

# House Bill 3682

Sponsored by COMMITTEE ON REVENUE

## 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**.

Creates definition of "smokeless tobacco products" for purposes of weight-based tax. Allows Attorney General to compel by subpoena information required to be maintained by smokeless tobacco distributors. Eliminates requirement that smokeless tobacco manufacturers pay into escrow in proportion to volume of sales. Requires manufacturers to make annual escrow payments to fund foundation supporting education about smokeless tobacco use. Allows Department of Revenue to disclose information related to smokeless tobacco to Attorney General for purposes of monitoring and enforcing compliance with provisions of Smokeless Tobacco Master Settlement Agreement.

Takes effect on 91st day following adjournment sine die.

## A BILL FOR AN ACT

1  
2 Relating to smokeless tobacco products; creating new provisions; amending ORS 180.477, 180.483,  
3 180.486, 180.491, 180.494, 323.500, 323.505, 323.810, 323.813 and 323.816; and prescribing an ef-  
4 fective date.

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

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

7 323.500. As used in ORS 323.500 to 323.645, unless the context otherwise requires:

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

10 (2) "**Chewing tobacco**" means **loose leaf, plug or twist tobacco, tobacco bites or bits, or**  
11 **other whole or coarsely shredded leaf tobacco that is intended to be placed in the oral cavity**  
12 **and consumed without being combusted.**

13 [(2)] (3) "Cigar" means a roll for smoking that is of any size or shape and that is made wholly  
14 or in part of tobacco, irrespective of whether the tobacco is pure or flavored, adulterated or mixed  
15 with any other ingredient, if the roll has a wrapper made wholly or in greater part of tobacco and  
16 if 1,000 of these rolls collectively weigh more than three pounds. "Cigar" does not include a ciga-  
17 rette, as defined in ORS 323.010.

18 [(3)] (4) "Consumer" means any person who purchases tobacco products in this state for the  
19 person's use or consumption or for any purpose other than for reselling the tobacco products to  
20 another person.

21 [(4)] (5) "Contraband tobacco products" means tobacco products or packages containing tobacco  
22 products:

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

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

26 (c) That bear trademarks that are counterfeit under ORS 647.135 or other state or federal  
27 trademark laws; or

28 (d) That have been sold, offered for sale or possessed for sale in this state in violation of ORS

**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.

1 180.486.

2 [(5)] (6) "Department" means the Department of Revenue.

3 [(6)] (7) "Distribute" means:

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

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

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

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

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

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

14 [(7)] (8) "Distributor" means:

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

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

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

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

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

23 [(8)] (9) "Manufacturer" means a person who manufactures tobacco products for sale.

24 [(9)] (10) "Moist snuff" means:

25 (a) [Any] **Snus or any other** finely cut, ground or powdered tobacco that is not intended to be  
26 smoked or placed in a nasal cavity; or

27 (b) **Pouches, lozenges, tobacco gum, strips, orbs, sticks or** any other product containing  
28 **finely cut, ground or powdered** tobacco that is intended or expected to be consumed without being  
29 combusted.

30 [(10)] (11) "Place of business" means any place where tobacco products are sold or where to-  
31 bacco products are manufactured, stored or kept for the purpose of sale or consumption, including  
32 any vessel, vehicle, airplane, train or vending machine.

33 [(11)] (12) "Retail dealer" means any person who is engaged in the business of selling or other-  
34 wise dispensing tobacco products to consumers. The term also includes the operators of or recipients  
35 of revenue from all places such as smoke shops, cigar stores and vending machines, where tobacco  
36 products are made or stored for ultimate sale to consumers.

37 [(12)] (13) "Sale" means any transfer, exchange or barter, in any manner or by any means, for  
38 a consideration, and includes and means all sales made by any person. It includes a gift by a person  
39 engaged in the business of selling tobacco products, for advertising, as a means of evading the pro-  
40 visions of ORS 323.500 to 323.645, or for any other purpose.

