

Enrolled
House Bill 2672

Sponsored by Representatives GELSER, HUNT; Senator MORRISETTE

CHAPTER

AN ACT

Relating to distribution of tobacco products; creating new provisions; amending ORS 131.602, 166.715, 180.205, 323.500, 323.505, 323.520, 323.530, 323.706 and 646.608; appropriating money; prescribing an effective date; and providing for revenue raising that requires approval by a three-fifths majority.

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

SECTION 1. ORS 323.500 is amended to read:

323.500. As used in ORS 323.500 to 323.645, unless the context otherwise requires:

(1) "Business" means any trade, occupation, activity or enterprise engaged in for the purpose of selling or distributing tobacco products in this state.

(2) "Cigar" means a roll for smoking that is of any size or shape and that is made wholly or in part of tobacco, irrespective of whether the tobacco is pure or flavored, adulterated or mixed with any other ingredient, if the roll has a wrapper made wholly or in greater part of tobacco and if 1,000 of these rolls collectively weigh more than three pounds. "Cigar" does not include a cigarette, as defined in ORS 323.010.

(3) "Consumer" means any person who purchases tobacco products in this state for the person's use or consumption or for any purpose other than for reselling the tobacco products to another person.

(4) "Contraband tobacco products" means tobacco products or packages containing tobacco products:

(a) That do not comply with the requirements of ORS 323.500 to 323.645;

(b) That do not comply with the requirements of the tobacco products tax laws of the federal government or of other states; [or]

(c) That bear trademarks that are counterfeit under ORS 647.135 or other state or federal trademark laws[.]; or

(d) That have been sold, offered for sale or possessed for sale in this state in violation of section 13 of this 2009 Act.

(5) "Department" means the Department of Revenue.

(6) "Distribute" means:

(a) Bringing, or causing to be brought, into this state from without this state tobacco products for sale, storage, use or consumption;

(b) Making, manufacturing or fabricating tobacco products in this state for sale, storage, use or consumption in this state;

(c) Shipping or transporting tobacco products to retail dealers in this state, to be sold, stored, used or consumed by those retail dealers;

(d) Storing untaxed tobacco products in this state that are intended to be for sale, use or consumption in this state;

(e) Selling untaxed tobacco products in this state; or

(f) As a consumer, being in possession of untaxed tobacco products in this state.

(7) "Distributor" means:

(a) Any person engaged in the business of selling tobacco products in this state who brings, or causes to be brought, into this state from without the state any tobacco products for sale;

(b) Any person who makes, manufactures or fabricates tobacco products in this state for sale in this state;

(c) Any person engaged in the business of selling tobacco products without this state who ships or transports tobacco products to retail dealers in this state, to be sold by those retail dealers;

(d) Any person, including a retail dealer, who sells untaxed tobacco products in this state; or

(e) A consumer in possession of untaxed tobacco products in this state.

(8) "Manufacturer" means a person who manufactures tobacco products for sale.

(9) "**Moist snuff**" means:

(a) **Any finely cut, ground or powdered tobacco that is not intended to be smoked or placed in a nasal cavity; or**

(b) **Any other product containing tobacco that is intended or expected to be consumed without being combusted.**

[(9)] (10) "Place of business" means any place where tobacco products are sold or where tobacco products are manufactured, stored or kept for the purpose of sale or consumption, including any vessel, vehicle, airplane, train or vending machine.

[(10)] (11) "Retail dealer" means any person who is engaged in the business of selling or otherwise dispensing tobacco products to consumers. The term also includes the operators of or recipients of revenue from all places such as smoke shops, cigar stores and vending machines, where tobacco products are made or stored for ultimate sale to consumers.

[(11)] (12) "Sale" means any transfer, exchange or barter, in any manner or by any means, for a consideration, and includes and means all sales made by any person. It includes a gift by a person engaged in the business of selling tobacco products, for advertising, as a means of evading the provisions of ORS 323.500 to 323.645, or for any other purpose.

[(12)] (13) "Taxpayer" includes a distributor or other person required to pay a tax imposed under ORS 323.500 to 323.645.

[(13)] (14) "Tobacco products" means cigars, cheroots, stogies, periques, granulated, plug cut, crimp cut, ready rubbed and other smoking tobacco, snuff, snuff flour, **moist snuff**, cavendish, plug and twist tobacco, fine-cut and other chewing tobaccos, shorts, refuse scraps, clippings, cuttings and sweepings of tobacco and other kinds and forms of tobacco, prepared in such manner as to be suitable for chewing or smoking in a pipe or otherwise, or both for chewing and smoking, but shall not include cigarettes as defined in ORS 323.010.

[(14)] (15) "Untaxed tobacco products" means tobacco products for which the tax required under ORS 323.500 to 323.645 has not been paid.

[(15)] (16) "Wholesale sales price" means the price paid for untaxed tobacco products to or on behalf of a seller by a purchaser of the untaxed tobacco products.

SECTION 2. ORS 323.505 is amended to read:

323.505. (1) A tax is hereby imposed upon the distribution of all tobacco products in this state. The tax imposed by this section is intended to be a direct tax on the consumer, for which payment upon distribution is required to achieve convenience and facility in the collection and administration of the tax. The tax shall be imposed on a distributor at the time the distributor distributes tobacco products.

(2) The tax imposed under this section shall be imposed at the rate of:

(a) Sixty-five percent of the wholesale sales price of cigars, but not to exceed 50 cents per cigar;
[or]

(b) One dollar and seventy-eight cents per ounce based on the net weight determined by the manufacturer, in the case of moist snuff, except that the minimum tax under this paragraph is \$2.14 per retail container; or

~~[(b)]~~ (c) Sixty-five percent of the wholesale sales price of all tobacco products that are not cigars or moist snuff.

(3) For reporting periods beginning on or after July 1, 2019, the rates of tax applicable to moist snuff under subsection (2)(b) of this section shall be adjusted for each biennium according to the cost-of-living adjustment for the calendar year. The Department of Revenue shall recompute the rates for each biennium by adding to the rates in subsection (2)(b) of this section the product obtained by multiplying the rates in subsection (2)(b) of this section by a factor that is equal to 0.25 multiplied by the percentage (if any) by which the monthly averaged U.S. City Average Consumer Price Index for the 12 consecutive months ending August 31 of the prior calendar year exceeds the monthly averaged U.S. City Average Consumer Price Index for the 12 consecutive months ending August 31, 2017.

~~[(3)]~~ (4) If the tax imposed under this section does not equal an amount calculable to a whole cent, the tax shall be equal to the next higher whole cent. However, the amount remitted to the Department of Revenue by the taxpayer for each quarter shall be equal only to 98.5 percent of the total taxes due and payable by the taxpayer for the quarter.

~~[(4)]~~ (5) No tobacco product shall be subject to the tax if the base product or other intermediate form thereof has previously been taxed under this section.

NOTE: Sections 3 and 4 were deleted by amendment. Subsequent sections were not renumbered.

SECTION 5. Sections 6 to 16 of this 2009 Act are added to and made a part of ORS chapter 180.

SECTION 6. The Legislative Assembly finds that violations of sections 18 to 20 of this 2009 Act threaten the integrity of the Smokeless Tobacco Master Settlement Agreement, the fiscal soundness of the state and the public health. The Legislative Assembly finds that enacting procedural enhancements will aid the enforcement of sections 18 to 20 of this 2009 Act and thereby safeguard the integrity of the Smokeless Tobacco Master Settlement Agreement, the fiscal soundness of the state and the public health.

