

**Blue Ribbon Commission to Design a Plan for Sustained
Investment in Preventing Disease and
Improving the Health of Maine Communities**

(Resolve 2023, c. 100)

*Wednesday, December 6, 2023
10:00 am*

*State House, Room 228 (AFA Committee Room)
Hybrid Meeting (In-person and Remote Participation Available)*

AGENDA

- I. Welcome and introductions** – Chairs Senator Peggy Rotundo and Representative Anne Graham
- II. Review agenda and second meeting** - Samuel Senft, OPLA
- III. Discussion: Committee findings and recommendations (Duties #1 – #6)**
- IV. Discussion: Return on investment (Duty #7)**
- V. Next Steps**

PLEASE READ

This meeting will be held in the State House, Room 228, the Committee on Appropriations and Financial Affairs Room. However, remote participation will be available for commission members and speakers over Zoom. Members of the public can attend the meeting either in-person or view the meeting over the Legislature’s streaming platform [at this link](#).

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1. Resolve the structural deficit in the Fund for a Healthy Maine;
(This duty aims to identify mechanisms to bring the FHM into balance)

1. *How can we mitigate for a future structural deficit? What options exist?*
 1. Increase the cigarette tax
 2. Move the MaineCare allocations and allocations for Headstart and purchased social services into the General Fund
 3. Move funding for substance use disorder services into the General Fund
 4. Consider future public health emergency or disaster funds
2. *Are there programmatic or administrative changes that would provide greater long-term stability? (Please provide specific examples if so.)*
 1. Create a clear, responsive structure for the administration of the FHM, including clear goals and targets to attract additional funding?
 2. Consider investment options
 3. Focus on driving down overhead and administrative costs

SUGGESTED FINDINGS:

2. Identify sources of sustained funding for reducing tobacco use, improving public health, preventing chronic illness, reducing health disparities across demographic and geographic populations and improving the community conditions that support good health and wellness;

(This duty is an inventory of what is and what could be sources of funding)

- *What are some ideas for new sources of revenue (e.g. existing state funds; other special revenue accounts; investments; bonds; shifted revenue; outside funds)?*
 1. Increase the cigarette tax
 2. Move the MaineCare allocations and allocations for Headstart and purchased social services into the General Fund
 3. Move funding for substance use disorder services into the General Fund
 4. Consider future public health emergency or disaster fund
 5. Investments
 6. Issuance of bonds
 7. Other existing state revenue sources (the liquor funds, for example)
 8. New taxes on products that contribute to public health concerns, including sodas and sugary drinks, certain chemicals
 9. Increase alcohol taxes
 10. Community benefit funds

SUGGESTED FINDINGS:

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- 3. Identify strategies and structural changes that resolve structural inequalities and allow funding and investment plans to extend beyond the Legislature's 2-year budget cycle when doing so is necessary for accomplishing their intents and purposes;**
(This duty This asks for any new or modified structures to receive and host health-related funding)
- *What are options to establish long term goals and investments for the FHM?*
 1. Creation of a trust like structure:
 - a. Clearly identify sources of funds/ potential funds
 - b. FHM could remain as the repository of MSA funds or a new fund created
 - c. Creation of a vehicle to which to direct settlement money; should settlement money bypass the general fund and be deposited into a vehicle that is available only to the trust?
 - d. Language should clearly identify the purpose of the entity and the funding priorities
 - e. Make sure that supplementation is the goal

SUGGESTED FINDINGS:

- 4. Advance the long-term goals established by the Legislature for funds received from legal settlements with manufacturers and excise taxes on products that affect public health and well-being;**
(This duty is about accountability)
- *What are options to advance these goals?*
 1. Additional litigation related to vaping (NOTE: Some cases are still being litigated in other states, e.g. vape products);
 2. Increasing taxes on tobacco products.
 3. Ensure that there are goals established at time of settlement.
 4. Question: what guidance should the legislature provide in the determination of public health goals in the settlement process?
 5. Prioritize evidence based interventions in use of funds

SUGGESTED FINDINGS:

- 5. Identify policy and funding models that maximize alignment between the purpose and intent of public health funding sources and the investments in public health and prevention initiatives those funds support;**
(This duty related to assurance of alignment)

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- Here, options could include:
 1. Establishing an oversight board or entity;
 2. Making changes to the authorizing statute or a constitutional amendment.

See: FHM authorizing legislation; FHM studies and legislation documents; 50 state survey; quasi-gov entity document

6. Identify how funding from various public health-related sources could be blended or pooled to achieve common aims in preventing chronic disease, reducing health disparities among historically disenfranchised and vulnerable populations and improving the community conditions that support the health and resilience of youth in the State; and

(This duty asks for any new or modified structures to maximize public/private funding partnerships)

- What are some ideas for new sources of revenue (e.g. existing state funds; other special revenue accounts; investments; bonds; shifted revenue; outside funds)?
- Also consider:
 1. Are there other matching funds that could be identified?
 2. Are FHM-funded programs considered alongside programs funded with other funds?

See: FHM authorizing legislation; FHM studies and legislation documents; agency fund documents; alternate sources of revenue document

7. Identify strategies and system changes that would allow for the calculation of return on investment of all proposed public health and prevention measures over a period of time using the projected health and productivity benefits of those investments.

(This duty asks for new tools for Maine legislators to assess long-term investments)

- How can matching funds be maximized?
- Are public health programs that are funded the best use of funds from a public health perspective?

See: FHM studies and legislation documents; agency fund documents; 50 state survey

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Decision Guide: Findings and Recommendations

Findings (note, the following are intended as starting points for discussion and may not represent all or any ultimate findings of the committee)

1. Decision: Should the commission find that a structural deficient exists or will exist in the Fund for a Healthy Maine, and that reorganization of the administration of the Fund is necessary for long term viability?
2. Decision: Should the commission find that additional sources of revenue are necessary to maintain the Fund?
3. Decision: Should the commission find that the current allocations from the Fund should be reconsidered during the next budget cycle or at such time as the Fund administration is restructured?
4. Decision: should the commission find that the authorizing statute for the FHM requires revision?

Recommendations

1. Decision: Should the commission recommend that a new entity be created to administer the Fund for a Healthy Maine? If so, what type of entity?

Consider:

- a. Legal status of the entity and its relationship to the state (quasi governmental; state agency entity)
 - b. How entity will be governed (if by a board, consider membership, appointments, term limits, leadership)
 - c. Oversight of entity (legislative and or executive branch oversight; ability of legislature to review financials etc)
 - d. Staffing of entity (numbers; expertise required; administrative cost)
 - e. Administration of funds (who will administer grants and provide subject matter expertise and oversight; relationship with state; will funds be distributed to state agencies or to private sector?)
2. Decision: Should a new fund be created into which MSA funds are deposited?

Consider:

- a. Any necessary statutory or constitutional changes
- b. Status of FHM if a new fund is created

3. Decision: Should the commission recommend that the authorizing statute for the FHM be amended to better reflect allowable uses of the funds?

Consider:

- a. Whether to remove current allowable uses
- b. Whether to add allowable uses

4. Decision: Should the commission recommend that allocations from the FHM be redistributed

Consider:

- a. Whether MaineCare allocations should be reconsidered
- b. Whether allocations for purchased social services should be reconsidered
- c. Whether allocations for substance use disorder should be reconsidered
- d. Whether other allocations should be reconsidered

5. Decision: Should the commission recommend that new sources of revenue be identified for the FHM?

Consider:

- a. Special revenue funds
- b. Private/ philanthropic funds
- c. Investments
- d. Bonds



130th MAINE LEGISLATURE

FIRST SPECIAL SESSION-2021

Legislative Document

No. 1523

H.P. 1127

House of Representatives, April 19, 2021

An Act To Establish the Trust for a Healthy Maine

Received by the Clerk of the House on April 15, 2021. Referred to the Committee on Health and Human Services pursuant to Joint Rule 308.2 and ordered printed pursuant to Joint Rule 401.

Handwritten signature of Robert B. Hunt in cursive.

ROBERT B. HUNT
Clerk

Presented by Representative MILLETT of Cape Elizabeth.
Cosponsored by President JACKSON of Aroostook and
Representatives: CRAVEN of Lewiston, SACHS of Freeport, TALBOT ROSS of Portland,
Senators: CARNEY of Cumberland, VITELLI of Sagadahoc.

1 **Be it enacted by the People of the State of Maine as follows:**

2 **Sec. 1. 5 MRSA §12004-G, sub-§14-J** is enacted to read:

3 **14-J.**

4 Health Trust for a Healthy Maine Board Expenses Only 22 MRSA §1515

5

6 **Sec. 2. 22 MRSA c. 260-A, sub-c. 1** is enacted by adding before section 1511 the
7 following to read:

8 **SUBCHAPTER 1**

9 **FUND FOR A HEALTHY MAINE**

10 **Sec. 3. 22 MRSA §1511, sub-§2**, as enacted by PL 1999, c. 401, Pt. V, §1, is
11 amended to read:

12 **2. Sources of fund.** The State Controller shall credit to the fund:

13 A. All If the Trust for a Healthy Maine established in section 1515 is repealed or
14 dissolved, all money received by the State in settlement of or in relation to the lawsuit
15 State of Maine v. Philip Morris, et al., Kennebec County Superior Court, Docket No.
16 CV-97-134;

17 B. Money from any other source, whether public or private, designated for deposit into
18 or credited to the fund; ~~and~~

19 C. Interest earned or other investment income on balances in the fund; and

20 D. If the Trust for a Healthy Maine established in section 1515 is repealed or dissolved,
21 all money transferred from the trust to the fund.

22 **Sec. 4. 22 MRSA c. 260-A, sub-c. 2** is enacted to read:

23 **SUBCHAPTER 2**

24 **TRUST FOR A HEALTHY MAINE ACT**

25 **§1513. Short title**

26 This subchapter may be known and cited as "the Trust for a Healthy Maine Act."

27 **§1514. Definitions**

28 As used in this subchapter, unless the context otherwise indicates, the following terms
29 have the following meanings.

30 **1. Administrative costs.** "Administrative costs" means staffing, overhead and
31 related operational costs, including costs for a coordinator, professional assistance and
32 bond premiums, incurred by the trust in carrying out its duties under this subchapter.

1 **2. Board.** "Board" means the Trust for a Healthy Maine Board established under
2 Title 5, section 12004-G, subsection 14-J.

3 **3. Community health worker.** "Community health worker" means a person who
4 provides outreach and public health services to a social group using the person's
5 understanding of the experiences, socioeconomic needs, language or culture of that social
6 group.

7 **4. Community resilience.** "Community resilience" means the capacity of individuals,
8 communities, institutions, businesses and systems within a community to survive, adapt
9 and grow no matter what kinds of chronic stresses and acute shocks they experience.

10 **5. Coordinator.** "Coordinator" means the coordinator of the Trust for a Healthy
11 Maine under section 1519, subsection 2.

12 **6. Designated agent.** "Designated agent" means an entity with which the department
13 has entered an agency relationship for the purpose of applying for federal funds to support
14 public health research and programming and that is authorized by the Federal Government
15 to receive those funds.

16 **7. Disbursement.** "Disbursement" means a decision of the trust governing how
17 settlement funds are to be distributed by the trust for the purposes set forth in this
18 subchapter.

19 **8. Health equity.** "Health equity" means the attainment of the highest level of health
20 for any social group in this State, regardless of whether a social group is subject to a
21 structural inequity.

22 **9. Medical care.** "Medical care" means direct health care, including but not limited
23 to care provided under the MaineCare program and the prescription drug program
24 established under section 254-D. "Medical care" does not include treatments provided
25 under the Tobacco Prevention and Control Program established in section 272 or the
26 delivery of preventive health screenings or services in a school setting.

27 **10. Settlement funds.** "Settlement funds" means any money received by the State or
28 any component of the State in settlement of or in relation to the lawsuit State of Maine v.
29 Philip Morris, et al., Kennebec County Superior Court, Docket No. CV-97-134.

30 **11. Social determinants of health.** "Social determinants of health" means the
31 conditions in which people are born, grow, live, work and age, as well as the social
32 structures and economic systems that shape these conditions, including the social
33 environment, physical environment and health services.

34 **12. Social group.** "Social group" means a group of people in this State that share
35 similar social, economic, demographic, geographic or other characteristics, including, but
36 not limited to, race, ethnicity, gender, gender identity, sexual orientation, class, zip code,
37 age or disability.

38 **13. State health plan.** "State health plan" means the most recent plan for improving
39 public health and health equity prepared by the Department of Health and Human Services,
40 Maine Center for Disease Control and Prevention for accreditation by a nonprofit public
41 health accreditation board dedicated to advancing the continuous quality improvement of
42 tribal, state, local and territorial health departments or any successor plan identified by the
43 Maine Center for Disease Control and Prevention.

1 **14. Structural inequity.** "Structural inequity" means the systemic disadvantage of one
2 social group in the State compared to other social groups in the State as a result of law,
3 policy, culture or other social structure, including, but not limited to, poverty,
4 discrimination, powerlessness or access to job opportunities, quality education, housing or
5 health care.

6 **15. Systemic racism.** "Systemic racism" means the laws and institutionalized policies,
7 practices or social structures that maintain and perpetuate domination by and advantages
8 for the race that is socially constructed as being white to the detriment of or with the purpose
9 of imposing influence or control over any other race that is socially constructed to be non-
10 white, including through color-blind discourse or derogatory and inaccurate stereotypes.

11 **16. Trust.** "Trust" means the Trust for a Healthy Maine established in section 1515,
12 subsection 1.

13 **17. Trustee.** "Trustee" means a member of the board.

14 **18. Trust fund.** "Trust fund" means the Trust for a Healthy Maine Trust Fund
15 established in section 1520-E, subsection 1.

16 **§1515. Trust for a Healthy Maine; Trust for a Healthy Maine Board**

17 **1. Establishment; purposes.** The Trust for a Healthy Maine is established for the
18 purposes of receiving all settlement funds and other funds, redistributing that money to
19 state agencies or designated agents of the State to fund tobacco use prevention and control
20 at levels recommended by the United States Department of Health and Human Services,
21 Centers for Disease Control and Prevention and to ensure adequate resources for other
22 disease prevention efforts and promoting public health. The purposes of the trust also
23 include supporting state agencies in planning and delivering public health and prevention
24 programs and services, supporting accreditation of the Department of Health and Human
25 Services, Maine Center for Disease Control and Prevention and supporting public health
26 workforce development. The trust also provides public health expertise and evidence-based
27 information to the Legislature.

28 **2. Governance; board.** The trust is created as a body corporate and politic and a
29 public instrumentality of the State and is governed by the Trust for a Healthy Maine Board
30 in accordance with this subchapter.

31 **3. Trustees; appointment.** The board consists of 15 trustees in accordance with this
32 subsection. A person who stands to benefit from the tobacco products, as defined in section
33 1551, subsection 3, alcohol or marijuana industry is not eligible to serve as a trustee.

34 **A.** The Director of the Maine Center for Disease Control and Prevention within the
35 Department of Health and Human Services or the director's designee serves as an ex
36 officio voting trustee.

37 **B.** The Governor shall appoint 3 trustees in accordance with this paragraph:

38 **(1)** A person who has clinical expertise or public health expertise, or both, in the
39 science and prevention of addiction as a brain disease, selected from
40 recommendations provided by a statewide organization dedicated to supporting
41 physicians, advancing the quality of medicine and promoting the health of citizens
42 in the State;

1 (2) A person who is an employer with experience recruiting and retaining a healthy
2 workforce; and

3 (3) A person who has experience as a member of an advisory board of a local
4 community health coalition, selected from recommendations provided by a
5 statewide network of community coalitions working to enhance physical, social,
6 emotional, environmental and economic health in the State.

7 C. The Governor shall appoint trustees from nominations made in accordance with this
8 paragraph within 30 days of receiving the nominations.

9 (1) The President of the Senate shall, for each of the following 3 qualifications,
10 submit to the Governor within 30 days of a vacancy 3 names for consideration:

11 (a) A person who has expertise in epidemiology and infectious disease or in
12 hospital-based prevention, screening and early prevention of infectious
13 disease, selected from recommendations provided by the integrated health care
14 delivery systems in the State and by a statewide hospital organization that
15 provides advocacy, information and education in its mission to improve the
16 health of patients and communities;

17 (b) A person who has clinical expertise or public health expertise, or both, in
18 rural primary care, selected from recommendations provided by a statewide
19 organization that represents community health centers in the State; and

20 (c) A person who has expertise in systemic racism and structural inequity and
21 is serving on the Permanent Commission on the Status of Racial, Indigenous
22 and Maine Tribal Populations, in accordance with Title 5, section 25002.

23 (2) The Speaker of the House of Representatives shall, for each of the following 2
24 qualifications, submit to the Governor within 30 days of a vacancy 3 names for
25 consideration:

26 (a) A person who has expertise in public health policy related to the leading
27 causes of chronic disease, selected from recommendations provided by a
28 statewide, nonprofit membership organization that promotes a healthy State
29 through advocacy, education, community connection and coalition-building;
30 and

31 (b) A person who has expertise in preventing the use of tobacco products and
32 other addictive substances by youth and young adults.

33 (3) The member of the Senate who is the leader of the party with the 2nd-largest
34 number of members in the Senate shall, for each of the following 2 qualifications,
35 submit to the Governor within 30 days of a vacancy 3 names for consideration:

36 (a) A person who has expertise in trauma, community resilience and social
37 determinants of health, selected from recommendations provided by a
38 statewide network dedicated to building community strengths and reducing the
39 effects of trauma; and

40 (b) A person who represents a statewide association of public health
41 professionals.

1 (4) The member of the House of Representatives who is the leader of the party
2 with the 2nd-largest number of members in the House shall, for each of the
3 following 2 qualifications, submit to the Governor within 30 days of a vacancy 3
4 names for consideration:

5 (a) A person who is employed as a member of the senior staff or faculty in a
6 public health academic program; and

7 (b) A person who has expertise in maternal and child health issues, including
8 early childhood education and out-of-school child care, or school-based health.

9 (5) The chiefs of the 4 federally recognized Indian tribes in the State shall, for each
10 of the following 2 qualifications, submit to the Governor within 30 days of a
11 vacancy 3 names for consideration:

12 (a) A person who has expertise in environmental health; and

13 (b) A person who has expertise in health equity or health disparity issues.

14 The trustees appointed pursuant to paragraphs B and C must be reviewed by the joint
15 standing committee of the Legislature having jurisdiction over public health matters and
16 approved by the Senate.

17 **4. Terms; vacancies.** Trustees serve 3-year terms. Trustees may serve no more than
18 3 consecutive terms. A trustee shall serve on the board until a replacement is appointed and
19 qualified. If a trustee is unable to complete a term, the Governor shall consult with the
20 board and appoint a replacement for the remainder of the unexpired term. The replacement
21 trustee must hold the same qualifications, set forth in subsection 3, as those of the departing
22 trustee.

23 **5. Chair; officers.** The board shall elect a chair, a vice-chair, a secretary and a
24 treasurer from among the trustees. Each officer serves a one-year term in that office and is
25 eligible for reelection.

26 **6. Meetings; quorum.** The board shall meet at least 4 times each year at regular
27 intervals and may meet at other times at the call of the chair or the Governor. A majority
28 of the trustees constitutes a quorum. Meetings of the board are public proceedings as
29 provided by Title 1, chapter 13, subchapter 1. Notwithstanding any provision of law to the
30 contrary, a trustee who is not physically present may participate by telephone or other
31 remote access technology in accordance with procedures established by the board.

32 **7. Election of subcommittees.** The board may elect an executive committee of not
33 fewer than 5 trustees who, between meetings of the board, may transact such business of
34 the trust as the board authorizes. The board may also elect a planning committee.

35 **8. Liaison to Legislature.** The chair is the trust's liaison to the joint standing
36 committee of the Legislature having jurisdiction over public health matters.

37 **9. Advisory groups.** The board may establish advisory groups as needed to gather
38 technical knowledge on any aspect of public health policy, infrastructure or funding
39 disbursement and to make recommendations to the board. Advisory groups may include
40 persons who are not trustees.

41 **10. Removal of trustee for disciplinary reasons.** The board shall develop the process
42 of removal and replacement of trustees for disciplinary reasons.

1 **11. Expenses; reimbursement.** Trustees are not entitled to compensation for service
2 on the board, except that, in accordance with Title 5, section 12004-G, subsection 14-J, the
3 trust may reimburse travel and other board-related expenses.

