

HOUSE AMENDMENTS TO HOUSE BILL 2128

By COMMITTEE ON JUDICIARY

March 28

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

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

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

5 “323.803. (1) Cigarette smoking presents serious public health concerns to the State of Oregon
6 and to the people of the State of Oregon. The Surgeon General has determined that smoking causes
7 lung cancer, heart disease and other serious diseases, and that there are hundreds of thousands of
8 tobacco-related deaths in the United States each year. These diseases most often do not appear until
9 many years after the person in question begins smoking.

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

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

16 “(4) It is the policy of the State of Oregon that financial burdens imposed on this state by cig-
17 arette smoking be borne by tobacco product manufacturers rather than by this state [*to the extent*
18 *that such manufacturers either determine to enter into a settlement with the State of Oregon or are*
19 *found culpable by the courts*]. **Tobacco product manufacturers that have settled with this state**
20 **pay the State of Oregon millions of dollars each year. Other tobacco product manufacturers**
21 **do not make direct payments to this state.**

22 “(5) On November 23, 1998, leading United States tobacco product manufacturers entered into
23 a settlement agreement, entitled the ‘Master Settlement Agreement,’ with the State of Oregon. The
24 Master Settlement Agreement obligates those manufacturers, in return for a release of past, present
25 and certain future claims against them as described in the Master Settlement Agreement:

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

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

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

30 “[6] *It would be contrary to the policy of the State of Oregon if those tobacco product manufac-*
31 *turers who determine not to enter into such a settlement could use a resulting cost advantage to derive*
32 *large, short-term profits in the years before liability may arise without ensuring that this state will have*
33 *an eventual source of recovery from them if they are proven to have acted culpably. It is thus in the*
34 *interest of the State of Oregon to require that such manufacturers establish a reserve fund to guarantee*
35 *a source of compensation and to prevent such manufacturers from deriving large, short-term profits and*

1 *then becoming judgment-proof before liability may arise.]*

2 **“(6) The State of Oregon owes its public health obligations equally to all persons in this**
3 **state who smoke, regardless of the brand of cigarette smoked or the status of the tobacco**
4 **product manufacturer under the Master Settlement Agreement.**

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

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

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

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

15 **“(d) Serve as partial compensation for the financial burdens imposed on this state by**
16 **cigarette smoking.**

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

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

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

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

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

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

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

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

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

33 **“(B) A tobacco product manufacturer that places funds into escrow pursuant to subparagraph**
34 **(A) of this paragraph shall receive the interest or other appreciation on such funds as earned. Such**
35 **funds themselves shall be released from escrow only under the following circumstances:**

36 **“(i) To pay a judgment or settlement on any released claim brought against such tobacco prod-**
37 **uct manufacturer by the State of Oregon or any releasing party located or residing in this state.**
38 **Funds shall be released from escrow under this sub-subparagraph in the order in which they were**
39 **placed into escrow and only to the extent and at the time necessary to make payments required**
40 **under such judgment or settlement;**

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

42 **“[(ii)] (iii) To the extent that a tobacco product manufacturer establishes that the amount it was**
43 **required to place into escrow on account of units sold in Oregon in a particular year was greater**
44 **than the Master Settlement Agreement payments, as determined pursuant to section IX(i) of that**
45 **agreement after final determination of all adjustments, that the manufacturer would have been re-**

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

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

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

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

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

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

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

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

32 “(b) Importers may be sued under subsection (1)(b)(C) of this section to the same extent as the
33 tobacco product manufacturer, and shall be subject to all of the same civil penalties, remedies or
34 other relief that may be awarded against the tobacco product manufacturer of the cigarettes as
35 provided in subsection (1)(b)(C) of this section;

36 “(c) If the importer fails or refuses within 15 days of the Attorney General’s written demand to
37 deposit the funds into escrow for which it is jointly and severally liable under paragraph (a) of this
38 subsection, all cigarettes imported into the United States by the importer shall constitute
39 contraband cigarettes as defined in ORS 323.010 and shall be subject to seizure and forfeiture as
40 provided under ORS 323.248; and

41 “(d) A nonparticipating manufacturer located outside the United States that conducts business
42 in this state shall provide to the Attorney General on a form prescribed by the Attorney General
43 a declaration from each importer that imports the cigarettes of the nonparticipating manufacturer
44 intended for sale in this state stating that the importer accepts liability pursuant to subsection
45 (1)(b)(A) of this section and consents to the jurisdiction of the courts of this state for the purposes

1 of enforcing this section.