SECTION 7. As used in sections 6 to 16 of this 2009 Act:

(1) "Distributor" means a person who is licensed under ORS 323.520 and any other person who is a distributor for the purposes of ORS 323.500 to 323.645.

(2) "Nonparticipating manufacturer" means any tobacco product manufacturer that is not a participating manufacturer.

(3) "Participating manufacturer" has the meaning given that term in section II(ee) of the Smokeless Tobacco Master Settlement Agreement.

(4) "Qualified escrow fund" has the meaning given that term in section 18 of this 2009 Act.

(5) "Smokeless Tobacco Master Settlement Agreement" has the meaning given that term in section 18 of this 2009 Act.

(6) "Smokeless tobacco products" has the meaning given that term in section 18 of this 2009 Act.

(7) "Tobacco product manufacturer" has the meaning given that term in section 18 of this 2009 Act.

(8) "Units sold" has the meaning given that term in section 18 of this 2009 Act.

SECTION 8. (1) Every tobacco product manufacturer whose smokeless tobacco products are sold in this state, whether directly or through a distributor, retailer or similar intermediary, shall execute and deliver a certification to the Attorney General certifying that, as of the date of the certification, the tobacco product manufacturer is either:

(a) A participating manufacturer; or

(b) In full compliance with section 20 of this 2009 Act and with rules adopted under sections 14 and 15 of this 2009 Act.

(2) The certification required by subsection (1) of this section shall be on a form prescribed by the Attorney General and shall be submitted no later than April 30 each year. The form shall permit the tobacco product manufacturer to indicate the electronic mail address to which the Attorney General may send notice of changes in the directory developed under section 10 of this 2009 Act if the tobacco product manufacturer elects to receive electronic mail notice.

SECTION 9. In the certification required by section 8 of this 2009 Act, a nonparticipating manufacturer shall further certify:

(1) That the nonparticipating manufacturer is registered to do business in the State of Oregon or has appointed a resident agent for service of process and provided notice of the appointment as required by section 11 of this 2009 Act.

(2) That the nonparticipating manufacturer:

(a) Has established and continues to maintain a qualified escrow fund; and

(b) Has executed a qualified escrow agreement that has been reviewed and approved by the Attorney General and that governs the qualified escrow fund. The Attorney General shall adopt rules defining the form and content of a model escrow agreement. A nonparticipating manufacturer that executes the model escrow agreement is deemed to have satisfied the requirement that it use a form of escrow agreement that has been reviewed and approved by the Attorney General.

(3)(a) The name, address and telephone number of the financial institution where the nonparticipating manufacturer has established the qualified escrow fund required by section 20 of this 2009 Act;

(b) The account number of the qualified escrow fund and any subaccount number for the State of Oregon;

(c) The amount the nonparticipating manufacturer placed in the qualified escrow fund for smokeless tobacco products sold in Oregon during the preceding calendar year, the amount and date of each deposit and evidence or verification as may be deemed necessary by the Attorney General to confirm the amounts and dates; and

(d) The amount and date of any withdrawal of funds the nonparticipating manufacturer made at any time from the qualified escrow fund or from any other qualified escrow fund into which the nonparticipating manufacturer ever made escrow payments pursuant to section 20 of this 2009 Act.

SECTION 10. (1) The Attorney General shall develop and make available for public inspection a directory listing all tobacco product manufacturers that have provided current and accurate certifications conforming to the requirements of sections 8 and 9 of this 2009 Act.

(2) The Attorney General may not include or retain in the directory the name of any nonparticipating manufacturer that fails to provide the required certification or whose certification the Attorney General determines is not in compliance with sections 8 and 9 of this 2009 Act, unless the Attorney General has determined that the violation has been cured to the satisfaction of the Attorney General. The Attorney General shall adopt rules defining the criteria by which the Attorney General will exercise the discretion granted by this subsection.

(3) The Attorney General may not include or retain in the directory a nonparticipating manufacturer if the Attorney General concludes that:

(a) Any escrow payment required from the nonparticipating manufacturer pursuant to section 20 of this 2009 Act for any period has not been fully paid into a qualified escrow fund governed by a qualified escrow agreement that has been approved by the Attorney General; or

(b) Any outstanding final judgment against the nonparticipating manufacturer, including interest thereon, for a violation of section 20 of this 2009 Act has not been fully satisfied.

(4) The Attorney General shall update the directory in order to correct mistakes and to add or remove a tobacco product manufacturer to keep the directory in conformity with the requirements of this section. The Attorney General shall update the directory with new tobacco product manufacturers upon receipt of an annual or supplemental certification listing new tobacco product manufacturers if the Attorney General determines that the annual or supplemental certification is in compliance with the requirements of sections 8 and 9 of this 2009 Act. The Attorney General shall make the determination about compliance within 45 days of receipt of the certification.

(5) The Attorney General shall:

(a) Create and maintain a list of persons, including but not limited to tobacco product manufacturers and distributors, that are interested in receiving electronic mail notifications of changes in the directory developed under this section;

(b) Develop a registration form to be completed by persons interested in receiving electronic mail notification of changes in the directory developed under this section that are not otherwise required by section 12 (3) of this 2009 Act or rules adopted under sections 14 and 15 of this 2009 Act to submit their electronic mail addresses to the Attorney General; and

(c) Immediately upon making any change in the directory developed under this section, send electronic mail notices of the change to all persons on the list created under this subsection.

SECTION 11. (1)(a) Any nonresident or foreign nonparticipating manufacturer that has not registered to do business in the State of Oregon as a foreign corporation or business entity shall, as a condition precedent to being listed or retained in the directory developed under section 10 of this 2009 Act, appoint and continuously engage the services of a resident agent in this state. The agent shall act as agent for service of process on whom all process in any action or proceeding against the nonparticipating manufacturer concerning or arising out of the enforcement of this section or section 8, 9, 10, 12, 13 or 20 of this 2009 Act, or rules adopted under sections 14 and 15 of this 2009 Act, may be served in any manner authorized by law. Service on the agent constitutes legal and valid service of process on the nonparticipating manufacturer.

(b) The nonparticipating manufacturer shall provide the name, address, telephone number and proof of the appointment and availability of the agent to the Attorney General.

(2) The nonparticipating manufacturer shall provide notice to the Attorney General at least 30 calendar days prior to termination of the authority of an agent and shall provide proof to the satisfaction of the Attorney General of the appointment of a new agent at least five calendar days prior to the termination of an existing agent appointment. If an agent terminates the agent's appointment, the nonparticipating manufacturer shall notify the Attorney General of the termination within five calendar days and shall include proof to the Attorney General of the appointment of a new agent.

(3) A nonparticipating manufacturer whose smokeless tobacco products are sold in this state who has not appointed or designated an agent as required by this section shall be deemed to have appointed the Secretary of State as the agent and may be proceeded against in courts of this state by service of process upon the Secretary of State. However, the appointment of the Secretary of State as the agent does not satisfy the condition precedent to the nonparticipating manufacturer being listed or retained in the directory.

SECTION 12. (1) Not later than 20 days after the end of each calendar quarter, and more frequently if so directed by the Attorney General, a distributor of smokeless tobacco products subject to the requirements of ORS 323.500 to 323.645 shall report such information as the Attorney General requires to facilitate compliance by tobacco product manufacturers with this section and sections 8, 9, 10, 11, 13 and 20 of this 2009 Act and with rules adopted under sections 14 and 15 of this 2009 Act. The information shall include, but need not be limited to, a list of the total number of units sold of smokeless tobacco products for which the distributor paid the tax due during the previous calendar quarter.