4 **12. Fiduciary duties.** A trustee has a fiduciary duty to the people of the State in the
5 administration of the trust. Upon accepting appointment as a trustee, each trustee shall
6 acknowledge the fiduciary duty to use the trust fund only for the purposes set forth in this
7 subchapter. It is the duty of each trustee to ensure that the purposes of the trust set forth in
8 this subchapter are fulfilled.

9 **13. Conflict of interest.** A trustee is deemed to be an executive employee for
10 purposes of Title 5, sections 18, 18-A and 19. In the operation or dissolution of the trust, a
11 trustee, employee of the trust, officer of the trust or a spouse or dependent child of any of
12 those individuals may not receive any direct personal benefit from the activities of the trust,
13 except that the trust may pay reasonable compensation for services rendered and otherwise
14 hold, manage and dispose of the trust's property in furtherance of the purposes of the trust.
15 This subsection does not prohibit corporations or other entities with which a trustee is
16 associated by reason of ownership or employment from participating in activities funded
17 directly or indirectly by the trust if ownership or employment is made known to the board
18 and the trustee abstains from all matters directly relating to that participation immediately
19 upon discovery of the association.

20 **§1516. Powers and duties**

21 **1. Powers.** The trust may:

22 A. Receive all settlement funds;

23 B. Receive money from any other source, whether public or private, designated for
24 deposit into or credited to the trust;

25 C. Receive funds transferred from the Fund for a Healthy Maine under subchapter 1;

26 D. Through funding disbursement plans under section 1517, disburse funds; and

27 E. Make recommendations to the Governor, the Legislature and other public officials
28 regarding improving public health outcomes and promoting public health awareness
29 and understanding.

30 **2. Duties.** The trust shall:

31 A. Administer the trust and the trust fund;

32 B. Promote the visibility and understanding of public health issues among children
33 and adults;

34 C. Participate in the development and promotion of a state health plan by the
35 Department of Health and Human Services, Maine Center for Disease Control and
36 Prevention or another planning entity and provide funding for the planning process if
37 necessary;

38 D. Promote multilevel planning and coordination that includes state, district,
39 community and municipal decision-making and advisory boards; and

40 E. Take other actions necessary and appropriate to fulfill the purposes of this
41 subchapter.

1 **§1517. Funding disbursement plan**

2 **1. Funding disbursement plan.** By December 31, 2022 and every year thereafter,
3 the board shall develop and approve a funding disbursement plan to disburse settlement
4 funds and other funds it may hold or receive in the subsequent biennium. The funding
5 disbursement plan must advance the purposes of this subchapter and be based on the most
6 recent state health plan and the most recent data available to the board.

7 **2. Input from interested parties.** Prior to adopting a funding disbursement plan
8 pursuant to subsection 1 or substantially amending an existing funding disbursement plan,
9 the trust shall hold at least one public hearing to receive input from interested parties,
10 including but not limited to the Department of Health and Human Services, Maine Center
11 for Disease Control and Prevention, other state agencies, organizations engaged in smoking
12 cessation and public health efforts, other nongovernmental organizations, interested
13 stakeholders, patients and members of the public. The board shall establish the procedure
14 and timelines for seeking input from interested parties. The board shall also determine
15 what circumstances, consistent with this subsection, would require the board to initiate a
16 public hearing. When considering the input of interested parties, the trust must consider
17 principles of zero-based budgeting, as defined in Title 35-A, section 102, subsection 25,
18 and long-term returns on investment.

19 **3. Funding disbursement plans.** The funding disbursement plan approved by the
20 board pursuant to subsection 1 for fiscal year 2023-24 must disburse an amount equal to
21 0.30 of the settlement funds projected to be received in fiscal year 2023-24 for the purpose
22 of providing medical care. The funding disbursement plan approved by the board for fiscal
23 year 2024-25 and subsequent years may not disburse funds for the purpose of providing
24 medical care. When approving other elements of the funding disbursement plans, the board
25 shall consider funding levels in the most recent fiscal year and disburse funding in amounts
26 that minimize disruption of existing programs and ensure smooth and efficient transitions
27 to the funding levels required under subsection 4.

28 **4. Designated disbursements.** Each funding disbursement plan approved by the
29 board must disburse funds in accordance with the following designated disbursements:

30 **A.** An amount that, when combined with amounts from other funding sources received
31 by the Department of Health and Human Services, Maine Center for Disease Control
32 and Prevention, yields a total amount available for purposes of providing evidence-
33 based tobacco prevention and control programs in the State that is in accordance with
34 the following:

35 **(1)** Beginning in fiscal year 2023-24, at least 0.70 of the level recommended by the
36 United States Department of Health and Human Services, Centers for Disease
37 Control and Prevention must be disbursed to the Department of Health and Human
38 Services, Maine Center for Disease Control and Prevention or its designated agent;
39 and

40 **(2)** Beginning in fiscal year 2024-25 and in subsequent years, at least the level
41 recommended by the United States Department of Health and Human Services,
42 Centers for Disease Control and Prevention must be disbursed to the Department
43 of Health and Human Services, Maine Center for Disease Control and Prevention
44 or its designated agent;

1 B. An amount of the settlement funds received in the previous fiscal year must be
2 disbursed to the Department of the Attorney General in accordance with the following:

3 (1) Beginning in fiscal year 2023-24, an amount equal to 0.005 of the settlement
4 funds; and

5 (2) Beginning in fiscal year 2024-25 and in subsequent years, an amount equal to
6 the amount the Department of the Attorney General received in accordance with
7 subparagraph (1) adjusted by the Chained Consumer Price Index, as defined in
8 Title 36, section 5402;

9 C. An amount of the settlement funds received in the previous fiscal year must be
10 disbursed to the administration fund established pursuant to section 1519, subsection 1
11 in accordance with the following:

12 (1) Beginning in fiscal year 2023-24, an amount equal to 0.003; and

13 (2) Beginning in fiscal year 2024-25 and in subsequent years, an amount equal to
14 the amount the administration fund received in accordance with subparagraph (1)
15 adjusted by the Chained Consumer Price Index as defined in Title 36, section 5402;

16 D. An amount not to exceed 0.05 of the settlement funds received in the previous fiscal
17 year may be disbursed to the internal stabilization account established in subsection 6;

18 E. An amount not to exceed 0.05 of the settlement funds received in the previous fiscal
19 year may be disbursed to the internal flexible account established in subsection 7; and

20 F. The funds remaining after making the disbursements required by paragraphs A to
21 C and authorized by paragraphs D and E must be disbursed to the health equity and
22 health improvement account established in subsection 5.

23 The designated disbursements approved by the board may not disburse settlement funds
24 for the purpose of providing medical care.

25 **5. Health equity and health improvement account.** A health equity and health
26 improvement account is established and funded with settlement funds in accordance with
27 subsection 4, paragraph F.

28 A. The funding disbursement plan approved by the board must disburse funds from the
29 health equity and health improvement account to prioritize the advancement of health
30 equity and the elimination of structural inequity. For fiscal year 2023-24, the funding
31 disbursement plan must disburse an amount equal to or greater than 0.15 of the funds
32 in the health equity and health improvement account. For fiscal year 2024-25 and
33 subsequent years, the funding disbursement plan must disburse an amount equal to or
34 greater than 0.20 of the funds in the health equity and health improvement account.
35 Funds disbursed in accordance with this paragraph must be distributed to achieve all
36 or some of the following:

37 (1) Improving data collection, analysis and reporting, particularly for, among and
38 co-led by populations experiencing health disparities, which includes social
39 determinants of health, community resilience, racial impacts and health equity;

40 (2) Enhancing health improvement and health equity planning at the local, district
41 and state levels that addresses and confronts systemic racism and structural
42 inequity;

1 (3) Supporting public-private partnerships at the local and district levels, including
2 comprehensive community health coalitions, as defined in section 411, and
3 organizations that prioritize health equity and derive meaningful leadership from
4 the communities they serve;

5 (4) Supporting the expansion, recruitment, retention and presence of the public
6 health workforce at local, district and state levels, including supporting a robust
7 network of community health workers and government employees in the State
8 dedicated to addressing systemic racism and structural inequity; and

9 (5) Providing training and technical assistance for local health officers, boards of
10 health, community and municipal leaders, community organizations, community
11 partnerships and other organizations providing public health services or serving
12 the functions of the State's public health and safety system.

13 B. Funds remaining in the health equity and health improvement account after the
14 disbursements required in paragraph A must be for state entities or their designated
15 agents that, in the board's sole determination, will use the funds efficiently and
16 effectively to promote the purposes of this subchapter, implement evidence-based
17 prevention and screening strategies to address the priorities of the state health plan,
18 support efforts by the Department of Health and Human Services, Maine Center for
19 Disease Control and Prevention to prevent disease and promote public health and
20 implement strategies for building and sustaining public health capacity and
21 infrastructure at the state and local levels. These funds may not be disbursed for the
22 purpose of providing medical care.

23 **6. Internal stabilization account.** An internal stabilization account is established
24 within the trust. In order to prevent disruptions from year to year in the amounts disbursed
25 pursuant to designated disbursements under subsection 4 and to ensure continuity in the
26 event of fluctuations in the amount of settlement funds received by the State, the board may
27 draw upon the internal stabilization account to make additional disbursements. The trust
28 may not cause the balance in the internal stabilization account at any one time to exceed
29 the amount of settlement funds received by the trust in the most recent year. The funds
30 within the internal stabilization account are nonlapsing and carry forward from year to year
31 for future use consistent with this subsection and do not revert to the trust fund.

32 **7. Internal flexible account.** An internal flexible account is established within the
33 trust. The funds in the internal flexible account may be drawn upon by the board for the
34 purpose of rapidly addressing emerging public health threats, promptly implementing
35 innovative promising practices or addressing other immediate unmet needs identified by
36 the board in the period between approval of funding disbursement plans, consistent with
37 the purposes of this subchapter. Trustees shall consult regularly with the commissioner
38 regarding emerging funding needs. Year-end balances remaining in the internal flexible
39 account lapse to the trust fund and are available for a subsequent year's funding
40 disbursement plan.

41 **8. Informational copies of funding disbursement plans.** Upon final approval by
42 the board of a funding disbursement plan, the trust shall transmit informational copies of
43 the funding disbursement plan to the Governor and to the joint standing committee of the
44 Legislature having jurisdiction over public health matters. A funding disbursement plan

1 does not require approval of the Governor or the joint standing committee of the Legislature
2 having jurisdiction over public health matters.

3 **9. Report.** The trust shall produce annually a report on the results of the tobacco
4 prevention and control programs funded pursuant to subsection 4, paragraph A and all other
5 activities of the trust. The report must include an accounting of the funding disbursement
6 plan created pursuant to this section, including identification of recipients, activities and
7 amounts disbursed. The report must include information and outcomes from the trust's
8 investments pursuant to subsection 4, paragraph C. The report may include information on
9 actual health and economic outcomes from funding disbursed to date and projected
10 outcomes from undertakings funded by the trust but not yet complete. The report may also
11 include recommendations for changes to the laws relating to activities under the jurisdiction
12 of the trust. The board must approve the report prior to its release. Upon release, the trust
13 shall transmit copies of the report to the Governor and to the joint standing committee of
14 the Legislature having jurisdiction over public health matters. The board shall establish
15 policies and practices for reporting in accordance with this subsection.

16 **10. Audit.** The trust must be audited at least annually by an independent certified public
17 auditor. A copy of the audit must be provided to the Governor and to the joint standing
18 committee of the Legislature having jurisdiction over public health matters.

19 **§1518. Restrictions; construction**

20 The trust's activity is restricted to receiving and disbursing funds and any actions
21 necessary and appropriate to receive and disburse funds. The trust may not create, manage
22 or operate public health or health delivery programs. Nothing in this subchapter may be
23 construed to empower the trust to direct, manage or oversee any program, fund or activity
24 of any other state agency.

25 **§1519. Administration**

26 **1. Administration fund.** The board shall establish an administration fund to be used
27 solely to defray administrative costs approved by the board or the coordinator. The trust
28 may annually deposit funds authorized to be used for administrative costs under this
29 subchapter into the administration fund. Any interest on funds in the administration fund
30 must be credited to the administration fund, and any funds unspent in any fiscal year carry
31 forward and remain in the administration fund to be used to defray administrative costs. In
32 any year, the board may not disburse to the administration fund an amount greater than the
33 amount allowed pursuant to section 1517, subsection 4, paragraph C. The board may also
34 use the administration fund to contract for reasonable professional assistance to help review
35 input received from interested parties, to develop the funding disbursement plan under
36 section 1517 and to allow the board to fulfill its responsibilities under this subchapter. The
37 board shall define the roles and responsibilities of any professional assistance in accordance
38 with this subsection.

39 **2. Coordinator.** The board shall appoint, using a full and competitive search process,
40 a qualified full-time coordinator of the trust. The coordinator serves at the pleasure of the
41 board. The coordinator must have demonstrated experience in research and analysis of
42 public health issues, coordination of public health programs or administrative support of a
43 board in the public health sector, public health finance or policy or closely related
44 experience. The coordinator shall assist the board in gathering and disseminating
45 information, preparing for meetings, analyzing public health issues at the direction of the

1 board, communicating with stakeholders, writing reports and such other board support and
2 administrative functions as the board may assign. The board shall establish the rate and
3 amount of compensation of the coordinator. The coordinator may exercise any powers
4 lawfully delegated to the coordinator by the board.

5 **3. Bylaws.** The board shall adopt bylaws for the governance of its affairs consistent
6 with this subchapter.

7 **4. Coordination with other entities.** Consistent with the requirements of this
8 subchapter and other applicable law, the board shall coordinate the development of its
9 funding disbursement plans with the Statewide Coordinating Council for Public Health,
10 established under Title 5, section 12004-G, subsection 14-G, and other state agencies and
11 authorities the missions of which relate to the purposes of this subchapter in order to
12 minimize inefficiency and duplication and to ensure consistency and effectiveness.
13 Notwithstanding any provision of law to the contrary, upon request of the trust and upon
14 the approval of the commissioner or director of the state agency receiving the request, other
15 state agencies, officials and employees shall cooperate and assist in the administration of
16 the trust as needed to further the purposes of this subchapter.

17 **5. Recommendations.** The trust may receive and shall consider any recommendations
18 made by the Governor, other state agencies, the joint standing committee having oversight
19 under section 1520-A and other interested entities and individuals.

20 **§1520. Rulemaking**

21 The trust shall adopt rules regarding establishing and administering the trust, receiving
22 public input and developing and approving funding disbursement plans. Rules adopted
23 pursuant to this section are routine technical rules pursuant to Title 5, chapter 375,
24 subchapter 2-A.

25 **§1520-A. Legislative oversight**

26 The trust is subject to the oversight of the joint standing committee of the Legislature
27 having jurisdiction over public health matters.

28 **§1520-B. Construction by court**

29 The court shall liberally construe this subchapter to give the greatest possible effect to
30 the powers and duties accorded to the trust.

31 **§1520-C. Freedom of access; confidentiality**

32 The proceedings of the board and records of the trust are subject to the freedom of
33 access laws under Title 1, chapter 13, subchapter 1.

34 **§1520-D. Liability**

35 **1. Bond.** All officers, trustees, employees and other agents of the trust entrusted with
36 the custody of funds of the trust or authorized to disburse the funds of the trust must be
37 bonded either by a blanket bond or by individual bonds with a minimum of \$100,000
38 coverage for each person, or equivalent fiduciary liability insurance, conditioned upon the
39 faithful performance of their duties. The premiums for the bond or bonds are administrative
40 costs of the trust.

41 **2. Indemnification.** Each trustee must be indemnified by the trust against expenses
42 actually and necessarily incurred by the trustee in connection with the defense of any action

1 or proceeding in which the trustee is made a party by reason of being or having been a
2 trustee and against any final judgment rendered against the trustee in that action or
3 proceeding.

4 **§1520-E. Trust for a Healthy Maine Trust Fund**

5 **1. Establishment.** The Trust for a Healthy Maine Trust Fund is established as a
6 nonlapsing fund administered exclusively by the trust solely for the purposes established
7 in this subchapter.

8 **2. Tobacco settlement funds.** Notwithstanding any provision of law to the contrary,
9 the State Controller shall credit to the trust fund all settlement funds immediately upon
10 receipt by the State.

11 **3. Administration of trust fund.** The trust fund may not be used for any purposes
12 other than those set forth in this subchapter, and money in the trust fund is held in trust for
13 the purposes of this subchapter. All money received by the trust must be deposited in the
14 trust fund for distribution by the trust in accordance with this subchapter. The trust is
15 authorized to receive settlement funds and may also seek and accept funding from other
16 public or private sources if the trust determines that such acceptance advances the purposes
17 of this subchapter. Any balance in the trust fund not spent in any fiscal year does not lapse
18 but must carry forward in the trust fund available to be used immediately for the purposes
19 of this subchapter, upon the sole direction of the trust. Any interest or investment income
20 earned by the trust fund must be credited to the trust fund. The trust may use administrative
21 services of the Department of Administrative and Financial Services for the management
22 of the trust fund, but the role of the Department of Administrative and Financial Services
23 is nondiscretionary and the Department of Administrative and Financial Services shall
24 carry out all lawful instructions of the trust for all matters relating to accessing the trust
25 fund without the requirement of an additional legislative authorization or a financial order.

26 **4. Working capital advance.** The State Controller is authorized to provide an annual
27 advance from the General Fund to the trust fund to provide money for disbursements from
28 the trust fund. The money must be returned to the General Fund as the first priority from
29 the amounts credited to the trust fund pursuant to subsection 2.

30 **5. Transfer of funds upon repeal or dissolution of the trust fund.** If the trust fund
31 is repealed or dissolved for any reason, the State Controller shall transfer the balance of
32 funds in the trust fund to the Fund for a Healthy Maine established in section 1511.

33 **Sec. 5. Staggered terms.** Notwithstanding the Maine Revised Statutes, Title 22,
34 section 1515, subsection 4, at the initial meeting of the Trust for a Healthy Maine Board,
35 trustees shall draw lots to determine trustees' initial term lengths so that the initial terms of
36 5 trustees expire after one year, the initial terms of 4 trustees expire after 2 years and the
37 initial terms of 5 trustees expire after 3 years.

38 **Sec. 6. Initial appointments.** Notwithstanding the Maine Revised Statutes, Title
39 22, section 1515, subsection 3, paragraph C, the President of the Senate, Speaker of the
40 House, member of the Senate who is the leader of the party with the 2nd-largest number of
41 members in the Senate, member of the House of Representatives who is the leader of the
42 party with the 2nd-largest number of members in the House and the chiefs of the 4 federally
43 recognized Indian tribes in the State shall make the initial nominations of trustees for the

1 Trust for a Healthy Maine Board to the Governor within 60 days of the effective date of
2 this legislation.

3 **Sec. 7. Transfer from Fund for a Healthy Maine.** The State Controller, no later
4 than July 1, 2023, shall transfer all settlement funds, as defined in the Maine Revised
5 Statutes, Title 22, section 1514, subsection 10, in the Fund for a Healthy Maine and a pro
6 rata share of investment income in the Fund for a Healthy Maine to the Trust for a Healthy
7 Maine Trust Fund.

8 **SUMMARY**

9 This bill establishes the Trust for a Healthy Maine to receive money paid to the State
10 pursuant to the tobacco settlement and from other sources and to distribute that money to
11 state agencies or designated agents of the State to fund tobacco use prevention and control,
12 ensure adequate resources for other disease prevention efforts, promote public health, plan
13 and deliver public health and prevention programs and services, support accreditation of
14 the Department of Health and Human Services, Maine Center for Disease Control and
15 Prevention and support public health workforce development. The trust is governed by a
16 15-member board of trustees composed of the Director of the Maine Center for Disease
17 Control and Prevention and 14 members appointed by the Governor.

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Date: (Filing No. H-)

HEALTH AND HUMAN SERVICES

Reproduced and distributed under the direction of the Clerk of the House.

**STATE OF MAINE
HOUSE OF REPRESENTATIVES
130TH LEGISLATURE
SECOND REGULAR SESSION**

COMMITTEE AMENDMENT “ ” to H.P. 1127, L.D. 1523, “An Act To Establish the Trust for a Healthy Maine”

Amend the bill in section 1 in the first line (page 1, line 2 in L.D.) by striking out the following: "**sub-§14-J**" and inserting the following: '**sub-§14-K**'

Amend the bill in section 1 in subsection 14-J in the first line (page 1, line 3 in L.D.) by striking out the following: "**14-J**," and inserting the following: '**14-K**.'

