

LC 455
2023 Regular Session
44300-035
10/26/22 (SCT/ps)

D R A F T

SUMMARY

Prohibits distributing, serving, selling, attempting to sell or allowing to be sold flavored inhalant delivery system product and flavored tobacco product. Defines “flavored inhalant delivery system product” and “flavored tobacco product.”

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

Relating to public health; creating new provisions; amending ORS 431A.175; and prescribing an effective date.

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

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

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

(a) “Characterizing flavor” means an artificial or natural taste, flavor, aroma or smell, other than the taste, flavor, aroma or smell of tobacco, that is distinguishable or distinctive prior to or during consumption. An express or implied public statement or claim made or disseminated by the manufacturer of a product, or by a person authorized or permitted by the manufacturer to make or disseminate public statements concerning the product, that the product has or produces a taste, flavor, aroma or smell other than the taste, flavor, aroma or smell of tobacco is presumptive evidence that the product has a characterizing flavor.

(b) “Flavored inhalant delivery system product” means an inhalant delivery system product manufactured to impart a characterizing fla-

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.

vor.

(c) “Flavored tobacco product” means a tobacco product manufactured to impart a characterizing flavor.

[(a)(A)] **(d)(A)** “Inhalant delivery system” means:

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

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

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

(i) 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; and

(ii) Tobacco products.

[(b)] **(e)** “Tobacco products” means:

(A) Any product that contains, is made from or is derived from tobacco or natural or synthetic nicotine, such as bidis, cigars, cheroots, stogies, periques, granulated, plug cut, crimp cut, ready rubbed and other smoking tobacco, snuff, snuff flour, cavendish, plug and twist tobacco, fine-cut and other chewing tobaccos, shorts, refuse scraps, clippings, cuttings and sweepings of tobacco and other forms of tobacco, prepared in a manner that makes the tobacco suitable for chewing or smoking in a pipe or otherwise, [*or*] for both chewing and smoking, **or for absorbing or ingesting by any other means;**

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

(C) A device that:

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

(ii) Has not 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.

(2) It is unlawful:

(a) To violate ORS 167.750.

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

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

(d) To distribute, sell or allow to be sold an inhalant delivery system if the inhalant delivery system is not labeled in accordance with rules adopted by the authority.

(e) To distribute, sell or allow to be sold an inhalant delivery system if the inhalant delivery system is not packaged in child-resistant safety packaging, as required by the authority by rule.

(f) To distribute, sell or allow to be sold an inhalant delivery system if the inhalant delivery system is packaged in a manner that is attractive to minors, as determined by the authority by rule.

(g) To distribute, sell or allow to be sold cigarettes in any form other than a sealed package that contains at least 20 cigarettes.

(h) To distribute, serve, sell, attempt to sell or allow to be sold a flavored inhalant delivery system product or flavored tobacco product in this state.

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

NOTICE

1 The sale of tobacco in any form to persons under 21 years of age is pro-
2 hibited by law. Any person who sells, or allows to be sold, tobacco to a
3 person under 21 years of age is in violation of Oregon law.

4 _____
5 (4) Rules adopted under subsection (2)(d), (e) and (f) of this section must
6 be consistent with any regulation adopted by the United States Food and
7 Drug Administration related to labeling or packaging requirements for
8 inhalant delivery systems.

9 **SECTION 2. (1) The amendments to ORS 431A.175 by section 1 of**
10 **this 2023 Act become operative on January 1, 2024.**

11 **(2) The Oregon Health Authority may take any action before the**
12 **operative date specified in subsection (1) of this section that is neces-**
13 **sary to enable the authority to exercise, on or after the operative date**
14 **specified in subsection (1) of this section, all of the duties, functions**
15 **and powers conferred on the authority by the amendments to ORS**
16 **431A.175 by section 1 of this 2023 Act.**

17 **SECTION 3. This 2023 Act takes effect on the 91st day after the date**
18 **on which the 2023 regular session of the Eighty-second Legislative**
19 **Assembly adjourns sine die.**