

D R A F T

SUMMARY

Establishes tax on retail sales of inhalant delivery systems and inhalant form nicotine. Provides for distribution of revenues from tax. Requires retailers of inhalant delivery systems and inhalant form nicotine to register with Department of Revenue.

Applies to sales of inhalant delivery systems and inhalant form nicotine occurring on or after January 1, 2017.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to taxation of nicotine delivery systems; creating new provisions;
3 amending ORS 431A.153 and 431A.155; prescribing an effective date; and
4 providing for revenue raising that requires approval by a three-fifths
5 majority.

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

7 **SECTION 1. As used in sections 1 to 14 of this 2016 Act:**

8 (1) **“Inhalant delivery system” has the meaning given that term in**
9 **ORS 431A.175.**

10 (2)(a) **“Inhalant form nicotine” means a substance in any form sold**
11 **for the purpose of being vaporized or aerosolized in an inhalant deliv-**
12 **ery system to deliver nicotine in the form of a vapor or aerosol to a**
13 **person inhaling from the system or a component of the system.**

14 (b) **“Inhalant form nicotine” does not include:**

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

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) Tobacco products, as defined in ORS 323.500.

2 (3) "Retail sale" means the transfer, exchange, gift or barter of an
3 inhalant delivery system or of inhalant form nicotine by any person
4 to a consumer.

5 (4) "Retailer" means a person that engages in the sale of inhalant
6 delivery systems or inhalant form nicotine.

7 **SECTION 2.** (1) A tax is hereby imposed upon the retail sale of
8 inhalant delivery systems and inhalant form nicotine in this state. The
9 tax imposed by this section is intended to be a direct tax on the con-
10 sumer, for which payment upon retail sale is required to achieve con-
11 venience and facility in the collection and administration of the tax.
12 The tax shall be collected at the point of sale of an inhalant delivery
13 system or of an inhalant form nicotine item by a retailer at the time
14 at which the sale occurs.

15 (2) The tax imposed under this section shall be imposed at the rate
16 of 50 percent of the retail sales price of an inhalant delivery system
17 or of an inhalant form nicotine item.

18 (3) If the tax imposed under this section does not equal an amount
19 calculable to a whole cent, the tax shall be equal to the next higher
20 whole cent.

21 (4) The tax imposed under this section does not apply to batteries,
22 chargers or other accessories for an inhalant delivery system typically
23 sold separately from the inhalant delivery system.

24 (5) Inhalant delivery systems and inhalant form nicotine items are
25 not subject to the tax if previously taxed under this section.

26 **SECTION 3.** (1) Except as otherwise provided in sections 1 to 14 of
27 this 2016 Act, the tax imposed under section 2 of this 2016 Act shall
28 be collected and remitted by each retailer making a retail sale of an
29 inhalant delivery system or an inhalant form nicotine item. The
30 amount of the tax shall be separately stated on an invoice, receipt or
31 similar document that the retailer provides to the consumer, or shall

1 be otherwise disclosed to the consumer. The tax shall be paid to the
2 Department of Revenue not more than 30 days after the last day of
3 each calendar quarter for the previous calendar quarter.

4 (2) With each quarterly payment, the retailer shall submit a return
5 to the department, in such form and containing such information as
6 the department shall prescribe.

7 (3) The tax, penalties and interest imposed by sections 1 to 14 of this
8 2016 Act shall be a personal debt, from the time liability is incurred,
9 owed by the retailer to the State of Oregon until paid.

10 (4) The returns required of retailers under this section shall be filed
11 regardless of whether any tax is owed.

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

17 (b) When the time for filing a return is extended at the request of
18 a retailer, interest shall be added at the rate established under ORS
19 305.220 for each month, or fraction of a month, from the time the re-
20 turn was originally required to be filed to the time of payment.

21 **SECTION 4.** For purposes of section 2 of this 2016 Act, a retail sale
22 of an inhalant delivery system or an inhalant form nicotine item:

23 (1) Occurs in this state if it is made in person by a consumer at a
24 business location of the retailer; or

25 (2) If not made in person by a consumer at a business location of
26 the retailer, occurs in this state if the consumer's shipping address,
27 payment instrument billing address or other address provided by the
28 consumer for purposes of the transaction is in this state.

29 **SECTION 5.** (1) Any person engaging or seeking to engage in the
30 sale of inhalant delivery systems or inhalant form nicotine as a
31 retailer shall file an application to register as a retailer with the De-

1 department of Revenue. The application shall be on a form prescribed
2 by the department.

3 (2) A person may not engage in the business of retail sale of
4 inhalant delivery systems or inhalant form nicotine in this state
5 without registration under this section.

6 SECTION 6. (1) Upon receipt of a completed application under sec-
7 tion 5 of this 2016 Act, the Department of Revenue may register the
8 applicant as a retailer.

9 (2) The department may not issue a registration to an applicant if
10 the department determines or has reason to believe that the applicant
11 will not comply with any provision of state or federal law.

12 (3) Notwithstanding ORS 305.280, a decision by the department not
13 to issue a registration to an applicant may be appealed by the appli-
14 cant to the magistrate division of the Oregon Tax Court within 30 days
15 after the date of the decision of the department in the manner pre-
16 scribed in ORS 305.404 to 305.560.

17 (4) For purposes of this section, an application to renew a regis-
18 tration as a retailer shall be considered the same as an application for
19 initial registration.

20 SECTION 7. For the purpose of compensating retailers for expenses
21 incurred in collecting the tax imposed under section 2 of this 2016 Act,
22 each retailer is permitted to deduct and retain _____ percent of the
23 amount of tax that is collected by the retailer from all retail sales
24 conducted by the retailer in this state.