Amend the bill in section 4 in sub-c. 2 in §1514 in subsection 2 in the last line (page 2, line 2 in L.D.) by striking out the following: "**14-J**" and inserting the following: '**14-K**'

Amend the bill in section 4 in sub-c. 2 in §1514 in subsection 7 in the 2nd line (page 2, line 17 in L.D.) by inserting after the following: "funds" the following: 'and other funds in the trust'

Amend the bill in section 4 in sub-c. 2 in §1514 by inserting after subsection 7 the following:

'8. Extraordinary receipts. "Extraordinary receipts" means funds received by the trust pursuant to section 1516, subsection 1, paragraph B or C.'

Amend the bill in section 4 in sub-c. 2 in §1514 in subsection 9 in the 2nd line (page 2, line 23 in L.D.) by striking out the following: "prescription drug" and inserting the following: 'elderly low-cost drug'

Amend the bill in section 4 in sub-c. 2 in §1514 by renumbering the subsections to read consecutively.

Amend the bill in section 4 in sub-c. 2 in §1515 in subsection 3 in paragraph B by striking out all of subparagraph (2) (page 4, lines 1 and 2 in L.D.) and inserting the following:

'(2) A person who has experience recruiting, employing, developing and retaining a healthy workforce; and'

COMMITTEE AMENDMENT

1 Amend the bill in section 4 in sub-c. 2 in §1515 in subsection 3 in paragraph C in the
2 first 2 lines (page 4, lines 7 and 8 in L.D.) by striking out the following: "trustees from
3 nominations made in accordance with this paragraph" and inserting the following: 'one
4 trustee from nominations made under each of the divisions described below'

5 Amend the bill in section 4 in sub-c. 2 in §1515 in subsection 3 in paragraph C in
6 subparagraph (1) in division (b) in the 2nd line (page 4, line 18 in L.D.) by striking out the
7 following: "care," and inserting the following: 'care or rural oral health care,'

8 Amend the bill in section 4 in sub-c. 2 in §1515 in subsection 6 in the 4th line (page 5,
9 line 29 in L.D.) by striking out the following: "chapter 13, subchapter 1. Notwithstanding
10 any provision of law" and inserting the following: 'section 403-B. Notwithstanding any
11 provision of that section'

12 Amend the bill in section 4 in sub-c. 2 in §1515 in subsection 11 in the 2nd line (page
13 6, line 2 in L.D.) by striking out the following: "14-J" and inserting the following: '14-K'

14 Amend the bill in section 4 in sub-c. 2 in §1517 by striking out all of subsection 3 (page
15 7, lines 19 to 27 in L.D.) and inserting the following:

16 **3. Funding disbursement plans.** A funding disbursement plan approved by the board
17 may not disburse funds for the purpose of providing medical care except as provided in
18 subsection 7. When approving elements of the funding disbursement plans, the board shall
19 consider funding levels in the most recent fiscal year and disburse funding in amounts that
20 minimize disruption of existing programs and ensure smooth and efficient transitions to the
21 funding levels required under subsection 4.'

22 Amend the bill in section 4 in sub-c. 2 in §1517 in subsection 4 in paragraph A in
23 subparagraph (1) in the first line (page 7, line 35 in L.D.) by striking out the following:
24 "Beginning in" and inserting the following: 'In'

25 Amend the bill in section 4 in sub-c. 2 in §1517 in subsection 4 in paragraph B in the
26 2nd line (page 8, line 2 in L.D.) by striking out the following: "Department" and inserting
27 the following: 'Office'

28 Amend the bill in section 4 in sub-c. 2 in §1517 in subsection 4 in paragraph B in
29 subparagraph (1) in the first line (page 8, line 3 in L.D.) by striking out the following:
30 "Beginning in fiscal year 2023-24, an amount equal to 0.005" and inserting the following:
31 'In fiscal year 2023-24, an amount equal to 0.006'

32 Amend the bill in section 4 in sub-c. 2 in §1517 in subsection 4 in paragraph B in
33 subparagraph (2) in the 2nd line (page 8, line 6 in L.D.) by striking out the following:
34 "Department" and inserting the following: 'Office'

35 Amend the bill in section 4 in sub-c. 2 in §1517 in subsection 4 in paragraph B in
36 subparagraph (2) in the last line (page 8, line 8 in L.D.) by inserting after the following:
37 "5402" the following: 'except that the date the State Tax Assessor determines the cost-of-
38 living adjustment is on or about September 15th of each year, beginning in 2024, and "cost-
39 of-living adjustment" means the Chained Consumer Price Index for the 12-month period
40 ending June 30th of the preceding calendar year divided by the Chained Consumer Price
41 Index for the 12-month period ending June 30, 2024. The State Tax Assessor shall calculate
42 the cost-of-living adjustment under this subparagraph'

1 Amend the bill in section 4 in sub-c. 2 in §1517 in subsection 4 in paragraph C by
2 striking out all of subparagraph (1) (page 8, line 12 in L.D.) and inserting the following:

3 '(1) In fiscal year 2023-24, an amount equal to 0.006 of the settlement funds; and'

4 Amend the bill in section 4 in sub-c. 2 in §1517 in subsection 4 in paragraph C in
5 subparagraph (2) in the last line (page 8, line 15 in L.D.) by inserting after the following:
6 "5402" the following: 'except that the date the State Tax Assessor determines the cost-of-
7 living adjustment is on or about September 15th of each year, beginning in 2024, and "cost-
8 of-living adjustment" means the Chained Consumer Price Index for the 12-month period
9 ending June 30th of the preceding calendar year divided by the Chained Consumer Price
10 Index for the 12-month period ending June 30, 2024. The State Tax Assessor shall calculate
11 the cost-of-living adjustment under this subparagraph'

12 Amend the bill in section 4 in sub-c. 2 in §1517 in subsection 4 in paragraph D in the
13 last line (page 8, line 17 in L.D.) by inserting after the following: "year" the following: ',
14 plus any extraordinary receipts.'

15 Amend the bill in section 4 in sub-c. 2 in §1517 in subsection 4 in paragraph F in the
16 first line (page 8, line 20 in L.D.) by inserting after the following: "remaining" the
17 following: ', including any remaining extraordinary receipts.'

18 Amend the bill in section 4 in sub-c. 2 in §1517 in subsection 4 in the last blocked
19 paragraph in the first line (page 8, line 23 in L.D.) by striking out the following: "The" and
20 inserting the following: 'Except as provided in subsection 7 for the first funding
21 disbursement plan, the'

22 Amend the bill in section 4 in sub-c. 2 in §1517 in subsection 5 in paragraph A in
23 subparagraph (4) in the first line (page 9, line 5 in L.D.) by inserting after the following:
24 "Supporting the" the following: 'development.'

25 Amend the bill in section 4 in sub-c. 2 in §1517 in subsection 7 in the 7th line (page 9,
26 line 38 in L.D.) by inserting after the following: "needs." the following: 'If the biennial or
27 supplemental budget enacted for fiscal year 2022-23 appropriates less than \$2,400,000
28 from the General Fund to the elderly low-cost drug program established under section
29 254-D, the board shall disburse in its first funding disbursement plan an amount from the
30 internal flexible account to the elderly low-cost drug program established under section
31 254-D that when added to the General Fund appropriation to that program for that fiscal
32 year totals \$2,400,000. The internal flexible account may not otherwise be used to fund
33 medical care.'

34 Amend the bill in section 4 in sub-c. 2 in §1517 in subsection 9 in the 5th and 6th lines
35 (page 10, lines 7 and 8 in L.D.) by striking out the following: "from the trust's investments
36 pursuant to" and inserting the following: 'regarding the fund described in'

37 Amend the bill in section 4 in sub-c. 2 in §1519 in subsection 2 in the 5th line (page
38 10, line 43 in L.D.) by striking out the following: "sector," and inserting the following:
39 'sector or'

40 Amend the bill by inserting after section 6 the following:

41 **'Sec. 7. Transfer; Fund for a Healthy Maine; General Fund.** Notwithstanding
42 any provision of law to the contrary, the State Controller shall transfer \$36,604,210 from

1 the Fund for a Healthy Maine to the General Fund unappropriated surplus no later than
 2 June 30, 2023.'

3 Amend the bill by inserting after section 7 the following:

4 **'Sec. 8. Appropriations and allocations.** The following appropriations and
 5 allocations are made.

6 **HEALTH AND HUMAN SERVICES, DEPARTMENT OF**

7 **Head Start 0545**

8 Initiative: Provides an ongoing deallocation of Fund for a Healthy Maine funds from the
 9 Head Start program.

10	FUND FOR A HEALTHY MAINE	2021-22	2022-23
11	All Other	\$0	(\$1,354,580)
12			
13	FUND FOR A HEALTHY MAINE TOTAL	\$0	(\$1,354,580)

14 **Head Start 0545**

15 Initiative: Provides an ongoing appropriation to retain state funding for the Head Start
 16 program.

17	GENERAL FUND	2021-22	2022-23
18	All Other	\$0	\$1,354,580
19			
20	GENERAL FUND TOTAL	\$0	\$1,354,580

21 **Low-cost Drugs To Maine's Elderly 0202**

22 Initiative: Provides an ongoing deallocation of Fund for a Healthy Maine funds from the
 23 Low-cost Drugs To Maine's Elderly program.

24	FUND FOR A HEALTHY MAINE	2021-22	2022-23
25	All Other	\$0	(\$2,413,057)
26			
27	FUND FOR A HEALTHY MAINE TOTAL	\$0	(\$2,413,057)

28 **Low-cost Drugs To Maine's Elderly 0202**

29 Initiative: Provides an ongoing appropriation to retain state funding for the Low-cost Drugs
 30 To Maine's Elderly program.

31	GENERAL FUND	2021-22	2022-23
32	All Other	\$0	\$2,413,057
33			
34	GENERAL FUND TOTAL	\$0	\$2,413,057

35 **Medical Care - Payments to Providers 0147**

36 Initiative: Provides an ongoing deallocation of Fund for a Healthy Maine funds from the
 37 Medical Care - Payments to Providers program.

38	FUND FOR A HEALTHY MAINE	2021-22	2022-23
39	All Other	\$0	(\$30,865,455)
40			

1 FUND FOR A HEALTHY MAINE TOTAL \$0 (\$30,865,455)

2 **Medical Care - Payments to Providers 0147**

3 Initiative: Provides an ongoing appropriation to retain state funding for the Medical Care -
4 Payments to Providers program.

5	GENERAL FUND	2021-22	2022-23
6	All Other	\$0	\$30,865,455
7			
8	GENERAL FUND TOTAL	\$0	\$30,865,455

9 **Purchased Social Services 0228**

10 Initiative: Provides an ongoing deallocation of Fund for a Healthy Maine funds from the
11 Purchased Social Services program.

12	FUND FOR A HEALTHY MAINE	2021-22	2022-23
13	All Other	\$0	(\$1,971,118)
14			
15	FUND FOR A HEALTHY MAINE TOTAL	\$0	(\$1,971,118)

16 **Purchased Social Services 0228**

17 Initiative: Provides an ongoing appropriation to retain state funding for the Purchased
18 Social Services program.

19	GENERAL FUND	2021-22	2022-23
20	All Other	\$0	\$1,971,118
21			
22	GENERAL FUND TOTAL	\$0	\$1,971,118

24 **HEALTH AND HUMAN SERVICES,**
25 **DEPARTMENT OF**
26 **DEPARTMENT TOTALS**

27		2021-22	2022-23
28	GENERAL FUND	\$0	\$36,604,210
29	FUND FOR A HEALTHY MAINE	\$0	(\$36,604,210)
30			
31	DEPARTMENT TOTAL - ALL FUNDS	\$0	\$0

33 Amend the bill by relettering or renumbering any nonconsecutive Part letter or section
34 number to read consecutively.

35 **SUMMARY**

36 This amendment:

- 37 1. Adds a definition of "extraordinary receipts";
- 38 2. Removes the requirement that one of the board members be an employer and
39 replaces it with a requirement that the member have experience recruiting, employing,
40 developing and retaining a healthy workforce;



130th MAINE LEGISLATURE

FIRST SPECIAL SESSION-2021

Legislative Document

No. 1693

H.P. 1258

House of Representatives, May 10, 2021

An Act To Advance Health Equity, Improve the Well-being of All Maine People and Create a Health Trust

Received by the Clerk of the House on May 6, 2021. Referred to the Committee on Health and Human Services pursuant to Joint Rule 308.2 and ordered printed pursuant to Joint Rule 401.

A handwritten signature in cursive script that reads "R B. Hunt".

ROBERT B. HUNT
Clerk

Presented by Representative TALBOT ROSS of Portland.
Cosponsored by Senator VITELLI of Sagadahoc and
Representatives: EVANS of Dover-Foxcroft, MEYER of Eliot, MILLETT of Cape Elizabeth,
NEWELL of the Passamaquoddy Tribe, PERRY of Calais, Senators: CHIPMAN of
Cumberland, HICKMAN of Kennebec.

1 **1. Administrative costs.** "Administrative costs" means staffing, overhead and related
2 operational costs, including costs for a coordinator, professional assistance and bond
3 premiums, incurred by the trust in carrying out its duties under this subchapter.

4 **2. Board.** "Board" means the Trust for a Healthy Maine Board established under Title
5 5, section 12004-G, subsection 14-J.

6 **3. Community health worker.** "Community health worker" means a person who
7 provides outreach and public health services to a social group using the person's
8 understanding of the experiences, socioeconomic needs, language or culture of that social
9 group.

10 **4. Community resilience.** "Community resilience" means the capacity of individuals,
11 communities, institutions, businesses and systems within a community to survive, adapt
12 and grow no matter what kinds of chronic stresses and acute shocks they experience.

13 **5. Coordinator.** "Coordinator" means the coordinator of the Trust for a Healthy
14 Maine under section 1519, subsection 2.

15 **6. Designated agent.** "Designated agent" means an entity with which the department
16 has entered an agency relationship for the purpose of applying for federal funds to support
17 public health research and programming and that is authorized by the Federal Government
18 to receive those funds.

19 **7. Disbursement.** "Disbursement" means a decision of the trust governing how
20 settlement funds are to be distributed by the trust for the purposes set forth in this
21 subchapter.

22 **8. Health equity.** "Health equity" means the attainment of the highest level of health
23 for any social group in this State, regardless of whether a social group is subject to a
24 structural inequity.

25 **9. Medical care.** "Medical care" means direct health care, including but not limited
26 to care provided under the MaineCare program and the prescription drug program
27 established under section 254-D. "Medical care" does not include treatments provided
28 under the Tobacco Prevention and Control Program established in section 272 or the
29 delivery of preventive health screenings or services in a school setting.

30 **10. Settlement funds.** "Settlement funds" means any money received by the State or
31 any component of the State in settlement of or in relation to the lawsuit State of Maine v.
32 Philip Morris, et al., Kennebec County Superior Court, Docket No. CV-97-134.

33 **11. Social determinants of health.** "Social determinants of health" means the
34 conditions in which people are born, grow, live, work and age, as well as the social
35 structures and economic systems that shape these conditions, including the social
36 environment, physical environment and health services.

37 **12. Social group.** "Social group" means a group of people in this State that share
38 similar social, economic, demographic, geographic or other characteristics, including, but
39 not limited to, race, ethnicity, gender, gender identity, sexual orientation, class, zip code,
40 age or disability.

41 **13. State health plan.** "State health plan" means the most recent plan for improving
42 public health and health equity prepared by the Department of Health and Human Services,
43 Maine Center for Disease Control and Prevention for accreditation by a nonprofit public

1 health accreditation board dedicated to advancing the continuous quality improvement of
2 tribal, state, local and territorial health departments or any successor plan identified by the
3 Maine Center for Disease Control and Prevention.

4 **14. Structural inequity.** "Structural inequity" means the systemic disadvantage of one
5 social group in the State compared to other social groups in the State as a result of law,
6 policy, culture or other social structure, including, but not limited to, poverty,
7 discrimination, powerlessness or access to job opportunities, quality education, housing or
8 health care.

9 **15. Systemic racism.** "Systemic racism" means the laws and institutionalized policies,
10 practices or social structures that maintain and perpetuate domination by and advantages
11 for the race that is socially constructed as being white to the detriment of or with the purpose
12 of imposing influence or control over any other race that is socially constructed to be non-
13 white, including through color-blind discourse or derogatory and inaccurate stereotypes.

14 **16. Trust.** "Trust" means the Trust for a Healthy Maine established in section 1515,
15 subsection 1.

16 **17. Trustee.** "Trustee" means a member of the board.

17 **18. Trust fund.** "Trust fund" means the Trust for a Healthy Maine Trust Fund
18 established in section 1520-E, subsection 1.

19 **§1515. Trust for a Healthy Maine; Trust for a Healthy Maine Board**

20 **1. Establishment; purposes.** The Trust for a Healthy Maine is established for the
21 purposes of receiving all settlement funds and other funds, redistributing that money to
22 state agencies or designated agents of the State to fund tobacco use prevention and control
23 at levels recommended by the United States Department of Health and Human Services,
24 Centers for Disease Control and Prevention and to ensure adequate resources for other
25 disease prevention efforts and promoting public health. The purposes of the trust also
26 include supporting state agencies in planning and delivering public health and prevention
27 programs and services, supporting accreditation of the Department of Health and Human
28 Services, Maine Center for Disease Control and Prevention and supporting public health
29 workforce development. The trust also provides public health expertise and evidence-based
30 information to the Legislature.

31 **2. Governance; board.** The trust is created as a body corporate and politic and a
32 public instrumentality of the State and is governed by the Trust for a Healthy Maine Board
33 in accordance with this subchapter.

34 **3. Trustees; appointment.** The board consists of 15 trustees in accordance with this
35 subsection. A person who stands to benefit from the tobacco products, as defined in section
36 1551, subsection 3, alcohol or marijuana industry is not eligible to serve as a trustee.

37 A. The Director of the Maine Center for Disease Control and Prevention within the
38 Department of Health and Human Services or the director's designee serves as an ex
39 officio voting trustee.

40 B. The Governor shall appoint 3 trustees in accordance with this paragraph:

41 (1) A person who has clinical expertise or public health expertise, or both, in the
42 science and prevention of addiction as a brain disease, selected from
43 recommendations provided by a statewide organization dedicated to supporting

- 1 physicians, advancing the quality of medicine and promoting the health of citizens
2 in the State;
- 3 (2) A person who is an employer with experience recruiting and retaining a healthy
4 workforce; and
- 5 (3) A person who has experience as a member of an advisory board of a local
6 community health coalition, selected from recommendations provided by a
7 statewide network of community coalitions working to enhance physical, social,
8 emotional, environmental and economic health in the State.
- 9 C. The Governor shall appoint trustees from nominations made in accordance with this
10 paragraph within 30 days of receiving the nominations.
- 11 (1) The President of the Senate shall, for each of the following 3 qualifications,
12 submit to the Governor within 30 days of a vacancy 3 names for consideration:
- 13 (a) A person who has expertise in epidemiology and infectious disease or in
14 hospital-based prevention, screening and early prevention of infectious
15 disease, selected from recommendations provided by the integrated health care
16 delivery systems in the State and by a statewide hospital organization that
17 provides advocacy, information and education in its mission to improve the
18 health of patients and communities;
- 19 (b) A person who has clinical expertise or public health expertise, or both, in
20 rural primary care, selected from recommendations provided by a statewide
21 organization that represents community health centers in the State; and
- 22 (c) A person who has expertise in systemic racism and structural inequity and
23 is serving on the Permanent Commission on the Status of Racial, Indigenous
24 and Maine Tribal Populations, in accordance with Title 5, section 25002.
- 25 (2) The Speaker of the House of Representatives shall, for each of the following 2
26 qualifications, submit to the Governor within 30 days of a vacancy 3 names for
27 consideration:
- 28 (a) A person who has expertise in public health policy related to the leading
29 causes of chronic disease, selected from recommendations provided by a
30 statewide, nonprofit membership organization that promotes a healthy State
31 through advocacy, education, community connection and coalition-building;
32 and
- 33 (b) A person who has expertise in preventing the use of tobacco products and
34 other addictive substances by youth and young adults.
- 35 (3) The member of the Senate who is the leader of the party with the 2nd-largest
36 number of members in the Senate shall, for each of the following 2 qualifications,
37 submit to the Governor within 30 days of a vacancy 3 names for consideration:
- 38 (a) A person who has expertise in trauma, community resilience and social
39 determinants of health, selected from recommendations provided by a
40 statewide network dedicated to building community strengths and reducing the
41 effects of trauma; and

1 (b) A person who represents a statewide association of public health
2 professionals.

