

Requested by Senator LIEBER

**PROPOSED AMENDMENTS TO  
B-ENGROSSED HOUSE BILL 2128**

1 On page 8 of the printed B-engrossed bill, delete lines 34 through 45 and  
2 delete pages 9 through 15 and insert:

3 **“SECTION 8. (1) Except for a Participating Manufacturer, as that**  
4 **term is defined in the Master Settlement Agreement, that is generally**  
5 **performing its financial obligations under the Master Settlement**  
6 **Agreement, a tobacco product manufacturer is liable for an equity**  
7 **assessment for units sold within the State of Oregon after January 1,**  
8 **2024.**

9 **“(2) The equity assessment is \$0.0188482 per unit sold, as this**  
10 **amount is adjusted for inflation.**

11 **“(3)(a) Each tobacco product manufacturer that is liable for an eq-**  
12 **uity assessment shall annually certify to the Attorney General that it**  
13 **is in compliance with this section and remit the required equity as-**  
14 **essment to this state by April 15 of the year following the sales year**  
15 **at issue. Tobacco product manufacturers have a continuing obligation**  
16 **to submit amended certificates of compliance if their sales or payment**  
17 **information changes.**

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

1 amended notice.

2 “(c) Any amounts recovered under this section are the property of  
3 the state, and this section creates no cause or right of action in any  
4 party except the State of Oregon. Amounts recovered under this sec-  
5 tion shall be deposited in the Oregon Health Authority Fund estab-  
6 lished under ORS 413.101 and shall be used for expenses of the Oregon  
7 Health Plan.

8 “(d) Nothing in this section operates to:

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

13 “(B) Relieve a tobacco product manufacturer from any obligation  
14 or duty imposed pursuant to ORS 180.400 to 180.455 or any other pro-  
15 vision of Oregon law.

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

27 “(4) The Attorney General may bring a civil action on behalf of the  
28 State of Oregon against any tobacco product manufacturer that fails  
29 to remit the amount due under subsection (2) of this section. In addi-  
30 tion to recovering the equity assessment, the Attorney General shall

1 be entitled to reasonable attorney fees, costs and expenses incurred in  
2 prosecuting the action and any appeal. Attorney fees, costs and ex-  
3 penses recovered under this subsection shall be deposited in the To-  
4 bacco Enforcement Fund established under ORS 180.205.

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

11 “(b) The court, upon a finding of a knowing violation of subsection  
12 (1) of this section, may impose a civil penalty upon the tobacco prod-  
13 uct manufacturer to be paid to the General Fund of this state in an  
14 amount not to exceed 15 percent of the amount improperly withheld  
15 per day of the violation and in a total amount not to exceed 300 per-  
16 cent of the original amount improperly withheld.

17 “(c) In the case of a second knowing violation of subsection (1) of  
18 this section, the tobacco product manufacturer shall be prohibited  
19 from selling cigarettes to consumers within the State of Oregon  
20 (whether directly or through a distributor, retailer or similar inter-  
21 mediary or intermediaries) for a period not to exceed two years. Each  
22 failure to make a payment required under this section shall constitute  
23 a separate violation.

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

27 “(a) Importers shall be jointly and severally liable with the tobacco  
28 product manufacturer of the cigarettes for the equity assessments re-  
29 quired under subsection (1) of this section;

30 “(b) Importers may be sued under subsection (4) of this section to

1 the same extent as the tobacco product manufacturer, and shall be  
2 subject to all of the same civil penalties, remedies or other relief that  
3 may be awarded against the tobacco product manufacturer of the cig-  
4 arettes as provided in subsection (4) of this section;

5 “(c) If the importer fails or refuses within 15 days of the Attorney  
6 General’s written demand to remit the equity assessment for which it  
7 is jointly and severally liable under paragraph (a) of this subsection,  
8 all cigarettes imported into the United States by the importer shall  
9 constitute contraband cigarettes as defined in ORS 323.010 and shall  
10 be subject to seizure and forfeiture as provided under ORS 323.248; and

11 “(d) A nonparticipating manufacturer located outside the United  
12 States that conducts business in this state shall provide to the Attor-  
13 ney General on a form prescribed by the Attorney General a declara-  
14 tion from each importer that imports the cigarettes of the  
15 nonparticipating manufacturer intended for sale in this state stating  
16 that the importer accepts liability pursuant to subsection (1) of this  
17 section and consents to the jurisdiction of the courts of this state for  
18 the purposes of enforcing this section.

