

Requested by Representative HAYDEN

**PROPOSED AMENDMENTS TO
HOUSE BILL 2391**

1 In line 2 of the printed bill, delete “and declaring an emergency” and in-
2 sert “creating new provisions; amending ORS 323.031 and 323.457 and
3 sections 1, 2, 3, 7, 9, 10, 12, 13 and 14, chapter 736, Oregon Laws 2003, and
4 section 15, chapter 389, Oregon Laws 2015; prescribing an effective date; and
5 providing for revenue raising that requires approval by a three-fifths major-
6 ity”.

7 Delete lines 4 through 13 and insert:
8

9 **“TAX ON INHALANT-FORM NICOTINE**
10 **AND INHALANT DELIVERY SYSTEMS**

11
12 **“SECTION 1. As used in sections 1 to 12 of this 2017 Act:**

13 **“(1) ‘Consumer’ means a person who purchases an inhalant delivery**
14 **system or inhalant-form nicotine in this state for the person’s use or**
15 **consumption, or for any purpose other than reselling the inhalant de-**
16 **livery system or inhalant-form nicotine to another person.**

17 **“(2) ‘Inhalant delivery system’ has the meaning given that term in**
18 **ORS 431A.175.**

19 **“(3) ‘Inhalant-form nicotine’ means nicotine that:**

20 **“(a) Is in a form that allows the nicotine to be delivered into a**
21 **person’s respiratory system;**

1 **“(b) Is inhaled for the purpose of delivering the nicotine into a**
2 **person’s respiratory system; and**

3 **“(c)(A) Is not approved by, or emitted by a device approved by, the**
4 **United States Food and Drug Administration for a therapeutic pur-**
5 **pose; or**

6 **“(B) If approved by, or emitted by a device approved by, the United**
7 **States Food and Drug Administration for a therapeutic purpose, is not**
8 **marketed and sold solely for that purpose.**

9 **“(4) ‘Inhalant wholesaler’ means a person that:**

10 **“(a) Holds inhalant-form nicotine or inhalant delivery systems for**
11 **sale in this state to any person; or**

12 **“(b) Makes the first sale of inhalant-form nicotine or an inhalant**
13 **delivery system in this state.**

14 **“(5) ‘Nicotine retailer’ means a person that is engaged in the busi-**
15 **ness of selling or otherwise dispensing inhalant-form nicotine to con-**
16 **sumers. The term also includes the operators of or recipients of**
17 **revenue from all places such as smoke shops, cigar stores and vending**
18 **machines, where inhalant-form nicotine is made or stored for ultimate**
19 **sale to consumers.**

20 **“(6) ‘Sale’ means any transfer, exchange or barter, in any manner**
21 **or by any means, for a consideration, and includes all sales made by**
22 **any person. It includes a gift by a person engaged in the business of**
23 **selling inhalant-form nicotine, for advertising, as a means of evading**
24 **the provisions of sections 1 to 12 of this 2017 Act, or for any other**
25 **purpose.**

26 **“(7) ‘Taxpayer’ includes a nicotine retailer or other person required**
27 **to collect a tax imposed under section 2 of this 2017 Act.**

28 **“(8) ‘Untaxed inhalant delivery system’ means an inhalant delivery**
29 **system for which the tax required under section 2 of this 2017 Act has**
30 **not been paid.**

1 “(9) ‘Wholesale price’ means the price paid for an inhalant delivery
2 system by a nicotine retailer at the point of first sale in this state.

3 “SECTION 2. (1)(a) A tax is hereby imposed upon the retail sale of
4 inhalant-form nicotine in this state. The tax imposed under this sec-
5 tion is a direct tax on the consumer, for which payment upon retail
6 sale is required. The tax shall be collected at the point of sale of
7 inhalant-form nicotine by a nicotine retailer at the time at which the
8 retail sale occurs.

9 “(b) The tax imposed under this subsection shall be imposed at the
10 rate of 5 cents on each container of inhalant-form nicotine with a
11 volume of two milliliters or less.

12 “(2)(a) A tax is hereby imposed upon the wholesale sale of inhalant
13 delivery systems and inhalant-form nicotine. The tax shall be collected
14 from a nicotine retailer or consumer at the point of first sale in this
15 state.

16 “(b) The tax imposed under this subsection shall be imposed at the
17 rate of 10 cents on each:

18 “(A) Container of inhalant-form nicotine with a volume greater
19 than two milliliters; and

20 “(B) Inhalant delivery system.

21 “(3) Except as otherwise provided by the Department of Revenue
22 by rule, the amount of the tax shall be separately stated on an invoice,
23 receipt or other similar document that the inhalant wholesaler or
24 nicotine retailer provides to the purchaser or consumer at the time
25 at which the sale occurs.

26 “(4) A person may not knowingly sell, purchase, install, transfer
27 or possess electronic devices or software programs for the purposes
28 of:

29 “(a) Hiding or removing records of wholesale or retail sales of
30 inhalant delivery systems or inhalant-form nicotine; or

1 “(b) Falsifying records of wholesale or retail sales of inhalant de-
2 livery systems or inhalant-form nicotine.

3 “(5) A nicotine retailer may not offer inhalant-form nicotine at no
4 charge if the retail sale of the inhalant-form nicotine is made in con-
5 junction with the retail sale of any other item.

6 “SECTION 3. (1) Except as otherwise provided in sections 1 to 12
7 of this 2017 Act, the tax imposed upon the purchaser or consumer
8 under section 2 of this 2017 Act shall be collected at the point of sale
9 and remitted by each wholesale or retail seller of inhalant delivery
10 systems or inhalant-form nicotine that engages in the wholesale or
11 retail sale of inhalant delivery systems or inhalant-form nicotine. The
12 tax is a tax upon the inhalant wholesaler or nicotine retailer that is
13 required to collect the tax, and the inhalant wholesaler or nicotine
14 retailer is a taxpayer.

15 “(2) The inhalant wholesaler or nicotine retailer shall file a return
16 with the Department of Revenue on or before the last day of January,
17 April, July and October of each year for the previous calendar quarter.

18 “(3) The inhalant wholesaler or nicotine retailer shall pay the tax
19 to the department in the form and manner prescribed by the depart-
20 ment, but not later than with each quarterly return, without regard
21 to an extension granted under subsection (5) of this section.

