

SENATE BILL 1018

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CF HB 1173

By: **Senator A. Washington**

Introduced and read first time: February 2, 2024

Assigned to: Finance and Budget and Taxation

A BILL ENTITLED

1 AN ACT concerning

2 **Tobacco Product Manufacturers – Escrow Act – Alterations**

3 FOR the purpose of requiring, beginning in a certain year, a certain tobacco product
4 manufacturer to pay a certain equity fee instead of depositing certain funds in a
5 certain escrow account; authorizing a certain tobacco product manufacturer to
6 contest the amount of the equity fee paid under certain circumstances; requiring a
7 certain tobacco product manufacturer to make a certain certification to the Attorney
8 General each year; authorizing the Attorney General to recover the attorney’s fees,
9 costs, and expenses of a certain action and to deposit certain funds into the Cigarette
10 Restitution Fund; altering the information that certain tobacco product
11 manufacturers must include in a certain certification to the Attorney General; and
12 generally relating to the tobacco product manufacturers and the Escrow Act.

13 BY repealing and reenacting, with amendments,

14 Article – Business Regulation

15 Section 16–401 and 16–403 to be under the amended subtitle “Subtitle 4. Tobacco
16 Product Manufacturers Equity Act”; and 16–501, 16–503, 16–504, and
17 16–506(e) to be under the amended subtitle “Subtitle 5. Equity Requirements
18 for Nonparticipating Tobacco Product Manufacturers”

19 Annotated Code of Maryland

20 (2015 Replacement Volume and 2023 Supplement)

21 BY adding to

22 Article – Business Regulation

23 Section 16–404

24 Annotated Code of Maryland

25 (2015 Replacement Volume and 2023 Supplement)

26 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,

27 That the Laws of Maryland read as follows:

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



Article – Business RegulationSubtitle 4. Tobacco Product Manufacturers [Escrow] **EQUITY Act.**

16–401.

(a) Cigarette smoking presents serious public health concerns to the State and to the citizens of the State. The United States 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.

(b) 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 the medical assistance.

(c) 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.

(d) 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] **AND, FOR THAT PURPOSE, TOBACCO PRODUCT MANUFACTURERS THAT HAVE SETTLED WITH THE STATE PAY THE STATE MILLIONS OF DOLLARS EACH YEAR, UNLIKE OTHER TOBACCO PRODUCT MANUFACTURERS THAT DO NOT MAKE DIRECT PAYMENTS.**

(e) 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 in the Agreement, to pay substantial sums to the State (tied in part to their volume of sales); to fund a national foundation devoted to the interests of public health; and to make substantial changes in their advertising and marketing practices and corporate culture, with the intention of reducing underage smoking.

(f) [(1) 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.

(2) It is thus in the interest of the State to require such tobacco product manufacturers to establish a reserve fund to guarantee a source of compensation in order

1 to prevent them from deriving large, short-term profits and then becoming judgment-proof
2 before liability may arise] **THE PUBLIC HEALTH OBLIGATIONS OF THE STATE ARE**
3 **OWED EQUALLY TO ALL INDIVIDUALS IN THE STATE WHO SMOKE, REGARDLESS OF**
4 **THE BRAND OF CIGARETTE SMOKED OR THE STATUS OF THE TOBACCO PRODUCT**
5 **MANUFACTURER UNDER THE MASTER SETTLEMENT AGREEMENT.**

6 **(G) IT IS CONSISTENT WITH THE POLICY OF THE STATE TO REQUIRE**
7 **TOBACCO PRODUCT MANUFACTURERS THAT DO NOT MAKE PAYMENTS DIRECTLY TO**
8 **THE STATE THROUGH THE MASTER SETTLEMENT AGREEMENT TO PAY AN AMOUNT**
9 **THAT IS INTENDED TO:**

