

Requested by Representative BUEHLER

**PROPOSED AMENDMENTS TO
A-ENGROSSED SENATE BILL 1540**

1 On page 1 of the printed A-engrossed bill, line 2, after the first semicolon
2 delete the rest of the line and delete line 3 and insert “creating new pro-
3 visions; amending ORS 323.031 and 323.457; prescribing an effective date; and
4 providing for revenue raising that requires approval by a three-fifths major-
5 ity.”.

6 Delete lines 5 through 26 and delete pages 2 through 7 and insert:

7 **“SECTION 1. In order to protect foster children in this state from**
8 **abuse and neglect, improve management of child welfare services in**
9 **the Department of Human Services, improve recruitment and re-**
10 **tention of foster parents and address chronic understaffing, over-**
11 **whelming caseloads and high staff turnover in the department, the**
12 **department shall:**

13 **“(1) Cultivate a culture of transparency, responsibility, respectful**
14 **communication and professionalism by using an array of leadership**
15 **tools and measuring results by conducting an independent work envi-**
16 **ronment survey.**

17 **“(2) Review the structure and organization of key child welfare**
18 **programs in order to:**

19 **“(a) Identify and understand long-standing operational problems**
20 **and system weaknesses;**

21 **“(b) Set policy and communicate expectations to ensure appropriate**

1 **implementation of changes; and**

2 **“(c) Ensure that changes do not merely involve the reorganization**
3 **or reassignment of employees, but address root problems within the**
4 **department.**

5 **“(3) When advocating before the Legislative Assembly for program**
6 **and staffing needs, use clear and accurate data to support budget re-**
7 **quests and show the effects of insufficient budgeted resources on**
8 **short-term and long-term program stability.**

9 **“(4) Implement a thorough and ongoing evaluation of department**
10 **programs and initiatives. As part of this evaluation, the department**
11 **shall:**

12 **“(a) Consider overhauling or replacing the existing case manage-**
13 **ment system and apply lessons learned from any changes made to fu-**
14 **ture information systems projects;**

15 **“(b) Review safety protocols to ensure that staff fully understand**
16 **them and can apply key concepts, thereby more effectively ensuring**
17 **the safety of children receiving foster care;**

18 **“(c) Assess the true impact of the introduction of centralized**
19 **screening on statewide staffing resources and the consistency of the**
20 **screening function; and**

21 **“(d) Assess the investigative model used by child welfare services**
22 **and the office that investigates abuse complaints to ensure that all**
23 **identified gaps are addressed and that there is a consistent response**
24 **to reports of child abuse and neglect.**

25 **“(5) Establish a process whereby staff may provide input and report**
26 **concerns and the department will track the concerns and ensure that**
27 **managers take action to resolve the concerns.**

28 **“(6) Develop and implement a statewide strategic plan to increase**
29 **foster care capacity that uses data analytics and tracking to increase**
30 **the number and variety of foster care placements in every district in**

1 the state, including therapeutic placements, culturally appropriate
2 placements and placements with career foster parents.

3 “(7) Collect and use data to improve the foster care system, in-
4 cluding the collection of data to:

5 “(a) Assess the availability of foster homes and the true capacity
6 of available beds in the system;

7 “(b) Measure the rate of foster parent turnover and the number of
8 foster parents trained per year; and

9 “(c) Identify key metrics and compare performance across districts
10 using a statewide information management tool.

11 “(8) Remove unnecessary barriers that impede timely recruitment
12 of foster parents, track the certification of career foster parents from
13 inquiry through certification and keep foster parents engaged during
14 the entire certification process to increase the likelihood of certifica-
15 tion.

16 “(9) Build a robust support system to retain career foster parents
17 and reduce placement instability by offering a foster care payment
18 that fully covers the cost of caring for a foster child, providing options
19 for respite care providers, encouraging foster parents to use respite
20 care and providing ongoing training and support to foster parents so
21 they can continue to meet the challenges of foster parenting.

