

A-Engrossed
House Bill 2672

Ordered by the House April 14
Including House Amendments dated April 14

Sponsored by Representatives GELSER, HUNT

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.

Increases rate of tax on distribution of moist snuff. **Requires Department of Revenue to re-compute rate of tax each biennium beginning in 2019.** Directs tobacco tax revenues to payment of expenses related to provision of medical examinations to children who are victims of suspected physical abuse and to pilot program for shaken baby prevention. Requires manufacturers of smokeless tobacco products to report certain information to Attorney General. Requires Attorney General to develop and maintain directory of information reported. Prohibits selling, offering for sale or possessing for sale smokeless tobacco products of manufacturers not listed in directory. **Prohibits distribution of free samples of smokeless tobacco products to persons under 21 years of age or in areas accessible by persons under 21 years of age.** Establishes civil and criminal penalties for various acts or omissions.

Continuously appropriates moneys deposited in Tobacco Enforcement Fund pursuant to Act to Department of Justice for enforcement.

Applies to smokeless tobacco products distributed on or after January 1, 2010.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to distribution of tobacco products; creating new provisions; amending ORS 131.602,
3 166.715, 180.205, 323.500, 323.505, 323.520, 323.530, 323.625, 323.706 and 646.608; appropriating
4 money; prescribing an effective date; and providing for revenue raising that requires approval
5 by a three-fifths majority.

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

7 **SECTION 1.** ORS 323.500 is amended to read:

8 323.500. As used in ORS 323.500 to 323.645, unless the context otherwise requires:

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

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

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

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

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

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

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

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

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

8 (6) "Distribute" means:

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

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

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

15 (d) Storing untaxed tobacco products in this state that are intended to be for sale, use or con-
16 sumption in this state;

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

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

19 (7) "Distributor" means:

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

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

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

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

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

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

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

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

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

34 [(9)] (10) "Place of business" means any place where tobacco products are sold or where tobacco
35 products are manufactured, stored or kept for the purpose of sale or consumption, including any
36 vessel, vehicle, airplane, train or vending machine.

37 [(10)] (11) "Retail dealer" means any person who is engaged in the business of selling or other-
38 wise dispensing tobacco products to consumers. The term also includes the operators of or recipients
39 of revenue from all places such as smoke shops, cigar stores and vending machines, where tobacco
40 products are made or stored for ultimate sale to consumers.

41 [(11)] (12) "Sale" means any transfer, exchange or barter, in any manner or by any means, for
42 a consideration, and includes and means all sales made by any person. It includes a gift by a person
43 engaged in the business of selling tobacco products, for advertising, as a means of evading the pro-
44 visions of ORS 323.500 to 323.645, or for any other purpose.

45 [(12)] (13) "Taxpayer" includes a distributor or other person required to pay a tax imposed under

1 ORS 323.500 to 323.645.

2 [(13)] (14) "Tobacco products" means cigars, cheroots, stogies, periques, granulated, plug cut,
3 crimp cut, ready rubbed and other smoking tobacco, snuff, snuff flour, **moist snuff**, cavendish, plug
4 and twist tobacco, fine-cut and other chewing tobaccos, shorts, refuse scraps, clippings, cuttings and
5 sweepings of tobacco and other kinds and forms of tobacco, prepared in such manner as to be suit-
6 able for chewing or smoking in a pipe or otherwise, or both for chewing and smoking, but shall not
7 include cigarettes as defined in ORS 323.010.

8 [(14)] (15) "Untaxed tobacco products" means tobacco products for which the tax required under
9 ORS 323.500 to 323.645 has not been paid.

10 [(15)] (16) "Wholesale sales price" means the price paid for untaxed tobacco products to or on
11 behalf of a seller by a purchaser of the untaxed tobacco products.

12 **SECTION 2.** ORS 323.505 is amended to read:

13 323.505. (1) A tax is hereby imposed upon the distribution of all tobacco products in this state.
14 The tax imposed by this section is intended to be a direct tax on the consumer, for which payment
15 upon distribution is required to achieve convenience and facility in the collection and administration
16 of the tax. The tax shall be imposed on a distributor at the time the distributor distributes tobacco
17 products.

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

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

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

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

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

35 [(3)] (4) If the tax imposed under this section does not equal an amount calculable to a whole
36 cent, the tax shall be equal to the next higher whole cent. However, the amount remitted to the
37 Department of Revenue by the taxpayer for each quarter shall be equal only to 98.5 percent of the
38 total taxes due and payable by the taxpayer for the quarter.

39 [(4)] (5) No tobacco product shall be subject to the tax if the base product or other intermediate
40 form thereof has previously been taxed under this section.