41 (14) **"Smokeless tobacco products" means snuff, dry snuff, snuff flour, moist snuff,**  
42 **chewing tobacco, shorts, refuse scraps, clippings, cuttings and sweepings of tobacco and all**  
43 **other kinds or forms of tobacco, prepared in such a manner as to be suitable for consump-**  
44 **tion, either orally or through the nasal cavity, without being combusted.**

45 [(13)] (15) "Taxpayer" includes a distributor or other person required to pay a tax imposed under

1 ORS 323.500 to 323.645.

2 [(14)] (16) “Tobacco products” means cigars, cheroots, stogies, periques, granulated, plug cut,  
 3 crimp cut, ready rubbed, **cavendish** and other smoking tobacco, [*snuff, snuff flour, moist snuff,*  
 4 *cavendish, plug and twist tobacco, fine-cut and other chewing tobaccos, shorts, refuse scraps, clippings,*  
 5 *cuttings and sweepings of tobacco*] **smokeless tobacco products** and other kinds and forms of to-  
 6 bacco, prepared in such manner as to be suitable for chewing or smoking in a pipe or otherwise,  
 7 or both for chewing and smoking, but shall not include cigarettes as defined in ORS 323.010.

8 [(15)] (17) “Untaxed tobacco products” means tobacco products for which the tax required under  
 9 ORS 323.500 to 323.645 has not been paid.

10 [(16)] (18) “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 (b) One dollar and seventy-eight cents per ounce based on the net weight determined by the  
 21 manufacturer, in the case of [*moist snuff*] **smokeless tobacco products**, except that the minimum  
 22 tax under this paragraph is \$2.14 per retail container; or

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

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

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

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

40 **SECTION 3.** ORS 180.483 is amended to read:

41 180.483. (1) Not later than 20 days after the end of each calendar quarter, and more frequently  
 42 if so directed by the Attorney General, a distributor of smokeless tobacco products subject to the  
 43 requirements of ORS 323.500 to 323.645 shall report such information as the Attorney General re-  
 44 quires to facilitate compliance by tobacco product manufacturers with this section and ORS 180.471,  
 45 180.474, 180.477, 180.480, 180.486 and 323.816 and with rules adopted under ORS 180.489 and 180.491.

1 The information shall include, but need not be limited to, a list of the total number of units sold of  
2 smokeless tobacco products for which the distributor paid the tax due during the previous calendar  
3 quarter.

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

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

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

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

28 [(3)] (4) A distributor shall provide the Attorney General with an electronic mail address so that  
29 the Attorney General may notify the distributor of the information required under subsections (1)  
30 and [(7)] (8) of this section.

31 [(4)] (5) The Attorney General and the Department of Revenue may share with each other in-  
32 formation received under this section and ORS 180.471, 180.474 and 323.520 and may share such in-  
33 formation with federal, state or local agencies for purposes of enforcement of this section and ORS  
34 180.471, 180.474, 180.477, 180.480, 180.486 and 323.816, rules adopted under ORS 180.489 and 180.491  
35 and corresponding laws of other states.

36 [(5)] (6) The Attorney General may at any time require a nonparticipating manufacturer to  
37 produce proof from the financial institution in which the nonparticipating manufacturer has estab-  
38 lished a qualified escrow fund for the purpose of compliance with ORS 323.816 of the amount of  
39 moneys in the fund, exclusive of interest, the amount and date of each deposit and the amount and  
40 date of each withdrawal from the fund.

41 [(6)] (7) The Attorney General shall, upon request of a nonparticipating manufacturer whose  
42 compliance with escrow requirements is at issue, provide the manufacturer with copies of all docu-  
43 ments upon which any proposed addition to the escrow is based. Documents required to be provided  
44 under this subsection include, but are not necessarily limited to, reports under this section from  
45 distributors. The information provided to the manufacturer under this subsection may not include

1 information about products of any tobacco product manufacturer other than the one to whom the  
 2 information is provided. The information may be used only for the purpose of determining the ap-  
 3 propriate amount of escrow deposits.

4 [(7)] (8) The Attorney General may require a distributor or a tobacco product manufacturer to  
 5 submit any additional information, including, but not limited to, samples of the packaging and la-  
 6 beling of each smokeless tobacco product manufactured or distributed, to enable the Attorney Gen-  
 7 eral to determine whether a tobacco product manufacturer is in compliance with this section and  
 8 ORS 180.471, 180.474, 180.477, 180.480, 180.486 and 323.816 and with rules adopted under ORS 180.489  
 9 and 180.491.