(2) A distributor shall maintain for a period of five years all invoices and documentation of sales of smokeless tobacco products manufactured by nonparticipating manufacturers and any other information relied upon in reporting to the Attorney General under subsection (1) of this section. The distributor shall make the invoices and other documentation available to the Attorney General upon request.

(3) A distributor shall provide the Attorney General with an electronic mail address so that the Attorney General may notify the distributor of the information required under subsections (1) and (7) of this section.

(4) The Attorney General and the Department of Revenue may share with each other information received under this section and sections 8 and 9 of this 2009 Act and ORS 323.520 and may share such information with federal, state or local agencies for purposes of enforcement of this section and sections 8, 9, 10, 11, 13 and 20 of this 2009 Act, rules adopted under sections 14 and 15 of this 2009 Act and corresponding laws of other states.

(5) The Attorney General may at any time require a nonparticipating manufacturer to produce proof from the financial institution in which the nonparticipating manufacturer has established a qualified escrow fund for the purpose of compliance with section 20 of this 2009 Act of the amount of moneys in the fund, exclusive of interest, the amount and date of each deposit and the amount and date of each withdrawal from the fund.

(6) The Attorney General shall, upon request of a nonparticipating manufacturer whose compliance with escrow requirements is at issue, provide the manufacturer with copies of all documents upon which any proposed addition to the escrow is based. Documents required to be provided under this subsection include, but are not necessarily limited to, reports under this section from distributors. The information provided to the manufacturer under this subsection may not include information about products of any tobacco product manufacturer other than the one to whom the information is provided. The information may be used only for the purpose of determining the appropriate amount of escrow deposits.

(7) The Attorney General may require a distributor or a tobacco product manufacturer to submit any additional information, including, but not limited to, samples of the packaging and labeling of each smokeless tobacco product manufactured or distributed, to enable the Attorney General to determine whether a tobacco product manufacturer is in compliance with this section and sections 8, 9, 10, 11, 13 and 20 of this 2009 Act and with rules adopted under sections 14 and 15 of this 2009 Act.

SECTION 13. (1) A person may not:

(a) Sell, offer for sale or possess for sale in this state smokeless tobacco products of a tobacco product manufacturer that is not included in the directory developed under section 10 of this 2009 Act;

(b) Sell, offer for sale or possess for sale in this state smokeless tobacco products of a tobacco product manufacturer that the person acquired at a time when the tobacco product manufacturer was not included in the directory developed under section 10 of this 2009 Act;

(c) Possess in this state for sale in another jurisdiction smokeless tobacco products of a tobacco product manufacturer that the person acquired at a time when the tobacco product manufacturer was not included in the directory developed under section 10 of this 2009 Act and was not in compliance with the Smokeless Tobacco Master Settlement Agreement qualifying statute in the other jurisdiction or with statutes that supplement the qualifying statute in that jurisdiction; or

(d) Distribute, in this state, free samples of smokeless tobacco products:

(A) To persons under 21 years of age; or

(B) In any area, unless access by persons under 21 years of age to that area is prohibited.

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

SECTION 14. (1) To promote compliance with the provisions of sections 8, 9, 10, 11, 12 and 13 of this 2009 Act, the Attorney General may adopt rules requiring a nonparticipating manufacturer to make the escrow deposits required by section 20 of this 2009 Act in quarterly installments during the year in which the sales covered by the deposits are made. The Attorney General may require a nonparticipating manufacturer to produce information sufficient to enable the Attorney General to determine the adequacy of the amount of the installment deposit.

(2) If the Attorney General adopts rules requiring a nonparticipating manufacturer to make escrow deposits in quarterly installments, the rules may also provide that a nonparticipating manufacturer that has been in continuous compliance for one year with sections 8, 9, 10, 11, 12, 13 and 20 of this 2009 Act may make escrow deposits required by section 20 of this 2009 Act in annual payments during the second and subsequent years in which deposits are required.

SECTION 15. (1) A determination by the Attorney General to omit or remove a tobacco product manufacturer from the directory developed under section 10 of this 2009 Act is subject to review in the manner prescribed by ORS 183.484 for judicial review of orders in other than contested cases.

(2) The Attorney General may adopt rules necessary to effect the purposes of sections 6 to 16 of this 2009 Act and ORS 323.520 (3).

(3) In any action brought by the state to enforce section 8, 9, 10, 11, 12, 13 or 20 of this 2009 Act, or any rule adopted under this section or section 14 of this 2009 Act, the state may recover the costs of investigation, expert witness fees, costs of the action and reasonable attorney fees. Moneys recovered under this subsection shall be deposited into the Tobacco Enforcement Fund established under ORS 180.205.

(4) If a court determines that a person has violated any provision of section 8, 9, 10, 11, 12, 13 or 20 of this 2009 Act, or any rule adopted under this section or section 14 of this 2009 Act, the court shall order any profits, gain, gross receipts or other benefit from the violation to be disgorged and paid to the Tobacco Enforcement Fund established under ORS 180.205.

(5) Unless otherwise expressly provided, the remedies or penalties provided by this section and sections 13 and 16 of this 2009 Act are cumulative to each other and to the remedies or penalties available under all other laws of this state.

SECTION 16. (1) Upon a determination that a distributor has violated section 13 of this 2009 Act, the Department of Revenue may revoke or suspend the license of the distributor in the manner provided by ORS 323.535. Each offer to sell smokeless tobacco products in violation of section 13 of this 2009 Act constitutes a separate violation.

(2) Upon a determination that a person applying for a license under ORS 323.520 has violated section 13 of this 2009 Act at any time within the five years preceding the application, the department may refuse to issue the license. The department shall provide opportunity for hearing and judicial review in the manner provided in ORS 323.535.

(3)(a) Upon a determination that a person has violated section 13 (1)(b) or (c) of this 2009 Act, the department may impose a civil penalty in an amount not to exceed the greater of \$5,000 or 500 percent of the retail value of the smokeless tobacco products sold, offered for sale or possessed for sale. Judicial review of an order imposing a civil penalty shall be as provided in ORS 305.445 and 305.501.

(b) Upon a determination that a person has violated section 13 (1)(a) of this 2009 Act, the department may impose a civil penalty in an amount not to exceed \$5,000. Judicial review of an order imposing a civil penalty shall be as provided in ORS 305.445 and 305.501.

(4) The Attorney General may seek an injunction to restrain a threatened or actual violation of section 12 or 13 of this 2009 Act by a distributor and to compel the distributor to comply with sections 12 and 13 of this 2009 Act. In any action brought pursuant to this subsection, the state may recover the costs of investigation, the costs of the action and reasonable attorney fees.

(5) A person who violates section 13 (1) of this 2009 Act engages in an unlawful practice in violation of ORS 646.608.

SECTION 17. Sections 18 to 20 of this 2009 Act are added to and made a part of ORS chapter 323.

SECTION 18. As used in sections 18 to 20 of this 2009 Act:

(1) "Adjusted for inflation" means increased in accordance with the formula for inflation adjustment set forth in Exhibit F to the Smokeless Tobacco Master Settlement Agreement.

(2) "Affiliate" means a person who directly or indirectly owns or controls, is owned or controlled by or is under common ownership or control with another person. For purposes of defining "affiliate":

(a) "Owns," "is owned" and "ownership" mean ownership of an equity interest, or the equivalent thereof, of 10 percent or more; and

(b) "Person" means an individual, partnership, committee, association, corporation or any other organization or group of persons.

