

Enrolled
House Bill 2128

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of Attorney General Ellen F. Rosenblum)

CHAPTER

AN ACT

Relating to the Master Settlement Agreement; creating new provisions; amending ORS 180.205, 180.415, 180.416, 180.425, 180.435, 180.445, 293.537, 323.803, 323.806 and 323.807; and repealing section 25, chapter 801, Oregon Laws 2003.

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

SECTION 1. ORS 323.803 is amended to read:

323.803. (1) Cigarette smoking presents serious public health concerns to the State of Oregon and to the people of the State of Oregon. The Surgeon General has determined that smoking causes lung cancer, heart disease and other serious diseases, and that there are hundreds of thousands of tobacco-related deaths in the United States each year. These diseases most often do not appear until many years after the person in question begins smoking.

(2) Cigarette smoking also presents serious financial concerns for this state. Under certain health care programs, the State of Oregon may have a legal obligation to provide medical assistance to eligible persons for health conditions associated with cigarette smoking, and those persons may have a legal entitlement to receive such medical assistance.

(3) Under those health care programs, the State of Oregon pays millions of dollars each year to provide medical assistance for persons for health conditions associated with cigarette smoking.

(4) It is the policy of the State of Oregon that financial burdens imposed on this state by cigarette smoking be borne by tobacco product manufacturers rather than by this state [*to the extent that such manufacturers either determine to enter into a settlement with the State of Oregon or are found culpable by the courts*]. **Tobacco product manufacturers that have settled with this state pay the State of Oregon millions of dollars each year. Other tobacco product manufacturers do not make direct payments to this state.**

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

- (a) To pay substantial sums to the State of Oregon (tied in part to their volume of sales);
- (b) To fund a national foundation devoted to the interests of public health; and
- (c) To make substantial changes in their advertising and marketing practices and corporate culture, with the intention of reducing underage smoking.

[(6) It would be contrary to the policy of the State of Oregon if those tobacco product manufacturers who determine not to enter into such a settlement could use a resulting cost advantage to derive large, short-term profits in the years before liability may arise without ensuring that this state will have an

eventual source of recovery from them if they are proven to have acted culpably. It is thus in the interest of the State of Oregon to require that such manufacturers establish a reserve fund to guarantee a source of compensation and to prevent such manufacturers from deriving large, short-term profits and then becoming judgment-proof before liability may arise.]

(6) The State of Oregon owes its public health obligations equally to all persons in this state who smoke, regardless of the brand of cigarette smoked or the status of the tobacco product manufacturer under the Master Settlement Agreement.

(7) It is consistent with the policy of the State of Oregon to require tobacco product manufacturers that have not entered into a settlement with this state to pay directly to this state an amount that is intended to:

(a) Prevent the manufacturers from deriving large, short-term profits and then becoming judgment-proof;

(b) Require the manufacturers to assume the health care costs imposed on this state by cigarette smoking;

(c) Increase the retail prices of cigarettes sold by the manufacturers, thereby reducing smoking rates, particularly among youth, as consistent with this state's policy of discouraging youth smoking; and

(d) Serve as partial compensation for the financial burdens imposed on this state by cigarette smoking.

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:

(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

(b)(A) **Satisfy the equity assessment required under section 8 of this 2023 Act** and 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):

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

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

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

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

(v) For [2007 and each year thereafter] **each of the years 2007 through 2023**, \$0.0188482 per unit sold.

(B) A tobacco product manufacturer that places funds into escrow pursuant to 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:

(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 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;

(ii) To pay an equity assessment required under section 8 of this 2023 Act;

[(ii)] **(iii)** 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

~~[(iii)]~~ (iv) To the extent not released from escrow under sub-subparagraph ~~[(i) or (ii)]~~ (i), (ii) or (iii) 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) Each tobacco product manufacturer that elects to place funds into escrow pursuant to this paragraph shall annually certify to the Attorney General that it is in compliance with this 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 paragraph. Any tobacco product manufacturer that fails in any year to place into escrow the funds required under this paragraph shall:

(i) Be required within 15 days to place such funds into escrow as shall bring such manufacturer into compliance with this paragraph. The court, upon a finding of a violation of this 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;

(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 paragraph. The court, upon a finding of a knowing violation of this 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

(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, and section 3, chapter 687, Oregon Laws 2017, 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:

(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

(b)(A) **Satisfy the equity assessment required under section 8 of this 2023 Act and** 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):

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

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

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

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

(v) For ~~[2007 and each year thereafter]~~ **each of the years 2007 through 2023**, \$0.0188482 per unit sold.

