

Enrolled
House Bill 3461

Sponsored by COMMITTEE ON RULES (at the request of Attorney General Ellen F. Rosenblum)

CHAPTER

AN ACT

Relating to the tobacco Master Settlement Agreement; creating new provisions; amending ORS 180.205, 180.405, 180.410, 180.415, 180.435, 323.800 and 323.806; 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.

[(5)] (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.

[(6)] (7) "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 [(2)(b)] (1)(b)(B).

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

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

[(9)(a)] (10)(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.

[(10)] (11)(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[, *as measured by excise taxes collected by the State of Oregon on roll-your-own tobacco containers or on packs bearing*] **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 [*shall*] **and the Attorney General may promulgate such rules as are necessary to ascertain the [*amount of state excise tax paid on the cigarettes*] 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 323.806 is amended to read:

323.806. (1) Any tobacco product manufacturer selling cigarettes to consumers within the State of Oregon (whether directly or through a distributor, retailer or similar intermediary or intermediaries) after October 23, 1999, shall do one of the following:

[(1)] (a) Become a Participating Manufacturer (as that term is defined in section II(jj) of the Master Settlement Agreement) and generally perform its financial obligations under the Master Settlement Agreement; or

[(2)(a)] (b)(A) Place into a qualified escrow fund by April 15 of the year following the year in question the following amounts (as such amounts are adjusted for inflation):

[(A)] (i) For 1999, \$0.0094241 per unit sold after October 23, 1999.

[(B)] (ii) For 2000, \$0.0104712 per unit sold.

[(C)] (iii) For each of the years 2001 and 2002, \$0.0136125 per unit sold.

[(D)] (iv) For each of the years 2003 through 2006, \$0.0167539 per unit sold.

[(E)] (v) For 2007 and each year thereafter, \$0.0188482 per unit sold.

[(b)] (B) A tobacco product manufacturer that places funds into escrow pursuant to [paragraph (a) of this subsection] **subparagraph (A) of this paragraph** shall receive the interest or other appreciation on such funds as earned. Such funds themselves shall be released from escrow only under the following circumstances:

[(A)] (i) To pay a judgment or settlement on any released claim brought against such tobacco product manufacturer by the State of Oregon or any releasing party located or residing in this state. Funds shall be released from escrow under this [subparagraph] **sub-subparagraph** in the order in which they were placed into escrow and only to the extent and at the time necessary to make payments required under such judgment or settlement;

[(B)] (ii) To the extent that a tobacco product manufacturer establishes that the amount it was required to place into escrow on account of units sold in Oregon in a particular year was greater than the Master Settlement Agreement payments, as determined pursuant to section IX(i) of that agreement after final determination of all adjustments, that the manufacturer would have been required to make on account of such units sold had it been a Participating Manufacturer (as that term is defined in the Master Settlement Agreement), the excess shall be released from escrow and revert back to such tobacco product manufacturer; or

[(C)] (iii) To the extent not released from escrow under [subparagraph (A) or (B) of this paragraph] **sub-subparagraph (i) or (ii) of this subparagraph**, funds shall be released from escrow and revert back to such tobacco product manufacturer 25 years after the date on which they were placed into escrow.

[(c)] (C) Each tobacco product manufacturer that elects to place funds into escrow pursuant to this [subsection] **paragraph** shall annually certify to the Attorney General that it is in compliance with this [subsection] **paragraph**. The Attorney General may bring a civil action on behalf of the State of Oregon against any tobacco product manufacturer that fails to place into escrow the funds required under this [subsection] **paragraph**. Any tobacco product manufacturer that fails in any year to place into escrow the funds required under this [subsection] **paragraph** shall:

[(A)] (i) Be required within 15 days to place such funds into escrow as shall bring such manufacturer into compliance with this [subsection] **paragraph**. The court, upon a finding of a violation of this [subsection] **paragraph**, may impose a civil penalty to be paid to the General Fund of this state in an amount not to exceed five percent of the amount improperly withheld from escrow per day of the violation and in a total amount not to exceed 100 percent of the original amount improperly withheld from escrow;

[(B)] (ii) In the case of a knowing violation, be required within 15 days to place such funds into escrow as shall bring such manufacturer into compliance with this [subsection] **paragraph**. The court, upon a finding of a knowing violation of this [subsection] **paragraph**, may impose a civil penalty to be paid to the General Fund of this state in an amount not to exceed 15 percent of the amount improperly withheld from escrow per day of the violation and in a total amount not to exceed 300 percent of the original amount improperly withheld from escrow; and

[(C)] (iii) In the case of a second knowing violation, be prohibited from selling cigarettes to consumers within the State of Oregon (whether directly or through a distributor, retailer or similar intermediary or intermediaries) for a period not to exceed two years. Each failure to make an annual deposit required under this section shall constitute a separate violation.

