

Legislative Fiscal Office

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Joint Committee on Ways and Means

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Representative Tawna Sanchez, House Co-Chair

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Tom MacDonald, Deputy Legislative Fiscal Officer (Budget)
Paul Siebert, Deputy Legislative Fiscal Officer (Audit/IT)

To: Human Services Subcommittee

From: Steve Robbins, Legislative Fiscal Office

Date: May 25, 2023

Subject: HB 2128 – Relating to the Master Settlement Agreement
Work Session Recommendations

HB 2128-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.

In addition, 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 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.

Finally, the measure amends ORS 180.205 to include deposits from the escrow fund into the Tobacco Enforcement Fund; effective January 1, 2024. The escrow fund has been accumulating payments from NPMs since the inception of the TMSA and has a current

balance of approximately \$40 million. As final disposition of those funds is made, OHA may need to request Other Funds expenditure limitation to use the funds made available through the provisions of this measure.

A staff measure summary, amendment, revenue impact statement, and fiscal impact statement are available on the Oregon Legislative Information System (OLIS).

Recommended Changes

LFO recommends adoption of the –A5 amendment.

MOTION: I move adoption of the –A5 amendment to HB 2128. (VOTE)

Final Subcommittee Action

LFO recommends that HB 2128, as amended by the –A5 amendment, be moved to the Ways and Means Full Committee.

MOTION: I move HB 2128, as amended, to the Full Committee with a do pass recommendation. (VOTE)

Carriers

Full Committee: _____

House Floor: _____

Senate Floor: _____