

# House Bill 2128

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of Attorney General Ellen F. Rosenblum)

## SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Replaces escrow deposit system required of tobacco product manufacturers who are nonparticipating manufacturers for purposes of Master Settlement Agreement with requirement of direct payments to state. Amends findings to state policy to include statement of intention to hold all tobacco product manufacturers liable for cigarette-related health care costs, regardless of status under Master Settlement Agreement.

Applies to certifications submitted on or after January 1, 2025.

Takes effect on 91st following adjournment sine die.

## A BILL FOR AN ACT

1  
2 Relating to the Master Settlement Agreement; creating new provisions; amending ORS 180.415,  
3 180.416, 180.425, 180.435, 180.445, 323.803 and 323.806; and prescribing an effective date.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1.** ORS 323.803 is amended to read:

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

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

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

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

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

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

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

**NOTE:** Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

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

3 *[(6) It would be contrary to the policy of the State of Oregon if those tobacco product manufacturers  
 4 who determine not to enter into such a settlement could use a resulting cost advantage to derive large,  
 5 short-term profits in the years before liability may arise without ensuring that this state will have an  
 6 eventual source of recovery from them if they are proven to have acted culpably. It is thus in the in-  
 7 terest of the State of Oregon to require that such manufacturers establish a reserve fund to guarantee  
 8 a source of compensation and to prevent such manufacturers from deriving large, short-term profits and  
 9 then becoming judgment-proof before liability may arise.]*

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

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

16 **(a) Prevent the manufacturers from deriving large, short-term profits and then becoming  
 17 judgment-proof;**

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

20 **(c) Increase the retail prices of cigarettes sold by the manufacturers, thereby reducing  
 21 smoking rates, particularly among youth, as consistent with this state's policy of discour-  
 22 aging youth smoking; and**

23 **(d) Serve as partial compensation for the financial burdens imposed on this state by cig-  
 24 arette smoking.**

25 **SECTION 2.** ORS 323.806 is amended to read:

26 323.806. (1) Any tobacco product manufacturer selling cigarettes to consumers within the State  
 27 of Oregon (whether directly or through a distributor, retailer or similar intermediary or interme-  
 28 diaries) after October 23, 1999, shall do one of the following:

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

32 (b)(A) *[Place into a qualified escrow fund by April 15 of the year following the year in question  
 33 the following amounts]* **Be liable for an equity assessment for units sold within the State of  
 34 Oregon after October 23, 1999.**

35 **(B) For units sold in each of the following years, the equity assessment is as follows** (as  
 36 such amounts are adjusted for inflation):

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

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

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

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

41 (v) For 2007 and each year thereafter, \$0.0188482 per unit sold.

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

45 *[(i) To pay a judgment or settlement on any released claim brought against such tobacco product*

1 manufacturer by the State of Oregon or any releasing party located or residing in this state. Funds  
 2 shall be released from escrow under this sub-subparagraph in the order in which they were placed into  
 3 escrow and only to the extent and at the time necessary to make payments required under such judg-  
 4 ment or settlement;]

5 [(ii)] (C) [To the extent that] A tobacco product manufacturer **may seek a credit or refund of**  
 6 **its escrow payment or equity assessment, if the tobacco product manufacturer** establishes  
 7 that the amount it was required to place into escrow **or pay as an equity assessment** on account  
 8 of units sold in Oregon in a particular year was greater than the Master Settlement Agreement  
 9 payments, as determined pursuant to section IX(i) of that agreement after final determination of all  
 10 adjustments, that the manufacturer would have been required to make on account of such units sold  
 11 had it been a Participating Manufacturer (as that term is defined in the Master Settlement Agree-  
 12 ment). **A tobacco product manufacturer may seek to obtain a credit or refund within one year**  
 13 **after the due date of the assessment.**[, the excess shall be released from escrow and revert back  
 14 to such tobacco product manufacturer; or]