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

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

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

10 “(b)(A) **Satisfy the equity assessment required under section 8 of this 2023 Act** and place
11 into a qualified escrow fund by April 15 of the year following the year in question the following
12 amounts (as such amounts are adjusted 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 [2007 and each year thereafter] **each of the years 2007 through 2023**, \$0.0188482 per
18 unit sold.

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

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

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

28 “[*(ii)*] **(iii)** To the extent that a tobacco product manufacturer establishes that the amount it was
29 required to place into escrow [*in a particular year was greater than this state’s allocable share of the*
30 *total payments that such manufacturer would have been required to make in that year under the Master*
31 *Settlement Agreement (as determined pursuant to section IX(i)(2) of the Master Settlement Agreement,*
32 *and before any of the adjustments or offsets described in section IX(i)(3) of that agreement other than*
33 *the inflation adjustment)] **on account of units sold in Oregon in a particular year was greater**
34 **than the Master Settlement Agreement payments, as determined pursuant to section IX(i)**
35 **of that agreement after final determination of all adjustments, that the manufacturer would**
36 **have been required to make on account of such units sold** had it been a Participating Man-
37 ufacturer (as that term is defined in the Master Settlement Agreement), the excess shall be released
38 from escrow and revert back to such tobacco product manufacturer; or*

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

42 “(C) Each tobacco product manufacturer that elects to place funds into escrow pursuant to this
43 paragraph shall annually certify to the Attorney General that it is in compliance with this para-
44 graph. The Attorney General may bring a civil action on behalf of the State of Oregon against any
45 tobacco product manufacturer that fails to place into escrow the funds required under this para-

1 graph. Any tobacco product manufacturer that fails in any year to place into escrow the funds re-
2 quired under this paragraph shall:

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

8 “(ii) In the case of a knowing violation, be required within 15 days to place such funds into
9 escrow as shall bring such manufacturer into compliance with this paragraph. The court, upon a
10 finding of a knowing violation of this paragraph, may impose a civil penalty to be paid to the Gen-
11 eral Fund of this state in an amount not to exceed 15 percent of the amount improperly withheld
12 from escrow per day of the violation and in a total amount not to exceed 300 percent of the original
13 amount improperly withheld from escrow; and

14 “(iii) In the case of a second knowing violation, be prohibited from selling cigarettes to con-
15 sumers within the State of Oregon (whether directly or through a distributor, retailer or similar
16 intermediary or intermediaries) for a period not to exceed two years. Each failure to make an annual
17 deposit required under this section shall constitute a separate violation.

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

20 “(a) Importers shall be jointly and severally liable with the tobacco product manufacturer of the
21 cigarettes for the escrow deposits required under subsection (1)(b)(A) of this section;

22 “(b) Importers may be sued under subsection (1)(b)(C) of this section to the same extent as the
23 tobacco product manufacturer, and shall be subject to all of the same civil penalties, remedies, or
24 other relief that may be awarded against the tobacco product manufacturer of the cigarettes as
25 provided in subsection (1)(b)(C) of this section;

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

31 “(d) A nonparticipating manufacturer located outside the United States that conducts business
32 in this state shall provide to the Attorney General on a form prescribed by the Attorney General
33 a declaration from each importer that imports the cigarettes of the nonparticipating manufacturer
34 intended for sale in this state stating that the importer accepts liability pursuant to subsection
35 (1)(b)(A) of this section and consents to the jurisdiction of the courts of this state for the purposes
36 of enforcing this section.