(3) "Qualified escrow fund" means an escrow arrangement with a federally or state chartered financial institution having no affiliation with any tobacco product manufacturer and having assets of at least \$1 billion, where such arrangement requires that such financial institution hold the escrowed funds' principal for the benefit of releasing parties and prohibits the tobacco product manufacturer who is placing the funds into escrow from using, accessing or directing the use of the escrowed funds' principal except as consistent with section 20 (2)(b) of this 2009 Act.

(4) "Released claims" has the meaning given that term in section II(gg) of the Smokeless Tobacco Master Settlement Agreement.

(5) "Releasing parties" has the meaning given that term in section II(ii) of the Smokeless Tobacco Master Settlement Agreement.

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

(7) "Smokeless tobacco products" means moist snuff, as defined in ORS 323.500, or chewing tobacco, as defined in section 5702 of the Internal Revenue Code.

(8)(a) "Tobacco product manufacturer" means an entity that, after the effective date of this 2009 Act, directly (and not exclusively through any affiliate):

(A) Manufactures smokeless tobacco products anywhere that such manufacturer intends to be sold in the United States, including smokeless tobacco products intended to be sold in the United States through an importer (except where such importer is an Original Participating Manufacturer, as defined in section II(cc) of the Smokeless Tobacco Master Settlement Agreement), that will be responsible for the payments under the Smokeless Tobacco Master Settlement Agreement with respect to such smokeless tobacco products as a result of the provisions of section VI(b) of the Smokeless Tobacco Master Settlement Agreement and that pays the taxes specified in section II(w) of the Smokeless Tobacco Master Settlement Agreement, and provided that the manufacturer of such smokeless tobacco products does not market or advertise such smokeless tobacco products in the United States);

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

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

(b) "Tobacco product manufacturer" does not include an affiliate of a tobacco product manufacturer unless such affiliate is itself a tobacco product manufacturer under paragraph (a) of this subsection.

(9) "Units sold" means the number of individual containers of smokeless tobacco products sold in the State of Oregon by the applicable tobacco product manufacturer (whether

directly or through a distributor, retailer or similar intermediary or intermediaries) during the year in question, as measured by excise taxes collected by the State of Oregon. The Department of Revenue shall adopt such rules as are necessary to ascertain the amount of state excise tax paid on the smokeless tobacco products of such tobacco product manufacturer for each year. A unit container shall contain 3.2 ounces of moist snuff, as defined in ORS 323.500, or 3.0 ounces of chewing tobacco.

SECTION 19. (1) The use of smokeless tobacco products presents serious public health concerns to the State of Oregon and to the residents of the State of Oregon. The United States Surgeon General has determined that use of smokeless tobacco causes cancer, noncancerous oral conditions and other serious diseases, and that there are hundreds of thousands of tobacco-related deaths in the United States each year. These diseases most often do not appear until many years after the person in question begins using tobacco products.

(2) Use of smokeless tobacco products also presents serious financial concerns for this state. Under certain health care programs, the State of Oregon may have a legal obligation to provide medical assistance to eligible persons for health conditions associated with the use of smokeless tobacco, and those persons may have a legal entitlement to receive such medical assistance.

(3) Under those health care programs, the State of Oregon pays millions of dollars each year to provide medical assistance for persons for health conditions associated with the use of smokeless tobacco products.

(4) It is the policy of the State of Oregon that financial burdens imposed on this state by the use of smokeless tobacco be borne by tobacco product manufacturers rather than by this state to the extent that such manufacturers either determine to enter into a settlement with the State of Oregon or are found culpable by the courts.

(5) On November 23, 1998, leading United States tobacco product manufacturers entered into a settlement agreement, titled the "Smokeless Tobacco Master Settlement Agreement," with the State of Oregon. The Smokeless Tobacco Master Settlement Agreement obligates those manufacturers, in return for a release of past, present and certain future claims against them as described in the Smokeless Tobacco Master Settlement Agreement:

- (a) To pay substantial sums to the State of Oregon (tied in part to their volume of sales);
- (b) To fund a national foundation devoted to the interests of public health; and
- (c) To make substantial changes in their advertising and marketing practices and corporate culture, with the intention of reducing underage smoking.

(6) It would be contrary to the policy of the State of Oregon if those tobacco product manufacturers who determine not to enter into such a settlement could use a resulting cost advantage to derive large, short-term profits in the years before liability may arise without ensuring that this state will have an eventual source of recovery from them if they are proven to have acted culpably. It is thus in the interest of the State of Oregon to require that such manufacturers establish a reserve fund to guarantee a source of compensation and to prevent such manufacturers from deriving large, short-term profits and then becoming judgment-proof before liability may arise.

SECTION 20. (1) Any tobacco product manufacturer selling smokeless tobacco products to consumers within the State of Oregon (whether directly or through a distributor, retailer or similar intermediary or intermediaries) after the effective date of this 2009 Act shall do one of the following:

- (a) Comply with the requirements imposed on Participating Manufacturers that are set forth in sections III, V and VII of the Smokeless Tobacco Master Settlement Agreement; or
- (b) Place into a qualified escrow fund, by April 15 of the year following the year in question, the amount of \$0.40 per unit sold for 2010 or such amount adjusted for inflation for each year thereafter.

(2) A tobacco product manufacturer that places funds into escrow pursuant to this section shall receive the interest or other appreciation on such funds as earned. The funds themselves shall be released from escrow only under the following circumstances:

(a) To pay a judgment or settlement on any released claim brought against such tobacco product manufacturer by the State of Oregon or any releasing party located or residing in this state. Funds shall be released from escrow under this paragraph in the order in which they were placed into escrow and only to the extent and at the time necessary to make payments required under such judgment or settlement;

(b) To refund any excess amount owed to a tobacco product manufacturer when the tobacco product manufacturer establishes that the amount it was required to place into escrow on account of units sold in Oregon in a particular year was greater than the Smokeless Tobacco Master Settlement Agreement payments, as determined pursuant to section IX(c) of that agreement after final determination of all adjustments, that the manufacturer would have been required to make on account of such units sold had it been a Participating Manufacturer, as defined in section II(ee) of the Smokeless Tobacco Master Settlement Agreement; or

(c) To refund funds to a tobacco product manufacturer 25 years after the date on which they were placed in escrow, only if the funds were not released from escrow under paragraph (a) or (b) of this subsection.

(3) Each tobacco product manufacturer that elects to place funds into escrow pursuant to this section shall annually certify to the Attorney General that it is in compliance with this section. The Attorney General may bring a civil action on behalf of the State of Oregon against any tobacco product manufacturer that fails to place into escrow the funds required under this section. Any tobacco product manufacturer that fails in any year to place into escrow the funds required under this section shall:

(a) Be required within 15 days to place such funds into escrow as shall bring the manufacturer into compliance with this section. The court, upon a finding of a violation of this section, may impose a civil penalty to be paid to the General Fund of this state in an amount not to exceed five percent of the amount improperly withheld from escrow per day of the violation and in a total amount not to exceed 100 percent of the original amount improperly withheld from escrow;

(b) In the case of a knowing violation, be required within 15 days to place such funds into escrow as shall bring the manufacturer into compliance with this section. The court, upon a finding of a knowing violation of this section, may impose a civil penalty to be paid to the General Fund of this state in an amount not to exceed 15 percent of the amount improperly withheld from escrow per day of the violation and in a total amount not to exceed 300 percent of the original amount improperly withheld from escrow; and

(c) In the case of a second knowing violation, be prohibited from selling smokeless tobacco products to consumers within the State of Oregon (whether directly or through a distributor, retailer or similar intermediary or intermediaries) for a period not to exceed two years. Each failure to make an annual deposit required under this section shall constitute a separate violation.