22 “(4) Inhalant wholesalers or nicotine retailers shall file the returns
23 required under this section regardless of whether any tax is owed.

24 “(5) For good cause, the department may extend the time for filing
25 a return under this section. The extension may be granted at any time
26 if a written request is filed with the department during or prior to the
27 period for which the extension may be granted. The department may
28 not grant an extension of more than 30 days.

29 “(6) Interest shall be added at the rate established under ORS
30 305.220 for each month, or fraction of a month, from the time the re-

1 turn was originally required to be filed to the time of payment.

2 “(7) If an inhalant wholesaler or a nicotine retailer fails to file a
3 return or pay the tax as required by this section, the department shall
4 impose a penalty in the manner provided in ORS 314.400.

5 “(8) Except as provided in subsections (9) and (10) of this section,
6 the period prescribed for the department to allow or make a refund
7 of any overpayment of tax paid under sections 1 to 12 of this 2017 Act
8 is as provided in ORS 314.415.

9 “(9)(a) The department shall first apply any overpayment of tax by
10 an inhalant wholesaler or a nicotine retailer to any tax imposed under
11 sections 1 to 12 of this 2017 Act that is owed by the inhalant wholesaler
12 or nicotine retailer.

13 “(b) If after any offset against any delinquent amount the over-
14 payment of tax remains greater than \$1,000, the remaining refund shall
15 be applied as a credit against the next subsequent calendar quarter as
16 an estimated payment.

17 “(10) The department may not make a refund of, or credit, any
18 overpayment of tax under sections 1 to 12 of this 2017 Act that was
19 credited to the account of an inhalant wholesaler or a nicotine retailer
20 under subsection (9)(b) of this section if the return for that tax period
21 is not filed within three years after the due date of that return.

22 **“SECTION 4. (1) Every person who collects any amount under sec-**
23 **tion 3 of this 2017 Act shall hold the same in trust for the State of**
24 **Oregon and for the payment thereof to the Department of Revenue in**
25 **the manner and at the time provided in section 3 of this 2017 Act.**

26 “(2) At any time an inhalant wholesaler or a nicotine retailer fails
27 to remit any amount collected, the department may enforce collection
28 by the issuance of a distraint warrant for the collection of the delin-
29 quent amount and all penalties, interest and collection charges ac-
30 crued thereon. The warrant shall be issued, recorded and proceeded

1 upon in the same manner and shall have the same force and effect as
2 is prescribed with respect to warrants for the collection of delinquent
3 income taxes.

4 “(3)(a) In the case of an inhalant wholesaler or a nicotine retailer
5 that is assessed pursuant to the provisions of ORS 305.265 (12) and
6 314.407 (1), the department may issue a notice of liability to any offi-
7 cer, employee or member of the inhalant wholesaler or nicotine
8 retailer within three years from the time of assessment. Within 30
9 days from the date the notice of liability is mailed to the officer, em-
10 ployee or member, the officer, employee or member shall pay the as-
11 sessment, plus penalties and interest, or advise the department in
12 writing of objections to the liability and, if desired, request a confer-
13 ence. A conference shall be governed by the provisions of ORS 305.265
14 pertaining to a conference requested from a notice of deficiency.

15 “(b) After a conference or, if no conference is requested, a deter-
16 mination of the issues considering the written objections, the depart-
17 ment shall mail the officer, employee or member a conference letter
18 affirming, canceling or adjusting the notice of liability. Within 90 days
19 from the date the conference letter is mailed to the officer, employee
20 or member, the officer, employee or member shall pay the assessment,
21 plus penalties and interest, or appeal to the Oregon Tax Court in the
22 manner provided for an appeal from a notice of assessment.

23 “(c) If the department does not receive payment or written ob-
24 jection to the notice of liability within 30 days after the notice of li-
25 ability was mailed, the notice of liability becomes final. In that event,
26 the officer, employee or member may appeal the notice of liability to
27 the tax court within 90 days after it became final in the manner pro-
28 vided for an appeal from a notice of assessment.

29 “(4)(a) In the case of a failure to file a return on the due date,
30 governed by the provisions of ORS 305.265 (10) and 314.400, the depart-

1 ment, in addition to any action described in the provisions of ORS
2 305.265 (10) and 314.400, may send notices of determination and assess-
3 ment to any officer, employee or member any time within three years
4 after the assessment. The time of assessment against the officer, em-
5 ployee or member is 30 days after the date the notice of determination
6 and assessment is mailed. Within 30 days from the date the notice of
7 determination and assessment is mailed to the officer, employee or
8 member, the officer, employee or member shall pay the assessment,
9 plus penalties and interest, or advise the department in writing of ob-
10 jections to the assessment and, if desired, request a conference. A
11 conference shall be governed by the provisions of ORS 305.265 per-
12 taining to a conference requested from a notice of deficiency.

13 “(b) After a conference or, if no conference is requested, a deter-
14 mination of the issues considering the written objections, the depart-
15 ment shall mail the officer, employee or member a conference letter
16 affirming, canceling or adjusting the notice of determination and as-
17 sessment. Within 90 days from the date the conference letter is mailed
18 to the officer, employee or member, the officer, employee or member
19 shall pay the assessment, plus penalties and interest, or appeal in the
20 manner provided for an appeal from a notice of assessment.

21 “(c) If the department does not receive payment or written ob-
22 jection to the notice of determination and assessment within 30 days
23 after the notice of determination and assessment was mailed, the no-
24 tice of determination and assessment becomes final. In that event, the
25 officer, employee or member may appeal the notice of determination
26 and assessment to the tax court within 90 days after it became final
27 in the manner provided for an appeal from a notice of assessment.

28 “(5)(a) More than one officer or employee of a corporation may be
29 held jointly and severally liable for payment of taxes.

30 “(b) Notwithstanding the confidentiality provisions of section 11 of

1 this 2017 Act, if more than one officer or employee of a corporation
2 may be held jointly and severally liable for payment of taxes, the de-
3 partment may require any or all of the officers, members or employees
4 who may be held liable to appear before the department for a joint
5 determination of liability. The department shall notify each officer,
6 member or employee of the time and place set for the determination
7 of liability.