(B) A tobacco product manufacturer that places funds into escrow pursuant to 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:

(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 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;

(ii) To pay an equity assessment required under section 8 of this 2023 Act;

[(ii)] **(iii)** 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)]* **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

[(iii)] **(iv)** To the extent not released from escrow under sub-subparagraph *[(i) or (ii)]* **(i), (ii) or (iii)** 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) Each tobacco product manufacturer that elects to place funds into escrow pursuant to this paragraph shall annually certify to the Attorney General that it is in compliance with this 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 paragraph. Any tobacco product manufacturer that fails in any year to place into escrow the funds required under this paragraph shall:

(i) Be required within 15 days to place such funds into escrow as shall bring such manufacturer into compliance with this paragraph. The court, upon a finding of a violation of this 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;

(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 paragraph. The court, upon a finding of a knowing violation of this 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

(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 inter-

mediary 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 323.806, as amended by section 22, chapter 801, Oregon Laws 2003, section 3, chapter 687, Oregon Laws 2017, and sections 2 and 3 of this 2023 Act, 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:

(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

(b)(A) [*Satisfy the equity assessment required under section 8 of this 2023 Act and*] 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):

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

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

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

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

(v) For [*each of the years 2007 through 2023*] **2007 and each year thereafter**, \$0.0188482 per unit sold.

(B) A tobacco product manufacturer that places funds into escrow pursuant to 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:

(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 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;

[(ii) *To pay an equity assessment required under section 8 of this 2023 Act;*]

[(iii)] (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

[(iv)] (iii) To the extent not released from escrow under sub-subparagraph [(i), (ii) or (iii)] (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) Each tobacco product manufacturer that elects to place funds into escrow pursuant to this paragraph shall annually certify to the Attorney General that it is in compliance with this 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 paragraph. Any tobacco product manufacturer that fails in any year to place into escrow the funds required under this paragraph shall:

(i) Be required within 15 days to place such funds into escrow as shall bring such manufacturer into compliance with this paragraph. The court, upon a finding of a violation of this 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;

(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 paragraph. The court, upon a finding of a knowing violation of this 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

(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 4a. ORS 323.807 is amended to read:

323.807. (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 assignment 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*] **Oregon Health Authority Fund established under ORS 413.101 and shall be used for expenses of the Oregon Health Plan.**

(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 323.807.

(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*] **Oregon Health Authority Fund** pursuant to this section.

SECTION 5. Section 25, chapter 801, Oregon Laws 2003, is repealed.

SECTION 6. (1) The amendments to ORS 323.806 by section 4 of this 2023 Act become operative 31 days after entry of a final judgment that invalidates the amendments to ORS 323.806 by sections 2 and 3 of this 2023 Act.

(2) If a court enters a final judgment described in subsection (1) of this section, the Attorney General shall notify the Legislative Counsel of the judgment and the date of the judgment.

SECTION 7. Section 8 of this 2023 Act is added to and made a part of ORS 323.800 to 323.807.

SECTION 8. (1) Except for a Participating Manufacturer, as that term is defined in the Master Settlement Agreement, that is generally performing its financial obligations under the Master Settlement Agreement, a tobacco product manufacturer is liable for an equity assessment for units sold within the State of Oregon after January 1, 2024.

(2) The equity assessment is \$0.0188482 per unit sold, as this amount is adjusted for inflation.

(3)(a) Each tobacco product manufacturer that is liable for an equity assessment shall annually certify to the Attorney General that it is in compliance with this section and remit the required equity assessment to this state by April 15 of the year following the sales year at issue. Tobacco product manufacturers have a continuing obligation to submit amended certificates of compliance if their sales or payment information changes.

(b) The Attorney General may issue amended notices of equity assessment if additional units sold are discovered through audit or otherwise. The tobacco product manufacturer shall cause the assessed amount to be remitted to this state within 30 days of the date of the amended notice.

(c) Any amounts recovered under this section are the property of the state, and this section creates no cause or right of action in any party except the State of Oregon. Amounts recovered under this section shall be deposited in the Oregon Health Authority Fund established under ORS 413.101 and shall be used for expenses of the Oregon Health Plan.