SECTION 21. ORS 323.520 is amended to read:

323.520. (1) Any person engaging or seeking to engage in the sale of tobacco products as a distributor shall file an application for a distributor's license with the Department of Revenue. The application shall be on a form prescribed by the department. A distributor shall apply for and obtain a license for each place of business at which the distributor engages in the business of distributing tobacco products. A fee may not be charged for the license. For the purposes of this section, a vending machine in and of itself is not a place of business.

(2) A person may not engage in the business of distributing tobacco products in this state without a license.

(3) A person filing an application under this section shall include with the application a written statement certifying that the person will comply with the provisions of sections 12 and 13 of this 2009 Act where applicable.

SECTION 22. ORS 323.530 is amended to read:

323.530. (1) Upon receipt of a completed application, **the statement required by ORS 323.520** (3) and any security required by the Department of Revenue under ORS 323.500 to 323.645, the department shall issue a distributor's license to an applicant. A separate license shall be issued for each place of business of the distributor within the state. Each license issued by the department shall include an identification number for the license. A license is valid only for engaging in business as a distributor at the place designated thereon, and it shall at all times be conspicuously displayed at the place for which issued. The license is not transferable and is valid until canceled, suspended or revoked.

(2) The department may not issue a license to an applicant if the department determines or has reason to believe that the applicant will not comply with the provisions of ORS chapter 323 or any other state or federal tobacco products tax law.

(3) Notwithstanding ORS 305.280, a decision by the department not to issue a license to an applicant may be appealed by the applicant to the magistrate division of the tax court within 30 days of the date of the decision of the department in the manner prescribed in ORS 305.404 to 305.560.

(4) For purposes of this section, an application to renew a distributor's license shall be considered the same as an application for an initial distributor's license.

SECTION 23. ORS 323.706 is amended to read:

323.706. A person accepting a purchase order for a delivery sale, prior to the first mailing, shipment or other delivery of tobacco to a consumer, shall comply with:

- (1) The age verification requirements set forth in ORS 323.709;
- (2) The distributor license requirements set forth in ORS 323.712;
- (3) The disclosure requirements set forth in ORS 323.715;
- (4) The mailing or shipping requirements set forth in ORS 323.718;
- (5) The reporting requirements set forth in ORS 323.721; and

(6) All other laws of this state applicable to sales of tobacco that occur entirely within Oregon, including but not limited to ORS 323.005 to 323.482, 323.500 to 323.645 and 323.806 **and section 20 of this 2009 Act.**

SECTION 24. ORS 131.602 is amended to read:

131.602. The crimes to which ORS 131.550 (11)(b) applies are:

- (1) Bribe giving, as defined in ORS 162.015.
- (2) Bribe receiving, as defined in ORS 162.025.
- (3) Public investment fraud, as defined in ORS 162.117.
- (4) Bribing a witness, as defined in ORS 162.265.
- (5) Bribe receiving by a witness, as defined in ORS 162.275.
- (6) Simulating legal process, as defined in ORS 162.355.
- (7) Official misconduct in the first degree, as defined in ORS 162.415.
- (8) Custodial interference in the second degree, as defined in ORS 163.245.
- (9) Custodial interference in the first degree, as defined in ORS 163.257.
- (10) Buying or selling a person under 18 years of age, as defined in ORS 163.537.
- (11) Using a child in a display of sexually explicit conduct, as defined in ORS 163.670.
- (12) Encouraging child sexual abuse in the first degree, as defined in ORS 163.684.
- (13) Encouraging child sexual abuse in the second degree, as defined in ORS 163.686.
- (14) Encouraging child sexual abuse in the third degree, as defined in ORS 163.687.
- (15) Possession of materials depicting sexually explicit conduct of a child in the first degree, as defined in ORS 163.688.
- (16) Possession of materials depicting sexually explicit conduct of a child in the second degree, as defined in ORS 163.689.
- (17) Theft in the second degree, as defined in ORS 164.045.

- (18) Theft in the first degree, as defined in ORS 164.055.
- (19) Aggravated theft in the first degree, as defined in ORS 164.057.
- (20) Theft by extortion, as defined in ORS 164.075.
- (21) Theft by deception, as defined in ORS 164.085, if it is a felony or a Class A misdemeanor.
- (22) Theft by receiving, as defined in ORS 164.095, if it is a felony or a Class A misdemeanor.
- (23) Theft of services, as defined in ORS 164.125, if it is a felony or a Class A misdemeanor.
- (24) Unauthorized use of a vehicle, as defined in ORS 164.135.
- (25) Mail theft or receipt of stolen mail, as defined in ORS 164.162.
- (26) Laundering a monetary instrument, as defined in ORS 164.170.
- (27) Engaging in a financial transaction in property derived from unlawful activity, as defined in ORS 164.172.
- (28) Burglary in the second degree, as defined in ORS 164.215.
- (29) Burglary in the first degree, as defined in ORS 164.225.
- (30) Possession of a burglary tool or theft device, as defined in ORS 164.235.
- (31) Unlawful entry into a motor vehicle, as defined in ORS 164.272.
- (32) Arson in the second degree, as defined in ORS 164.315.
- (33) Arson in the first degree, as defined in ORS 164.325.
- (34) Computer crime, as defined in ORS 164.377.
- (35) Robbery in the third degree, as defined in ORS 164.395.
- (36) Robbery in the second degree, as defined in ORS 164.405.
- (37) Robbery in the first degree, as defined in ORS 164.415.
- (38) Unlawful labeling of a sound recording, as defined in ORS 164.868.
- (39) Unlawful recording of a live performance, as defined in ORS 164.869.
- (40) Unlawful labeling of a videotape recording, as defined in ORS 164.872.
- (41) A violation of ORS 164.886.
- (42) Endangering aircraft, as defined in ORS 164.885.
- (43) Interference with agricultural operations, as defined in ORS 164.887.
- (44) Forgery in the second degree, as defined in ORS 165.007.
- (45) Forgery in the first degree, as defined in ORS 165.013.
- (46) Criminal possession of a forged instrument in the second degree, as defined in ORS 165.017.
- (47) Criminal possession of a forged instrument in the first degree, as defined in ORS 165.022.
- (48) Criminal possession of a forged device, as defined in ORS 165.032.
- (49) Criminal simulation, as defined in ORS 165.037.
- (50) Fraudulently obtaining a signature, as defined in ORS 165.042.
- (51) Fraudulent use of a credit card, as defined in ORS 165.055.
- (52) Negotiating a bad check, as defined in ORS 165.065.
- (53) Possessing a fraudulent communications device, as defined in ORS 165.070.
- (54) Unlawful factoring of a payment card transaction, as defined in ORS 165.074.
- (55) Falsifying business records, as defined in ORS 165.080.
- (56) Sports bribery, as defined in ORS 165.085.
- (57) Sports bribe receiving, as defined in ORS 165.090.
- (58) Misapplication of entrusted property, as defined in ORS 165.095.
- (59) Issuing a false financial statement, as defined in ORS 165.100.
- (60) Obtaining execution of documents by deception, as defined in ORS 165.102.
- (61) A violation of ORS 165.543.
- (62) Cellular counterfeiting in the third degree, as defined in ORS 165.577.
- (63) Cellular counterfeiting in the second degree, as defined in ORS 165.579.
- (64) Cellular counterfeiting in the first degree, as defined in ORS 165.581.
- (65) Identity theft, as defined in ORS 165.800.
- (66) A violation of ORS 166.190.
- (67) Unlawful use of a weapon, as defined in ORS 166.220.
- (68) A violation of ORS 166.240.