22 “(10) Create and maintain a culture of respectful communication
23 between foster parents and caseworkers and allow staff time for
24 caseworkers to build relationships with foster parents.

25 “(11) Use foster parent satisfaction and exit surveys to measure the
26 quality of the foster care program over time and to understand and
27 address foster parents’ concerns.

28 “(12) To reduce risks to foster children who are placed in hotels,
29 design a robust internal policy and provide district caseworkers and
30 office staff with clear protocols and operational support when arrang-

1 **ing such placements.**

2 **“(13) Commit to building foster placement capacity across the whole**
3 **system for children with a range of behavioral, health-related and**
4 **cultural needs.**

5 **“(14) Develop a strategy for ending the practice of placing foster**
6 **children in hotels.**

7 **“(15) Understand and clearly communicate child welfare staffing**
8 **needs to the Legislative Assembly.**

9 **“(16) Revise the current workload model for the department to re-**
10 **fect recent policy and procedure changes and child welfare caseworker**
11 **staffing needs.**

12 **“(17) To reduce child welfare caseloads to manageable levels, work**
13 **with the Legislative Assembly to increase child welfare staffing ac-**
14 **ording to the workload model revised under subsection (10) of this**
15 **section and reduce the number of caseworker positions held vacant**
16 **as a means of balancing the budget.**

17 **“(18) Monitor caseworker caseloads, district staffing allocations and**
18 **the impact of turnover, overtime use, lack of experience and family**
19 **medical leave use on caseloads to support equitable staffing allocations**
20 **across the state.**

21 **“(19) Develop and implement strategies to reduce and mitigate**
22 **workload stress factors, reduce staff turnover and reduce the use of**
23 **paid and unpaid overtime by child welfare caseworkers.**

24 **“(20) Take the following actions to improve caseworker staffing and**
25 **training:**

26 **“(a) Work with the Oregon Department of Administrative Services**
27 **to review the Social Service Specialist 1 classification and consider**
28 **separating casework positions into separate classes;**

29 **“(b) Consider developing a career ladder for skilled caseworkers,**
30 **supervisors and support staff; and**

1 “(c) Continue to develop and review training and professional de-
2 velopment of caseworkers and supervisors in conjunction with com-
3 munity partners.

4 “(21) Ensure adequate facility space and technological support
5 throughout the state to absorb needed child welfare staffing increases
6 and support quality casework.

7 “(22) Work with the Department of Justice and the Legislative As-
8 sembly to provide legal representation and legal support to
9 caseworkers.

10 “(23) Consider implementing casework teams for responding to po-
11 tentially dangerous calls and managing unusually complex or difficult
12 cases.

13 “(24) Ensure that the central and district offices are in regular
14 communication with field offices throughout the state and provide the
15 necessary support and resources to field offices when requested.

16 “**SECTION 2.** ORS 323.031 is amended to read:

17 “323.031. (1) Notwithstanding ORS 323.030 (2) and in addition to and not
18 in lieu of any other tax, every distributor shall pay a tax upon distributions
19 of cigarettes at the rate of [30] **45** mills for the distribution of each cigarette
20 in this state.

21 “(2) Any cigarette for which a tax has once been imposed under ORS
22 323.005 to 323.482 may not be subject upon a subsequent distribution to the
23 taxes imposed by ORS 323.005 to 323.482.

