

House Bill 2528

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of Governor Tina Kotek for Oregon Health Authority)

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**. The statement includes a measure digest written in compliance with applicable readability standards.

Digest: The Act changes some laws that relate to products with tobacco or nicotine derived from any source. (Flesch Readability Score: 60.1).

Adds "nicotine derived from any source" to the definitions of "inhalant delivery system" and "tobacco products." Repeals existing criminal prohibition on the sale of inhalant delivery systems or tobacco products to a person under 21 years of age and replaces the repealed law with a civil prohibition enforced by the Oregon Health Authority. Authorizes imposition of civil penalties for violations.

Establishes a civil prohibition on providing, without compensation, inhalant delivery systems or tobacco products.

Authorizes the authority to adopt rules to regulate the sale of inhalant delivery systems or tobacco products for the purpose of protecting public health and safety.

Requires any sale of cigarettes, inhalant delivery systems or smokeless tobacco products to occur at licensed premises.

Expands the definition of "tobacco products" for taxation purposes to include nicotine pouches, nicotine lozenges and other products containing nicotine derived from any source.

Takes effect on the 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to public health; creating new provisions; amending ORS 180.441, 323.500, 431A.175 and
3 431A.183; repealing ORS 167.750 and 167.755; prescribing an effective date; and providing for
4 revenue raising that requires approval by a three-fifths majority.

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

6 **SECTION 1.** ORS 431A.175 is amended to read:

7 431A.175. (1) As used in this section and ORS 431A.183:

8 (a)(A) "Inhalant delivery system" means:

9 (i) A device that can be used to deliver [*nicotine or*] cannabinoids **or nicotine derived from any**
10 **source** in the form of a vapor or aerosol to a person inhaling from the device; or

11 (ii) A component of a device described in this subparagraph or a substance in any form sold for
12 the purpose of being vaporized or aerosolized by a device described in this subparagraph, whether
13 **or not** the component or substance is sold separately [*or is not sold separately*].

14 (B) "Inhalant delivery system" does not include:

15 (i) Any product that has been approved by the United States Food and Drug Administration for
16 sale as a tobacco cessation product or for any other therapeutic purpose, if the product is marketed
17 and sold solely for the approved purpose; and

18 (ii) Tobacco products.

19 (b) "Tobacco products" means:

20 (A) **Any product that contains, is made from or is derived from tobacco or nicotine de-**
21 **rived from any source that is intended or likely to be used for human consumption by any**
22 **means, including but not limited to [*Bidis*] bidis, cigars, cheroots, stogies, periques, granulated,**

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 plug cut, crimp cut, ready rubbed and other smoking tobacco, snuff, snuff flour, cavendish, plug and
 2 twist tobacco, fine-cut and other chewing tobaccos, shorts, refuse scraps, clippings, cuttings and
 3 sweepings of tobacco and other forms of tobacco[,] **and oral nicotine pouches, nicotine lozenges**
 4 **and other products containing nicotine derived from any source** [*prepared in a manner that*
 5 *makes the tobacco suitable for chewing or smoking in a pipe or otherwise, or for both chewing and*
 6 *smoking*];

7 (B) Cigarettes as defined in ORS 323.010 (1); or

8 (C) A device that:

9 (i) Can be used to deliver tobacco products to a person using the device; and

10 (ii) Has not been approved by the United States Food and Drug Administration for sale as a
 11 tobacco cessation product or for any other therapeutic purpose, if the product is marketed and sold
 12 solely for the approved purpose.

13 (2) It is unlawful:

14 [(a) *To violate ORS 167.755.*]

15 **(a) To distribute, sell or offer for sale in this state tobacco products or inhalant delivery**
 16 **systems to a person under 21 years of age. A business entity or person who is an owner of**
 17 **a business entity that is engaged in the retail sale of tobacco products or inhalant delivery**
 18 **systems violates this paragraph if the owner or an employee, agent or other representative**
 19 **of the business entity distributes, sells or offers for sale tobacco products or inhalant deliv-**
 20 **ery systems to a person under 21 years of age.**

21 (b) To fail as a retailer of tobacco products to post a notice substantially similar to the notice
 22 described in subsection (3) of this section in a location that is clearly visible to the seller and the
 23 purchaser of the tobacco products.

24 (c) To fail as a retailer of inhalant delivery systems to post a notice in a location that is clearly
 25 visible to the seller and the purchaser of the inhalant delivery systems that it is unlawful to sell
 26 inhalant delivery systems to persons under 21 years of age. The Oregon Health Authority shall
 27 adopt by rule the content of the notice required under this paragraph.

28 (d) To distribute, sell or [*allow to be sold*] **offer for sale in this state** an inhalant delivery
 29 system if the inhalant delivery system is not labeled in accordance with rules adopted by the au-
 30 thority.

31 (e) To distribute, sell or [*allow to be sold*] **offer for sale in this state** an inhalant delivery
 32 system if the inhalant delivery system is not packaged in child-resistant safety packaging, as re-
 33 quired by the authority by rule.

