

House Bill 4078

Sponsored by Representative MARSH, Senators TAYLOR, MONNES ANDERSON, Representative NOSSE; Representatives ALONSO LEON, CLEM, LIVELY, MEEK, MITCHELL, POWER, PRUSAK, REARDON, SALINAS, SANCHEZ, SCHOUTEN, WILDE, WILLIAMS (at the request of Attorney General Ellen Rosenblum) (Presession filed.)

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**.

Prohibits remote sales of inhalant delivery systems. Defines "inhalant delivery system."
Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to inhalant delivery systems; creating new provisions; amending ORS 180.405, 180.441 and
3 180.451; and declaring an emergency.

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

5 **SECTION 1.** ORS 180.405 is amended to read:

6 180.405. As used in ORS 180.400 to 180.455 and 323.106:

7 (1) "Brand family" means all styles of cigarettes sold under the same trademark and differen-
8 tiated from one another by means of additional modifiers or descriptors, including, but not limited
9 to, cigarettes labeled "menthol," "lights," "kings," "100s" and any cigarettes sold under a brand
10 name, alone or in conjunction with any other word, trademark, logo, symbol, motto, selling message,
11 recognizable pattern of colors or other indicia of product identification, that are identical to, similar
12 to or identifiable with a previously known brand of cigarettes.

13 (2) "Cigarette" has the meaning given that term in ORS 323.800.

14 (3) "Distributor" means a person who is licensed under ORS 323.105 or 323.530 and any other
15 person who is a distributor for the purposes of ORS 323.005 to 323.482 or 323.500 to 323.645.

16 (4) "Importer" has the meaning given that term in ORS 323.800.

17 **(5)(a) "Inhalant delivery system" means:**

18 **(A) A device that can be used to deliver nicotine in the form of a vapor or aerosol to a**
19 **person inhaling from the device; or**

20 **(B) A component of a device described in this paragraph, or a substance in any form, sold**
21 **for the purpose of being vaporized or aerosolized by a device described in this paragraph,**
22 **whether or not the component or substance is sold separately.**

23 **(b) "Inhalant delivery system" does not include:**

24 **(A) Any product that has been approved by the United States Food and Drug Adminis-**
25 **tration for sale as a tobacco cessation product or any other therapeutic purpose if the**
26 **product is marketed and sold solely for the approved purpose;**

27 **(B) If sold separately, battery chargers, straps or lanyards; or**

28 **(C) Marijuana items, as defined in ORS 475B.015.**

29 [(5)] (6) "Master Settlement Agreement" has the meaning given that term in ORS 323.800.

30 [(6)] (7) "Nonparticipating manufacturer" means any tobacco product manufacturer that is not

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 a participating manufacturer.

2 [(7)] (8) “Participating manufacturer” has the meaning given that term in section II(jj) of the
3 Master Settlement Agreement.

4 [(8)] (9) “Qualified escrow fund” has the meaning given that term in ORS 323.800.

5 [(9)] (10) “Retailer” means a person that sells cigarettes, **inhalant delivery systems** or
6 smokeless tobacco products to individuals for personal consumption.

7 [(10)] (11) “Smokeless tobacco products” has the meaning given that term in ORS 323.810.

8 [(11)] (12) “Tobacco product manufacturer” has the meaning given that term in ORS 323.800.

9 [(12)] (13) “Units sold” has the meaning given that term in ORS 323.800.

10 **SECTION 2.** ORS 180.441 is amended to read:

11 180.441. (1)(a) A person engaged in the business of selling cigarettes, **inhalant delivery systems**
12 or smokeless tobacco products for profit may not ship or transport, or cause to be shipped or
13 transported, cigarettes, **inhalant delivery systems** or smokeless tobacco products ordered or pur-
14 chased by mail or telephone or through a computer or other electronic network to any person in this
15 state other than a distributor or retailer.

16 (b) Paragraph (a) of this subsection does not apply to a freight forwarder or motor carrier, as
17 those terms are defined in 49 U.S.C. 13102, as in effect on August 8, 2017, or an air carrier, as de-
18 fined in 49 U.S.C. 40102, as in effect on August 8, 2017.

19 (2) A retailer may not sell cigarettes, **inhalant delivery systems** or smokeless tobacco products
20 unless the retailer or an employee of the retailer makes the sale to the purchaser in person as part
21 of a face-to-face exchange.

22 (3) A person may not knowingly provide substantial assistance to a person that is violating
23 subsection (1) or (2) of this section.

24 **SECTION 3.** ORS 180.451 is amended to read:

25 180.451. (1) The Attorney General may bring a civil action in the name of the State of Oregon
26 against a person who violates ORS 180.441 or for the purpose of seeking an injunction to restrain
27 an actual or threatened violation of ORS 180.441 and compel compliance with ORS 180.441.

28 (2) If a court determines that a person violated ORS 180.441, the court shall order the
29 disgorgement of any profits, gain, gross receipts or other benefit from the violation. All moneys
30 disgorged under this subsection must be deposited in the Tobacco Enforcement Fund established
31 under ORS 180.205.

32 (3)(a) In any action brought pursuant to this section, the state may recover the costs of the in-
33 vestigation, the costs of the action, reasonable attorney fees and a civil penalty for each violation,
34 not to exceed \$5,000 per violation. A civil penalty imposed under this section must be imposed in
35 the manner provided by ORS 183.745.

36 (b) For the purposes of this subsection, each shipment or transport of cigarettes, **inhalant de-**
37 **livery systems** or smokeless tobacco products constitutes a separate violation.

38 (4) Unless expressly provided, the remedies or penalties under this section are cumulative to
39 each other and to the remedies available under all other laws of this state.

40 **SECTION 4. The amendments to ORS 180.405, 180.441 and 180.451 by sections 1 to 3 of this**
41 **2020 Act apply to inhalant delivery systems sold on or after the effective date of this 2020**
42 **Act.**

43 **SECTION 5. This 2020 Act being necessary for the immediate preservation of the public**
44 **peace, health and safety, an emergency is declared to exist, and this 2020 Act takes effect**
45 **on its passage.**