24 “**SECTION 3.** ORS 323.457 is amended to read:

25 “323.457. (1) Moneys received under ORS 323.031 shall be paid over to the
26 State Treasurer to be held in a suspense account established under ORS
27 293.445. After the payment of refunds:

28 “(a) [29.37/30] **29.37/45** of the moneys shall be credited to the Oregon
29 Health Plan Fund established under ORS 414.109;

30 “(b) [0.14/30] **0.14/45** of the moneys are continuously appropriated to the

1 Oregon Department of Administrative Services for distribution to the cities
2 of this state;

3 “(c) [0.14/30] **0.14/45** of the moneys are continuously appropriated to the
4 Oregon Department of Administrative Services for distribution to the coun-
5 ties of this state;

6 “(d) [0.14/30] **0.14/45** of the moneys are continuously appropriated to the
7 Department of Transportation to be distributed and transferred to the El-
8 derly and Disabled Special Transportation Fund established under ORS
9 391.800; [and]

10 “(e) [0.21/30] **0.21/45** of the moneys shall be credited to the Tobacco Use
11 Reduction Account established under ORS 431A.153[.]; **and**

12 **“(f) 15/45 of the moneys are continuously appropriated to the De-**
13 **partment of Human Services to carry out section 1 of this 2018 Act.**

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

17 “(b) Moneys shall be distributed to cities, counties and the Elderly and
18 Disabled Special Transportation Fund at the same time moneys are distrib-
19 uted to cities, counties and the Elderly and Disabled Special Transportation
20 Fund under ORS 323.455.

21 **“SECTION 4. (1) In addition to and not in lieu of any other tax, for**
22 **the privilege of holding or storing cigarettes for sale, use or con-**
23 **sumption, a floor tax is imposed upon every dealer at the rate of 15**
24 **mills for each cigarette in the possession of or under the control of the**
25 **dealer in this state at 12:01 a.m. on January 1, 2019.**

26 **“(2) The tax imposed by this section is due and payable on or before**
27 **January 20, 2019. Any amount of tax that is not paid within the time**
28 **required shall bear interest at the rate established under ORS 305.220**
29 **per month, from the date on which the tax is due to be paid, until**
30 **paid.**

1 **“(3) By January 20, 2019, every dealer must file a report with the**
2 **Department of Revenue in such form as the department may prescribe.**
3 **The report must state the number of cigarettes in the possession of**
4 **or under the control of the dealer in this state at 12:01 a.m. on January**
5 **1, 2019, and the amount of tax due. Each report must be accompanied**
6 **by a remittance payable to the department for the amount of tax due.**

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

9 **“SECTION 5. Notwithstanding ORS 323.030 (3), for the privilege of**
10 **distributing cigarettes as a distributor, as defined in ORS 323.015, and**
11 **for holding or storing cigarettes for sale, use or consumption, a floor**
12 **tax and cigarette adjustment indicia tax is imposed upon every dis-**
13 **tributor in the amount of 37.5 cents for each Oregon cigarette tax**
14 **stamp bearing the designation ‘25,’ and in the amount of 30 cents for**
15 **each Oregon cigarette tax stamp bearing the designation ‘20,’ that is**
16 **affixed to any package of cigarettes in the possession of or under the**
17 **control of the distributor at 12:01 a.m. on January 1, 2019.**

18 **“SECTION 6. (1) Every distributor, as defined in ORS 323.015, must**
19 **take an inventory as of 12:01 a.m. on January 1, 2019, of all packages**
20 **of cigarettes to which are affixed Oregon cigarette tax stamps and of**
21 **all unaffixed Oregon cigarette tax stamps in the possession of or under**
22 **the control of the distributor.**

23 **“(2) Every distributor must file a report with the Department of**
24 **Revenue by January 20, 2019, in such form as the department may**
25 **prescribe, showing:**

26 **“(a) The number of Oregon cigarette tax stamps, with the desig-**
27 **nations of the stamps, that were affixed to packages of cigarettes in**
28 **the possession of or under the control of the distributor at 12:01 a.m.**
29 **on January 1, 2019; and**

30 **“(b) The number of unaffixed Oregon cigarette tax stamps, with the**

1 designations of the stamps, that were in the possession of or under the
2 control of the distributor at 12:01 a.m. on January 1, 2019.