41 **SECTION 3.** ORS 323.625 is amended to read:

42 323.625. All moneys received by the Department of Revenue under ORS 323.500 to 323.645 shall
43 be deposited in the State Treasury and credited to a suspense account established under ORS
44 293.445. After payment of refunds or credits arising from erroneous overpayments, the balance of the
45 money shall be credited to the General Fund. **The moneys credited to the General Fund under**

1 **this section shall be distributed as follows:**

2 (1) **\$1 million is dedicated in each biennium to the Department of Justice for expenses**
3 **related to the provision of medical examinations to children who are victims of suspected**
4 **physical abuse.**

5 (2) **41.54 percent** of the **remaining** amount [*credited to the General Fund under this section 41.54*
6 *percent shall be*] **is** dedicated to funding the maintenance and expansion of the number of persons
7 eligible for medical assistance under the Oregon Health Plan, or to funding the maintenance of the
8 benefits available under the Oregon Health Plan, or both, and 4.62 percent shall be credited to the
9 Tobacco Use Reduction Account established under ORS 431.832.

10 **SECTION 4. Notwithstanding ORS 323.625, for the biennium beginning July 1, 2009,**
11 **\$500,000 of the moneys credited to the General Fund under ORS 323.625 is dedicated to the**
12 **Department of Human Services for expenses related to a pilot program for shaken baby**
13 **prevention.**

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

16 **SECTION 6. The Legislative Assembly finds that violations of sections 18 to 20 of this**
17 **2009 Act threaten the integrity of the Smokeless Tobacco Master Settlement Agreement, the**
18 **fiscal soundness of the state and the public health. The Legislative Assembly finds that en-**
19 **acting procedural enhancements will aid the enforcement of sections 18 to 20 of this 2009**
20 **Act and thereby safeguard the integrity of the Smokeless Tobacco Master Settlement**
21 **Agreement, the fiscal soundness of the state and the public health.**

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

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

25 (2) **“Nonparticipating manufacturer” means any tobacco product manufacturer that is**
26 **not a participating manufacturer.**

27 (3) **“Participating manufacturer” has the meaning given that term in section II(ee) of the**
28 **Smokeless Tobacco Master Settlement Agreement.**

29 (4) **“Qualified escrow fund” has the meaning given that term in section 18 of this 2009**
30 **Act.**

31 (5) **“Smokeless Tobacco Master Settlement Agreement” has the meaning given that term**
32 **in section 18 of this 2009 Act.**

33 (6) **“Smokeless tobacco products” has the meaning given that term in section 18 of this**
34 **2009 Act.**

35 (7) **“Tobacco product manufacturer” has the meaning given that term in section 18 of**
36 **this 2009 Act.**

37 (8) **“Units sold” has the meaning given that term in section 18 of this 2009 Act.**

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

42 (a) **A participating manufacturer; or**

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

45 (2) **The certification required by subsection (1) of this section shall be on a form pre-**

1 scribed by the Attorney General and shall be submitted no later than April 30 each year. The
2 form shall permit the tobacco product manufacturer to indicate the electronic mail address
3 to which the Attorney General may send notice of changes in the directory developed under
4 section 10 of this 2009 Act if the tobacco product manufacturer elects to receive electronic
5 mail notice.

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

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

11 (2) That the nonparticipating manufacturer:

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

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

19 (3)(a) The name, address and telephone number of the financial institution where the
20 nonparticipating manufacturer has established the qualified escrow fund required by section
21 20 of this 2009 Act;

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

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

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

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

36 (2) The Attorney General may not include or retain in the directory the name of any
37 nonparticipating manufacturer that fails to provide the required certification or whose cer-
38 tification the Attorney General determines is not in compliance with sections 8 and 9 of this
39 2009 Act, unless the Attorney General has determined that the violation has been cured to
40 the satisfaction of the Attorney General. The Attorney General shall adopt rules defining the
41 criteria by which the Attorney General will exercise the discretion granted by this sub-
42 section.

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

45 (a) Any escrow payment required from the nonparticipating manufacturer pursuant to

1 section 20 of this 2009 Act for any period has not been fully paid into a qualified escrow fund
2 governed by a qualified escrow agreement that has been approved by the Attorney General;
3 or

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

6 (4) The Attorney General shall update the directory in order to correct mistakes and to
7 add or remove a tobacco product manufacturer to keep the directory in conformity with the
8 requirements of this section. The Attorney General shall update the directory with new to-
9 bacco product manufacturers upon receipt of an annual or supplemental certification listing
10 new tobacco product manufacturers if the Attorney General determines that the annual or
11 supplemental certification is in compliance with the requirements of sections 8 and 9 of this
12 2009 Act. The Attorney General shall make the determination about compliance within 45
13 days of receipt of the certification.

14 (5) The Attorney General shall:

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

18 (b) Develop a registration form to be completed by persons interested in receiving elec-
19 tronic mail notification of changes in the directory developed under this section that are not
20 otherwise required by section 12 (3) of this 2009 Act or rules adopted under sections 14 and
21 15 of this 2009 Act to submit their electronic mail addresses to the Attorney General; and

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

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

35 (b) The nonparticipating manufacturer shall provide the name, address, telephone num-
36 ber and proof of the appointment and availability of the agent to the Attorney General.

