House Bill 3266

Sponsored by Representative GREENLICK

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.

Increases cigarette tax. Applies increase to cigarettes distributed on or after January 1, 2020, and to existing inventories of cigarettes not yet acquired by consumers as of January 1, 2020. Provides for distribution of revenues from increased tax. Prohibits distribution or sale of lower cost cigars in packages containing fewer than four cigars.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

Relating to products containing tobacco; creating new provisions; amending ORS 323.031, 323.457 and 431A.175; prescribing an effective date; and providing for revenue raising that requires approval by a three-fifths majority.

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

SECTION 1. ORS 323.031 is amended to read:

323.031. (1) Notwithstanding ORS 323.030 (2) and in addition to and not in lieu of any other tax, every distributor shall pay a tax upon distributions of cigarettes at the rate of [30] 130 mills for the distribution of each cigarette in this state.

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

SECTION 2. ORS 323.457 is amended to read:

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

(a) [29.37/30] 29.37/130 of the moneys shall be credited to the Oregon Health Plan Fund established under ORS 414.109;

(b) [0.14/30] 0.14/130 of the moneys are continuously appropriated to the Oregon Department of Administrative Services for distribution to the cities of this state;

(c) [0.14/30] 0.14/130 of the moneys are continuously appropriated to the Oregon Department of Administrative Services for distribution to the counties of this state;

(d) [0.14/30] 0.14/130 of the moneys are continuously appropriated to the Department of Transportation to be distributed and transferred to the Elderly and Disabled Special Transportation Fund established under ORS 391.800; [and]

(e) [0.21/30] 0.21/130 of the moneys shall be credited to the Tobacco Use Reduction Account established under ORS 431A.153[.];

(f) 80/130 of the moneys are continuously appropriated to the Oregon Health Authority for use in the medical assistance program under ORS chapter 414;

(g) 10/130 of the moneys are continuously appropriated to the Oregon Health Authority for tobacco addiction prevention and chronic disease prevention; and

(h) 10/130 of the moneys are continuously appropriated to the Oregon Health Authority

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.

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for statewide public health modernization programs.

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

(b) Moneys shall be distributed to cities, counties and the Elderly and Disabled Special Transportation Fund at the same time moneys are distributed to cities, counties and the Elderly and Disabled Special Transportation Fund under ORS 323.455.

SECTION 3. (1) In addition to and not in lieu of any other tax, for the privilege of holding or storing cigarettes for sale, use or consumption, a floor tax is imposed upon every dealer at the rate of 100 mills for each cigarette in the possession of or under the control of the dealer in this state at 12:01 a.m. on January 1, 2020.

(2) The tax imposed by this section is due and payable on or before January 20, 2020. Any amount of tax that is not paid within the time required shall bear interest at the rate established under ORS 305.220 per month, or fraction of a month, from the date on which the tax is due to be paid, until paid.

(3) By January 20, 2020, every dealer must file a report with the Department of Revenue in such form as the department may prescribe. The report must state the number of cigarettes in the possession of or under the control of the dealer in this state at 12:01 a.m. on January 1, 2020, and the amount of tax due. Each report must be accompanied by a remittance payable to the department for the amount of tax due.

(4) As used in this section, “dealer” has the meaning given that term in ORS 323.010.

SECTION 4. Notwithstanding ORS 323.030 (3), for the privilege of distributing cigarettes as a distributor, as defined in ORS 323.015, and for holding or storing cigarettes for sale, use or consumption, a floor tax and cigarette adjustment indicia tax is imposed upon every distributor in the amount of $2.50 for each Oregon cigarette tax stamp bearing the designation “25,” and in the amount of $2 for each Oregon cigarette tax stamp bearing the designation “20,” that is affixed to any package of cigarettes in the possession of or under the control of the distributor at 12:01 a.m. on January 1, 2020.

SECTION 5. (1) Every distributor as defined in ORS 323.015 must take an inventory as of 12:01 a.m. on January 1, 2020, of all packages of cigarettes to which are affixed Oregon cigarette tax stamps and of all unaffixed Oregon cigarette tax stamps in the possession of or under the control of the distributor.

(2) Every distributor must file a report with the Department of Revenue by January 20, 2020, in such form as the department may prescribe, showing:

(a) The number of Oregon cigarette tax stamps, with the designations of the stamps, that were affixed to packages of cigarettes in the possession of or under the control of the distributor at 12:01 a.m. on January 1, 2020; and

(b) The number of unaffixed Oregon cigarette tax stamps, with the designations of the stamps, that were in the possession of or under the control of the distributor at 12:01 a.m. on January 1, 2020.