3 “(3) The amount of tax required to be paid with respect to the af-
4 fixed Oregon cigarette tax stamps shall be computed pursuant to sec-
5 tion 5 of this 2018 Act and remitted with the distributor’s report. Any
6 amount of tax not paid within the time specified for the filing of the
7 report shall bear interest at the rate established under ORS 305.220,
8 from the due date of the report until paid.

9 “SECTION 7. The amendments to ORS 323.031 and 323.457 by
10 sections 2 and 3 of this 2018 Act apply to cigarette distributions made
11 on or after January 1, 2019.

12 “SECTION 8. As used in sections 8 to 12 of this 2018 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;

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

24 “(c)(A) Is not approved by, or emitted by a device approved by, the
25 United States Food and Drug Administration for a therapeutic pur-
26 pose; or

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

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

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

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

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

11 “(6) ‘Sale’ means any transfer, exchange or barter, in any manner
12 or by any means, for a consideration, and includes all sales made by
13 any person. It includes a gift by a person engaged in the business of
14 selling inhalant-form nicotine, for advertising, as a means of evading
15 the provisions of sections 8 to 12 of this 2018 Act, or for any other
16 purpose.

17 “(7) ‘Taxpayer’ includes a nicotine retailer or other person required
18 to collect a tax imposed under section 9 of this 2018 Act.

19 “(8) ‘Untaxed inhalant delivery system’ means an inhalant delivery
20 system for which the tax required under section 9 of this 2018 Act has
21 not been paid.

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

24 “SECTION 9. (1)(a) A tax is hereby imposed upon the retail sale of
25 inhalant-form nicotine in this state. The tax imposed under this sec-
26 tion is a direct tax on the consumer, for which payment upon retail
27 sale is required. The tax shall be collected at the point of sale of
28 inhalant-form nicotine by a nicotine retailer at the time at which the
29 retail sale occurs.

30 “(b) The tax imposed under this subsection shall be imposed at the

1 rate of 5 cents on each container of inhalant-form nicotine with a
2 volume of two milliliters or less.

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

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

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

11 “(B) Inhalant delivery system.

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

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

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

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

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

27 **“SECTION 10. (1) Except as otherwise provided in sections 8 to 12**
28 **of this 2018 Act, the tax imposed upon the purchaser or consumer**
29 **under section 9 of this 2018 Act shall be collected at the point of sale**
30 **and remitted by each wholesale or retail seller of inhalant delivery**

1 systems or inhalant-form nicotine that engages in the wholesale or
2 retail sale of inhalant delivery systems or inhalant-form nicotine. The
3 tax is a tax upon the inhalant wholesaler or nicotine retailer that is
4 required to collect the tax, and the inhalant wholesaler or nicotine
5 retailer is a taxpayer.

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

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

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

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

20 “(6) Interest shall be added at the rate established under ORS
21 305.220, from the time the return was originally required to be filed to
22 the time of payment.

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

26 “(8) Except as provided in subsections (9) and (10) of this section,
27 the period prescribed for the department to allow or make a refund
28 of any overpayment of tax paid under sections 8 to 12 of this 2018 Act
29 is as provided in ORS 314.415.

30 “(9)(a) The department shall first apply any overpayment of tax by

1 an inhalant wholesaler or a nicotine retailer to any tax imposed under
2 sections 8 to 12 of this 2018 Act that is owed by the inhalant wholesaler
3 or nicotine retailer.

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

8 “(10) The department may not make a refund of, or credit, any
9 overpayment of tax under sections 8 to 12 of this 2018 Act that was
10 credited to the account of an inhalant wholesaler or a nicotine retailer
11 under subsection (9)(b) of this section if the return for that tax period
12 is not filed within three years after the due date of that return.

