Oregon Department of Justice
Office of the Attorney General
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HB 2128: Tobacco Equity Assessments

Background:

Regardless of the brand of cigarette, cigarettes are a leading cause of cancer, disease and death. To help compensate for the state's costs for medical care to address illness and harm caused by cigarette smoking, many cigarette manufacturers have been paying the state large annual payments since the 1990's under an historic agreement called the tobacco Master Settlement Agreement ("MSA"), which the Attorney General enforces for Oregon. There is no end date for these payments.

In contrast, cigarette manufacturers who are not parties to the MSA (also called non-participating manufacturers, or "NPMs") have not been compensating the state for *any* harm caused by their cigarettes. Rather than paying the state, ORS 323.806 requires NPMs to fund escrow accounts based on their cigarette sales. The escrow accounts were intended to provide the state with a source of compensation, but in reality, these accounts have given the NPMs an additional income stream.

Escrow Obligation of Non- Participating Manufacturers:

Current escrow deposit structure:

- An NPM makes payments into an escrow account in an amount that is directly related to cigarette sales in Oregon and that is adjusted annually for inflation. The required amount for 2022 sales is around $0.84 per pack of cigarettes.
- The statute allows the NPMs to withdraw interest earned on the escrow accounts.
- The funds will revert to the NPM 25 years after the date of deposit, meaning that the entire amount will go back to the NPM and the state will not receive any funds. The releases would occur on a rolling basis. In other words, funds that are deposited in 2000 could be eligible for release in 2025, funds deposited in 2001 could be eligible for release in 2026, and so on.
- Like the MSA payment, there is no end date to the escrow obligation. As long as an NPM is selling cigarettes in Oregon, it will be required to make payments into the escrow account at the statutory rate. This will be true even as the 25-year releases begin rolling out.

The original intent of the escrow statute was to provide a source of funds that could be available to Oregon to pay for health care costs caused by cigarettes. This current escrow statute is not fulfilling these policy goals. A few reasons why:

- NPMs treat the escrow accounts as investments. Rather than forcing NPMs to internalize the costs of their harmful products, the escrow accounts provide another income stream for NPMs. In other words, NPMs profit on both their cigarette sales and the escrow accounts.
- When the funds revert to the NPMs after 25 years, NPMs will be able to reinvest the funds. It is likely this will allow NPMs to lower their prices, which would hinder public health goals of reducing cigarette smoking, particularly among youth.
- The state has limited ability to access the funds in the escrow accounts as a source of reimbursement for health care costs.

Proposed Solution: Equity Assessment Concept:

HB 2128 will fulfill the original intent of ORS 323.806 by requiring NPMs to compensate Oregon for the public health costs associated with their cigarettes. The bill converts the NPM escrow payments to direct payments to the state. This direct-payment structure will ensure that all cigarette manufacturers are making payments to the state – not just the companies that are parties to the MSA.

HB 2128 does not change the amount that the NPMs are currently required to pay. The only change is that the payments will be made to the state instead of an interest-bearing escrow account. In addition, the total amount due will include the amount paid into escrow since the enactment of the original statute, and NPMs can satisfy the equity assessment liability with either the funds in their escrow accounts, or through a direct payment to the state.

Note that the Department intends to seek an amendment to HB 2128 that will ensure NPM payments are deposited into an Oregon Health Authority Fund for the benefit of the Oregon Health Plan to align with the public policy goals of this concept. The Attorney General will have enforcement authority to ensure that NPMs are meeting their payment obligations.

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