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

18 [(C)] Each tobacco product manufacturer that elects to place funds into escrow pursuant to this  
 19 paragraph shall annually certify to the Attorney General that it is in compliance with this paragraph.  
 20 The Attorney General may bring a civil action on behalf of the State of Oregon against any tobacco  
 21 product manufacturer that fails to place into escrow the funds required under this paragraph. Any to-  
 22 bacco product manufacturer that fails in any year to place into escrow the funds required under this  
 23 paragraph shall:]

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

29 [(ii)] In the case of a knowing violation, be required within 15 days to place such funds into escrow  
 30 as shall bring such manufacturer into compliance with this paragraph. The court, upon a finding of a  
 31 knowing violation of this paragraph, may impose a civil penalty to be paid to the General Fund of this  
 32 state in an amount not to exceed 15 percent of the amount improperly withheld from escrow per day  
 33 of the violation and in a total amount not to exceed 300 percent of the original amount improperly  
 34 withheld from escrow; and]

35 [(iii)] In the case of a second knowing violation, be prohibited from selling cigarettes to consumers  
 36 within the State of Oregon (whether directly or through a distributor, retailer or similar intermediary  
 37 or intermediaries) for a period not to exceed two years. Each failure to make an annual deposit re-  
 38 quired under this section shall constitute a separate violation.]

39 **(2) A tobacco product manufacturer that placed funds into a qualified escrow fund prior**  
 40 **to the effective date of this 2023 Act shall receive interest or other gain on the funds as ac-**  
 41 **crued. The principal shall be released from escrow only in the following circumstances:**

42 **(a) To pay a judgment or settlement on any released claim brought against the tobacco**  
 43 **product manufacturer by the State of Oregon or any releasing party located or residing in**  
 44 **this state, with funds to be released from escrow under this paragraph in the order in which**  
 45 **they were placed into escrow and only to the extent and at the time necessary to make**

1 **payments required under the judgment or settlement.**

2 **(b) To pay an equity assessment established under this section.**

3 **(c) To the extent not released from escrow under paragraphs (a) and (b) of this sub-**  
 4 **section, funds shall be released from escrow and revert back to a tobacco product manufac-**  
 5 **turer 25 years after the date on which they were placed into escrow.**

6 **(3)(a) This section is intended to recover cigarette-related health care costs incurred by**  
 7 **the State of Oregon for cigarettes sold in this state after October 23, 1999. For sales years**  
 8 **that occurred prior to the effective date of this 2023 Act, the Attorney General shall provide**  
 9 **written notice of the amount of the tobacco product manufacturer’s equity assessment li-**  
 10 **ability under subsection (1)(b) of this section. At the Attorney General’s discretion, the no-**  
 11 **tice may include assessments for one or more sales years. The tobacco product**  
 12 **manufacturer shall cause the assessed amount to be remitted to this state within 30 days**  
 13 **of the date of the notice.**

14 **(b) For sales years that occur after the effective date of this 2023 Act, each tobacco**  
 15 **product manufacturer that is liable for an equity assessment shall annually certify to the**  
 16 **Attorney General that it is in compliance with this paragraph and remit the required equity**  
 17 **assessment to this state by April 15 of the year following the sales year at issue. Tobacco**  
 18 **product manufacturers have a continuing obligation to submit amended certificates of com-**  
 19 **pliance if their sales or payment information changes.**

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

24 **(d) Any amounts recovered under this section are the property of the state, and this**  
 25 **section creates no cause or right of action in any party except the State of Oregon. Amounts**  
 26 **recovered under this section shall be deposited in the Tobacco Settlement Funds Account**  
 27 **established under ORS 293.537.**

28 **(e) Nothing in this section operates to:**

29 **(A) Waive the right of the state to bring a claim against a tobacco product manufacturer,**  
 30 **except that any funds paid to the state under this section shall be credited on a dollar-for-**  
 31 **dollar basis against any such judgment or settlement; or**

32 **(B) Relieve a tobacco product manufacturer from any obligation or duty imposed pursu-**  
 33 **ant to ORS 180.400 to 180.455 or any other provision of Oregon law.**