10 **SECTION 4.** ORS 180.486 is amended to read:

11 180.486. (1) A person may not:

12 [(a) Sell, offer for sale or possess for sale in this state smokeless tobacco products of a tobacco  
 13 product manufacturer that is not included in the directory developed under ORS 180.477;]

14 [(b)] (a) Sell, offer for sale or possess for sale in this state smokeless tobacco products of a to-  
 15 bacco product manufacturer that the person acquired at a time when the tobacco product manufac-  
 16 turer was not included in the directory developed under ORS 180.477;

17 [(c)] (b) Possess in this state for sale in another jurisdiction smokeless tobacco products of a  
 18 tobacco product manufacturer that the person acquired at a time when the tobacco product man-  
 19 ufacturer was not included in the directory developed under ORS 180.477 [and was not in compliance  
 20 with the Smokeless Tobacco Master Settlement Agreement qualifying statute in the other jurisdiction  
 21 or with statutes that supplement the qualifying statute in that jurisdiction]; or

22 [(d)] (c) Distribute, in this state, free samples of smokeless tobacco products:

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

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

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

29 **SECTION 5.** ORS 180.491 is amended to read:

30 180.491. (1) A determination by the Attorney General to omit or remove a tobacco product  
 31 manufacturer from the directory developed under ORS 180.477 is subject to review in the manner  
 32 prescribed by ORS 183.484 for judicial review of orders in other than contested cases.

33 (2) The Attorney General may adopt rules necessary to effect the purposes of ORS 180.465 to  
 34 180.494, [and] 323.520 (3) **and 323.810 to 323.816.**

35 (3) In any action brought by the state to enforce ORS 180.471, 180.474, 180.477, 180.480, 180.483,  
 36 180.486 or 323.816, or any rule adopted under this section or ORS 180.489, the state may recover the  
 37 costs of investigation, expert witness fees, costs of the action and reasonable attorney fees. Moneys  
 38 recovered under this subsection shall be deposited into the Tobacco Enforcement Fund established  
 39 under ORS 180.205.

40 (4) If a court determines that a person has violated any provision of ORS 180.471, 180.474,  
 41 180.477, 180.480, 180.483, 180.486 or 323.816, or any rule adopted under this section or ORS 180.489,  
 42 the court shall order any profits, gain, gross receipts or other benefit from the violation to be  
 43 disgorged and paid to the Tobacco Enforcement Fund established under ORS 180.205.

44 (5) Unless otherwise expressly provided, (5) the remedies or penalties provided by this section and  
 45 ORS 180.486 and 180.494 are cumulative to each other and to the remedies or penalties available

1 under all other laws of this state.

2 **SECTION 6.** ORS 180.494 is amended to read:

3 180.494. (1) Upon a determination that a distributor has violated ORS 180.486, the Department  
4 of Revenue may revoke or suspend the license of the distributor in the manner provided by ORS  
5 323.535. Each offer to sell smokeless tobacco products in violation of ORS 180.486 constitutes a  
6 separate violation.

7 (2) Upon a determination that a person applying for a license under ORS 323.520 has violated  
8 ORS 180.486 at any time within the five years preceding the application, the department may refuse  
9 to issue the license. The department shall provide opportunity for hearing and judicial review in the  
10 manner provided in ORS 323.535.

11 (3)~~(a)~~ Upon a determination that a person has violated ORS 180.486 ~~[(1)(b) or (c)]~~ **(1)(a) or**  
12 **(b)**, the department may impose a civil penalty in an amount not to exceed the greater of \$5,000 or  
13 500 percent of the retail value of the smokeless tobacco products sold, offered for sale or possessed  
14 for sale. Judicial review of an order imposing a civil penalty shall be as provided in ORS 305.445  
15 and 305.501.

16 *[(b) Upon a determination that a person has violated ORS 180.486 (1)(a), the department may im-*  
17 *pose a civil penalty in an amount not to exceed \$5,000. Judicial review of an order imposing a civil*  
18 *penalty shall be as provided in ORS 305.445 and 305.501.]*

19 (4) The Attorney General may seek an injunction to restrain a threatened or actual violation  
20 of ORS 180.483 or 180.486 by a [*distributor*] **person** and to compel the [*distributor*] **person** to comply  
21 with ORS 180.483 and 180.486. In any action brought pursuant to this subsection, the state may re-  
22 cover the costs of investigation, the costs of the action [*and*], reasonable attorney fees **and a civil**  
23 **penalty in an amount not to exceed \$5,000. The civil penalty must be imposed in the manner**  
24 **provided by ORS 183.745.**

25 (5) A person who violates ORS 180.486 (1) engages in an unlawful practice in violation of ORS  
26 646.608.