8 “(c) Each person notified of a joint determination under this sub-
9 section shall appear and present such information as is necessary to
10 establish that person’s liability or nonliability for payment of taxes to
11 the department. If a person who was notified fails to appear, the de-
12 partment shall make its determination on the basis of all the infor-
13 mation and evidence presented. The department’s determination is
14 binding on all persons notified and required to appear under this sub-
15 section.

16 “(d)(A) If an appeal is taken to the tax court pursuant to section
17 11 of this 2017 Act by any person determined to be liable for unpaid
18 taxes under this subsection, each person required to appear before the
19 department under this subsection shall be impleaded by the plaintiff.
20 The department may implead any officer, employee or member who
21 may be held jointly and severally liable for the payment of taxes. Each
22 person impleaded under this paragraph shall be made a party to the
23 action before the tax court and shall make available to the tax court
24 the information that was presented before the department, as well as
25 other information that may be presented to the tax court.

26 “(B) The tax court may determine that one or more persons
27 impleaded under this paragraph are liable for unpaid taxes without
28 regard to any earlier determination by the department that an
29 impleaded person was not liable for unpaid taxes.

30 “(C) If a person required to appear before the tax court under this

1 subsection fails or refuses to appear or bring such information in part
2 or in whole, or is outside the jurisdiction of the tax court, the tax
3 court shall make its determination on the basis of all the evidence
4 introduced. Notwithstanding section 11 of this 2017 Act, the evidence
5 constitutes a public record and shall be available to the parties and the
6 tax court. The determination of the tax court is binding on all persons
7 made parties to the action under this subsection.

8 “(e) This section may not be construed to preclude a determination
9 by the department or the tax court that more than one officer, em-
10 ployee or member is jointly and severally liable for unpaid taxes.

11 **“SECTION 5. (1) An inhalant wholesaler or a nicotine retailer shall**
12 **keep receipts, invoices and other pertinent records related to wholesale**
13 **and retail sales of inhalant delivery systems and inhalant-form**
14 **nicotine in the form required by the Department of Revenue. Each**
15 **record shall be preserved for five years from the time to which the**
16 **record relates, or for as long as the inhalant wholesaler or nicotine**
17 **retailer retains the inhalant delivery systems or inhalant-form**
18 **nicotine to which the record relates, whichever is later. During the**
19 **retention period and at any time prior to the destruction of records,**
20 **the department may give written notice to the inhalant wholesaler or**
21 **nicotine retailer not to destroy records described in the notice without**
22 **written permission of the department. Notwithstanding any other**
23 **provision of law, the department shall preserve reports and returns**
24 **filed with the department for at least five years.**

25 “(2) The department or its authorized representative, upon oral or
26 written demand, may make examinations of the books, papers, records
27 and equipment of persons making wholesale or retail sales of inhalant
28 delivery systems or inhalant-form nicotine and any other investi-
29 gations the department deems necessary to carry out the provisions
30 of sections 1 to 12 of this 2017 Act.

1 **“SECTION 6. (1) The Department of Revenue has authority, by or-**
2 **der or subpoena to be served with the same force and effect and in the**
3 **same manner as a subpoena is served in a civil action in the circuit**
4 **court, or the Oregon Tax Court, to require the production at any time**
5 **and place the department designates of any books, papers, accounts**
6 **or other information necessary to carry out sections 1 to 12 of this 2017**
7 **Act. The department may require the attendance of any person having**
8 **knowledge in the premises, and may take testimony and require proof**
9 **material for the information, with power to administer oaths to the**
10 **person.**

11 **“(2) If a person fails to comply with a subpoena or order of the de-**
12 **partment or to produce or permit the examination or inspection of any**
13 **books, papers, records and equipment pertinent to an investigation or**
14 **inquiry under sections 1 to 12 of this 2017 Act, or to testify to any**
15 **matter regarding which the person is lawfully interrogated, the de-**
16 **partment may apply to the Oregon Tax Court or to the circuit court**
17 **of the county in which the person resides or where the person is lo-**
18 **cated for an order to the person to attend and testify, or otherwise to**
19 **comply with the demand or request of the department. The depart-**
20 **ment shall apply to the court by ex parte motion, upon which the**
21 **court shall make an order requiring the person against whom the**
22 **motion is directed to comply with the request or demand of the de-**
23 **partment within 10 days after the service of the order, or within the**
24 **additional time granted by the court, or to justify the failure within**
25 **that time. The order shall be served upon the person to whom it is**
26 **directed in the manner required by this state for service of process,**
27 **which service is required to confer jurisdiction upon the court. Failure**
28 **to obey any order issued by the court under this section is contempt**
29 **of court. The remedy provided by this section is in addition to other**
30 **remedies, civil or criminal, existing under the tax laws or other laws**

1 of this state.

2 **“SECTION 7. Except as otherwise provided in sections 1 to 12 of this**
3 **2017 Act, a person aggrieved by an act or determination of the De-**
4 **partment of Revenue or its authorized agent under sections 1 to 12 of**
5 **this 2017 Act may appeal, within 90 days after the act or determi-**
6 **nation, to the Oregon Tax Court in the manner provided in ORS 305.404**
7 **to 305.560. These appeal rights are the exclusive remedy available to**
8 **determine the person’s liability for the tax imposed under section 2**
9 **of this 2017 Act.**

10 **“SECTION 8. (1)(a) When an amount represented by a nicotine**
11 **retailer at retail to a consumer as constituting the tax imposed under**
12 **section 2 of this 2017 Act is computed upon an amount that is not**
13 **taxable or is in excess of the taxable amount and is actually paid by**
14 **the consumer to the nicotine retailer, the excess tax paid shall be re-**
15 **turned by the nicotine retailer to the consumer upon written notifi-**
16 **cation by the Department of Revenue or the consumer.**

17 **“(b) The written notification must contain information necessary**
18 **to determine the validity of the consumer’s claim.**

19 **“(2) If the nicotine retailer does not return the excess tax within**
20 **60 days after mailing of the written notification required under sub-**
21 **section (1) of this section, the consumer may appeal to the department**
22 **for a refund of the amount of the excess tax, in the manner and within**
23 **the time allowed under rules adopted by the department.**

24 **“(3) If excess tax is returned to the consumer by the department,**
25 **the department may issue a notice of deficiency for the excess tax to**
26 **the nicotine retailer in the manner provided under ORS 305.265.**

27 **“SECTION 9. For the purpose of compensating nicotine retailers for**
28 **expenses incurred in collecting the tax imposed under section 2 of this**
29 **2017 Act, each nicotine retailer is permitted to deduct and retain two**
30 **percent of the amount of taxes that are collected by the nicotine**

1 retailer from all retail sales of inhalant-form nicotine conducted by
2 the nicotine retailer.

