

# House Bill 4062

Sponsored by Representative BARNHART; Representatives KENY-GUYER, PILUSO, TAYLOR, Senator BURDICK  
(Pre-session filed.)

## 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**.

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; amending ORS 431A.153  
3 and 431A.155; prescribing an effective date; and providing for revenue raising that requires ap-  
4 proval by a three-fifths majority.

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

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

7 (1) **"Inhalant delivery system" has the meaning given that term in ORS 431A.175.**

8 (2)(a) **"Inhalant form nicotine" means a substance in any form sold for the purpose of**  
9 **being vaporized or aerosolized in an inhalant delivery system to deliver nicotine in the form**  
10 **of a vapor or aerosol to a person inhaling from the system or a component of the system.**

11 (b) **"Inhalant form nicotine" does not include:**

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

15 (B) **Tobacco products, as defined in ORS 323.500.**

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

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

20 **SECTION 2. (1) A tax is hereby imposed upon the retail sale of inhalant delivery systems**  
21 **and inhalant form nicotine in this state. The tax imposed by this section is intended to be a**  
22 **direct tax on the consumer, for which payment upon retail sale is required to achieve con-**  
23 **venience and facility in the collection and administration of the tax. The tax shall be col-**  
24 **lected at the point of sale of an inhalant delivery system or of an inhalant form nicotine item**  
25 **by a retailer at the time at which the sale occurs.**

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

28 (3) **If the tax imposed under this section does not equal an amount calculable to a whole**

**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 cent, the tax shall be equal to the next higher whole cent.

2 (4) The tax imposed under this section does not apply to batteries, chargers or other  
3 accessories for an inhalant delivery system typically sold separately from the inhalant de-  
4 livery system.

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

7 **SECTION 3.** (1) Except as otherwise provided in sections 1 to 14 of this 2016 Act, the tax  
8 imposed under section 2 of this 2016 Act shall be collected and remitted by each retailer  
9 making a retail sale of an inhalant delivery system or an inhalant form nicotine item. The  
10 amount of the tax shall be separately stated on an invoice, receipt or similar document that  
11 the retailer provides to the consumer, or shall be otherwise disclosed to the consumer. The  
12 tax shall be paid to the Department of Revenue not more than 30 days after the last day of  
13 each calendar quarter for the previous calendar quarter.

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

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

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

21 (5)(a) The department for good cause may extend the time for making any return under  
22 this section. The extension may be granted at any time if a written request is filed with the  
23 department during or prior to the period for which the extension may be granted. The de-  
24 partment may not grant an extension of more than 30 days.

25 (b) When the time for filing a return is extended at the request of a retailer, interest  
26 shall be added at the rate established under ORS 305.220 for each month, or fraction of a  
27 month, from the time the return was originally required to be filed to the time of payment.

28 **SECTION 4.** For purposes of section 2 of this 2016 Act, a retail sale of an inhalant deliv-  
29 ery system or an inhalant form nicotine item:

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

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

35 **SECTION 5.** (1) Any person engaging or seeking to engage in the sale of inhalant delivery  
36 systems or inhalant form nicotine as a retailer shall file an application to register as a  
37 retailer with the Department of Revenue. The application shall be on a form prescribed by  
38 the department.

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

41 **SECTION 6.** (1) Upon receipt of a completed application under section 5 of this 2016 Act,  
42 the Department of Revenue may register the applicant as a retailer.

43 (2) The department may not issue a registration to an applicant if the department de-  
44 termines or has reason to believe that the applicant will not comply with any provision of  
45 state or federal law.

1 (3) Notwithstanding ORS 305.280, a decision by the department not to issue a registration  
2 to an applicant may be appealed by the applicant to the magistrate division of the Oregon  
3 Tax Court within 30 days after the date of the decision of the department in the manner  
4 prescribed in ORS 305.404 to 305.560.

5 (4) For purposes of this section, an application to renew a registration as a retailer shall  
6 be considered the same as an application for initial registration.

7 **SECTION 7.** For the purpose of compensating retailers for expenses incurred in collecting  
8 the tax imposed under section 2 of this 2016 Act, each retailer is permitted to deduct and  
9 retain \_\_\_\_\_ percent of the amount of tax that is collected by the retailer from all retail  
10 sales conducted by the retailer in this state.

11 **SECTION 8.** The Department of Revenue shall administer and enforce sections 1 to 14  
12 of this 2016 Act. The department is authorized to establish rules and procedures for the im-  
13 plementation and enforcement of sections 1 to 14 of this 2016 Act that are consistent with  
14 sections 1 to 14 of this 2016 Act and considered necessary and appropriate, including policies  
15 and procedures for seizing inhalant delivery systems or inhalant form nicotine if a retailer  
16 is not compliant with sections 1 to 14 of this 2016 Act.