27 **SECTION 7.** ORS 323.810 is amended to read:

28 323.810. As used in ORS 323.810 to 323.816:

29 (1) “Adjusted for inflation” means increased in accordance with the formula for inflation ad-  
30 justment set forth in Exhibit F to the Smokeless Tobacco Master Settlement Agreement.

31 (2) “Affiliate” means a person who directly or indirectly owns or controls, is owned or con-  
32 trolled by or is under common ownership or control with another person. For purposes of defining  
33 “affiliate”:

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

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

38 (3) “Qualified escrow fund” means an escrow arrangement with a federally or state chartered  
39 financial institution having no affiliation with any tobacco product manufacturer and having assets  
40 of at least \$1 billion, where such arrangement requires that such financial institution hold the  
41 escrowed funds’ principal for the benefit of releasing parties and prohibits the tobacco product  
42 manufacturer who is placing the funds into escrow from using, accessing or directing the use of the  
43 escrowed funds’ principal except as consistent with ORS 323.816 [(2)(b)].

44 (4) “Released claims” has the meaning given that term in section II(gg) of the Smokeless To-  
45 bacco Master Settlement Agreement.

1 (5) “Releasing parties” has the meaning given that term in section II(ii) of the Smokeless To-  
 2 bacco Master Settlement Agreement.

3 (6) “Smokeless Tobacco Master Settlement Agreement” means the settlement agreement **with**  
 4 **that title** (and related documents) entered into on November 23, 1998, by the State of Oregon and  
 5 leading United States tobacco product manufacturers.

6 (7) “Smokeless tobacco products” means moist snuff **or chewing tobacco, both** as defined in  
 7 ORS 323.500[, *or chewing tobacco, as defined in section 5702 of the Internal Revenue Code*].

8 (8)(a) “Tobacco product manufacturer” means an entity that, after September 28, 2009, directly  
 9 (and not exclusively through any affiliate):

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

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

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

23 (b) “Tobacco product manufacturer” does not include an affiliate of a tobacco product man-  
 24 ufacturer unless such affiliate is itself a tobacco product manufacturer under paragraph (a) of this  
 25 subsection.

26 (9) “Units sold” means the number of individual **unit** containers of smokeless tobacco products  
 27 sold in the State of Oregon by the applicable tobacco product manufacturer (whether directly or  
 28 through a distributor, retailer or similar intermediary or intermediaries) during the year in question,  
 29 as measured by excise taxes collected by the State of Oregon. The Department of Revenue [*shall*]  
 30 **may** adopt such rules as are necessary to ascertain the amount of state excise tax paid on the  
 31 smokeless tobacco products of such tobacco product manufacturer for each year. A unit container  
 32 shall contain [3.2] **1.2** ounces of moist snuff, as defined in ORS 323.500, or 3.0 ounces of chewing  
 33 tobacco, **as defined in ORS 325.500.**

34 **SECTION 8.** ORS 323.813 is amended to read:

35 323.813. (1) The use of smokeless tobacco products presents serious public health concerns to  
 36 the State of Oregon and to the residents of the State of Oregon. The United States Surgeon General  
 37 has determined that use of smokeless tobacco causes cancer, noncancerous oral conditions and other  
 38 serious diseases, and that there are hundreds of thousands of tobacco-related deaths in the United  
 39 States each year. These diseases most often do not appear until many years after the person in  
 40 question begins using tobacco products.

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

45 (3) Under those health care programs, the State of Oregon pays millions of dollars each year to

1 provide medical assistance for persons for health conditions associated with the use of smokeless  
2 tobacco products.