3 **“SECTION 10.** The Department of Revenue shall administer and
4 enforce sections 1 to 12 of this 2017 Act. The department is authorized
5 to establish rules and procedures for the implementation and enforce-
6 ment of sections 1 to 12 of this 2017 Act that are consistent with
7 sections 1 to 12 of this 2017 Act and that the department considers
8 necessary and appropriate to administer and enforce sections 1 to 12
9 of this 2017 Act.

10 **“SECTION 11.** Except as otherwise provided in sections 1 to 12 of
11 this 2017 Act or where the context requires otherwise, the provisions
12 of ORS chapters 305 and 314 as to the audit and examination of re-
13 turns, periods of limitation, determination of and notices of deficien-
14 cies, assessments, collections, liens, delinquencies, claims for refund
15 and refunds, conferences, appeals to the Oregon Tax Court, stays of
16 collection pending appeal, confidentiality of returns and the penalties
17 relative thereto, and the procedures relating thereto, apply to the de-
18 terminations of taxes, penalties and interest under sections 1 to 12 of
19 this 2017 Act.

20 **“SECTION 12.** (1) All moneys received by the Department of Reve-
21 nue under sections 1 to 12 of this 2017 Act shall be deposited in the
22 State Treasury and credited to a suspense account established under
23 ORS 293.445. The department may pay expenses for the administration
24 and enforcement of sections 1 to 12 of this 2017 Act out of moneys re-
25 ceived from the tax imposed under section 2 of this 2017 Act. Amounts
26 necessary to pay administrative and enforcement expenses are con-
27 tinuously appropriated to the department from the suspense account.

28 **“(2)** After the payment of administrative and enforcement expenses
29 and refunds or credits arising from erroneous overpayments, the de-
30 partment shall transfer the balance of the moneys received by the

1 department under this section to the Mental Health Services Fund
2 established in section 13 of this 2017 Act.

3 **“SECTION 13.** The Mental Health Services Fund is established in
4 the State Treasury separate and apart from the General Fund. The
5 Mental Health Services Fund consists of moneys transferred to the
6 fund by the Department of Revenue under section 12 of this 2017 Act.
7 Moneys in the fund are continuously appropriated to the Oregon
8 Health Authority to be used to pay for behavioral health treatment
9 and other services for residents of this state who have mental illness
10 or substance abuse disorders.

11

12 **“RECONCILIATION OF ADDRESSES OF MEDICAL ASSISTANCE**
13 **RECIPIENTS WITH NATIONAL CHANGE OF ADDRESS PRODUCT**

14

15 **“SECTION 14.** At regular intervals of not less than six months, the
16 Oregon Health Authority shall reconcile the addresses listed for indi-
17 viduals receiving medical assistance with the National Change of Ad-
18 dress product licensed by the United States Postal Service to
19 determine if any recipients of medical assistance have moved out of
20 this state. If the reconciliation shows that a recipient of medical as-
21 sistance has moved out of this state, the authority shall immediately
22 take appropriate actions to terminate the recipient’s medical assist-
23 ance.

24

25 **“NOTE:** Sections 15 and 16 were deleted by amendment. Subsequent
26 sections were not renumbered.

27

28 **“FUNDING FOR MEDICAL ASSISTANCE**

29

30 **“SECTION 17.** The Oregon Health Authority shall terminate pay-

1 ments of the administrative expense portion of the hospital re-
2 imbursement adjustment made to coordinated care organizations out
3 of moneys in the Hospital Quality Assurance Fund established in sec-
4 tion 9, chapter 736, Oregon Laws 2003.

5 **“SECTION 18.** Section 17 of this 2017 Act applies to payments of the
6 administrative expense portion of the hospital reimbursement adjust-
7 ment made to coordinated care organizations on and after July 1, 2017.
8 The Oregon Health Authority may recover from coordinated care or-
9 ganizations payments for the administrative expense portion of the
10 hospital reimbursement adjustment made on and after July 1, 2017.

11 **“SECTION 19.** (1) From the unexpended balance of the Health In-
12 surance Exchange Fund established in ORS 741.102, \$12 million is
13 transferred to the Oregon Health Authority Fund established in ORS
14 413.101.

15 **“(2)** From the unexpended balance of the Hospital Quality Assur-
16 ance Fund established in section 9, chapter 736, Oregon Laws 2003, \$72
17 million is transferred to the Oregon Health Authority Fund.

18 **“(3)** From the unexpended balance of the Health Care Trust Fund
19 established in ORS 293.540, on:

20 **“(a)** January 1, 2018, \$25 million is transferred to the Oregon Health
21 Authority Fund.

22 **“(b)** January 1, 2019, \$25 million is transferred to the Oregon Health
23 Authority Fund.

24 **“(4)** Any moneys remaining in the Oregon Medical Insurance Pool
25 Account established in ORS 735.612 on the effective date of this 2017
26 Act are transferred to the Oregon Health Authority Fund.

27 **“(5)** All moneys transferred to the Oregon Health Authority Fund
28 under this section shall be used by the Oregon Health Authority to
29 provide medical assistance under ORS chapter 414.

30 **“SECTION 20.** If the actual decrease in the medical assistance

1 caseload on the operative date of this section specified in section 42
2 of this 2017 Act is greater than the decrease in the medical assistance
3 caseload projected by the Oregon Health Authority as of June 30, 2017,
4 up to \$85 million of the difference between the actual caseload savings
5 and the projected caseload savings are transferred to the Oregon
6 Health Authority Fund established in ORS 413.101.

