

HB 2128 C STAFF MEASURE SUMMARY

Carrier: Sen. Prozanski

Senate Committee On Rules**Action Date:** 06/23/23**Action:** Do pass with amendments to the B-Eng bill. (Printed C-Eng.)**Vote:** 3-1-1-0**Yeas:** 3 - Lieber, Manning Jr, Steiner**Nays:** 1 - Knopp**Exc:** 1 - Hansell**Fiscal:** Fiscal impact issued**Revenue:** Revenue impact issued**Prepared By:** Patricia Pascone**Meeting Dates:** 6/23**WHAT THE MEASURE DOES:**

Requires tobacco manufacturers who did not elect to participate in the Tobacco Master Settlement Agreement (nonparticipating manufacturers or NPMs) to make equity assessment payments directly to the state for tobacco products sold in Oregon after January 1, 2024. Ends requirement to make escrow payments for sales made after the 2023 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. Provides that the payments shall be deposited in the Oregon Health Authority Fund for expenses of the Oregon Health Plan. Specifies that certification and remittance are due annually on April 15 for the previous sales year. Permits an NPM 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 payments may be used to satisfy future liability, dollar for dollar, but do not prevent a civil action by the Attorney General (AG). Authorizes AG 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 AG in an enforcement action, and directs that recovered fees, costs, and expenses 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 related rules, and applies these changes to certifications submitted to the AG on or after January 1, 2025.

ISSUES DISCUSSED:

- Eight nonparticipating manufacturers (NPMs) are currently making escrow payments
- Total sum in escrow is approximately \$43 million; amounts will still be returned to NPMs on a rolling basis
- Equity assessments are intended to pay for portion of health care costs relating to tobacco use
- NPMs have not been accused of deceptive trade practices
- Attorney General and NPMs will work together if technical fixes are needed to the measure

EFFECT OF AMENDMENT:

Specifies that equity assessment liability applies only to sales after Jan. 1, 2024, instead of Oct. 23, 1999.

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.

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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 C replaces the escrow program with a direct payment program (equity assessments) for tobacco manufacturers who did not participate in the Tobacco Master Settlement Agreement, for sales made in Oregon after Jan. 1, 2024.