
By: **Delegate Wood**
Introduced and read first time: February 7, 2003
Assigned to: Health and Government Operations

Committee Report: Favorable with amendments
House action: Adopted
Read second time: March 21, 2003

CHAPTER _____

1 AN ACT concerning

2 **Tobacco Product Manufacturers - Nonparticipating Manufacturers -**
3 **Escrow Requirements**

4 FOR the purpose of requiring tobacco product manufacturers whose cigarettes are
5 sold in the State to periodically submit certain certifications, reports, and
6 notices to ~~the Comptroller and to the Attorney General~~; requiring the
7 ~~Comptroller~~ Attorney General to maintain a directory of cigarettes approved for
8 stamping and sale; prohibiting the stamping or selling or importing of cigarettes
9 not in the directory for sale in the State; requiring manufacturers to appoint an
10 agent for the service of process; requiring reporting of information by licensed
11 wholesalers; ~~prescribing~~ establishing certain penalties, remedies, and
12 enforcement procedures; authorizing the ~~Comptroller~~ Attorney General to adopt
13 regulations requiring certain escrow payments; requiring the Governor to make
14 a certain appropriation from the Cigarette Restitution Fund each year under
15 certain circumstances; providing for construction of this Act; providing that a
16 certain act controls one of the provisions of this Act under certain circumstances;
17 making the provisions of this Act severable; requiring a certain report to be filed
18 by a certain date; requiring a certain certification to be filed by a certain date;
19 requiring a certain directory to be made available by a certain date; defining
20 certain terms; providing for the effective date of this Act; and generally relating
21 to tobacco product manufacturers, the sale of tobacco products, and the
22 enforcement of the provisions of Chapter 169 of the Acts of the General
23 Assembly of 1999, as amended by Chapter 141 of the Acts of the General
24 Assembly of 2001.

25 BY adding to
26 Article - Business Regulation
27 Section 16-501 through 16-508 to be under the new subtitle "Subtitle 5. Escrow

1 Requirements for Nonparticipating Tobacco Product Manufacturers"
2 Annotated Code of Maryland
3 (1998 Replacement Volume and 2002 Supplement)

4 BY repealing and reenacting, with amendments,
5 Article - State Finance and Procurement
6 Section 7-317(g)
7 Annotated Code of Maryland
8 (2001 Replacement Volume and 2002 Supplement)

9 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
10 MARYLAND, That the Laws of Maryland read as follows:

11 **Article - Business Regulation**

12 **SUBTITLE 5. ESCROW REQUIREMENTS FOR NONPARTICIPATING TOBACCO PRODUCT**
13 **MANUFACTURERS.**

14 16-501.

15 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS
16 INDICATED.

17 (B) (1) "BRAND FAMILY" MEANS ALL STYLES OF CIGARETTES SOLD UNDER
18 THE SAME TRADEMARK, REGARDLESS OF WHETHER THE CIGARETTES ARE
19 DIFFERENTIATED FROM ONE ANOTHER BY MEANS OF ADDITIONAL MODIFIERS OR
20 DESCRIPTORS SUCH AS "MENTHOL", "LIGHTS", "KINGS", "100S", OR OTHER
21 DIFFERENTIATION.

22 (2) "BRAND FAMILY" INCLUDES ANY USE OF A BRAND NAME (ALONE OR
23 IN CONJUNCTION WITH ANY OTHER WORD) TRADEMARK, LOGO, SYMBOL, MOTTO,
24 SELLING MESSAGE, RECOGNIZABLE PATTERN OF COLORS, OR ANY OTHER INDICIA
25 OF PRODUCT IDENTIFICATION IDENTICAL OR SIMILAR TO, OR IDENTIFIABLE WITH, A
26 PREVIOUSLY KNOWN BRAND OF CIGARETTES.

27 (C) "CIGARETTE" HAS THE ~~SAME~~ MEANING AS STATED IN SUBSECTION 2(E) OF
28 THE ESCROW ACT.

29 (D) "COMPTROLLER" MEANS THE COMPTROLLER OF THE STATE OR ANY
30 AUTHORIZED AGENT OF THE COMPTROLLER WHO IS RESPONSIBLE FOR COLLECTION
31 OF THE EXCISE TAX ON CIGARETTES.

32 (E) "ESCROW ACT" MEANS CHAPTER 169 OF THE ACTS OF THE GENERAL
33 ASSEMBLY OF 1999 AS AMENDED BY CHAPTER 141 OF THE ACTS OF THE GENERAL
34 ASSEMBLY OF 2001.

35 (F) "LICENSED WHOLESALER" MEANS A WHOLESALER WHO IS LICENSED
36 UNDER TITLE 16, SUBTITLE 2, OF THIS ARTICLE TO ACT AS A WHOLESALER AND

1 ~~INCLUDES~~ ANY PERSON WHO IS AN AUTHORIZED AGENT OF THE LICENSED
2 WHOLESALER FOR THE STAMPING AND DISTRIBUTION OF CIGARETTES.