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

21 **SECTION 10.** Except as otherwise provided in sections 1 to 14 of this 2016 Act or when  
22 the context requires otherwise, the provisions of ORS chapters 305 and 314 as to the audit  
23 and examination of returns, periods of limitations, determination of and notices of deficien-  
24 cies, assessments, liens, delinquencies, claims for refund and refunds, conferences, appeals  
25 to the Oregon Tax Court, stay of collection pending appeal, confidentiality of returns and the  
26 penalties relating thereto, and the procedures relating thereto, apply to the determinations  
27 of taxes, penalties and interest under sections 1 to 14 of this 2016 Act.

28 **SECTION 11.** If, under sections 1 to 14 of this 2016 Act, the Department of Revenue is  
29 not satisfied with the return or the amount of tax paid to the state by any person, the de-  
30 partment may compute and determine the amount required to be paid upon the basis of the  
31 facts contained in the return or upon the basis of any information in the department's pos-  
32 session or that may come into the department's possession. One or more deficiency deter-  
33 minations may be made of the amount due for one or for more than one period. Notices of  
34 deficiency shall be given and interest on deficiencies shall be computed as provided in ORS  
35 305.265. Subject to ORS 314.421 and 314.423, liens for taxes or deficiencies arise at the time  
36 of assessment, continue until the taxes, interest and penalties are fully satisfied and may be  
37 recorded and collected in the manner provided for the collection of delinquent income taxes.

38 **SECTION 12.** If the Department of Revenue believes that the collection of any tax im-  
39 posed under sections 1 to 14 of this 2016 Act or any amount of the tax required to be paid  
40 to the state, or any determination thereof, will be jeopardized by delay, the department shall  
41 make a determination of the tax or amount of tax required to be collected, noting that fact  
42 upon the determination. The amount determined is immediately due and payable, and the  
43 department shall assess the taxes, notify the person and proceed to collect the tax in the  
44 same manner and using the same procedures as for the collection of income taxes under ORS  
45 314.440.

1        **SECTION 13.** Any person subject to the tax imposed under section 2 of this 2016 Act and  
 2 from whom the tax has not been collected shall, on or before the 20th day of the month fol-  
 3 lowing the close of the calendar quarter in which the tax is due, file with the Department  
 4 of Revenue a report of the amount of tax due from the consumer in the preceding quarter  
 5 in the detail and form as prescribed by the department, submitting with the report the  
 6 amount of tax due.

7        **SECTION 14.** All moneys received by the Department of Revenue under sections 1 to 14  
 8 of this 2016 Act shall be deposited in the State Treasury and credited to a suspense account  
 9 established under ORS 293.445. The department may pay expenses for administration and  
 10 enforcement of sections 1 to 14 of this 2016 Act out of moneys received from the taxes im-  
 11 posed under section 2 of this 2016 Act. Amounts necessary to pay administrative and  
 12 enforcement expenses are continuously appropriated to the department from the suspense  
 13 account. After the payment of administrative and enforcement expenses and refunds or  
 14 credits arising from erroneous overpayments, the balance of the moneys shall be credited  
 15 as follows:

- 16        (1) Ten percent to the Tobacco Use Reduction Account established under ORS 431A.153.
- 17        (2) Ninety percent to the General Fund.

18        **SECTION 15.** Sections 1 to 14 of this 2016 Act apply to inhalant delivery systems and  
 19 inhalant form nicotine sold on or after January 1, 2017.

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

21        431A.153. (1) There is established in the General Fund the Tobacco Use Reduction Account.

22        (2) Amounts credited to the Tobacco Use Reduction Account are continuously appropriated to  
 23 the Oregon Health Authority for the funding of prevention and education programs designed to re-  
 24 duce cigarette and tobacco use **and use of inhalant form nicotine.**

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

26        431A.155. The Oregon Health Authority shall develop and adopt rules for awarding grants to  
 27 programs for educating the public on the risk of tobacco use, including but not limited to:

- 28        (1) Educating children on the health hazards and consequences of tobacco use **and use of**  
 29 **inhalant form nicotine;** and
- 30        (2) Promoting enrollment in smoking cessation programs and programs that prevent smoking-  
 31 related diseases including cancer and other diseases of the heart, lungs and mouth.

32        **SECTION 18.** The amendments to ORS 431A.153 and 431A.155 by sections 16 and 17 of this  
 33 2016 Act apply to moneys credited and grants awarded on or after January 1, 2017.

34        **SECTION 19.** This 2016 Act takes effect on the 91st day after the date on which the 2016  
 35 regular session of the Seventy-eighth Legislative Assembly adjourns sine die.