(d) Nothing in this section operates to:

(A) Waive the right of the state to bring a claim against a tobacco product manufacturer, except that any funds paid to the state under this section shall be credited on a dollar-for-dollar basis against any such judgment or settlement; or

(B) Relieve a tobacco product manufacturer from any obligation or duty imposed pursuant to ORS 180.400 to 180.455 or any other provision of Oregon law.

(e) A tobacco product manufacturer may seek and receive a credit or refund of equity assessment payments to the extent that the tobacco product manufacturer establishes that the amount of the equity assessment paid 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 an account of such units sold, had it been a Participating Manufacturer, as that term is defined in the Master Settlement Agreement. A tobacco product manufacturer may seek a credit or refund within one year after the due date of the assessment.

(4) The Attorney General may bring a civil action on behalf of the State of Oregon against any tobacco product manufacturer that fails to remit the amount due under subsection (2) of this section. In addition to recovering the equity assessment, the Attorney General shall be entitled to reasonable attorney fees, costs and expenses incurred in prosecuting the action and any appeal. Attorney fees, costs and expenses recovered under this subsection shall be deposited in the Tobacco Enforcement Fund established under ORS 180.205.

(5)(a) The court, upon a finding of a violation of subsection (1) of this section, may impose a civil penalty upon the tobacco product manufacturer to be paid to the General Fund of this state in an amount not to exceed five percent of the amount improperly withheld per day of the violation and in a total amount not to exceed 100 percent of the original amount improperly withheld.

(b) The court, upon a finding of a knowing violation of subsection (1) of this section, may impose a civil penalty upon the tobacco product manufacturer to be paid to the General Fund of this state in an amount not to exceed 15 percent of the amount improperly withheld per day of the violation and in a total amount not to exceed 300 percent of the original amount improperly withheld.

(c) In the case of a second knowing violation of subsection (1) of this section, the tobacco product manufacturer shall 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 a payment required under this section shall constitute a separate violation.

(6) 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 equity assessments required under subsection (1) of this section;

(b) Importers may be sued under subsection (4) 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 (4) of this section;

(c) If the importer fails or refuses within 15 days of the Attorney General's written demand to remit the equity assessment 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) of this section and consents to the jurisdiction of the courts of this state for the purposes of enforcing this section.

SECTION 9. 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 and, if applicable, the nonparticipating manufacturer's importer are registered to do business in the State of Oregon or 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 made all required equity assessment payments; or

~~[(a)]~~ **(b)(A)** Has established and continues to maintain a qualified escrow fund; and

~~[(b)]~~ **(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 **has** placed in the qualified escrow fund **or has paid as equity assessments** for cigarettes sold in Oregon during the preceding calendar year, the amount and date of each deposit **or payment** 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]~~ **any** qualified escrow fund into which the nonparticipating manufacturer ever made escrow payments pursuant to ORS 323.806 **or section 8 of this 2023 Act.**

(4) That the nonparticipating manufacturer has posted a bond in accordance with ORS 180.416.

(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 10. ORS 180.416 is amended to read:

180.416. (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 **or section 8 of this 2023 Act.**

(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 **or equity assessment payment** 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 **or payments** 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 **or section 8 of this 2023 Act**.

(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 11. ORS 180.425 is amended to read:

180.425. (1) The Attorney General shall develop and make available for public inspection a directory listing all tobacco product manufacturers that have provided current and accurate certifications conforming to the requirements of ORS 180.410 and 180.415 and all brand families that are listed in the certifications.

(2) The Attorney General may not include or retain in the directory the name or brand families of any nonparticipating manufacturer that fails to provide the required certification or whose certification the Attorney General determines is not in compliance with ORS 180.410 and 180.415, unless the Attorney General has determined that the violation has been cured to the satisfaction of the Attorney General. The Attorney General shall adopt rules defining the criteria by which the Attorney General will exercise the discretion granted by this subsection.

(3) The Attorney General may not include or retain in the directory a nonparticipating manufacturer or a brand family if the Attorney General concludes that:

(a) Any [escrow] payment required from the nonparticipating manufacturer pursuant to ORS 323.806 **or section 8 of this 2023 Act** for any period for any brand family, whether listed or not listed by the nonparticipating manufacturer, has not been fully paid, **if applicable**, into a qualified escrow fund governed by a qualified escrow agreement that has been approved by the Attorney General; or

(b) Any outstanding final judgment, including interest thereon, for a violation of ORS 323.806 **or section 8 of this 2023 Act** has not been fully satisfied for the brand family or the nonparticipating manufacturer.