25 SECTION 8. The Department of Revenue shall administer and en-
26 force sections 1 to 14 of this 2016 Act. The department is authorized
27 to establish rules and procedures for the implementation and enforce-
28 ment of sections 1 to 14 of this 2016 Act that are consistent with
29 sections 1 to 14 of this 2016 Act and considered necessary and appro-
30 priate, including policies and procedures for seizing inhalant delivery
31 systems or inhalant form nicotine if a retailer is not compliant with

1 sections 1 to 14 of this 2016 Act.

2 **SECTION 9.** ORS 314.400 applies to a person who fails to file a re-
3 turn required under sections 1 to 14 of this 2016 Act or fails to pay a
4 tax at the time the tax becomes due, if no extension is granted under
5 section 3 of this 2016 Act or if the time granted as an extension has
6 expired and the person fails to file a return or pay a tax.

7 **SECTION 10.** Except as otherwise provided in sections 1 to 14 of this
8 2016 Act or when the context requires otherwise, the provisions of ORS
9 chapters 305 and 314 as to the audit and examination of returns, peri-
10 ods of limitations, determination of and notices of deficiencies, as-
11 sessments, liens, delinquencies, claims for refund and refunds,
12 conferences, appeals to the Oregon Tax Court, stay of collection
13 pending appeal, confidentiality of returns and the penalties relating
14 thereto, and the procedures relating thereto, apply to the determi-
15 nations of taxes, penalties and interest under sections 1 to 14 of this
16 2016 Act.

17 **SECTION 11.** If, under sections 1 to 14 of this 2016 Act, the De-
18 partment of Revenue is not satisfied with the return or the amount
19 of tax paid to the state by any person, the department may compute
20 and determine the amount required to be paid upon the basis of the
21 facts contained in the return or upon the basis of any information in
22 the department's possession or that may come into the department's
23 possession. One or more deficiency determinations may be made of the
24 amount due for one or for more than one period. Notices of deficiency
25 shall be given and interest on deficiencies shall be computed as pro-
26 vided in ORS 305.265. Subject to ORS 314.421 and 314.423, liens for taxes
27 or deficiencies arise at the time of assessment, continue until the
28 taxes, interest and penalties are fully satisfied and may be recorded
29 and collected in the manner provided for the collection of delinquent
30 income taxes.

31 **SECTION 12.** If the Department of Revenue believes that the col-

1 **lection of any tax imposed under sections 1 to 14 of this 2016 Act or**
2 **any amount of the tax required to be paid to the state, or any deter-**
3 **mination thereof, will be jeopardized by delay, the department shall**
4 **make a determination of the tax or amount of tax required to be col-**
5 **lected, noting that fact upon the determination. The amount deter-**
6 **mined is immediately due and payable, and the department shall**
7 **assess the taxes, notify the person and proceed to collect the tax in**
8 **the same manner and using the same procedures as for the collection**
9 **of income taxes under ORS 314.440.**

10 **SECTION 13. Any person subject to the tax imposed under section**
11 **2 of this 2016 Act and from whom the tax has not been collected shall,**
12 **on or before the 20th day of the month following the close of the cal-**
13 **endar quarter in which the tax is due, file with the Department of**
14 **Revenue a report of the amount of tax due from the consumer in the**
15 **preceding quarter in the detail and form as prescribed by the depart-**
16 **ment, submitting with the report the amount of tax due.**

17 **SECTION 14. All moneys received by the Department of Revenue**
18 **under sections 1 to 14 of this 2016 Act shall be deposited in the State**
19 **Treasury and credited to a suspense account established under ORS**
20 **293.445. The department may pay expenses for administration and**
21 **enforcement of sections 1 to 14 of this 2016 Act out of moneys received**
22 **from the taxes imposed under section 2 of this 2016 Act. Amounts**
23 **necessary to pay administrative and enforcement expenses are con-**
24 **tinuously appropriated to the department from the suspense account.**
25 **After the payment of administrative and enforcement expenses and**
26 **refunds or credits arising from erroneous overpayments, the balance**
27 **of the moneys shall be credited as follows:**

28 **(1) Ten percent to the Tobacco Use Reduction Account established**
29 **under ORS 431A.153.**

30 **(2) Ninety percent to the General Fund.**

31 **SECTION 15. Sections 1 to 14 of this 2016 Act apply to inhalant de-**

1 **livery systems and inhalant form nicotine sold on or after January 1,**
2 **2017.**

3 **SECTION 16.** ORS 431A.153 is amended to read:

4 431A.153. (1) There is established in the General Fund the Tobacco Use
5 Reduction Account.

6 (2) Amounts credited to the Tobacco Use Reduction Account are contin-
7 uously appropriated to the Oregon Health Authority for the funding of pre-
8 vention and education programs designed to reduce cigarette and tobacco use
9 **and use of inhalant form nicotine.**

10 **SECTION 17.** ORS 431A.155 is amended to read:

11 431A.155. The Oregon Health Authority shall develop and adopt rules for
12 awarding grants to programs for educating the public on the risk of tobacco
13 use, including but not limited to:

14 (1) Educating children on the health hazards and consequences of tobacco
15 use **and use of inhalant form nicotine;** and

16 (2) Promoting enrollment in smoking cessation programs and programs
17 that prevent smoking-related diseases including cancer and other diseases of
18 the heart, lungs and mouth.

19 **SECTION 18.** **The amendments to ORS 431A.153 and 431A.155 by**
20 **sections 16 and 17 of this 2016 Act apply to moneys credited and grants**
21 **awarded on or after January 1, 2017.**

22 **SECTION 19.** **This 2016 Act takes effect on the 91st day after the**
23 **date on which the 2016 regular session of the Seventy-eighth Legisla-**
24 **tive Assembly adjourns sine die.**

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