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

20 “180.415. In the certification required by ORS 180.410 (1), a nonpartic-  
21 ipating manufacturer shall further certify:

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

26 “(2) That the nonparticipating manufacturer:

27 “(a) **Has made all required equity assessment payments; or**

28 “[a] (b)(A) Has established and continues to maintain a qualified escrow  
29 fund; and

30 “[b] (B) Has executed a qualified escrow agreement that has been re-

1 viewed and approved by the Attorney General and that governs the qualified  
2 escrow fund. The Attorney General shall adopt rules defining the form and  
3 content of a model escrow agreement. A nonparticipating manufacturer that  
4 executes the model escrow agreement is deemed to have satisfied the re-  
5 quirement that it use a form of escrow agreement that has been reviewed and  
6 approved by the Attorney General.

7 “(3)(a) The name, address and telephone number of the financial institu-  
8 tion where the nonparticipating manufacturer has established the qualified  
9 escrow fund required by ORS 323.806;

10 “(b) The account number of the qualified escrow fund and any subaccount  
11 number for the State of Oregon;

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

17 “(d) The amount and date of any withdrawal of funds the nonparticipating  
18 manufacturer made at any time from [*the qualified escrow fund or from any*  
19 *other*] **any** qualified escrow fund into which the nonparticipating manufac-  
20 turer ever made escrow payments pursuant to ORS 323.806 **or section 8 of**  
21 **this 2023 Act.**

22 “(4) That the nonparticipating manufacturer has posted a bond in ac-  
23 cordance with ORS 180.416.

24 “(5) That all shipments or sales made within or into this state by the  
25 nonparticipating manufacturer or its importer are made to a distributor of  
26 cigarettes licensed under ORS 323.105 or a distributor of tobacco products  
27 licensed under ORS 323.530.

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

29 “180.416. (1) A nonparticipating manufacturer shall post a bond for the  
30 benefit of the state, in accordance with this section, which is conditioned

1 on the nonparticipating manufacturer fully complying with the [escrow] ob-  
2 ligations of ORS 323.806 **or section 8 of this 2023 Act.**

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

7 “(a) The greatest required escrow **or equity assessment payment**  
8 amount due from the nonparticipating manufacturer or its predecessor for  
9 any of the 12 preceding calendar quarters; or

10 “(b) \$25,000.

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

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

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

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

30 “180.425. (1) The Attorney General shall develop and make available for

1 public inspection a directory listing all tobacco product manufacturers that  
2 have provided current and accurate certifications conforming to the re-  
3 quirements of ORS 180.410 and 180.415 and all brand families that are listed  
4 in the certifications.

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

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

16 “(a) Any [*escrow*] payment required from the nonparticipating manufac-  
17 turer pursuant to ORS 323.806 **or section 8 of this 2023 Act** for any period  
18 for any brand family, whether listed or not listed by the nonparticipating  
19 manufacturer, has not been fully paid, **if applicable**, into a qualified escrow  
20 fund governed by a qualified escrow agreement that has been approved by  
21 the Attorney General; or

22 “(b) Any outstanding final judgment, including interest thereon, for a vi-  
23 olation of ORS 323.806 **or section 8 of this 2023 Act** has not been fully  
24 satisfied for the brand family or the nonparticipating manufacturer.

25 “(4) The Attorney General shall update the directory in order to correct  
26 mistakes and to add or remove a tobacco product manufacturer or a brand  
27 family to keep the directory in conformity with the requirements of this  
28 section. The Attorney General shall update the directory with new brand  
29 families upon receipt of an annual or supplemental certification listing new  
30 brand families if the Attorney General determines that the annual or sup-

1 plemental certification is in compliance with the requirements of ORS  
2 180.410 and 180.415. The Attorney General shall make the determination  
3 about compliance within 45 days of receipt of the certification.

