

HB 2128-4
(LC 302)
3/7/23 (CMT/ps)

Requested by HOUSE COMMITTEE ON JUDICIARY (at the request of Representative Jason Kropf)

**PROPOSED AMENDMENTS TO
HOUSE BILL 2128**

1 On page 1 of the printed bill, line 3, after “323.803” delete the rest of the
2 line and insert “, 323.806 and 323.807; and repealing section 25, chapter 801,
3 Oregon Laws 2003.”.

4 Delete lines 5 through 28 and delete pages 2 through 12 and insert:

5 **“SECTION 1.** ORS 323.803 is amended to read:

6 “323.803. (1) Cigarette smoking presents serious public health concerns to
7 the State of Oregon and to the people of the State of Oregon. The Surgeon
8 General has determined that smoking causes lung cancer, heart disease and
9 other serious diseases, and that there are hundreds of thousands of tobacco-
10 related deaths in the United States each year. These diseases most often do
11 not appear until many years after the person in question begins smoking.

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

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

20 “(4) It is the policy of the State of Oregon that financial burdens imposed
21 on this state by cigarette smoking be borne by tobacco product manufactur-

1 ers rather than by this state [*to the extent that such manufacturers either*
2 *determine to enter into a settlement with the State of Oregon or are found*
3 *culpable by the courts*]. **Tobacco product manufacturers that have settled**
4 **with this state pay the State of Oregon millions of dollars each year.**
5 **Other tobacco product manufacturers do not make direct payments to**
6 **this state.**

7 “(5) On November 23, 1998, leading United States tobacco product man-
8 ufacturers entered into a settlement agreement, entitled the ‘Master Settle-
9 ment Agreement,’ with the State of Oregon. The Master Settlement
10 Agreement obligates those manufacturers, in return for a release of past,
11 present and certain future claims against them as described in the Master
12 Settlement Agreement:

13 “(a) To pay substantial sums to the State of Oregon (tied in part to their
14 volume of sales);

15 “(b) To fund a national foundation devoted to the interests of public
16 health; and

17 “(c) To make substantial changes in their advertising and marketing
18 practices and corporate culture, with the intention of reducing underage
19 smoking.

20 “[*(6) It would be contrary to the policy of the State of Oregon if those to-*
21 *bacco product manufacturers who determine not to enter into such a settlement*
22 *could use a resulting cost advantage to derive large, short-term profits in the*
23 *years before liability may arise without ensuring that this state will have an*
24 *eventual source of recovery from them if they are proven to have acted culpably.*
25 *It is thus in the interest of the State of Oregon to require that such manufac-*
26 *turers establish a reserve fund to guarantee a source of compensation and to*
27 *prevent such manufacturers from deriving large, short-term profits and then*
28 *becoming judgment-proof before liability may arise.*]

29 “**(6) The State of Oregon owes its public health obligations equally**
30 **to all persons in this state who smoke, regardless of the brand of cig-**

1 **arettte smoked or the status of the tobacco product manufacturer un-**
2 **der the Master Settlement Agreement.**

3 **“(7) It is consistent with the policy of the State of Oregon to require**
4 **tobacco product manufacturers that have not entered into a settle-**
5 **ment with this state to pay directly to this state an amount that is**
6 **intended to:**

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

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

11 **“(c) Increase the retail prices of cigarettes sold by the manufac-**
12 **turers, thereby reducing smoking rates, particularly among youth, as**
13 **consistent with this state’s policy of discouraging youth smoking; and**

14 **“(d) Serve as partial compensation for the financial burdens im-**
15 **posed on this state by cigarette smoking.**

16 **“SECTION 2. ORS 323.806 is amended to read:**

17 **“323.806. (1) Any tobacco product manufacturer selling cigarettes to con-**
18 **sumers within the State of Oregon (whether directly or through a distributor,**
19 **retailer or similar intermediary or intermediaries) after October 23, 1999,**
20 **shall do one of the following:**

21 **“(a) Become a Participating Manufacturer (as that term is defined in**
22 **section II(jj) of the Master Settlement Agreement) and generally perform its**
23 **financial obligations under the Master Settlement Agreement; or**

24 **“(b)(A) Satisfy the equity assessment required under section 8 of this**
25 **2023 Act and** place into a qualified escrow fund by April 15 of the year fol-
26 **lowing the year in question the following amounts (as such amounts are**
27 **adjusted for inflation):**

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

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

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

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

2 “(v) For [2007 and each year thereafter] **each of the years 2007 through**
3 **2023**, \$0.0188482 per unit sold.