3 (G) "MASTER SETTLEMENT AGREEMENT" HAS THE ~~SAME~~ MEANING ~~AS~~ STATED
4 IN SUBSECTION 2(F) OF THE ESCROW ACT.

5 (H) "NONPARTICIPATING MANUFACTURER" MEANS ANY TOBACCO PRODUCT
6 MANUFACTURER THAT IS NOT A PARTICIPATING MANUFACTURER.

7 (I) "PARTICIPATING MANUFACTURER" HAS THE MEANING ~~AS~~ STATED IN
8 SECTION II(JJ) OF THE MASTER SETTLEMENT AGREEMENT AND ALL AMENDMENTS
9 TO THE AGREEMENT.

10 (J) "QUALIFIED ESCROW FUND" HAS THE ~~SAME~~ MEANING ~~AS~~ STATED IN
11 SUBSECTION 2(G) OF THE ESCROW ACT.

12 (K) "TOBACCO PRODUCT MANUFACTURER" HAS THE MEANING ~~AS~~ STATED IN
13 SUBSECTION 2(J) OF THE ESCROW ACT.

14 (L) "UNITS SOLD" HAS THE MEANING ~~AS~~ STATED IN SUBSECTION 2(K) OF THE
15 ESCROW ACT.

16 16-502.

17 (A) VIOLATIONS OF THE ESCROW ACT, AN ACT CONCERNING
18 NONPARTICIPATING MANUFACTURERS AND DEPOSITS OF FUNDS INTO ESCROW
19 ACCOUNTS, THREATEN THE INTEGRITY OF THE TOBACCO MASTER SETTLEMENT
20 AGREEMENT, THE FISCAL SOUNDNESS OF THE STATE, AND THE PUBLIC HEALTH.

21 (B) ENACTING PROCEDURAL ENHANCEMENTS WILL HELP PREVENT
22 VIOLATIONS AND AID THE ENFORCEMENT OF THE ESCROW ACT AND THEREBY
23 SAFEGUARD THE MASTER SETTLEMENT AGREEMENT, THE FISCAL SOUNDNESS OF
24 THE STATE, AND THE PUBLIC HEALTH.

25 (C) THE PROVISIONS OF THIS SUBTITLE ARE NOT INTENDED TO AND ~~SHALL~~
26 MAY NOT BE INTERPRETED TO AMEND THE ESCROW ACT.

27 16-503.

28 (A) A TOBACCO PRODUCT MANUFACTURER WHOSE CIGARETTES ARE SOLD IN
29 THIS STATE, WHETHER DIRECTLY OR THROUGH A DISTRIBUTOR, RETAILER OR
30 SIMILAR INTERMEDIARY, SHALL EXECUTE AND DELIVER, ON A FORM PRESCRIBED BY
31 ~~THE COMPTROLLER ATTORNEY GENERAL~~, A CERTIFICATION TO THE ~~COMPTROLLER~~
32 ~~AND~~ ATTORNEY GENERAL NO LATER THAN THE 30TH DAY OF APRIL EACH YEAR,
33 CERTIFYING UNDER PENALTY OF PERJURY THAT, AS OF THE DATE OF THE
34 CERTIFICATION, THE TOBACCO PRODUCT MANUFACTURER EITHER:

35 (1) IS A PARTICIPATING MANUFACTURER; OR

36 (2) IS IN FULL COMPLIANCE WITH THE ESCROW ACT.

1 (B) (1) A PARTICIPATING MANUFACTURER SHALL INCLUDE IN ITS
2 CERTIFICATION A LIST OF ITS BRAND FAMILIES.

3 (2) THE PARTICIPATING MANUFACTURER SHALL UPDATE THE LIST AT
4 LEAST 30 CALENDAR DAYS PRIOR TO ANY ADDITION OR MODIFICATION TO ITS BRAND
5 FAMILIES BY EXECUTING AND DELIVERING A SUPPLEMENTAL CERTIFICATION TO
6 THE ATTORNEY GENERAL ~~AND COMPTROLLER~~.

7 (C) (1) A NONPARTICIPATING MANUFACTURER SHALL INCLUDE IN ITS
8 CERTIFICATION A COMPLETE LIST OF ALL OF ITS BRAND FAMILIES.