- (69) Unlawful possession of a firearm, as defined in ORS 166.250.
- (70) A violation of ORS 166.270.
- (71) Unlawful possession of a machine gun, short-barreled rifle, short-barreled shotgun or firearms silencer, as defined in ORS 166.272.
- (72) A violation of ORS 166.275.
- (73) Unlawful possession of armor piercing ammunition, as defined in ORS 166.350.
- (74) A violation of ORS 166.370.
- (75) Unlawful possession of a destructive device, as defined in ORS 166.382.
- (76) Unlawful manufacture of a destructive device, as defined in ORS 166.384.
- (77) Possession of a hoax destructive device, as defined in ORS 166.385.
- (78) A violation of ORS 166.410.
- (79) Providing false information in connection with a transfer of a firearm, as defined in ORS 166.416.
- (80) Improperly transferring a firearm, as defined in ORS 166.418.
- (81) Unlawfully purchasing a firearm, as defined in ORS 166.425.
- (82) A violation of ORS 166.429.
- (83) A violation of ORS 166.470.
- (84) A violation of ORS 166.480.
- (85) A violation of ORS 166.635.
- (86) A violation of ORS 166.638.
- (87) Unlawful paramilitary activity, as defined in ORS 166.660.
- (88) A violation of ORS 166.720.
- (89) Prostitution, as defined in ORS 167.007.
- (90) Promoting prostitution, as defined in ORS 167.012.
- (91) Compelling prostitution, as defined in ORS 167.017.
- (92) Exhibiting an obscene performance to a minor, as defined in ORS 167.075.
- (93) Unlawful gambling in the second degree, as defined in ORS 167.122.
- (94) Unlawful gambling in the first degree, as defined in ORS 167.127.
- (95) Possession of gambling records in the second degree, as defined in ORS 167.132.
- (96) Possession of gambling records in the first degree, as defined in ORS 167.137.
- (97) Possession of a gambling device, as defined in ORS 167.147.
- (98) Possession of a gray machine, as defined in ORS 167.164.
- (99) Cheating, as defined in ORS 167.167.
- (100) Tampering with drug records, as defined in ORS 167.212.
- (101) A violation of ORS 167.262.
- (102) Research and animal interference, as defined in ORS 167.312.
- (103) Animal abuse in the first degree, as defined in ORS 167.320.
- (104) Aggravated animal abuse in the first degree, as defined in ORS 167.322.
- (105) Animal neglect in the first degree, as defined in ORS 167.330.
- (106) Interfering with an assistance, a search and rescue or a therapy animal, as defined in ORS 167.352.
- (107) Involvement in animal fighting, as defined in ORS 167.355.
- (108) Dogfighting, as defined in ORS 167.365.
- (109) Participation in dogfighting, as defined in ORS 167.370.
- (110) Unauthorized use of a livestock animal, as defined in ORS 167.385.
- (111) Interference with livestock production, as defined in ORS 167.388.
- (112) A violation of ORS 167.390.
- (113) A violation of ORS 471.410.
- (114) Failure to report missing precursor substances, as defined in ORS 475.955.
- (115) Illegally selling drug equipment, as defined in ORS 475.960.
- (116) Providing false information on a precursor substances report, as defined in ORS 475.965.
- (117) Unlawful delivery of an imitation controlled substance, as defined in ORS 475.912.

- (118) A violation of ORS 475.840, if it is a felony or a Class A misdemeanor.
- (119) A violation of ORS 475.914, if it is a felony or a Class A misdemeanor.
- (120) A violation of ORS 475.916.
- (121) A violation of ORS 475.906, if it is a felony or a Class A misdemeanor.
- (122) A violation of ORS 475.904.
- (123) Misuse of an identification card, as defined in ORS 807.430.
- (124) Unlawful production of identification cards, licenses, permits, forms or camera cards, as defined in ORS 807.500.
- (125) Transfer of documents for the purposes of misrepresentation, as defined in ORS 807.510.
- (126) Using an invalid license, as defined in ORS 807.580.
- (127) Permitting misuse of a license, as defined in ORS 807.590.
- (128) Using another's license, as defined in ORS 807.600.
- (129) Criminal driving while suspended or revoked, as defined in ORS 811.182, when it is a felony.
- (130) Driving while under the influence of intoxicants, as defined in ORS 813.010, when it is a felony.
- (131) Unlawful distribution of cigarettes, as defined in ORS 323.482.
- (132) Unlawful distribution of tobacco products, as defined in ORS 323.632.
- (133) A violation of ORS 180.440 (2)[.] **or section 13 (2) of this 2009 Act.**
- (134) A violation described in ORS 475.846 to 475.894, if it is a felony.
- (135) Subjecting another person to involuntary servitude in the first degree, as defined in ORS 163.264.
- (136) Subjecting another person to involuntary servitude in the second degree, as defined in ORS 163.263.
- (137) Trafficking in persons, as defined in ORS 163.266.
- (138) Furnishing sexually explicit material to a child, as defined in ORS 167.054.
- (139) Luring a minor, as defined in ORS 167.057.
- (140) Online sexual corruption of a child in the second degree, as defined in ORS 163.432.
- (141) Online sexual corruption of a child in the first degree, as defined in ORS 163.433.
- (142) An attempt, conspiracy or solicitation to commit a crime in subsections (1) to (141) of this section if the attempt, conspiracy or solicitation is a felony or a Class A misdemeanor.

SECTION 25. ORS 166.715 is amended to read:

166.715. As used in ORS 166.715 to 166.735, unless the context requires otherwise:

(1) "Documentary material" means any book, paper, document, writing, drawing, graph, chart, photograph, phonograph record, magnetic tape, computer printout, other data compilation from which information can be obtained or from which information can be translated into usable form, or other tangible item.

(2) "Enterprise" includes any individual, sole proprietorship, partnership, corporation, business trust or other profit or nonprofit legal entity, and includes any union, association or group of individuals associated in fact although not a legal entity, and both illicit and licit enterprises and governmental and nongovernmental entities.

(3) "Investigative agency" means the Department of Justice or any district attorney.

(4) "Pattern of racketeering activity" means engaging in at least two incidents of racketeering activity that have the same or similar intents, results, accomplices, victims or methods of commission or otherwise are interrelated by distinguishing characteristics, including a nexus to the same enterprise, and are not isolated incidents, provided at least one of such incidents occurred after November 1, 1981, and that the last of such incidents occurred within five years after a prior incident of racketeering activity. Notwithstanding ORS 131.505 to 131.525 or 419A.190 or any other provision of law providing that a previous prosecution is a bar to a subsequent prosecution, conduct that constitutes an incident of racketeering activity may be used to establish a pattern of racketeering activity without regard to whether the conduct previously has been the subject of a criminal prosecution or conviction or a juvenile court adjudication, unless the prosecution resulted

in an acquittal or the adjudication resulted in entry of an order finding the youth not to be within the jurisdiction of the juvenile court.

(5) "Person" means any individual or entity capable of holding a legal or beneficial interest in real or personal property.