4 “(B) A tobacco product manufacturer that places funds into escrow pur-
5 suant to subparagraph (A) of this paragraph shall receive the interest or
6 other appreciation on such funds as earned. Such funds themselves shall be
7 released from escrow only under the following circumstances:

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

14 “**(ii) To pay an equity assessment required under section 8 of this**
15 **2023 Act;**

16 “[*ii*] **(iii)** To the extent that a tobacco product manufacturer establishes
17 that the amount it was required to place into escrow on account of units sold
18 in Oregon in a particular year was greater than the Master Settlement
19 Agreement payments, as determined pursuant to section IX(i) of that agree-
20 ment after final determination of all adjustments, that the manufacturer
21 would have been required to make on account of such units sold had it been
22 a Participating Manufacturer (as that term is defined in the Master Settle-
23 ment Agreement), the excess shall be released from escrow and revert back
24 to such tobacco product manufacturer; or

25 “[*iii*] **(iv)** To the extent not released from escrow under sub-
26 subparagraph [*i* or *ii*] **(i), (ii) or (iii)** of this subparagraph, funds shall
27 be released from escrow and revert back to such tobacco product manufac-
28 turer 25 years after the date on which they were placed into escrow.

29 “(C) Each tobacco product manufacturer that elects to place funds into
30 escrow pursuant to this paragraph shall annually certify to the Attorney

1 General that it is in compliance with this paragraph. The Attorney General
2 may bring a civil action on behalf of the State of Oregon against any tobacco
3 product manufacturer that fails to place into escrow the funds required un-
4 der this paragraph. Any tobacco product manufacturer that fails in any year
5 to place into escrow the funds required under this paragraph shall:

6 “(i) Be required within 15 days to place such funds into escrow as shall
7 bring such manufacturer into compliance with this paragraph. The court,
8 upon a finding of a violation of this paragraph, may impose a civil penalty
9 to be paid to the General Fund of this state in an amount not to exceed five
10 percent of the amount improperly withheld from escrow per day of the vio-
11 lation and in a total amount not to exceed 100 percent of the original amount
12 improperly withheld from escrow;

13 “(ii) In the case of a knowing violation, be required within 15 days to
14 place such funds into escrow as shall bring such manufacturer into compli-
15 ance with this paragraph. The court, upon a finding of a knowing violation
16 of this paragraph, may impose a civil penalty to be paid to the General Fund
17 of this state in an amount not to exceed 15 percent of the amount improperly
18 withheld from escrow per day of the violation and in a total amount not to
19 exceed 300 percent of the original amount improperly withheld from escrow;
20 and

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

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

28 “(a) Importers shall be jointly and severally liable with the tobacco
29 product manufacturer of the cigarettes for the escrow deposits required un-
30 der subsection (1)(b)(A) of this section;

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

6 “(c) If the importer fails or refuses within 15 days of the Attorney
7 General’s written demand to deposit the funds into escrow for which it is
8 jointly and severally liable under paragraph (a) of this subsection, all ciga-
9 rettes imported into the United States by the importer shall constitute
10 contraband cigarettes as defined in ORS 323.010 and shall be subject to sei-
11 zure and forfeiture as provided under ORS 323.248; and

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

19 **“SECTION 3.** ORS 323.806, as amended by section 22, chapter 801, Oregon
20 Laws 2003, and section 3, chapter 687, Oregon Laws 2017, is amended to read:

21 “323.806. (1) Any tobacco product manufacturer selling cigarettes to con-
22 sumers within the State of Oregon (whether directly or through a distributor,
23 retailer or similar intermediary or intermediaries) after October 23, 1999,
24 shall do one of the following:

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

28 “(b)(A) **Satisfy the equity assessment required under section 8 of this**
29 **2023 Act and** place into a qualified escrow fund by April 15 of the year fol-
30 lowing the year in question the following amounts (as such amounts are

1 adjusted for inflation):

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

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

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

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

6 “(v) For [2007 and each year thereafter] **each of the years 2007 through**
7 **2023**, \$0.0188482 per unit sold.

8 “(B) A tobacco product manufacturer that places funds into escrow pur-
9 suant to subparagraph (A) of this paragraph shall receive the interest or
10 other appreciation on such funds as earned. Such funds themselves shall be
11 released from escrow only under the following circumstances:

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

18 “(ii) **To pay an equity assessment required under section 8 of this**
19 **2023 Act;**

20 “[*ii*] (iii) To the extent that a tobacco product manufacturer establishes
21 that the amount it was required to place into escrow [*in a particular year*
22 *was greater than this state’s allocable share of the total payments that such*
23 *manufacturer would have been required to make in that year under the Master*
24 *Settlement Agreement (as determined pursuant to section IX(i)(2) of the Master*
25 *Settlement Agreement, and before any of the adjustments or offsets described*
26 *in section IX(i)(3) of that agreement other than the inflation adjustment)] **on**
27 **account of units sold in Oregon in a particular year was greater than**
28 **the Master Settlement Agreement payments, as determined pursuant**
29 **to section IX(i) of that agreement after final determination of all ad-**
30 **justments, that the manufacturer would have been required to make***