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

44 (3) A nonparticipating manufacturer whose smokeless tobacco products are sold in this
45 state who has not appointed or designated an agent as required by this section shall be

1 deemed to have appointed the Secretary of State as the agent and may be proceeded against
2 in courts of this state by service of process upon the Secretary of State. However, the ap-
3 pointment of the Secretary of State as the agent does not satisfy the condition precedent to
4 the nonparticipating manufacturer being listed or retained in the directory.

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

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

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

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

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

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

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

45 **SECTION 13.** (1) A person may not:

1 (a) Sell, offer for sale or possess for sale in this state smokeless tobacco products of a
2 tobacco product manufacturer that is not included in the directory developed under section
3 10 of this 2009 Act;

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

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

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

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

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

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

20 **SECTION 14.** (1) To promote compliance with the provisions of sections 8, 9, 10, 11, 12
21 and 13 of this 2009 Act, the Attorney General may adopt rules requiring a nonparticipating
22 manufacturer to make the escrow deposits required by section 20 of this 2009 Act in quar-
23 terly installments during the year in which the sales covered by the deposits are made. The
24 Attorney General may require a nonparticipating manufacturer to produce information suf-
25 ficient to enable the Attorney General to determine the adequacy of the amount of the in-
26 stallment deposit.

27 (2) If the Attorney General adopts rules requiring a nonparticipating manufacturer to
28 make escrow deposits in quarterly installments, the rules may also provide that a nonpar-
29 ticipating manufacturer that has been in continuous compliance for one year with sections
30 8, 9, 10, 11, 12, 13 and 20 of this 2009 Act may make escrow deposits required by section 20
31 of this 2009 Act in annual payments during the second and subsequent years in which de-
32 posits are required.

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

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

39 (3) In any action brought by the state to enforce section 8, 9, 10, 11, 12, 13 or 20 of this
40 2009 Act, or any rule adopted under this section or section 14 of this 2009 Act, the state may
41 recover the costs of investigation, expert witness fees, costs of the action and reasonable
42 attorney fees. Moneys recovered under this subsection shall be deposited into the Tobacco
43 Enforcement Fund established under ORS 180.205.

44 (4) If a court determines that a person has violated any provision of section 8, 9, 10, 11,
45 12, 13 or 20 of this 2009 Act, or any rule adopted under this section or section 14 of this 2009

1 Act, the court shall order any profits, gain, gross receipts or other benefit from the violation
2 to be disgorged and paid to the Tobacco Enforcement Fund established under ORS 180.205.

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

6 **SECTION 16.** (1) Upon a determination that a distributor has violated section 13 of this
7 2009 Act, the Department of Revenue may revoke or suspend the license of the distributor
8 in the manner provided by ORS 323.535. Each offer to sell smokeless tobacco products in vi-
9 olation of section 13 of this 2009 Act constitutes a separate violation.

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

14 (3)(a) Upon a determination that a person has violated section 13 (1)(b) or (c) of this 2009
15 Act, the department may impose a civil penalty in an amount not to exceed the greater of
16 \$5,000 or 500 percent of the retail value of the smokeless tobacco products sold, offered for
17 sale or possessed for sale. Judicial review of an order imposing a civil penalty shall be as
18 provided in ORS 305.445 and 305.501.

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

22 (4) The Attorney General may seek an injunction to restrain a threatened or actual vio-
23 lation of section 12 or 13 of this 2009 Act by a distributor and to compel the distributor to
24 comply with sections 12 and 13 of this 2009 Act. In any action brought pursuant to this sub-
25 section, the state may recover the costs of investigation, the costs of the action and rea-
26 sonable attorney fees.

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

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

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

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

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

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

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

41 (3) "Qualified escrow fund" means an escrow arrangement with a federally or state
42 chartered financial institution having no affiliation with any tobacco product manufacturer
43 and having assets of at least \$1 billion, where such arrangement requires that such financial
44 institution hold the escrowed funds' principal for the benefit of releasing parties and pro-
45 hibits the tobacco product manufacturer who is placing the funds into escrow from using,

1 accessing or directing the use of the escrowed funds' principal except as consistent with
2 section 20 (2)(b) of this 2009 Act.

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

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

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

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

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

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

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

27 (C) Becomes a successor of an entity described in subparagraph (A) or (B) of this para-
28 graph.

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

32 (9) "Units sold" means the number of individual containers of smokeless tobacco pro-
33 ducts sold in the State of Oregon by the applicable tobacco product manufacturer (whether
34 directly or through a distributor, retailer or similar intermediary or intermediaries) during
35 the year in question, as measured by excise taxes collected by the State of Oregon. The De-
36 partment of Revenue shall adopt such rules as are necessary to ascertain the amount of
37 state excise tax paid on the smokeless tobacco products of such tobacco product manufac-
38 turer for each year. A unit container shall contain 3.2 ounces of moist snuff, as defined in
39 ORS 323.500, or 3.0 ounces of chewing tobacco.

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

1 ducts.

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

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

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

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

20 (a) To pay substantial sums to the State of Oregon (tied in part to their volume of sales);

21 (b) To fund a national foundation devoted to the interests of public health; and

22 (c) To make substantial changes in their advertising and marketing practices and cor-
23 porate culture, with the intention of reducing underage smoking.