(2) In the case of units sold that are cigarettes manufactured outside the United States and imported into the United States by an importer:

(a) Importers shall be jointly and severally liable with the tobacco product manufacturer of the cigarettes for the escrow deposits required under subsection (1)(b)(A) of this section;

(b) Importers may be sued under subsection (1)(b)(C) of this section to the same extent as the tobacco product manufacturer, and shall be subject to all of the same civil penalties, remedies or other relief that may be awarded against the tobacco product manufacturer of the cigarettes as provided in subsection (1)(b)(C) of this section;

(c) If the importer fails or refuses within 15 days of the Attorney General's written demand to deposit the funds into escrow for which it is jointly and severally liable under paragraph (a) of this subsection, all cigarettes imported into the United States by the importer shall constitute contraband cigarettes as defined in ORS 323.010 and shall be subject to seizure and forfeiture as provided under ORS 323.248; and

(d) A nonparticipating manufacturer located outside the United States that conducts business in this state shall provide to the Attorney General on a form prescribed by the Attorney General a declaration from each importer that imports the cigarettes of the nonparticipating manufacturer intended for sale in this state stating that the importer accepts liability pursuant to subsection (1)(b)(A) of this section and consents to the jurisdiction of the courts of this state for the purposes of enforcing this section.

SECTION 3. ORS 323.806, as amended by section 22, chapter 801, Oregon Laws 2003, is amended to read:

323.806. (1) Any tobacco product manufacturer selling cigarettes to consumers within the State of Oregon (whether directly or through a distributor, retailer or similar intermediary or intermediaries) after October 23, 1999, shall do one of the following:

[(1)] (a) Become a Participating Manufacturer (as that term is defined in section II(jj) of the Master Settlement Agreement) and generally perform its financial obligations under the Master Settlement Agreement; or

[(2)(a)] (b)(A) Place into a qualified escrow fund by April 15 of the year following the year in question the following amounts (as such amounts are adjusted for inflation):

[(A)] (i) For 1999, \$0.0094241 per unit sold after October 23, 1999.

[(B)] (ii) For 2000, \$0.0104712 per unit sold.

[(C)] (iii) For each of the years 2001 and 2002, \$0.0136125 per unit sold.

[(D)] (iv) For each of the years 2003 through 2006, \$0.0167539 per unit sold.

[(E)] (v) For 2007 and each year thereafter, \$0.0188482 per unit sold.

[(b)] (B) A tobacco product manufacturer that places funds into escrow pursuant to [paragraph (a) of this subsection] **subparagraph (A) of this paragraph** shall receive the interest or other appreciation on such funds as earned. Such funds themselves shall be released from escrow only under the following circumstances:

[(A)] (i) To pay a judgment or settlement on any released claim brought against such tobacco product manufacturer by the State of Oregon or any releasing party located or residing in this state. Funds shall be released from escrow under this [subparagraph] **sub-subparagraph** in the order in which they were placed into escrow and only to the extent and at the time necessary to make payments required under such judgment or settlement;

[(B)] (ii) To the extent that a tobacco product manufacturer establishes that the amount it was required to place into escrow in a particular year was greater than this state's allocable share of the total payments that such manufacturer would have been required to make in that year under the Master Settlement Agreement (as determined pursuant to section IX(i)(2) of the Master Settlement Agreement, and before any of the adjustments or offsets described in section IX(i)(3) of that agreement other than the inflation adjustment) had it been a Participating Manufacturer (as that term is defined in the Master Settlement Agreement), the excess shall be released from escrow and revert back to such tobacco product manufacturer; or

[(C)] (iii) To the extent not released from escrow under [subparagraph (A) or (B) of this paragraph] **sub-subparagraph (i) or (ii) of this subparagraph**, funds shall be released from escrow and revert back to such tobacco product manufacturer 25 years after the date on which they were placed into escrow.