7 **“SECTION 21. (1) No later than December 1, 2017, the Oregon**
8 **Health Authority shall submit for approval by the Centers for Medi-**
9 **care and Medicaid Services an amendment to the Medicaid state plan**
10 **to permit the hospital assessment under section 2, chapter 736, Oregon**
11 **Laws 2003, to be imposed at the rate of six percent.**

12 **“(2) No later than December 15, 2017, the authority shall report to**
13 **the interim committees of the Legislative Assembly related to health**
14 **the status of the amendment to the Medicaid state plan described in**
15 **subsection (1) of this section.**

16 **“SECTION 22. Section 1, chapter 736, Oregon Laws 2003, as amended by**
17 **section 34, chapter 792, Oregon Laws 2009, is amended to read:**

18 **“Sec. 1. As used in sections 1 to 9, chapter 736, Oregon Laws 2003:**

19 **“(1) ‘Charity care’ means costs for providing inpatient or outpatient care**
20 **services free of charge or at a reduced charge because of the indigence or**
21 **lack of health insurance of the patient receiving the care services.**

22 **“(2) ‘Contractual adjustments’ means the difference between the amounts**
23 **charged based on the hospital’s full established charges and the amount re-**
24 **ceived or due from the payor.**

25 **“(3) ‘Health district hospital’ means a hospital created by a health**
26 **district under ORS 440.315 to 440.410.**

27 **“[(3)] (4)(a) ‘Hospital’ [has the meaning given that term in ORS 442.015]**
28 **means a hospital licensed under ORS chapter 441.**

29 **“(b) ‘Hospital’ does not include:**

30 **“(A) Special inpatient care facilities;**

1 **“(B) Hospitals that provide only psychiatric care;**

2 **“(C) Hospitals providing care to children at no charge; and**

3 **“(D) Public hospitals.**

4 “[(4)] (5) ‘Net revenue’:

5 “(a) Means the total amount of charges for inpatient or outpatient care
6 provided by the hospital to patients, less charity care, bad debts and con-
7 tractual adjustments;

8 “(b) Does not include revenue derived from sources other than inpatient
9 or outpatient operations, including but not limited to interest and guest
10 meals; and

11 “(c) Does not include any revenue that is taken into account in computing
12 a long term care facility assessment under sections 15 to 22, **24 and 29**,
13 chapter 736, Oregon Laws 2003.

14 “[(5) ‘Waivered hospital’ means a type A or type B hospital, as described
15 in ORS 442.470, a hospital that provides only psychiatric care or a hospital
16 identified by the Department of Human Services as appropriate for inclusion
17 in the application described in section 4, chapter 736, Oregon Laws 2003.]

18 **“(6) ‘Type A hospital’ has the meaning given that term in ORS**
19 **442.470.**

20 **“(7) ‘Type B hospital’ has the meaning given that term in ORS**
21 **442.470.**

22 **“SECTION 23.** Section 2, chapter 736, Oregon Laws 2003, as amended by
23 section 1, chapter 780, Oregon Laws 2007, section 51, chapter 828, Oregon
24 Laws 2009, section 17, chapter 867, Oregon Laws 2009, section 2, chapter 608,
25 Oregon Laws 2013, and section 1, chapter 16, Oregon Laws 2015, is amended
26 to read:

27 **“Sec. 2.** (1) An assessment is imposed on the net revenue of each hospital
28 in this state [*that is not a waivered hospital*]. **Except as provided in sub-**
29 **section (2) of this section**, the assessment shall be imposed at a rate [*de-*
30 *termined by the Director of the Oregon Health Authority by rule that is the*

1 *director's best estimate of the rate needed to fund the services and costs iden-*
2 *tified in section 9, chapter 736, Oregon Laws 2003] of 5.5 percent. [The rate*
3 *of assessment shall be imposed on the net revenue of each hospital subject to*
4 *assessment. The director shall consult with representatives of hospitals before*
5 *setting the assessment.]*

6 **“(2)(a) The director may impose a rate lower than 5.5 percent on**
7 **type A hospitals, type B hospitals and health district hospitals to take**
8 **into account the hospital's financial position.**

9 **“(b) If the director reduces the rate of assessment under this sub-**
10 **section, the director may increase the assessment imposed under sub-**
11 **section (1) of this section to 5.7 percent for hospitals other than type**
12 **A hospitals, type B hospitals and health district hospitals.**

13 **“[(2)] (3) The assessment shall be reported on a form prescribed by the**
14 **Oregon Health Authority and shall contain the information required to be**
15 **reported by the authority. The assessment form shall be filed with the au-**
16 **thority on or before the 75th day following the end of the calendar quarter**
17 **for which the assessment is being reported. Except as provided in subsection**
18 **[(6)] (5) of this section, the hospital shall pay the assessment at the time the**
19 **hospital files the assessment report. The payment shall accompany the re-**
20 **port.**

21 **“[(3)(a) To the extent permitted by federal law, aggregate assessments im-**
22 **posed under this section may not exceed the total of the following amounts**
23 **received by the hospitals that are reimbursed by Medicare based on diagnostic**
24 **related groups:]**

25 **“[(A) 30 percent of payments made to the hospitals on a fee-for-service basis**
26 **by the authority for inpatient hospital services;]**

27 **“[(B) 41 percent of payments made to the hospitals on a fee-for-service basis**
28 **by the authority for outpatient hospital services; and]**

29 **“[(C) Payments made to the hospitals using a payment methodology estab-**
30 **lished by the authority that advances the goals of the Oregon Integrated and**

1 *Coordinated Health Care Delivery System described in ORS 414.620 (3).]*

2 “[*(b) Notwithstanding paragraph (a) of this subsection, aggregate assess-*
3 *ments imposed on or after July 1, 2015, may exceed the total of the amounts*
4 *described in paragraph (a) of this subsection to the extent necessary to com-*
5 *pensate for any reduction of funding in the legislatively adopted budget for*
6 *hospital services under ORS 414.631, 414.651 and 414.688 to 414.745.]*

7 “(4) [*Notwithstanding subsection (3) of this section,*] A hospital is not
8 guaranteed that any additional moneys paid to the hospital in the form of
9 payments for services shall equal or exceed the amount of the assessment
10 paid by the hospital.