1 **on account of such units sold** had it been a Participating Manufacturer
2 (as that term is defined in the Master Settlement Agreement), the excess
3 shall be released from escrow and revert back to such tobacco product man-
4 ufacturer; or

5 “[*iii*] **(iv)** To the extent not released from escrow under sub-
6 subparagraph [*i* or *ii*] **(i), (ii) or (iii)** of this subparagraph, funds shall
7 be released from escrow and revert back to such tobacco product manufac-
8 turer 25 years after the date on which they were placed into escrow.

9 “(C) Each tobacco product manufacturer that elects to place funds into
10 escrow pursuant to this paragraph shall annually certify to the Attorney
11 General that it is in compliance with this paragraph. The Attorney General
12 may bring a civil action on behalf of the State of Oregon against any tobacco
13 product manufacturer that fails to place into escrow the funds required un-
14 der this paragraph. Any tobacco product manufacturer that fails in any year
15 to place into escrow the funds required under this paragraph shall:

16 “(i) Be required within 15 days to place such funds into escrow as shall
17 bring such manufacturer into compliance with this paragraph. The court,
18 upon a finding of a violation of this paragraph, may impose a civil penalty
19 to be paid to the General Fund of this state in an amount not to exceed five
20 percent of the amount improperly withheld from escrow per day of the vio-
21 lation and in a total amount not to exceed 100 percent of the original amount
22 improperly withheld from escrow;

23 “(ii) In the case of a knowing violation, be required within 15 days to
24 place such funds into escrow as shall bring such manufacturer into compli-
25 ance with this paragraph. The court, upon a finding of a knowing violation
26 of this paragraph, may impose a civil penalty to be paid to the General Fund
27 of this state in an amount not to exceed 15 percent of the amount improperly
28 withheld from escrow per day of the violation and in a total amount not to
29 exceed 300 percent of the original amount improperly withheld from escrow;
30 and

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

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

8 “(a) Importers shall be jointly and severally liable with the tobacco
9 product manufacturer of the cigarettes for the escrow deposits required un-
10 der subsection (1)(b)(A) of this section;

11 “(b) Importers may be sued under subsection (1)(b)(C) of this section to
12 the same extent as the tobacco product manufacturer, and shall be subject
13 to all of the same civil penalties, remedies, or other relief that may be
14 awarded against the tobacco product manufacturer of the cigarettes as pro-
15 vided in subsection (1)(b)(C) of this section;

16 “(c) If the importer fails or refuses within 15 days of the Attorney
17 General’s written demand to deposit the funds into escrow for which it is
18 jointly and severally liable under paragraph (a) of this subsection, all ciga-
19 rettes imported into the United States by the importer shall constitute
20 contraband cigarettes as defined in ORS 323.010 and shall be subject to sei-
21 zure and forfeiture as provided under ORS 323.248; and

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

29 **“SECTION 4.** ORS 323.806, as amended by section 22, chapter 801, Oregon
30 Laws 2003, section 3, chapter 687, Oregon Laws 2017, and sections 2 and 3

1 of this 2023 Act, is amended to read:

2 “323.806. (1) Any tobacco product manufacturer selling cigarettes to con-
3 sumers within the State of Oregon (whether directly or through a distributor,
4 retailer or similar intermediary or intermediaries) after October 23, 1999,
5 shall do one of the following:

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

9 “(b)(A) [*Satisfy the equity assessment required under section 8 of this 2023*
10 *Act and*] Place into a qualified escrow fund by April 15 of the year following
11 the year in question the following amounts (as such amounts are adjusted
12 for inflation):

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

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

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

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

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

19 “(B) A tobacco product manufacturer that places funds into escrow pur-
20 suant to subparagraph (A) of this paragraph shall receive the interest or
21 other appreciation on such funds as earned. Such funds themselves shall be
22 released from escrow only under the following circumstances:

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

29 “[*ii To pay an equity assessment required under section 8 of this 2023*
30 *Act;*]

1 “~~[(iii)]~~ **(ii)** To the extent that a tobacco product manufacturer establishes
2 that the amount it was required to place into escrow on account of units sold
3 in Oregon in a particular year was greater than the Master Settlement
4 Agreement payments, as determined pursuant to section IX(i) of that agree-
5 ment after final determination of all adjustments, that the manufacturer
6 would have been required to make on account of such units sold had it been
7 a Participating Manufacturer (as that term is defined in the Master Settle-
8 ment Agreement), the excess shall be released from escrow and revert back
9 to such tobacco product manufacturer; or

10 “~~[(iv)]~~ **(iii)** To the extent not released from escrow under sub-
11 subparagraph ~~[(i), (ii) or (iii)]~~ **(i) or (ii)** of this subparagraph, funds shall be
12 released from escrow and revert back to such tobacco product manufacturer
13 25 years after the date on which they were placed into escrow.