9 (2) THE CERTIFICATION SHALL:

10 (I) SEPARATELY LIST EACH BRAND FAMILY OF CIGARETTES AND
11 THE NUMBER OF UNITS SOLD FOR EACH BRAND FAMILY THAT WAS SOLD IN THE
12 STATE DURING THE PRECEDING CALENDAR YEAR;

13 (II) LIST EACH OF ITS BRAND FAMILIES THAT HAVE BEEN SOLD IN
14 THE STATE AT ANY TIME DURING THE CURRENT CALENDAR YEAR;

15 (III) INDICATE BY AN ASTERISK ANY BRAND FAMILY SOLD IN THE
16 STATE DURING THE PRECEDING CALENDAR YEAR THAT IS NO LONGER BEING SOLD
17 IN THE STATE AS OF THE DATE OF SUCH CERTIFICATION; AND

18 (IV) IDENTIFY BY NAME AND ADDRESS ANY OTHER
19 MANUFACTURER OF SUCH BRAND FAMILIES IN THE PRECEDING OR CURRENT
20 CALENDAR YEAR.

21 (3) THE NONPARTICIPATING MANUFACTURER SHALL UPDATE THE LIST
22 AT LEAST 30 CALENDAR DAYS PRIOR TO ANY ADDITION OR MODIFICATION OF ITS
23 BRAND FAMILIES BY EXECUTING AND DELIVERING A SUPPLEMENTAL
24 CERTIFICATION TO THE ATTORNEY GENERAL ~~AND THE COMPTROLLER~~.

25 (D) (1) IN THE CASE OF A NONPARTICIPATING MANUFACTURER, THE
26 CERTIFICATION SHALL FURTHER CERTIFY THAT THE NONPARTICIPATING
27 MANUFACTURER:

28 (I) IS REGISTERED TO DO BUSINESS IN THE STATE OR HAS
29 APPOINTED A RESIDENT AGENT FOR SERVICE OF PROCESS AND PROVIDED NOTICE
30 ~~THEREOF~~ OF THE APPOINTMENT AS REQUIRED BY § 16-505 OF THIS SUBTITLE;

31 (II) HAS ESTABLISHED AND CONTINUES TO MAINTAIN A
32 QUALIFIED ESCROW FUND, AND HAS EXECUTED A QUALIFIED ESCROW AGREEMENT
33 THAT HAS BEEN REVIEWED AND APPROVED BY THE ATTORNEY GENERAL AND THAT
34 GOVERNS THE QUALIFIED ESCROW FUND; AND

35 (III) IS IN FULL COMPLIANCE WITH THE ESCROW ACT AND THIS
36 SUBTITLE AND ANY REGULATIONS ~~PROMULGATED~~ ADOPTED IN ACCORDANCE WITH
37 THE ESCROW ACT AND THIS SUBTITLE.

1 (2) THE CERTIFICATION SHALL INCLUDE:

2 (I) THE NAME, ADDRESS AND TELEPHONE NUMBER OF THE
3 FINANCIAL INSTITUTION IN WHICH THE NONPARTICIPATING MANUFACTURER HAS
4 ESTABLISHED A QUALIFIED ESCROW FUND REQUIRED ~~PURSUANT TO~~ UNDER
5 SUBSECTION 3(A)(2) OF THE ESCROW ACT AND ALL REGULATIONS ~~PROMULGATED~~
6 ADOPTED UNDER IT;

7 (II) THE ACCOUNT NUMBER OF THE QUALIFIED ESCROW FUND
8 AND SUBACCOUNT NUMBER FOR THE STATE OF MARYLAND;

9 (III) THE AMOUNT THE NONPARTICIPATING MANUFACTURER
10 PLACED IN THE FUND FOR CIGARETTES SOLD IN THE STATE DURING THE
11 PRECEDING CALENDAR YEAR, THE DATE AND AMOUNT OF EACH DEPOSIT, AND ANY
12 ADDITIONAL INFORMATION THE ~~COMPTROLLER~~ ATTORNEY GENERAL CONSIDERS
13 NECESSARY TO CONFIRM THE INFORMATION REQUIRED BY THIS SUBPARAGRAPH;
14 AND

15 (IV) THE AMOUNT OF AND DATE OF ANY WITHDRAWAL OR
16 TRANSFER OF FUNDS THE NONPARTICIPATING MANUFACTURER MADE AT ANY TIME
17 FROM ~~SUCH THE~~ FUND OR FROM ANY OTHER QUALIFIED ESCROW FUND INTO
18 WHICH THE NONPARTICIPATING MANUFACTURER MADE ESCROW PAYMENTS UNDER
19 SUBSECTION 3(A)(2) OF THE ESCROW ACT AND ALL REGULATIONS ADOPTED UNDER
20 THAT SECTION.

