

Senate Bill 214

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SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Authorizes Attorney General to compel distributor to produce information or provide testimony concerning cigarette manufacture and distribution. Requires circuit court to hold in contempt person who does not comply with order compelling production of information or testimony and who is unable to justify to court failure to comply with order.

A BILL FOR AN ACT

1
2 Relating to the Attorney General's regulation of tobacco; amending ORS 180.425 and 180.435.

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

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

5 180.435. (1) Not later than 20 days after the end of each calendar quarter, and more frequently
6 if so directed by the Attorney General, a distributor who affixes stamps to cigarette packages in
7 accordance with the provisions of ORS 323.005 to 323.482 shall report such information as the At-
8 torney General requires to facilitate compliance by tobacco product manufacturers with this section
9 and ORS 180.410, 180.415, 180.420, 180.430 and 180.440, and with rules adopted under ORS 180.445
10 and 180.450. The information shall include, but need not be limited to, a list by brand family of the
11 total number of cigarettes or, in the case of roll-your-own tobacco, the equivalent stick count for
12 which the distributor affixed stamps or otherwise paid the tax due during the previous calendar
13 quarter.

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

18 **(3)(a) The Attorney General may compel by subpoena the production of any books, pa-**
19 **pers, records or other information required to be maintained under subsection (2) of this**
20 **section and may require any person to appear and provide testimony pertinent to the infor-**
21 **mation described in subsection (2) of this section. The subpoena shall have the same force**
22 **and effect and be served in the same manner as in a civil action in the circuit court.**

23 **(b) If a person fails to produce any books, papers, records or other information required**
24 **to be produced, fails to appear or testify about a matter for which testimony may be com-**
25 **pelled or otherwise fails to comply with a subpoena issued under this subsection, the Attor-**
26 **ney General may apply to the circuit court of the county in which the person to whom the**
27 **subpoena was issued resides or may be found. The application shall be for an order requiring**
28 **the person to comply with the demand or request of the Attorney General. The application**
29 **shall be made by ex parte motion. The order of the court shall require the person against**

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 **whom the order is directed to comply with the request or demand of the Attorney General**
2 **within 10 days after the service of the order, or such further time as the court may grant,**
3 **or to justify the failure to comply with the order within that time.**

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

7 [(3)] (4) A distributor shall provide the Attorney General with an electronic mail address so that
8 the Attorney General may notify the distributor of the information required under subsections (1)
9 and [(7)] (8) of this section.

10 [(4)] (5) The Attorney General and the Department of Revenue may share with each other in-
11 formation received under this section and ORS 180.410, 180.415 and 323.106 and may share such in-
12 formation with federal, state or local agencies for purposes of enforcement of this section and ORS
13 180.410, 180.415, 180.420, 180.430, 180.440 and 323.806, rules adopted under ORS 180.445 and 180.450
14 and corresponding laws of other states.

15 [(5)] (6) The Attorney General may at any time require a nonparticipating manufacturer to
16 produce proof from the financial institution in which the nonparticipating manufacturer has estab-
17 lished a qualified escrow fund for the purpose of compliance with ORS 323.806 of the amount of
18 moneys in the fund, exclusive of interest, the amount and date of each deposit and the amount and
19 date of each withdrawal from the fund.

20 [(6)] (7) The Attorney General shall, upon request of a nonparticipating manufacturer whose
21 compliance with escrow requirements is at issue, provide the manufacturer with copies of all docu-
22 ments upon which any proposed addition to the escrow is based. Documents required to be provided
23 under this subsection include, but are not necessarily limited to, reports under this section from
24 distributors. The information provided to the manufacturer under this subsection may not include
25 information about brand families or products of any tobacco product manufacturer other than the
26 one to whom the information is provided. The information may be used only for the purpose of de-
27 termining the appropriate amount of escrow deposits.

28 [(7)] (8) The Attorney General may require a distributor or a tobacco product manufacturer to
29 submit any additional information, including, but not limited to, samples of the packaging and la-
30 beling of each brand family, to enable the Attorney General to determine whether a tobacco product
31 manufacturer is in compliance with this section and ORS 180.410, 180.415, 180.420, 180.430 and
32 180.440 and with rules adopted under ORS 180.445 and 180.450.

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

34 180.425. (1) The Attorney General shall develop and make available for public inspection a di-
35 rectory listing all tobacco product manufacturers that have provided current and accurate certif-
36 ications conforming to the requirements of ORS 180.410 and 180.415 and all brand families that are
37 listed in the certifications.

38 (2) The Attorney General may not include or retain in the directory the name or brand families
39 of any nonparticipating manufacturer that fails to provide the required certification or whose cer-
40 tification the Attorney General determines is not in compliance with ORS 180.410 and 180.415, un-
41 less the Attorney General has determined that the violation has been cured to the satisfaction of
42 the Attorney General. The Attorney General shall adopt rules defining the criteria by which the
43 Attorney General will exercise the discretion granted by this subsection.

44 (3) The Attorney General may not include or retain in the directory a nonparticipating man-
45 ufacturer or a brand family if the Attorney General concludes that:

1 (a) Any escrow payment required from the nonparticipating manufacturer pursuant to ORS
2 323.806 for any period for any brand family, whether listed or not listed by the nonparticipating
3 manufacturer, has not been fully paid into a qualified escrow fund governed by a qualified escrow
4 agreement that has been approved by the Attorney General; or

5 (b) Any outstanding final judgment, including interest thereon, for a violation of ORS 323.806
6 has not been fully satisfied for the brand family or the nonparticipating manufacturer.

7 (4) The Attorney General shall update the directory in order to correct mistakes and to add or
8 remove a tobacco product manufacturer or a brand family to keep the directory in conformity with
9 the requirements of this section. The Attorney General shall update the directory with new brand
10 families upon receipt of an annual or supplemental certification listing new brand families if the
11 Attorney General determines that the annual or supplemental certification is in compliance with the
12 requirements of ORS 180.410 and 180.415. The Attorney General shall make the determination about
13 compliance within 45 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 man-
16 ufacturers and distributors, that are interested in receiving electronic mail notifications of changes
17 in the directory developed under this section;

18 (b) Develop a registration form to be completed by persons interested in receiving electronic
19 mail notification of changes in the directory developed under this section that are not otherwise
20 required by ORS 180.435 [(3)] (4) or rules adopted under ORS 180.445 or 180.450 to submit their
21 electronic mail addresses to the Attorney General; and

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

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