13 **“SECTION 11. (1) Every person who collects any amount under**
14 **section 10 of this 2018 Act shall hold the same in trust for the State**
15 **of Oregon and for the payment thereof to the Department of Revenue**
16 **in the manner and at the time provided in section 10 of this 2018 Act.**

17 “(2) At any time an inhalant wholesaler or a nicotine retailer fails
18 to remit any amount collected, the department may enforce collection
19 by the issuance of a distraint warrant for the collection of the delin-
20 quent amount and all penalties, interest and collection charges ac-
21 crued thereon. The warrant shall be issued, recorded and proceeded
22 upon in the same manner and shall have the same force and effect as
23 is prescribed with respect to warrants for the collection of delinquent
24 income taxes.

25 “(3)(a) In the case of an inhalant wholesaler or a nicotine retailer
26 that is assessed pursuant to the provisions of ORS 305.265 (12) and
27 314.407 (1), the department may issue a notice of liability to any offi-
28 cer, employee or member of the inhalant wholesaler or nicotine
29 retailer within three years from the time of assessment. Within 30
30 days from the date the notice of liability is mailed to the officer, em-

1 **ployee or member, the officer, employee or member shall pay the as-**
2 **essment, plus penalties and interest, or advise the department in**
3 **writing of objections to the liability and, if desired, request a confer-**
4 **ence. A conference shall be governed by the provisions of ORS 305.265**
5 **pertaining to a conference requested from a notice of deficiency.**

6 **“(b) After a conference or, if no conference is requested, a deter-**
7 **mination of the issues considering the written objections, the depart-**
8 **ment shall mail the officer, employee or member a conference letter**
9 **affirming, canceling or adjusting the notice of liability. Within 90 days**
10 **from the date the conference letter is mailed to the officer, employee**
11 **or member, the officer, employee or member shall pay the assessment,**
12 **plus penalties and interest, or appeal to the Oregon Tax Court in the**
13 **manner provided for an appeal from a notice of assessment.**

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

20 **“(4)(a) In the case of a failure to file a return on the due date,**
21 **governed by the provisions of ORS 305.265 (10) and 314.400, the depart-**
22 **ment, in addition to any action described in the provisions of ORS**
23 **305.265 (10) and 314.400, may send notices of determination and assess-**
24 **ment to any officer, employee or member any time within three years**
25 **after the assessment. The time of assessment against the officer, em-**
26 **ployee or member is 30 days after the date the notice of determination**
27 **and assessment is mailed. Within 30 days from the date the notice of**
28 **determination and assessment is mailed to the officer, employee or**
29 **member, the officer, employee or member shall pay the assessment,**
30 **plus penalties and interest, or advise the department in writing of ob-**

1 jections to the assessment and, if desired, request a conference. A
2 conference shall be governed by the provisions of ORS 305.265 per-
3 taining to a conference requested from a notice of deficiency.

4 “(b) After a conference or, if no conference is requested, a deter-
5 mination of the issues considering the written objections, the depart-
6 ment shall mail the officer, employee or member a conference letter
7 affirming, canceling or adjusting the notice of determination and as-
8 sessment. Within 90 days from the date the conference letter is mailed
9 to the officer, employee or member, the officer, employee or member
10 shall pay the assessment, plus penalties and interest, or appeal in the
11 manner provided for an appeal from a notice of assessment.

12 “(c) If the department does not receive payment or written ob-
13 jection to the notice of determination and assessment within 30 days
14 after the notice of determination and assessment was mailed, the no-
15 tice of determination and assessment becomes final. In that event, the
16 officer, employee or member may appeal the notice of determination
17 and assessment to the tax court within 90 days after it became final
18 in the manner provided for an appeal from a notice of assessment.

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

21 “(b) Notwithstanding the confidentiality provisions of section 18 of
22 this 2018 Act, if more than one officer or employee of a corporation
23 may be held jointly and severally liable for payment of taxes, the de-
24 partment may require any or all of the officers, members or employees
25 who may be held liable to appear before the department for a joint
26 determination of liability. The department shall notify each officer,
27 member or employee of the time and place set for the determination
28 of liability.