11 “[*(5) Hospitals operated by the United States Department of Veterans Af-*
12 *fairs and pediatric specialty hospitals providing care to children at no charge*
13 *are exempt from the assessment imposed under this section.]*

14 “[*(6)(a)*] **(5)(a)** The authority shall develop a schedule for collection of the
15 assessment for the calendar quarter ending September 30, [*2019*] **2021**, that
16 will result in the collection occurring between December 15, [*2019*] **2021**, and
17 the time all Medicaid cost settlements are finalized for that calendar quarter.

18 “(b) The authority shall prescribe by rule criteria for late payment of
19 assessments.

20 “**SECTION 24.** Section 3, chapter 736, Oregon Laws 2003, as amended by
21 section 3, chapter 608, Oregon Laws 2013, is amended to read:

22 “**Sec. 3.** [*(1)*] Notwithstanding section 2, chapter 736, Oregon Laws 2003,
23 the Director of the Oregon Health Authority shall reduce the rate of as-
24 sessment imposed under section 2, chapter 736, Oregon Laws 2003, to the
25 maximum rate allowed under federal law if the reduction is required to
26 comply with federal law.

27 “[*(2) If federal law requires a reduction in the rate of assessments, the di-*
28 *rector shall, after consulting with representatives of the hospitals that are*
29 *subject to the assessments, first reduce the distribution of moneys described in*
30 *section 9 (2)(d), chapter 736, Oregon Laws 2003, by a corresponding amount.]*

1 **“SECTION 25.** Section 7, chapter 736, Oregon Laws 2003, as amended by
2 section 5, chapter 608, Oregon Laws 2013, is amended to read:

3 **“Sec. 7.** The Oregon Health Authority may audit the records of any hos-
4 pital in this state to determine compliance with sections 1 to 9, chapter 736,
5 Oregon Laws 2003[, *and section 1 of this 2013 Act*]. The authority may audit
6 records at any time for a period of five years following the date an assess-
7 ment is due to be reported and paid under section 2, chapter 736, Oregon
8 Laws 2003.

9 **“SECTION 26.** Section 9, chapter 736, Oregon Laws 2003, as amended by
10 section 2, chapter 757, Oregon Laws 2005, section 2, chapter 780, Oregon
11 Laws 2007, section 53, chapter 828, Oregon Laws 2009, section 19, chapter 867,
12 Oregon Laws 2009, section 59, chapter 602, Oregon Laws 2011, and section
13 7, chapter 608, Oregon Laws 2013, is amended to read:

14 **“Sec. 9.** (1) The Hospital Quality Assurance Fund is established in the
15 State Treasury, separate and distinct from the General Fund. Interest earned
16 by the Hospital Quality Assurance Fund shall be credited to the Hospital
17 Quality Assurance Fund.

18 “(2) Amounts in the Hospital Quality Assurance Fund are continuously
19 appropriated to the Oregon Health Authority for the purpose of:

20 “(a) Paying refunds due under section 6, chapter 736, Oregon Laws 2003;

21 “(b) Funding [*services under ORS 414.631, 414.651 and 414.688 to 414.750*]
22 **medical assistance under ORS chapter 414**, including but not limited to
23 increasing reimbursement rates for inpatient and outpatient hospital services
24 [*under ORS 414.631, 414.651 and 414.688 to 414.750*];

25 “(c) Making payments described in section 2 (3)(a)(C), chapter 736, Oregon
26 Laws 2003;

27 “(d) Making distributions, as described in section 1 (4), **chapter 608,**
28 **Oregon Laws 2013** [*of this 2013 Act*], of an amount of moneys equal to the
29 federal financial participation received from one percentage point of the rate
30 assessed under section 2, chapter 736, Oregon Laws 2003; [*and*]

1 “(e) Making qualified directed payments to coordinated care organ-
2 izations to be used to provide to type A hospitals, type B hospitals and
3 health district hospitals additional reimbursement that:

4 “(A) Is based on the utilization and delivery of services;

5 “(B) Is expended equally, using the same terms of performance for
6 all type A hospitals and type B hospitals;

7 “(C) Is expected to advance at least one of the goals of the state’s
8 quality strategy;

9 “(D) Is evaluated on the degree to which the payments advance at
10 least one of the goals of the state’s quality strategy;

11 “(E) Does not require a hospital to enter into an intergovernmental
12 transfer agreement; and

13 “(F) Is not renewed automatically; and

14 “[(e)] (f) Paying administrative costs incurred by the authority to admin-
15 ister [section 1 of this 2013 Act and] the assessments imposed under section
16 2, chapter 736, Oregon Laws 2003.

17 “(3) [Except for assessments imposed pursuant to section 2 (3)(b), chapter
18 736, Oregon Laws 2003,] The authority may not use moneys from the Hospital
19 Quality Assurance Fund to supplant, directly or indirectly, other moneys
20 made available to fund services described in subsection (2) of this section.

21 “**SECTION 27.** Section 9, chapter 736, Oregon Laws 2003, as amended by
22 section 2, chapter 757, Oregon Laws 2005, section 2, chapter 780, Oregon
23 Laws 2007, section 53, chapter 828, Oregon Laws 2009, section 19, chapter 867,
24 Oregon Laws 2009, section 59, chapter 602, Oregon Laws 2011, section 7,
25 chapter 608, Oregon Laws 2013, and section 26 of this 2017 Act, is amended
26 to read:

27 “**Sec. 9.** (1) The Hospital Quality Assurance Fund is established in the
28 State Treasury, separate and distinct from the General Fund. Interest earned
29 by the Hospital Quality Assurance Fund shall be credited to the Hospital
30 Quality Assurance Fund.