21 (E) (1) A TOBACCO PRODUCT MANUFACTURER MAY NOT INCLUDE A BRAND
22 FAMILY IN ITS CERTIFICATION UNLESS:

23 (I) IN THE CASE OF A PARTICIPATING MANUFACTURER, THE
24 PARTICIPATING MANUFACTURER AFFIRMS THAT THE BRAND FAMILY IS DEEMED TO
25 BE ITS CIGARETTES FOR PURPOSES OF CALCULATING ITS PAYMENTS UNDER THE
26 MASTER SETTLEMENT AGREEMENT FOR THE RELEVANT YEAR, IN THE VOLUME AND
27 SHARES DETERMINED ~~PURSUANT TO~~ IN ACCORDANCE WITH THE MASTER
28 SETTLEMENT AGREEMENT; AND

29 (II) IN THE CASE OF A NONPARTICIPATING MANUFACTURER, THE
30 NONPARTICIPATING MANUFACTURER AFFIRMS THAT THE BRAND FAMILY IS
31 DEEMED TO BE ITS CIGARETTES FOR PURPOSES OF THE ESCROW ACT.

32 (2) NOTHING IN THIS SECTION MAY BE CONSTRUED AS LIMITING OR
33 OTHERWISE AFFECTING THE STATE'S RIGHT TO MAINTAIN THAT A BRAND FAMILY
34 CONSTITUTES CIGARETTES OF A DIFFERENT TOBACCO PRODUCT MANUFACTURER
35 FOR PURPOSES OF CALCULATING PAYMENTS UNDER THE MASTER SETTLEMENT
36 AGREEMENT OR FOR PURPOSES OF THE ESCROW ACT.

37 (3) THE TOBACCO PRODUCT MANUFACTURER SHALL MAINTAIN ALL
38 INVOICES AND DOCUMENTATION OF SALES AND ANY OTHER INFORMATION RELIED
39 UPON FOR ITS CERTIFICATION FOR A PERIOD OF 5 YEARS, UNLESS OTHERWISE
40 REQUIRED BY LAW TO MAINTAIN THEM FOR A GREATER PERIOD OF TIME.

1 16-504.

2 (A) EXCEPT AS PROVIDED IN SUBSECTION (B) OF THIS SECTION, THE
3 ~~COMPTROLLER ATTORNEY GENERAL~~ SHALL DEVELOP AND MAKE AVAILABLE FOR
4 PUBLIC INSPECTION A DIRECTORY LISTING ALL TOBACCO PRODUCT
5 MANUFACTURERS THAT HAVE PROVIDED CURRENT AND ACCURATE
6 CERTIFICATIONS CONFORMING TO THE REQUIREMENTS OF § 16-503 OF THIS
7 SUBTITLE AND ALL BRAND FAMILIES THAT ARE LISTED IN SUCH CERTIFICATIONS.

8 (B) (1) THE ~~COMPTROLLER ATTORNEY GENERAL~~ MAY NOT INCLUDE OR
9 RETAIN IN THE DIRECTORY THE NAME OR BRAND FAMILIES OF ANY
10 NONPARTICIPATING MANUFACTURER THAT FAILS TO PROVIDE THE REQUIRED
11 CERTIFICATION OR WHOSE CERTIFICATION THE ~~COMPTROLLER ATTORNEY~~
12 ~~GENERAL~~ DETERMINES IS NOT IN COMPLIANCE WITH § 16-503(C)(3) AND (D) OF THIS
13 SUBTITLE, UNLESS THE ~~COMPTROLLER ATTORNEY GENERAL~~ HAS DETERMINED
14 THAT THE VIOLATION HAS BEEN CURED TO THE SATISFACTION OF THE
15 ~~COMPTROLLER ATTORNEY GENERAL~~.

16 (2) NEITHER A TOBACCO PRODUCT MANUFACTURER NOR A BRAND
17 FAMILY MAY BE INCLUDED OR RETAINED IN THE DIRECTORY IF THE ~~COMPTROLLER~~
18 ~~ATTORNEY GENERAL~~ CONCLUDES, IN THE CASE OF A NONPARTICIPATING
19 MANUFACTURER, THAT:

20 (I) ANY ESCROW PAYMENT REQUIRED UNDER SUBSECTION 3(A)(2)
21 OF THE ESCROW ACT FOR ANY PERIOD FOR ANY BRAND FAMILY, WHETHER OR NOT
22 LISTED BY SUCH NONPARTICIPATING MANUFACTURER, HAS NOT BEEN FULLY PAID
23 INTO A QUALIFIED ESCROW FUND GOVERNED BY A QUALIFIED ESCROW AGREEMENT
24 THAT HAS BEEN APPROVED BY THE ATTORNEY GENERAL; OR

25 (II) ANY OUTSTANDING FINAL JUDGMENT, INCLUDING INTEREST
26 ON THE ~~JUDGEMENT~~ JUDGMENT, FOR A VIOLATION OF THE ESCROW ACT HAS NOT
27 BEEN FULLY SATISFIED FOR THE BRAND FAMILY OR THE MANUFACTURER.

28 (3) THE ~~COMPTROLLER ATTORNEY GENERAL~~ SHALL UPDATE THE
29 DIRECTORY AS NECESSARY IN ORDER TO CORRECT MISTAKES AND TO ADD OR
30 REMOVE A TOBACCO PRODUCT MANUFACTURER OR BRAND FAMILY TO KEEP THE
31 DIRECTORY IN CONFORMITY WITH THE REQUIREMENTS OF THIS SUBTITLE.

