

**A-Engrossed**  
**Senate Bill 185**

Ordered by the Senate January 28  
Including Senate Amendments dated January 28

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Attorney General Ellen Rosenblum)

**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.

Prohibits person licensed to distribute cigarettes or tobacco products from affixing Oregon tax stamps or purchasing untaxed roll-your-own tobacco unless person certifies to Attorney General that cigarettes or tobacco was purchased directly from manufacturer or importer. Allows tobacco product manufacturer that elects to make payments to qualified escrow fund to assign moneys in qualified escrow fund to state.

Declares emergency, effective on passage.

**A BILL FOR AN ACT**

1  
2 Relating to the Master Settlement Agreement; creating new provisions; amending ORS 180.405,  
3 180.440 and 323.800; and declaring an emergency.

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

5 **SECTION 1.** ORS 323.800 is amended to read:

6 323.800. As used in ORS 323.800 to 323.806:

7 (1) "Adjusted for inflation" means increased in accordance with the formula for inflation ad-  
8 justment set forth in Exhibit C to the Master Settlement Agreement.

9 (2)(a) "Affiliate" means a person who directly or indirectly owns or controls, is owned or con-  
10 trolled by, or is under common ownership or control with, another person.

11 (b) For purposes of defining "affiliate":

12 (A) The terms "owns," "is owned" and "ownership" mean ownership of an equity interest, or the  
13 equivalent thereof, of 10 percent or more; and

14 (B) The term "person" means an individual, partnership, committee, association, corporation or  
15 any other organization or group of persons.

16 (3) "Allocable share" means Allocable Share as that term is defined in the Master Settlement  
17 Agreement.

18 (4)(a) "Cigarette" means any product that contains nicotine, is intended to be burned or heated  
19 under ordinary conditions of use, and consists of or contains:

20 (A) Any roll of tobacco wrapped in paper or in any substance not containing tobacco;

21 (B) Tobacco, in any form, that is functional in the product and that because of its appearance,  
22 the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or  
23 purchased by, consumers as a cigarette; or

24 (C) Any roll of tobacco wrapped in any substance containing tobacco that, because of its ap-  
25 pearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered

**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 to, or purchased by, consumers as a cigarette described in subparagraph (A) of this paragraph.

2 (b) The term “cigarette” includes “roll-your-own tobacco” (i.e., tobacco that, because of its ap-  
3 pearance, type, packaging or labeling, is suitable for use and likely to be offered to, or purchased  
4 by, consumers as tobacco for making cigarettes). For purposes of this paragraph, 0.09 ounces of  
5 roll-your-own tobacco shall constitute one individual cigarette.

6 (5) “Importer” means:

7 (a) Any person in the United States to whom cigarettes are shipped or consigned, if federal ex-  
8 cise tax has not been paid on the cigarettes, and if the cigarettes are manufactured in a foreign  
9 country;

10 (b) Any person who removes cigarettes for sale or consumption in the United States from a  
11 customs bonded manufacturing warehouse; or

12 (c) Any person who smuggles or otherwise unlawfully brings cigarettes into the United States.

13 (6) “Master Settlement Agreement” means the settlement agreement (and related documents)  
14 entered into on November 23, 1998, by the State of Oregon and leading United States tobacco  
15 product manufacturers.

16 **(7) “Qualified escrow agreement” means the escrow agreement described in ORS 180.415.**

17 [(7)] **(8)** “Qualified escrow fund” means an escrow arrangement with a federally or state char-  
18 tered financial institution having no affiliation with any tobacco product manufacturer and having  
19 assets of at least \$1 billion where such arrangement requires that such financial institution hold the  
20 escrowed funds’ principal for the benefit of releasing parties and prohibits the tobacco product  
21 manufacturer who is placing the funds into escrow from using, accessing or directing the use of the  
22 escrowed funds’ principal except as consistent with ORS 323.806 (1)(b)(B).