34 **(4) The Attorney General may bring a civil action on behalf of the State of Oregon**  
 35 **against any tobacco product manufacturer that fails to remit the amounts due under sub-**  
 36 **section (1) of this section. In addition to recovering the equity assessment, the Attorney**  
 37 **General shall be entitled to reasonable attorney fees, costs and expenses incurred in prose-**  
 38 **cuting the action and any appeal. Attorney fees, costs and expenses recovered under this**  
 39 **subsection shall be deposited in the Tobacco Enforcement Fund established under ORS**  
 40 **180.205.**

41 **(5)(a) The court, upon a finding of a violation of subsection (1) of this section, may im-**  
 42 **pose a civil penalty upon the tobacco product manufacturer to be paid to the General Fund**  
 43 **of this state in an amount not to exceed five percent of the amount improperly withheld per**  
 44 **day of the violation and in a total amount not to exceed 100 percent of the original amount**  
 45 **improperly withheld;**

1       **(b) The court, upon a finding of a knowing violation of subsection (1) of this section, may**  
 2 **impose a civil penalty upon the tobacco product manufacturer to be paid to the General Fund**  
 3 **of this state in an amount not to exceed 15 percent of the amount improperly withheld per**  
 4 **day of the violation and in a total amount not to exceed 300 percent of the original amount**  
 5 **improperly withheld; and**

6       **(c) In the case of a second knowing violation of subsection (1) of this section, the tobacco**  
 7 **product manufacturer shall be prohibited from selling cigarettes to consumers within the**  
 8 **State of Oregon (whether directly or through a distributor, retailer or similar intermediary**  
 9 **or intermediaries) for a period not to exceed two years. Each failure to make a payment**  
 10 **required under this section shall constitute a separate violation.**

11       [(2)] **(6)** In the case of units sold that are cigarettes manufactured outside the United States and  
 12 imported into the United States by an importer:

13       (a) Importers shall be jointly and severally liable with the tobacco product manufacturer of the  
 14 cigarettes for the [*escrow deposits*] **equity assessments** required under subsection (1)(b)(A) of this  
 15 section;

16       (b) Importers may be sued under subsection [(1)(b)(C)] **(4)** of this section to the same extent as  
 17 the tobacco product manufacturer, and shall be subject to all of the same civil penalties, remedies  
 18 or other relief that may be awarded against the tobacco product manufacturer of the cigarettes as  
 19 provided in subsection [(1)(b)(C)] **(4)** of this section;

20       (c) If the importer fails or refuses within 15 days of the Attorney General's written demand to  
 21 [*deposit the funds into escrow*] **remit the equity assessment** for which it is jointly and severally  
 22 liable under paragraph (a) of this subsection, all cigarettes imported into the United States by the  
 23 importer shall constitute contraband cigarettes as defined in ORS 323.010 and shall be subject to  
 24 seizure and forfeiture as provided under ORS 323.248; and

25       (d) A nonparticipating manufacturer located outside the United States that conducts business in  
 26 this state shall provide to the Attorney General on a form prescribed by the Attorney General a  
 27 declaration from each importer that imports the cigarettes of the nonparticipating manufacturer in-  
 28 tended for sale in this state stating that the importer accepts liability pursuant to subsection  
 29 (1)(b)(A) of this section and consents to the jurisdiction of the courts of this state for the purposes  
 30 of enforcing this section.

31       **SECTION 3.** ORS 323.806, as amended by section 22, chapter 801, Oregon Laws 2003, and sec-  
 32 tion 3, chapter 687, Oregon Laws 2017, is amended to read:

33       323.806. (1) Any tobacco product manufacturer selling cigarettes to consumers within the State  
 34 of Oregon (whether directly or through a distributor, retailer or similar intermediary or interme-  
 35 diaries) after October 23, 1999, shall do one of the following:

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

39       (b)(A) [*Place into a qualified escrow fund by April 15 of the year following the year in question*  
 40 *the following amounts*] **Be liable for an equity assessment for units sold within the State of**  
 41 **Oregon after October 23, 1999.**

42       **(B) For units sold in each of the following years, the equity assessment is as follows** (as  
 43 such amounts are adjusted for inflation):

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

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

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

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

3 (v) For 2007 and each year thereafter, \$0.0188482 per unit sold.

