

# Enrolled Senate Bill 214

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CHAPTER .....

AN ACT

Relating to the Attorney General’s regulation of tobacco; amending ORS 180.425 and 180.435.

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

**SECTION 1.** ORS 180.435 is amended to read:

180.435. (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 [*who affixes stamps to cigarette packages in accordance with the provisions of ORS 323.005 to 323.482*] shall report such information as the Attorney General requires to facilitate compliance by tobacco product manufacturers with this section and ORS 180.410, 180.415, 180.420, 180.430 and 180.440, and with rules adopted under ORS 180.445 and 180.450. The information shall include, but need not be limited to, a list by brand family of the total number of cigarettes or, in the case of roll-your-own tobacco, the equivalent stick count for which the distributor affixed stamps or otherwise 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 cigarettes 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) The Attorney General may compel by subpoena the production of any books, papers, records or other information required to be maintained under subsection (2) of this section and may require any person to appear and provide testimony pertinent to the information described in subsection (2) of this section. The subpoena shall have the same force and effect and be served in the same manner as in a civil action in the circuit court.**

**(b) If a person fails to produce any books, papers, records or other information required to be produced, fails to appear or testify about a matter for which testimony may be compelled or otherwise fails to comply with a subpoena issued under this subsection, the Attorney General may apply to the circuit court of the county in which the person to whom the subpoena was issued resides or may be found. The application shall be for an order requiring the person to comply with the demand or request of the Attorney General. The application shall be made by ex parte motion. The order of the court shall require the person against whom the order is directed to comply with the request or demand of the Attorney General within 10 days after the service of the order, or such further time as the court may grant, or to justify the failure to comply with the order within that time.**

**(c) Failure to comply with an order under this subsection shall constitute contempt of court. The remedy provided under this paragraph shall be in addition to any other remedy provided by law.**

[(3)] (4) 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)] (8) of this section.

[(4)] (5) The Attorney General and the Department of Revenue may share with each other information received under this section and ORS 180.410, 180.415 and 323.106 and may share such information with federal, state or local agencies for purposes of enforcement of this section and ORS 180.410, 180.415, 180.420, 180.430, 180.440 and 323.806, rules adopted under ORS 180.445 and 180.450 and corresponding laws of other states.

[(5)] (6) 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 ORS 323.806 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)] (7) 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 brand families or 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)] (8) 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 brand family, to enable the Attorney General to determine whether a tobacco product manufacturer is in compliance with this section and ORS 180.410, 180.415, 180.420, 180.430 and 180.440 and with rules adopted under ORS 180.445 and 180.450.

**SECTION 2.** ORS 180.425 is amended to read:

180.425. (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 ORS 180.410 and 180.415 and all brand families that are listed in the certifications.

(2) The Attorney General may not include or retain in the directory the name or brand families of any nonparticipating manufacturer that fails to provide the required certification or whose certification the Attorney General determines is not in compliance with ORS 180.410 and 180.415, 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 or a brand family if the Attorney General concludes that:

(a) Any escrow payment required from the nonparticipating manufacturer pursuant to ORS 323.806 for any period for any brand family, whether listed or not listed by the nonparticipating manufacturer, 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, including interest thereon, for a violation of ORS 323.806 has not been fully satisfied for the brand family or the nonparticipating manufacturer.

(4) The Attorney General shall update the directory in order to correct mistakes and to add or remove a tobacco product manufacturer or a brand family to keep the directory in conformity with the requirements of this section. The Attorney General shall update the directory with new brand families upon receipt of an annual or supplemental certification listing new brand families if the

Attorney General determines that the annual or supplemental certification is in compliance with the requirements of ORS 180.410 and 180.415. 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 ORS 180.435 [(3)] (4) or rules adopted under ORS 180.445 or 180.450 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.

**Passed by Senate March 12, 2009**

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Secretary of Senate

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President of Senate

**Passed by House May 21, 2009**

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Speaker of House

**Received by Governor:**

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

**Approved:**

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

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Governor

**Filed in Office of Secretary of State:**

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

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Secretary of State