32 (4) EACH LICENSED WHOLESALER SHALL PROVIDE AND UPDATE AS
33 NECESSARY AN ELECTRONIC MAIL ADDRESS TO THE ~~COMPTROLLER ATTORNEY~~
34 ~~GENERAL~~ FOR THE PURPOSE OF RECEIVING ANY NOTIFICATIONS ~~AS~~ THAT MAY BE
35 REQUIRED BY THIS SUBTITLE.

36 (C) ~~IT SHALL BE UNLAWFUL FOR ANY A PERSON TO~~ MAY NOT:

37 (1) AFFIX A STAMP TO A PACKAGE OR OTHER CONTAINER OF
38 CIGARETTES OF A TOBACCO PRODUCT MANUFACTURER OR BRAND FAMILY NOT
39 INCLUDED IN THE DIRECTORY; OR

1 (2) SELL, OFFER OR POSSESS FOR SALE IN THIS STATE, OR IMPORT FOR
2 PERSONAL CONSUMPTION IN THIS STATE, CIGARETTES OF A TOBACCO PRODUCT
3 MANUFACTURER OR BRAND FAMILY NOT INCLUDED IN THE DIRECTORY.

4 16-505.

5 (A) (1) ANY NONRESIDENT OR FOREIGN NONPARTICIPATING
6 MANUFACTURER THAT HAS NOT REGISTERED TO DO BUSINESS IN THE STATE AS A
7 FOREIGN CORPORATION OR BUSINESS ENTITY SHALL, AS A CONDITION PRECEDENT
8 TO HAVING ITS BRAND FAMILIES INCLUDED OR RETAINED IN THE DIRECTORY
9 DESCRIBED IN § 16-504 OF THIS SUBTITLE, APPOINT AND CONTINUALLY ENGAGE
10 WITHOUT INTERRUPTION THE SERVICES OF AN AGENT IN THE UNITED STATES TO
11 ACT AS AN AGENT FOR THE SERVICE OF PROCESS ON THE NONRESIDENT OR
12 FOREIGN NONPARTICIPATING MANUFACTURER.

13 (2) ANY PROCESS AND ANY ACTION OR PROCEEDING AGAINST THE
14 NONRESIDENT OR FOREIGN NONPARTICIPATING MANUFACTURER CONCERNING OR
15 ARISING OUT OF THE ENFORCEMENT OF THIS SUBTITLE OR THE ESCROW ACT MAY
16 BE SERVED IN ANY MANNER AUTHORIZED BY LAW.

17 (3) THE SERVICE OF PROCESS SHALL CONSTITUTE LEGAL AND VALID
18 SERVICE OF PROCESS ON THE NONPARTICIPATING MANUFACTURER. THE
19 NONPARTICIPATING MANUFACTURER SHALL PROVIDE, TO THE SATISFACTION OF
20 ~~THE COMPTROLLER AND~~ THE ATTORNEY GENERAL, THE NAME, ADDRESS, PHONE
21 NUMBER, AND PROOF OF THE APPOINTMENT AND AVAILABILITY OF THE AGENT TO
22 ~~THE COMPTROLLER AND~~ THE ATTORNEY GENERAL.

23 (B) (1) THE NONPARTICIPATING MANUFACTURER SHALL PROVIDE:

24 (I) NOTICE TO ~~THE COMPTROLLER AND~~ THE ATTORNEY GENERAL
25 AT LEAST 30 CALENDAR DAYS PRIOR TO TERMINATION OF THE AUTHORITY OF AN
26 AGENT; AND

27 (II) PROOF TO THE SATISFACTION OF THE ATTORNEY GENERAL OF
28 THE APPOINTMENT OF A NEW AGENT NOT LESS THAN 5 CALENDAR DAYS PRIOR TO
29 THE TERMINATION OF AN EXISTING AGENT APPOINTMENT.

30 (2) IF AN AGENT TERMINATES AN AGENCY APPOINTMENT, THE
31 NONPARTICIPATING MANUFACTURER SHALL:

32 (I) NOTIFY ~~THE COMPTROLLER AND~~ THE ATTORNEY GENERAL OF
33 THE TERMINATION WITHIN 5 CALENDAR DAYS; AND

34 (II) INCLUDE PROOF TO THE SATISFACTION OF THE ATTORNEY
35 GENERAL OF THE APPOINTMENT OF A NEW AGENT.

36 16-506.