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

7 [(i) To pay a judgment or settlement on any released claim brought against such tobacco product  
8 manufacturer by the State of Oregon or any releasing party located or residing in this state. Funds  
9 shall be released from escrow under this sub-subparagraph in the order in which they were placed into  
10 escrow and only to the extent and at the time necessary to make payments required under such judg-  
11 ment or settlement;]

12 [(ii)] (C) [To the extent that] A tobacco product manufacturer **may seek a credit or refund of**  
13 **its escrow payment or equity assessment, if the tobacco product manufacturer** establishes  
14 that the amount it was required to place into escrow **or pay as an equity assessment** in a par-  
15 ticular year was greater than this state's allocable share of the total payments that such manufac-  
16 turer would have been required to make in that year under the Master Settlement Agreement (as  
17 determined pursuant to section IX(i)(2) of the Master Settlement Agreement, and before any of the  
18 adjustments or offsets described in section IX(i)(3) of that agreement other than the inflation ad-  
19 justment) had it been a Participating Manufacturer (as that term is defined in the Master Settlement  
20 Agreement). **A tobacco product manufacturer may seek to obtain a credit or refund within**  
21 **one year after the due date of the assessment.**[, the excess shall be released from escrow and re-  
22 vert back to such tobacco product manufacturer; or]

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

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

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

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

43 [(iii) In the case of a second knowing violation, be prohibited from selling cigarettes to consumers  
44 within the State of Oregon (whether directly or through a distributor, retailer or similar intermediary  
45 or intermediaries) for a period not to exceed two years. Each failure to make an annual deposit re-

1 *quired under this section shall constitute a separate violation.]*

2 **(2) A tobacco product manufacturer that placed funds into a qualified escrow fund prior**  
 3 **to the effective date of this 2023 Act shall receive interest or other gain on the funds as ac-**  
 4 **crued. The principal shall be released from escrow only in the following circumstances:**

5 **(a) To pay a judgment or settlement on any released claim brought against the tobacco**  
 6 **product manufacturer by the State of Oregon or any releasing party located or residing in**  
 7 **this state, with funds to be released from escrow under this paragraph in the order in which**  
 8 **they were placed into escrow and only to the extent and at the time necessary to make**  
 9 **payments required under the judgment or settlement.**

10 **(b) To pay an equity assessment established under this section.**

11 **(c) To the extent not released from escrow under paragraphs (a) and (b) of this sub-**  
 12 **section, funds shall be released from escrow and revert back to the tobacco product man-**  
 13 **ufacturer 25 years after the date on which they were placed into escrow.**

14 **(3)(a) This section is intended to recover cigarette-related health care costs incurred by**  
 15 **the State of Oregon for cigarettes sold in this state after October 23, 1999. For sales years**  
 16 **that occurred prior to the effective date of this 2023 Act, the Attorney General shall provide**  
 17 **written notice of the amount of the tobacco product manufacturer’s equity assessment li-**  
 18 **ability under subsection (1)(b) of this section. At the Attorney General’s discretion, the no-**  
 19 **tice may include assessments for one or more sales years. The tobacco product**  
 20 **manufacturer shall cause the assessed amount to be remitted to this state within 30 days**  
 21 **of the date of the notice.**

22 **(b) For sales years that occur after the effective date of this 2023 Act, each tobacco**  
 23 **product manufacturer that is liable for an equity assessment shall annually certify to the**  
 24 **Attorney General that it is in compliance with this paragraph and remit the required equity**  
 25 **assessment to this state by April 15 of the year following the sales year at issue. Tobacco**  
 26 **product manufacturers have a continuing obligation to submit amended certificates of com-**  
 27 **pliance if their sales or payment information changes.**

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

32 **(d) Any amounts recovered under this section are the property of the state, and this**  
 33 **section creates no cause or right of action in any party except the State of Oregon. Amounts**  
 34 **recovered under this section shall be deposited in the Tobacco Settlement Funds Account**  
 35 **established under ORS 293.537.**