34 (f) To distribute, sell or [*allow to be sold*] **offer for sale in this state** an inhalant delivery sys-
 35 tem if the inhalant delivery system is packaged in a manner that is attractive to minors, as deter-
 36 mined by the authority by rule.

37 (g) To distribute, sell or [*allow to be sold*] **offer for sale in this state** cigarettes in any form
 38 other than a sealed package that contains at least 20 cigarettes.

39 **(h) To distribute, offer or otherwise provide, without compensation, tobacco products or**
 40 **inhalant delivery systems.**

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

42
 43
 44 NOTICE

45 The sale of tobacco in any form to persons under 21 years of age is prohibited by law. Any

1 person who sells, or allows to be sold, tobacco to a person under 21 years of age is in violation of
 2 Oregon law.

3
 4
 5 **(4) The authority may adopt rules to regulate the wholesale or retail sale of tobacco**
 6 **products or inhalant delivery systems in this state to protect the public health and safety**
 7 **of the residents of this state.**

8 [(4)] (5) Rules adopted under subsection (2)(d), (e) and (f) of this section must be consistent with
 9 any regulation adopted by the United States Food and Drug Administration related to labeling or
 10 packaging requirements for inhalant delivery systems.

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

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

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

20 (2) A retailer may not sell cigarettes, inhalant delivery systems or smokeless tobacco products
 21 unless the retailer or an employee of the retailer makes the sale to the purchaser in person as part
 22 of a face-to-face exchange **that occurs on premises, as defined in ORS 431A.190, that are li-**
 23 **icensed under ORS 431A.198 or an ordinance, rule or resolution adopted by a local government**
 24 **as defined in ORS 174.116.**

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

27 **SECTION 3.** ORS 323.500 is amended to read:

28 323.500. As used in ORS 323.500 to 323.645, unless the context otherwise requires:

29 (1) “Business” means any trade, occupation, activity or enterprise engaged in for the purpose
 30 of selling or distributing tobacco products in this state.

31 (2) “Cigar” means a roll for smoking that is of any size or shape and that is made wholly or in
 32 part of tobacco, irrespective of whether the tobacco is pure or flavored, adulterated or mixed with
 33 any other ingredient, if the roll has a wrapper made wholly or in greater part of tobacco and if 1,000
 34 of these rolls collectively weigh more than three pounds. “Cigar” does not include a cigarette, as
 35 defined in ORS 323.010.

36 (3) “Consumer” means any person who purchases tobacco products in this state for the person’s
 37 use or consumption or for any purpose other than for reselling the tobacco products to another
 38 person.

39 (4) “Contraband tobacco products” means tobacco products or packages containing tobacco
 40 products:

41 (a) That do not comply with the requirements of ORS 323.500 to 323.645;

42 (b) That do not comply with the requirements of the tobacco products tax laws of the federal
 43 government or of other states;

44 (c) That bear trademarks that are counterfeit under ORS 647.135 or other state or federal
 45 trademark laws; or

1 (d) That have been sold, offered for sale or possessed for sale in this state in violation of ORS
2 180.486.

3 (5) "Department" means the Department of Revenue.

4 (6) "Distribute" means:

5 (a) Bringing, or causing to be brought, into this state from without this state tobacco products
6 for sale, storage, use or consumption;

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

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

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

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

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

15 (7) "Distributor" means:

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

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

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

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

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

24 (8)(a) "Inhalant delivery system" means:

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

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

30 (b) "Inhalant delivery system" does not include:

31 (A) Any product that has been approved by the United States Food and Drug Administration for
32 sale as a tobacco cessation product or for any other therapeutic purpose, if the product is marketed
33 and sold solely for the approved purpose;

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

35 (C) Marijuana items as defined in ORS 475C.009.

36 (9) "Manufacturer" means a person who manufactures tobacco products for sale.

37 (10) "Moist snuff" means:

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

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

42 (11) "Place of business" means any place where tobacco products are sold or where tobacco
43 products are manufactured, stored or kept for the purpose of sale or consumption, including any
44 vessel, vehicle, airplane, train or vending machine.

45 (12) "Retail dealer" means any person who is engaged in the business of selling or otherwise

1 dispensing tobacco products to consumers. The term also includes the operators of or recipients of
2 revenue from all places such as smoke shops, cigar stores and vending machines, where tobacco
3 products are made or stored for ultimate sale to consumers.

4 (13) "Sale" means any transfer, exchange or barter, in any manner or by any means, for a con-
5 sideration, and includes and means all sales made by any person. It includes a gift by a person en-
6 gaged in the business of selling tobacco products, for advertising, as a means of evading the
7 provisions of ORS 323.500 to 323.645, or for any other purpose.

8 (14) "Taxpayer" includes a distributor or other person required to pay a tax imposed under ORS
9 323.500 to 323.645.