37 “**SECTION 4.** ORS 323.806, as amended by section 22, chapter 801, Oregon Laws 2003, section
38 3, chapter 687, Oregon Laws 2017, and sections 2 and 3 of this 2023 Act, is amended to read:

39 “323.806. (1) Any tobacco product manufacturer selling cigarettes to consumers within the State
40 of Oregon (whether directly or through a distributor, retailer or similar intermediary or interme-
41 diaries) after October 23, 1999, shall do one of the following:

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

45 “(b)(A) [*Satisfy the equity assessment required under section 8 of this 2023 Act and*] Place into a

1 qualified escrow fund by April 15 of the year following the year in question the following amounts
2 (as such amounts are adjusted for inflation):

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

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

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

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

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

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

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

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

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

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

28 “(C) Each tobacco product manufacturer that elects to place funds into escrow pursuant to this
29 paragraph shall annually certify to the Attorney General that it is in compliance with this para-
30 graph. The Attorney General may bring a civil action on behalf of the State of Oregon against any
31 tobacco product manufacturer that fails to place into escrow the funds required under this para-
32 graph. Any tobacco product manufacturer that fails in any year to place into escrow the funds re-
33 quired under this paragraph shall:

34 “(i) Be required within 15 days to place such funds into escrow as shall bring such manufacturer
35 into compliance with this paragraph. The court, upon a finding of a violation of this paragraph, may
36 impose a civil penalty to be paid to the General Fund of this state in an amount not to exceed five
37 percent of the amount improperly withheld from escrow per day of the violation and in a total
38 amount not to exceed 100 percent of the original amount improperly withheld from escrow;

39 “(ii) In the case of a knowing violation, be required within 15 days to place such funds into
40 escrow as shall bring such manufacturer into compliance with this paragraph. The court, upon a
41 finding of a knowing violation of this paragraph, may impose a civil penalty to be paid to the Gen-
42 eral Fund of this state in an amount not to exceed 15 percent of the amount improperly withheld
43 from escrow per day of the violation and in a total amount not to exceed 300 percent of the original
44 amount improperly withheld from escrow; and

45 “(iii) In the case of a second knowing violation, be prohibited from selling cigarettes to con-

1 sumers within the State of Oregon (whether directly or through a distributor, retailer or similar
2 intermediary or intermediaries) for a period not to exceed two years. Each failure to make an annual
3 deposit required under this section shall constitute a separate violation.

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

6 “(a) Importers shall be jointly and severally liable with the tobacco product manufacturer of the
7 cigarettes for the escrow deposits required under subsection (1)(b)(A) of this section;

8 “(b) Importers may be sued under subsection (1)(b)(C) of this section to the same extent as the
9 tobacco product manufacturer, and shall be subject to all of the same civil penalties, remedies, or
10 other relief that may be awarded against the tobacco product manufacturer of the cigarettes as
11 provided in subsection (1)(b)(C) of this section;

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

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

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

24 “323.807. (1) Notwithstanding the provisions of ORS 323.806 (2)(b), a tobacco product manufac-
25 turer that elects to place funds into a qualified escrow fund pursuant to ORS 323.806 (1)(b) may as-
26 sign to the state the tobacco product manufacturer’s interest in any funds in the qualified escrow
27 fund.

28 “(2) An assignment executed pursuant to subsection (1) of this section is permanent and irrev-
29 ocable and applies to all moneys in the qualified escrow fund established for the benefit of the state,
30 including all moneys deposited into the qualified escrow fund before the tobacco product manufac-
31 turer executes the assignment, all moneys deposited into the qualified escrow fund after the tobacco
32 product manufacturer executes the assignment and any interest or other appreciation earned on any
33 moneys in the qualified escrow fund.

34 “(3) The parties to a qualified escrow agreement may amend the agreement for the purposes of
35 executing an assignment pursuant to subsection (1) of this section.

36 “(4) An assignment executed pursuant to subsection (1) of this section must be in writing and
37 be signed by the assignee and the assignor or by an authorized agent or representative thereof.
38 An assignment that is duly executed becomes enforceable after a copy of the assignment is delivered
39 to the Attorney General and the financial institution where the qualified escrow fund is maintained.