36 **(e) Nothing in this section operates to:**

37 **(A) Waive the right of the state to bring a claim against a tobacco product manufacturer,**  
 38 **except that any funds paid to the state under this section shall be credited on a dollar-for-**  
 39 **dollar basis against any such judgment or settlement; or**

40 **(B) Relieve a tobacco product manufacturer from any obligation or duty imposed pursu-**  
 41 **ant to ORS 180.400 to 180.455 or any other provision of Oregon law.**

42 **(4) The Attorney General may bring a civil action on behalf of the State of Oregon**  
 43 **against any tobacco product manufacturer that fails to remit the amounts due under sub-**  
 44 **section (1) of this section. In addition to recovering the equity assessment, the Attorney**  
 45 **General shall be entitled to reasonable attorney fees, costs and expenses incurred in prose-**

1 **cutting the action and any appeal. Attorney fees, costs and expenses recovered under this**  
 2 **subsection shall be deposited in the Tobacco Enforcement Fund established under ORS**  
 3 **180.205.**

4 **(5)(a) The court, upon a finding of a violation of subsection (1) of this section, may im-**  
 5 **pose a civil penalty upon the tobacco product manufacturer to be paid to the General Fund**  
 6 **of this state in an amount not to exceed five percent of the amount improperly withheld per**  
 7 **day of the violation and in a total amount not to exceed 100 percent of the original amount**  
 8 **improperly withheld;**

9 **(b) The court, upon a finding of a knowing violation of subsection (1) of this section, may**  
 10 **impose a civil penalty upon the tobacco product manufacturer to be paid to the General Fund**  
 11 **of this state in an amount not to exceed 15 percent of the amount improperly withheld per**  
 12 **day of the violation and in a total amount not to exceed 300 percent of the original amount**  
 13 **improperly withheld; and**

14 **(c) In the case of a second knowing violation of subsection (1) of this section, the tobacco**  
 15 **product manufacturer shall be prohibited from selling cigarettes to consumers within the**  
 16 **State of Oregon (whether directly or through a distributor, retailer or similar intermediary**  
 17 **or intermediaries) for a period not to exceed two years. Each failure to make a payment**  
 18 **required under this section shall constitute a separate violation.**

19 **[(2)] (6) In the case of units sold that are cigarettes manufactured outside the United States and**  
 20 **imported into the United States by an importer:**

21 **(a) Importers shall be jointly and severally liable with the tobacco product manufacturer of the**  
 22 **cigarettes for the [escrow deposits] equity assessments required under subsection (1)(b)(A) of this**  
 23 **section;**

24 **(b) Importers may be sued under subsection [(1)(b)(C)] (4) of this section to the same extent as**  
 25 **the tobacco product manufacturer, and shall be subject to all of the same civil penalties, remedies,**  
 26 **or other relief that may be awarded against the tobacco product manufacturer of the cigarettes as**  
 27 **provided in subsection [(1)(b)(C)] (4) of this section;**

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

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

39 **SECTION 4.** ORS 180.415 is amended to read:

40 **180.415. In the certification required by ORS 180.410 (1), a nonparticipating manufacturer shall**  
 41 **further certify:**

42 **(1) That the nonparticipating manufacturer and, if applicable, the nonparticipating**  
 43 **manufacturer's importer are registered to do business in the State of Oregon or have appointed a**  
 44 **resident agent for service of process and provided notice of the appointment as required by ORS**  
 45 **180.430.**



1 (2) That the nonparticipating manufacturer[:] **has made all required equity assessment pay-**  
 2 **ments.**

3 [(a) Has established and continues to maintain a qualified escrow fund; and]

4 [(b) Has executed a qualified escrow agreement that has been reviewed and approved by the At-  
 5 torney General and that governs the qualified escrow fund. The Attorney General shall adopt rules  
 6 defining the form and content of a model escrow agreement. A nonparticipating manufacturer that ex-  
 7 ecutes the model escrow agreement is deemed to have satisfied the requirement that it use a form of  
 8 escrow agreement that has been reviewed and approved by the Attorney General.]

