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TO: The Honorable Melony Griffith
Chair, Finance Committee

FROM: Anna MacCormack
Assistant Attorney General, Office of the Attorney General

RE: SB 541

The Office of Attorney General urges this Committee to report favorably on the Office of the Attorney General's SB 541.

SB 541 will close a gap in the current law governing the reporting obligations of tobacco wholesalers. Closing this gap will provide the Office of the Attorney General with important additional tools to maximize the State's financial recovery under the Master Settlement Agreement (MSA). SB 541 will accomplish this goal by amending Business Regulation § 16-506(a), making it a violation of that subsection for wholesalers to submit inaccurate or incomplete Form 608-3 reports.

Under current law, tobacco wholesalers must submit Form 608-3 each month to report on the manufacturers, brands, and amounts of cigarettes and roll-your-own tobacco that they sell. The 608-3 report is used by the Office of the Attorney General's Tobacco Enforcement Unit (TEU) to determine how much escrow non-participating manufacturers—manufacturers that have not joined the MSA and thus make no settlement payments to Maryland—must deposit to comply with Maryland's Escrow Act, Business Regulation § 16-401 *et seq.* Maryland's diligence enforcing the Escrow Act determines whether a significant downward adjustment is applied to Maryland's share of the annual payments made by tobacco products manufacturers pursuant to the MSA, which total approximately \$140 million each year.

Currently, there are thirty-four tobacco wholesalers licensed by the State; only five of these are located in Maryland. The remainder are mostly larger tobacco wholesalers that sell to multiple states. These tobacco wholesalers sometimes miscalculate the number of cigarettes or roll-your-

This bill letter is a statement of the Office of Attorney General's policy position on the referenced pending legislation. For a legal or constitutional analysis of the bill, Members of the House and Senate should consult with the Counsel to the General Assembly, Sandy Brantley. She can be reached at 410-946-5600 or sbrantley@oag.state.md.us.

own tobacco they have sold, incorrectly list the names of the brands they sell, or fail to file records of all the sales made.

Right now, there is no provision in Maryland law that makes these errors on wholesalers' reports a violation of the law. Although these mistakes are generally not egregious, they require significant time and effort from Comptroller and TEU employees to communicate with the wholesaler and to receive and process corrected reports. Every time the Comptroller or TEU spot an error or determine that there is a missing portion, they must contact the wholesaler and request a revision or complete submission. At times it takes several follow-up attempts before a correct and complete report is received.

Ultimately, and most importantly, inaccurate 608-3 reports also complicate or threaten the ability to defend Maryland's diligent enforcement of its Escrow Act because such reports indicate that Maryland's wholesalers do not take seriously their obligations to submit correct information. The information required by 608-3 reports is the primary information collected and is needed for TEU to ensure correct amounts are deposited in escrow so that Maryland can defend its record on diligence.

The proposed changes would also give the OAG, on behalf of the Alcohol and Tobacco Commission (ATC) or Comptroller, penalty authority for violations of Business Regulation § 16-506(a). The ATC is responsible for holding administrative hearings when there are violations and determining whether a wholesaler has violated the law. The penalty authority, which permits the OAG to levy a penalty of up to \$1,000 per incorrect report, will be in lieu of or in addition to suspension or revocation of a wholesaler's license, which are the current options available if the ATC determines there is a violation of Business Regulation § 16-506(a).

For the foregoing reasons, we urge a favorable report on SB 541.

cc: Committee Members