(4) The Attorney General shall update the directory in order to correct mistakes and to add or remove a tobacco product manufacturer or a brand family to keep the directory in conformity with the requirements of this section. The Attorney General shall update the directory with new brand families upon receipt of an annual or supplemental certification listing new brand families if the Attorney General determines that the annual or supplemental certification is in compliance with the requirements of ORS 180.410 and 180.415. The Attorney General shall make the determination about compliance within 45 days of receipt of the certification.

(5) The Attorney General shall:

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

(b) Develop a registration form to be completed by persons interested in receiving electronic mail notification of changes in the directory developed under this section that are not otherwise required by ORS 180.435 (4) or rules adopted under ORS 180.445 or 180.450 to submit their electronic mail addresses to the Attorney General; and

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

SECTION 12. 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 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 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 **or equity assessment** requirements is at issue, provide the manufacturer with copies of all documents upon which any proposed addition to the escrow **or equity assessment** 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 **or equity assessment** 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 man-

ufacturer 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 13. ORS 180.445 is amended to read:

180.445. (1) To promote compliance with the provisions of ORS 180.410, 180.415, 180.420, 180.430, 180.435 and 180.440, the Attorney General may adopt rules requiring a nonparticipating manufacturer to make the escrow deposits **or equity assessment payments** required by ORS 323.806 **or section 8 of this 2023 Act** in quarterly installments during the year in which the sales covered by the deposits are made. The Attorney General may require a nonparticipating manufacturer to produce information sufficient to enable the Attorney General to determine the adequacy of the amount of the installment deposit **or payment**.

(2) If the Attorney General adopts rules requiring a nonparticipating manufacturer to make escrow deposits **or payments** in quarterly installments, the rules may also provide that a nonparticipating manufacturer that has been in continuous compliance for one year with ORS 180.410, 180.415, 180.420, 180.430, 180.435, 180.440 and 323.806 **and section 8 of this 2023 Act** may make escrow deposits **or payments** required by ORS 323.806 **or section 8 of this 2023 Act** in annual payments during the second and subsequent years in which deposits are required.

SECTION 14. 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, 180.451 and 180.491 **and section 8 of this 2023 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 **and section 8 of this 2023 Act**. Moneys in the fund are not subject to allotment under ORS 291.234 to 291.260.

SECTION 15. ORS 293.537 is amended to read:

293.537. (1) The Tobacco Settlement Funds Account is established as an account in the General Fund. Except as provided in section 2, chapter 11, Oregon Laws 2003, the account shall consist of all moneys paid to this state under the Master Settlement Agreement of 1998.

(2) Before July 1 of each odd-numbered year, the Department of Justice shall submit for approval to the Oregon Department of Administrative Services the estimated costs that will be incurred by the Department of Justice in the subsequent biennium in enforcing the provisions of ORS 180.400 to 180.455, 323.106 and 323.806 **and section 8 of this 2023 Act**. On July 1 of each odd-numbered year, a sum equal to the amount approved by the Oregon Department of Administrative Services shall be transferred from the Tobacco Settlement Funds Account to the Tobacco Enforcement Fund established under ORS 180.205. If the Department of Justice determines during a biennium that it needs funds for purposes described in this subsection in addition to the amount approved by the Oregon Department of Administrative Services, the Department of Justice may request transfer of additional moneys from the Tobacco Settlement Funds Account and the additional amount approved by the Oregon Department of Administrative Services shall be transferred to the Tobacco Enforcement Fund.

(3) Except as provided in subsection (2) of this section, all moneys in the Tobacco Settlement Funds Account are continuously appropriated to the Oregon Department of Administrative Services to be expended as directed by the Legislative Assembly.

(4) All moneys in the Tobacco Settlement Funds Account shall be invested as provided in ORS 293.701 to 293.790.

SECTION 16. **The amendments to ORS 180.415, 180.416, 180.425, 180.435 and 180.445 by sections 9 to 13 of this 2023 Act apply to certifications submitted under ORS 180.410 on or after January 1, 2025.**

Passed by House June 13, 2023

Repassed by House June 25, 2023

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Timothy G. Sekerak, Chief Clerk of House

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Dan Rayfield, Speaker of House

Passed by Senate June 25, 2023

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Rob Wagner, President of Senate

Received by Governor:

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Approved:

.....M.,....., 2023

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Tina Kotek, Governor

Filed in Office of Secretary of State:

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Secretary of State