37 (A) (1) NOT LATER THAN ~~20~~ 21 DAYS AFTER THE END OF EACH CALENDAR
38 QUARTER, AND MORE FREQUENTLY IF SO DIRECTED BY THE COMPTROLLER, EACH

1 LICENSED WHOLESALER SHALL SUBMIT INFORMATION ~~AS~~ IN THE FORM AND
2 MANNER THE COMPTROLLER REQUIRES TO FACILITATE COMPLIANCE WITH THIS
3 SUBTITLE, INCLUDING, ~~BUT NOT LIMITED TO,~~ A LIST BY BRAND FAMILY OF THE
4 TOTAL NUMBER OF CIGARETTES, OR IN THE CASE OF ROLL-YOUR-OWN CIGARETTES,
5 THE EQUIVALENT STICK COUNT FOR WHICH THE LICENSED WHOLESALER AFFIXED
6 STAMPS DURING THE PREVIOUS CALENDAR QUARTER OR OTHERWISE PAID THE TAX
7 DUE FOR THE CIGARETTES.

8 (2) THE LICENSED WHOLESALER SHALL MAINTAIN AND MAKE
9 AVAILABLE TO THE COMPTROLLER FOR A PERIOD OF 5 YEARS ALL INVOICES AND
10 DOCUMENTATION OF SALES OF ALL NONPARTICIPATING MANUFACTURER
11 CIGARETTES AND ANY OTHER INFORMATION RELIED ON IN REPORTING TO THE
12 COMPTROLLER.

13 (B) (1) THE COMPTROLLER ~~IS AUTHORIZED TO~~ MAY DISCLOSE TO THE
14 ATTORNEY GENERAL ANY INFORMATION RECEIVED UNDER THIS SUBTITLE AND
15 REQUESTED BY THE ATTORNEY GENERAL FOR PURPOSES OF DETERMINING
16 COMPLIANCE WITH AND ENFORCEMENT OF THE PROVISIONS OF THIS SUBTITLE.

17 (2) THE COMPTROLLER AND THE ATTORNEY GENERAL SHALL SHARE
18 WITH EACH OTHER THE INFORMATION RECEIVED UNDER THIS SUBTITLE AND MAY
19 SHARE THE INFORMATION WITH OTHER FEDERAL, STATE, OR LOCAL AGENCIES
20 ONLY FOR PURPOSES OF ENFORCEMENT OF THIS SUBTITLE, THE ESCROW ACT, OR
21 CORRESPONDING LAWS OF OTHER STATES.

22 (C) THE ATTORNEY GENERAL MAY REQUIRE AT ANY TIME FROM ~~THE A~~ A
23 NONPARTICIPATING MANUFACTURER PROOF, FROM THE FINANCIAL INSTITUTION
24 IN WHICH THE MANUFACTURER HAS ESTABLISHED A QUALIFIED ESCROW FUND FOR
25 THE PURPOSE OF COMPLIANCE WITH THE ESCROW ACT, OF THE AMOUNT OF MONEY
26 IN THE ESCROW FUND, EXCLUSIVE OF INTEREST, THE AMOUNT AND DATE OF EACH
27 DEPOSIT TO THE ESCROW FUND, AND THE AMOUNT AND DATE OF EACH
28 WITHDRAWAL FROM THE ESCROW FUND.

29 (D) IN ADDITION TO ANY OTHER INFORMATION REQUIRED TO BE SUBMITTED
30 BY LAW, THE COMPTROLLER OR THE ATTORNEY GENERAL MAY REQUIRE A LICENSED
31 WHOLESALER OR TOBACCO PRODUCT MANUFACTURER TO SUBMIT ANY ADDITIONAL
32 INFORMATION, INCLUDING, ~~BUT NOT LIMITED TO,~~ SAMPLES OF THE PACKAGING OR
33 LABELING OF EACH BRAND FAMILY, AS IS NECESSARY TO ENABLE THE ATTORNEY
34 GENERAL TO DETERMINE WHETHER A TOBACCO PRODUCT MANUFACTURER IS IN
35 COMPLIANCE WITH THIS SUBTITLE.

36 (E) (1) TO PROMOTE COMPLIANCE WITH THIS SUBTITLE, THE
37 ~~COMPTROLLER~~ ATTORNEY GENERAL MAY ADOPT REGULATIONS REQUIRING A
38 TOBACCO PRODUCT MANUFACTURER SUBJECT TO THE REQUIREMENTS OF §
39 16-503(A) OF THIS SUBTITLE TO MAKE THE ESCROW DEPOSITS REQUIRED IN
40 QUARTERLY INSTALLMENTS DURING THE YEAR IN WHICH THE SALES COVERED BY
41 THE DEPOSITS ARE MADE.

1 (2) ~~THE COMPTROLLER ATTORNEY GENERAL~~ MAY REQUIRE
2 PRODUCTION OF INFORMATION SUFFICIENT TO ENABLE THE ~~COMPTROLLER~~
3 ~~ATTORNEY GENERAL~~ TO DETERMINE THE ADEQUACY OF THE AMOUNT OF THE
4 INSTALLMENT DEPOSIT.