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

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

36 (a) Comply with the requirements imposed on Participating Manufacturers that are set
37 forth in sections III, V and VII of the Smokeless Tobacco Master Settlement Agreement; or

38 (b) Place into a qualified escrow fund, by April 15 of the year following the year in ques-
39 tion, the amount of \$0.40 per unit sold for 2010 or such amount adjusted for inflation for each
40 year thereafter.

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

44 (a) To pay a judgment or settlement on any released claim brought against such tobacco
45 product manufacturer by the State of Oregon or any releasing party located or residing in

1 this state. Funds shall be released from escrow under this paragraph in the order in which
2 they were placed into escrow and only to the extent and at the time necessary to make
3 payments required under such judgment or settlement;

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

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

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

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

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

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

38 **SECTION 21.** ORS 323.520 is amended to read:

39 323.520. (1) Any person engaging or seeking to engage in the sale of tobacco products as a dis-
40 tributor shall file an application for a distributor's license with the Department of Revenue. The
41 application shall be on a form prescribed by the department. A distributor shall apply for and obtain
42 a license for each place of business at which the distributor engages in the business of distributing
43 tobacco products. A fee may not be charged for the license. For the purposes of this section, a
44 vending machine in and of itself is not a place of business.

45 (2) A person may not engage in the business of distributing tobacco products in this state

1 without a license.

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

5 **SECTION 22.** ORS 323.530 is amended to read:

6 323.530. (1) Upon receipt of a completed application, **the statement required by ORS 323.520**
7 **(3)** and any security required by the Department of Revenue under ORS 323.500 to 323.645, the de-
8 partment shall issue a distributor's license to an applicant. A separate license shall be issued for
9 each place of business of the distributor within the state. Each license issued by the department
10 shall include an identification number for the license. A license is valid only for engaging in busi-
11 ness as a distributor at the place designated thereon, and it shall at all times be conspicuously dis-
12 played at the place for which issued. The license is not transferable and is valid until canceled,
13 suspended or revoked.

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

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

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

22 **SECTION 23.** ORS 323.706 is amended to read:

23 323.706. A person accepting a purchase order for a delivery sale, prior to the first mailing,
24 shipment or other delivery of tobacco to a consumer, shall comply with:

25 (1) The age verification requirements set forth in ORS 323.709;

26 (2) The distributor license requirements set forth in ORS 323.712;

27 (3) The disclosure requirements set forth in ORS 323.715;

28 (4) The mailing or shipping requirements set forth in ORS 323.718;

29 (5) The reporting requirements set forth in ORS 323.721; and

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

33 **SECTION 24.** ORS 131.602 is amended to read:

34 131.602. The crimes to which ORS 131.550 (11)(b) applies are:

35 (1) Bribe giving, as defined in ORS 162.015.

36 (2) Bribe receiving, as defined in ORS 162.025.

37 (3) Public investment fraud, as defined in ORS 162.117.

38 (4) Bribing a witness, as defined in ORS 162.265.

39 (5) Bribe receiving by a witness, as defined in ORS 162.275.

40 (6) Simulating legal process, as defined in ORS 162.355.

41 (7) Official misconduct in the first degree, as defined in ORS 162.415.

42 (8) Custodial interference in the second degree, as defined in ORS 163.245.

43 (9) Custodial interference in the first degree, as defined in ORS 163.257.

44 (10) Buying or selling a person under 18 years of age, as defined in ORS 163.537.

45 (11) Using a child in a display of sexually explicit conduct, as defined in ORS 163.670.

