section.

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

24 323.715. The notice required under ORS 323.709 (3) shall include:

25 (1) A prominent and clearly legible statement that tobacco sales to persons under the legal
26 minimum purchase age are illegal;

27 (2) A prominent and clearly legible statement that sales of tobacco are restricted to those indi-
28 viduals who provide verifiable proof of age in accordance with ORS 323.709; and

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

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

34 323.724. (1) A person that accepts a purchase order for a delivery sale of cigarettes may not
35 make a delivery sale of cigarettes to a person in this state if the packages in which the cigarettes
36 are contained do not bear the proper tax stamps required to be affixed to the packages of cigarettes
37 under ORS 323.005 to 323.482.

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

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

42 323.740. (1) As used in this section, “premises” means a place of business:

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

44 (b) That the Department of Revenue has reasonable cause to believe is used for the sale or
45 distribution of cigarettes [or], tobacco products **or tobacco substitutes**.

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

5 (a) All areas used in or by the business operated at the premises, regardless of whether patrons
 6 are permitted to be present in those areas; and

7 (b) Areas not located at the premises that reasonably appear to be used by the person or busi-
 8 ness to store items listed in subsection (3) of this section.

9 (3) The department may examine:

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

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

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

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

17 (5) This section does not authorize the department to enter or examine an area used for resi-
 18 dential purposes, unless the area is located on a lot or parcel not zoned for residential use or where
 19 residential use is not allowed as a nonconforming use.

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

21 166.715. As used in ORS 166.715 to 166.735, unless the context requires otherwise:

22 (1) “Documentary material” means any book, paper, document, writing, drawing, graph, chart,
 23 photograph, phonograph record, magnetic tape, computer printout, other data compilation from
 24 which information can be obtained or from which information can be translated into usable form,
 25 or other tangible item.

26 (2) “Enterprise” includes any individual, sole proprietorship, partnership, corporation, business
 27 trust or other profit or nonprofit legal entity, and includes any union, association or group of indi-
 28 viduals associated in fact although not a legal entity, and both illicit and licit enterprises and gov-
 29 ernmental and nongovernmental entities.

30 (3) “Investigative agency” means the Department of Justice or any district attorney.

31 (4) “Pattern of racketeering activity” means engaging in at least two incidents of racketeering
 32 activity that have the same or similar intents, results, accomplices, victims or methods of commis-
 33 sion or otherwise are interrelated by distinguishing characteristics, including a nexus to the same
 34 enterprise, and are not isolated incidents, provided at least one of such incidents occurred after
 35 November 1, 1981, and that the last of such incidents occurred within five years after a prior inci-
 36 dent of racketeering activity. Notwithstanding ORS 131.505 to 131.525 or 419A.190 or any other
 37 provision of law providing that a previous prosecution is a bar to a subsequent prosecution, conduct
 38 that constitutes an incident of racketeering activity may be used to establish a pattern of
 39 racketeering activity without regard to whether the conduct previously has been the subject of a
 40 criminal prosecution or conviction or a juvenile court adjudication, unless the prosecution resulted
 41 in an acquittal or the adjudication resulted in entry of an order finding the youth not to be within
 42 the jurisdiction of the juvenile court.

43 (5) “Person” means any individual or entity capable of holding a legal or beneficial interest in
 44 real or personal property.

45 (6) “Racketeering activity” includes conduct of a person committed both before and after the

1 person attains the age of 18 years, and means to commit, to attempt to commit, to conspire to
 2 commit, or to solicit, coerce or intimidate another person to commit:

3 (a) Any conduct that constitutes a crime, as defined in ORS 161.515, under any of the following
 4 provisions of the Oregon Revised Statutes:

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

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

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

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

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

11 (F) ORS 163.095 to 163.115, 163.118, 163.125 and 163.145, relating to criminal 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, 164.098, 164.125, 164.135,
 17 164.140, 164.215, 164.225 and 164.245 to 164.270, relating to theft, burglary, criminal trespass and
 18 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 recording or labeling of a
 23 recording;