10 (15) "Tobacco products" means cigars, cheroots, stogies, periques, granulated, plug cut, crimp
11 cut, ready rubbed and other smoking tobacco, snuff, snuff flour, moist snuff, cavendish, plug and
12 twist tobacco, fine-cut and other chewing tobaccos, shorts, refuse scraps, clippings, cuttings and
13 sweepings of tobacco and other kinds and forms of tobacco, prepared in such manner as to be suit-
14 able for chewing or smoking in a pipe or otherwise, or both for chewing and smoking, [and] inhalant
15 delivery systems, **oral nicotine pouches, nicotine lozenges and other products containing**
16 **nicotine derived from any source**, but does not include cigarettes as defined in ORS 323.010 or
17 **products that have been approved by the United States Food and Drug Administration for**
18 **sale as a tobacco cessation product or for any other therapeutic purpose, if the product is**
19 **marketed and sold solely for the approved purpose.**

20 (16) "Untaxed tobacco products" means tobacco products for which the tax required under ORS
21 323.500 to 323.645 has not been paid.

22 (17) "Wholesale sales price" means the price paid for untaxed tobacco products to or on behalf
23 of a seller by a purchaser of the untaxed tobacco products.

24 **SECTION 4.** ORS 431A.183 is amended to read:

25 431A.183. (1)(a) The Oregon Health Authority may enter into an agreement with federal agencies
26 to assist the authority in monitoring and enforcing federal laws and regulations related to tobacco
27 products or inhalant delivery systems.

28 (b) The authority may commission employees of the authority as federal officers for the purpose
29 of carrying out the duties prescribed under an agreement entered into under paragraph (a) of this
30 subsection.

31 (c) The authority may adopt rules and take any action necessary to carry out the authority's
32 duties as established under an agreement entered into under paragraph (a) of this subsection.

33 (2)(a) The authority may enter into an agreement with federal, state and local government
34 agencies, including federal, state and local law enforcement agencies, to assist the authority in
35 carrying out the authority's duties under ORS 431A.175 and to conduct random, unannounced in-
36 spections of wholesalers and retailers of tobacco products or inhalant delivery systems to ensure
37 compliance with the laws of this state designed to discourage the use of tobacco products and
38 inhalant delivery systems by persons under 21 years of age, including ORS [167.755,] 167.760, 167.765,
39 167.770, 167.775, 167.780 and 431A.175.

40 (b) The authority shall ensure that a retailer is inspected as described in this subsection at least
41 once each year. A retailer that is found to be out of compliance with the laws described in para-
42 graph (a) of this subsection may be reinspected as the authority determines necessary.

43 (c) The authority may adopt rules to carry out paragraph (b) of this subsection.

44 (3)(a) If the authority enters into an agreement with the Department of State Police under sub-
45 section (2) of this section, the department may employ retired state police officers who are active

1 reserve officers. Service by a retired state police officer under this paragraph is subject to ORS
2 238.082.

3 (b) The department may not use the services of a retired state police officer to displace an ac-
4 tive state police member.

5 (4)(a) The authority may apply for and accept moneys from the federal government or other
6 public or private sources and, in accordance with any federal restrictions or other funding source
7 restrictions, use those moneys to carry out the duties and functions related to preventing the use
8 of tobacco products or inhalant delivery systems by persons who are not of the minimum age to
9 purchase tobacco products or inhalant delivery systems.

10 (b) Moneys received by the authority under paragraph (a) of this subsection shall be deposited
11 in the Oregon Health Authority Fund established under ORS 413.101. Moneys subject to a federal
12 restriction or other funding source restriction must be accounted for separately from other fund
13 moneys.

14 (5)(a) The authority shall submit a written report each biennium to the Governor and to the
15 appropriate committee or interim committee of the Legislative Assembly to which matters of public
16 health are assigned.

17 (b) The report submitted under this subsection must contain information describing:

18 (A) The activities carried out to enforce the laws listed in subsection (2) of this section during
19 the previous biennium;

20 (B) The extent of success achieved in reducing the availability of tobacco products and inhalant
21 delivery systems to persons under 21 years of age; and

22 (C) The strategies to be utilized for enforcing the laws listed in subsection (2) of this section
23 during the biennium following the report.

24 (6) The authority shall adopt rules for conducting random inspections of establishments that
25 distribute or sell tobacco products or inhalant delivery systems. The rules shall provide that in-
26 spections may take place:

27 (a) Only in areas open to the public;

28 (b) Only during the hours that tobacco products or inhalant delivery systems are distributed or
29 sold; and

30 (c) No more frequently than once a month in any single establishment unless a compliance
31 problem exists or is suspected.

32 **SECTION 5. ORS 167.750 and 167.755 are repealed.**

33 **SECTION 6. (1) The amendments to ORS 431A.175 by section 1 of this 2025 Act become**
34 **operative on October 1, 2025.**

35 **(2) The Oregon Health Authority may take any action before the operative date specified**
36 **in subsection (1) of this section that is necessary to enable the authority to exercise, on and**
37 **after the operative date specified in subsection (1) of this section, all of the duties, functions**
38 **and powers conferred on the authority by the amendments to ORS 431A.175 by section 1 of**
39 **this 2025 Act.**

40 **SECTION 7. This 2025 Act takes effect on the 91st day after the date on which the 2025**
41 **regular session of the Eighty-third Legislative Assembly adjourns sine die.**