3 (4) The member of the House of Representatives who is the leader of the party
4 with the 2nd-largest number of members in the House shall, for each of the
5 following 2 qualifications, submit to the Governor within 30 days of a vacancy 3
6 names for consideration:

7 (a) A person who is employed as a member of the senior staff or faculty in a
8 public health academic program; and

9 (b) A person who has expertise in maternal and child health issues, including
10 early childhood education and out-of-school child care, or school-based health.

11 (5) The chiefs of the 4 federally recognized Indian tribes in the State shall, for each
12 of the following 2 qualifications, submit to the Governor within 30 days of a
13 vacancy 3 names for consideration:

14 (a) A person who has expertise in environmental health; and

15 (b) A person who has expertise in health equity or health disparity issues.

16 The trustees appointed pursuant to paragraphs B and C must be reviewed by the joint
17 standing committee of the Legislature having jurisdiction over public health matters and
18 approved by the Senate.

19 **4. Terms; vacancies.** Trustees serve 3-year terms. Trustees may serve no more than
20 3 consecutive terms. A trustee shall serve on the board until a replacement is appointed and
21 qualified. If a trustee is unable to complete a term, the Governor shall consult with the
22 board and appoint a replacement for the remainder of the unexpired term. The replacement
23 trustee must hold the same qualifications, set forth in subsection 3, as those of the departing
24 trustee.

25 **5. Chair; officers.** The board shall elect a chair, a vice-chair, a secretary and a
26 treasurer from among the trustees. Each officer serves a one-year term in that office and is
27 eligible for reelection.

28 **6. Meetings; quorum.** The board shall meet at least 4 times each year at regular
29 intervals and may meet at other times at the call of the chair or the Governor. A majority
30 of the trustees constitutes a quorum. Meetings of the board are public proceedings as
31 provided by Title 1, chapter 13, subchapter 1. Notwithstanding any provision of law to the
32 contrary, a trustee who is not physically present may participate by telephone or other
33 remote access technology in accordance with procedures established by the board.

34 **7. Election of subcommittees.** The board may elect an executive committee of not
35 fewer than 5 trustees who, between meetings of the board, may transact such business of
36 the trust as the board authorizes. The board may also elect a planning committee.

37 **8. Liaison to Legislature.** The chair is the trust's liaison to the joint standing
38 committee of the Legislature having jurisdiction over public health matters.

39 **9. Advisory groups.** The board may establish advisory groups as needed to gather
40 technical knowledge on any aspect of public health policy, infrastructure or funding
41 disbursement and to make recommendations to the board. Advisory groups may include
42 persons who are not trustees.

1 **10. Removal of trustee for disciplinary reasons.** The board shall develop the process
2 of removal and replacement of trustees for disciplinary reasons.

3 **11. Expenses; reimbursement.** Trustees are not entitled to compensation for service
4 on the board, except that, in accordance with Title 5, section 12004-G, subsection 14-J, the
5 trust may reimburse travel and other board-related expenses.

6 **12. Fiduciary duties.** A trustee has a fiduciary duty to the people of the State in the
7 administration of the trust. Upon accepting appointment as a trustee, each trustee shall
8 acknowledge the fiduciary duty to use the trust fund only for the purposes set forth in this
9 subchapter. It is the duty of each trustee to ensure that the purposes of the trust set forth in
10 this subchapter are fulfilled.

11 **13. Conflict of interest.** A trustee is deemed to be an executive employee for purposes
12 of Title 5, sections 18, 18-A and 19. In the operation or dissolution of the trust, a trustee,
13 employee of the trust, officer of the trust or a spouse or dependent child of any of those
14 individuals may not receive any direct personal benefit from the activities of the trust,
15 except that the trust may pay reasonable compensation for services rendered and otherwise
16 hold, manage and dispose of the trust's property in furtherance of the purposes of the trust.
17 This subsection does not prohibit corporations or other entities with which a trustee is
18 associated by reason of ownership or employment from participating in activities funded
19 directly or indirectly by the trust if ownership or employment is made known to the board
20 and the trustee abstains from all matters directly relating to that participation immediately
21 upon discovery of the association.

22 **§1516. Powers and duties**

23 **1. Powers.** The trust may:

24 **A.** Receive all settlement funds;

25 **B.** Receive money from any other source, whether public or private, designated for
26 deposit into or credited to the trust;

27 **C.** Receive funds transferred from the Fund for a Healthy Maine under subchapter 1;

28 **D.** Through funding disbursement plans under section 1517, disburse funds; and

29 **E.** Make recommendations to the Governor, the Legislature and other public officials
30 regarding improving public health outcomes and promoting public health awareness
31 and understanding.

32 **2. Duties.** The trust shall:

33 **A.** Administer the trust and the trust fund;

34 **B.** Promote the visibility and understanding of public health issues among children
35 and adults;

36 **C.** Participate in the development and promotion of a state health plan by the
37 Department of Health and Human Services, Maine Center for Disease Control and
38 Prevention or another planning entity and provide funding for the planning process if
39 necessary;

40 **D.** Promote multilevel planning and coordination that includes state, district,
41 community and municipal decision-making and advisory boards; and

1 E. Take other actions necessary and appropriate to fulfill the purposes of this
2 subchapter.

3 **§1517. Funding disbursement plan**

4 **1. Funding disbursement plan.** By December 31, 2022 and every year thereafter,
5 the board shall develop and approve a funding disbursement plan to disburse settlement
6 funds and other funds it may hold or receive in the subsequent biennium. The funding
7 disbursement plan must advance the purposes of this subchapter and be based on the most
8 recent state health plan and the most recent data available to the board.

9 **2. Input from interested parties.** Prior to adopting a funding disbursement plan
10 pursuant to subsection 1 or substantially amending an existing funding disbursement plan,
11 the trust shall hold at least one public hearing to receive input from interested parties,
12 including but not limited to the Department of Health and Human Services, Maine Center
13 for Disease Control and Prevention, other state agencies, organizations engaged in smoking
14 cessation and public health efforts, other nongovernmental organizations, interested
15 stakeholders, patients and members of the public. The board shall establish the procedure
16 and timelines for seeking input from interested parties. The board shall also determine
17 what circumstances, consistent with this subsection, would require the board to initiate a
18 public hearing. When considering the input of interested parties, the trust must consider
19 principles of zero-based budgeting, as defined in Title 35-A, section 102, subsection 25,
20 and long-term returns on investment.

21 **3. Funding disbursement plans.** The funding disbursement plan approved by the
22 board pursuant to subsection 1 for fiscal year 2023-24 must disburse an amount equal to
23 0.30 of the settlement funds projected to be received in fiscal year 2023-24 for the purpose
24 of providing medical care. The funding disbursement plan approved by the board for fiscal
25 year 2024-25 and subsequent years may not disburse funds for the purpose of providing
26 medical care. When approving other elements of the funding disbursement plans, the board
27 shall consider funding levels in the most recent fiscal year and disburse funding in amounts
28 that minimize disruption of existing programs and ensure smooth and efficient transitions
29 to the funding levels required under subsection 4.

30 **4. Designated disbursements.** Each funding disbursement plan approved by the
31 board must disburse funds in accordance with the following designated disbursements:

32 **A.** An amount of the settlement funds received in the previous fiscal year must be
33 disbursed to the Department of Health and Human Services, Maine Center for Disease
34 Control and Prevention or its designated agent for purposes of providing evidence-
35 based tobacco prevention and control programs in the State in accordance with the
36 following:

37 **(1)** For fiscal year 2023-24, an amount that is at least 0.70 of the level
38 recommended by the United States Department of Health and Human Services,
39 Centers for Disease Control and Prevention; and

40 **(2)** For fiscal year 2024-25 and in subsequent fiscal years, an amount that when
41 combined with amounts from other funding sources received by the Department of
42 Health and Human Services, Maine Center for Disease Control and Prevention
43 yields a total amount that is at least the level recommended by the United States

1 Department of Health and Human Services, Centers for Disease Control and
2 Prevention;

3 B. An amount of the settlement funds received in the previous fiscal year must be
4 disbursed to the Department of the Attorney General in accordance with the following:

5 (1) Beginning in fiscal year 2023-24, an amount equal to 0.005 of the settlement
6 funds; and

7 (2) Beginning in fiscal year 2024-25 and in subsequent years, an amount equal to
8 the amount the Department of the Attorney General received in accordance with
9 subparagraph (1) adjusted by the Chained Consumer Price Index, as defined in
10 Title 36, section 5402;

11 C. An amount of the settlement funds received in the previous fiscal year must be
12 disbursed to the administration fund established pursuant to section 1519, subsection 1
13 in accordance with the following:

14 (1) Beginning in fiscal year 2023-24, an amount equal to 0.003; and

15 (2) Beginning in fiscal year 2024-25 and in subsequent years, an amount equal to
16 the amount the administration fund received in accordance with subparagraph (1)
17 adjusted by the Chained Consumer Price Index as defined in Title 36, section 5402;

18 D. An amount not to exceed 0.05 of the settlement funds received in the previous fiscal
19 year may be disbursed to the internal stabilization account established in subsection 6;

20 E. An amount not to exceed 0.05 of the settlement funds received in the previous fiscal
21 year may be disbursed to the internal flexible account established in subsection 7; and

22 F. The funds remaining after making the disbursements required by paragraphs A to
23 C and authorized by paragraphs D and E must be disbursed to the health equity and
24 health improvement account established in subsection 5.

25 The designated disbursements approved by the board may not disburse settlement funds
26 for the purpose of providing medical care.

27 **5. Health equity and health improvement account.** A health equity and health
28 improvement account is established and funded with settlement funds in accordance with
29 subsection 4, paragraph F.

30 A. The funding disbursement plan approved by the board must disburse funds from the
31 health equity and health improvement account to prioritize the advancement of health
32 equity and the elimination of structural inequity. For fiscal year 2023-24, the funding
33 disbursement plan must disburse an amount equal to or greater than 0.15 of the funds
34 in the health equity and health improvement account. For fiscal year 2024-25 and
35 subsequent years, the funding disbursement plan must disburse an amount equal to or
36 greater than 0.20 of the funds in the health equity and health improvement account.
37 Funds disbursed in accordance with this paragraph must be distributed to achieve all
38 or some of the following:

39 (1) Improving data collection, analysis and reporting, particularly for, among and
40 co-led by populations experiencing health disparities, which includes social
41 determinants of health, community resilience, racial impacts and health equity;

1 (2) Enhancing health improvement and health equity planning at the local, district
2 and state levels that addresses and confronts systemic racism and structural
3 inequity;

4 (3) Supporting public-private partnerships at the local and district levels, including
5 comprehensive community health coalitions, as defined in section 411, and
6 organizations that prioritize health equity and derive meaningful leadership from
7 the communities they serve;

8 (4) Supporting the expansion, recruitment, retention and presence of the public
9 health workforce at local, district and state levels, including supporting a robust
10 network of community health workers and government employees in the State
11 dedicated to addressing systemic racism and structural inequity; and

12 (5) Providing training and technical assistance for local health officers, boards of
13 health, community and municipal leaders, community organizations, community
14 partnerships and other organizations providing public health services or serving
15 the functions of the State's public health and safety system.

16 B. Funds remaining in the health equity and health improvement account after the
17 disbursements required in paragraph A must be for state entities or their designated
18 agents that, in the board's sole determination, will use the funds efficiently and
19 effectively to promote the purposes of this subchapter, implement evidence-based
20 prevention and screening strategies to address the priorities of the state health plan,
21 support efforts by the Department of Health and Human Services, Maine Center for
22 Disease Control and Prevention to prevent disease and promote public health and
23 implement strategies for building and sustaining public health capacity and
24 infrastructure at the state and local levels. These funds may not be disbursed for the
25 purpose of providing medical care.

26 **6. Internal stabilization account.** An internal stabilization account is established
27 within the trust. In order to prevent disruptions from year to year in the amounts disbursed
28 pursuant to designated disbursements under subsection 4 and to ensure continuity in the
29 event of fluctuations in the amount of settlement funds received by the State, the board may
30 draw upon the internal stabilization account to make additional disbursements. The trust
31 may not cause the balance in the internal stabilization account at any one time to exceed
32 the amount of settlement funds received by the trust in the most recent year. The funds
33 within the internal stabilization account are nonlapsing and carry forward from year to year
34 for future use consistent with this subsection and do not revert to the trust fund.

35 **7. Internal flexible account.** An internal flexible account is established within the
36 trust. The funds in the internal flexible account may be drawn upon by the board for the
37 purpose of rapidly addressing emerging public health threats, promptly implementing
38 innovative promising practices or addressing other immediate unmet needs identified by
39 the board in the period between approval of funding disbursement plans, consistent with
40 the purposes of this subchapter. Trustees shall consult regularly with the commissioner
41 regarding emerging funding needs. Year-end balances remaining in the internal flexible
42 account lapse to the trust fund and are available for a subsequent year's funding
43 disbursement plan.

44 **8. Informational copies of funding disbursement plans.** Upon final approval by
45 the board of a funding disbursement plan, the trust shall transmit informational copies of

1 the funding disbursement plan to the Governor and to the joint standing committee of the
2 Legislature having jurisdiction over public health matters. A funding disbursement plan
3 does not require approval of the Governor or the joint standing committee of the Legislature
4 having jurisdiction over public health matters.

5 **9. Report.** The trust shall produce annually a report on the results of the tobacco
6 prevention and control programs funded pursuant to subsection 4, paragraph A and all other
7 activities of the trust. The report must include an accounting of the funding disbursement
8 plan created pursuant to this section, including identification of recipients, activities and
9 amounts disbursed. The report must include information and outcomes from the trust's
10 investments pursuant to subsection 4, paragraph C. The report may include information on
11 actual health and economic outcomes from funding disbursed to date and projected
12 outcomes from undertakings funded by the trust but not yet complete. The report may also
13 include recommendations for changes to the laws relating to activities under the jurisdiction
14 of the trust. The board must approve the report prior to its release. Upon release, the trust
15 shall transmit copies of the report to the Governor and to the joint standing committee of
16 the Legislature having jurisdiction over public health matters. The board shall establish
17 policies and practices for reporting in accordance with this subsection.

18 **10. Audit.** The trust must be audited at least annually by an independent certified public
19 auditor. A copy of the audit must be provided to the Governor and to the joint standing
20 committee of the Legislature having jurisdiction over public health matters.

21 **§1518. Restrictions; construction**

22 The trust's activity is restricted to receiving and disbursing funds and any actions
23 necessary and appropriate to receive and disburse funds. The trust may not create, manage
24 or operate public health or health delivery programs. Nothing in this subchapter may be
25 construed to empower the trust to direct, manage or oversee any program, fund or activity
26 of any other state agency.

27 **§1519. Administration**

28 **1. Administration fund.** The board shall establish an administration fund to be used
29 solely to defray administrative costs approved by the board or the coordinator. The trust
30 may annually deposit funds authorized to be used for administrative costs under this
31 subchapter into the administration fund. Any interest on funds in the administration fund
32 must be credited to the administration fund, and any funds unspent in any fiscal year carry
33 forward and remain in the administration fund to be used to defray administrative costs. In
34 any year, the board may not disburse to the administration fund an amount greater than the
35 amount allowed pursuant to section 1517, subsection 4, paragraph C. The board may also
36 use the administration fund to contract for reasonable professional assistance to help review
37 input received from interested parties, to develop the funding disbursement plan under
38 section 1517 and to allow the board to fulfill its responsibilities under this subchapter. The
39 board shall define the roles and responsibilities of any professional assistance in accordance
40 with this subsection.

41 **2. Coordinator.** The board shall appoint, using a full and competitive search process,
42 a qualified full-time coordinator of the trust. The coordinator serves at the pleasure of the
43 board. The coordinator must have demonstrated experience in research and analysis of
44 public health issues, coordination of public health programs or administrative support of a
45 board in the public health sector, public health finance or policy or closely related

1 experience. The coordinator shall assist the board in gathering and disseminating
2 information, preparing for meetings, analyzing public health issues at the direction of the
3 board, communicating with stakeholders, writing reports and such other board support and
4 administrative functions as the board may assign. The board shall establish the rate and
5 amount of compensation of the coordinator. The coordinator may exercise any powers
6 lawfully delegated to the coordinator by the board.

7 **3. Bylaws.** The board shall adopt bylaws for the governance of its affairs consistent
8 with this subchapter.

9 **4. Coordination with other entities.** Consistent with the requirements of this
10 subchapter and other applicable law, the board shall coordinate the development of its
11 funding disbursement plans with the Statewide Coordinating Council for Public Health,
12 established under Title 5, section 12004-G, subsection 14-G, and other state agencies and
13 authorities the missions of which relate to the purposes of this subchapter in order to
14 minimize inefficiency and duplication and to ensure consistency and effectiveness.
15 Notwithstanding any provision of law to the contrary, upon request of the trust and upon
16 the approval of the commissioner or director of the state agency receiving the request, other
17 state agencies, officials and employees shall cooperate and assist in the administration of
18 the trust as needed to further the purposes of this subchapter.

19 **5. Recommendations.** The trust may receive and shall consider any recommendations
20 made by the Governor, other state agencies, the joint standing committee having oversight
21 under section 1520-A and other interested entities and individuals.

22 **§1520. Rulemaking**

23 The trust shall adopt rules regarding establishing and administering the trust, receiving
24 public input and developing and approving funding disbursement plans. Rules adopted
25 pursuant to this section are routine technical rules pursuant to Title 5, chapter 375,
26 subchapter 2-A.

27 **§1520-A. Legislative oversight**

28 The trust is subject to the oversight of the joint standing committee of the Legislature
29 having jurisdiction over public health matters.

30 **§1520-B. Construction by court**

31 The court shall liberally construe this subchapter to give the greatest possible effect to
32 the powers and duties accorded to the trust.

33 **§1520-C. Freedom of access; confidentiality**

34 The proceedings of the board and records of the trust are subject to the freedom of
35 access laws under Title 1, chapter 13, subchapter 1.

36 **§1520-D. Liability**

37 **1. Bond.** All officers, trustees, employees and other agents of the trust entrusted with
38 the custody of funds of the trust or authorized to disburse the funds of the trust must be
39 bonded either by a blanket bond or by individual bonds with a minimum of \$100,000
40 coverage for each person, or equivalent fiduciary liability insurance, conditioned upon the
41 faithful performance of their duties. The premiums for the bond or bonds are administrative
42 costs of the trust.

1 **2. Indemnification.** Each trustee must be indemnified by the trust against expenses
2 actually and necessarily incurred by the trustee in connection with the defense of any action
3 or proceeding in which the trustee is made a party by reason of being or having been a
4 trustee and against any final judgment rendered against the trustee in that action or
5 proceeding.

6 **§1520-E. Trust for a Healthy Maine Trust Fund**

7 **1. Establishment.** The Trust for a Healthy Maine Trust Fund is established as a
8 nonlapsing fund administered exclusively by the trust solely for the purposes established
9 in this subchapter.

10 **2. Tobacco settlement funds.** Notwithstanding any provision of law to the contrary,
11 the State Controller shall credit to the trust fund all settlement funds immediately upon
12 receipt by the State.

13 **3. Administration of trust fund.** The trust fund may not be used for any purposes
14 other than those set forth in this subchapter, and money in the trust fund is held in trust for
15 the purposes of this subchapter. All money received by the trust must be deposited in the
16 trust fund for distribution by the trust in accordance with this subchapter. The trust is
17 authorized to receive settlement funds and may also seek and accept funding from other
18 public or private sources if the trust determines that such acceptance advances the purposes
19 of this subchapter. Any balance in the trust fund not spent in any fiscal year does not lapse
20 but must carry forward in the trust fund available to be used immediately for the purposes
21 of this subchapter, upon the sole direction of the trust. Any interest or investment income
22 earned by the trust fund must be credited to the trust fund. The trust may use administrative
23 services of the Department of Administrative and Financial Services for the management
24 of the trust fund, but the role of the Department of Administrative and Financial Services
25 is nondiscretionary and the Department of Administrative and Financial Services shall
26 carry out all lawful instructions of the trust for all matters relating to accessing the trust
27 fund without the requirement of an additional legislative authorization or a financial order.

28 **4. Working capital advance.** The State Controller is authorized to provide an annual
29 advance from the General Fund to the trust fund to provide money for disbursements from
30 the trust fund. The money must be returned to the General Fund as the first priority from
31 the amounts credited to the trust fund pursuant to subsection 2.