14 “(C) Each tobacco product manufacturer that elects to place funds into
15 escrow pursuant to this paragraph shall annually certify to the Attorney
16 General that it is in compliance with this paragraph. The Attorney General
17 may bring a civil action on behalf of the State of Oregon against any tobacco
18 product manufacturer that fails to place into escrow the funds required un-
19 der this paragraph. Any tobacco product manufacturer that fails in any year
20 to place into escrow the funds required under this paragraph shall:

21 “(i) Be required within 15 days to place such funds into escrow as shall
22 bring such manufacturer into compliance with this paragraph. The court,
23 upon a finding of a violation of this paragraph, may impose a civil penalty
24 to be paid to the General Fund of this state in an amount not to exceed five
25 percent of the amount improperly withheld from escrow per day of the vio-
26 lation and in a total amount not to exceed 100 percent of the original amount
27 improperly withheld from escrow;

28 “(ii) In the case of a knowing violation, be required within 15 days to
29 place such funds into escrow as shall bring such manufacturer into compli-
30 ance with this paragraph. The court, upon a finding of a knowing violation

1 of this paragraph, may impose a civil penalty to be paid to the General Fund
2 of this state in an amount not to exceed 15 percent of the amount improperly
3 withheld from escrow per day of the violation and in a total amount not to
4 exceed 300 percent of the original amount improperly withheld from escrow;
5 and

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

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

13 “(a) Importers shall be jointly and severally liable with the tobacco
14 product manufacturer of the cigarettes for the escrow deposits required un-
15 der subsection (1)(b)(A) of this section;

16 “(b) Importers may be sued under subsection (1)(b)(C) of this section to
17 the same extent as the tobacco product manufacturer, and shall be subject
18 to all of the same civil penalties, remedies, or other relief that may be
19 awarded against the tobacco product manufacturer of the cigarettes as pro-
20 vided in subsection (1)(b)(C) of this section;

21 “(c) If the importer fails or refuses within 15 days of the Attorney
22 General’s written demand to deposit the funds into escrow for which it is
23 jointly and severally liable under paragraph (a) of this subsection, all ciga-
24 rettes imported into the United States by the importer shall constitute
25 contraband cigarettes as defined in ORS 323.010 and shall be subject to sei-
26 zure and forfeiture as provided under ORS 323.248; and

27 “(d) A nonparticipating manufacturer located outside the United States
28 that conducts business in this state shall provide to the Attorney General
29 on a form prescribed by the Attorney General a declaration from each
30 importer that imports the cigarettes of the nonparticipating manufacturer

1 intended for sale in this state stating that the importer accepts liability
2 pursuant to subsection (1)(b)(A) of this section and consents to the jurisdic-
3 tion of the courts of this state for the purposes of enforcing this section.

4 **“SECTION 4a.** ORS 323.807 is amended to read:

5 “323.807. (1) Notwithstanding the provisions of ORS 323.806 (2)(b), a to-
6 bacco product manufacturer that elects to place funds into a qualified escrow
7 fund pursuant to ORS 323.806 (1)(b) may assign to the state the tobacco
8 product manufacturer’s interest in any funds in the qualified escrow fund.

9 “(2) An assignment executed pursuant to subsection (1) of this section is
10 permanent and irrevocable and applies to all moneys in the qualified escrow
11 fund established for the benefit of the state, including all moneys deposited
12 into the qualified escrow fund before the tobacco product manufacturer exe-
13 cutes the assignment, all moneys deposited into the qualified escrow fund
14 after the tobacco product manufacturer executes the assignment and any in-
15 terest or other appreciation earned on any moneys in the qualified escrow
16 fund.

17 “(3) The parties to a qualified escrow agreement may amend the agree-
18 ment for the purposes of executing an assignment pursuant to subsection (1)
19 of this section.

20 “(4) An assignment executed pursuant to subsection (1) of this section
21 must be in writing and be signed by the assignee and the assignor or by an
22 authorized agent or representative thereof. An assignment that is duly exe-
23 cuted becomes enforceable after a copy of the assignment is delivered to the
24 Attorney General and the financial institution where the qualified escrow
25 fund is maintained.