4 “(5) The Attorney General shall:

5 “(a) Create and maintain a list of persons, including but not limited to  
6 tobacco product manufacturers and distributors, that are interested in re-  
7 ceiving electronic mail notifications of changes in the directory developed  
8 under this section;

9 “(b) Develop a registration form to be completed by persons interested in  
10 receiving electronic mail notification of changes in the directory developed  
11 under this section that are not otherwise required by ORS 180.435 (4) or rules  
12 adopted under ORS 180.445 or 180.450 to submit their electronic mail ad-  
13 dresses to the Attorney General; and

14 “(c) Immediately upon making any change in the directory developed un-  
15 der this section, send electronic mail notices of the change to all persons on  
16 the list created under this subsection.

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

18 “180.435. (1) Not later than 20 days after the end of each calendar quarter,  
19 and more frequently if so directed by the Attorney General, a distributor  
20 shall report such information as the Attorney General requires to facilitate  
21 compliance by tobacco product manufacturers with this section and ORS  
22 180.410, 180.415, 180.420, 180.430 and 180.440, and with rules adopted under  
23 ORS 180.445 and 180.450. The information shall include, but need not be  
24 limited to, a list by brand family of the total number of cigarettes or, in the  
25 case of roll-your-own tobacco, the equivalent stick count for which the dis-  
26 tributor affixed stamps or otherwise paid the tax due during the previous  
27 calendar quarter.

28 “(2) A distributor shall maintain for a period of five years all invoices  
29 and documentation of sales of cigarettes manufactured by nonparticipating  
30 manufacturers and any other information relied upon in reporting to the



1 Attorney General under subsection (1) of this section. The distributor shall  
2 make the invoices and other documentation available to the Attorney Gen-  
3 eral upon request.

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

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

22 “(c) Failure to comply with an order under this subsection shall consti-  
23 tute contempt of court. The remedy provided under this paragraph shall be  
24 in addition to any other remedy provided by law.

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

28 “(5) The Attorney General and the Department of Revenue may share with  
29 each other information received under ORS 180.400 to 180.455, ORS chapter  
30 323 and corresponding rules, and may share such information with federal,

1 state or local agencies for purposes of enforcement of ORS 180.400 to 180.455,  
2 ORS chapter 323 and corresponding rules, or the corresponding laws of other  
3 states and with the data clearinghouse or similar entity established pursuant  
4 to a settlement agreement between the State of Oregon and the participating  
5 manufacturers, and with any parties necessary to effectuate the terms of the  
6 settlement agreement.

7 “(6) The Attorney General may at any time require a nonparticipating  
8 manufacturer to produce proof from the financial institution in which the  
9 nonparticipating manufacturer has established a qualified escrow fund for  
10 the purpose of compliance with ORS 323.806 of the amount of moneys in the  
11 fund, exclusive of interest, the amount and date of each deposit and the  
12 amount and date of each withdrawal from the fund.

13 “(7) The Attorney General shall, upon request of a nonparticipating  
14 manufacturer whose compliance with escrow **or equity assessment** re-  
15 quirements is at issue, provide the manufacturer with copies of all documents  
16 upon which any proposed addition to the escrow **or equity assessment** is  
17 based. Documents required to be provided under this subsection include, but  
18 are not necessarily limited to, reports under this section from distributors.  
19 The information provided to the manufacturer under this subsection may not  
20 include information about brand families or products of any tobacco product  
21 manufacturer other than the one to whom the information is provided. The  
22 information may be used only for the purpose of determining the appropriate  
23 amount of escrow **or equity assessment** deposits.

24 “(8) The Attorney General may require a distributor or a tobacco product  
25 manufacturer to submit any additional information, including, but not lim-  
26 ited to, samples of the packaging and labeling of each brand family, to enable  
27 the Attorney General to determine whether a tobacco product manufacturer  
28 is in compliance with this section and ORS 180.410, 180.415, 180.420, 180.430  
29 and 180.440 and with rules adopted under ORS 180.445 and 180.450.