32 **5. Transfer of funds upon repeal or dissolution of the trust fund.** If the trust fund
33 is repealed or dissolved for any reason, the State Controller shall transfer the balance of
34 funds in the trust fund to the Fund for a Healthy Maine established in section 1511.

35 **Sec. A-5. Staggered terms.** Notwithstanding the Maine Revised Statutes, Title 22,
36 section 1515, subsection 4, at the initial meeting of the Trust for a Healthy Maine Board,
37 trustees shall draw lots to determine trustees' initial term lengths so that the initial terms of
38 5 trustees expire after one year, the initial terms of 4 trustees expire after 2 years and the
39 initial terms of 5 trustees expire after 3 years.

40 **Sec. A-6. Initial appointments.** Notwithstanding the Maine Revised Statutes, Title
41 22, section 1515, subsection 3, paragraph C, the President of the Senate, Speaker of the
42 House, member of the Senate who is the leader of the party with the 2nd-largest number of
43 members in the Senate, member of the House of Representatives who is the leader of the
44 party with the 2nd-largest number of members in the House and the chiefs of the 4 federally

1 recognized Indian tribes in the State shall make the initial nominations of trustees for the
2 Trust for a Healthy Maine Board to the Governor within 60 days of the effective date of
3 this legislation.

4 **Sec. A-7. Transfer from Fund for a Healthy Maine.** The State Controller, no
5 later than July 1, 2023, shall transfer all settlement funds, as defined in the Maine Revised
6 Statutes, Title 22, section 1514, subsection 10, in the Fund for a Healthy Maine and a pro
7 rata share of investment income in the Fund for a Healthy Maine to the Trust for a Healthy
8 Maine Trust Fund.

9 **PART B**

10 **Sec. B-1. 22 MRSA §414** is enacted to read:

11 **§414. Office of Health Equity**

12 **1. Office established.** The Office of Health Equity is established within the
13 department. The office is staffed by at least one full-time employee.

14 **2. Purpose.** The Office of Health Equity shall:

15 A. Upon request, advise the commissioner, the Governor's Office of Policy Innovation
16 and the Future and other state agencies, the Legislature and the Governor on health
17 systems, policies and practices, including intradepartmental and interdepartmental
18 training;

19 B. Provide recommendations to the public and State Government and private and
20 philanthropic partners to advance health equity, as defined in section 1514, subsection
21 8, in all sectors and settings;

22 C. Produce and update a state health equity plan to:

23 (1) Create systems, policies and practices to achieve health equity, as defined in
24 section 1514, subsection 8, in all policies across State Government, including
25 robust surveillance and evaluation; and

26 (2) Establish policies to ensure all state contractors and vendors have a health
27 equity plan in place as a criteria for funding; and

28 D. Produce an annual report, known as the Maine Health Equity Report Card, which
29 includes health programs and services, outcomes and social determinants of health
30 equity, as defined in section 1514.

31 **PART C**

32 **Sec. C-1. Obesity prevention standards in early care and education.** The
33 Department of Education shall adopt rules to revise its nutrition, physical activity, screen
34 time and sugary drink standards to increase obesity prevention in early care and education
35 in accordance with this section.

36 1. Early care and education nutrition standards must be consistent with the meal
37 patterns of the most recent version of the United States Department of Agriculture, Food
38 and Nutrition Service standards for the child and adult care food program established in 42
39 United States Code, Section 1766.

40 2. Physical activity standards must be consistent with the standards in the most recent
41 version of the publication "Caring for Our Children" developed as part of a collaboration

1 between the American Academy of Pediatrics, the American Public Health Association and
2 the National Resource Center for Health and Safety in Child Care and Early Education.

3 3. Screen time standards must be consistent with the standards in the most recent
4 version of the publication "Caring for Our Children" developed as part of a collaboration
5 between the American Academy of Pediatrics, the American Public Health Association and
6 the National Resource Center for Health and Safety in Child Care and Early Education.

7 4. Sugary drink standards must be consistent with the standards in the publication
8 "Consensus Statement. Healthy Beverage Consumption in Early Childhood:
9 Recommendations from Key National Health and Nutrition Organizations" dated
10 September 2019.

11 Rules adopted pursuant to this section are routine technical rules as defined in the
12 Maine Revised Statutes, Title 5, chapter 375, subchapter 2-A.

13 **Sec. C-2. Obesity prevention standards in public schools.** The Department of
14 Education shall adopt rules to revise its school nutrition and physical activity standards to
15 increase obesity prevention in public schools in accordance with this section.

16 1. School nutrition standards must:

17 A. Require, at a minimum, the standards established by the United States Department
18 of Agriculture in Final Rule: National School Lunch Program and School Breakfast
19 Program: Nutrition Standards for All Foods Sold in School as Required by the Healthy,
20 Hunger-Free Kids Act of 2010, 7 Code of Federal Regulations, Parts 210 and 220
21 (2016);

22 B. Require, at a minimum, the standards established in the most recent version of the
23 publication "A Guide to Smart Snacks in School" issued by the United States
24 Department of Agriculture, Food and Nutrition Service for school meals and foods sold
25 or available in schools outside of federally reimbursable school meals programs;

26 C. Require reasonably scheduled meal periods and minimum meal times, in alignment
27 with the standards set by the federal Healthy, Hunger-Free Kids Act of 2010, Public
28 Law 111-296, that ensure sufficient time to eat; and

29 D. Require that all school meals served under the programs described in the Maine
30 Revised Statutes, Title 20-A, section 6602, subsection 1, paragraph C meet standards
31 consistent with those of breakfast and lunch served during the school year.

32 2. Physical activity standards must be consistent with the standards in the most recent
33 version of the publication "Comprehensive School Physical Activity Programs" developed
34 by the United States Department of Health and Human Services, Centers for Disease
35 Control and Prevention in collaboration with SHAPE America.

36 3. Contingent upon state funding, the department shall make all students, regardless
37 of household income, eligible to receive a breakfast and lunch at the public school free of
38 charge. A student in a public school online learning program must be eligible to receive a
39 breakfast and lunch from the public school free of charge.

40 4. Contingent upon state funding, the department shall develop and provide technical
41 assistance and incentives for public schools to meet nutrition standards more stringent than
42 required under law or rule.

1 5. The department shall require the phasing out of artificial food dyes that cause
2 adverse behavioral effects in children.

3 6. Contingent upon state funding, the department shall provide kitchen equipment
4 grants for upgrades, repairs and maintenance.

5 Rules adopted pursuant to this section are routine technical rules as defined in Title 5,
6 chapter 375, subchapter 2-A.

7 **PART D**

8 **Sec. D-1. 22 MRSA §1551, sub-§1-D**, as enacted by PL 2017, c. 308, §1, is
9 amended to read:

10 **1-D. Electronic smoking device.** "Electronic smoking device" has the same meaning
11 as in section 1541, subsection 1-A means any device that may be used to deliver any
12 aerosolized or vaporized substance to the person inhaling from the device, including, but
13 not limited to, an electronic cigarette, electronic cigar, electronic pipe, vape pen or
14 electronic hookah. "Electronic smoking device" includes any component, part or accessory
15 of the device and also includes any substance that may be aerosolized or vaporized by that
16 device, whether or not the substance contains nicotine. "Electronic smoking device" does
17 not include drugs, devices or combination products authorized for sale by the United States
18 Food and Drug Administration, as those terms are defined in the Federal Food, Drug, and
19 Cosmetic Act.

20 **Sec. D-2. 22 MRSA §1551, sub-§1-E** is enacted to read:

21 **1-E. Flavored tobacco product.** "Flavored tobacco product" means any tobacco
22 product that imparts a taste or smell, other than the taste or smell of tobacco, that is
23 distinguishable by an ordinary consumer either prior to or during the consumption of a
24 tobacco product, including, but not limited to, any taste or smell relating to fruit, menthol,
25 mint, wintergreen, chocolate, cocoa, vanilla, honey or any candy, dessert, beverage, herb
26 or spice.

27 **Sec. D-3. 22 MRSA c. 262-A, sub-c. 5**, as amended, is amended by amending the
28 subchapter headnote to read:

29 **SUBCHAPTER 5**

30 **FLAVORED CIGARS TOBACCO PRODUCTS**

31 **Sec. D-4. 22 MRSA §1560-D**, as amended by PL 2011, c. 380, Pt. II, §2, is repealed.

32 **Sec. D-5. 22 MRSA §1560-E** is enacted to read:

33 **§1560-E. Flavored tobacco products**

34 **1. Prohibition on sale or distribution of flavored tobacco products.** A tobacco
35 retailer may not sell or distribute or offer to sell or distribute in this State any flavored
36 tobacco product. A public statement or claim made or disseminated by the retailer or
37 manufacturer of a tobacco product, or by a person authorized or permitted by the retailer
38 or manufacturer to make or disseminate public statements concerning a tobacco product,

1 that a tobacco product has or produces a taste or smell other than tobacco constitutes
2 presumptive evidence that the tobacco product is a flavored tobacco product.

3 2. Violation. A tobacco retailer who violates this section commits a civil violation for
4 which a fine may be imposed under subsection 3.

5 3. Fines. The fines that apply to violations of this section are as set out in this
6 subsection.

7 A. A tobacco retailer who violates subsection 1 commits a civil violation for which a
8 fine of \$1,000 may be adjudged.

9 B. A tobacco retailer who violates subsection 1 after having previously been convicted
10 of a violation of that subsection commits a civil violation for which a fine of \$5,000
11 may be adjudged.

12 PART E

13 **Sec. E-1. 36 MRSA §4365**, as amended by PL 2005, c. 457, Pt. AA, §1 and affected
14 by §8, is further amended to read:

15 **§4365. Rate of tax**

16 A tax is imposed on all cigarettes imported into this State or held in this State by any
17 person for sale at the rate of ~~100~~ 200 mills for each cigarette. Payment of the tax is
18 evidenced by the affixing of stamps to the packages containing the cigarettes.

19 **Sec. E-2. 36 MRSA §4365-F**, as enacted by PL 2005, c. 457, Pt. AA, §3 and
20 affected by §8, is repealed.

21 **Sec. E-3. 36 MRSA §4365-G** is enacted to read:

22 **§4365-G. Application of cigarette tax rate increase effective November 1, 2021**

23 The following provisions apply to cigarettes held for resale on November 1, 2021.

24 1. Stamped rate. Cigarettes stamped at the rate of 100 mills per cigarette and held
25 for resale after October 31, 2021 are subject to tax at the rate of 200 mills per cigarette.

26 2. Liability. A person possessing cigarettes for resale is liable for the difference
27 between the tax rate of 200 mills per cigarette and the tax rate of 100 mills per cigarette in
28 effect before November 1, 2021. Stamps indicating payment of the tax imposed by this
29 section must be affixed to all packages of cigarettes held for resale as of November 1, 2021,
30 except that cigarettes held in vending machines as of that date do not require that stamp.

31 3. Vending machines. Notwithstanding any provision of this chapter to the contrary,
32 it is presumed that all cigarette vending machines are filled to capacity on November 1,
33 2021, and the tax imposed by this section must be reported on that basis. A credit against
34 this inventory tax must be allowed for cigarettes stamped at the rate of 200 mills per
35 cigarette placed in vending machines before November 1, 2021.

36 4. Payment. Payment of the tax imposed by this section must be made to the assessor
37 by January 1, 2022, accompanied by forms prescribed by the assessor.

38 **Sec. E-4. 36 MRSA §4366-A, sub-§2**, as amended by PL 2009, c. 361, §23, is
39 further amended to read:

1 **2. Provided to sellers.** The State Tax Assessor shall provide stamps to a licensed
 2 distributor upon submission by the licensed distributor of a cigarette tax return in a form
 3 prescribed by the assessor. The stamps must be of a design suitable to be affixed to
 4 packages of cigarettes as evidence of the payment of the tax imposed by this chapter. The
 5 assessor may permit a licensed distributor to pay for the stamps within 30 days after the
 6 date of purchase, if a bond satisfactory to the assessor in an amount not less than 50% of
 7 the sale price of the stamps has been filed with the assessor conditioned upon payment for
 8 the stamps. Such a distributor may continue to purchase stamps on a 30-day deferral basis
 9 only if it remains current with its cigarette tax obligations. The assessor may not sell
 10 additional stamps to a distributor that has failed to pay in full within 30 days for stamps
 11 previously purchased until such time as the overdue payment is received. ~~The assessor~~
 12 ~~shall sell cigarette stamps to licensed distributors at the following discounts from their face~~
 13 ~~value:~~

14 D. For stamps at the face value of 100 mills, the discount rate is 1.15%.

15 **Sec. E-5. 36 MRSA §4381** is amended to read:

16 **§4381. Tax credited to General Fund; Fund for a Healthy Maine**

17 The revenue derived from the tax imposed by this chapter shall ~~shall~~ must be credited to the
 18 General Fund of the State, ~~except that the State Controller shall credit 50% of the net tax~~
 19 ~~revenue to the Fund for a Healthy Maine established under Title 22, section 1511 to be~~
 20 ~~segregated into a separate account under Title 22, section 1511, subsection 11, with the use~~
 21 ~~of funds in the account restricted to the purposes described in Title 22, section 1511,~~
 22 ~~subsection 6.~~

23 **Sec. E-6. Appropriations and allocations.** The following appropriations and
 24 allocations are made.

25 **HEALTH AND HUMAN SERVICES, DEPARTMENT OF**
 26 **Maine Center for Disease Control and Prevention 0143**

27 Initiative: Appropriates funds for one Comprehensive Health Planner II position to act as
 28 the Obesity Care Coordinator in the Maine Center for Disease Control and Prevention.

29	GENERAL FUND	2021-22	2022-23
30	POSITIONS - LEGISLATIVE COUNT	1,000	1,000
31	Personal Services	\$89,627	\$92,480
32	All Other	\$6,398	\$6,398
33			
34	GENERAL FUND TOTAL	<u>\$96,025</u>	<u>\$98,878</u>

35 **Maine Center for Disease Control and Prevention 0143**

36 Initiative: Appropriates funds to implement evidence-based programming relating to the
 37 reduction of unhealthy weight and obesity.

38	GENERAL FUND	2021-22	2022-23
39	All Other	\$154,000	\$151,000
40			
41	GENERAL FUND TOTAL	<u>\$154,000</u>	<u>\$151,000</u>

42 **Maine Center for Disease Control and Prevention 0143**

1	Initiative: Appropriates funds for district public health improvement plans.		
2	GENERAL FUND	2021-22	2022-23
3	All Other	\$900,000	\$900,000
4			
5	GENERAL FUND TOTAL	<u>\$900,000</u>	<u>\$900,000</u>
6	Office of Health Equity N365		
7	Initiative: Appropriates funds for one Comprehensive Health Planner II position to act as		
8	the Health Equity Coordinator in the Office of Health Equity.		
9	GENERAL FUND	2021-22	2022-23
10	POSITIONS - LEGISLATIVE COUNT	1.000	1.000
11	Personal Services	\$89,627	\$92,480
12	All Other	\$6,398	\$6,398
13			
14	GENERAL FUND TOTAL	<u>\$96,025</u>	<u>\$98,878</u>
15	Office of Health Equity N365		
16	Initiative: Appropriates funds to implement data collection and reporting in the Office of		
17	Health Equity.		
18	GENERAL FUND	2021-22	2022-23
19	All Other	\$154,000	\$151,000
20			
21	GENERAL FUND TOTAL	<u>\$154,000</u>	<u>\$151,000</u>
22			
23	HEALTH AND HUMAN SERVICES,		
24	DEPARTMENT OF		
25	DEPARTMENT TOTALS	2021-22	2022-23
26			
27	GENERAL FUND	\$1,400,050	\$1,399,756
28			
29	DEPARTMENT TOTAL - ALL FUNDS	<u>\$1,400,050</u>	<u>\$1,399,756</u>
30	Sec. E-7. Effective date. This Part takes effect November 1, 2021.		

31 **SUMMARY**

32 Part A establishes the Trust for a Healthy Maine to receive money paid to the State
33 pursuant to the tobacco settlement and from other sources and to distribute that money to
34 state agencies or designated agents of the State to fund tobacco use prevention and control,
35 ensure adequate resources for other disease prevention efforts, promote public health, plan
36 and deliver public health and prevention programs and services, support accreditation of
37 the Department of Health and Human Services, Maine Center for Disease Control and
38 Prevention and support public health workforce development. The trust is governed by a
39 15-member board of trustees composed of the Director of the Maine Center for Disease
40 Control and Prevention and 14 members appointed by the Governor.

41 Part B establishes the Office of Health Equity within the Department of Health and
42 Human Services. The office is tasked with providing advice to the Commissioner of Health

1 and Human Services, the Governor's Office of Policy Innovation and the Future and other
2 state agencies, the Legislature and the Governor on health systems, policies and practices;
3 providing recommendations to advance health equity in all sectors and settings; producing
4 and updating a state health equity plan; and producing an annual Maine Health Equity
5 Report Card.

6 Part C requires the Department of Education to revise its nutrition, physical activity,
7 screen time and sugary drink standards to increase obesity prevention in early care and
8 education and to revise its school nutrition and physical activity standards to increase
9 obesity prevention in public schools and requires those standards to match those specified
10 by various national organizations and federal agencies.

11 Part D prohibits the sale and distribution of flavored tobacco products, including
12 flavored cigars and electronic smoking devices.

13 Part E increases the tax on cigarettes from 100 mills to 200 mills per cigarette effective
14 November 1, 2021 and eliminates the provision that allows the sale of cigarette stamps to
15 licensed distributors at a discount. The amount of increased revenue from the cigarette tax
16 is credited to the Fund for a Healthy Maine. Part E also provides funding for the health
17 initiatives in the bill.

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Date: (Filing No. H-)

HEALTH AND HUMAN SERVICES

Reproduced and distributed under the direction of the Clerk of the House.

**STATE OF MAINE
HOUSE OF REPRESENTATIVES
130TH LEGISLATURE
SECOND REGULAR SESSION**

COMMITTEE AMENDMENT “ ” to H.P. 1258, L.D. 1693, “An Act To Advance Health Equity, Improve the Well-being of All Maine People and Create a Health Trust”

Amend the bill by striking out the title and substituting the following:

'An Act To Advance Health Equity and Improve the Well-being of All Maine People'

Amend the bill by striking out everything after the enacting clause and inserting the following:

'Sec. 1. 5 MRSA §12004-I, sub-§48-A is enacted to read:

48-A.

<u>Human</u>	<u>Obesity Advisory Council</u>	<u>Expenses/Legislative</u>	<u>22 MRSA</u>
<u>Services</u>		<u>Per Diem for</u>	<u>§1696-J</u>
		<u>Nonsalaried</u>	
		<u>Employee Members</u>	

Sec. 2. 22 MRSA §411, sub-§6-A is enacted to read:

6-A. Health equity. "Health equity" means the attainment of the highest level of health for any social group in this State, regardless of whether a social group is subject to a structural inequity.

Sec. 3. 22 MRSA §411, sub-§10-A is enacted to read:

10-A. Social determinants of health. "Social determinants of health" means the conditions in which people are born, grow, live, work and age, as well as the social structures and economic systems that shape these conditions, including the social environment, physical environment and health services.

Sec. 4. 22 MRSA §411, sub-§10-B is enacted to read:

10-B. Social group. "Social group" means a group of people in this State that share similar social, economic, demographic, geographic or other characteristics, including, but

COMMITTEE AMENDMENT

1 not limited to, race, ethnicity, gender, gender identity, sexual orientation, class, zip code,
2 age or disability.

3 **Sec. 5. 22 MRSA §411, sub-§11-A** is enacted to read:

4 **11-A. Structural inequity.** "Structural inequity" means the systemic disadvantage of
5 one social group in the State compared to other social groups in the State as a result of law,
6 policy, culture or other social structure, including, but not limited to, poverty,
7 discrimination, powerlessness or access to job opportunities, quality education, housing or
8 health care.

9 **Sec. 6. 22 MRSA §414** is enacted to read:

10 **§414. Office of Population Health Equity**

11 **1. Office established.** The Office of Population Health Equity is established within
12 the department. The office is staffed by at least one full-time employee.