10 **(1) PREVENT MANUFACTURERS FROM DERIVING LARGE**
11 **SHORT-TERM PROFITS AND THEN BECOMING JUDGMENT-PROOF;**

12 **(2) REQUIRE TOBACCO PRODUCT MANUFACTURERS TO INTERNALIZE**
13 **THE HEALTH CARE COSTS IMPOSED ON THE STATE BY CIGARETTE SMOKING;**

14 **(3) INCREASE THE PRICE OF CIGARETTES TO REDUCE SMOKING**
15 **RATES, PARTICULARLY AMONG THE YOUTH OF THE STATE, CONSISTENT WITH**
16 **STATE POLICY TO DISCOURAGE UNDERAGE SMOKING; AND**

17 **(4) SERVE AS PARTIAL COMPENSATION FOR THE FINANCIAL**
18 **BURDENS IMPOSED ON THE STATE BY CIGARETTE SMOKING.**

19 16-403.

20 (a) Any tobacco product manufacturer that sells cigarettes to consumers within
21 the State, whether directly or through a distributor, retailer, or similar intermediary or
22 intermediaries, after June 1, 1999, shall either:

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

26 (2) **(I) [place] HAVE PLACED** into a qualified escrow fund by April 15
27 of the year following the year in question the following amounts, as such amounts are
28 adjusted for inflation:

29 **[(i)] 1.** for 1999, \$.0094241 per unit sold after June 1, 1999;

30 **[(ii)] 2.** for 2000, \$.0104712 per unit sold;

31 **[(iii)] 3.** for each of 2001 and 2002, \$.0136125 per unit sold;

1 [(iv)] 4. for each of 2003, 2004, 2005, and 2006, \$.0167539 per unit
2 sold; and

3 [(v)] 5. for 2007 [and each year thereafter] **THROUGH 2023**,
4 \$.0188482 per unit sold; **AND**

5 **(II) BEGINNING IN 2024 AND EACH YEAR THEREAFTER, PAY TO**
6 **THE COMPTROLLER AN EQUITY FEE OF \$.0188482 PER UNIT SOLD, AS ADJUSTED**
7 **FOR INFLATION.**

8 (b) (1) A tobacco product manufacturer that [places] **PLACED** funds into
9 escrow in accordance with subsection [(a)(2)] **(A)(2)(I)** of this section shall receive the
10 interest or other appreciation on the funds as earned.

11 (2) The funds themselves shall be released from escrow only under the
12 following circumstances:

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

16 1. in the order in which they were placed into escrow; and

17 2. only to the extent and at the time necessary to make
18 payments required under such judgment or settlement;

19 (ii) to the extent that a tobacco product manufacturer establishes
20 that the amount it was required to place into escrow on account of units sold in the State
21 in a particular year was greater than the Master Settlement Agreement payments, as
22 determined pursuant to section IX(i) of that Agreement, including after final determination
23 of all adjustments, that such manufacturer would have been required to make on account
24 of such units sold had it been a participating manufacturer, the excess shall be released
25 from escrow and revert back to such tobacco manufacturer; or

26 (iii) to the extent funds are not released from escrow under item (i)
27 or (ii) of this paragraph, funds shall be released from escrow and revert to such tobacco
28 product manufacturer 25 years after the date on which they were placed into escrow.

29 **(C) A TOBACCO PRODUCT MANUFACTURER THAT TIMELY PAYS THE EQUITY**
30 **FEE UNDER SUBSECTION (A)(2)(II) OF THIS SECTION MAY CONTEST THE AMOUNT OF**
31 **THE EQUITY FEE REQUIRED WITHIN 1 YEAR AFTER THE DATE OF PAYMENT.**

32 **(D) THE COMPTROLLER SHALL DISTRIBUTE THE EQUITY FEES PAID UNDER**
33 **SUBSECTION (A)(2)(II) OF THIS SECTION TO THE CIGARETTE RESTITUTION FUND**

1 ESTABLISHED UNDER § 7-317 OF THE STATE FINANCE AND PROCUREMENT
2 ARTICLE.

3 [(c)] (E) (1) [Each] ON OR BEFORE APRIL 30 EACH YEAR, EACH tobacco
4 product manufacturer [that elects to place funds into escrow pursuant to subsection (a)(2)
5 of this section] shall [annually]:

