



701 South Battleground Avenue
Grover, North Carolina 28073

704.937.7200 704.937.7250
www.cheyenneintl.com

March 13, 2024

The Honorable Pam Beidle, Chair Senate Finance
3 East, Miller Senate Office Building
Annapolis, MD 21401

The Honorable Guy Guzzone, Chair Senate Budget & Tax
3 West, Miller Senate Office Building
Annapolis, MD 21401

Re: Opposition to Senate Bill 1018 “Tobacco Product Manufacturers - Escrow Act - Alterations”

Dear Honorables Beidle and Guzzone,

Please find below a brief outline of arguments in opposition to Maryland Senate Bill 1018 (“SB 1018”) for your consideration by Cheyenne International, L.L.C., (“Cheyenne”), a small tobacco company located in Grover, North Carolina. Cheyenne is a non-participating manufacturer (“NPM”), meaning it is not a signatory to the 1998 Master Settlement Agreement (“MSA”) between several settling states, including Maryland, and many large tobacco companies.

SENATE BILL 1018 DOES NOT ACCOMPLISH ITS STATED PURPOSES

In its preamble to SB 1018, the State makes the following four supporting points:

1. Prevent manufacturers from deriving large short-term profits and then becoming judgment-proof;
2. Require tobacco product manufacturers to internalize the health care costs imposed on the State by cigarette smoking;
3. Increase the price of cigarettes to reduce smoking rates, particularly among the youth of the State, consistent with State policy to discourage underage smoking; and
4. Serve as partial compensation for the financial burdens imposed on the State by cigarette smoking.

If enacted, SB 1018 would not accomplish any of these four objectives. SB 1018 only serves to enrich those larger cigarette manufacturers that are signatories to the MSA, which stand to gain new smokers.

It is important to understand that the State’s existing MSA charges on cigarettes manufactured by small business manufactures, like Cheyenne, are already equal to the MSA charges on manufacturers that are parties to the Master Settlement Agreement. Like the participating manufacturers, NPMs are required to pay MSA charges into an escrow account for the benefit of the State. Importantly, these MSA deposits are payments - not fictional charges or

accounting accruals - and the NPMs do not have access to these amounts. As with the MSA charges on the participating manufacturers, the NPM MSA charges are subject to various adjustments each year so that NPMs pay the same amount as the participating manufacturers and do not have a price advantage. The “equity fee” that SB 1018 seeks to impose on NPMs would not be subject to any of the participating manufacturer MSA adjustments (e.g., the NPM Adjustment which reduces the annual charge that the participating manufacturers pay) and thus is nothing more than special tax on non-participating manufacturers. Consequently, cigarettes sold by non-participating manufacturers would be more expensive than those sold by participating manufacturers. This would not discourage smoking. Rather, it only induces smokers to switch brands.

If the State genuinely desires to reduce smoking as stated in its purposes for SB 1018, then it should impose a tax on all cigarettes to make all cigarettes more expensive. Taxing only a subset of cigarette brands merely encourages smoking of different brands of cigarettes, namely those manufactured by participants to the MSA.

Next, contrary to the State’s first stated purpose, NPMs, like Cheyenne, do NOT derive large short-term profits with the possibility of becoming judgment-proof in the future. As explained above, the Model Escrow Statute, which Senate Bill 1018 seeks to amend, requires non-participating manufacturers to pay into an escrow account for the benefit of the State the same amount that the participating manufacturers pay to the State. Pursuant to the Model Escrow Statute, these escrowed funds exist “[t]o pay a judgment or settlement on any released claim brought against such tobacco product manufacturer by the State of Maryland[.]” This escrow construct was intentionally designed by the settling States (including Maryland) and the participating manufacturers in 1998 and incorporated into the MSA to specifically equate the annual payment non-participating manufacturers make to that made by the participating manufacturers. Thus, the Model Escrow Statute, which has existed for almost 25 years, already prevents the non-participating manufacturers from “deriving large short-term profits and then becoming judgment-proof” (SB 1018’s first stated objective) and requires the non-participating manufacturers to “internalize the health care costs imposed on the State by cigarette smoking” (SB 1018’s second stated objective).

The State also seemingly asserts that the measure would prevent youth initiation of cigarette products. If that is the goal, the State should target the PMs, rather than NPMs. As outlined by the Centers for Disease Control (“CDC”) as recently as 2018, youth do not smoke brands manufactured by NPMs. Rather, “the top three brands usually smoked among cigarette smokers in all middle school grades combined were Marlboro (38.3%), Newport (21.4%), and Camel (13.4%). In 2017, the CDC more fully outlined the remaining cigarette brands used by youth. In order, these were Pall Mall, Maverick, Santa Fe, Winston, and Kool. All of these brands are manufactured by the participating manufacturers. SB 1018 does not correct youth initiation of NPM brands, as the evidence establishes there is none.

Lastly, SB 1018 would not “serve as partial compensation for the financial burdens imposed on the State by cigarette smoking.” **The State will lose over \$1.5 million in 2025 from the effects of SB 1018, as confirmed by the State’s Comptroller’s Office.** The State’s Department of Legislative Services estimates that SB 1018 would raise only \$450,000 annually from NPM equity fees. This is due to the fact that NPMs sell very few cigarettes that are consumed in the State. However, the State’s Comptroller’s Office will incur at **least \$2 million** to adjust its computer systems to account for the equity fee. This is a loss of over \$1.5 million! This supports the fact that SB 1018 only serves to financially reward the participating manufacturers, who stand to win with SB 1018. The State stands to lose money by enacting SB 1018.

In closing, I appreciate the opportunity to present my company’s objections to SB 1018 and if you have any questions regarding my arguments against SB 1018, please do not hesitate to contact me.

Best regards,

A handwritten signature in black ink that reads "David Scott". The signature is fluid and cursive, with a long horizontal stroke extending from the end of the name.

David Scott
CEO
Cheyenne International, LLC