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

11 [(b) The account number of the qualified escrow fund and any subaccount number for the State of  
 12 Oregon;]

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

17 [(d) (b) The amount and date of any withdrawal of funds the nonparticipating manufacturer  
 18 made at any time from [the qualified escrow fund or from any other] **any** qualified escrow fund into  
 19 which the nonparticipating manufacturer ever made escrow payments pursuant to ORS 323.806.

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

21 (5) That all shipments or sales made within or into this state by the nonparticipating manufac-  
 22 turer or its importer are made to a distributor of cigarettes licensed under ORS 323.105 or a dis-  
 23 tributor of tobacco products licensed under ORS 323.530.

24 **SECTION 5.** ORS 180.416 is amended to read:

25 180.416. (1) A nonparticipating manufacturer shall post a bond for the benefit of the state, in  
 26 accordance with this section, which is conditioned on the nonparticipating manufacturer fully com-  
 27 plying with the [escrow] obligations of ORS 323.806.

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

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

33 (b) \$25,000.

34 (3) If a nonparticipating manufacturer that posted a bond has failed to make or have made on  
 35 its behalf deposits **or payments** equal to the full amount owed for a quarter within 15 days follow-  
 36 ing the due date for the quarter, the Attorney General may execute upon the bond in the amount  
 37 equal to any remaining amount [of the escrow] due, including any applicable penalties or other  
 38 charges allowable by law. Amounts the Attorney General collects on a bond shall be deposited into  
 39 the General Fund for the benefit of the state and shall reduce the amount [of escrow] due from the  
 40 nonparticipating manufacturer in the dollar amount collected. [Escrow] Obligations above the  
 41 amount collected on the bond remain due from the nonparticipating manufacturer and any importer  
 42 liable as provided in ORS 323.806.

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

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

3 **SECTION 6.** ORS 180.425 is amended to read:

4 180.425. (1) The Attorney General shall develop and make available for public inspection a di-  
5 rectory listing all tobacco product manufacturers that have provided current and accurate certif-  
6 ications conforming to the requirements of ORS 180.410 and 180.415 and all brand families that are  
7 listed in the certifications.

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

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

16 (a) Any [escrow] payment required from the nonparticipating manufacturer pursuant to ORS  
17 323.806 for any period for any brand family, whether listed or not listed by the nonparticipating  
18 manufacturer, has not been fully paid [*into a qualified escrow fund governed by a qualified escrow*  
19 *agreement that has been approved by the Attorney General*]; or

20 (b) Any outstanding final judgment, including interest thereon, for a violation of ORS 323.806  
21 has not been fully satisfied for the brand family or the nonparticipating manufacturer.

22 (4) The Attorney General shall update the directory in order to correct mistakes and to add or  
23 remove a tobacco product manufacturer or a brand family to keep the directory in conformity with  
24 the requirements of this section. The Attorney General shall update the directory with new brand  
25 families upon receipt of an annual or supplemental certification listing new brand families if the  
26 Attorney General determines that the annual or supplemental certification is in compliance with the  
27 requirements of ORS 180.410 and 180.415. The Attorney General shall make the determination about  
28 compliance within 45 days of receipt of the certification.

29 (5) The Attorney General shall:

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

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

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

39 **SECTION 7.** ORS 180.435 is amended to read:

40 180.435. (1) Not later than 20 days after the end of each calendar quarter, and more frequently  
41 if so directed by the Attorney General, a distributor shall report such information as the Attorney  
42 General requires to facilitate compliance by tobacco product manufacturers with this section and  
43 ORS 180.410, 180.415, 180.420, 180.430 and 180.440, and with rules adopted under ORS 180.445 and  
44 180.450. The information shall include, but need not be limited to, a list by brand family of the total  
45 number of cigarettes or, in the case of roll-your-own tobacco, the equivalent stick count for which

1 the distributor affixed stamps or otherwise paid the tax due during the previous calendar quarter.