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

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

12 *[(a) To pay substantial sums to the State of Oregon (tied in part to their volume of sales);]*

13 *[(b)] (a) To fund a national foundation devoted to the interests of public health; and*

14 *[(c)] (b) To make substantial changes in their advertising and marketing practices and corporate*  
15 *culture, with the intention of reducing underage [smoking] **use of smokeless tobacco products.***

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

23 **SECTION 9.** ORS 323.816 is amended to read:

24 323.816. (1) Any tobacco product manufacturer selling smokeless tobacco products to consumers  
25 within the State of Oregon (whether directly or through a distributor, retailer or similar interme-  
26 diary or intermediaries) after September 28, 2009, shall do one of the following:

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

29 *[(b) Place into a qualified escrow fund, by April 15 of the year following the year in question, the*  
30 *amount of \$0.40 per unit sold for 2010 or such amount adjusted for inflation for each year thereafter.]*

31 **(a) Become a participating manufacturer (as that term is defined in section II(ee) of the**  
32 **Smokeless Tobacco Master Settlement Agreement) and generally perform its obligations**  
33 **under the Smokeless Tobacco Master Settlement Agreement; or**

34 **(b) Place into a qualified escrow fund, by April 15 of the year following the year in ques-**  
35 **tion, the amount of the Smokeless Tobacco Master Settlement Agreement annual payment,**  
36 **as determined pursuant to section VI(b)(6) of that agreement, that the manufacturer would**  
37 **be required to pay if it were a participating manufacturer during the year in question. The**  
38 **required payments shall be calculated as if the manufacturer had become a participating**  
39 **manufacturer in 2010.**

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

43 (a) To pay a judgment or settlement on any released claim brought against such tobacco product  
44 manufacturer by the State of Oregon or any releasing party located or residing in this state. Funds  
45 shall be released from escrow under this paragraph in the order in which they were placed into

1 escrow and only to the extent and at the time necessary to make payments required under such  
 2 judgment or settlement; **or**

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

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

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

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

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

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

34 **SECTION 10. Section 11 of this 2010 Act is added to and made a part of ORS 323.810 to**  
 35 **323.816.**

36 **SECTION 11. The Department of Revenue may disclose information submitted to the**  
 37 **department related to smokeless tobacco products, tobacco product manufacturers and to-**  
 38 **bacco retailers to the Attorney General, and such other parties as the Attorney General**  
 39 **determines necessary, to monitor and enforce compliance by tobacco product manufacturers**  
 40 **with ORS 180.465 to 180.494 and 323.810 to 323.816.**

41 **SECTION 12.** ORS 180.477 is amended to read:

42 180.477. (1) The Attorney General shall develop and make available for public inspection a di-  
 43 rectory listing all tobacco product manufacturers that have provided current and accurate certif-  
 44 ications conforming to the requirements of ORS 180.471 and 180.474.

45 (2) The Attorney General may not include or retain in the directory the name of any nonpar-

1 participating manufacturer that fails to provide the required certification or whose certification the  
 2 Attorney General determines is not in compliance with ORS 180.471 and 180.474, unless the Attorney  
 3 General has determined that the violation has been cured to the satisfaction of the Attorney Gen-  
 4 eral. The Attorney General shall adopt rules defining the criteria by which the Attorney General  
 5 will exercise the discretion granted by this subsection.

6 (3) The Attorney General may not include or retain in the directory a nonparticipating man-  
 7 ufacturer if the Attorney General concludes that:

8 (a) Any escrow payment required from the nonparticipating manufacturer pursuant to ORS  
 9 323.816 for any period has not been fully paid into a qualified escrow fund governed by a qualified  
 10 escrow agreement that has been approved by the Attorney General; or

11 (b) Any outstanding final judgment against the nonparticipating manufacturer, including interest  
 12 thereon, for a violation of ORS 323.816 has not been fully satisfied.

13 (4) The Attorney General shall update the directory in order to correct mistakes and to add or  
 14 remove a tobacco product manufacturer to keep the directory in conformity with the requirements  
 15 of this section. The Attorney General shall update the directory with new tobacco product man-  
 16 ufacturers upon receipt of an annual or supplemental certification listing new tobacco product  
 17 manufacturers if the Attorney General determines that the annual or supplemental certification is  
 18 in compliance with the requirements of ORS 180.471 and 180.474. The Attorney General shall make  
 19 the determination about compliance within 45 days of receipt of the certification.

20 (5) The Attorney General shall:

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

24 (b) Develop a registration form to be completed by persons interested in receiving electronic  
 25 mail notification of changes in the directory developed under this section that are not otherwise  
 26 required by ORS 180.483 [(3)] (4) or rules adopted under ORS 180.489 and 180.491 to submit their  
 27 electronic mail addresses to the Attorney General; and

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

30 **SECTION 13. This 2010 Act takes effect on the 91st day after the date on which the**  
 31 **special session of the Seventy-fifth Legislative Assembly adjourns sine die.**

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