- 1 (12) Encouraging child sexual abuse in the first degree, as defined in ORS 163.684.
- 2 (13) Encouraging child sexual abuse in the second degree, as defined in ORS 163.686.
- 3 (14) Encouraging child sexual abuse in the third degree, as defined in ORS 163.687.
- 4 (15) Possession of materials depicting sexually explicit conduct of a child in the first degree, as
- 5 defined in ORS 163.688.
- 6 (16) Possession of materials depicting sexually explicit conduct of a child in the second degree,
- 7 as defined in ORS 163.689.
- 8 (17) Theft in the second degree, as defined in ORS 164.045.
- 9 (18) Theft in the first degree, as defined in ORS 164.055.
- 10 (19) Aggravated theft in the first degree, as defined in ORS 164.057.
- 11 (20) Theft by extortion, as defined in ORS 164.075.
- 12 (21) Theft by deception, as defined in ORS 164.085, if it is a felony or a Class A misdemeanor.
- 13 (22) Theft by receiving, as defined in ORS 164.095, if it is a felony or a Class A misdemeanor.
- 14 (23) Theft of services, as defined in ORS 164.125, if it is a felony or a Class A misdemeanor.
- 15 (24) Unauthorized use of a vehicle, as defined in ORS 164.135.
- 16 (25) Mail theft or receipt of stolen mail, as defined in ORS 164.162.
- 17 (26) Laundering a monetary instrument, as defined in ORS 164.170.
- 18 (27) Engaging in a financial transaction in property derived from unlawful activity, as defined
- 19 in ORS 164.172.
- 20 (28) Burglary in the second degree, as defined in ORS 164.215.
- 21 (29) Burglary in the first degree, as defined in ORS 164.225.
- 22 (30) Possession of a burglary tool or theft device, as defined in ORS 164.235.
- 23 (31) Unlawful entry into a motor vehicle, as defined in ORS 164.272.
- 24 (32) Arson in the second degree, as defined in ORS 164.315.
- 25 (33) Arson in the first degree, as defined in ORS 164.325.
- 26 (34) Computer crime, as defined in ORS 164.377.
- 27 (35) Robbery in the third degree, as defined in ORS 164.395.
- 28 (36) Robbery in the second degree, as defined in ORS 164.405.
- 29 (37) Robbery in the first degree, as defined in ORS 164.415.
- 30 (38) Unlawful labeling of a sound recording, as defined in ORS 164.868.
- 31 (39) Unlawful recording of a live performance, as defined in ORS 164.869.
- 32 (40) Unlawful labeling of a videotape recording, as defined in ORS 164.872.
- 33 (41) A violation of ORS 164.886.
- 34 (42) Endangering aircraft, as defined in ORS 164.885.
- 35 (43) Interference with agricultural operations, as defined in ORS 164.887.
- 36 (44) Forgery in the second degree, as defined in ORS 165.007.
- 37 (45) Forgery in the first degree, as defined in ORS 165.013.
- 38 (46) Criminal possession of a forged instrument in the second degree, as defined in ORS 165.017.
- 39 (47) Criminal possession of a forged instrument in the first degree, as defined in ORS 165.022.
- 40 (48) Criminal possession of a forgery device, as defined in ORS 165.032.
- 41 (49) Criminal simulation, as defined in ORS 165.037.
- 42 (50) Fraudulently obtaining a signature, as defined in ORS 165.042.
- 43 (51) Fraudulent use of a credit card, as defined in ORS 165.055.
- 44 (52) Negotiating a bad check, as defined in ORS 165.065.
- 45 (53) Possessing a fraudulent communications device, as defined in ORS 165.070.

- 1 (54) Unlawful factoring of a payment card transaction, as defined in ORS 165.074.
- 2 (55) Falsifying business records, as defined in ORS 165.080.
- 3 (56) Sports bribery, as defined in ORS 165.085.
- 4 (57) Sports bribe receiving, as defined in ORS 165.090.
- 5 (58) Misapplication of entrusted property, as defined in ORS 165.095.
- 6 (59) Issuing a false financial statement, as defined in ORS 165.100.
- 7 (60) Obtaining execution of documents by deception, as defined in ORS 165.102.
- 8 (61) A violation of ORS 165.543.
- 9 (62) Cellular counterfeiting in the third degree, as defined in ORS 165.577.
- 10 (63) Cellular counterfeiting in the second degree, as defined in ORS 165.579.
- 11 (64) Cellular counterfeiting in the first degree, as defined in ORS 165.581.
- 12 (65) Identity theft, as defined in ORS 165.800.
- 13 (66) A violation of ORS 166.190.
- 14 (67) Unlawful use of a weapon, as defined in ORS 166.220.
- 15 (68) A violation of ORS 166.240.
- 16 (69) Unlawful possession of a firearm, as defined in ORS 166.250.
- 17 (70) A violation of ORS 166.270.
- 18 (71) Unlawful possession of a machine gun, short-barreled rifle, short-barreled shotgun or
19 firearms silencer, as defined in ORS 166.272.
- 20 (72) A violation of ORS 166.275.
- 21 (73) Unlawful possession of armor piercing ammunition, as defined in ORS 166.350.
- 22 (74) A violation of ORS 166.370.
- 23 (75) Unlawful possession of a destructive device, as defined in ORS 166.382.
- 24 (76) Unlawful manufacture of a destructive device, as defined in ORS 166.384.
- 25 (77) Possession of a hoax destructive device, as defined in ORS 166.385.
- 26 (78) A violation of ORS 166.410.
- 27 (79) Providing false information in connection with a transfer of a firearm, as defined in ORS
28 166.416.
- 29 (80) Improperly transferring a firearm, as defined in ORS 166.418.
- 30 (81) Unlawfully purchasing a firearm, as defined in ORS 166.425.
- 31 (82) A violation of ORS 166.429.
- 32 (83) A violation of ORS 166.470.
- 33 (84) A violation of ORS 166.480.
- 34 (85) A violation of ORS 166.635.
- 35 (86) A violation of ORS 166.638.
- 36 (87) Unlawful paramilitary activity, as defined in ORS 166.660.
- 37 (88) A violation of ORS 166.720.
- 38 (89) Prostitution, as defined in ORS 167.007.
- 39 (90) Promoting prostitution, as defined in ORS 167.012.
- 40 (91) Compelling prostitution, as defined in ORS 167.017.
- 41 (92) Exhibiting an obscene performance to a minor, as defined in ORS 167.075.
- 42 (93) Unlawful gambling in the second degree, as defined in ORS 167.122.
- 43 (94) Unlawful gambling in the first degree, as defined in ORS 167.127.
- 44 (95) Possession of gambling records in the second degree, as defined in ORS 167.132.
- 45 (96) Possession of gambling records in the first degree, as defined in ORS 167.137.

