

HB 2128 B -B6 STAFF MEASURE SUMMARY

Senate Committee On Rules

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Meeting Dates: 6/23

WHAT THE MEASURE DOES:

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

ISSUES DISCUSSED:

EFFECT OF AMENDMENT:

-B6 Requires equity assessment payments from nonparticipating manufacturers only for sales made after Jan. 1, 2024. Retains existing escrow payment provisions for nonparticipating manufacturers' sales prior to Jan. 2, 2024.

BACKGROUND:

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

Oregon enacted Senate Bill 792 in 1999 to require that all manufacturers selling tobacco products in Oregon be either a PM or a nonparticipating manufacturer ("NPM") and imposed certain obligations on NPMs. NPMs are required to place funds in an escrow account at a set rate per unit, not to exceed amounts paid per unit by PMs. SB 792 stated findings and purposes that included ensuring that NPMs were not rewarded with a cost advantage

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by not becoming a PM, and that funds would be available to pay any future settlement or judgment against the NPMs should they become insolvent. All interest earned goes to the manufacturer, and any escrow funds not used within 25 years revert back to the NPM.

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

House Bill 2128 B replaces the escrow program with a direct payment program for tobacco manufacturers who did not participate in the Tobacco Master Settlement Agreement.