40 “(5) Notwithstanding the provisions of ORS 323.806 (1)(b), funds assigned to the state shall be
41 deposited in the [*Tobacco Settlement Funds Account established pursuant to ORS 293.537*] **Oregon**
42 **Health Authority Fund established under ORS 413.101 and shall be used for expenses of the**
43 **Oregon Health Plan.**

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

45 “(a) Waive the right of the state to bring a claim against a tobacco product manufacturer as

1 described in ORS 323.806 (2)(b), except that any funds assigned to the state under this section shall
2 be credited on a dollar-for-dollar basis against any judgment or settlement described in ORS 323.806
3 (2)(b); or

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

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

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

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

14 “**SECTION 6. (1) The amendments to ORS 323.806 by section 4 of this 2023 Act become
15 operative 31 days after entry of a final judgment that invalidates the amendments to ORS
16 323.806 by sections 2 and 3 of this 2023 Act.**

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

20 “**SECTION 7. Section 8 of this 2023 Act is added to and made a part of ORS 323.800 to
21 323.807.**

22 “**SECTION 8. (1) Except for a Participating Manufacturer, as that term is defined in the
23 Master Settlement Agreement, that is generally performing its financial obligations under
24 the Master Settlement Agreement, a tobacco product manufacturer is liable for an equity
25 assessment for units sold within the State of Oregon after October 23, 1999.**

26 “**(2) For units sold in each of the following years, the equity assessment is as follows (as
27 such amounts are adjusted for inflation):**

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

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

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

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

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

33 “**(3)(a) This section is intended to recover cigarette-related health care costs incurred
34 by the State of Oregon for cigarettes sold in this state after October 23, 1999. For sales
35 years that occurred prior to the effective date of this 2023 Act, the Attorney General shall
36 provide written notice of the amount of the tobacco product manufacturer’s equity assess-
37 ment liability under subsection (1) of this section. At the Attorney General’s discretion, the
38 notice may include assessments for one or more sales years. The tobacco product manufac-
39 turer shall cause the assessed amount to be remitted to this state within 30 days of the date
40 of the notice.**

41 “**(b) For sales years that occur after the effective date of this 2023 Act, each tobacco
42 product manufacturer that is liable for an equity assessment shall annually certify to the
43 Attorney General that it is in compliance with this paragraph and remit the required equity
44 assessment to this state by April 15 of the year following the sales year at issue. Tobacco
45 product manufacturers have a continuing obligation to submit amended certificates of com-**

1 pliance if their sales or payment information changes.

2 “(c) The Attorney General may issue amended notices of equity assessment if additional
3 units sold are discovered through audit or otherwise. The tobacco product manufacturer
4 shall cause the assessed amount to be remitted to this state within 30 days of the date of the
5 amended notice.

6 “(d) Any amounts recovered under this section are the property of the state, and this
7 section creates no cause or right of action in any party except the State of Oregon. Amounts
8 recovered under this section 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 Health Plan.

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

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

14 “(B) Relieve a tobacco product manufacturer from any obligation or duty imposed pur-
15 suant to ORS 180.400 to 180.455 or any other provision of Oregon law.

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

25 “(4) The Attorney General may bring a civil action on behalf of the State of Oregon
26 against any tobacco product manufacturer that fails to remit the amounts due under sub-
27 section (1) of this section. In addition to recovering the equity assessment, the Attorney
28 General shall be entitled to reasonable attorney fees, costs and expenses incurred in prose-
29 cuting the action and any appeal. Attorney fees, costs and expenses recovered under this
30 subsection shall be deposited in the Tobacco Enforcement Fund established under ORS
31 180.205.

32 “(5)(a) The court, upon a finding of a violation of subsection (1) of this section, may im-
33 pose a civil penalty upon the tobacco product manufacturer to be paid to the General Fund
34 of this state in an amount not to exceed five percent of the amount improperly withheld per
35 day of the violation and in a total amount not to exceed 100 percent of the original amount
36 improperly withheld.

37 “(b) The court, upon a finding of a knowing violation of subsection (1) of this section,
38 may impose a civil penalty upon the tobacco product manufacturer to be paid to the General
39 Fund of this state in an amount not to exceed 15 percent of the amount improperly withheld
40 per day of the violation and in a total amount not to exceed 300 percent of the original
41 amount improperly withheld.