23 [(8)] **(9)** “Released claims” means Released Claims as that term is defined in the Master Settle-  
24 ment Agreement.

25 [(9)] **(10)** “Releasing parties” means Releasing Parties as that term is defined in the Master  
26 Settlement Agreement.

27 [(10)(a)] **(11)(a)** “Tobacco product manufacturer” means an entity that, after October 23, 1999,  
28 directly (and not exclusively through any affiliate):

29 (A) Manufactures cigarettes anywhere that such manufacturer intends to be sold in the United  
30 States, including cigarettes intended to be sold in the United States through an importer (except  
31 where such importer is an Original Participating Manufacturer (as that term is defined in the  
32 Master Settlement Agreement) that will be responsible for the payments under the Master Settle-  
33 ment Agreement with respect to such cigarettes as a result of the provisions of subsection II(mm)  
34 of the Master Settlement Agreement and that pays the taxes specified in subsection II(z) of the  
35 Master Settlement Agreement, and provided that the manufacturer of such cigarettes does not  
36 market or advertise such cigarettes in the United States);

37 (B) Is the first purchaser anywhere for resale in the United States of cigarettes manufactured  
38 anywhere that the manufacturer does not intend to be sold in the United States; or

39 (C) Becomes a successor of an entity described in subparagraph (A) or (B) of this paragraph.

40 (b) The term “tobacco product manufacturer” does not include an affiliate of a tobacco product  
41 manufacturer unless such affiliate is itself a tobacco product manufacturer under paragraph (a)(A),  
42 (B) or (C) of this subsection.

43 [(11)(a)] **(12)(a)** “Units sold” means the number of individual cigarettes sold in the State of  
44 Oregon by the applicable tobacco product manufacturer (whether directly or through a distributor,  
45 retailer or similar intermediary or intermediaries) during the year in question that are required to

1 bear the excise tax stamp of this state or that are sold as “roll-your-own tobacco” on which excise  
2 tax is due. The Department of Revenue and the Attorney General may promulgate such rules as are  
3 necessary to ascertain the number of units sold of such tobacco product manufacturer for each year.

4 (b) “Units sold” does not include cigarettes neither the purchase nor the use of which the state  
5 may tax under the Constitution or statutes of the United States.

6 **SECTION 2.** ORS 180.405 is amended to read:

7 180.405. As used in ORS 180.400 to 180.455 and 323.106:

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

14 (2) “Cigarette” has the meaning given that term in ORS 323.800.

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

17 (4) “Importer” has the meaning given that term in ORS 323.800.

18 (5) “Master Settlement Agreement” has the meaning given that term in ORS 323.800.

19 (6) “Nonparticipating manufacturer” means any tobacco product manufacturer that is not a  
20 participating manufacturer.

21 (7) “Participating manufacturer” has the meaning given that term in section II(jj) of the Master  
22 Settlement Agreement.

23 (8) “Qualified escrow fund” has the meaning given that term in ORS 323.800.

24 (9) “Retailer” means a person that sells cigarettes or smokeless tobacco products to individuals  
25 for personal consumption.

26 (10) “Smokeless tobacco products” has the meaning given that term in ORS 323.810.

27 (11) “Tobacco product manufacturer” has the meaning given that term in ORS 323.800.

28 (12) “Units sold” has the meaning given that term in ORS 323.800.

29 **SECTION 3.** ORS 180.440 is amended to read:

30 180.440. (1) A person may not:

31 (a) Affix a stamp to a package or other container of cigarettes of a tobacco product manufac-  
32 turer or brand family that is not included in the directory developed under ORS 180.425;

33 (b) Sell, offer for sale or possess for sale cigarettes of a tobacco product manufacturer or brand  
34 family that the person acquired at a time when the tobacco product manufacturer or brand family  
35 was not included in the directory developed under ORS 180.425; or

36 (c) Possess in this state for sale in another jurisdiction cigarettes of a tobacco product man-  
37 ufacturer or brand family that the person acquired at a time when the tobacco product manufacturer  
38 or brand family was not included in the directory developed under ORS 180.425 and was not in  
39 compliance with the Master Settlement Agreement qualifying statute in the other jurisdiction or  
40 with statutes that supplement the qualifying statute in that jurisdiction.