- 1 (97) Possession of a gambling device, as defined in ORS 167.147.
- 2 (98) Possession of a gray machine, as defined in ORS 167.164.
- 3 (99) Cheating, as defined in ORS 167.167.
- 4 (100) Tampering with drug records, as defined in ORS 167.212.
- 5 (101) A violation of ORS 167.262.
- 6 (102) Research and animal interference, as defined in ORS 167.312.
- 7 (103) Animal abuse in the first degree, as defined in ORS 167.320.
- 8 (104) Aggravated animal abuse in the first degree, as defined in ORS 167.322.
- 9 (105) Animal neglect in the first degree, as defined in ORS 167.330.
- 10 (106) Interfering with an assistance, a search and rescue or a therapy animal, as defined in ORS
- 11 167.352.
- 12 (107) Involvement in animal fighting, as defined in ORS 167.355.
- 13 (108) Dogfighting, as defined in ORS 167.365.
- 14 (109) Participation in dogfighting, as defined in ORS 167.370.
- 15 (110) Unauthorized use of a livestock animal, as defined in ORS 167.385.
- 16 (111) Interference with livestock production, as defined in ORS 167.388.
- 17 (112) A violation of ORS 167.390.
- 18 (113) A violation of ORS 471.410.
- 19 (114) Failure to report missing precursor substances, as defined in ORS 475.955.
- 20 (115) Illegally selling drug equipment, as defined in ORS 475.960.
- 21 (116) Providing false information on a precursor substances report, as defined in ORS 475.965.
- 22 (117) Unlawful delivery of an imitation controlled substance, as defined in ORS 475.912.
- 23 (118) A violation of ORS 475.840, if it is a felony or a Class A misdemeanor.
- 24 (119) A violation of ORS 475.914, if it is a felony or a Class A misdemeanor.
- 25 (120) A violation of ORS 475.916.
- 26 (121) A violation of ORS 475.906, if it is a felony or a Class A misdemeanor.
- 27 (122) A violation of ORS 475.904.
- 28 (123) Misuse of an identification card, as defined in ORS 807.430.
- 29 (124) Unlawful production of identification cards, licenses, permits, forms or camera cards, as
- 30 defined in ORS 807.500.
- 31 (125) Transfer of documents for the purposes of misrepresentation, as defined in ORS 807.510.
- 32 (126) Using an invalid license, as defined in ORS 807.580.
- 33 (127) Permitting misuse of a license, as defined in ORS 807.590.
- 34 (128) Using another's license, as defined in ORS 807.600.
- 35 (129) Criminal driving while suspended or revoked, as defined in ORS 811.182, when it is a fel-
- 36 ony.
- 37 (130) Driving while under the influence of intoxicants, as defined in ORS 813.010, when it is a
- 38 felony.
- 39 (131) Unlawful distribution of cigarettes, as defined in ORS 323.482.
- 40 (132) Unlawful distribution of tobacco products, as defined in ORS 323.632.
- 41 (133) A violation of ORS 180.440 (2)[.] **or section 13 (2) of this 2009 Act.**
- 42 (134) A violation described in ORS 475.846 to 475.894, if it is a felony.
- 43 (135) Subjecting another person to involuntary servitude in the first degree, as defined in ORS
- 44 163.264.
- 45 (136) Subjecting another person to involuntary servitude in the second degree, as defined in ORS

1 163.263.

2 (137) Trafficking in persons, as defined in ORS 163.266.

3 (138) Furnishing sexually explicit material to a child, as defined in ORS 167.054.

4 (139) Luring a minor, as defined in ORS 167.057.

5 (140) Online sexual corruption of a child in the second degree, as defined in ORS 163.432.

6 (141) Online sexual corruption of a child in the first degree, as defined in ORS 163.433.

7 (142) An attempt, conspiracy or solicitation to commit a crime in subsections (1) to (141) of this
8 section if the attempt, conspiracy or solicitation is a felony or a Class A misdemeanor.

9 **SECTION 25.** ORS 166.715 is amended to read:

10 166.715. As used in ORS 166.715 to 166.735, unless the context requires otherwise:

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

15 (2) "Enterprise" includes any individual, sole proprietorship, partnership, corporation, business
16 trust or other profit or nonprofit legal entity, and includes any union, association or group of indi-
17 viduals associated in fact although not a legal entity, and both illicit and licit enterprises and gov-
18 ernmental and nongovernmental entities.