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

1 “180.445. (1) To promote compliance with the provisions of ORS 180.410,  
2 180.415, 180.420, 180.430, 180.435 and 180.440, the Attorney General may adopt  
3 rules requiring a nonparticipating manufacturer to make the escrow deposits  
4 **or equity assessment payments** required by ORS 323.806 **or section 8 of**  
5 **this 2023 Act** in quarterly installments during the year in which the sales  
6 covered by the deposits are made. The Attorney General may require a non-  
7 participating manufacturer to produce information sufficient to enable the  
8 Attorney General to determine the adequacy of the amount of the installment  
9 deposit **or payment**.

10 “(2) If the Attorney General adopts rules requiring a nonparticipating  
11 manufacturer to make escrow deposits **or payments** in quarterly install-  
12 ments, the rules may also provide that a nonparticipating manufacturer that  
13 has been in continuous compliance for one year with ORS 180.410, 180.415,  
14 180.420, 180.430, 180.435, 180.440 and 323.806 **and section 8 of this 2023 Act**  
15 may make escrow deposits **or payments** required by ORS 323.806 **or section**  
16 **8 of this 2023 Act** in annual payments during the second and subsequent  
17 years in which deposits are required.

18 **“SECTION 14.** ORS 180.205 is amended to read:

19 “180.205. (1) The Tobacco Enforcement Fund is established separate and  
20 distinct from the General Fund. The Tobacco Enforcement Fund shall consist  
21 of:

22 “(a) Moneys deposited into the fund under ORS 180.450, 180.451 and  
23 180.491 **and section 8 of this 2023 Act**; and

24 “(b) Moneys transferred to the fund under ORS 293.537.

25 “(2) Moneys in the Tobacco Enforcement Fund are continuously appro-  
26 priated to the Department of Justice for the purpose of enforcing the pro-  
27 visions of ORS 180.400 to 180.455, 180.465 to 180.494, 323.106, 323.806 and  
28 323.810 to 323.816 **and section 8 of this 2023 Act**. Moneys in the fund are  
29 not subject to allotment under ORS 291.234 to 291.260.

30 **“SECTION 15.** ORS 293.537 is amended to read:

1 “293.537. (1) The Tobacco Settlement Funds Account is established as an  
2 account in the General Fund. Except as provided in section 2, chapter 11,  
3 Oregon Laws 2003, the account shall consist of all moneys paid to this state  
4 under the Master Settlement Agreement of 1998.

5 “(2) Before July 1 of each odd-numbered year, the Department of Justice  
6 shall submit for approval to the Oregon Department of Administrative Ser-  
7 vices the estimated costs that will be incurred by the Department of Justice  
8 in the subsequent biennium in enforcing the provisions of ORS 180.400 to  
9 180.455, 323.106 and 323.806 **and section 8 of this 2023 Act**. On July 1 of  
10 each odd-numbered year, a sum equal to the amount approved by the Oregon  
11 Department of Administrative Services shall be transferred from the Tobacco  
12 Settlement Funds Account to the Tobacco Enforcement Fund established  
13 under ORS 180.205. If the Department of Justice determines during a  
14 biennium that it needs funds for purposes described in this subsection in  
15 addition to the amount approved by the Oregon Department of Administra-  
16 tive Services, the Department of Justice may request transfer of additional  
17 moneys from the Tobacco Settlement Funds Account and the additional  
18 amount approved by the Oregon Department of Administrative Services shall  
19 be transferred to the Tobacco Enforcement Fund.

20 “(3) Except as provided in subsection (2) of this section, all moneys in the  
21 Tobacco Settlement Funds Account are continuously appropriated to the  
22 Oregon Department of Administrative Services to be expended as directed  
23 by the Legislative Assembly.

24 “(4) All moneys in the Tobacco Settlement Funds Account shall be in-  
25 vested as provided in ORS 293.701 to 293.790.

26 **“SECTION 16. The amendments to ORS 180.415, 180.416, 180.425,**  
27 **180.435 and 180.445 by sections 9 to 13 of this 2023 Act apply to certif-**  
28 **ications submitted under ORS 180.410 on or after January 1, 2025.”.**

29