13 **2. Purpose.** The Office of Population Health Equity shall:

14 **A.** Upon request, advise the commissioner, the Office of Policy Innovation and the
15 Future and other state agencies, the Legislature and the Governor on health systems,
16 policies and practices, including intradepartmental and interdepartmental training;

17 **B.** Provide recommendations to the public and State Government and private and
18 philanthropic partners to advance health equity in all sectors and settings;

19 **C.** Produce and update a state health equity plan to:

20 **(1)** Create systems, policies and practices to achieve health equity in all policies
21 across State Government, including robust surveillance and evaluation; and

22 **(2)** Establish policies to ensure all state contractors and vendors have a health
23 equity plan in place as a criteria for funding; and

24 **D.** Produce an annual report, known as the Maine Health Equity Report Card, that
25 includes information regarding health programs and services, outcomes and social
26 determinants of health.

27 **Sec. 7. 22 MRSA c. 271, sub-c. 5** is enacted to read:

28 **SUBCHAPTER 5**

29 **OBESITY ADVISORY COUNCIL**

30 **§1696-J. Obesity Advisory Council**

31 **1. Obesity Advisory Council established.** The Obesity Advisory Council, referred to
32 in this subchapter as "the advisory council," is established under Title 5, section 12004-I,
33 subsection 48-A to review programs relating to the reduction of unhealthy weight and
34 obesity. The advisory council shall provide advice to the department in carrying out its
35 duties under this section and ensure coordination of the program with relevant nonprofit
36 and community agencies and the Department of Education and other relevant state
37 agencies.

38 **2. Membership.** The advisory council consists of 9 members appointed as follows:

- 1 A. Two public health officials, appointed by the Governor;
- 2 B. Two representatives of nonprofit organizations involved in seeking to reduce
- 3 unhealthy weight and obesity, with one representative appointed by the President of
- 4 the Senate and one representative appointed by the Speaker of the House of
- 5 Representatives;
- 6 C. A person who designs and implements issue-oriented public health media
- 7 campaigns, appointed by the Governor;
- 8 D. Two persons involved in designing and implementing community-based education
- 9 programs for the prevention of unhealthy weight and obesity, one to focus on adults,
- 10 appointed by the President of the Senate, and one to focus on youth, appointed by the
- 11 Speaker of the House of Representatives; and
- 12 E. Two members of the public, appointed jointly by the President of the Senate and the
- 13 Speaker of the House of Representatives in consultation with the minority leaders of
- 14 the Senate and the House.

15 **3. Appointments.** Members serve for 3-year terms and may be reappointed. The

16 appointing authority shall fill a vacancy on the advisory council for the remainder of the

17 vacant term.

18 **4. Chair.** The advisory council shall choose a chair from among its members and

19 establish its procedure for reaching decisions.

20 **5. Quorum.** A quorum is 5 members of the advisory council.

21 **6. Staff assistance.** The department shall provide staff assistance to the advisory

22 council.

23 **7. Compensation.** Each member of the advisory council who is not a salaried

24 employee is entitled to compensation as provided in Title 5, section 12004-I, subsection

25 48-A following approval of expenses by the commissioner.

26 **Sec. 8. Obesity Advisory Council initial membership.** Initial appointments to

27 the Obesity Advisory Council established under the Maine Revised Statutes, Title 5,

28 section 12004-I, subsection 48-A must be made by October 1, 2022. Notwithstanding Title

29 22, section 1696-J, subsection 3, of the initial appointments, 5 members must be appointed

30 for 2-year terms and 4 members for 3-year terms. When the appointment of all members

31 is complete, the Governor or the Governor's designee shall convene the first meeting of the

32 advisory council no later than November 1, 2022.

33 **Sec. 9. Obesity prevention standards in early care and education.** The

34 Department of Education and the Department of Health and Human Services shall adopt

35 rules to revise their nutrition, physical activity, screen time and sugary drink standards to

36 increase obesity prevention in early care and education in accordance with this section.

37 1. Early care and education nutrition standards must be consistent with the meal

38 patterns of the most recent version of the United States Department of Agriculture, Food

39 and Nutrition Service standards for the child and adult care food program established in 42

40 United States Code, Section 1766.

41 2. Physical activity standards must be consistent with the standards in the most recent

42 version of the publication "Caring for Our Children" developed as part of a collaboration

COMMITTEE AMENDMENT

1 between the American Academy of Pediatrics, the American Public Health Association and
2 the National Resource Center for Health and Safety in Child Care and Early Education.

3 3. Screen time standards must be consistent with the standards in the most recent
4 version of the publication "Caring for Our Children" developed as part of a collaboration
5 between the American Academy of Pediatrics, the American Public Health Association and
6 the National Resource Center for Health and Safety in Child Care and Early Education.

7 4. Sugary drink standards must be consistent with the standards in the publication
8 "Consensus Statement. Healthy Beverage Consumption in Early Childhood:
9 Recommendations from Key National Health and Nutrition Organizations" dated
10 September 2019.

11 Rules adopted pursuant to this section are routine technical rules as defined in the
12 Maine Revised Statutes, Title 5, chapter 375, subchapter 2-A.

13 **Sec. 10. Obesity prevention standards in public schools.** The Department of
14 Education shall adopt rules to revise its school nutrition and physical activity standards to
15 increase obesity prevention in public schools in accordance with this section.

16 1. School nutrition standards must:

17 A. Require, at a minimum, the standards established by the United States Department
18 of Agriculture in its final rule "National School Lunch Program and School Breakfast
19 Program: Nutrition Standards for All Foods Sold in School as Required by the Healthy,
20 Hunger-Free Kids Act of 2010";

21 B. Require, at a minimum, the standards established in the most recent version of the
22 publication "A Guide to Smart Snacks in School" issued by the United States
23 Department of Agriculture, Food and Nutrition Service for school meals and foods sold
24 or available in schools outside of federally reimbursable school meals programs;

25 C. Require reasonably scheduled meal periods and minimum meal times, in alignment
26 with the standards set by the federal Healthy, Hunger-Free Kids Act of 2010, Public
27 Law 111-296, that ensure sufficient time to eat; and

28 D. Require that all school meals served under the programs described in the Maine
29 Revised Statutes, Title 20-A, section 6602, subsection 1, paragraph C meet standards
30 consistent with those of breakfast and lunch served during the school year.

31 2. Physical activity standards must be consistent with the standards in the most recent
32 version of the publication "Comprehensive School Physical Activity Programs" developed
33 by the United States Department of Health and Human Services, Centers for Disease
34 Control and Prevention in collaboration with SHAPE America.

35 3. Contingent upon state funding, the department shall make all students, regardless
36 of household income, eligible to receive a breakfast and lunch at their public school free of
37 charge. A student in a public school online learning program must be made eligible to
38 receive a breakfast and lunch from the public school free of charge.

39 4. Contingent upon state funding, the department shall develop and provide technical
40 assistance and incentives for public schools to meet nutrition standards more stringent than
41 required under law or rule.

42 5. The department shall require the phasing out of artificial food dyes that cause
43 adverse behavioral effects in children.

1 6. Contingent upon state funding, the department shall provide kitchen equipment
2 grants for upgrades, repairs and maintenance.

3 Rules adopted pursuant to this section are routine technical rules as defined in the
4 Maine Revised Statutes, Title 5, chapter 375, subchapter 2-A.

5 **Sec. 11. Appropriations and allocations.** The following appropriations and
6 allocations are made.

7 **HEALTH AND HUMAN SERVICES, DEPARTMENT OF**
8 **Maine Center for Disease Control and Prevention 0143**

9 Initiative: Appropriates funds for one Comprehensive Health Planner II position to act as
10 the Obesity Coordinator in the Maine Center for Disease Control and Prevention.

11	GENERAL FUND	2021-22	2022-23
12	POSITIONS - LEGISLATIVE COUNT	0.000	1.000
13	Personal Services	\$0	\$97,692
14	All Other	\$0	\$6,537
15			
16	GENERAL FUND TOTAL	\$0	\$104,229

17 **Maine Center for Disease Control and Prevention 0143**

18 Initiative: Appropriates funds to implement evidence-based programming relating to the
19 reduction of unhealthy weight and obesity.

20	GENERAL FUND	2021-22	2022-23
21	All Other	\$0	\$151,000
22			
23	GENERAL FUND TOTAL	\$0	\$151,000

24 **Maine Center for Disease Control and Prevention 0143**

25 Initiative: Appropriates funds for district public health improvement plans.

26	GENERAL FUND	2021-22	2022-23
27	All Other	\$0	\$900,000
28			
29	GENERAL FUND TOTAL	\$0	\$900,000

30 **Office of Population Health Equity N365**

31 Initiative: Appropriates funds for one Public Service Manager II position to act as the
32 Health Equity Coordinator in the Office of Population Health Equity.

33	GENERAL FUND	2021-22	2022-23
34	POSITIONS - LEGISLATIVE COUNT	0.000	1.000
35	Personal Services	\$0	\$125,981
36	All Other	\$0	\$6,537
37			
38	GENERAL FUND TOTAL	\$0	\$132,518

39 **Office of Population Health Equity N365**

40 Initiative: Appropriates funds to implement data collection and reporting in the Office of
41 Population Health Equity.

1	GENERAL FUND	2021-22	2022-23
2	All Other	\$0	\$151,000
3			
4	GENERAL FUND TOTAL	<u>\$0</u>	<u>\$151,000</u>
5			
6	HEALTH AND HUMAN SERVICES,		
7	DEPARTMENT OF		
8	DEPARTMENT TOTALS	2021-22	2022-23
9			
10	GENERAL FUND	\$0	\$1,438,747
11			
12	DEPARTMENT TOTAL - ALL FUNDS	<u>\$0</u>	<u>\$1,438,747</u>

14 Amend the bill by relettering or renumbering any nonconsecutive Part letter or section
 15 number to read consecutively.

16 **SUMMARY**

17 This amendment:

- 18 1. Removes from the bill the provision establishing the Trust for a Healthy Maine and
 19 the Trust for a Healthy Maine Board;
- 20 2. Changes the name of the proposed Office of Health Equity to the Office of
 21 Population Health Equity;
- 22 3. Retains the definitions of "health equity," "social determinants of health," "social
 23 group" and "structural inequity" but applies them to the laws governing public health
 24 infrastructure, including the Office of Population Health Equity;
- 25 4. Creates the Obesity Advisory Council within the Department of Health and Human
 26 Services;
- 27 5. Removes from the bill the provision banning the sale of flavored tobacco products;
- 28 6. Removes from the bill the provision that increases the cigarette tax; and
- 29 7. Retains the standards regarding obesity prevention in early child care and education
 30 settings and in public schools.

31 **FISCAL NOTE REQUIRED**

32 (See attached)

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Date: (Filing No. S-)

Reproduced and distributed under the direction of the Secretary of the Senate.

**STATE OF MAINE
SENATE
130TH LEGISLATURE
SECOND REGULAR SESSION**

SENATE AMENDMENT “ ” to COMMITTEE AMENDMENT “A” to H.P. 1258, L.D. 1693, “An Act To Advance Health Equity, Improve the Well-being of All Maine People and Create a Health Trust”

Amend the amendment by striking out all of sections 1, 7, 8 and 10.

Amend the amendment by relettering or renumbering any nonconsecutive Part letter or section number to read consecutively.

SUMMARY

This amendment removes from Committee Amendment "A" the provisions that create the Obesity Advisory Council and that require the Department of Education to adopt rules regarding certain obesity prevention standards for public schools.

SPONSORED BY: _____

(Senator CLAXTON, N.)

COUNTY: Androscoggin

SENATE AMENDMENT

LD 1523 v. LD 1693

Provision	LD 1523	LD 1693
Trust for a Healthy Maine Board Est.	22 MRSA c. 260-A, sub-c.1 (pg 1 lines 2 - 4)	22 MRSA c. 260-A, sub-c.1 (pg 1 lines 3 - 5)
Dissolution language – providing that if trust dissolved or repealed, all settlement money and money remaining in trust reverts to FHM	22 MRSA §1511, sub-§2 (pg 1 lines 10 - 22)	22 MRSA §1511, sub-§2 (pg 1 lines 12 - 24)
Trust for a Healthy Maine – Definitions	22 MRSA §1514 pg 1 line 27 – pg 3 line 15	22 MRSA §1514 (pg 1 line 29 – pg 3 line 18)
Trust for a Healthy Maine – Board purposes	22 MRSA §1515, sub §1 (pg 3 lines 17 – 27)	22 MRSA §1515, sub §1 (pg 3 lines 20 - 30)
Trust for a Healthy Maine – Board governance	22 MRSA §1515, sub §2 (pg 3 lines 28 – 30)	22 MRSA §1515, sub §2 (pg 3 lines 31 - 33)
Trust for a Healthy Maine – Trustee appointment	22 MRSA §1515, sub §3 (pg 3 line 31 – pg 5 line 16)	22 MRSA §1515, sub §3 (pg 3 line 34 – pg 5 line 18)
Trust for a Healthy Maine – Trustee terms and vacancies	22 MRSA §1515, sub §4 (pg 5 lines 17 – 22)	22 MRSA §1515, sub §4 (pg 5 lines 19 – 24)
Trust for a Healthy Maine – Chair and officers	22 MRSA §1515, sub §5 (pg 5 lines 23 – 26)	22 MRSA §1515, sub §5 (pg 5 line 25 – pg 5 line 27)
Trust for a Healthy Maine – Meetings and quorum	22 MRSA §1515, sub §6 (pg 5 lines 26 – 31)	22 MRSA §1515, sub §6 (pg 5 lines 28 - 33)
Trust for a Healthy Maine – Election of subcommittees	22 MRSA §1515, sub §7 (pg 5 lines 32 - 34)	22 MRSA §1515, sub §7 (pg 5 lines 34 - 36)
Trust for a Healthy Maine – Liaison to legislature	22 MRSA §1515, sub §8 (pg 5 lines 35 - 36)	22 MRSA §1515, sub §8 (pg 5 lines 37 - 38)
Trust for a Healthy Maine – Advisory groups	22 MRSA §1515, sub §9 (pg 5 lines 37 - 40)	22 MRSA §1515, sub §9 (pg 5 lines 39 - 42)
Trust for a Healthy Maine – Trustee removal	22 MRSA §1515, sub §10 (pg 5 lines 41 - 42)	22 MRSA §1515, sub §10 (pg 6 lines 1 - 2)
Trust for a Healthy Maine – Expenses and reimbursement	22 MRSA §1515, sub §11 (pg 6 lines 1 - 3)	22 MRSA §1515, sub §11 (pg 6 lines 3 - 5)
Trust for a Healthy Maine – Fiduciary duties	22 MRSA §1515, sub §12 (pg 6 lines 4 - 8)	22 MRSA §1515, sub §12 (pg 6 lines 6 - 10)
Trust for a Healthy Maine – Conflict of interest	22 MRSA §1515, sub §13 (pg 6 lines 9 - 19)	22 MRSA §1515, sub §13 (pg 6 lines 11 - 21)
Trust for a Healthy Maine – Powers and duties	22 MRSA §1516 (pg 6 lines 20 - 41)	22 MRSA §1516 (pg 6 line 22 – pg 7 line 2)
Trust for a Healthy Maine – Funding disbursement plan	22 MRSA §1517, sub §1 (pg 7 line 2 – 6)	22 MRSA §1517, sub §1 (pg 7 line 3 – 8)
Trust for a Healthy Maine – Input from interested parties	22 MRSA §1517, sub §2 (pg 7 line 7 – 18)	22 MRSA §1517, sub §2 (pg 7 line 9 – 20)
Trust for a Healthy Maine – Funding disbursement plans	22 MRSA §1517, sub §3 (pg 7 line 19 – 27)	22 MRSA §1517, sub §3 (pg 7 line 29)

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Trust for a Healthy Maine – Designated disbursements

4. Designated disbursements. Each funding disbursement plan approved by the board must disburse funds in accordance with the following designated disbursements:

A. An amount that, when combined with amounts from other funding sources received by the Department of Health and Human Services, Maine Center for Disease Control and Prevention, yields a total amount available for purposes of providing evidence-based tobacco prevention and control programs in the State that is in accordance with the following:

(1) Beginning in fiscal year 2023-24, at least 0.70 of the level recommended by the United States Department of Health and Human Services, Centers for Disease Control and Prevention must be disbursed to the Department of Health and Human Services, Maine Center for Disease Control and Prevention or its designated agent; and

(2) Beginning in fiscal year 2024-25 and in subsequent years, at least the level recommended by the United States Department of Health and Human Services, Centers for Disease Control and Prevention must be disbursed to the Department of Health and Human Services, Maine Center for Disease Control and Prevention or its designated agent;

22 MRSA §1517, sub §4 (pg 7 line 28 – pg 8 line 24)

4. Designated disbursements. Each funding disbursement plan approved by the board must disburse funds in accordance with the following designated disbursements:

A. An amount of the settlement funds received in the previous fiscal year must be disbursed to the Department of Health and Human Services, Maine Center for Disease Control and Prevention or its designated agent for purposes of providing evidence-based tobacco prevention and control programs in the State in accordance with the following:

(1) For fiscal year 2023-24, an amount that is at least 0.70 of the level recommended by the United States Department of Health and Human Services, Centers for Disease Control and Prevention; and

(2) For fiscal year 2024-25 and in subsequent fiscal years, an amount that when combined with amounts from other funding sources received by the Department of Health and Human Services, Maine Center for Disease Control and Prevention yields a total amount that is at least the level recommended by the United States Department of Health and Human Services, Centers for Disease Control and Prevention;

22 MRSA §1517, sub §4 (pg 7 line 30 – pg 8 line 24)

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Trust for a Healthy Maine – Health equity and health improvement account	22 MRSA §1517, sub §5 (pg 8 line 25 – pg 9 line 22)	22 MRSA §1517, sub §5 (pg 8 line 27 – pg 9 line 25)
Trust for a Healthy Maine – Internal stabilization account	22 MRSA §1517, sub §6 (pg 9 lines 23 – 31)	22 MRSA §1517, sub §6 (pg 9 lines 26 – 34)
Trust for a Healthy Maine – Internal flexible account	22 MRSA §1517, sub §7 (pg 9 lines 32 – 40)	22 MRSA §1571, sub §7 (pg 9 lines 35 – 43)
Trust for a Healthy Maine – Copies of funding plans	22 MRSA §1517, sub §8 (pg 9 line 41 – pg 10 line 2)	22 MRSA §1517, sub §8 (pg 9 line 44 – pg 10 line 4)
Trust for a Healthy Maine – Report	22 MRSA §1517, sub §9 (pg 10 lines 3 - 15)	22 MRSA §1517, sub §9 (pg 10 lines 5 - 17)
Trust for a Healthy Maine – Audit	22 MRSA §1517, sub §10 (pg 10 lines 16 - 18)	22 MRSA §1517, sub §10 (pg 10 lines 18 - 20)
Trust for a Healthy Maine – Restrictions and construction	22 MRSA §1518 (pg 10 lines 19 - 24)	22 MRSA §1518 (pg 10 lines 21 - 26)
Trust for a Healthy Maine – Administration fund	22 MRSA §1519, sub §1 (pg 10 lines 26 - 38)	22 MRSA §1519, sub § (pg 10 lines 28 - 40)
Trust for a Healthy Maine – Coordinator	22 MRSA §1519, sub §2 (pg 10 line 39 – pg 11 line 4)	22 MRSA §1519, sub §2 (pg 10 line 41 – pg 11 line 6)
Trust for a Healthy Maine – Bylaws	22 MRSA §1519, sub §3 (pg 11 lines 5 – 6)	22 MRSA §1519, sub §3 (pg 11 lines 7 – 8)
Trust for a Healthy Maine – Coordination	22 MRSA §1519, sub §4 (pg 11 lines 7 – 16)	22 MRSA §1519, sub §4 (pg 11 lines 9 – 18)
Trust for a Healthy Maine – Recommendations	22 MRSA §1519, sub §5 (pg 11 lines 17 – 19)	22 MRSA §1519, sub §5 (pg 11 lines 19 – 21)
Trust for a Healthy Maine – Rulemaking	22 MRSA §1520 (pg 11 lines 20 – 24)	22 MRSA §1520 (pg 11 lines 22 – 26)
Trust for a Healthy Maine – Legislative oversight	22 MRSA §1520-A (pg 11 lines 25 – 27)	22 MRSA §1520-A (pg 11 lines 27 – 29)
Trust for a Healthy Maine – Construction by court	22 MRSA §1520-B (pg 11 lines 28 – 30)	22 MRSA §1520-B (pg 11 lines 30 – 32)
Trust for a Healthy Maine – Freedom of access and confidentiality	22 MRSA §1520-C (pg 11 lines 31 – 33)	22 MRSA §1520-C (pg 11 lines 33 – 35)
Trust for a Healthy Maine – Bond	22 MRSA §1520-D, sub §1 (pg 11 lines 31 – 33)	22 MRSA §1520-D, sub §1 (pg 11 lines 37 – 42)
Trust for a Healthy Maine – Indemnification	22 MRSA §1520-D, sub §2 (pg 11 line 41 – pg 12 line 3)	22 MRSA §1520-D, sub §2 (pg 12 line 3 1 – 5)
Trust for a Healthy Maine Fund – Establishment	22 MRSA §1520-E, sub §1 (pg 12 lines 5 – 7)	22 MRSA §1520-E, sub §1 (pg 12 lines 7 – 9)
Trust for a Healthy Maine Fund – Tobacco settlement funds	22 MRSA §1520-E, sub §2 (pg 12 lines 8 – 10)	22 MRSA §1520-E, sub §2 (pg 12 lines 10 – 12)

