

# House Bill 2123

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of House Interim Committee on Revenue)

## SUMMARY

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

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, 2020.

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  
30 for sale, storage, use or consumption;

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

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

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

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

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

9 (7) "Distributor" means:

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

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

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

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

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

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

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

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

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

24 [(8)] **(10) "Manufacturer" means a person who manufactures tobacco products for sale.**

25 [(9)] **(11) "Moist snuff" means:**

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

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

30 [(10)] **(12) "Place of business" means any place where tobacco products are sold or where to-**  
31 **bacco products are manufactured, stored or kept for the purpose of sale or consumption, including**  
32 **any vessel, vehicle, airplane, train or vending machine.**

33 [(11)] **(13) "Retail dealer" means any person who is engaged in the business of selling or other-**  
34 **wise dispensing tobacco products to consumers. The term also includes the operators of or recipients**  
35 **of revenue from all places such as smoke shops, cigar stores and vending machines, where tobacco**  
36 **products are made or stored for ultimate sale to consumers.**

37 [(12)] **(14) "Sale" means any transfer, exchange or barter, in any manner or by any means, for**  
38 **a consideration, and includes and means all sales made by any person. It includes a gift by a person**  
39 **engaged in the business of selling tobacco products, for advertising, as a means of evading the pro-**  
40 **visions of ORS 323.500 to 323.645, or for any other purpose.**

41 [(13)] **(15) "Taxpayer" includes a distributor or other person required to pay a tax imposed under**  
42 **ORS 323.500 to 323.645.**

43 [(14)] **(16) "Tobacco products" means cigars, cheroots, stogies, periques, granulated, plug cut,**  
44 **crimp cut, ready rubbed and other smoking tobacco, snuff, snuff flour, moist snuff, cavendish, plug**  
45 **and twist tobacco, fine-cut and other chewing tobaccos, shorts, refuse scraps, clippings, cuttings and**

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

4 *[(15)]* **(17)** “Untaxed tobacco products” means tobacco products for which the tax required under  
 5 ORS 323.500 to 323.645 has not been paid.

6 *[(16)]* **(18)** “Wholesale sales price” means the price paid for untaxed tobacco products to or on  
 7 behalf of a seller by a purchaser of the untaxed tobacco products.

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

9 323.505. (1) A tax is hereby imposed upon the distribution of all tobacco products in this state.  
 10 The tax imposed by this section is intended to be a direct tax on the consumer, for which payment  
 11 upon distribution is required to achieve convenience and facility in the collection and administration  
 12 of the tax. The tax shall be imposed on a distributor at the time the distributor distributes tobacco  
 13 products.

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

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

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

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

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

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

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

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

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

41 **SECTION 3.** The amendments to ORS 323.500 and 323.505 by sections 1 and 2 of this 2019  
 42 Act apply to distributions of tobacco products occurring on or after January 1, 2020.

43 **SECTION 4.** This 2019 Act takes effect on the 91st day after the date on which the 2019  
 44 regular session of the Eightieth Legislative Assembly adjourns sine die.