6 (I) certify to the Attorney General that it is in compliance with
7 subsections (a)(2) and (b) of this section; AND

8 (II) 1. HAVE PLACED FUNDS INTO ESCROW UNDER
9 SUBSECTION (A)(2)(I) OF THIS SECTION; OR

10 2. HAVE PAID THE EQUITY FEE UNDER SUBSECTION
11 (A)(2)(II) OF THIS SECTION.

12 (2) (I) The Attorney General may bring a civil action on behalf of the
13 State against any tobacco product manufacturer that fails to place into escrow the funds
14 OR PAY THE EQUITY FEE required under this section.

15 (II) THE ATTORNEY GENERAL IS ENTITLED TO RECOVER THE
16 ATTORNEY'S FEES, COSTS, AND EXPENSES OF THE ACTION FOR THE USE OF THE
17 STATE.

18 (III) THE ATTORNEY GENERAL SHALL DEPOSIT ANY FUNDS
19 RECEIVED UNDER SUBPARAGRAPH (II) OF THIS PARAGRAPH INTO THE CIGARETTE
20 RESTITUTION FUND ESTABLISHED UNDER § 7-317 OF THE STATE FINANCE AND
21 PROCUREMENT ARTICLE.

22 (3) (i) Any tobacco product manufacturer that fails in any year to place
23 into escrow the funds OR PAY THE EQUITY FEE required under this section shall be
24 required within 15 days to place such funds into escrow OR PAY THE EQUITY FEE as will
25 bring the manufacturer into compliance with this section.

26 (ii) The court, upon a finding of a violation of subsection (a)(2) or (b)
27 of this section, may impose a civil penalty, to be paid to the General Fund of the State:

28 1. in an amount not to exceed 5 percent of the amount
29 improperly withheld [from escrow] per day of the violation; and

30 2. in a total amount not to exceed 100 percent of the original
31 amount improperly withheld [from escrow].

32 (4) (i) If a tobacco product manufacturer has knowingly violated
33 subsection (a)(2) or (b) of this section, the manufacturer shall be required within 15 days to

1 place such funds into escrow **OR PAY THE EQUITY FEE** as will bring it into compliance with
2 this section.

3 (ii) Upon a finding of a knowing violation of subsection (a)(2) or (b)
4 of this section, the court may impose a civil penalty, to be paid to the General Fund of the
5 State:

6 1. in an amount not to exceed 15 percent of the amount
7 improperly withheld [from escrow] per day of the violation; and

8 2. in a total amount not to exceed 300 percent of the original
9 amount improperly withheld [from escrow].

10 (5) In the case of a second knowing violation of subsection (a)(2) or (b) of
11 this section, the tobacco product manufacturer shall be prohibited from selling cigarettes
12 to consumers within the State, whether directly or through a distributor, retailer, or similar
13 intermediary or intermediaries, for a period not to exceed 2 years.

14 (6) Each failure to make the annual deposit **OR PAY THE EQUITY FEE**
15 required under this section shall constitute a separate violation.

16 **16-404.**

17 **THE ATTORNEY GENERAL MAY ADOPT REGULATIONS TO CARRY OUT THE**
18 **PROVISIONS OF THIS SUBTITLE.**

19 Subtitle 5. [Escrow] **EQUITY** Requirements for Nonparticipating Tobacco Product
20 Manufacturers.

21 16-501.

22 (a) In this subtitle the following words have the meanings indicated.

23 (b) (1) “Brand family” means all styles of cigarettes sold under the same
24 trademark, regardless of whether the cigarettes are differentiated from one another by
25 means of additional modifiers or descriptors such as “menthol”, “lights”, “kings”, “100s”, or
26 other differentiation.