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Trust for a Healthy Maine Fund – Fund administration	22 MRSA §1520-E, sub §3 (pg 12 lines 11 – 25)	22 MRSA §1520-E, sub §3 (pg 12 lines 13 – 27)
Trust for a Healthy Maine Fund – Working capital advance	22 MRSA §1520-E, sub §4 (pg 12 lines 26 – 29)	22 MRSA §1520-E, sub §4 (pg 12 lines 28 – 31)
Trust for a Healthy Maine Fund – Transfer of funds upon trust repeal or dissolution	22 MRSA §1520-E, sub §5 (pg 12 lines 30 – 32)	22 MRSA §1520-E, sub §5 (pg 12 lines 32 – 34)
Staggered terms	Sec. 5 (pg 12 lines 33 – 37)	Sec. A-5 (pg 12 lines 35 – 39)
Initial Appointments	Sec. 6 (pg 12 line 38 – pg 13 line 2)	Sec. A-6 (pg 12 line 40 – pg 13 line 3)
Transfer from Fund for a Healthy Maine	Sec. 7 (pg 13 lines 3 – 7)	Sec. A-7 (pg 13 lines 4 – 8)
Office of Health Equity	N/A	22 MRSA §414 (pg 13 lines 11 – 30)
Obesity prevention in early care and education	N/A	Sec. C-1 (pg 13 line 32 – pg 14 line 12)
Obesity prevention in public schools	N/A	Sec. C-2 (pg 12 line 14 – pg 15 line 6)
Electronic smoking device defined	N/A	22 MRSA §1551, sub §1-D (pg 15 lines 8 – 19)
Flavored tobacco product defined	N/A	22 MRSA §1551, sub §1-E (pg 15 lines 20 – 26)
Prohibition of flavored tobacco products	N/A	22 MRSA §1560-E, sub §1 (pg 15 line 31 – pg 16 line 2)
Violation – sale of flavored tobacco products	N/A	22 MRSA §1560-E, sub §2 (pg 15 lines 3-4)
Fines for violations, sale of tobacco products	N/A	22 MRSA §1560-E, sub §3 (pg 16 lines 6-11)
Tax of tobacco products - Cigarette tax rate	N/A	36 MRSA §4365 (pg 16 lines 15 - 18)
Tax of tobacco products - Stamped rate	N/A	36 MRSA §4365-G, sub §1 (pg 16 lines 24 – 25)
Tax of tobacco products - Liability	N/A	36 MRSA §4365-G, sub §2 (pg 16 lines 24 – 25)
Tax of tobacco products - Tobacco vending machines	N/A	36 MRSA §4365-G, sub §3 (pg 16 lines 31 – 35)
Tax of tobacco products - payment	N/A	36 MRSA §4365-G, sub §4 (pg 16 lines 36 – 37)
Tax of tobacco products - discount	N/A	36 MRSA §4366-A, sub §2 (pg 17 lines 1 – 14)
Tax of tobacco products – tax credited to fund	N/A	36 MRSA §4381 (pg 17 lines 16 – 22)

§1580-G. Findings and purpose

Cigarette smoking presents serious public health concerns to the State and to the citizens of the State. The Surgeon General has determined that smoking causes lung cancer, heart disease and other serious diseases, and that there are hundreds of thousands of tobacco-related deaths in the United States each year. These diseases most often do not appear until many years after the person in question begins smoking. [PL 1999, c. 401, Pt. U, §1 (NEW); PL 1999, c. 401, Pt. U, §2 (AFF).]

Cigarette smoking also presents serious financial concerns for the State. Under certain health-care programs, the State may have a legal obligation to provide medical assistance to eligible persons for health conditions associated with cigarette smoking, and those persons may have a legal entitlement to receive such medical assistance. [PL 1999, c. 401, Pt. U, §1 (NEW); PL 1999, c. 401, Pt. U, §2 (AFF).]

Under these programs, the State pays millions of dollars each year to provide medical assistance for these persons for health conditions associated with cigarette smoking. [PL 1999, c. 401, Pt. U, §1 (NEW); PL 1999, c. 401, Pt. U, §2 (AFF).]

It is the policy of the State that financial burdens imposed on the State by cigarette smoking be borne by tobacco product manufacturers rather than by the State to the extent that such manufacturers either determine to enter into a settlement with the State or are found culpable by the courts. [PL 1999, c. 401, Pt. U, §1 (NEW); PL 1999, c. 401, Pt. U, §2 (AFF).]

On November 23, 1998, leading United States tobacco product manufacturers entered into a settlement agreement, entitled the "Master Settlement Agreement," with the State. The Master Settlement Agreement obligates these manufacturers, in return for a release of past, present and certain future claims against them as described therein, to pay substantial sums to the State (tied in part to their volume of sales); to fund a national foundation devoted to the interest of public health; and to make substantial changes in their advertising and marketing practices and corporate culture, with the intention of reducing underage smoking. [PL 1999, c. 401, Pt. U, §1 (NEW); PL 1999, c. 401, Pt. U, §2 (AFF).]

It would be contrary to the policy of the State if tobacco product manufacturers who determine not to enter into such a settlement could use a resulting cost advantage to derive large, short-term profits in the years before liability may arise without ensuring that the State will have an eventual source of recovery from them if they are proven to have acted culpably. It is thus in the interest of the State to require that such manufacturers establish a reserve fund to guarantee a source of compensation and to prevent such manufacturers from deriving large, short-term profits and then becoming judgment-proof before liability may arise. [PL 1999, c. 401, Pt. U, §1 (NEW); PL 1999, c. 401, Pt. U, §2 (AFF).]

SECTION HISTORY

PL 1999, c. 401, §U1 (NEW). PL 1999, c. 401, §U2 (AFF).

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§1580-H. Definitions

1. "Adjusted for inflation" means increased in accordance with the formula for inflation adjustment set forth in Exhibit C to the Master Settlement Agreement.

[PL 1999, c. 401, Pt. U, §1 (NEW); PL 1999, c. 401, Pt. U, §2 (AFF).]

2. "Affiliate" means a person who directly or indirectly owns or controls, is owned or controlled by, or is under common ownership or control with, another person. Solely for purposes of this definition, the terms "owns," "is owned" and "ownership" mean ownership of an equity interest, or the equivalent thereof, of ten percent or more, and the term "person" means an individual, partnership, committee, association, corporation or any other organization or group of persons.

[PL 1999, c. 401, Pt. U, §1 (NEW); PL 1999, c. 401, Pt. U, §2 (AFF).]

3. "Allocable share" means allocable share as that term is defined in the Master Settlement Agreement.

[PL 1999, c. 401, Pt. U, §1 (NEW); PL 1999, c. 401, Pt. U, §2 (AFF).]

4. "Cigarette" means any product that contains nicotine, is intended to be burned or heated under ordinary conditions of use, and consists of or contains

A. any roll of tobacco wrapped in paper or in any substance not containing tobacco; or [PL 1999, c. 401, Pt. U, §1 (NEW); PL 1999, c. 401, Pt. U, §2 (AFF).]

B. tobacco, in any form, that is functional in the product, which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette; or [PL 1999, c. 401, Pt. U, §1 (NEW); PL 1999, c. 401, Pt. U, §2 (AFF).]

C. any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in paragraph A of this definition. The term "cigarette" includes "roll-your-own" (i.e., any tobacco which, because of its appearance, type, packaging, or labeling is suitable for use and likely to be offered to, or purchased by, consumers as tobacco for making cigarettes). For purposes of this definition of "cigarette," 0.09 ounces of "roll-your-own" tobacco shall constitute one individual "cigarette." [PL 1999, c. 401, Pt. U, §1 (NEW); PL 1999, c. 401, Pt. U, §2 (AFF).]

[PL 1999, c. 401, Pt. U, §1 (NEW); PL 1999, c. 401, Pt. U, §2 (AFF).]

5. "Master Settlement Agreement" means the settlement agreement (and related documents) entered into on November 23, 1998 by the State and the leading United States tobacco product manufacturers, docketed by the Superior Court on December 9, 1998, in State of Maine v. Philip Morris, et al., Kennebec County Superior Court, Docket No. CV-97-134.

[PL 1999, c. 401, Pt. U, §1 (NEW); PL 1999, c. 401, Pt. U, §2 (AFF).]

6. "Qualified escrow fund" means an escrow arrangement with a federally or State chartered financial institution having no affiliation with any tobacco product manufacturer and having assets of at least \$1,000,000,000 where such arrangement requires that such financial institution hold the escrowed funds' principal for the benefit of releasing parties and prohibits the tobacco product manufacturer placing the funds into escrow from using, accessing or directing the use of the funds' principal except as consistent with section 1580-I, subsection 2, paragraph A of this Act.

[PL 1999, c. 401, Pt. U, §1 (NEW); PL 1999, c. 401, Pt. U, §2 (AFF).]

7. "Released claims" means Released Claims as that term is defined in the Master Settlement Agreement.

[PL 1999, c. 401, Pt. U, §1 (NEW); PL 1999, c. 401, Pt. U, §2 (AFF).]

8. "Releasing parties" means releasing parties as that term is defined in the Master Settlement Agreement.

[PL 1999, c. 401, Pt. U, §1 (NEW); PL 1999, c. 401, Pt. U, §2 (AFF).]

9. "Tobacco Product Manufacturer" means an entity that after the date of enactment of this Act directly (and not exclusively through any affiliate):

A. manufactures cigarettes anywhere that such manufacturer intends to be sold in the United States, including cigarettes intended to be sold in the United States through an importer (except where such importer is an original participating manufacturer (as that term is defined in the Master Settlement Agreement) that will be responsible for the payments under the Master Settlement Agreement with respect to such cigarettes as a result of the provisions of subsection II(mm) of the Master Settlement Agreement and that pays the taxes specified in subsection II(z) of the Master Settlement Agreement, and provided that the manufacturer of such cigarettes does not market or advertise such cigarettes in the United States); [PL 1999, c. 401, Pt. U, §1 (NEW); PL 1999, c. 401, Pt. U, §2 (AFF).]

B. is the first purchaser anywhere for the resale in the United States of cigarettes manufactured anywhere that the manufacturer does not intend to be sold in the United States; or [PL 1999, c. 401, Pt. U, §1 (NEW); PL 1999, c. 401, Pt. U, §2 (AFF).]

C. becomes a successor of an entity described in paragraph A or B. [PL 1999, c. 401, Pt. U, §1 (NEW); PL 1999, c. 401, Pt. U, §2 (AFF).]

The term "tobacco product manufacturer" shall not include an affiliate of a tobacco product manufacturer unless such affiliate itself falls within any of paragraphs A to C above. [PL 1999, c. 401, Pt. U, §1 (NEW); PL 1999, c. 401, Pt. U, §2 (AFF).]

10. "Units sold" means the number of individual cigarettes sold in the State by the applicable tobacco product manufacturer (whether directly or through a distributor, retailer or similar intermediary or intermediaries) during the year in question, as measured by excise taxes collected by the State on packs bearing the excise tax stamp of the State or "roll-your-own" tobacco containers. The Attorney General may adopt rules as are necessary to obtain information from any tobacco product retailer, distributor or manufacturer to ascertain the amount of state excise tax paid on tobacco products of each tobacco product manufacturer for each year. Rules established pursuant to this section are routine technical rules, as provided in Title 5, chapter 375, subchapter 2-A. Notwithstanding any other provision of law, the Bureau of Revenue Services may provide information to the Attorney General as is necessary for a tobacco product manufacturer to compile its escrow payment hereunder. In addition, the Attorney General may subpoena the records of any tobacco product retailer, distributor or manufacturer to enforce this Act.

[PL 2003, c. 435, §1 (AMD).]

SECTION HISTORY

PL 1999, c. 401, §U1 (NEW). PL 1999, c. 401, §U2 (AFF). PL 2003, c. 435, §1 (AMD).

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§1580-I. Requirements**(CONTAINS TEXT WITH VARYING EFFECTIVE DATES)**

Any tobacco product manufacturer selling cigarettes to consumers within the State (whether directly or through a distributor, retailer or similar intermediary or intermediaries) after the date of enactment of this Act shall do one of the following: [PL 1999, c. 401, Pt. U, §1 (NEW); PL 1999, c. 401, Pt. U, §2 (AFF).]

1. Become a participating manufacturer (as that term is defined in section II(jj) of the Master Settlement Agreement) and generally perform its financial obligations under the Master Settlement Agreement; or

[PL 1999, c. 401, Pt. U, §1 (NEW); PL 1999, c. 401, Pt. U, §2 (AFF).]

2. place into a qualified escrow fund by April 15 of the year following the year in question the following amounts (as such amounts are adjusted for inflation) --

1999: \$.0094241 per unit sold after the date of enactment of this Act.

2000: \$.0104712 per unit sold.

For each of 2001 and 2002: \$.0136125 per unit sold.

For each of 2003 through 2006: \$.0167539 per unit sold.

For each of 2007 and each year thereafter: \$.0188482 per unit sold.

A. A tobacco product manufacturer that places funds into escrow pursuant to this subsection shall receive the interest or other appreciation on such funds as earned. Such funds themselves must be released from escrow only under the following circumstances:

(1) to pay a judgment or settlement on any released claim brought against such tobacco product manufacturer by the State or any releasing party located or residing in the State. Funds must be released from escrow under this subparagraph:

(a) in the order in which they were placed into escrow; and

(b) only to the extent and at the time necessary to make payments required under such judgment or settlement;

(2) **(TEXT REPEALED ON CONTINGENCY: If court of competent jurisdiction holds that subparagraph (2) is unconstitutional)** to the extent that a tobacco product manufacturer establishes that the amount it was required to place into escrow on account of units sold in the State in a particular year was greater than the Master Settlement Agreement payments, as determined pursuant to section IX(i) of that agreement including after final determination of all adjustments, that such manufacturer would have been required to make an account of such units sold had it been a participating manufacturer, the excess must be released from escrow and revert back to such tobacco product manufacturer. If a court of competent jurisdiction holds that this subparagraph is unconstitutional, then this subparagraph is deemed repealed; or

(2-A) **(TEXT EFFECTIVE ON CONTINGENCY: Only if, following repeal of subparagraph (2), court of competent jurisdiction holds that paragraph A is unconstitutional)** to the extent that a tobacco product manufacturer establishes that the amount it was required to place into escrow in a particular year was greater than the State's allocable share of the total payments that such manufacturer would have been required to make in that year under the Master Settlement Agreement (as determined pursuant to section IX(i)(2) of the Master Settlement Agreement, and before any of the adjustments or offsets described in section IX(i)(3) of that Agreement other than the Inflation Adjustment) had it been a participating manufacturer, the excess must be released from escrow and revert back to such tobacco product

manufacturer. This subparagraph takes effect only if, following the repeal of subparagraph (2), as described therein, a court of competent jurisdiction holds that paragraph A is unconstitutional; or

(3) to the extent not released from escrow under subparagraph (1) or (2), funds must be released from escrow and revert back to such tobacco product manufacturer 25 years after the date on which they were placed into escrow. [PL 2003, c. 435, §2 (AMD).]

B. Each tobacco product manufacturer that elects to place funds into escrow pursuant to this subsection shall annually certify to the Attorney General that it is in compliance with this subsection. The Attorney General may bring a civil action on behalf of the State against any tobacco product manufacturer that fails to place into escrow the funds required under this section. Any tobacco product manufacturer that fails in any year to place into escrow the funds required under this section shall --

(1) be required within 15 days to place such funds into escrow as shall bring it into compliance with this section. The court, upon a finding of a violation of this subsection, may impose a civil penalty in an amount not to exceed 5 percent of the amount improperly withheld from escrow per day of the violation and in a total amount not to exceed 100 percent of the original amount improperly withheld from escrow;

(2) in the case of a knowing violation, be required within 15 days to place such funds into escrow as shall bring it into compliance with this section. The court, upon a finding of a knowing violation of this subsection, may impose a civil penalty in an amount not to exceed 15 percent of the amount improperly withheld from escrow per day of the violation and in a total amount not to exceed 300 percent of the original amount improperly withheld from escrow;

(3) in the case of a second knowing violation, be prohibited from selling cigarettes to consumers within the State (whether directly or through a distributor, retailer or similar intermediary) for a period not to exceed 2 years. [PL 1999, c. 401, Pt. U, §1 (NEW); PL 1999, c. 401, Pt. U, §2 (AFF).]

[PL 2003, c. 435, §2 (AMD).]

Each failure to make an annual deposit required under this section shall constitute a separate violation. In addition to the amounts set forth above, the State's costs and attorney's fees shall be paid by the violator. [PL 1999, c. 401, Pt. U, §1 (NEW); PL 1999, c. 401, Pt. U, §2 (AFF).]

SECTION HISTORY

PL 1999, c. 401, §U1 (NEW). PL 1999, c. 401, §U2 (AFF). PL 2003, c. 435, §2 (AMD).

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§1580-L. Tobacco product manufacturer

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Brand family" means all styles of cigarettes sold under the same trademark and differentiated from one another by means of additional modifiers, including, but not limited to, menthol, lights, kings and 100s. "Brand family" includes any brand name alone or in conjunction with any other word, trademark, logo, symbol, motto, selling message, recognizable pattern of colors or any other indicia of product identification identical or similar to or identifiable with a previously known brand of cigarettes. [PL 2003, c. 439, §1 (NEW).]

B. "Cigarette" has the same meaning as in section 1580-H, subsection 4. [PL 2003, c. 439, §1 (NEW).]

C. "Distributor" means a person that is authorized to affix tax stamps to packages or other containers of cigarettes under Title 36, section 4366-A or any person that is required to pay the excise tax imposed on cigarettes, including roll-your-own tobacco, pursuant to Title 36, chapter 703 or chapter 704. [PL 2003, c. 439, §1 (NEW).]

D. "Nonparticipating manufacturer" means any tobacco product manufacturer that is not a participating manufacturer. [PL 2003, c. 439, §1 (NEW).]

E. "Participating manufacturer" means a manufacturer as defined in the Master Settlement Agreement, as that agreement is defined in section 1580-H, subsection 5. [PL 2003, c. 439, §1 (NEW).]

F. "Qualified escrow fund" has the same meaning as in section 1580-H, subsection 6. [PL 2003, c. 439, §1 (NEW).]

G. "Tobacco product manufacturer" has the same meaning as in section 1580-H, subsection 9. "Tobacco product manufacturer" also means a participating manufacturer or a nonparticipating manufacturer. [PL 2003, c. 439, §1 (NEW).]

H. "Units sold" has the same meaning as in section 1580-H, subsection 10. [PL 2003, c. 439, §1 (NEW).]

[PL 2003, c. 439, §1 (NEW).]

2. Certification; participating manufacturer. Every participating manufacturer whose cigarettes are sold in this State, whether directly or through a distributor, retailer or similar intermediary, shall execute and deliver in the manner prescribed by the Attorney General a certification to the Attorney General no earlier than April 15th of each year and no later than April 30th of each year under penalty of perjury that as of the date of certification the tobacco product manufacturer is a participating manufacturer.

A. A participating manufacturer shall include in its certification a list of its brand families. The participating manufacturer shall provide an updated list 30 calendar days prior to any addition to or modification of its brand families and deliver a supplemental certification to the Attorney General. [PL 2003, c. 439, §1 (NEW).]

[PL 2003, c. 439, §1 (NEW).]

3. Certification; nonparticipating manufacturer. Every nonparticipating manufacturer whose cigarettes are sold in this State, whether directly or through a distributor, retailer or similar intermediary, shall execute and deliver in the manner prescribed by the Attorney General a certification to the Attorney General no earlier than April 15th of each year and no later than April 30th of each year under penalty of perjury that as of the date of certification the tobacco product manufacturer is in full compliance with subchapter 3.