29 “(c) Each person notified of a joint determination under this sub-
30 section shall appear and present such information as is necessary to

1 establish that person's liability or nonliability for payment of taxes to
2 the department. If a person who was notified fails to appear, the de-
3 partment shall make its determination on the basis of all the infor-
4 mation and evidence presented. The department's determination is
5 binding on all persons notified and required to appear under this sub-
6 section.

7 “(d)(A) If an appeal is taken to the tax court pursuant to section
8 18 of this 2018 Act by any person determined to be liable for unpaid
9 taxes under this subsection, each person required to appear before the
10 department under this subsection shall be impleaded by the plaintiff.
11 The department may implead any officer, employee or member who
12 may be held jointly and severally liable for the payment of taxes. Each
13 person impleaded under this paragraph shall be made a party to the
14 action before the tax court and shall make available to the tax court
15 the information that was presented before the department, as well as
16 other information that may be presented to the tax court.

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

21 “(C) If a person required to appear before the tax court under this
22 subsection fails or refuses to appear or bring such information in part
23 or in whole, or is outside the jurisdiction of the tax court, the tax
24 court shall make its determination on the basis of all the evidence
25 introduced. Notwithstanding section 18 of this 2018 Act, the evidence
26 constitutes a public record and shall be available to the parties and the
27 tax court. The determination of the tax court is binding on all persons
28 made parties to the action under this subsection.

29 “(e) This section may not be construed to preclude a determination
30 by the department or the tax court that more than one officer, em-

1 ployee or member is jointly and severally liable for unpaid taxes.

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

16 **“(2) The department or its authorized representative, upon oral or**
17 **written demand, may make examinations of the books, papers, records**
18 **and equipment of persons making wholesale or retail sales of inhalant**
19 **delivery systems or inhalant-form nicotine and any other investi-**
20 **gations the department deems necessary to carry out the provisions**
21 **of sections 8 to 12 of this 2018 Act.**

22 **“SECTION 13. (1) The Department of Revenue has authority, by**
23 **order or subpoena to be served with the same force and effect and in**
24 **the same manner as a subpoena is served in a civil action in the cir-**
25 **cuit court, or the Oregon Tax Court, to require the production at any**
26 **time and place the department designates of any books, papers, ac-**
27 **counts or other information necessary to carry out sections 8 to 12 of**
28 **this 2018 Act. The department may require the attendance of any**
29 **person having knowledge in the premises, and may take testimony and**
30 **require proof material for the information, with power to administer**

1 oaths to the person.

2 “(2) If a person fails to comply with a subpoena or order of the de-
3 partment or to produce or permit the examination or inspection of any
4 books, papers, records and equipment pertinent to an investigation or
5 inquiry under sections 8 to 12 of this 2018 Act, or to testify to any
6 matter regarding which the person is lawfully interrogated, the de-
7 partment may apply to the Oregon Tax Court or to the circuit court
8 of the county in which the person resides or where the person is lo-
9 cated for an order to the person to attend and testify, or otherwise to
10 comply with the demand or request of the department. The depart-
11 ment shall apply to the court by ex parte motion, upon which the
12 court shall make an order requiring the person against whom the
13 motion is directed to comply with the request or demand of the de-
14 partment within 10 days after the service of the order, or within the
15 additional time granted by the court, or to justify the failure within
16 that time. The order shall be served upon the person to whom it is
17 directed in the manner required by this state for service of process,
18 which service is required to confer jurisdiction upon the court. Failure
19 to obey any order issued by the court under this section is contempt
20 of court. The remedy provided by this section is in addition to other
21 remedies, civil or criminal, existing under the tax laws or other laws
22 of this state.

23 “SECTION 14. Except as otherwise provided in sections 8 to 12 of
24 this 2018 Act, a person aggrieved by an act or determination of the
25 Department of Revenue or its authorized agent under sections 8 to 12
26 of this 2018 Act may appeal, within 90 days after the act or determi-
27 nation, to the Oregon Tax Court in the manner provided in ORS 305.404
28 to 305.560. These appeal rights are the exclusive remedy available to
29 determine the person’s liability for the tax imposed under section 9
30 of this 2018 Act.