24 (P) ORS 165.007 to 165.022, 165.032 to 165.042 and 165.055 to 165.070, relating to forgery and
 25 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 and 166.470, relating
 29 to firearms and other weapons;

30 (T) ORS 164.377 (2) to (4), as punishable under ORS 164.377 (5)(b), 167.007 to 167.017, 167.057,
 31 167.062 to 167.080, 167.090, 167.122 to 167.137, 167.147, 167.164, 167.167, 167.212, 167.355, 167.365,
 32 167.370, 167.428, 167.431 and 167.439, relating to prostitution, obscenity, sexual conduct, gambling,
 33 computer crimes involving the Oregon State Lottery, animal fighting, forcible recovery of a fighting
 34 bird and related offenses;

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

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

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

38 (X) ORS 180.440 (2) and 180.486 (2) and ORS chapter 323, relating to cigarette *[and]*, tobacco
 39 products **and tobacco substitute** taxes and the directories developed under ORS 180.425 and
 40 180.477;

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

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

44 (AA) ORS 463.995, relating to boxing, mixed martial arts and entertainment wrestling, as defined
 45 in ORS 463.015;

1 (BB) ORS 471.305, 471.360, 471.392 to 471.400, 471.403, 471.404, 471.405, 471.425, 471.442, 471.445,
2 471.446, 471.485, 471.490 and 471.675, relating to alcoholic liquor, and any of the provisions of ORS
3 chapter 471 relating to licenses issued under the Liquor Control Act;

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

5 (DD) ORS 480.070, 480.210, 480.215, 480.235 and 480.265, relating to explosives;

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

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

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

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

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

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

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

13 (LL) ORS 166.382 and 166.384, relating to destructive devices;

14 (MM) ORS 165.074;

15 (NN) ORS 86A.095 to 86A.198, relating to mortgage bankers and mortgage brokers;

16 (OO) ORS chapter 496, 497 or 498, relating to wildlife;

17 (PP) ORS 163.355 to 163.427, relating to sexual offenses;

18 (QQ) ORS 166.015, relating to riot;

19 (RR) ORS 166.155 and 166.165, relating to intimidation;

20 (SS) ORS chapter 696, relating to real estate and escrow;

21 (TT) ORS chapter 704, relating to outfitters and guides;

22 (UU) ORS 165.692, relating to making a false claim for health care payment;

23 (VV) ORS 162.117, relating to public investment fraud;

24 (WW) ORS 164.170 or 164.172;

25 (XX) ORS 647.140, 647.145 or 647.150, relating to trademark counterfeiting;

26 (YY) ORS 164.886;

27 (ZZ) ORS 167.312 and 167.388;

28 (AAA) ORS 164.889;

29 (BBB) ORS 165.800; or

30 (CCC) ORS 163.263, 163.264 or 163.266.

31 (b) Any conduct defined as “racketeering activity” under 18 U.S.C. 1961 (1)(B), (C), (D) and (E).

32 (7) “Unlawful debt” means any money or other thing of value constituting principal or interest
33 of a debt that is legally unenforceable in the state in whole or in part because the debt was incurred
34 or contracted:

35 (a) In violation of any one of the following:

36 (A) ORS chapter 462, relating to racing;

37 (B) ORS 167.108 to 167.164, relating to gambling; or

38 (C) ORS 82.010 to 82.170, relating to interest and usury.

39 (b) In gambling activity in violation of federal law or in the business of lending money at a rate
40 usurious under federal or state law.

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

45 **SECTION 25. The amendments to ORS 166.715, 323.500, 323.505, 323.515, 323.520, 323.530,**

1 323.535, 323.538, 323.540, 323.555, 323.560, 323.565, 323.570, 323.607, 323.612, 323.613, 323.615,
2 323.630, 323.632, 323.640, 323.712, 323.715, 323.724 and 323.740 by sections 1 to 24 of this 2017
3 Act apply to tobacco substitutes distributed on or after January 1, 2018.

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