

Senate Bill 185

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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**.

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

27 (b) The term "cigarette" includes "roll-your-own tobacco" (i.e., tobacco that, because of its ap-
28 pearance, type, packaging or labeling, is suitable for use and likely to be offered to, or purchased

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 by, consumers as tobacco for making cigarettes). For purposes of this paragraph, 0.09 ounces of
2 roll-your-own tobacco shall constitute one individual cigarette.

3 (5) "Importer" means:

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

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

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

10 (6) "Master Settlement Agreement" means the settlement agreement (and related documents)
11 entered into on November 23, 1998, by the State of Oregon and leading United States tobacco
12 product manufacturers.

13 (7) "Qualified escrow agreement" means the escrow agreement described in ORS 180.415.

14 [(7)] (8) "Qualified escrow fund" means an escrow arrangement with a federally or state char-
15 tered financial institution having no affiliation with any tobacco product manufacturer and having
16 assets of at least \$1 billion where such arrangement requires that such financial institution hold the
17 escrowed funds' principal for the benefit of releasing parties and prohibits the tobacco product
18 manufacturer who is placing the funds into escrow from using, accessing or directing the use of the
19 escrowed funds' principal except as consistent with ORS 323.806 (1)(b)(B).

20 [(8)] (9) "Released claims" means Released Claims as that term is defined in the Master Settle-
21 ment Agreement.

22 [(9)] (10) "Releasing parties" means Releasing Parties as that term is defined in the Master
23 Settlement Agreement.

24 [(10)(a)] (11)(a) "Tobacco product manufacturer" means an entity that, after October 23, 1999,
25 directly (and not exclusively through any affiliate):

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

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

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

37 (b) The term "tobacco product manufacturer" does not include an affiliate of a tobacco product
38 manufacturer unless such affiliate is itself a tobacco product manufacturer under paragraph (a)(A),
39 (B) or (C) of this subsection.

40 [(11)(a)] (12)(a) "Units sold" means the number of individual cigarettes sold in the State of
41 Oregon by the applicable tobacco product manufacturer (whether directly or through a distributor,
42 retailer or similar intermediary or intermediaries) during the year in question that are required to
43 bear the excise tax stamp of this state or that are sold as "roll-your-own tobacco" on which excise
44 tax is due. The Department of Revenue and the Attorney General may promulgate such rules as are
45 necessary to ascertain the number of units sold of such tobacco product manufacturer for each year.

1 (b) "Units sold" does not include cigarettes neither the purchase nor the use of which the state
2 may tax under the Constitution or statutes of the United States.

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

4 180.405. As used in ORS 180.400 to 180.455 and 323.106:

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

11 (2) "Cigarette" has the meaning given that term in ORS 323.800.

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

14 (4) "Importer" has the meaning given that term in ORS 323.800.

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

16 (6) "Nonparticipating manufacturer" means any tobacco product manufacturer that is not a
17 participating manufacturer.

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

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

21 (9) "Retailer" means a person that sells cigarettes or smokeless tobacco products to individuals
22 for personal consumption.

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

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

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

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

27 180.440. (1) A person may not:

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

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

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

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

41 **(3) A distributor may not affix a stamp to a package or other container of cigarettes or**
42 **purchase untaxed roll-your-own tobacco unless the distributor certifies to the Attorney**
43 **General, in a manner prescribed by the Attorney General, that the distributor has purchased**
44 **the cigarettes or roll-your-own tobacco directly from the tobacco product manufacturer or**
45 **from the first importer of the cigarettes or roll-your-own tobacco into the United States.**

1 **SECTION 4.** Section 5 of this 2019 Act is added to and made a part of ORS 323.800 to
 2 **323.806.**

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

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

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

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

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

22 (6) Nothing in this section operates to:

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

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

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

30 (8) If the financial institution described in ORS 180.415 tenders funds in a qualified escrow
 31 fund to a court pursuant to the terms of a qualified escrow agreement, the court may order
 32 that the funds are assigned to the state pursuant to this section.

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