

## HB 2128 A STAFF MEASURE SUMMARY

### House Committee On Judiciary

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**Action Date:** 03/21/23

**Action:** Do pass with amendments and be referred to Ways and Means. (Printed A-Eng.)

**Vote:** 6-4-0-0

**Yeas:** 6 - Andersen, Bynum, Chaichi, Kropf, Reynolds, Tran

**Nays:** 4 - Conrad, Lewis, Morgan, Wallan

**Fiscal:** Fiscal impact issued

**Revenue:** Revenue impact issued

**Prepared By:** Patricia Pascone, LPRO Analyst

**Meeting Dates:** 2/14, 3/15, 3/21

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#### 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 payment of an equity assessment directly to the state for deposit in the Oregon Health Authority Fund for expenses of the Oregon Health Plan. 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 either keep existing escrow deposits in the escrow fund or apply the escrow deposits to the equity assessment due. 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. Replaces Attorney General's authority to recover escrow payment and penalties with authority to recover equity assessment payment and penalties, in a civil action against a manufacturer who fails to remit payment. Adds authority to recover attorney fees, costs, and expenses incurred by the Attorney General in an enforcement action. 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:

- History of Tobacco Master Settlement Agreement
- Smoking rates of Oregon Health Plan enrollees
- What constitutes a tax, requiring a supermajority vote
- Contractual obligations
- Nonparticipating manufacturers have deposited approximately \$40 million into escrow since 2000
- Nonparticipating manufacturers would as a group owe approximately \$4 million each future year

#### EFFECT OF AMENDMENT:

Requires a nonparticipating manufacturer to either become a Participating Manufacturer or satisfy the equity assessment. Specifies that a participating manufacturer is liable for an equity assessment if it is not performing its financial obligations under the Master Settlement Agreement. Designates the Oregon Health Authority Fund as

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repository for the equity assessment payments, and directs payments be used for expenses of the Oregon Health Plan. Repeals contingent amendments from 2003 that never became operative. Reverts to original text of ORS 323.806, with inoperative 2003 amendments removed, within 31 days of a court order that invalidates the equity assessment provisions, if such a court order is entered. Removes specified effective date of measure.

### **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 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 A replaces the escrow program with a direct payment program for tobacco manufacturers who did not participate in the Tobacco Master Settlement Agreement and directs deposit of payments be made to the Oregon Health Authority Fund for Oregon Health Plan expenses.