(6) "Racketeering activity" includes conduct of a person committed both before and after the person attains the age of 18 years, and means to commit, to attempt to commit, to conspire to commit, or to solicit, coerce or intimidate another person to commit:

(a) Any conduct that constitutes a crime, as defined in ORS 161.515, under any of the following provisions of the Oregon Revised Statutes:

- (A) ORS 59.005 to 59.451, 59.710 to 59.830, 59.991 and 59.995, relating to securities;
- (B) ORS 162.015, 162.025 and 162.065 to 162.085, relating to bribery and perjury;
- (C) ORS 162.235, 162.265 to 162.305, 162.325, 162.335, 162.355 and 162.365, relating to obstructing governmental administration;
- (D) ORS 162.405 to 162.425, relating to abuse of public office;
- (E) ORS 162.455, relating to interference with legislative operation;
- (F) ORS 163.095 to 163.115, 163.118, 163.125 and 163.145, relating to criminal homicide;
- (G) ORS 163.160 to 163.205, relating to assault and related offenses;
- (H) ORS 163.225 and 163.235, relating to kidnapping;
- (I) ORS 163.275, relating to coercion;
- (J) ORS 163.670 to 163.693, relating to sexual conduct of children;
- (K) ORS 164.015, 164.043, 164.045, 164.055, 164.057, 164.075 to 164.095, 164.098, 164.125, 164.135, 164.140, 164.215, 164.225 and 164.245 to 164.270, relating to theft, burglary, criminal trespass and related offenses;
- (L) ORS 164.315 to 164.335, relating to arson and related offenses;
- (M) ORS 164.345 to 164.365, relating to criminal mischief;
- (N) ORS 164.395 to 164.415, relating to robbery;
- (O) ORS 164.865, 164.875 and 164.868 to 164.872, relating to unlawful recording or labeling of a recording;
- (P) ORS 165.007 to 165.022, 165.032 to 165.042 and 165.055 to 165.070, relating to forgery and related offenses;
- (Q) ORS 165.080 to 165.109, relating to business and commercial offenses;
- (R) ORS 165.485 to 165.515, 165.540 and 165.555, relating to communication crimes;
- (S) ORS 166.180, 166.190, 166.220, 166.250, 166.270, 166.275, 166.410, 166.450 and 166.470, relating to firearms and other weapons;
- (T) ORS 164.377 (2) to (4), as punishable under ORS 164.377 (5)(b), 167.007 to 167.017, 167.054, 167.057, 167.062 to 167.080, 167.090, 167.122 to 167.137, 167.147, 167.164, 167.167, 167.212, 167.355, 167.365, 167.370, 167.428, 167.431 and 167.439, relating to prostitution, obscenity, sexually explicit material, sexual conduct, gambling, computer crimes involving the Oregon State Lottery, animal fighting, forcible recovery of a fighting bird and related offenses;
- (U) ORS 171.990, relating to legislative witnesses;
- (V) ORS 260.575 and 260.665, relating to election offenses;
- (W) ORS 314.075, relating to income tax;
- (X) ORS 180.440 (2) and **section 13 (2) of this 2009 Act** and ORS chapter 323, relating to cigarette and tobacco products taxes and the [*directory*] **directories** developed under ORS 180.425 and **section 10 of this 2009 Act**;
- (Y) ORS 411.630, 411.675, 411.690 and 411.840, relating to public assistance payments, and ORS 411.990 (2) and (3);
- (Z) ORS 462.140, 462.415 and 462.420 to 462.520, relating to racing;
- (AA) ORS 463.995, relating to boxing, mixed martial arts and entertainment wrestling, as defined in ORS 463.015;

(BB) ORS 471.305, 471.360, 471.392 to 471.400, 471.403, 471.404, 471.405, 471.425, 471.442, 471.445, 471.446, 471.485, 471.490 and 471.675, relating to alcoholic liquor, and any of the provisions of ORS chapter 471 relating to licenses issued under the Liquor Control Act;

(CC) ORS 475.005 to 475.285 and 475.840 to 475.980, relating to controlled substances;

(DD) ORS 480.070, 480.210, 480.215, 480.235 and 480.265, relating to explosives;

(EE) ORS 819.010, 819.040, 822.100, 822.135 and 822.150, relating to motor vehicles;

(FF) ORS 658.452 or 658.991 (2) to (4), relating to farm labor contractors;

(GG) ORS chapter 706, relating to banking law administration;

(HH) ORS chapter 714, relating to branch banking;

(II) ORS chapter 716, relating to mutual savings banks;

(JJ) ORS chapter 723, relating to credit unions;

(KK) ORS chapter 726, relating to pawnbrokers;

(LL) ORS 166.382 and 166.384, relating to destructive devices;

(MM) ORS 165.074;

(NN) ORS 59.840 to 59.980, relating to mortgage bankers and mortgage brokers;

(OO) ORS chapter 496, 497 or 498, relating to wildlife;

(PP) ORS 163.355 to 163.427, relating to sexual offenses;

(QQ) ORS 166.015, relating to riot;

(RR) ORS 166.155 and 166.165, relating to intimidation;

(SS) ORS chapter 696, relating to real estate and escrow;

(TT) ORS chapter 704, relating to outfitters and guides;

(UU) ORS 165.692, relating to making a false claim for health care payment;

(VV) ORS 162.117, relating to public investment fraud;

(WW) ORS 164.170 or 164.172;

(XX) ORS 647.140, 647.145 or 647.150, relating to trademark counterfeiting;

(YY) ORS 164.886;

(ZZ) ORS 167.312 and 167.388;

(AAA) ORS 164.889;

(BBB) ORS 165.800; or

(CCC) ORS 163.263, 163.264 or 163.266.

(b) Any conduct defined as “racketeering activity” under 18 U.S.C. 1961 (1)(B), (C), (D) and (E).

(7) “Unlawful debt” means any money or other thing of value constituting principal or interest of a debt that is legally unenforceable in the state in whole or in part because the debt was incurred or contracted:

(a) In violation of any one of the following:

(A) ORS chapter 462, relating to racing;

(B) ORS 167.108 to 167.164, relating to gambling; or

(C) ORS 82.010 to 82.170, relating to interest and usury.

(b) In gambling activity in violation of federal law or in the business of lending money at a rate usurious under federal or state law.

(8) Notwithstanding contrary provisions in ORS 174.060, when this section references a statute in the Oregon Revised Statutes that is substantially different in the nature of its essential provisions from what the statute was when this section was enacted, the reference shall extend to and include amendments to the statute.

SECTION 26. ORS 646.608, as amended by section 8, chapter 19, Oregon Laws 2008, and section 5, chapter 31, Oregon Laws 2008, is amended to read:

646.608. (1) A person engages in an unlawful practice when in the course of the person’s business, vocation or occupation the person does any of the following:

(a) Passes off real estate, goods or services as those of another.

(b) Causes likelihood of confusion or of misunderstanding as to the source, sponsorship, approval, or certification of real estate, goods or services.

(c) Causes likelihood of confusion or of misunderstanding as to affiliation, connection, or association with, or certification by, another.

(d) Uses deceptive representations or designations of geographic origin in connection with real estate, goods or services.

(e) Represents that real estate, goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, quantities or qualities that they do not have or that a person has a sponsorship, approval, status, qualification, affiliation, or connection that the person does not have.

(f) Represents that real estate or goods are original or new if they are deteriorated, altered, reconditioned, reclaimed, used or secondhand.

(g) Represents that real estate, goods or services are of a particular standard, quality, or grade, or that real estate or goods are of a particular style or model, if they are of another.

(h) Disparages the real estate, goods, services, property or business of a customer or another by false or misleading representations of fact.

(i) Advertises real estate, goods or services with intent not to provide them as advertised, or with intent not to supply reasonably expectable public demand, unless the advertisement discloses a limitation of quantity.