27 (2) “Brand family” includes any use of a brand name (alone or in
28 conjunction with any other word) trademark, logo, symbol, motto, selling message,
29 recognizable pattern of colors, or any other indicia of product identification identical or
30 similar to, or identifiable with, a previously known brand of cigarettes.

31 (c) “Cigarette” has the meaning stated in § 16-402(e) of this title (the [Escrow]
32 **EQUITY** Act).

1 (d) "Comptroller" means the Comptroller of the State or any authorized agent of
2 the Comptroller who is responsible for collection of the excise tax on cigarettes.

3 (e) ["Escrow] **EQUITY Act** means Subtitle 4 of this title.

4 (f) "Executive Director" includes an agent or employee of the Alcohol and Tobacco
5 Commission responsible for the enforcement of State tobacco laws and regulations.

6 (g) "Licensed wholesaler" means a wholesaler who is licensed under Subtitle 2 of
7 this title to act as a wholesaler and any person who is an authorized agent of the licensed
8 wholesaler for the stamping and distribution of cigarettes.

9 (h) "Master Settlement Agreement" has the meaning stated in § 16–402(f) of this
10 title (the [Escrow] **EQUITY Act**).

11 (i) "Nonparticipating manufacturer" means any tobacco product manufacturer
12 that is not a participating manufacturer.

13 (j) "Participating manufacturer" has the meaning stated in section II(jj) of the
14 Master Settlement Agreement and all amendments to the Agreement.

15 (k) "Qualified escrow fund" has the meaning stated in § 16–402(g) of this title (the
16 [Escrow] **EQUITY Act**).

17 (l) "Tobacco product manufacturer" has the meaning stated in § 16–402(j) of this
18 title (the [Escrow] **EQUITY Act**).

19 (m) "Units sold" has the meaning stated in § 16–402(k) of this title (the [Escrow]
20 **EQUITY Act**).

21 16–503.

22 (a) A tobacco product manufacturer whose cigarettes are sold in this State,
23 whether directly or through a distributor, retailer or similar intermediary, shall execute
24 and deliver, on a form prescribed by the Attorney General, a certification to the Attorney
25 General no later than the 30th day of April each year, certifying under penalty of perjury
26 that, as of the date of the certification, the tobacco product manufacturer either:

27 (1) is a participating manufacturer; or

28 (2) is in full compliance with the [Escrow] **EQUITY Act**.

29 (b) (1) A participating manufacturer shall include in its certification a list of
30 its brand families.

1 (2) The participating manufacturer shall update the list at least 30
2 calendar days prior to any addition or modification to its brand families by executing and
3 delivering a supplemental certification to the Attorney General.

4 (c) (1) A nonparticipating manufacturer shall include in its certification a
5 complete list of all of its brand families.

6 (2) The certification shall:

7 (i) separately list each brand family of cigarettes and the number of
8 units sold for each brand family that was sold in the State during the preceding calendar
9 year;

10 (ii) list each of its brand families that have been sold in the State at
11 any time during the current calendar year;

12 (iii) indicate by an asterisk any brand family sold in the State during
13 the preceding calendar year that is no longer being sold in the State as of the date of such
14 certification; and

15 (iv) identify by name and address any other manufacturer of such
16 brand families in the preceding or current calendar year.

17 (3) The nonparticipating manufacturer shall update the list at least 30
18 calendar days prior to any addition or modification of its brand families by executing and
19 delivering a supplemental certification to the Attorney General.

20 (d) (1) In the case of a nonparticipating manufacturer, the certification shall
21 further certify that the nonparticipating manufacturer:

22 (i) is registered to do business in the State or has appointed a
23 resident agent for service of process and provided notice of the appointment as required by
24 § 16–505 of this subtitle;

25 (ii) **1. REGARDING SALES MADE ON OR BEFORE DECEMBER**
26 **31, 2023**, has established and continues to maintain a qualified escrow fund, and has
27 executed a qualified escrow agreement that has been reviewed and approved by the
28 Attorney General and that governs the qualified escrow fund; **[and] OR**

29 **2. HAS PAID THE EQUITY FEE REQUIRED UNDER §**
30 **16–403(A)(2)(II) OF THIS TITLE; AND**

31 (iii) is in full compliance with the **[Escrow] EQUITY Act** and this
32 subtitle and any regulations adopted in accordance with the **[Escrow] EQUITY Act** and this
33 subtitle.

