

Enrolled
House Bill 2261

Sponsored by Representative MARSH, Senator TAYLOR; Representatives CAMPOS, DEXTER, DRAZAN, MOORE-GREEN, PRUSAK, SALINAS, SCHOUTEN, Senator WAGNER (at the request of Attorney General Ellen F. Rosenblum) (Presession filed.)

CHAPTER

AN ACT

Relating to items for which a person must obtain a minimum age to purchase; creating new provisions; amending ORS 167.760, 180.405, 180.441, 180.451, 180.468, 323.700, 323.703, 323.706, 323.709, 323.712, 323.715 and 323.724; and repealing ORS 323.718.

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

SECTION 1. ORS 167.760 is amended to read:

167.760. (1) Except as provided in subsection (2) of this section, a person under 21 years of age may not purchase or attempt to purchase tobacco products or an inhalant delivery system.

(2) A person under 21 years of age who is acting under the supervision of a person 21 years of age or older may purchase or attempt to purchase tobacco products or an inhalant delivery system for the purpose of testing compliance with a federal law, state law, local law or retailer policy limiting or regulating the distribution or sale of tobacco products or inhalant delivery systems to persons who are under [*the legal minimum purchase age*] **21 years of age.**

SECTION 2. 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 the component or substance is sold separately or is not 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 for any other therapeutic purpose, if the product is marketed and sold solely for the approved purpose;

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

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

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

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

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

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

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

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

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

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

SECTION 3. ORS 180.441 is amended to read:

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

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

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

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

SECTION 4. ORS 180.451 is amended to read:

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

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

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

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

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

SECTION 5. ORS 180.468 is amended to read:

180.468. As used in ORS 180.465 to 180.494:

(1) "Distributor" means a person who is licensed under ORS [323.520] **323.530** and any other person who is a distributor for the purposes of ORS 323.500 to 323.645.

(2) "Nonparticipating manufacturer" means any tobacco product manufacturer that is not a participating manufacturer.

(3) "Participating manufacturer" has the meaning given that term in section II(ee) of the Smokeless Tobacco Master Settlement Agreement.

(4) "Qualified escrow fund" has the meaning given that term in ORS 323.810.

(5) "Smokeless Tobacco Master Settlement Agreement" has the meaning given that term in ORS 323.810.

(6) "Smokeless tobacco products" has the meaning given that term in ORS 323.810.

(7) "Tobacco product manufacturer" has the meaning given that term in ORS 323.810.

(8) "Units sold" has the meaning given that term in ORS 323.810.

SECTION 6. ORS 323.700 is amended to read:

323.700. As used in ORS 323.700 to 323.730:

(1) "Consumer" means an individual who is not a [*licensed*] distributor [*of tobacco*] or a [*licensed tobacco*] retailer.

(2) "Delivery sale":

(a) Means a sale of tobacco to a consumer in this state in which:

(A) The [*purchaser*] **consumer** submits the order for the sale by means of a telephone or other method of voice transmission, a delivery service or the Internet or other online service; or

(B) The tobacco is delivered by use of a delivery service.

(b) Includes any sale of tobacco described in paragraph (a) of this subsection, regardless of whether the seller is located within Indian country or is otherwise within or outside of this state.

(c) Does not include any sale to a [*licensed*] distributor or [*licensed tobacco*] retailer in this state.

(3) "Delivery service" means any person that is engaged in the commercial delivery of letters, packages or other containers.

(4) "**Distributor**" means a person that is licensed under ORS 323.105 or 323.530.

[(4)] (5) "Indian country" has the meaning given that term in 18 U.S.C. 1151.

[(5)] "*Legal minimum purchase age*" means the minimum age at which an individual may purchase tobacco in this state.]

(6) "Mail" means the use of the United States Postal Service for delivery of letters, packages or other containers.

(7) "Person accepting a purchase order for a delivery sale" means a person who fills a tobacco purchase order given by a consumer and processes the order for mail, shipping or other delivery, or who contracts with another party to provide delivery service.

(8) "Purchase order" means a written or electronic document authorizing a seller to provide goods.

(9) "Sale of tobacco to a consumer" means any sale of tobacco to an individual in this state, unless the individual is [*licensed as*] a distributor or retailer [*of tobacco by the Department of Revenue*].

(10) "**Retailer**" means a person that sells tobacco to individuals for personal consumption.

[(10)] (11) "Shipping container" means a container in which tobacco is packaged in connection with a delivery sale.

[(11)] (12) "Shipping documents" means bills of lading, airbills or any other documents used to evidence the undertaking by a delivery service to deliver letters, packages or other containers.

[(12)] (13) "Tobacco" means cigarettes, as defined in ORS 323.010, or tobacco products, as defined in ORS 323.500.

SECTION 7. ORS 323.703 is amended to read:

323.703. A person may not make a delivery sale of tobacco to a person who is under [*the legal minimum purchase age*] **21 years of age**.