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

20 (4) "Pattern of racketeering activity" means engaging in at least two incidents of racketeering
21 activity that have the same or similar intents, results, accomplices, victims or methods of commis-
22 sion or otherwise are interrelated by distinguishing characteristics, including a nexus to the same
23 enterprise, and are not isolated incidents, provided at least one of such incidents occurred after
24 November 1, 1981, and that the last of such incidents occurred within five years after a prior inci-
25 dent of racketeering activity. Notwithstanding ORS 131.505 to 131.525 or 419A.190 or any other
26 provision of law providing that a previous prosecution is a bar to a subsequent prosecution, conduct
27 that constitutes an incident of racketeering activity may be used to establish a pattern of
28 racketeering activity without regard to whether the conduct previously has been the subject of a
29 criminal prosecution or conviction or a juvenile court adjudication, unless the prosecution resulted
30 in an acquittal or the adjudication resulted in entry of an order finding the youth not to be within
31 the jurisdiction of the juvenile court.

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

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

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

39 (A) ORS 59.005 to 59.451, 59.710 to 59.830, 59.991 and 59.995, relating to securities;

40 (B) ORS 162.015, 162.025 and 162.065 to 162.085, relating to bribery and perjury;

41 (C) ORS 162.235, 162.265 to 162.305, 162.325, 162.335, 162.355 and 162.365, relating to obstructing
42 governmental administration;

43 (D) ORS 162.405 to 162.425, relating to abuse of public office;

44 (E) ORS 162.455, relating to interference with legislative operation;

45 (F) ORS 163.095 to 163.115, 163.118, 163.125 and 163.145, relating to criminal homicide;

- 1 (G) ORS 163.160 to 163.205, relating to assault and related offenses;
2 (H) ORS 163.225 and 163.235, relating to kidnapping;
3 (I) ORS 163.275, relating to coercion;
4 (J) ORS 163.670 to 163.693, relating to sexual conduct of children;
5 (K) ORS 164.015, 164.043, 164.045, 164.055, 164.057, 164.075 to 164.095, 164.098, 164.125, 164.135,
6 164.140, 164.215, 164.225 and 164.245 to 164.270, relating to theft, burglary, criminal trespass and
7 related offenses;
8 (L) ORS 164.315 to 164.335, relating to arson and related offenses;
9 (M) ORS 164.345 to 164.365, relating to criminal mischief;
10 (N) ORS 164.395 to 164.415, relating to robbery;
11 (O) ORS 164.865, 164.875 and 164.868 to 164.872, relating to unlawful recording or labeling of a
12 recording;
13 (P) ORS 165.007 to 165.022, 165.032 to 165.042 and 165.055 to 165.070, relating to forgery and
14 related offenses;
15 (Q) ORS 165.080 to 165.109, relating to business and commercial offenses;
16 (R) ORS 165.485 to 165.515, 165.540 and 165.555, relating to communication crimes;
17 (S) ORS 166.180, 166.190, 166.220, 166.250, 166.270, 166.275, 166.410, 166.450 and 166.470, relating
18 to firearms and other weapons;
19 (T) ORS 164.377 (2) to (4), as punishable under ORS 164.377 (5)(b), 167.007 to 167.017, 167.054,
20 167.057, 167.062 to 167.080, 167.090, 167.122 to 167.137, 167.147, 167.164, 167.167, 167.212, 167.355,
21 167.365, 167.370, 167.428, 167.431 and 167.439, relating to prostitution, obscenity, sexually explicit
22 material, sexual conduct, gambling, computer crimes involving the Oregon State Lottery, animal
23 fighting, forcible recovery of a fighting bird and related offenses;
24 (U) ORS 171.990, relating to legislative witnesses;
25 (V) ORS 260.575 and 260.665, relating to election offenses;
26 (W) ORS 314.075, relating to income tax;
27 (X) ORS 180.440 (2) and **section 13 (2) of this 2009 Act** and ORS chapter 323, relating to cig-
28 arette and tobacco products taxes and the [*directory*] **directories** developed under ORS 180.425 **and**
29 **section 10 of this 2009 Act**;
30 (Y) ORS 411.630, 411.675, 411.690 and 411.840, relating to public assistance payments, and ORS
31 411.990 (2) and (3);
32 (Z) ORS 462.140, 462.415 and 462.420 to 462.520, relating to racing;
33 (AA) ORS 463.995, relating to boxing, mixed martial arts and entertainment wrestling, as defined
34 in ORS 463.015;
35 (BB) ORS 471.305, 471.360, 471.392 to 471.400, 471.403, 471.404, 471.405, 471.425, 471.442, 471.445,
36 471.446, 471.485, 471.490 and 471.675, relating to alcoholic liquor, and any of the provisions of ORS
37 chapter 471 relating to licenses issued under the Liquor Control Act;
38 (CC) ORS 475.005 to 475.285 and 475.840 to 475.980, relating to controlled substances;
39 (DD) ORS 480.070, 480.210, 480.215, 480.235 and 480.265, relating to explosives;
40 (EE) ORS 819.010, 819.040, 822.100, 822.135 and 822.150, relating to motor vehicles;
41 (FF) ORS 658.452 or 658.991 (2) to (4), relating to farm labor contractors;
42 (GG) ORS chapter 706, relating to banking law administration;
43 (HH) ORS chapter 714, relating to branch banking;
44 (II) ORS chapter 716, relating to mutual savings banks;
45 (JJ) ORS chapter 723, relating to credit unions;

