

Enrolled
Senate Bill 185

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CHAPTER

AN ACT

Relating to the Master Settlement Agreement; creating new provisions; amending ORS 180.405, 180.440 and 323.800; and declaring an emergency.

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

SECTION 1. ORS 323.800 is amended to read:

323.800. As used in ORS 323.800 to 323.806:

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

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

(b) For purposes of defining "affiliate":

(A) The terms "owns," "is owned" and "ownership" mean ownership of an equity interest, or the equivalent thereof, of 10 percent or more; and

(B) The term "person" means an individual, partnership, committee, association, corporation or any other organization or group of persons.

(3) "Allocable share" means Allocable Share as that term is defined in the Master Settlement Agreement.

(4)(a) "Cigarette" means any product that contains nicotine, is intended to be burned or heated under ordinary conditions of use, and consists of or contains:

(A) Any roll of tobacco wrapped in paper or in any substance not containing tobacco;

(B) Tobacco, in any form, that is functional in the product and that because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette; or

(C) Any roll of tobacco wrapped in any substance containing tobacco that, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in subparagraph (A) of this paragraph.

(b) The term "cigarette" includes "roll-your-own tobacco" (i.e., tobacco that, because of its appearance, type, packaging or labeling, is suitable for use and likely to be offered to, or purchased by, consumers as tobacco for making cigarettes). For purposes of this paragraph, 0.09 ounces of roll-your-own tobacco shall constitute one individual cigarette.

(5) "Importer" means:

(a) Any person in the United States to whom cigarettes are shipped or consigned, if federal excise tax has not been paid on the cigarettes, and if the cigarettes are manufactured in a foreign country;

(b) Any person who removes cigarettes for sale or consumption in the United States from a customs bonded manufacturing warehouse; or

(c) Any person who smuggles or otherwise unlawfully brings cigarettes into the United States.

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

(7) **"Qualified escrow agreement" means the escrow agreement described in ORS 180.415.**

[(7)] (8) "Qualified escrow fund" means an escrow arrangement with a federally or state chartered financial institution having no affiliation with any tobacco product manufacturer and having assets of at least \$1 billion where such arrangement requires that such financial institution hold the escrowed funds' principal for the benefit of releasing parties and prohibits the tobacco product manufacturer who is placing the funds into escrow from using, accessing or directing the use of the escrowed funds' principal except as consistent with ORS 323.806 (1)(b)(B).

[(8)] (9) "Released claims" means Released Claims as that term is defined in the Master Settlement Agreement.

[(9)] (10) "Releasing parties" means Releasing Parties as that term is defined in the Master Settlement Agreement.

[(10)(a)] (11)(a) "Tobacco product manufacturer" means an entity that, after October 23, 1999, directly (and not exclusively through any affiliate):

(A) Manufactures cigarettes anywhere that such manufacturer intends to be sold in the United States, including cigarettes intended to be sold in the United States through an importer (except where such importer is an Original Participating Manufacturer (as that term is defined in the Master Settlement Agreement) that will be responsible for the payments under the Master Settlement Agreement with respect to such cigarettes as a result of the provisions of subsection II(mm) of the Master Settlement Agreement and that pays the taxes specified in subsection II(z) of the Master Settlement Agreement, and provided that the manufacturer of such cigarettes does not market or advertise such cigarettes in the United States);

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

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

(b) The term "tobacco product manufacturer" does not include an affiliate of a tobacco product manufacturer unless such affiliate is itself a tobacco product manufacturer under paragraph (a)(A), (B) or (C) of this subsection.

[(11)(a)] (12)(a) "Units sold" means the number of individual cigarettes sold in the State of Oregon by the applicable tobacco product manufacturer (whether directly or through a distributor, retailer or similar intermediary or intermediaries) during the year in question that are required to bear the excise tax stamp of this state or that are sold as "roll-your-own tobacco" on which excise tax is due. The Department of Revenue and the Attorney General may promulgate such rules as are necessary to ascertain the number of units sold of such tobacco product manufacturer for each year.

(b) "Units sold" does not include cigarettes neither the purchase nor the use of which the state may tax under the Constitution or statutes of the United States.

SECTION 2. ORS 180.405 is amended to read:

180.405. As used in ORS 180.400 to 180.455 and 323.106:

(1) "Brand family" means all styles of cigarettes sold under the same trademark and differentiated from one another by means of additional modifiers or descriptors, including, but not limited to, cigarettes labeled "menthol," "lights," "kings," "100s" and any cigarettes sold under a brand name, alone or in conjunction with any other word, trademark, logo, symbol, motto, selling message, recognizable pattern of colors or other indicia of product identification, that are identical to, similar to or identifiable with a previously known brand of cigarettes.