[(c)] (C) Each tobacco product manufacturer that elects to place funds into escrow pursuant to this [subsection] **paragraph** shall annually certify to the Attorney General that it is in compliance with this [subsection] **paragraph**. The Attorney General may bring a civil action on behalf of the State of Oregon against any tobacco product manufacturer that fails to place into escrow the funds required under this [subsection] **paragraph**. Any tobacco product manufacturer that fails in any year to place into escrow the funds required under this [subsection] **paragraph** shall:

[(A)] (i) Be required within 15 days to place such funds into escrow as shall bring such manufacturer into compliance with this [subsection] **paragraph**. The court, upon a finding of a violation of this [subsection] **paragraph**, may impose a civil penalty to be paid to the General Fund of this state in an amount not to exceed five percent of the amount improperly withheld from escrow per day of the violation and in a total amount not to exceed 100 percent of the original amount improperly withheld from escrow;

[(B)] (ii) In the case of a knowing violation, be required within 15 days to place such funds into escrow as shall bring such manufacturer into compliance with this [subsection] **paragraph**. The court, upon a finding of a knowing violation of this [subsection] **paragraph**, may impose a civil penalty to be paid to the General Fund of this state in an amount not to exceed 15 percent of the amount improperly withheld from escrow per day of the violation and in a total amount not to exceed 300 percent of the original amount improperly withheld from escrow; and

[(C)] (iii) In the case of a second knowing violation, be prohibited from selling cigarettes to consumers within the State of Oregon (whether directly or through a distributor, retailer or similar intermediary or intermediaries) for a period not to exceed two years. Each failure to make an annual deposit required under this section shall constitute a separate violation.

(2) In the case of units sold that are cigarettes manufactured outside the United States and imported into the United States by an importer:

(a) Importers shall be jointly and severally liable with the tobacco product manufacturer of the cigarettes for the escrow deposits required under subsection (1)(b)(A) of this section;

(b) Importers may be sued under subsection (1)(b)(C) of this section to the same extent as the tobacco product manufacturer, and shall be subject to all of the same civil penalties, remedies, or other relief that may be awarded against the tobacco product manufacturer of the cigarettes as provided in subsection (1)(b)(C) of this section;

(c) If the importer fails or refuses within 15 days of the Attorney General's written demand to deposit the funds into escrow for which it is jointly and severally liable under paragraph (a) of this subsection, all cigarettes imported into the United States by the importer shall constitute contraband cigarettes as defined in ORS 323.010 and shall be subject to seizure and forfeiture as provided under ORS 323.248; and

(d) A nonparticipating manufacturer located outside the United States that conducts business in this state shall provide to the Attorney General on a form prescribed by the Attorney General a declaration from each importer that imports the cigarettes of the nonparticipating manufacturer intended for sale in this state stating that the importer accepts liability pursuant to subsection (1)(b)(A) of this section and consents to the jurisdiction of the courts of this state for the purposes of enforcing this section.

SECTION 4. 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 and any other person who is a distributor for the purposes of ORS 323.005 to 323.482.

(4) “Importer” has the meaning given that term in ORS 323.800.

[4] **(5) “Master Settlement Agreement” has the meaning given that term in ORS 323.800.**

[5] **(6) “Nonparticipating manufacturer” means any tobacco product manufacturer that is not a participating manufacturer.**

[6] **(7) “Participating manufacturer” has the meaning given that term in section II(jj) of the Master Settlement Agreement.**

[7] **(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.

[8] **(11) “Tobacco product manufacturer” has the meaning given that term in ORS 323.800.**

[9] **(12) “Units sold” has the meaning given that term in ORS 323.800.**

SECTION 5. ORS 180.410 is amended to read:

180.410. (1) Every tobacco product manufacturer whose cigarettes are sold in this state whether directly or through a distributor, retailer or similar intermediary shall execute and deliver a certification to the Attorney General certifying that as of the date of the certification, the tobacco product manufacturer is either:

(a) A participating manufacturer; or

(b) In full compliance with ORS 323.806 and with rules adopted under ORS 180.445 and 180.450.

(2) The certification required by subsection (1) of this section shall be on a form prescribed by the Attorney General and shall be submitted no later than April 30 each year. The form shall permit the tobacco product manufacturer to indicate the electronic mail address to which the Attorney General may send notice of changes in the directory developed under ORS 180.425 if the tobacco product manufacturer elects to receive electronic mail notice.

(3) A participating manufacturer shall include in the certification required by subsection (1) of this section a list of its brand families. The participating manufacturer shall update the list at least 30 days prior to any addition or modification to its brand families by executing and delivering a supplemental certification to the Attorney General.

(4) A participating manufacturer may not include a brand family in the list required by subsection (3) of this section unless the participating manufacturer affirms that the cigarettes in the brand family are to be considered the participating manufacturer’s cigarettes for purposes of calculating the participating manufacturer’s payments under the Master Settlement Agreement for the relevant year, in the volume and shares determined under the Master Settlement Agreement. This subsection does not limit or otherwise affect the right of the state to maintain that cigarettes in a brand family are those of a different tobacco product manufacturer for purposes of calculating payments under the Master Settlement Agreement or for purposes of ORS 323.800 to 323.806.