1 (2) The certification shall include:

2 (i) **FOR NONPARTICIPATING MANUFACTURERS THAT**
3 **ESTABLISHED AN ESCROW FUND:**

4 1. the name, address and telephone number of the financial
5 institution in which the nonparticipating manufacturer has established a qualified escrow
6 fund required under [§ 16-403(a)(2)] **§ 16-403(A)(2)(I)** of this title (the [Escrow] **EQUITY**
7 Act) and all regulations adopted under it;

8 [(ii)] 2. the account number of the qualified escrow fund and
9 subaccount number for the State of Maryland;

10 [(iii)] 3. the amount the nonparticipating manufacturer **HAS**
11 placed in the fund for cigarettes sold in the State during the preceding calendar year, the
12 date and amount of each deposit, and any additional information the Attorney General
13 considers necessary to confirm the information required by this subparagraph; and

14 [(iv)] 4. the amount of and date of any withdrawal or transfer of
15 funds the nonparticipating manufacturer made at any time from the fund or from any other
16 qualified escrow fund into which the nonparticipating manufacturer made escrow
17 payments under [§ 16-403(a)(2)] **§ 16-403(A)(2)(I)** of this title (the [Escrow] **EQUITY** Act)
18 and all regulations adopted under that section; **OR**

19 **(II) FOR A NONPARTICIPATING MANUFACTURER THAT PAID THE**
20 **EQUITY FEE, THE AMOUNT OF THE PAYMENT THE NONPARTICIPATING**
21 **MANUFACTURER HAS PAID FOR CIGARETTES SOLD IN THE STATE DURING THE**
22 **PRECEDING CALENDAR YEAR, THE DATE AND AMOUNT OF THE PAYMENT, AND ANY**
23 **ADDITIONAL INFORMATION THE ATTORNEY GENERAL CONSIDERS NECESSARY TO**
24 **CONFIRM THE INFORMATION REQUIRED BY THIS ITEM.**

25 (e) (1) A tobacco product manufacturer may not include a brand family in its
26 certification unless:

27 (i) in the case of a participating manufacturer, the participating
28 manufacturer affirms that the brand family is deemed to be its cigarettes for purposes of
29 calculating its payments under the Master Settlement Agreement for the relevant year, in
30 the volume and shares determined in accordance with the Master Settlement Agreement;
31 and

32 (ii) in the case of a nonparticipating manufacturer, the
33 nonparticipating manufacturer affirms that the brand family is deemed to be its cigarettes
34 for purposes of the [Escrow] **EQUITY** Act.

35 (2) Nothing in this section may be construed as limiting or otherwise
36 affecting the State's right to maintain that a brand family constitutes cigarettes of a

1 different tobacco product manufacturer for purposes of calculating payments under the
2 Master Settlement Agreement or for purposes of the [Escrow] EQUITY Act.

3 (3) The tobacco product manufacturer shall maintain all invoices and
4 documentation of sales and any other information relied upon for its certification for a
5 period of 5 years, unless otherwise required by law to maintain them for a greater period
6 of time.

7 16-504.

8 (a) Except as provided in subsection (b) of this section, the Attorney General shall
9 develop and make available for public inspection a directory listing all tobacco product
10 manufacturers that **THE ATTORNEY GENERAL DETERMINES** have provided current and
11 accurate certifications conforming to the requirements of § 16-503 of this subtitle **AND**
12 **WITH ALL APPLICABLE FEDERAL, STATE, AND LOCAL LAWS** and all **COMPLIANT** brand
13 families that are listed in such certifications.