(j) Makes false or misleading representations of fact concerning the reasons for, existence of, or amounts of price reductions.

(k) Makes false or misleading representations concerning credit availability or the nature of the transaction or obligation incurred.

(L) Makes false or misleading representations relating to commissions or other compensation to be paid in exchange for permitting real estate, goods or services to be used for model or demonstration purposes or in exchange for submitting names of potential customers.

(m) Performs service on or dismantles any goods or real estate when not authorized by the owner or apparent owner thereof.

(n) Solicits potential customers by telephone or door to door as a seller unless the person provides the information required under ORS 646.611.

(o) In a sale, rental or other disposition of real estate, goods or services, gives or offers to give a rebate or discount or otherwise pays or offers to pay value to the customer in consideration of the customer giving to the person the names of prospective purchasers, lessees, or borrowers, or otherwise aiding the person in making a sale, lease, or loan to another person, if earning the rebate, discount or other value is contingent upon occurrence of an event subsequent to the time the customer enters into the transaction.

(p) Makes any false or misleading statement about a prize, contest or promotion used to publicize a product, business or service.

(q) Promises to deliver real estate, goods or services within a certain period of time with intent not to deliver them as promised.

(r) Organizes or induces or attempts to induce membership in a pyramid club.

(s) Makes false or misleading representations of fact concerning the offering price of, or the person's cost for real estate, goods or services.

(t) Concurrent with tender or delivery of any real estate, goods or services fails to disclose any known material defect or material nonconformity.

(u) Engages in any other unfair or deceptive conduct in trade or commerce.

(v) Violates any of the provisions relating to auction sales, auctioneers or auction marts under ORS 698.640, whether in a commercial or noncommercial situation.

(w) Manufactures mercury fever thermometers.

(x) Sells or supplies mercury fever thermometers unless the thermometer is required by federal law, or is:

(A) Prescribed by a person licensed under ORS chapter 677; and

(B) Supplied with instructions on the careful handling of the thermometer to avoid breakage and on the proper cleanup of mercury should breakage occur.

(y) Sells a thermostat that contains mercury unless the thermostat is labeled in a manner to inform the purchaser that mercury is present in the thermostat and that the thermostat may not be disposed of until the mercury is removed, reused, recycled or otherwise managed to ensure that the mercury does not become part of the solid waste stream or wastewater. For purposes of this paragraph, "thermostat" means a device commonly used to sense and, through electrical communication with heating, cooling or ventilation equipment, control room temperature.

(z) Sells or offers for sale a motor vehicle manufactured after January 1, 2006, that contains mercury light switches.

(aa) Violates the provisions of ORS 803.375, 803.385 or 815.410 to 815.430.

(bb) Violates ORS 646A.070 (1).

(cc) Violates any requirement of ORS 646A.030 to 646A.040.

(dd) Violates the provisions of ORS 128.801 to 128.898.

(ee) Violates ORS 646.883 or 646.885.

(ff) Violates any provision of ORS 646A.020.

(gg) Violates ORS 646.569.

(hh) Violates the provisions of ORS 646A.142.

(ii) Violates ORS 646A.360.

(jj) Violates ORS 646.553 or 646.557 or any rule adopted pursuant thereto.

(kk) Violates ORS 646.563.

(LL) Violates ORS 759.690 or any rule adopted pursuant thereto.

(mm) Violates the provisions of ORS 759.705, 759.710 and 759.720 or any rule adopted pursuant thereto.

(nn) Violates ORS 646A.210 or 646A.214.

(oo) Violates any provision of ORS 646A.124 to 646A.134.

(pp) Violates ORS 646A.254.

(qq) Violates ORS 646A.095.

(rr) Violates ORS 822.046.

(ss) Violates ORS 128.001.

(tt) Violates ORS 646.649 (2) to (4).

(uu) Violates ORS 646A.090 (2) to (4).

(vv) Violates ORS 87.686.

(ww) Violates ORS 646.651.

(xx) Violates ORS 646A.362.

(yy) Violates ORS 646A.052 or any rule adopted under ORS 646A.052 or 646A.054.

(zz) Violates ORS 180.440 (1)[.] **or section 13 (1) of this 2009 Act.**

(aaa) Commits the offense of acting as a vehicle dealer without a certificate under ORS 822.005.

(bbb) Violates ORS 87.007 (2) or (3).

(ccc) Violates ORS 92.405 (1), (2) or (3).

(ddd) Engages in an unlawful practice under ORS 646.648.

(eee) Violates ORS 646A.365.

(fff) Violates ORS 98.854 or 98.858 or a rule adopted under ORS 98.864.

(ggg) Sells a gift card in violation of ORS 646A.276.

(hhh) Violates ORS 646A.102, 646A.106 or 646A.108.

(iii) Violates ORS 646A.430 to 646A.450.

(jjj) Violates a provision of sections 2 to 6, chapter 19, Oregon Laws 2008.

(kkk) Violates section 2, chapter 31, Oregon Laws 2008, 30 or more days after a recall notice, warning or declaration described in section 2, chapter 31, Oregon Laws 2008, is issued for the children's product, as defined in section 1, chapter 31, Oregon Laws 2008, that is the subject of the violation.

(2) A representation under subsection (1) of this section or ORS 646.607 may be any manifestation of any assertion by words or conduct, including, but not limited to, a failure to disclose a fact.

(3) In order to prevail in an action or suit under ORS 646.605 to 646.652, a prosecuting attorney need not prove competition between the parties or actual confusion or misunderstanding.

(4) An action or suit may not be brought under subsection (1)(u) of this section unless the Attorney General has first established a rule in accordance with the provisions of ORS chapter 183 declaring the conduct to be unfair or deceptive in trade or commerce.

(5) Notwithstanding any other provision of ORS 646.605 to 646.652, if an action or suit is brought under subsection (1)(zz) of this section by a person other than a prosecuting attorney, relief is limited to an injunction and the prevailing party may be awarded reasonable attorney fees.

SECTION 27. ORS 180.205 is amended to read:

180.205. (1) The Tobacco Enforcement Fund is established separate and distinct from the General Fund. The Tobacco Enforcement Fund shall consist of:

- (a) Moneys deposited into the fund under ORS 180.450 **and section 15 of this 2009 Act**; and
- (b) Moneys transferred to the fund under ORS 293.537.

(2) Moneys in the Tobacco Enforcement Fund are continuously appropriated to the Department of Justice for the purpose of enforcing the provisions of ORS 180.400 to 180.455, 323.106 and 323.806 **and sections 6 to 16 and 18 to 20 of this 2009 Act**. Moneys in the fund are not subject to allotment under ORS 291.234 to 291.260.

SECTION 28. Sections 6 to 16 and 18 to 20 of this 2009 Act and the amendments to ORS 131.602, 166.715, 180.205, 323.500, 323.505, 323.520, 323.530, 323.706 and 646.608 by sections 1, 2 and 21 to 27 of this 2009 Act apply to smokeless tobacco products distributed on or after January 1, 2010.

SECTION 29. This 2009 Act takes effect on the 91st day after the date on which the regular session of the Seventy-fifth Legislative Assembly adjourns sine die.

Passed by House April 22, 2009

.....
Chief Clerk of House

.....
Speaker of House

Passed by Senate June 15, 2009

.....
President of Senate

Received by Governor:

.....M.,....., 2009

Approved:

.....M.,....., 2009

.....
Governor

Filed in Office of Secretary of State:

.....M.,....., 2009

.....
Secretary of State