26 “(5) Notwithstanding the provisions of ORS 323.806 (1)(b), funds assigned
27 to the state shall be deposited in the [*Tobacco Settlement Funds Account es-*
28 *tablished pursuant to ORS 293.537*] **Oregon Health Authority Fund es-**
29 **tablished under ORS 413.101 and shall be used for expenses of the**
30 **Oregon Health Plan.**

1 “(6) Nothing in this section operates to:

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

7 “(b) Relieve a tobacco product manufacturer from any obligation or duty
8 imposed pursuant to ORS 180.400 to 180.455 or 323.800 to 323.807.

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

11 “(8) A financial institution in which a qualified escrow fund is maintained
12 may file a petition in circuit court for an order authorizing a transfer of
13 funds in the qualified escrow fund to the state. The petition must state the
14 factual and legal bases for the relief sought. The financial institution shall
15 serve the petition on the Attorney General at the time the petition is filed.
16 The court may order the transfer of funds in the fund to the [*Tobacco*
17 *Settlement Funds Account*] **Oregon Health Authority Fund** pursuant to
18 this section.

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

20 **“SECTION 6. (1) The amendments to ORS 323.806 by section 4 of this**
21 **2023 Act become operative 31 days after entry of a final judgment that**
22 **invalidates the amendments to ORS 323.806 by sections 2 and 3 of this**
23 **2023 Act.**

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

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

29 **“SECTION 8. (1) Except for a Participating Manufacturer, as that**
30 **term is defined in the Master Settlement Agreement, that is generally**

1 performing its financial obligations under the Master Settlement
2 Agreement, a tobacco product manufacturer is liable for an equity
3 assessment for units sold within the State of Oregon after October 23,
4 1999.

5 “(2) For units sold in each of the following years, the equity as-
6 sessment is as follows (as such amounts are adjusted for inflation):

7 “(a) For 1999, \$0.0094241 per unit sold after October 23, 1999.

8 “(b) For 2000, \$0.0104712 per unit sold.

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

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

11 “(e) For 2007 and each year thereafter, \$0.0188482 per unit sold.

12 “(3)(a) This section is intended to recover cigarette-related health
13 care costs incurred by the State of Oregon for cigarettes sold in this
14 state after October 23, 1999. For sales years that occurred prior to the
15 effective date of this 2023 Act, the Attorney General shall provide
16 written notice of the amount of the tobacco product manufacturer’s
17 equity assessment liability under subsection (1) of this section. At the
18 Attorney General’s discretion, the notice may include assessments for
19 one or more sales years. The tobacco product manufacturer shall
20 cause the assessed amount to be remitted to this state within 30 days
21 of the date of the notice.

22 “(b) For sales years that occur after the effective date of this 2023
23 Act, each tobacco product manufacturer that is liable for an equity
24 assessment shall annually certify to the Attorney General that it is in
25 compliance with this paragraph and remit the required equity assess-
26 ment to this state by April 15 of the year following the sales year at
27 issue. Tobacco product manufacturers have a continuing obligation to
28 submit amended certificates of compliance if their sales or payment
29 information changes.

30 “(c) The Attorney General may issue amended notices of equity

1 assessment if additional units sold are discovered through audit or
2 otherwise. The tobacco product manufacturer shall cause the assessed
3 amount to be remitted to this state within 30 days of the date of the
4 amended notice.

5 “(d) Any amounts recovered under this section are the property of
6 the state, and this section creates no cause or right of action in any
7 party except the State of Oregon. Amounts recovered under this sec-
8 tion shall be deposited in the Oregon Health Authority Fund estab-
9 lished under ORS 413.101 and shall be used for expenses of the Oregon
10 Health Plan.

11 “(e) Nothing in this section operates to:

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

16 “(B) Relieve a tobacco product manufacturer from any obligation
17 or duty imposed pursuant to ORS 180.400 to 180.455 or any other pro-
18 vision of Oregon law.

19 “(f) A tobacco product manufacturer may seek and receive a credit
20 or refund of equity assessment payments to the extent that the to-
21 bacco product manufacturer establishes that the amount of the equity
22 assessment paid on account of units sold in Oregon in a particular
23 year was greater than the Master Settlement Agreement payments,
24 as determined pursuant to section IX(i) of that agreement after final
25 determination of all adjustments, that the manufacturer would have
26 been required to make an account of such units sold, had it been a
27 Participating Manufacturer, as that term is defined in the Master
28 Settlement Agreement. A tobacco product manufacturer may seek a
29 credit or refund within one year after the due date of the assessment.