- (2) "Cigarette" has the meaning given that term in ORS 323.800.
- (3) "Distributor" means a person who is licensed under ORS 323.105 **or 323.530** and any other person who is a distributor for the purposes of ORS 323.005 to 323.482 **or 323.500 to 323.645**.
- (4) "Importer" has the meaning given that term in ORS 323.800.
- (5) "Master Settlement Agreement" has the meaning given that term in ORS 323.800.
- (6) "Nonparticipating manufacturer" means any tobacco product manufacturer that is not a participating manufacturer.
- (7) "Participating manufacturer" has the meaning given that term in section II(jj) of the Master Settlement Agreement.
- (8) "Qualified escrow fund" has the meaning given that term in ORS 323.800.
- (9) "Retailer" means a person that sells cigarettes or smokeless tobacco products to individuals for personal consumption.
- (10) "Smokeless tobacco products" has the meaning given that term in ORS 323.810.
- (11) "Tobacco product manufacturer" has the meaning given that term in ORS 323.800.
- (12) "Units sold" has the meaning given that term in ORS 323.800.

SECTION 3. ORS 180.440 is amended to read:

180.440. (1) A person may not:

- (a) Affix a stamp to a package or other container of cigarettes of a tobacco product manufacturer or brand family that is not included in the directory developed under ORS 180.425;
- (b) Sell, offer for sale or possess for sale cigarettes of a tobacco product manufacturer or brand family that the person acquired at a time when the tobacco product manufacturer or brand family was not included in the directory developed under ORS 180.425; or
- (c) Possess in this state for sale in another jurisdiction cigarettes of a tobacco product manufacturer or brand family that the person acquired at a time when the tobacco product manufacturer or brand family was not included in the directory developed under ORS 180.425 and was not in compliance with the Master Settlement Agreement qualifying statute in the other jurisdiction or with statutes that supplement the qualifying statute in that jurisdiction.

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

(3) A distributor may not affix a stamp to a package or other container of cigarettes or purchase untaxed roll-your-own tobacco unless the distributor certifies to the Attorney General, in a manner prescribed by the Attorney General, that the distributor has purchased the cigarettes or roll-your-own tobacco directly from the tobacco product manufacturer or from the first importer of the cigarettes or roll-your-own tobacco into the United States.

SECTION 4. Section 5 of this 2019 Act is added to and made a part of ORS 323.800 to 323.806.

SECTION 5. (1) Notwithstanding the provisions of ORS 323.806 (2)(b), a tobacco product manufacturer that elects to place funds into a qualified escrow fund pursuant to ORS 323.806 (1)(b) may assign to the state the tobacco product manufacturer's interest in any funds in the qualified escrow fund.

(2) An assignment executed pursuant to subsection (1) of this section is permanent and irrevocable and applies to all moneys in the qualified escrow fund established for the benefit of the state, including all moneys deposited into the qualified escrow fund before the tobacco product manufacturer executes the assignment, all moneys deposited into the qualified escrow fund after the tobacco product manufacturer executes the assignment and any interest or other appreciation earned on any moneys in the qualified escrow fund.

(3) The parties to a qualified escrow agreement may amend the agreement for the purposes of executing an assignment pursuant to subsection (1) of this section.

(4) An assignment executed pursuant to subsection (1) of this section must be in writing and be signed by the assignee and the assignor or by an authorized agent or representative thereof. An assignment that is duly executed becomes enforceable after a copy of the as-

signment is delivered to the Attorney General and the financial institution where the qualified escrow fund is maintained.

(5) Notwithstanding the provisions of ORS 323.806 (1)(b), funds assigned to the state shall be deposited in the Tobacco Settlement Funds Account established pursuant to ORS 293.537.

(6) Nothing in this section operates to:

(a) Waive the right of the state to bring a claim against a tobacco product manufacturer as described in ORS 323.806 (2)(b), except that any funds assigned to the state under this section shall be credited on a dollar-for-dollar basis against any judgment or settlement described in ORS 323.806 (2)(b); or

(b) Relieve a tobacco product manufacturer from any obligation or duty imposed pursuant to ORS 180.400 to 180.455 or 323.800 to 323.806.

(7) The Attorney General may adopt rules necessary to implement this section.

(8) A financial institution in which a qualified escrow fund is maintained may file a petition in circuit court for an order authorizing a transfer of funds in the qualified escrow fund to the state. The petition must state the factual and legal bases for the relief sought. The financial institution shall serve the petition on the Attorney General at the time the petition is filed. The court may order the transfer of funds in the fund to the Tobacco Settlement Funds Account pursuant to this section.

SECTION 6. This 2019 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2019 Act takes effect on its passage.

Passed by Senate January 31, 2019

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Lori L. Brocker, Secretary of Senate

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Peter Courtney, President of Senate

Passed by House May 22, 2019

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Tina Kotek, Speaker of House

Received by Governor:

.....M.,....., 2019

Approved:

.....M.,....., 2019

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Kate Brown, Governor

Filed in Office of Secretary of State:

.....M.,....., 2019

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Bev Clarno, Secretary of State