42 “(c) In the case of a second knowing violation of subsection (1) of this section, the to-
43 bacco product manufacturer shall be prohibited from selling cigarettes to consumers within
44 the State of Oregon (whether directly or through a distributor, retailer or similar interme-
45 diary or intermediaries) for a period not to exceed two years. Each failure to make a pay-

1 **ment required under this section shall constitute a separate violation.**

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

4 **“(a) Importers shall be jointly and severally liable with the tobacco product manufacturer**
5 **of the cigarettes for the equity assessments required under subsection (1) of this section;**

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

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

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

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

22 **“180.415.** In the certification required by ORS 180.410 (1), a nonparticipating manufacturer shall
23 further certify:

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

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

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

31 *“(b) Has executed a qualified escrow agreement that has been reviewed and approved by the At-*
32 *torney General and that governs the qualified escrow fund. The Attorney General shall adopt rules*
33 *defining the form and content of a model escrow agreement. A nonparticipating manufacturer that ex-*
34 *ecutes the model escrow agreement is deemed to have satisfied the requirement that it use a form of*
35 *escrow agreement that has been reviewed and approved by the Attorney General.]*

36 *“(3)(a) The name, address and telephone number of the financial institution where the nonpartic-*
37 *ipating manufacturer has established the qualified escrow fund required by ORS 323.806;]*

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

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

44 *“(d) (b) The amount and date of any withdrawal of funds the nonparticipating manufacturer*
45 *made at any time from [the qualified escrow fund or from any other] **any** qualified escrow fund into*

1 which the nonparticipating manufacturer ever made escrow payments pursuant to ORS 323.806 **or**
2 **section 8 of this 2023 Act.**

3 “(4) That the nonparticipating manufacturer has posted a bond in accordance with ORS 180.416.

4 “(5) That all shipments or sales made within or into this state by the nonparticipating man-
5 ufacturer or its importer are made to a distributor of cigarettes licensed under ORS 323.105 or a
6 distributor of tobacco products licensed under ORS 323.530.

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

8 “180.416. (1) A nonparticipating manufacturer shall post a bond for the benefit of the state, in
9 accordance with this section, which is conditioned on the nonparticipating manufacturer fully com-
10 plying with the [*escrow*] obligations of ORS 323.806 **or section 8 of this 2023 Act.**

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

14 “(a) The greatest required escrow **or equity assessment payment** amount due from the non-
15 participating manufacturer or its predecessor for any of the 12 preceding calendar quarters; or

16 “(b) \$25,000.

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

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

29 “(5) The Attorney General may promulgate rules necessary to implement this section including
30 acceptable forms and types of bonds.

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

32 “180.425. (1) The Attorney General shall develop and make available for public inspection a di-
33 rectory listing all tobacco product manufacturers that have provided current and accurate certif-
34 ications conforming to the requirements of ORS 180.410 and 180.415 and all brand families that are
35 listed in the certifications.

36 “(2) The Attorney General may not include or retain in the directory the name or brand families
37 of any nonparticipating manufacturer that fails to provide the required certification or whose cer-
38 tification the Attorney General determines is not in compliance with ORS 180.410 and 180.415, un-
39 less the Attorney General has determined that the violation has been cured to the satisfaction of
40 the Attorney General. The Attorney General shall adopt rules defining the criteria by which the
41 Attorney General will exercise the discretion granted by this subsection.

42 “(3) The Attorney General may not include or retain in the directory a nonparticipating man-
43 ufacturer or a brand family if the Attorney General concludes that:

44 “(a) Any [*escrow*] payment required from the nonparticipating manufacturer pursuant to ORS
45 323.806 **or section 8 of this 2023 Act** for any period for any brand family, whether listed or not

1 listed by the nonparticipating manufacturer, has not been fully paid [*into a qualified escrow fund*
2 *governed by a qualified escrow agreement that has been approved by the Attorney General*]; or

3 “(b) Any outstanding final judgment, including interest thereon, for a violation of ORS 323.806
4 **or section 8 of this 2023 Act** has not been fully satisfied for the brand family or the nonpartic-
5 ipating manufacturer.

6 “(4) The Attorney General shall update the directory in order to correct mistakes and to add
7 or remove a tobacco product manufacturer or a brand family to keep the directory in conformity
8 with the requirements of this section. The Attorney General shall update the directory with new
9 brand families upon receipt of an annual or supplemental certification listing new brand families if
10 the Attorney General determines that the annual or supplemental certification is in compliance with
11 the requirements of ORS 180.410 and 180.415. The Attorney General shall make the determination
12 about compliance within 45 days of receipt of the certification.