(5) A nonparticipating manufacturer shall include in the certification required by subsection (1) of this section a complete list of:

(a) All of its brand families and the number of units of each brand family that were sold in the state during the preceding calendar year;

(b) All of its brand families that have been sold in the state at any time during the current calendar year;

(c) Any brand family of the manufacturer sold in the state during the preceding calendar year that is no longer being sold in the state as of the date of the certification, which may be indicated on the list described in paragraph (a) of this subsection by an asterisk; *[and]*

(d) The name and address of every other tobacco product manufacturer that manufactured a brand family described in paragraph (a) or (b) of this subsection in the preceding or current calendar year[.];

(e) The name and address of all distributors that the manufacturer intends to use to sell its brand families in this state; and

(f) In the case of brand families imported into the United States by one or more importers, the name and address of all importers of the brand families.

(6) A nonparticipating manufacturer shall update the list required by subsection (5) of this section at least 30 days prior to any addition or modification to its brand families by executing and delivering a supplemental certification to the Attorney General.

(7) A nonparticipating manufacturer may not include a brand family in the list required by subsection (5) of this section unless the nonparticipating manufacturer affirms that the cigarettes in the brand family are to be considered the nonparticipating manufacturer's cigarettes for purposes of ORS 323.800 to 323.806. This subsection does not limit or otherwise affect the right of the state to maintain that cigarettes in a brand family are those of a different tobacco product manufacturer for purposes of calculating payments under the Master Settlement Agreement or for purposes of ORS 323.800 to 323.806.

SECTION 6. ORS 180.415 is amended to read:

180.415. In the certification required by ORS 180.410 (1), a nonparticipating manufacturer shall further certify:

(1) That the nonparticipating manufacturer *[is]* **and, if applicable, the nonparticipating manufacturer's importer are** registered to do business in the State of Oregon or *[has]* **have** appointed a resident agent for service of process and provided notice of the appointment as required by ORS 180.430.

(2) That the nonparticipating manufacturer:

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

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

(3)(a) The name, address and telephone number of the financial institution where the nonparticipating manufacturer has established the qualified escrow fund required by ORS 323.806;

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

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

(d) The amount and date of any withdrawal of funds the nonparticipating manufacturer made at any time from the qualified escrow fund or from any other qualified escrow fund into which the nonparticipating manufacturer ever made escrow payments pursuant to ORS 323.806.

(4) That the nonparticipating manufacturer has posted a bond in accordance with section 9 of this 2017 Act.

(5) That all shipments or sales made within or into this state by the nonparticipating manufacturer or its importer are made to a distributor of cigarettes licensed under ORS 323.105 or a distributor of tobacco products licensed under ORS 323.530.

SECTION 7. 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 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.

(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 (8) of this section.

(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]* **ORS 180.400 to 180.455, ORS chapter 323 and corresponding rules**, 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]* **ORS 180.400 to 180.455, ORS chapter 323 and corresponding rules, or the corresponding laws of other states and with the data clearinghouse or similar entity established pursuant to a settlement agreement between the State of Oregon and the participating manufacturers, and with any parties necessary to effectuate the terms of the settlement agreement.**

(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.

(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.

(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 8. Sections 9 to 11 of this 2017 Act are added to and made a part of ORS 180.400 to 180.455.

SECTION 9. Bond required of nonparticipating manufacturer. (1) A nonparticipating manufacturer shall post a bond for the benefit of the state, in accordance with this section, which is conditioned on the nonparticipating manufacturer fully complying with the escrow obligations of ORS 323.806.

(2) The bond must be posted at least 10 days in advance of each calendar quarter as a condition to the nonparticipating manufacturer and its brand families being included in the state directory for that quarter. The amount of the bond must be the greater of:

(a) The greatest required escrow amount due from the nonparticipating manufacturer or its predecessor for any of the 12 preceding calendar quarters; or

(b) \$25,000.

(3) If a nonparticipating manufacturer that posted a bond has failed to make or have made on its behalf deposits equal to the full amount owed for a quarter within 15 days following the due date for the quarter, the Attorney General may execute upon the bond in the amount equal to any remaining amount of the escrow due, including any applicable penalties or other charges allowable by law. Amounts the Attorney General collects on a bond shall be deposited into the General Fund for the benefit of the state and shall reduce the amount of escrow due from the nonparticipating manufacturer in the dollar amount collected. Escrow obligations above the amount collected on the bond remain due from the nonparticipating manufacturer and any importer liable as provided in ORS 323.806.