SECTION 8. ORS 323.706 is amended to read:

323.706. **Subject to ORS 180.441**, a person accepting a purchase order for a delivery sale, prior to the first mailing, shipment or other delivery of tobacco to a consumer, shall comply with:

(1) The age verification requirements set forth in ORS 323.709;

(2) The [*distributor*] license requirements set forth in ORS 323.712;

(3) The disclosure requirements set forth in ORS 323.715;

[4] *The mailing or shipping requirements set forth in ORS 323.718;*
[5] (4) The reporting requirements set forth in ORS 323.721; and
[6] (5) All other laws of this state applicable to sales of tobacco that occur entirely within Oregon, including but not limited to ORS 323.005 to 323.482, 323.500 to 323.645, 323.806 and 323.816.

SECTION 9. ORS 323.709 is amended to read:

323.709. A person may not mail or ship tobacco in connection with a delivery sale order unless the person, before mailing or shipping the tobacco, does all of the following:

(1) Obtains a certification from the prospective consumer that includes a written statement signed by the prospective consumer that:

(a) Certifies the prospective consumer's address and that the prospective consumer is at least *[the legal minimum purchase age]* **21 years of age**; and

(b) Confirms that the prospective consumer understands that signing another person's name to the certification is illegal, that the sale of tobacco to individuals under *[the legal minimum purchase age]* **21 years of age** is illegal and that the purchase of tobacco by individuals under *[the legal minimum purchase age]* **21 years of age** is illegal;

(2) Verifies *[the information contained in the certification against a commercially available database of government-collected information showing the age or date of birth of the individual placing the order and obtains a photocopy or other image of a valid, government-issued identification stating the age or date of birth of the individual placing the order]* **that the prospective consumer is 21 years of age or older through the use of an independent, third-party verification system that compares information from public records to the personal information entered by the prospective consumer at the time the delivery sale is ordered;**

(3) Provides a notice to the prospective consumer, via electronic mail or other means, that meets the requirements of ORS 323.715; and

(4) In the case of an order for tobacco placed through an Internet website, receives payment for the delivery sale from the prospective *[purchaser]* **consumer** by a credit or debit card that has been issued in the name of the prospective *[purchaser]* **consumer** or by a personal check issued by the prospective *[purchaser]* **consumer**.

SECTION 10. ORS 323.712 is amended to read:

323.712. *[(1) Each person seeking to engage in delivery sales of tobacco to purchasers in this state shall apply for and obtain:]*

[(a) A cigarette distributor's license under ORS 323.105, if the person intends to engage in cigarette delivery sales; and]

[(b) A tobacco products distributor's license under ORS 323.520, if the person intends to engage in tobacco products delivery sales.]

[(2) A person may not engage in delivery sales in this state without first obtaining each applicable distributor's license under subsection (1) of this section.] **A person may not engage in delivery sales of tobacco in this state without first obtaining the applicable distributor's license under ORS 323.105 or 323.530 and any applicable retailer's license required by a jurisdiction into which a delivery sale of tobacco is made.**

SECTION 11. ORS 323.715 is amended to read:

323.715. The notice required under ORS 323.709 (3) shall include:

(1) A prominent and clearly legible statement that tobacco sales to persons under *[the legal minimum purchase age]* **21 years of age** are illegal;

(2) A prominent and clearly legible statement that sales of tobacco are restricted to those individuals who provide verifiable proof of age in accordance with ORS 323.709; and

(3) A prominent and clearly legible statement that sales of cigarettes are subject to tax under ORS 323.005 to 323.482 and that sales of other tobacco products are subject to tax under ORS 323.500 to 323.645, and an explanation of how the applicable tax has been paid or is to be paid.

SECTION 12. ORS 323.724 is amended to read:

323.724. *[(1)]* A person that accepts a purchase order for a delivery sale of *[cigarettes]* **tobacco** may not make a delivery sale of *[cigarettes]* **tobacco** to a person in this state if **the delivery sale**

of tobacco does not comply with the requirements of this chapter. [*the packages in which the cigarettes are contained do not bear the proper tax stamps required to be affixed to the packages of cigarettes under ORS 323.005 to 323.482.*]

[(2) A person that accepts a purchase order for a delivery sale of tobacco products may not make a delivery sale of tobacco products in this state if the sales invoice for the delivery sale does not comply with ORS 323.538.]

SECTION 13. ORS 323.718 is repealed.

SECTION 14. The amendments to ORS 180.405, 180.441 and 180.451 by sections 2 to 4 of this 2021 Act apply to inhalant delivery systems sold on or after the effective date of this 2021 Act.

SECTION 15. The amendments to ORS 323.700, 323.703, 323.706, 323.709, 323.712, 323.715 and 323.724 by sections 6 to 12 of this 2021 Act apply to delivery sales of tobacco occurring on or after the effective date of this 2021 Act.

Passed by House April 9, 2021

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Timothy G. Sekerak, Chief Clerk of House

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Tina Kotek, Speaker of House

Passed by Senate May 26, 2021

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Peter Courtney, President of Senate

Received by Governor:

.....M.,....., 2021

Approved:

.....M.,....., 2021

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Kate Brown, Governor

Filed in Office of Secretary of State:

.....M.,....., 2021

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Shemia Fagan, Secretary of State