

# House Bill 2148

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of Governor Kate Brown 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**.

Prohibits remote sales of inhalant delivery systems. Defines "inhalant delivery system."

Prohibits distribution or sale of flavored inhalant delivery system product or flavored tobacco product. Defines "flavored inhalant delivery system product" and "flavored tobacco product." Allows Oregon Health Authority to impose civil penalty of up to \$5,000 per violation.

Takes effect on 91st day following adjournment sine die.

## A BILL FOR AN ACT

Relating to public health; creating new provisions; amending ORS 167.750, 180.405, 180.441, 180.451 and 431A.183; and prescribing an effective date.

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

## REMOTE SALES PROHIBITION

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

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

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

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

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

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

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

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

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

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

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

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

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

3 [(5)] **(6)** “Master Settlement Agreement” has the meaning given that term in ORS 323.800.

4 [(6)] **(7)** “Nonparticipating manufacturer” means any tobacco product manufacturer that is not  
5 a participating manufacturer.

6 [(7)] **(8)** “Participating manufacturer” has the meaning given that term in section II(jj) of the  
7 Master Settlement Agreement.

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

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

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

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

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

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

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

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

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

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

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

29 180.451. (1) The Attorney General may bring a civil action in the name of the State of Oregon  
30 against a person who violates ORS 180.441 or for the purpose of seeking an injunction to restrain  
31 an actual or threatened violation of ORS 180.441 and compel compliance with ORS 180.441.

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

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

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

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

44 **SECTION 4. The amendments to ORS 180.405, 180.441 and 180.451 by sections 1 to 3 of this**  
45 **2021 Act apply to inhalant delivery systems sold on or after the effective date of this 2021**

1 Act.

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3 **FLAVORED ITEMS PROHIBITION**  
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5 **SECTION 5. (1) As used in this section:**

6 (a) **“Characterizing flavor” means a taste or aroma other than the taste or aroma of**  
7 **tobacco that is distinguishable by an ordinary consumer either prior to or during consump-**  
8 **tion, including but not limited to any taste or aroma relating to chocolate, cocoa, menthol,**  
9 **mint, wintergreen, vanilla, honey or fruit, any candy, dessert, alcoholic beverage, herb or**  
10 **spice or any concept flavor. A public statement or claim, whether express or implied, made**  
11 **or disseminated by the manufacturer of a product, or by any person authorized or permitted**  
12 **by the manufacturer to make or disseminate public statements concerning the product, that**  
13 **the product has or produces a taste or aroma other than a taste or aroma of tobacco con-**  
14 **stitutes presumptive evidence that the product has a characterizing flavor.**

15 (b)(A) **“Flavored inhalant delivery system product” means a component of an inhalant**  
16 **delivery system or a substance in any form sold for the purpose of being aerosolized or**  
17 **vaporized by an inhalant delivery system, regardless of whether the component or substance**  
18 **is sold separately, that has been manufactured to impart a characterizing flavor.**

19 (B) **“Flavored inhalant delivery system product” does not include:**

20 (i) **A product that has been approved by the United States Food and Drug Administration**  
21 **for sale as a tobacco cessation product or for any other therapeutic purpose.**

22 (ii) **A product that contains cannabinoids.**

23 (c) **“Flavored tobacco product” means:**

24 (A) **Tobacco products, as defined in ORS 323.500, that have been manufactured to impart**  
25 **a characterizing flavor; or**

26 (B) **Cigarettes, as defined in ORS 323.010, that have been manufactured to impart a**  
27 **characterizing flavor.**

28 (d) **“Inhalant delivery system” means a device that can be used to deliver nicotine or**  
29 **other substances in the form of an aerosol or vapor to a person inhaling from the device.**

30 (2) **A person may not distribute, attempt to sell, sell or allow to be sold a flavored**  
31 **inhalant delivery system product or flavored tobacco product in this state.**

32 (3) **The Oregon Health Authority may impose a civil penalty of up to \$5,000 for each vio-**  
33 **lation of this section. All moneys collected pursuant to this subsection shall be deposited in**  
34 **the Oregon Health Authority Fund established under ORS 413.101 and are continuously ap-**  
35 **propriated to the authority for the purpose of carrying out this section.**

36 (4) **The authority may adopt rules to carry out this section.**

37 **SECTION 6. ORS 431A.183 is amended to read:**

38 431A.183. (1)(a) **The Oregon Health Authority may enter into an agreement with federal agencies**  
39 **to assist the authority in monitoring and enforcing federal laws and regulations related to tobacco**  
40 **products or inhalant delivery systems.**

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

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

1 (2) The authority may enter into an agreement with federal, state and local government agen-  
 2 cies, including federal, state and local law enforcement agencies, to assist the authority in carrying  
 3 out the authority’s duties under ORS 431A.175 and to conduct random, unannounced inspections of  
 4 wholesalers and retailers of tobacco products or inhalant delivery systems to ensure compliance  
 5 with the laws of this state designed to discourage the use of tobacco products and inhalant delivery  
 6 systems by persons under 21 years of age, including ORS 167.750, 167.755, 167.760, 167.765, 167.775,  
 7 167.780 and 431A.175 **and section 5 of this 2021 Act.**

8 (3)(a) If the authority enters into an agreement with the Department of State Police under sub-  
 9 section (2) of this section, the department may employ retired state police officers who are active  
 10 reserve officers. Service by a retired state police officer under this paragraph is subject to ORS  
 11 238.082.

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

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

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

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

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

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

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

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

33 (6) The authority shall adopt rules for conducting random inspections of establishments that  
 34 distribute or sell tobacco products or inhalant delivery systems **that are consistent with any**  
 35 **federal law or regulation relating to the inspection of establishments that distribute or sell**  
 36 **tobacco products or inhalant delivery systems.** The rules shall provide that inspections may take  
 37 place:

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

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

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

43 **SECTION 7.** ORS 167.750 is amended to read:

44 167.750. For purposes of ORS 167.755 and 431A.175 **and section 5 of this 2021 Act**, “allows to  
 45 be sold” includes the negligent omission of an act by a manager or other person who supervises the

1 retail sale of tobacco products or inhalant delivery systems, the commission of which would have  
2 prevented the distribution or sale of the tobacco products or inhalant delivery system.

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4 **CAPTIONS**

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6 **SECTION 8. The unit captions used in this 2021 Act are provided only for the convenience  
7 of the reader and do not become part of the statutory law of this state or express any leg-  
8 islative intent in the enactment of this 2021 Act.**

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10 **OPERATIVE AND EFFECTIVE DATES**

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12 **SECTION 9. (1) Section 5 of this 2021 Act and the amendments to ORS 167.750 and  
13 431A.183 by sections 6 and 7 of this 2021 Act become operative on January 1, 2022.**

14 **(2) The Oregon Health Authority may take any action before the operative date specified  
15 in subsection (1) of this section that is necessary to enable the authority, on and after the  
16 operative date specified in subsection (1) of this section, to exercise all of the duties, func-  
17 tions and powers conferred on the authority by section 5 of this 2021 Act and the amend-  
18 ments to ORS 167.750 and 431A.183 by sections 6 and 7 of this 2021 Act.**

19 **SECTION 10. This 2021 Act takes effect on the 91st day after the date on which the 2021  
20 regular session of the Eighty-first Legislative Assembly adjourns sine die.**

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