30 “(4) The Attorney General may bring a civil action on behalf of the

1 **State of Oregon against any tobacco product manufacturer that fails**
2 **to remit the amounts due under subsection (1) of this section. In ad-**
3 **dition to recovering the equity assessment, the Attorney General shall**
4 **be entitled to reasonable attorney fees, costs and expenses incurred in**
5 **prosecuting the action and any appeal. Attorney fees, costs and ex-**
6 **penses recovered under this subsection shall be deposited in the To-**
7 **bacco Enforcement Fund established under ORS 180.205.**

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

14 **“(b) The court, upon a finding of a knowing violation of subsection**
15 **(1) of this section, may impose a civil penalty upon the tobacco prod-**
16 **uct manufacturer to be paid to the General Fund of this state in an**
17 **amount not to exceed 15 percent of the amount improperly withheld**
18 **per day of the violation and in a total amount not to exceed 300 per-**
19 **cent of the original amount improperly withheld.**

20 **“(c) In the case of a second knowing violation of subsection (1) of**
21 **this section, the tobacco product manufacturer shall be prohibited**
22 **from selling cigarettes to consumers within the State of Oregon**
23 **(whether directly or through a distributor, retailer or similar inter-**
24 **mediary or intermediaries) for a period not to exceed two years. Each**
25 **failure to make a payment required under this section shall constitute**
26 **a separate violation.**

27 **“(6) In the case of units sold that are cigarettes manufactured**
28 **outside the United States and imported into the United States by an**
29 **importer:**

30 **“(a) Importers shall be jointly and severally liable with the tobacco**

1 **product manufacturer of the cigarettes for the equity assessments re-**
2 **quired under subsection (1) of this section;**

3 **“(b) Importers may be sued under subsection (4) of this section to**
4 **the same extent as the tobacco product manufacturer, and shall be**
5 **subject to all of the same civil penalties, remedies or other relief that**
6 **may be awarded against the tobacco product manufacturer of the cig-**
7 **arettes as provided in subsection (4) of this section;**

8 **“(c) If the importer fails or refuses within 15 days of the Attorney**
9 **General’s written demand to remit the equity assessment for which it**
10 **is jointly and severally liable under paragraph (a) of this subsection,**
11 **all cigarettes imported into the United States by the importer shall**
12 **constitute contraband cigarettes as defined in ORS 323.010 and shall**
13 **be subject to seizure and forfeiture as provided under ORS 323.248; and**

14 **“(d) A nonparticipating manufacturer located outside the United**
15 **States that conducts business in this state shall provide to the Attor-**
16 **ney General on a form prescribed by the Attorney General a declara-**
17 **tion from each importer that imports the cigarettes of the**
18 **nonparticipating manufacturer intended for sale in this state stating**
19 **that the importer accepts liability pursuant to subsection (1) of this**
20 **section and consents to the jurisdiction of the courts of this state for**
21 **the purposes of enforcing this section.**

22 **“SECTION 9.** ORS 180.415 is amended to read:

23 **“180.415.** In the certification required by ORS 180.410 (1), a nonpartic-
24 **ipating manufacturer shall further certify:**

25 **“(1) That the nonparticipating manufacturer and, if applicable, the non-**
26 **participating manufacturer’s importer are registered to do business in the**
27 **State of Oregon or have appointed a resident agent for service of process and**
28 **provided notice of the appointment as required by ORS 180.430.**

29 **“(2) That the nonparticipating manufacturer[:] has made all required**
30 **equity assessment payments.**

1 “[(a) *Has established and continues to maintain a qualified escrow fund;*
2 *and]*

3 “[(b) *Has executed a qualified escrow agreement that has been reviewed and*
4 *approved by the Attorney General and that governs the qualified escrow fund.*
5 *The Attorney General shall adopt rules defining the form and content of a*
6 *model escrow agreement. A nonparticipating manufacturer that executes the*
7 *model escrow agreement is deemed to have satisfied the requirement that it use*
8 *a form of escrow agreement that has been reviewed and approved by the At-*
9 *torney General.*]

10 “[(3)(a) *The name, address and telephone number of the financial institu-*
11 *tion where the nonparticipating manufacturer has established the qualified*
12 *escrow fund required by ORS 323.806;*]

13 “[(b) *The account number of the qualified escrow fund and any subaccount*
14 *number for the State of Oregon;*]

15 “[(c)] **(3)(a)** The amount the nonparticipating manufacturer [*placed in the*
16 *qualified escrow fund*] **has paid as equity assessments** for cigarettes sold
17 in Oregon during the preceding calendar year, the amount and date of each
18 [*deposit*] **payment** and evidence or verification as may be deemed necessary
19 by the Attorney General to confirm the amounts and dates; and

20 “[(d)] **(b)** The amount and date of any withdrawal of funds the nonpar-
21 ticipating manufacturer made at any time from [*the qualified escrow fund or*
22 *from any other*] **any** qualified escrow fund into which the nonparticipating
23 manufacturer ever made escrow payments pursuant to ORS 323.806 **or sec-**
24 **tion 8 of this 2023 Act.**

25 “(4) That the nonparticipating manufacturer has posted a bond in ac-
26 cordance with ORS 180.416.

