

Senate Bill 180

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Senate Interim Committee on Finance and 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**.

Expands definition of tobacco products for purpose of taxation to include inhalant form nicotine. Imposes tax on inhalant form nicotine and certain inhalant delivery devices. Applies to distributions of tobacco products occurring on or after January 1, 2018.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to taxation of products containing nicotine; creating new provisions; amending ORS 323.500
3 and 323.505; prescribing an effective date; and providing for revenue raising that requires ap-
4 proval by a three-fifths majority.

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

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

7 323.500. As used in ORS 323.500 to 323.645, unless the context otherwise requires:

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

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

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

18 (4) "Contraband tobacco products" means tobacco products or packages containing tobacco
19 products:

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

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

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

25 (d) That have been sold, offered for sale or possessed for sale in this state in violation of ORS
26 180.486.

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

28 (6) "Distribute" means:

29 (a) Bringing, or causing to be brought, into this state from without this state tobacco products

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 for sale, storage, use or consumption;

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

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

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

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

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

10 (7) "Distributor" means:

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

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

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

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

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

19 **(8) "Inhalant delivery system" has the meaning given that term in ORS 431A.175.**

20 **(9) "Inhalant form nicotine" means nicotine that:**

21 **(a) Is in a form that allows the nicotine to be delivered into a person's respiratory sys-**
22 **tem; and**

23 **(b) Is inhaled for the purpose of delivering the nicotine into a person's respiratory sys-**
24 **tem.**

25 [(8)] **(10)** "Manufacturer" means a person who manufactures tobacco products for sale.

26 [(9)] **(11)** "Moist snuff" means:

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

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

31 [(10)] **(12)** "Place of business" means any place where tobacco products are sold or where to-
32 bacco products are manufactured, stored or kept for the purpose of sale or consumption, including
33 any vessel, vehicle, airplane, train or vending machine.

34 [(11)] **(13)** "Retail dealer" means any person who is engaged in the business of selling or other-
35 wise dispensing tobacco products to consumers. The term also includes the operators of or recipients
36 of revenue from all places such as smoke shops, cigar stores and vending machines, where tobacco
37 products are made or stored for ultimate sale to consumers.

38 [(12)] **(14)** "Sale" means any transfer, exchange or barter, in any manner or by any means, for
39 a consideration, and includes and means all sales made by any person. It includes a gift by a person
40 engaged in the business of selling tobacco products, for advertising, as a means of evading the pro-
41 visions of ORS 323.500 to 323.645, or for any other purpose.

42 [(13)] **(15)** "Taxpayer" includes a distributor or other person required to pay a tax imposed under
43 ORS 323.500 to 323.645.

44 [(14)] **(16)** "Tobacco products" means cigars, cheroots, stogies, periques, granulated, plug cut,
45 crimp cut, ready rubbed and other smoking tobacco, snuff, snuff flour, moist snuff, cavendish, plug

1 and twist tobacco, fine-cut and other chewing tobaccos, shorts, refuse scraps, clippings, cuttings and
 2 sweepings of tobacco and other kinds and forms of tobacco, prepared in such manner as to be suit-
 3 able for chewing or smoking in a pipe or otherwise, or both for chewing and smoking, **and inhalant**
 4 **form nicotine**, but *[shall]* **does** not include cigarettes as defined in ORS 323.010.

5 *[(15)]* **(17)** “Untaxed tobacco products” means tobacco products for which the tax required under
 6 ORS 323.500 to 323.645 has not been paid.

7 *[(16)]* **(18)** “Wholesale sales price” means the price paid for untaxed tobacco products to or on
 8 behalf of a seller by a purchaser of the untaxed tobacco products.

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

10 323.505. (1) A tax is hereby imposed upon the distribution of all tobacco products in this state.
 11 The tax imposed by this section is intended to be a direct tax on the consumer, for which payment
 12 upon distribution is required to achieve convenience and facility in the collection and administration
 13 of the tax. The tax shall be imposed on a distributor at the time the distributor distributes tobacco
 14 products.

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

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

17 **(b) Ninety-five percent of the wholesale price of inhalant form nicotine that is sold sep-**
 18 **arately from an inhalant delivery system or sold in a disposable cartridge used in an inhalant**
 19 **delivery system;**

20 **(c) Seventy percent of the wholesale price of an inhalant delivery system that is sold**
 21 **containing inhalant form nicotine and does not require any additional components for use;**

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

25 *[(c)]* **(e)** Sixty-five percent of the wholesale sales price of all tobacco products that are not
 26 cigars, **inhalant form nicotine** or moist snuff.

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

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

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

42 **SECTION 3. The amendments to ORS 323.500 and 323.505 by sections 1 and 2 of this 2017**
 43 **Act apply to distributions of tobacco products occurring on or after January 1, 2018.**

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