1 “(2) Amounts in the Hospital Quality Assurance Fund are continuously
2 appropriated to the Oregon Health Authority for the purpose of:

3 “(a) Paying refunds due under section 6, chapter 736, Oregon Laws 2003;

4 “(b) Funding medical assistance under ORS chapter 414, including but not
5 limited to increasing reimbursement rates for inpatient and outpatient hos-
6 pital services;

7 “[*(c) Making payments described in section 2 (3)(a)(C), chapter 736, Oregon*
8 *Laws 2003;*]

9 “[*(d) Making distributions, as described in section 1 (4), chapter 608,*
10 *Oregon Laws 2013, of an amount of moneys equal to the federal financial*
11 *participation received from one percentage point of the rate assessed under*
12 *section 2, chapter 736, Oregon Laws 2003;*]

13 “[*(e)*] **(c)** Making qualified directed payments to coordinated care organ-
14 izations to be used to provide to type A hospitals, type B hospitals and
15 health district hospitals additional reimbursement that:

16 “(A) Is based on the utilization and delivery of services;

17 “(B) Is expended equally, using the same terms of performance for all type
18 A hospitals and type B hospitals;

19 “(C) Is expected to advance at least one of the goals of the state’s quality
20 strategy;

21 “(D) Is evaluated on the degree to which the payments advance at least
22 one of the goals of the state’s quality strategy;

23 “(E) Does not require a hospital to enter into an intergovernmental
24 transfer agreement; and

25 “(F) Is not renewed automatically; and

26 “[*(f)*] **(d)** Paying administrative costs incurred by the authority to ad-
27 minister the assessments imposed under section 2, chapter 736, Oregon Laws
28 2003.

29 “(3) The authority may not use moneys from the Hospital Quality Assur-
30 ance Fund to supplant, directly or indirectly, other moneys made available

1 to fund services described in subsection (2) of this section.

2 **“SECTION 28.** Section 10, chapter 736, Oregon Laws 2003, as amended
3 by section 3, chapter 780, Oregon Laws 2007, section 20, chapter 867, Oregon
4 Laws 2009, section 8, chapter 608, Oregon Laws 2013, and section 2, chapter
5 16, Oregon Laws 2015, is amended to read:

6 **“Sec. 10.** Sections 1 to 9, chapter 736, Oregon Laws 2003, apply to net
7 revenues earned by hospitals during a period beginning October 1, 2015, and
8 ending the earlier of September 30, [2019] **2021**, or the date on which the
9 assessment no longer qualifies for federal financial participation under Title
10 XIX or XXI of the Social Security Act.

11 **“SECTION 29.** Section 12, chapter 736, Oregon Laws 2003, as amended
12 by section 4, chapter 780, Oregon Laws 2007, section 21, chapter 867, Oregon
13 Laws 2009, section 9, chapter 608, Oregon Laws 2013, and section 3, chapter
14 16, Oregon Laws 2015, is amended to read:

15 **“Sec. 12.** Sections 1 to 9, chapter 736, Oregon Laws 2003, [*and section 1,*
16 *chapter 608, Oregon Laws 2013,*] are repealed on January 2, [2024] **2026**.

17 **“SECTION 30.** Section 13, chapter 736, Oregon Laws 2003, as amended
18 by section 5, chapter 780, Oregon Laws 2007, section 22, chapter 867, Oregon
19 Laws 2009, section 10, chapter 608, Oregon Laws 2013, and section 4, chapter
20 16, Oregon Laws 2015, is amended to read:

21 **“Sec. 13.** Nothing in the repeal of sections 1 to 9, chapter 736, Oregon
22 Laws 2003, [*and section 1, chapter 608, Oregon Laws 2013,*] by section 12,
23 chapter 736, Oregon Laws 2003, affects the imposition and collection of a
24 hospital assessment under sections 1 to 9, chapter 736, Oregon Laws 2003, for
25 a calendar quarter beginning before September 30, [2019] **2021**.

26 **“SECTION 31.** Section 14, chapter 736, Oregon Laws 2003, as amended
27 by section 6, chapter 780, Oregon Laws 2007, section 23, chapter 867, Oregon
28 Laws 2009, and section 5, chapter 16, Oregon Laws 2015, is amended to read:

29 **“Sec. 14.** Any moneys remaining in the Hospital Quality Assurance Fund
30 on December 31, [2023] **2025**, are transferred to the General Fund.

1 **“SECTION 32.** Section 15, chapter 389, Oregon Laws 2015, is amended to
2 read:

3 **“Sec. 15.** Section 1, chapter 608, Oregon Laws 2013, as amended by section
4 6, chapter 16, Oregon Laws 2015, and section 13, [*of this 2015 Act*] **chapter**
5 **389, Oregon Laws 2015**, is repealed on [*September 30, 2019*] **July 1, 2018.**

6 **“SECTION 33.** ORS 323.031 is amended to read:

7 “323.031. (1) Notwithstanding ORS 323.030 (2) and in addition to and not
8 in lieu of any other tax, every distributor shall pay a tax upon distributions
9 of cigarettes at the rate of [30] _____ mills for the distribution of each cig-
10 arette in this state.

11 “(2) Any cigarette for which a tax has once been imposed under ORS
12 323.005 to 323.482 may not be subject upon a subsequent distribution to the
13 taxes imposed by ORS 323.005 to 323.482.

14 **“SECTION 34.** ORS 323.457 is amended to read:

15 “323.457. (1) Moneys received under ORS 323.031 shall be paid over to the
16 State Treasurer to be held in a suspense account established under ORS
17 293.445. After the payment of refunds:

18 “(a) [29.37/30] _____ of the moneys shall be credited to the Oregon Health
19 [*Plan*] **Authority** Fund established under ORS [414.109] **413.101**;

20 “(b) [0.14/30] _____ of the moneys are continuously appropriated to the
21 Oregon Department of Administrative Services for distribution to the cities
22 of this state;

23 “(c) [0.14/30] _____ of the moneys are continuously appropriated to the
24 Oregon Department of Administrative Services for distribution to the coun-
25 ties of this state;

26 “(d) [0.14/30] _____ of the moneys are continuously appropriated to the
27 Department of Transportation to be distributed and transferred to the El-
28 derly and Disabled Special Transportation Fund established under ORS
29 391.800; and

30 “(e) [0.21/30] _____ of the moneys shall be credited to the Tobacco Use

1 Reduction Account established under ORS 431A.153.

2 “(2)(a) Moneys distributed to cities and counties under this section shall
3 be distributed to each city or county using the proportions used for distrib-
4 utions made under ORS 323.455.

5 “(b) Moneys shall be distributed to cities, counties and the Elderly and
6 Disabled Special Transportation Fund at the same time moneys are distrib-
7 uted to cities, counties and the Elderly and Disabled Special Transportation
8 Fund under ORS 323.455.

