

**ANTHONY G. BROWN**  
*Attorney General*



**CANDACE MCLAREN LANHAM**  
*Chief of Staff*

**CAROLYN A. QUATTROCKI**  
*Deputy Attorney General*

**STATE OF MARYLAND**  
**OFFICE OF THE ATTORNEY GENERAL**

EMAIL  
jleovy@oag.state.md.us

WRITER'S DIRECT DIAL NO.  
(410) 576-7056

March 13, 2024

**TO:** The Honorable Pamela Beidle  
Chair, Finance Committee

**FROM:** John M. Leovy  
Assistant Attorney General, Office of the Attorney General

**RE:** Senate Bill 1018 – Tobacco Product Manufacturers – Escrow Act –  
Alterations.

---

The Office of Attorney General urges this Committee to report favorably on Senate Bill 1018 – Tobacco Product Manufacturers – Escrow Act – Alterations.

Senate Bill 1018 restores fairness and equity to Maryland's cigarette market. It amends Maryland's Tobacco Product Manufacturers Escrow Statute by removing a provision that allows companies that did not join the Master Settlement Agreement, or "MSA," to use their escrow accounts to subsidize low cigarette prices and undersell their competitors. Senate Bill 1018 will thus fulfill the legislature's intention when it enacted the Escrow Act, Bus. Reg. §§ 16-401–403, creating a level playing field for all the cigarette companies that compete in Maryland's market.

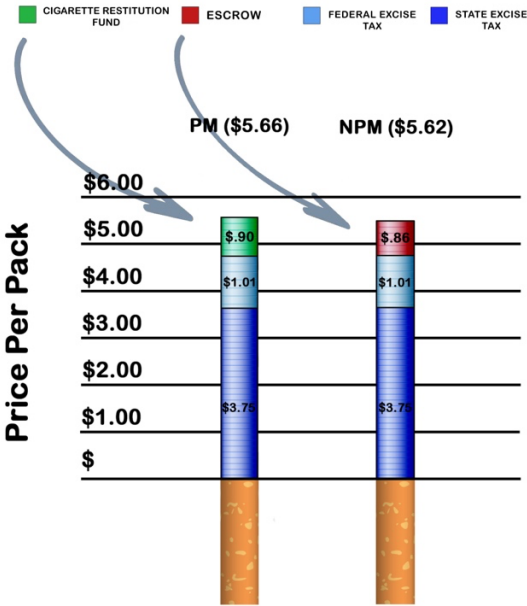
Maryland enacted the Escrow Act in 1999, the year after it signed the MSA. Cigarette companies that joined the MSA, called Participating Manufacturers ("PMs"), must end almost all cigarette advertising and pay Maryland and other States billions of dollars every year. These payments are to compensate the States for some of the past and future medical expenses incurred from treating their residents for the diseases cigarettes cause. As a result, Participating Manufacturers must raise their prices to finance their settlement payments. This creates a market opportunity for companies that do not join the MSA, called Nonparticipating Manufacturers ("NPMs"), to undersell the PMs.

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.

Intending to level the playing field between the PMs and the NPMs, Maryland and other States enacted the Escrow Act, which requires all cigarette companies to make a choice. They must either become a PM and comply with the MSA’s financial obligations or remain an NPM and deposit funds into an escrow account roughly equal to the settlement payments that they would have to make to the State and leave the funds there for 25 years.

In the last 25 years, NPMs have collectively deposited more than \$10 million in escrow accounts for the cigarettes they have sold in Maryland. NPM cigarettes make Marylanders just as sick, and strain Maryland’s health care system, just as much as the PMs’ cigarettes do. The NPMs’ escrow accounts are assets held by the NPMs, which expect to recover every penny 25 years after they deposit it. NPMs also earn interest on the money in their escrow accounts, which they use to underwrite their business and sell cigarettes at prices lower than the PMs can. As one NPM recently boasted, they use the interest “to offset business expenses.”

The chart below illustrates why the current law favors NPMs and why the legislature needs to establish equity in the cigarette market by enacting Senate Bill 1018.



Both packs of cigarettes, PM and NPM, are subject to the same amount of Federal Excise Tax and State of Maryland Excise Tax. Where they differ is in that top level. The PMs pay about

90 cents per pack pursuant to the MSA and the money goes to Maryland's Cigarette Restitution Fund.<sup>1</sup> But the NPMs deposit about 86 cents per pack and the money goes not to Maryland, but into an escrow account owned by the NPM, and they use the money, including interest earned, to subsidize their low-priced cigarettes. Those cheaper cigarettes drive up Maryland's smoking rate and cost Maryland's taxpayers more money treating people sickened and killed by NPM cigarettes.

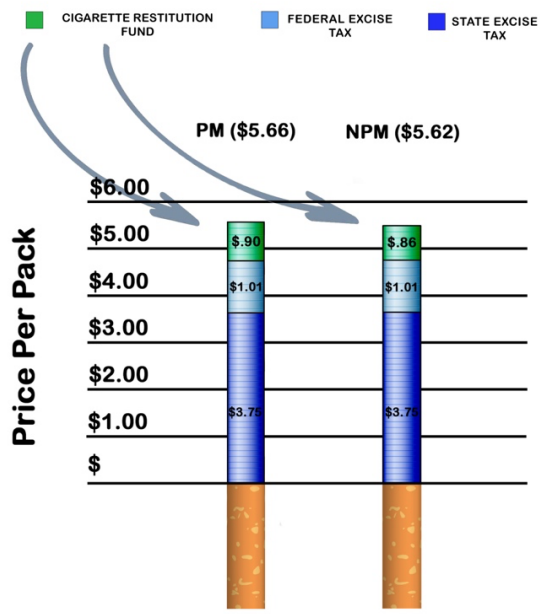
The 25-year roll-out period will start soon, and the escrow accounts, which were intended to impose costs on NPMs and make funds available to States should they bring certain claims against NPMs, are now subsidizing low-priced cigarettes. This leaves Maryland's taxpayers to foot the bill for the costs associated with the NPMs' cigarettes. Senate Bill 1018 will put an end to this plan by restoring the level playing field between PMs and NPMs that Maryland's legislature intended when it first enacted Maryland's Escrow Act almost 25 years ago.

Senate Bill 1018 is also carefully drafted to avoid any risk to the State's future MSA settlement payments. If any future court or tribunal determines that the amendments contained in Senate Bill 1018 is are unconstitutional or otherwise invalid, it provides that the current statute immediately snaps back in place as if it had not been amended.

The most important feature of Senate Bill 1018 is that it requires NPMs to pay the same amount of money they now use to underwrite their cigarette business to the State of Maryland instead. Senate Bill 1018 will achieve the goals the legislature set 25 years ago, and bring equity to a cigarette marketplace that is now out of balance. The chart below illustrates what will happen if the legislature enacts Senate Bill 1018:

---

<sup>1</sup> These settlement payments of 90 cents per pack pay only a small percentage of what cigarettes cost Maryland's taxpayers every year. Data obtained from the Maryland Department of Health demonstrates that in 2022 the health-care costs paid by Maryland's Medicaid program amount to \$5.74 per pack.



By enacting Senate Bill 1018, Maryland can restore equity in Maryland’s cigarette marketplace by creating the level playing field that the legislature intended when it enacted Maryland’s Escrow Act a quarter of a century ago. The Office of the Attorney General strongly urges a favorable report on Senate Bill 1018 is.