14 (b) (1) The Attorney General may not include or retain in the directory the
15 name or brand families of any nonparticipating manufacturer that fails to provide the
16 required certification or whose certification the Attorney General determines is not in
17 compliance with § 16-503(c)(3) and (d) of this subtitle, unless the Attorney General has
18 determined that the violation has been cured to the satisfaction of the Attorney General.

19 (2) Neither a tobacco product manufacturer nor a brand family may be
20 included or retained in the directory if the Attorney General concludes, in the case of a
21 nonparticipating manufacturer, that:

22 (i) **1.** any escrow payment required under [§ 16-403(a)(2)] §
23 **16-403(A)(2)(I)** of this title (the [Escrow] EQUITY Act) for any period for any brand
24 family, whether or not listed by such nonparticipating manufacturer, has not been fully
25 paid into a qualified escrow fund governed by a qualified escrow agreement that has been
26 approved by the Attorney General; or

27 **2. ANY EQUITY FEE REQUIRED UNDER § 16-403(A)(2)(II)**
28 **OF THIS TITLE FOR ANY PERIOD FOR ANY BRAND FAMILY, WHETHER OR NOT LISTED**
29 **BY SUCH NONPARTICIPATING MANUFACTURER, HAS NOT BEEN FULLY PAID TO THE**
30 **COMPROLLER; OR**

31 (ii) any outstanding final judgment, including interest on the
32 judgment, for a violation of the Escrow Act has not been fully satisfied for the brand family
33 or the manufacturer.

34 (3) The Attorney General shall update the directory as necessary in order
35 to correct mistakes and to add or remove a tobacco product manufacturer or brand family
36 to keep the directory in conformity with the requirements of this subtitle.

1 (4) Each licensed wholesaler shall provide and update as necessary an
2 electronic mail address to the Attorney General for the purpose of receiving any
3 notifications that may be required by this subtitle.

4 (c) A person may not:

5 (1) affix a stamp to a package or other container of cigarettes of a tobacco
6 product manufacturer or brand family not included in the directory; or

7 (2) sell, offer or possess for sale in this State, or import for personal
8 consumption in this State, cigarettes of a tobacco product manufacturer or brand family
9 not included in the directory.

10 16-506.

11 (e) (1) To promote compliance with this subtitle, the Attorney General may
12 adopt regulations requiring a tobacco product manufacturer subject to the requirements of
13 § 16-503(a) of this subtitle to make the escrow deposits **OR PAY THE EQUITY FEE** required
14 in quarterly installments during the year in which the sales covered by the deposits **OR**
15 **PAYMENTS** are made.

16 (2) The Attorney General may require production of information sufficient
17 to enable the Attorney General to determine the adequacy of the amount of the installment
18 deposit **OR PAYMENT**.

19 SECTION 2. AND BE IT FURTHER ENACTED, That notwithstanding the
20 provisions of § 1-210 of the General Provisions Article, the provisions of this Act are not
21 severable, and if any provision of this Act or the application thereof to any person or
22 circumstance is held invalid for any reason in a court of competent jurisdiction no other
23 provision or application of this Act may be given effect.

24 SECTION 3. AND BE IT FURTHER ENACTED, That:

25 (a) In this section, "Master Settlement Agreement" means the settlement
26 agreement and related documents entered into on November 23, 1998, by the State and
27 leading United States tobacco product manufacturers.

28 (b) Notwithstanding the provisions of § 1-210 of the General Provisions Article,
29 the provisions of this Act are not severable, and if all or any portion of the equity fee
30 established under § 16-403 of the Business Regulation Article, as enacted under Section 1
31 of this Act, results in a determination by the Firm, as that term is defined by the Master
32 Settlement Agreement, that Title 16, Subtitle 4 (the Equity Act) of the Business Regulation
33 Article no longer constitutes a qualifying statute, as that term is defined in § IX(d)(1)(C) of
34 the Master Settlement Agreement, no other provision or application of this Act may be
35 given effect.

1 SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall take effect
2 October 1, 2024.