1 **“SECTION 15. (1)(a) When an amount represented by a nicotine**
2 **retailer at retail to a consumer as constituting the tax imposed under**
3 **section 9 of this 2018 Act is computed upon an amount that is not**
4 **taxable or is in excess of the taxable amount and is actually paid by**
5 **the consumer to the nicotine retailer, the excess tax paid shall be re-**
6 **turned by the nicotine retailer to the consumer upon written notifi-**
7 **cation by the Department of Revenue or the consumer.**

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

10 **“(2) If the nicotine retailer does not return the excess tax within**
11 **60 days after mailing of the written notification required under sub-**
12 **section (1) of this section, the consumer may appeal to the department**
13 **for a refund of the amount of the excess tax, in the manner and within**
14 **the time allowed under rules adopted by the department.**

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

18 **“SECTION 16. For the purpose of compensating nicotine retailers**
19 **for expenses incurred in collecting the tax imposed under section 9 of**
20 **this 2018 Act, each nicotine retailer is permitted to deduct and retain**
21 **two percent of the amount of taxes that are collected by the nicotine**
22 **retailer from all retail sales of inhalant-form nicotine conducted by**
23 **the nicotine retailer.**

24 **“SECTION 17. The Department of Revenue shall administer and**
25 **enforce sections 8 to 12 of this 2018 Act. The department is authorized**
26 **to establish rules and procedures for the implementation and enforce-**
27 **ment of sections 8 to 12 of this 2018 Act that are consistent with**
28 **sections 8 to 12 of this 2018 Act and that the department considers**
29 **necessary and appropriate to administer and enforce sections 8 to 12**
30 **of this 2018 Act.**

1 **“SECTION 18. Except as otherwise provided in sections 8 to 12 of**
2 **this 2018 Act or where the context requires otherwise, the provisions**
3 **of ORS chapters 305 and 314 as to the audit and examination of re-**
4 **turns, periods of limitation, determination of and notices of deficien-**
5 **cies, assessments, collections, liens, delinquencies, claims for refund**
6 **and refunds, conferences, appeals to the Oregon Tax Court, stays of**
7 **collection pending appeal, confidentiality of returns and the penalties**
8 **relative thereto, and the procedures relating thereto, apply to the de-**
9 **terminations of taxes, penalties and interest under sections 8 to 12 of**
10 **this 2018 Act.**

11 **“SECTION 19. (1) All moneys received by the Department of Reve-**
12 **nue under sections 8 to 12 of this 2018 Act shall be deposited in the**
13 **State Treasury and credited to a suspense account established under**
14 **ORS 293.445. The department may pay expenses for the administration**
15 **and enforcement of sections 8 to 12 of this 2018 Act out of moneys re-**
16 **ceived from the tax imposed under section 9 of this 2018 Act. Amounts**
17 **necessary to pay administrative and enforcement expenses are con-**
18 **tinuously appropriated to the department from the suspense account.**

19 **“(2) After the payment of administrative and enforcement expenses**
20 **and refunds or credits arising from erroneous overpayments, the bal-**
21 **ance of the moneys received by the Department of Revenue under**
22 **sections 8 to 12 of this 2018 Act are continuously appropriated to the**
23 **Department of Human Services to carry out section 1 of this 2018 Act.**

24 **“SECTION 20. Sections 8 to 12 of this 2018 Act apply to inhalant-**
25 **form nicotine and inhalant delivery systems sold on or after January**
26 **1, 2019.**

27 **“SECTION 21. This 2018 Act takes effect on the 91st day after the**
28 **date on which the 2018 regular session of the Seventy-ninth Legislative**
29 **Assembly adjourns sine die.”.**