(4) The bond required under this section must be a good and sufficient bond executed by a surety company licensed and authorized to do business in Oregon and shall be conditioned to pay the escrow requirements as well as any penalties or other charges under this chapter.

(5) The Attorney General may promulgate rules necessary to implement this section including acceptable forms and types of bonds.

SECTION 10. Prohibited conduct. (1)(a) A person engaged in the business of selling cigarettes or smokeless tobacco products for profit may not ship or transport, or cause to be shipped or transported, cigarettes or smokeless tobacco products ordered or purchased by mail or telephone or through a computer or other electronic network to any person in this state other than a distributor or retailer.

(b) Paragraph (a) of this subsection does not apply to a freight forwarder or motor carrier, as those terms are defined in 49 U.S.C. 13102, as in effect on the effective date of this 2017 Act, or an air carrier, as defined in 49 U.S.C. 40102, as in effect on the effective date of this 2017 Act.

(2) A retailer may not sell cigarettes or smokeless tobacco products unless the retailer or an employee of the retailer makes the sale to the purchaser in person as part of a face-to-face exchange.

(3) A person may not knowingly provide substantial assistance to a person that is violating subsection (1) or (2) of this section.

SECTION 11. Civil remedies. (1) The Attorney General may bring a civil action in the name of the State of Oregon against a person who violates section 10 of this 2017 Act or for the purpose of seeking an injunction to restrain an actual or threatened violation of section 10 of this 2017 Act and compel compliance with section 10 of this 2017 Act.

(2) If a court determines that a person violated section 10 of this 2017 Act, the court shall order the disgorgement of any profits, gain, gross receipts or other benefit from the violation. All moneys disgorged under this subsection must be deposited in the Tobacco Enforcement Fund established under ORS 180.205.

(3)(a) In any action brought pursuant to this section, the state may recover the costs of the investigation, the costs of the action, reasonable attorney fees and a civil penalty for each violation, not to exceed \$5,000 per violation. A civil penalty imposed under this section must be imposed in the manner provided by ORS 183.745.

(b) For the purposes of this subsection, each shipment or transport of cigarettes or smokeless tobacco products constitutes a separate violation.

(4) Unless expressly provided, the remedies or penalties under this section are cumulative to each other and to the remedies available under all other laws of this state.

SECTION 12. Investigative demand. (1) If it appears to the Attorney General that a person, including a person described in section 10 (1)(b) of this 2017 Act, has possession, custody

or control of any information, document or other material that is relevant to an investigation of a violation of ORS 180.400 to 180.455 or 323.806, or that could lead to the discovery of relevant information in an investigation of a violation of ORS 180.400 to 180.455 or 323.806, the Attorney General may execute an investigative demand and may cause an investigative demand to be served upon the person. The investigative demand may require the person:

(a) To appear and testify under oath at the time and place stated in the investigative demand;

(b) To answer written interrogatories; or

(c) To produce relevant documentary material or physical evidence for examination at the time and place stated in the investigative demand.

(2) An investigative demand under this section shall be served in the manner provided by ORS 646.622 and may be enforced in the manner provided by ORS 646.626.

(3) As used in this section, "person" does not include a participating manufacturer as defined in ORS 180.405.

SECTION 13. ORS 180.205 is amended to read:

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

(a) Moneys deposited into the fund under ORS 180.450 and 180.491 **and section 11 of this 2017 Act**; and

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

(2) Moneys in the Tobacco Enforcement Fund are continuously appropriated to the Department of Justice for the purpose of enforcing the provisions of ORS 180.400 to 180.455, 180.465 to 180.494, 323.106, 323.806 and 323.810 to 323.816. Moneys in the fund are not subject to allotment under ORS 291.234 to 291.260.

SECTION 14. The section captions used in this 2017 Act are provided only for the convenience of the reader and do not become part of the statutory law of this state or express any legislative intent in the enactment of this 2017 Act.

SECTION 15. This 2017 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2017 Act takes effect on its passage.

Passed by House June 19, 2017

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Timothy G. Sekerak, Chief Clerk of House

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Tina Kotek, Speaker of House

Passed by Senate July 1, 2017

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Peter Courtney, President of Senate

Received by Governor:

.....M,....., 2017

Approved:

.....M,....., 2017

.....
Kate Brown, Governor

Filed in Office of Secretary of State:

.....M,....., 2017

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Dennis Richardson, Secretary of State