13 “(5) The Attorney General shall:

14 “(a) Create and maintain a list of persons, including but not limited to tobacco product man-
15 ufacturers and distributors, that are interested in receiving electronic mail notifications of changes
16 in the directory developed under this section;

17 “(b) Develop a registration form to be completed by persons interested in receiving electronic
18 mail notification of changes in the directory developed under this section that are not otherwise
19 required by ORS 180.435 (4) or rules adopted under ORS 180.445 or 180.450 to submit their electronic
20 mail addresses to the Attorney General; and

21 “(c) Immediately upon making any change in the directory developed under this section, send
22 electronic mail notices of the change to all persons on the list created under this subsection.

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

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

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

35 “(3)(a) The Attorney General may compel by subpoena the production of any books, papers, re-
36 cords or other information required to be maintained under subsection (2) of this section and may
37 require any person to appear and provide testimony pertinent to the information described in sub-
38 section (2) of this section. The subpoena shall have the same force and effect and be served in the
39 same manner as in a civil action in the circuit court.

40 “(b) If a person fails to produce any books, papers, records or other information required to be
41 produced, fails to appear or testify about a matter for which testimony may be compelled or other-
42 wise fails to comply with a subpoena issued under this subsection, the Attorney General may apply
43 to the circuit court of the county in which the person to whom the subpoena was issued resides or
44 may be found. The application shall be for an order requiring the person to comply with the demand
45 or request of the Attorney General. The application shall be made by ex parte motion. The order

1 of the court shall require the person against whom the order is directed to comply with the request
2 or demand of the Attorney General within 10 days after the service of the order, or such further
3 time as the court may grant, or to justify the failure to comply with the order within that time.

4 “(c) Failure to comply with an order under this subsection shall constitute contempt of court.
5 The remedy provided under this paragraph shall be in addition to any other remedy provided by law.

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

9 “(5) The Attorney General and the Department of Revenue may share with each other informa-
10 tion received under ORS 180.400 to 180.455, ORS chapter 323 and corresponding rules, and may
11 share such information with federal, state or local agencies for purposes of enforcement of ORS
12 180.400 to 180.455, ORS chapter 323 and corresponding rules, or the corresponding laws of other
13 states and with the data clearinghouse or similar entity established pursuant to a settlement
14 agreement between the State of Oregon and the participating manufacturers, and with any parties
15 necessary to effectuate the terms of the settlement agreement.

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

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

30 “[~~(8)~~ (7) The Attorney General may require a distributor or a tobacco product manufacturer to
31 submit any additional information, including, but not limited to, samples of the packaging and la-
32 beling of each brand family, to enable the Attorney General to determine whether a tobacco product
33 manufacturer is in compliance with this section and ORS 180.410, 180.415, 180.420, 180.430 and
34 180.440 and with rules adopted under ORS 180.445 and 180.450.

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

36 “180.445. (1) To promote compliance with the provisions of ORS 180.410, 180.415, 180.420,
37 180.430, 180.435 and 180.440, the Attorney General may adopt rules requiring a nonparticipating
38 manufacturer to make the [*escrow deposits*] **equity assessment payments** required by ORS 323.806
39 **or section 8 of this 2023 Act** in quarterly installments during the year in which the sales covered
40 by the deposits are made. The Attorney General may require a nonparticipating manufacturer to
41 produce information sufficient to enable the Attorney General to determine the adequacy of the
42 amount of the installment [*deposit*] **payment**.

43 “(2) If the Attorney General adopts rules requiring a nonparticipating manufacturer to make
44 [*escrow deposits*] **payments** in quarterly installments, the rules may also provide that a nonpartic-
45 ipating manufacturer that has been in continuous compliance for one year with ORS 180.410,

1 180.415, 180.420, 180.430, 180.435, 180.440 and 323.806 **and section 8 of this 2023 Act** may make
2 [*escrow deposits*] **payments** required by ORS 323.806 **or section 8 of this 2023 Act** in annual pay-
3 ments during the second and subsequent years in which deposits are required.

4 **“SECTION 14. The amendments to ORS 180.415, 180.416, 180.425, 180.435 and 180.445 by**
5 **sections 9 to 13 of this 2023 Act apply to certifications submitted under ORS 180.410 on or**
6 **after January 1, 2025.”**

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