5 16-507.

6 (A) (1) IN ADDITION TO OR INSTEAD OF ANY OTHER CIVIL OR CRIMINAL
7 REMEDY PROVIDED BY LAW, ON A DETERMINATION THAT A LICENSED WHOLESALER
8 HAS VIOLATED § 16-504(C) OR § 16-506(A) OF THIS SUBTITLE OR ANY REGULATION
9 ADOPTED UNDER ~~THAT SECTION THIS SUBTITLE~~, THE COMPTROLLER MAY REVOKE
10 OR SUSPEND THE LICENSE OF ANY LICENSED WHOLESALER IN THE MANNER
11 PROVIDED ~~§ 16-211~~ UNDER §§ 16-211 AND 16-212 OF THIS ~~ARTICLE~~ TITLE.

12 (2) EACH STAMP AFFIXED AND EACH OFFER TO SELL CIGARETTES IN
13 VIOLATION OF § 16-504(C) OF THIS SUBTITLE SHALL CONSTITUTE A SEPARATE
14 VIOLATION.

15 (3) THE COMPTROLLER MAY ALSO IMPOSE A CIVIL PENALTY IN AN
16 AMOUNT NOT TO EXCEED THE GREATER OF 500% OF THE RETAIL VALUE OF THE
17 CIGARETTES SOLD OR \$5,000 ON A DETERMINATION OF VIOLATION OF § 16-504(C) OF
18 THIS SUBTITLE OR ANY REGULATIONS ADOPTED UNDER THAT SECTION.

19 (4) ~~THE PENALTY SHALL BE IMPOSED IN THE MANNER PROVIDED~~
20 ~~UNDER § 16-212 OF THIS ARTICLE.~~

21 (B) (1) ANY CIGARETTES THAT HAVE BEEN SOLD, OFFERED FOR SALE OR
22 POSSESSED FOR SALE IN THIS STATE, OR IMPORTED FOR PERSONAL CONSUMPTION
23 IN THIS STATE IN VIOLATION OF § 16-504(C) OF THIS SUBTITLE SHALL BE DEEMED
24 CONTRABAND UNDER §§ 13-836, 13-837, AND 13-839 OF THE TAX - GENERAL ARTICLE,
25 AND THOSE CIGARETTES SHALL BE SUBJECT TO SEIZURE AND FORFEITURE AS
26 PROVIDED IN THOSE SECTIONS.

27 (2) ALL CIGARETTES SEIZED AND FORFEITED MAY NOT BE RESOLD AND
28 SHALL BE DESTROYED.

29 (C) (1) THE ATTORNEY GENERAL, ON BEHALF OF THE COMPTROLLER, MAY
30 SEEK AN INJUNCTION TO RESTRAIN A THREATENED OR ACTUAL VIOLATION OF §
31 16-504(C), § 16-506(A) OR § 16-506(D) OF THIS SUBTITLE BY A LICENSED WHOLESALER
32 AND COMPEL THE LICENSED WHOLESALER TO COMPLY WITH SUCH THOSE
33 SECTIONS.

34 (2) IN ANY ACTION BROUGHT UNDER THIS SECTION, THE STATE SHALL
35 BE ENTITLED TO RECOVER THE COSTS OF INVESTIGATION, COSTS OF THE ACTION,
36 AND REASONABLE ATTORNEY'S FEES.

37 (D) A PERSON WHO SELLS, DISTRIBUTES, ACQUIRES, HOLDS, OWNS,
38 POSSESSES, TRANSPORTS, IMPORTS, OR CAUSES TO BE IMPORTED, CIGARETTES
39 THAT THE PERSON KNOWS OR SHOULD KNOW ARE INTENDED FOR DISTRIBUTION OR
40 SALE IN THE STATE IN VIOLATION OF § 16-504(C) OF THIS SUBTITLE IS GUILTY OF A

1 MISDEMEANOR, AND ON CONVICTION IS SUBJECT TO A FINE NOT EXCEEDING \$5,000
2 OR IMPRISONMENT NOT EXCEEDING 1 YEAR OR BOTH.

3 16-508.

4 (A) A DETERMINATION ~~OF BY THE COMPTROLLER ATTORNEY GENERAL~~ TO
5 OMIT OR TO DELETE FROM THE DIRECTORY DESCRIBED IN § 16-504 OF THIS
6 SUBTITLE A BRAND FAMILY OR TOBACCO PRODUCT MANUFACTURER SHALL BE
7 SUBJECT TO REVIEW IN ~~THE MANNER PRESCRIBED BY~~ ACCORDANCE WITH TITLE 10,
8 SUBTITLE 2 OF THE STATE GOVERNMENT ARTICLE.