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

1 **“SECTION 10.** ORS 180.416 is amended to read:

2 “180.416. (1) A nonparticipating manufacturer shall post a bond for the
3 benefit of the state, in accordance with this section, which is conditioned
4 on the nonparticipating manufacturer fully complying with the [*escrow*] ob-
5 ligations of ORS 323.806 **or section 8 of this 2023 Act.**

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

10 “(a) The greatest required escrow **or equity assessment payment**
11 amount due from the nonparticipating manufacturer or its predecessor for
12 any of the 12 preceding calendar quarters; or

13 “(b) \$25,000.

14 “(3) If a nonparticipating manufacturer that posted a bond has failed to
15 make or have made on its behalf deposits **or payments** equal to the full
16 amount owed for a quarter within 15 days following the due date for the
17 quarter, the Attorney General may execute upon the bond in the amount
18 equal to any remaining amount [*of the escrow*] due, including any applicable
19 penalties or other charges allowable by law. Amounts the Attorney General
20 collects on a bond shall be deposited into the General Fund for the benefit
21 of the state and shall reduce the amount [*of escrow*] due from the nonpar-
22 ticipating manufacturer in the dollar amount collected. [*Escrow*] Obligations
23 above the amount collected on the bond remain due from the nonparticipat-
24 ing manufacturer and any importer liable as provided in ORS 323.806 **or**
25 **section 8 of this 2023 Act.**

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

30 “(5) The Attorney General may promulgate rules necessary to implement

1 this section including acceptable forms and types of bonds.

2 **“SECTION 11.** ORS 180.425 is amended to read:

3 “180.425. (1) The Attorney General shall develop and make available for
4 public inspection a directory listing all tobacco product manufacturers that
5 have provided current and accurate certifications conforming to the re-
6 quirements of ORS 180.410 and 180.415 and all brand families that are listed
7 in the certifications.

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

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

19 “(a) Any [*escrow*] payment required from the nonparticipating manufac-
20 turer pursuant to ORS 323.806 **or section 8 of this 2023 Act** for any period
21 for any brand family, whether listed or not listed by the nonparticipating
22 manufacturer, has not been fully paid [*into a qualified escrow fund governed*
23 *by a qualified escrow agreement that has been approved by the Attorney Gen-*
24 *eral*]; or

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

28 “(4) The Attorney General shall update the directory in order to correct
29 mistakes and to add or remove a tobacco product manufacturer or a brand
30 family to keep the directory in conformity with the requirements of this

1 section. The Attorney General shall update the directory with new brand
2 families upon receipt of an annual or supplemental certification listing new
3 brand families if the Attorney General determines that the annual or sup-
4 plemental certification is in compliance with the requirements of ORS
5 180.410 and 180.415. The Attorney General shall make the determination
6 about compliance within 45 days of receipt of the certification.

7 “(5) The Attorney General shall:

8 “(a) Create and maintain a list of persons, including but not limited to
9 tobacco product manufacturers and distributors, that are interested in re-
10 ceiving electronic mail notifications of changes in the directory developed
11 under this section;

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

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

20 **“SECTION 12.** ORS 180.435 is amended to read:

21 “180.435. (1) Not later than 20 days after the end of each calendar quarter,
22 and more frequently if so directed by the Attorney General, a distributor
23 shall report such information as the Attorney General requires to facilitate
24 compliance by tobacco product manufacturers with this section and ORS
25 180.410, 180.415, 180.420, 180.430 and 180.440, and with rules adopted under
26 ORS 180.445 and 180.450. The information shall include, but need not be
27 limited to, a list by brand family of the total number of cigarettes or, in the
28 case of roll-your-own tobacco, the equivalent stick count for which the dis-
29 tributor affixed stamps or otherwise paid the tax due during the previous
30 calendar quarter.

1 “(2) A distributor shall maintain for a period of five years all invoices
2 and documentation of sales of cigarettes manufactured by nonparticipating
3 manufacturers and any other information relied upon in reporting to the
4 Attorney General under subsection (1) of this section. The distributor shall
5 make the invoices and other documentation available to the Attorney Gen-
6 eral upon request.

7 “(3)(a) The Attorney General may compel by subpoena the production of
8 any books, papers, records or other information required to be maintained
9 under subsection (2) of this section and may require any person to appear
10 and provide testimony pertinent to the information described in subsection
11 (2) of this section. The subpoena shall have the same force and effect and
12 be served in the same manner as in a civil action in the circuit court.