9 **“SECTION 35. (1) In addition to and not in lieu of any other tax,
10 for the privilege of holding or storing cigarettes for sale, use or con-
11 sumption, a floor tax is imposed upon every dealer at the rate of
12 _____ mills for each cigarette in the possession of or under the control
13 of the dealer in this state at 12:01 a.m. on January 1, 2018.**

14 **“(2) The tax imposed by this section is due and payable on or before
15 January 20, 2018. Any amount of tax that is not paid within the time
16 required shall bear interest at the rate established under ORS 305.220
17 per month, or fraction of a month, from the date on which the tax is
18 due to be paid, until paid.**

19 **“(3) By January 20, 2018, every dealer must file a report with the
20 Department of Revenue in such form as the department may prescribe.
21 The report must state the number of cigarettes in the possession of
22 or under the control of the dealer in this state at 12:01 a.m. on January
23 1, 2018, and the amount of tax due. Each report must be accompanied
24 by a remittance payable to the department for the amount of tax due.**

25 **“(4) As used in this section, ‘dealer’ has the meaning given that
26 term in ORS 323.010.**

27 **“SECTION 36. Notwithstanding ORS 323.030 (3), for the privilege of
28 distributing cigarettes as a distributor, as defined in ORS 323.015, and
29 for holding or storing cigarettes for sale, use or consumption, a floor
30 tax and cigarette adjustment indicia tax is imposed upon every dis-**

1 tributor in the amount of \$_____ for each Oregon cigarette tax stamp
2 bearing the designation ‘25,’ and in the amount of \$_____ for each
3 Oregon cigarette tax stamp bearing the designation ‘20,’ that is affixed
4 to any package of cigarettes in the possession of or under the control
5 of the distributor at 12:01 a.m. on January 1, 2018.

6 **“SECTION 37. (1) Every distributor, as defined in ORS 323.015, must**
7 **take an inventory as of 12:01 a.m. on January 1, 2018, of all packages**
8 **of cigarettes to which are affixed Oregon cigarette tax stamps and of**
9 **all unaffixed Oregon cigarette tax stamps in the possession of or under**
10 **the control of the distributor.**

11 **“(2) Every distributor must file a report with the Department of**
12 **Revenue by January 20, 2018, in such form as the department may**
13 **prescribe, showing:**

14 **“(a) The number of Oregon cigarette tax stamps, with the desig-**
15 **nations of the stamps, that were affixed to packages of cigarettes in**
16 **the possession of or under the control of the distributor at 12:01 a.m.**
17 **on January 1, 2018; and**

18 **“(b) The number of unaffixed Oregon cigarette tax stamps, with the**
19 **designations of the stamps, that were in the possession of or under the**
20 **control of the distributor at 12:01 a.m. on January 1, 2018.**

21 **“(3) The amount of tax required to be paid with respect to the af-**
22 **fixed Oregon cigarette tax stamps shall be computed pursuant to sec-**
23 **tion 36 of this 2017 Act and remitted with the distributor’s report. Any**
24 **amount of tax not paid within the time specified for the filing of the**
25 **report shall bear interest at the rate established under ORS 305.220 per**
26 **month, or fraction of a month, from the due date of the report until**
27 **paid.**

28 **“SECTION 38. All moneys received by the Department of Revenue**
29 **from the taxes imposed by sections 35 and 36 of this 2017 Act shall be**
30 **paid over to the State Treasurer to be held in a suspense account es-**

1 **tablished under ORS 293.445. After payment of refunds, the balance**
2 **shall be credited to the General Fund.**

3 **“SECTION 39. The amendments to ORS 323.031 and 323.457 by**
4 **sections 33 and 34 of this 2017 Act apply to distributions of cigarettes**
5 **occurring on or after January 1, 2018.**

6 **“SECTION 40. (1) No later than February 1, 2018, the Oregon Health**
7 **Authority shall report to the Joint Committee on Ways and Means of**
8 **the Legislative Assembly all of the following:**

9 **“(a) The amount of moneys transferred to the authority by the**
10 **Oregon Health and Science University and hospitals created by health**
11 **districts as intergovernmental transfers.**

12 **“(b) Assessments collected under section 2, chapter 736, Oregon**
13 **Laws 2003, as amended by section 1, chapter 780, Oregon Laws 2007,**
14 **section 51, chapter 828, Oregon Laws 2009, section 17, chapter 867,**
15 **Oregon Laws 2009, section 2, chapter 608, Oregon Laws 2013, section 1,**
16 **chapter 16, Oregon Laws 2015, and section 23 of this 2017 Act.**

17 **“(c) The amount of moneys paid into the Health Care Trust Fund**
18 **established in ORS 293.540 on or after July 1, 2017.**

19 **“(d) The amount of moneys in the suspense account resulting from**
20 **the amendments to ORS 323.031 and 323.457 by sections 33 and 34 of this**
21 **2017 Act.**

22 **“(2) If the authority fails to report as required by subsection (1) of**
23 **this section, the unexpended balances of moneys transferred, collected**
24 **or paid from the sources described in subsection (1) of this section on**
25 **or after July 1, 2018, shall be transferred back to the funds and ac-**
26 **counts from which the moneys were transferred.**

27

28 **“OPERATIVE DATES AND APPLICABILITY PROVISIONS**

29

30 **“SECTION 41. Sections 1 to 12 of this 2017 Act apply to inhalant-**

1 form nicotine and inhalant delivery systems sold on or after January
2 1, 2018.

3 **“SECTION 42. (1) Section 20 of this 2017 Act becomes operative on**
4 **June 30, 2018.**

5 **“(2) The amendments to sections 3, 7 and 9, chapter 736, Oregon**
6 **Laws 2003, as amended by sections 24, 25 and 27 of this 2017 Act, be-**
7 **come operative on July 1, 2018.**

8

9

“CAPTIONS

10

11 **“SECTION 43. The unit captions used in this 2017 Act are provided**
12 **only for the convenience of the reader and do not become part of the**
13 **statutory law of this state or express any legislative intent in the**
14 **enactment of this 2017 Act.**

15

16

“EFFECTIVE DATE

17

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

21
