

HB 2128 A STAFF MEASURE SUMMARY

Joint Committee On Ways and Means

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Meeting Dates: 5/25

WHAT THE MEASURE DOES:

Changes obligations for tobacco manufacturers that did not elect to participate in the Tobacco Master Settlement Agreement (a “non-participating manufacturer”), from deposit of moneys into an escrow account to payment of an equity assessment directly to the state for deposit in the Tobacco Master Settlement Fund Account. Creates liability of equity assessment for cigarettes sold in Oregon after October 23, 1999, with remittance due within 30 days of the Attorney General’s notice. Specifies that, for sales occurring after the measure’s effective date, certification and remittance are due annually on April 15 for the previous sales year. Amends purposes of payments to include ensuring all tobacco manufacturers assume costs of health care in Oregon imposed by smoking, and increasing the costs of cigarettes to reduce smoking rates, particularly among youth. Permits a non-participating manufacturer to either keep existing escrow deposits in the escrow fund or apply the escrow deposits to the equity assessment due. Reverts existing escrow deposits to manufacturer if not used to make the equity assessment payment or to pay a judgment or settlement in an action brought by the State of Oregon within 25 years of the date it was assessed. Permits a non-participating manufacturer to seek a refund or credit within one year of assessment date for amounts in excess of what it would have owed as a participating manufacturer. Provides that an equity assessment payment may be used to satisfy future liability, dollar for dollar, but does not prevent a civil action by the Attorney General. Replaces Attorney General’s authority to recover escrow payment and penalties with authority to recover equity assessment payment and penalties, in a civil action against a manufacturer who fails to remit payment. Adds authority to recover attorney fees, costs, and expenses incurred by the Attorney General in an enforcement action. Makes conforming amendments to include equity assessment payment references regarding certifications, bond requirements, distributor reporting, and the adoption of rules; amendments apply to certifications submitted on or after January 1, 2025. Takes effect on 91st day following adjournment sine die.

ISSUES DISCUSSED:

EFFECT OF AMENDMENT:

-A5 requires termed non-participating manufacturers NPMs to either become a participating manufacturer and generally perform to the financial obligations under the Master Settlement Agreement or, satisfy the equity assessment for units sold in Oregon. The measure designates the Oregon Health Authority Fund as the repository for the equity assessment payments and directs the payments to be used for expenses of the Oregon Health Plan (OHP). This portion of the measure becomes operative 31 days after entry of final judgment.

The measure allows for recovery of cigarette-related health care costs incurred in Oregon and requires monies recovered to be deposited into the Oregon Health Authority Fund for expenses of the OHP. The measure also allows NPMs to receive a credit or refund (and interest or other appreciation earned) for equity assessment payments if the required amount paid exceeded the amount of the Tobacco Master Settlement Agreement if, the NPM had been a participating manufacturer. Manufacturers may seek a credit or refund within one year after the due date of the assessment.

The measure authorizes the Attorney General to bring civil action on behalf of Oregon against tobacco product manufacturers who fail to pay the required amount and allows the court to impose a civil penalty upon tobacco

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manufacturers, which are paid to the General Fund, in an amount that does not exceed 5% of the amount improperly withheld per day of the violation or, the total amount not exceed 100% of the original amount improperly withheld; if the court finds that it was a knowing violation, then the amount is increased to 15% and 300%, respectively. Attorney fees, costs and expenses recovered from violation of the measure shall be deposited into the Tobacco Enforcement Fund. This portion of the measure becomes operative January 1, 2025.

The measure amends ORS 180.205 to include deposits from the escrow fund into the Tobacco Enforcement Fund; effective January 1, 2024.

BACKGROUND:

In 1998, Oregon was among 46 states that joined in the Master Settlement Agreement to settle the states' civil claims against several major tobacco manufacturers. In exchange for settling past claims and certain future claims against them by the states, each Participating Manufacturer ("PM") agreed to pay an established rate in perpetuity per cigarette unit sold, along with funding a public health foundation and changing advertising and marketing practices to help reduce underage smoking. Payments to each state are proportionate with the PMs' tobacco sales in that state.

Oregon enacted Senate Bill 792 in 1999 to require that all manufacturers selling tobacco products in Oregon be either a PM or a non-participating manufacturer ("NPM") and imposed certain obligations on NPMs. NPMs are required to place funds in an escrow account at a set rate per unit, not to exceed amounts paid per unit by PMs. SB 792 stated findings and purposes that included ensuring that NPMs were not rewarded with a cost advantage by not becoming a PM, and that funds would be available to pay any future settlement or judgment against the NPMs should they become insolvent. All interest earned goes to the manufacturer, and any escrow funds not used within 25 years revert back to the NPM.

The legislature authorizes transfers from the Tobacco Settlement Account each biennium to offset costs to the Oregon Health Plan, among other programs. For example, Senate Bill 5541 (2021) allocated \$100.2 million from the Tobacco Settlement Account to OHA for Oregon Health Plan expenses, and approximately \$13 million to the OHA for community mental health programs. In 2013 and 2015, the legislature also specifically allocated \$4 million for Oregon's Tobacco Prevention and Education Program.