A. A nonparticipating manufacturer shall include in its certification a complete list of all of its brand families that:

- (1) Separately lists for each brand family the number of units sold in the State during the preceding calendar year;
- (2) Indicates all of the nonparticipating manufacturer's brand families that have been sold in the State at any time during the current calendar year;
- (3) Indicates by an asterisk any brand family sold in the State during the preceding calendar year that is no longer being sold in the State as of the date of certification; and
- (4) Identifies by name and address any other manufacturer of the brand families in the preceding or current calendar year.

The nonparticipating manufacturer shall provide an updated list to the Attorney General 30 days prior to any addition to or modification of its brand families and deliver a supplemental certification to the Attorney General. [PL 2003, c. 439, §1 (NEW).]

B. In addition to submitting the lists required in paragraph A, a nonparticipating manufacturer shall also state in its certification that:

- (1) The nonparticipating manufacturer is registered to do business in the State or has appointed a resident agent for service of process and provided notice of the registration as required under subsection 8;
- (2) The nonparticipating manufacturer has:
 - (a) Established and continues to maintain a qualified escrow fund pursuant to section 1580-I; and
 - (b) Executed an escrow agreement, reviewed and approved by the Attorney General, that governs the qualified escrow fund;
- (3) The nonparticipating manufacturer is in full compliance with subchapter 3 and any rules adopted pursuant to this section and subchapter 3;
- (4) The name, address and telephone number of the financial institution where the nonparticipating manufacturer has established the qualified escrow fund required under section 1580-I;
- (5) The account number of the qualified escrow fund and the subaccount number for the State;
- (6) The amount the nonparticipating manufacturer placed in the qualified escrow fund for cigarettes sold in the State during the preceding calendar year, the date and amount of each deposit and evidence or verification as may be determined necessary by the Attorney General to confirm the amount; and
- (7) The amount and date of any withdrawal or transfer of funds the nonparticipating manufacturer made at any time from the qualified escrow fund or from any other qualified escrow fund into which the nonparticipating manufacturer has made escrow payments. [PL 2003, c. 439, §1 (NEW).]

[PL 2003, c. 439, §1 (NEW).]

4. Tobacco product manufacturer; brand family. A tobacco product manufacturer may not include a brand family in its certification unless:

A. In the case of a participating manufacturer, the participating manufacturer affirms that the brand family is deemed to be the participating manufacturer's cigarettes for purposes of calculating its payments under the Master Settlement Agreement for the relevant year, in the volume and shares determined pursuant to the Master Settlement Agreement; and [PL 2003, c. 439, §1 (NEW).]

B. In the case of a nonparticipating manufacturer, the nonparticipating manufacturer affirms that the brand family is deemed to be the nonparticipating manufacturer's cigarettes for purposes of subchapter 3.

Nothing in this subsection may be construed as limiting or otherwise affecting the State's right to maintain that a brand family constitutes cigarettes of a different tobacco product manufacturer for purposes of calculating payments under the Master Settlement Agreement or for purposes of subchapter 3. [PL 2003, c. 439, §1 (NEW).]

[PL 2003, c. 439, §1 (NEW).]

5. Maintain invoices. A tobacco product manufacturer of any cigarettes sold in this State shall maintain all invoices and documentation of sales and other information relied upon for certification for a period of 5 years unless otherwise required by law to maintain those invoices and documentation of sales and other information for a greater period of time.

[PL 2003, c. 439, §1 (NEW).]

6. Directory of cigarettes. The Attorney General shall develop and make available for public inspection a directory listing all tobacco product manufacturers that have provided accurate certifications conforming to the requirements of this section and all brand families that are listed in the certifications.

A. The Attorney General may not include or retain in the directory the name or brand families of any nonparticipating manufacturer that fails to provide the required certification or whose certification the Attorney General determines is not in compliance with subsection 3, paragraphs A and B, unless the Attorney General has determined that the nonparticipating manufacturer is no longer in violation of subsection 3, paragraphs A and B. [PL 2003, c. 439, §1 (NEW).]

B. Neither a tobacco product manufacturer nor brand family may be included or retained in the directory if the Attorney General concludes that:

(1) In the case of a nonparticipating manufacturer, all escrow payments required pursuant to subchapter 3 for any period for any brand family, whether or not listed by the nonparticipating manufacturer, have not been fully deposited into a qualified escrow fund governed by an escrow agreement that has been approved by the Attorney General; or

(2) All outstanding final judgments, including interest on the judgment, for violations of subchapter 3 have not been fully satisfied for the brand family or the tobacco product manufacturer. [PL 2003, c. 439, §1 (NEW).]

C. The Attorney General shall update the directory as necessary in order to correct mistakes and to add or remove a tobacco product manufacturer or brand family to keep the directory in conformity with the requirements of this section. A determination by the Attorney General not to list or to remove from the directory a brand family or tobacco product manufacturer is a final agency action as defined in Title 5, section 8002. [PL 2003, c. 439, §1 (NEW).]

[PL 2003, c. 439, §1 (NEW).]

7. Prohibition against stamping or sale of cigarettes. It is unlawful for any person to affix a tax stamp to a package or other container of cigarettes of a tobacco product manufacturer or brand family not included in the directory or to distribute, sell or offer or possess for sale in this State cigarettes of a tobacco product manufacturer or brand family not included in the directory.

A person who violates this subsection engages in an unfair and deceptive act in violation of the Maine Unfair Trade Practices Act.

[PL 2003, c. 439, §1 (NEW).]

8. Agent for service of process. Any nonresident or foreign nonparticipating manufacturer that has not registered to do business in the State as a foreign corporation or business entity shall, as a

condition precedent to having its brand families listed or retained in the directory, appoint and continually engage without interruption the services of an agent in this State for the service of process concerning or arising out of the enforcement of this section and subchapter 3. Such service constitutes legal and valid service of process on the nonparticipating manufacturer. The nonparticipating manufacturer shall provide the name, address, phone number and proof of the appointment and availability of the agent to the Attorney General.

The nonparticipating manufacturer shall provide notice to the Attorney General 30 days prior to termination of the authority of an agent and shall further provide proof to the satisfaction of the Attorney General of the appointment of a new agent no less than 5 days prior to the termination of an existing agent appointment. In the event an agent terminates that agent's appointment by the nonparticipating manufacturer, the nonparticipating manufacturer shall notify the Attorney General of the termination within 5 days and shall include proof to the satisfaction of the Attorney General of the appointment of a new agent.

[PL 2003, c. 439, §1 (NEW).]

9. Reporting by distributors. No later than 20 days after the end of each calendar quarter and more frequently if so directed by the Attorney General, each distributor shall submit information as the Attorney General requires to facilitate compliance with this section, including, but not limited to, a list by brand family of the total number of cigarettes upon which the distributor affixed tax stamps during the previous calendar quarter or, in the case of roll-your-own tobacco, the equivalent stick count for which the distributor paid the tax due. The distributor shall maintain all invoices and documentation of sales of all nonparticipating manufacturer cigarettes and any other information relied upon in reporting to the Attorney General for a period of 5 years.

[PL 2003, c. 439, §1 (NEW).]

10. Disclosure of information. Notwithstanding any provision of law to the contrary, the Department of Administrative and Financial Services, Bureau of Revenue Services is authorized to disclose to the Attorney General any tax information received by the Bureau of Revenue Services and requested by the Attorney General for purposes of determining compliance with and enforcing the provisions of this section. The Attorney General may share any information received under this section, other than information received from the Bureau of Revenue Services, with:

- A. Federal, state or local agencies but only for purposes of enforcement of this section, subchapter 3 or corresponding laws of other states; and [PL 2019, c. 381, §1 (NEW).]
- B. Courts, arbitrators, data clearinghouses or similar entities for the purpose of assessing compliance with, resolving disputes arising under or making calculations required by the Master Settlement Agreement or agreements resolving disputes arising under the Master Settlement Agreement, and with counsel for the parties or expert witnesses in any such proceeding, if the information otherwise remains confidential. [PL 2019, c. 381, §1 (NEW).]

The Attorney General shall provide notice to the Department of Administrative and Financial Services, Bureau of Revenue Services of those persons certified under this section.

[PL 2019, c. 381, §1 (RPR).]

11. Verification of qualified escrow fund. The Attorney General may require at any time that the nonparticipating manufacturer provide from the financial institution in which the nonparticipating manufacturer has established a qualified escrow fund for the purpose of compliance with subchapter 3 proof of the amount of money in the qualified escrow fund being held on behalf of the State, the dates of deposits and a listing of the amounts of all withdrawals from the fund and the dates of the withdrawals.

[PL 2003, c. 439, §1 (NEW).]

12. Requests for additional information. The Attorney General may require a distributor or tobacco product manufacturer to submit any additional information, including, but not limited to,

samples of the packaging or labeling of each brand family necessary to enable the Attorney General to determine whether a tobacco product manufacturer is in compliance with this section.

[PL 2003, c. 439, §1 (NEW).]

13. Escrow installments. To promote compliance with the provisions of this section, the Attorney General may adopt rules requiring a tobacco product manufacturer subject to the requirements of subsection 3, paragraph A to make the required deposits in the qualified escrow fund in installments during the year in which the sales covered by the deposits are made. The Attorney General may require sufficient information to enable the Attorney General to determine the adequacy of the amount of the installment deposit.

[PL 2003, c. 439, §1 (NEW).]

14. Rules. The Attorney General may adopt rules necessary to carry out the purposes of this section. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[PL 2003, c. 439, §1 (NEW).]

15. Unlawful acts. A person may not:

A. Sell or distribute cigarettes in violation of subsection 7; [PL 2003, c. 439, §1 (NEW).]

B. Violate paragraph A after having been previously convicted of a violation of this section; [PL 2003, c. 439, §1 (NEW).]

C. Acquire, hold, own, possess, transport, import or cause to be imported cigarettes that the person knows or should have known are intended for distribution or sale in the State in violation of subsection 7; or [PL 2003, c. 439, §1 (NEW).]

D. Violate paragraph C after having been previously convicted of a violation of this section. [PL 2003, c. 439, §1 (NEW).]

[PL 2003, c. 439, §1 (NEW).]

16. Criminal penalty. A violation of this section is a Class E crime except that violation of this section is a Class D crime when the person has one or more prior convictions for violation of this section. Title 17-A, section 9-A governs the use of prior convictions when determining a sentence.

Each stamp affixed and each offer to sell cigarettes in violation of subsection 7 constitutes a separate violation.

[PL 2003, c. 439, §1 (NEW).]

17. Contraband; seizure. Cigarettes that have been sold, offered for sale or possessed for sale in this State in violation of subsection 7 are deemed contraband under Title 36, section 4372-A and the cigarettes are subject to seizure and forfeiture as provided in section 4372-A. All cigarettes so seized and forfeited must be destroyed and may not be resold.

[PL 2003, c. 439, §1 (NEW).]

18. Injunction. The Attorney General may seek an injunction to restrain a threatened or actual violation of subsection 7, 9 or 12 and to compel compliance with these subsections.

[PL 2003, c. 439, §1 (NEW).]

19. Recovery of costs. In any action brought by the State to enforce this section, the State is entitled to recover the costs of investigation, expert witness fees, costs of the action and reasonable attorney's fees.

[PL 2003, c. 439, §1 (NEW).]

20. Profits. If a court determines that a person has violated this section, the court shall order any profits, gain, gross receipts or other benefit from the violation to be paid to the Fund for a Healthy Maine. Unless otherwise expressly provided, the remedies or penalties provided by this section are cumulative to each other and to the remedies or penalties available under all other laws of this State.

[PL 2003, c. 439, §1 (NEW).]

21. Construction; severability. If a court of competent jurisdiction finds that the provisions of this section and of subchapter 3 conflict, then the provisions of subchapter 3 control. If any portion of this section causes subchapter 3 to no longer constitute a qualifying or model statute, as those terms are defined in the Master Settlement Agreement, then that portion of this section is not valid.

[PL 2003, c. 439, §1 (NEW).]

SECTION HISTORY

PL 2003, c. 439, §1 (NEW). PL 2019, c. 381, §1 (AMD).

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Enrolled
House Bill 2128

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

CHAPTER

AN ACT

Relating to the Master Settlement Agreement; creating new provisions; amending ORS 180.205, 180.415, 180.416, 180.425, 180.435, 180.445, 293.537, 323.803, 323.806 and 323.807; and repealing section 25, chapter 801, Oregon Laws 2003.

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

SECTION 1. ORS 323.803 is amended to read:

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

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

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

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

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

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

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

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

[(6) It would be contrary to the policy of the State of Oregon if those tobacco product manufacturers who determine not to enter into such a settlement could use a resulting cost advantage to derive large, short-term profits in the years before liability may arise without ensuring that this state will have an

eventual source of recovery from them if they are proven to have acted culpably. It is thus in the interest of the State of Oregon to require that such manufacturers establish a reserve fund to guarantee a source of compensation and to prevent such manufacturers from deriving large, short-term profits and then becoming judgment-proof before liability may arise.]

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

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

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

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

(c) Increase the retail prices of cigarettes sold by the manufacturers, thereby reducing smoking rates, particularly among youth, as consistent with this state's policy of discouraging youth smoking; and

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

SECTION 2. ORS 323.806 is amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(iii) In the case of a second knowing violation, be prohibited from selling cigarettes to consumers within the State of Oregon (whether directly or through a distributor, retailer or similar inter-

mediary or intermediaries) for a period not to exceed two years. Each failure to make an annual deposit required under this section shall constitute a separate violation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[(iii)] (ii) To the extent that a tobacco product manufacturer establishes that the amount it was required to place into escrow on account of units sold in Oregon in a particular year was greater than the Master Settlement Agreement payments, as determined pursuant to section IX(i) of that agreement after final determination of all adjustments, that the manufacturer would have been required to make on account of such units sold had it been a Participating Manufacturer (as that term

is defined in the Master Settlement Agreement), the excess shall be released from escrow and revert back to such tobacco product manufacturer; or

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

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

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

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

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

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

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

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

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

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

SECTION 4a. ORS 323.807 is amended to read:

323.807. (1) Notwithstanding the provisions of ORS 323.806 (2)(b), a tobacco product manufacturer that elects to place funds into a qualified escrow fund pursuant to ORS 323.806 (1)(b) may assign to the state the tobacco product manufacturer's interest in any funds in the qualified escrow fund.

(2) An assignment executed pursuant to subsection (1) of this section is permanent and irrevocable and applies to all moneys in the qualified escrow fund established for the benefit of the state,

including all moneys deposited into the qualified escrow fund before the tobacco product manufacturer executes the assignment, all moneys deposited into the qualified escrow fund after the tobacco product manufacturer executes the assignment and any interest or other appreciation earned on any moneys in the qualified escrow fund.

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

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

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

(6) Nothing in this section operates to:

(a) Waive the right of the state to bring a claim against a tobacco product manufacturer as described in ORS 323.806 (2)(b), except that any funds assigned to the state under this section shall be credited on a dollar-for-dollar basis against any judgment or settlement described in ORS 323.806 (2)(b); or

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

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

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

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

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

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

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

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

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

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

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

(c) Any amounts recovered under this section are the property of the state, and this section creates no cause or right of action in any party except the State of Oregon. Amounts recovered under this section shall be deposited in the Oregon Health Authority Fund established under ORS 413.101 and shall be used for expenses of the Oregon Health Plan.

(d) Nothing in this section operates to:

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

(B) Relieve a tobacco product manufacturer from any obligation or duty imposed pursuant to ORS 180.400 to 180.455 or any other provision of Oregon law.

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

(4) The Attorney General may bring a civil action on behalf of the State of Oregon against any tobacco product manufacturer that fails to remit the amount due under subsection (2) of this section. In addition to recovering the equity assessment, the Attorney General shall be entitled to reasonable attorney fees, costs and expenses incurred in prosecuting the action and any appeal. Attorney fees, costs and expenses recovered under this subsection shall be deposited in the Tobacco Enforcement Fund established under ORS 180.205.

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

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

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

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

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

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

(c) If the importer fails or refuses within 15 days of the Attorney General's written demand to remit the equity assessment for which it is jointly and severally liable under paragraph (a) of this subsection, all cigarettes imported into the United States by the importer

shall constitute contraband cigarettes as defined in ORS 323.010 and shall be subject to seizure and forfeiture as provided under ORS 323.248; and

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

SECTION 9. ORS 180.415 is amended to read:

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

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

(2) That the nonparticipating manufacturer:

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

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

[(b)] (B) Has executed a qualified escrow agreement that has been reviewed and approved by the Attorney General and that governs the qualified escrow fund. The Attorney General shall adopt rules defining the form and content of a model escrow agreement. A nonparticipating manufacturer that executes the model escrow agreement is deemed to have satisfied the requirement that it use a form of escrow agreement that has been reviewed and approved by the Attorney General.

(3)(a) The name, address and telephone number of the financial institution where the nonparticipating manufacturer has established the qualified escrow fund required by ORS 323.806;

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

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

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

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

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

SECTION 10. ORS 180.416 is amended to read:

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

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

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

(b) \$25,000.

(3) If a nonparticipating manufacturer that posted a bond has failed to make or have made on its behalf deposits **or payments** equal to the full amount owed for a quarter within 15 days following the due date for the quarter, the Attorney General may execute upon the bond in the amount

equal to any remaining amount [of the escrow] due, including any applicable penalties or other charges allowable by law. Amounts the Attorney General collects on a bond shall be deposited into the General Fund for the benefit of the state and shall reduce the amount [of escrow] due from the nonparticipating manufacturer in the dollar amount collected. [Escrow] Obligations above the amount collected on the bond remain due from the nonparticipating manufacturer and any importer liable as provided in ORS 323.806 or section 8 of this 2023 Act.

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

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

SECTION 11. ORS 180.425 is amended to read:

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

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

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

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

(b) Any outstanding final judgment, including interest thereon, for a violation of ORS 323.806 or section 8 of this 2023 Act has not been fully satisfied for the brand family or the nonparticipating manufacturer.

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

(5) The Attorney General shall:

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

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

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

SECTION 12. ORS 180.435 is amended to read:

180.435. (1) Not later than 20 days after the end of each calendar quarter, and more frequently if so directed by the Attorney General, a distributor shall report such information as the Attorney

General requires to facilitate compliance by tobacco product manufacturers with this section and ORS 180.410, 180.415, 180.420, 180.430 and 180.440, and with rules adopted under ORS 180.445 and 180.450. The information shall include, but need not be limited to, a list by brand family of the total number of cigarettes or, in the case of roll-your-own tobacco, the equivalent stick count for which the distributor affixed stamps or otherwise paid the tax due during the previous calendar quarter.

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

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

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

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

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

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

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

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

(8) The Attorney General may require a distributor or a tobacco product manufacturer to submit any additional information, including, but not limited to, samples of the packaging and labeling of each brand family, to enable the Attorney General to determine whether a tobacco product man-

ufacturer is in compliance with this section and ORS 180.410, 180.415, 180.420, 180.430 and 180.440 and with rules adopted under ORS 180.445 and 180.450.

SECTION 13. ORS 180.445 is amended to read:

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

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

SECTION 14. ORS 180.205 is amended to read:

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

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

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

(2) Moneys in the Tobacco Enforcement Fund are continuously appropriated to the Department of Justice for the purpose of enforcing the provisions of ORS 180.400 to 180.455, 180.465 to 180.494, 323.106, 323.806 and 323.810 to 323.816 **and section 8 of this 2023 Act**. Moneys in the fund are not subject to allotment under ORS 291.234 to 291.260.

SECTION 15. ORS 293.537 is amended to read:

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

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

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

(4) All moneys in the Tobacco Settlement Funds Account shall be invested as provided in ORS 293.701 to 293.790.

SECTION 16. The amendments to ORS 180.415, 180.416, 180.425, 180.435 and 180.445 by sections 9 to 13 of this 2023 Act apply to certifications submitted under ORS 180.410 on or after January 1, 2025.

Passed by House June 13, 2023

Repassed by House June 25, 2023

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Timothy G. Sekerak, Chief Clerk of House

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Dan Rayfield, Speaker of House

Passed by Senate June 25, 2023

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Rob Wagner, President of Senate

Received by Governor:

.....M,....., 2023

Approved:

.....M,....., 2023

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Tina Kotek, Governor

Filed in Office of Secretary of State:

.....M,....., 2023

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Secretary of State