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

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

11 (b) If a person fails to produce any books, papers, records or other information required to be  
 12 produced, fails to appear or testify about a matter for which testimony may be compelled or other-  
 13 wise fails to comply with a subpoena issued under this subsection, the Attorney General may apply  
 14 to the circuit court of the county in which the person to whom the subpoena was issued resides or  
 15 may be found. The application shall be for an order requiring the person to comply with the demand  
 16 or request of the Attorney General. The application shall be made by ex parte motion. The order  
 17 of the court shall require the person against whom the order is directed to comply with the request  
 18 or demand of the Attorney General within 10 days after the service of the order, or such further  
 19 time as the court may grant, or to justify the failure to comply with the order within that time.

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

22 (4) A distributor shall provide the Attorney General with an electronic mail address so that the  
 23 Attorney General may notify the distributor of the information required under subsections (1) and  
 24 ~~[(8)] (7)~~ of this section.

25 (5) The Attorney General and the Department of Revenue may share with each other informa-  
 26 tion received under ORS 180.400 to 180.455, ORS chapter 323 and corresponding rules, and may  
 27 share such information with federal, state or local agencies for purposes of enforcement of ORS  
 28 180.400 to 180.455, ORS chapter 323 and corresponding rules, or the corresponding laws of other  
 29 states and with the data clearinghouse or similar entity established pursuant to a settlement  
 30 agreement between the State of Oregon and the participating manufacturers, and with any parties  
 31 necessary to effectuate the terms of the settlement agreement.

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

37 ~~[(7)]~~ (6) The Attorney General shall, upon request of a nonparticipating manufacturer whose  
 38 compliance with ~~[escrow]~~ **equity assessment** requirements is at issue, provide the manufacturer  
 39 with copies of all documents upon which any proposed addition to the ~~[escrow]~~ **equity assessment**  
 40 is based. Documents required to be provided under this subsection include, but are not necessarily  
 41 limited to, reports under this section from distributors. The information provided to the manufac-  
 42 turer under this subsection may not include information about brand families or products of any  
 43 tobacco product manufacturer other than the one to whom the information is provided. The infor-  
 44 mation may be used only for the purpose of determining the appropriate amount of ~~[escrow]~~ **equity**  
 45 **assessment** deposits.

1        [(8)] (7) The Attorney General may require a distributor or a tobacco product manufacturer to  
 2 submit any additional information, including, but not limited to, samples of the packaging and la-  
 3 beling of each brand family, to enable the Attorney General to determine whether a tobacco product  
 4 manufacturer is in compliance with this section and ORS 180.410, 180.415, 180.420, 180.430 and  
 5 180.440 and with rules adopted under ORS 180.445 and 180.450.

6        **SECTION 8.** ORS 180.445 is amended to read:

7        180.445. (1) To promote compliance with the provisions of ORS 180.410, 180.415, 180.420, 180.430,  
 8 180.435 and 180.440, the Attorney General may adopt rules requiring a nonparticipating manufac-  
 9 turer to make the [*escrow deposits*] **equity assessment payments** required by ORS 323.806 in  
 10 quarterly installments during the year in which the sales covered by the deposits are made. The  
 11 Attorney General may require a nonparticipating manufacturer to produce information sufficient to  
 12 enable the Attorney General to determine the adequacy of the amount of the installment [*deposit*]  
 13 **payment.**

14        (2) If the Attorney General adopts rules requiring a nonparticipating manufacturer to make  
 15 [*escrow deposits*] **payments** in quarterly installments, the rules may also provide that a nonpartic-  
 16 ipating manufacturer that has been in continuous compliance for one year with ORS 180.410,  
 17 180.415, 180.420, 180.430, 180.435, 180.440 and 323.806 may make [*escrow deposits*] **payments** required  
 18 by ORS 323.806 in annual payments during the second and subsequent years in which deposits are  
 19 required.

20        **SECTION 9.** The amendments to ORS 180.415, 180.416, 180.425, 180.435, 180.445 by sections  
 21 4 to 8 of this 2023 Act apply to certifications submitted under ORS 180.410 on or after Janu-  
 22 ary 1, 2025.

23        **SECTION 10.** This 2023 Act takes effect on the 91st day after the date on which the 2023  
 24 regular session of the Eighty-second Legislative Assembly adjourns sine die.  
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