- 1 (KK) ORS chapter 726, relating to pawnbrokers;
- 2 (LL) ORS 166.382 and 166.384, relating to destructive devices;
- 3 (MM) ORS 165.074;
- 4 (NN) ORS 59.840 to 59.980, relating to mortgage bankers and mortgage brokers;
- 5 (OO) ORS chapter 496, 497 or 498, relating to wildlife;
- 6 (PP) ORS 163.355 to 163.427, relating to sexual offenses;
- 7 (QQ) ORS 166.015, relating to riot;
- 8 (RR) ORS 166.155 and 166.165, relating to intimidation;
- 9 (SS) ORS chapter 696, relating to real estate and escrow;
- 10 (TT) ORS chapter 704, relating to outfitters and guides;
- 11 (UU) ORS 165.692, relating to making a false claim for health care payment;
- 12 (VV) ORS 162.117, relating to public investment fraud;
- 13 (WW) ORS 164.170 or 164.172;
- 14 (XX) ORS 647.140, 647.145 or 647.150, relating to trademark counterfeiting;
- 15 (YY) ORS 164.886;
- 16 (ZZ) ORS 167.312 and 167.388;
- 17 (AAA) ORS 164.889;
- 18 (BBB) ORS 165.800; or
- 19 (CCC) ORS 163.263, 163.264 or 163.266.

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

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

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

- 25 (A) ORS chapter 462, relating to racing;
- 26 (B) ORS 167.108 to 167.164, relating to gambling; or
- 27 (C) ORS 82.010 to 82.170, relating to interest and usury.

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

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

34 **SECTION 26.** ORS 646.608, as amended by section 8, chapter 19, Oregon Laws 2008, and section
35 5, chapter 31, Oregon Laws 2008, is amended to read:

36 646.608. (1) A person engages in an unlawful practice when in the course of the person’s busi-
37 ness, vocation or occupation the person does any of the following:

- 38 (a) Passes off real estate, goods or services as those of another.
- 39 (b) Causes likelihood of confusion or of misunderstanding as to the source, sponsorship, ap-
40 proval, or certification of real estate, goods or services.
- 41 (c) Causes likelihood of confusion or of misunderstanding as to affiliation, connection, or asso-
42 ciation with, or certification by, another.
- 43 (d) Uses deceptive representations or designations of geographic origin in connection with real
44 estate, goods or services.
- 45 (e) Represents that real estate, goods or services have sponsorship, approval, characteristics,

1 ingredients, uses, benefits, quantities or qualities that they do not have or that a person has a
2 sponsorship, approval, status, qualification, affiliation, or connection that the person does not have.

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

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

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

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

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

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

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

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

21 (n) Solicits potential customers by telephone or door to door as a seller unless the person pro-
22 vides the information required under ORS 646.611.

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

29 (p) Makes any false or misleading statement about a prize, contest or promotion used to publi-
30 cize a product, business or service.

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

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

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

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

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

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

41 (w) Manufactures mercury fever thermometers.

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

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

45 (B) Supplied with instructions on the careful handling of the thermometer to avoid breakage and

1 on the proper cleanup of mercury should breakage occur.

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

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

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

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

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

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

14 (ee) Violates ORS 646.883 or 646.885.

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

16 (gg) Violates ORS 646.569.

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

18 (ii) Violates ORS 646A.360.

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

20 (kk) Violates ORS 646.563.

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

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

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

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

26 (pp) Violates ORS 646A.254.

27 (qq) Violates ORS 646A.095.

28 (rr) Violates ORS 822.046.

29 (ss) Violates ORS 128.001.

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

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

32 (vv) Violates ORS 87.686.

33 (ww) Violates ORS 646.651.

34 (xx) Violates ORS 646A.362.

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

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

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

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

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

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

41 (eee) Violates ORS 646A.365.

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

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

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

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

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

2 (kkk) Violates section 2, chapter 31, Oregon Laws 2008, 30 or more days after a recall notice,
3 warning or declaration described in section 2, chapter 31, Oregon Laws 2008, is issued for the chil-
4 dren's product, as defined in section 1, chapter 31, Oregon Laws 2008, that is the subject of the vi-
5 olation.

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

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

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

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

16 **SECTION 27.** ORS 180.205 is amended to read:

17 180.205. (1) The Tobacco Enforcement Fund is established separate and distinct from the General
18 Fund. The Tobacco Enforcement Fund shall consist of:

19 (a) Moneys deposited into the fund under ORS 180.450 **and section 15 of this 2009 Act**; and

20 (b) Moneys transferred to the fund under ORS 293.537.

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

25 **SECTION 28.** Sections 6 to 16 and 18 to 20 of this 2009 Act and the amendments to ORS
26 131.602, 166.715, 180.205, 323.500, 323.505, 323.520, 323.530, 323.625, 323.706 and 646.608 by
27 sections 1 to 3 and 21 to 27 of this 2009 Act apply to smokeless tobacco products distributed
28 on or after January 1, 2010.

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