(3) The amount of tax required to be paid with respect to the affixed Oregon cigarette tax stamps shall be computed pursuant to section 4 of this 2019 Act and remitted with the distributor's report. Any amount of tax not paid within the time specified for the filing of the report shall bear interest at the rate established under ORS 305.220 per month, or fraction of a month, from the due date of the report until paid.

SECTION 6. All moneys received by the Department of Revenue from the taxes imposed
by sections 3 and 4 of this 2019 Act shall be paid over to the State Treasurer to be held in a suspense account established under ORS 293.445. After payment of refunds, the balance shall be credited to the General Fund.

SECTION 7. The amendments to ORS 323.031 and 323.457 by sections 1 and 2 of this 2019 Act apply to cigarette tax reporting periods beginning on or after January 1, 2020.

SECTION 8. ORS 431A.175 is amended to read:

431A.175. (1) As used in this section and ORS 431A.183:
   (a)(A) “Inhalant delivery system” means:
      (i) A device that can be used to deliver nicotine or cannabinoids in the form of a vapor or aerosol to a person inhaling from the device; or
      (ii) A component of a device described in this subparagraph or a substance in any form sold for the purpose of being vaporized or aerosolized by a device described in this subparagraph, whether the component or substance is sold separately or is not sold separately.
   (B) “Inhalant delivery system” does not include:
      (i) Any product that has been approved by the United States Food and Drug Administration for sale as a tobacco cessation product or for any other therapeutic purpose, if the product is marketed and sold solely for the approved purpose; and
      (ii) Tobacco products.
   (b) “Tobacco products” means:
      (A) Bidis, cigars, cheroots, stogies, periques, granulated, plug cut, crimp cut, ready rubbed and other smoking tobacco, snuff, snuff flour, cavendish, plug and twist tobacco, fine-cut and other chewing tobaccos, shorts, refuse scraps, clippings, cuttings and sweepings of tobacco and other forms of tobacco, prepared in a manner that makes the tobacco suitable for chewing or smoking in a pipe or otherwise, or for both chewing and smoking;
      (B) Cigarettes as defined in ORS 323.010 (1); or
      (C) A device that:
         (i) Can be used to deliver tobacco products to a person using the device; and
         (ii) Has not been approved by the United States Food and Drug Administration for sale as a tobacco cessation product or for any other therapeutic purpose, if the product is marketed and sold solely for the approved purpose.
   (2) It is unlawful:
      (a) To violate ORS 167.750.
      (b) To fail as a retailer of tobacco products to post a notice substantially similar to the notice described in subsection (3) of this section in a location that is clearly visible to the seller and the purchaser of the tobacco products.
      (c) To fail as a retailer of inhalant delivery systems to post a notice in a location that is clearly visible to the seller and the purchaser of the inhalant delivery systems that it is unlawful to sell inhalant delivery systems to persons under 21 years of age. The Oregon Health Authority shall adopt by rule the content of the notice required under this paragraph.
      (d) To distribute, sell or allow to be sold an inhalant delivery system if the inhalant delivery system is not labeled in accordance with rules adopted by the authority.
      (e) To distribute, sell or allow to be sold an inhalant delivery system if the inhalant delivery system is not packaged in child-resistant safety packaging, as required by the authority by rule.
      (f) To distribute, sell or allow to be sold an inhalant delivery system if the inhalant delivery system is packaged in a manner that is attractive to minors, as determined by the authority by rule.
(g) To distribute, sell or allow to be sold cigarettes in any form other than a sealed package.

(h) To distribute, sell or allow to be sold cigars, as defined in ORS 323.500, in any package containing fewer than four cigars, unless the wholesale price of an individual cigar exceeds $3.

(3) The notice required by subsection (2)(b) of this section must be substantially as follows:

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NOTICE

The sale of tobacco in any form to persons under 21 years of age is prohibited by law. Any person who sells, or allows to be sold, tobacco to a person under 21 years of age is in violation of Oregon law.

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(4) Rules adopted under subsection (2)(d), (e) and (f) of this section must be consistent with any regulation adopted by the United States Food and Drug Administration related to labeling or packaging requirements for inhalant delivery systems.

SECTION 9. This 2019 Act takes effect on the 91st day after the date on which the 2019 regular session of the Eightieth Legislative Assembly adjourns sine die.