13 “(b) If a person fails to produce any books, papers, records or other in-
14 formation required to be produced, fails to appear or testify about a matter
15 for which testimony may be compelled or otherwise fails to comply with a
16 subpoena issued under this subsection, the Attorney General may apply to
17 the circuit court of the county in which the person to whom the subpoena
18 was issued resides or may be found. The application shall be for an order
19 requiring the person to comply with the demand or request of the Attorney
20 General. The application shall be made by ex parte motion. The order of the
21 court shall require the person against whom the order is directed to comply
22 with the request or demand of the Attorney General within 10 days after the
23 service of the order, or such further time as the court may grant, or to jus-
24 tify the failure to comply with the order within that time.

25 “(c) Failure to comply with an order under this subsection shall consti-
26 tute contempt of court. The remedy provided under this paragraph shall be
27 in addition to any other remedy provided by law.

28 “(4) A distributor shall provide the Attorney General with an electronic
29 mail address so that the Attorney General may notify the distributor of the
30 information required under subsections (1) and [(8)] (7) of this section.

1 “(5) The Attorney General and the Department of Revenue may share with
2 each other information received under ORS 180.400 to 180.455, ORS chapter
3 323 and corresponding rules, and may share such information with federal,
4 state or local agencies for purposes of enforcement of ORS 180.400 to 180.455,
5 ORS chapter 323 and corresponding rules, or the corresponding laws of other
6 states and with the data clearinghouse or similar entity established pursuant
7 to a settlement agreement between the State of Oregon and the participating
8 manufacturers, and with any parties necessary to effectuate the terms of the
9 settlement agreement.

10 “[~~(6)~~ *The Attorney General may at any time require a nonparticipating*
11 *manufacturer to produce proof from the financial institution in which the*
12 *nonparticipating manufacturer has established a qualified escrow fund for the*
13 *purpose of compliance with ORS 323.806 of the amount of moneys in the fund,*
14 *exclusive of interest, the amount and date of each deposit and the amount and*
15 *date of each withdrawal from the fund.*]

16 “[~~(7)~~ **(6)** The Attorney General shall, upon request of a nonparticipating
17 manufacturer whose compliance with [*escrow*] **equity assessment** require-
18 ments is at issue, provide the manufacturer with copies of all documents
19 upon which any proposed addition to the [*escrow*] **equity assessment** is
20 based. Documents required to be provided under this subsection include, but
21 are not necessarily limited to, reports under this section from distributors.
22 The information provided to the manufacturer under this subsection may not
23 include information about brand families or products of any tobacco product
24 manufacturer other than the one to whom the information is provided. The
25 information may be used only for the purpose of determining the appropriate
26 amount of [*escrow*] **equity assessment** deposits.

27 “[~~(8)~~ **(7)** The Attorney General may require a distributor or a tobacco
28 product manufacturer to submit any additional information, including, but
29 not limited to, samples of the packaging and labeling of each brand family,
30 to enable the Attorney General to determine whether a tobacco product

1 manufacturer is in compliance with this section and ORS 180.410, 180.415,
2 180.420, 180.430 and 180.440 and with rules adopted under ORS 180.445 and
3 180.450.

4 **“SECTION 13.** ORS 180.445 is amended to read:

5 “180.445. (1) To promote compliance with the provisions of ORS 180.410,
6 180.415, 180.420, 180.430, 180.435 and 180.440, the Attorney General may adopt
7 rules requiring a nonparticipating manufacturer to make the [*escrow*
8 *deposits*] **equity assessment payments** required by ORS 323.806 **or section**
9 **8 of this 2023 Act** in quarterly installments during the year in which the
10 sales covered by the deposits are made. The Attorney General may require
11 a nonparticipating manufacturer to produce information sufficient to enable
12 the Attorney General to determine the adequacy of the amount of the in-
13 stallment [*deposit*] **payment**.

14 “(2) If the Attorney General adopts rules requiring a nonparticipating
15 manufacturer to make [*escrow deposits*] **payments** in quarterly installments,
16 the rules may also provide that a nonparticipating manufacturer that has
17 been in continuous compliance for one year with ORS 180.410, 180.415,
18 180.420, 180.430, 180.435, 180.440 and 323.806 **and section 8 of this 2023 Act**
19 may make [*escrow deposits*] **payments** required by ORS 323.806 **or section**
20 **8 of this 2023 Act** in annual payments during the second and subsequent
21 years in which deposits are required.

22 **“SECTION 14.** The amendments to ORS 180.415, 180.416, 180.425,
23 180.435 and 180.445 by sections 9 to 13 of this 2023 Act apply to certifi-
24 **ications submitted under ORS 180.410 on or after January 1, 2025.”.**

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