

House Bill 3437

Sponsored by Representatives PHAM H, NERON, MCDONALD, MCLAIN; Representatives BOWMAN, FRAGALA, HUDSON, ISADORE

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 bans the sale of flavored products with tobacco or nicotine. (Flesch Readability Score: 67.7).

Prohibits distributing, selling, attempting to sell or offering to sell flavored inhalant delivery system products or flavored tobacco products in this state. Defines "flavored inhalant delivery system product" and "flavored tobacco product."

Prohibits distributing, offering or providing, without compensation, any tobacco product or inhalant delivery system.

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

Authorizes local governments to adopt regulations that are stricter than state law on the sale of inhalant delivery system products or tobacco products.

Declares an emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to public health; creating new provisions; amending ORS 167.750, 180.441 and 431A.175; and
3 declaring an emergency.

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

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

6 431A.175. (1) As used in this section and ORS 431A.183:

7 **(a)(A) "Characterizing flavor" means:**

8 **(i) An artificial or natural taste, flavor, aroma, smell or sensation not attributable ex-**
9 **clusively to tobacco that an ordinary consumer would distinguish prior to or during con-**
10 **sumption, including but not limited to a taste, flavor, aroma, smell or sensation related to**
11 **menthol, mint, wintergreen, chocolate, cocoa, vanilla, honey or molasses or any fruit, candy,**
12 **dessert, alcoholic beverage, herb or spice.**

13 **(ii) A product about which the manufacturer of the product or a third party authorized**
14 **by the manufacturer makes an express or implied public statement that describes the prod-**
15 **uct as producing a taste, flavor, aroma, smell or sensation related to a minty or cooling ef-**
16 **fect or chill, ice, fresh, arctic or frost.**

17 **(B) "Characterizing flavor" does not include the artificial or natural taste, flavor, aroma,**
18 **smell or sensation of cannabis.**

19 **(b) "Flavored inhalant delivery system product" means an inhalant delivery system**
20 **product that imparts a characterizing flavor.**

21 **(c) "Flavored tobacco product" means a tobacco product manufactured to impart a**
22 **characterizing flavor.**

23 **[(a)(A)] (d)(A) "Inhalant delivery system" means:**

24 **(i) A device that can be used to deliver [*nicotine or*] cannabinoids **or nicotine** in the form of a**

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 vapor or aerosol to a person inhaling from the device; or

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

5 (B) “Inhalant delivery system” does not include:

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

9 (ii) Tobacco products.

10 (e) **“Nicotine” means any form of the chemical nicotine, regardless of whether the**
 11 **chemical is naturally or synthetically derived, including any salt, complex, alkaloid or analog.**

12 [(b)] (f) “Tobacco products” means:

13 (A) **Any product that contains, is made from or is derived from tobacco or nicotine, such**
 14 **as bidis, cigars, cheroots, stogies, periques, granulated, plug cut, crimp cut, ready rubbed and other**
 15 **smoking tobacco, snuff, snuff flour, cavendish, plug and twist tobacco, fine-cut and other chewing**
 16 **tobaccos, shorts, refuse scraps, clippings, cuttings and sweepings of tobacco and other forms of to-**
 17 **bacco or nicotine, prepared in a manner that makes the tobacco or nicotine suitable for human**
 18 **consumption** [*chewing or smoking in a pipe or otherwise, or for both chewing and smoking*];

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

20 (C) A device that:

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

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

25 (2) It is unlawful:

26 (a) To violate ORS 167.755.

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

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

34 (d) To distribute, sell or [*allow to be sold*] **offer for sale** an inhalant delivery system if the
 35 inhalant delivery system is not labeled in accordance with rules adopted by the authority.

36 (e) To distribute, sell or [*allow to be sold*] **offer for sale** an inhalant delivery system if the
 37 inhalant delivery system is not packaged in child-resistant safety packaging, as required by the au-
 38 thority by rule.

39 (f) To distribute, sell or [*allow to be sold*] **offer for sale** an inhalant delivery system if the
 40 inhalant delivery system is packaged in a manner that is attractive to minors, as determined by the
 41 authority by rule.

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

44 (h) **To distribute, sell, attempt to sell or offer for sale a flavored inhalant delivery system**
 45 **product or flavored tobacco product in this state.**

1 (i) **To distribute, offer or otherwise provide, without compensation, any tobacco product**
2 **or inhalant delivery system.**

3 (3) The notice required by subsection (2)(b) of this section must be substantially as follows:
4

5
6 NOTICE

7 The sale of tobacco in any form to persons under 21 years of age is prohibited by law. Any
8 person who sells, or allows to be sold, tobacco to a person under 21 years of age is in violation of
9 Oregon law.
10

11
12 (4) Rules adopted under subsection (2)(d), (e) and (f) of this section must be consistent with any
13 regulation adopted by the United States Food and Drug Administration related to labeling or pack-
14 aging requirements for inhalant delivery systems.

15 (5) **This section does not preempt a local government, as defined in ORS 174.116, from**
16 **enacting an ordinance, rule or resolution, or from taking other legislative action, that im-**
17 **poses requirements or prohibitions on the sale of inhalant delivery system products or to-**
18 **bacco products that are more stringent than the requirements or prohibitions set forth in**
19 **this section.**

20 **SECTION 2.** ORS 167.750 is amended to read:

21 167.750. For purposes of ORS 167.755 [and 431A.175], “allows to be sold” includes the negligent
22 omission of an act by a manager or other person who supervises the retail sale of tobacco products
23 or inhalant delivery systems, the commission of which would have prevented the distribution or sale
24 of the tobacco products or inhalant delivery system.

25 **SECTION 3.** ORS 180.441 is amended to read:

26 180.441. (1)(a) A person engaged in the business of selling cigarettes, inhalant delivery systems
27 or smokeless tobacco products for profit may not ship or transport, or cause to be shipped or
28 transported, cigarettes, inhalant delivery systems or smokeless tobacco products ordered or pur-
29 chased by mail or telephone or through a computer or other electronic network to any person in this
30 state other than a distributor or retailer.

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

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

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

41 **SECTION 4.** A local government, as defined in ORS 174.116, that, on or before the oper-
42 ative date specified in section 5 of this 2025 Act, enforces an ordinance, rule or resolution,
43 or has taken other legislative action, that imposes requirements or prohibitions on the sale
44 of inhalant delivery system products or tobacco products that are more stringent than the
45 requirements or prohibitions set forth in ORS 431A.175, as amended by section 1 of this 2025

1 Act, may continue to enforce the ordinance, rule, resolution or other legislative action after
2 the operative date specified in section 5 of this 2025 Act.

3 **SECTION 5.** (1) The amendments to ORS 431A.175 by section 1 of this 2025 Act become
4 operative on October 1, 2025.

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

10 **SECTION 6.** This 2025 Act being necessary for the immediate preservation of the public
11 peace, health and safety, an emergency is declared to exist, and this 2025 Act takes effect
12 on its passage.
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