9 (B) THE ATTORNEY GENERAL AND THE COMPTROLLER MAY ADOPT
10 REGULATIONS NECESSARY TO EFFECTUATE THE PURPOSES OF THIS SUBTITLE.

11 (C) IN ANY ACTION BROUGHT BY THE STATE TO ENFORCE THIS SUBTITLE,
12 THE STATE SHALL BE ENTITLED TO RECOVER THE COSTS OF INVESTIGATION,
13 EXPERT WITNESS FEES, COSTS OF THE ACTION, AND REASONABLE ATTORNEY'S
14 FEES.

15 (D) (1) IF A COURT DETERMINES THAT A PERSON HAS VIOLATED THIS
16 SUBTITLE, THE COURT SHALL ORDER ANY PROFITS, GAIN, GROSS RECEIPTS, OR
17 OTHER BENEFIT FROM THE VIOLATION TO BE PAID TO THE STATE TREASURER FOR
18 DEPOSIT INTO THE CIGARETTE RESTITUTION FUND ESTABLISHED UNDER § 7-317 OF
19 THE STATE FINANCE AND PROCUREMENT ARTICLE.

20 (2) UNLESS OTHERWISE EXPRESSLY PROVIDED, THE REMEDIES OR
21 PENALTIES PROVIDED BY THIS SUBTITLE ARE CUMULATIVE TO EACH OTHER, AND TO
22 THE REMEDIES OR PENALTIES AVAILABLE UNDER ALL OTHER LAWS OF THIS STATE.

23 **Article - State Finance and Procurement**

24 7-317.

25 (g) (1) Amounts may only be expended from the Fund through
26 appropriations in the State budget bill as provided in this subsection.

27 (2) The Governor shall include in the annual budget bill appropriations
28 from the Fund equivalent to the lesser of \$100,000,000 or 90% of the funds estimated
29 to be available to the Fund in the fiscal year for which the appropriations are made.

30 (3) For each fiscal year for which appropriations are made, at least 50%
31 of the appropriations shall be made for those purposes enumerated in subsection
32 (f)(1)(i), (ii), and (iii)1 through 9 of this section subject to the requirement of
33 subsection (e)(2) of this section.

34 (4) For each of fiscal years 2003 through 2006, at least 25% of the
35 appropriations shall be made for the purposes of the Maryland Medical Assistance
36 Program.

1 (5) FOR EACH FISCAL YEAR FOR WHICH APPROPRIATIONS ARE MADE,
2 0.15% OF THE FUND SHALL BE APPROPRIATED FOR THE PURPOSES OF
3 ENFORCEMENT OF ~~SUBTITLE 5~~, TITLE 16, SUBTITLE 5 OF THE BUSINESS REGULATION
4 ARTICLE.

5 [(5)] (6) Any additional appropriations, not subject to paragraph (3) ~~or~~,
6 paragraph (4), OR PARAGRAPH (5) of this subsection, may be made for any lawful
7 purpose.

8 SECTION 2. AND BE IT FURTHER ENACTED, That if a court of competent
9 jurisdiction finds that the provisions of this Act and of Chapter 169 of the Acts of the
10 General Assembly of 1999, as amended by Chapter 141 of the Acts of the General
11 Assembly of 2001, conflict and cannot be harmonized, then the provisions of Chapter
12 169 of the Acts of the General Assembly of 1999, as amended by Chapter 141 of the
13 Acts of the General Assembly of 2001, shall control. If any section, subsection,
14 subdivision, paragraph, sentence, clause or phrase of this Act causes Chapter 169 of
15 the Acts of the General Assembly of 1999, as amended by Chapter 141 of the Acts of
16 the General Assembly of 2001, to no longer constitute a Qualifying or Model Statute,
17 as those terms are defined in the Master Settlement Agreement, then that portion of
18 this Act shall not be valid. If any section, subsection, subdivision, paragraph,
19 sentence, clause or phrase of this Act is for any reason held by a court of competent
20 jurisdiction to be invalid, unlawful, or unconstitutional, the decision of the court does
21 not affect the validity of the remaining portions of this Act or any part of this Act.

22 SECTION 3. AND BE IT FURTHER ENACTED, That under this Act:

23 (a) the first report of licensed wholesalers required by § 16-506(a) of the
24 Business Regulation Article, as added by Section 1 of this Act, shall be due no later
25 than ~~August 1~~ October 21, 2003, covering the period July 1, 2003 through September
26 30, 2003;

27 (b) the first certification by a tobacco product manufacturer required by §
28 16-503(a) of the Business Regulation Article, as added by Section 1 of this Act, shall
29 be due no later than August 15, 2003; and

30 (c) the directory required by § 16-504(a) of the Business Regulation Article, as
31 added by Section 1 of this Act, shall be made available by the ~~Comptroller~~ Attorney
32 General no later than ~~November 1~~ September 15, 2003.

33 SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall take effect
34 June 1, 2003.