41 (2) A person who sells, offers for sale, distributes, acquires, holds, owns, possesses, transports,  
42 imports or causes to be imported cigarettes that the person knows or should know are intended for  
43 sale or distribution in violation of subsection (1) of this section commits a Class A misdemeanor.

44 **(3) A distributor may not affix a stamp to a package or other container of cigarettes or**  
45 **purchase untaxed roll-your-own tobacco unless the distributor certifies to the Attorney**

1 General, in a manner prescribed by the Attorney General, that the distributor has purchased  
2 the cigarettes or roll-your-own tobacco directly from the tobacco product manufacturer or  
3 from the first importer of the cigarettes or roll-your-own tobacco into the United States.

4 **SECTION 4.** Section 5 of this 2019 Act is added to and made a part of ORS 323.800 to  
5 323.806.

6 **SECTION 5.** (1) Notwithstanding the provisions of ORS 323.806 (2)(b), a tobacco product  
7 manufacturer that elects to place funds into a qualified escrow fund pursuant to ORS 323.806  
8 (1)(b) may assign to the state the tobacco product manufacturer's interest in any funds in  
9 the qualified escrow fund.

10 (2) An assignment executed pursuant to subsection (1) of this section is permanent and  
11 irrevocable and applies to all moneys in the qualified escrow fund established for the benefit  
12 of the state, including all moneys deposited into the qualified escrow fund before the tobacco  
13 product manufacturer executes the assignment, all moneys deposited into the qualified  
14 escrow fund after the tobacco product manufacturer executes the assignment and any in-  
15 terest or other appreciation earned on any moneys in the qualified escrow fund.

16 (3) The parties to a qualified escrow agreement may amend the agreement for the pur-  
17 poses of executing an assignment pursuant to subsection (1) of this section.

18 (4) An assignment executed pursuant to subsection (1) of this section must be in writing  
19 and be signed by the assignee and the assignor or by an authorized agent or representative  
20 thereof. An assignment that is duly executed becomes enforceable after a copy of the as-  
21 signment is delivered to the Attorney General and the financial institution where the quali-  
22 fied escrow fund is maintained.

23 (5) Notwithstanding the provisions of ORS 323.806 (1)(b), funds assigned to the state shall  
24 be deposited in the Tobacco Settlement Funds Account established pursuant to ORS 293.537.

25 (6) Nothing in this section operates to:

26 (a) Waive the right of the state to bring a claim against a tobacco product manufacturer  
27 as described in ORS 323.806 (2)(b), except that any funds assigned to the state under this  
28 section shall be credited on a dollar-for-dollar basis against any judgment or settlement de-  
29 scribed in ORS 323.806 (2)(b); or

30 (b) Relieve a tobacco product manufacturer from any obligation or duty imposed pursu-  
31 ant to ORS 180.400 to 180.455 or 323.800 to 323.806.

32 (7) The Attorney General may adopt rules necessary to implement this section.

33 (8) A financial institution in which a qualified escrow fund is maintained may file a peti-  
34 tion in circuit court for an order authorizing a transfer of funds in the qualified escrow fund  
35 to the state. The petition must state the factual and legal bases for the relief sought. The  
36 financial institution shall serve the petition on the Attorney General at the time the petition  
37 is filed. The court may order the transfer of funds in the fund to the Tobacco Settlement  
38 Funds Account pursuant to this section.

39 **SECTION 6.** This 2019 Act being necessary for the immediate preservation of the public  
40 peace, health and safety, an emergency is declared to exist, and this 2019 Act takes effect  
41 on its passage.