HB 870

Department of Legislative Services

Maryland General Assembly
2025 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 870 (Delegate Rosenberg)
Health and Government Operations

Tobacco Product Manufacturers - Escrow Act - Alterations

This bill revises the Tobacco Product Manufacturers Escrow Act (Escrow Act) and renames it the Tobacco Product Manufacturers Equity Act (Equity Act). Tobacco product manufacturers that have not joined the Master Settlement Agreement (MSA) – also known as nonparticipating manufacturers (NPMs) – must pay an equity fee to the Attorney General for each unit sold in the State on or after January 1, 2026 (rather than placing an equivalent amount of money into a qualified escrow fund). That equity fee must be paid within a specified timeline. The annual certification that an NPM must submit to the Office of the Attorney General (OAG) must include specified information about equity fee payments. An NPM that pays an equity fee in a timely manner may contest the amount of the fee within one year of payment. The Attorney General must distribute all equity fee payments by NPMs to the Cigarette Restitution Fund (CRF). Equity fees distributed to CRF must be appropriated for purposes consistent with current law. The Attorney General may adopt regulations to implement the bill. The bill's provisions are not severable.

Fiscal Summary

State Effect: CRF revenues increase by *as much as* $933,000 annually, beginning in FY 2027, from equity fees paid by NPMs, as discussed below. OAG can absorb any costs associated with the bill's implementation using existing budgeted resources.

Local Effect: The bill is not anticipated to materially affect local government operations or finances.

Small Business Effect: None.

Analysis

Bill Summary: In renaming the Escrow Act as the Equity Act, the bill replaces various statutory references to "Escrow Act" with "Equity Act" and "escrow" with "equity."

Legislative Findings

The bill expands certain legislative findings pertaining to the (as renamed) Equity Act as follows:

- 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 the State 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.
- The public health obligations of the State are owed equally to all individuals in the State who smoke, regardless of the brand of cigarette smoked or the status of the tobacco product manufacturer under the MSA.
- It is consistent with the policy of the State to require tobacco product manufacturers that do not make payments directly to the State through the MSA to pay an amount that is intended to (1) prevent manufacturers from deriving large short-term profits and then becoming judgment proof; (2) require tobacco 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; and (4) serve as partial compensation for the financial burdens imposed on the State by cigarette smoking.

Termination of Escrow Fund Payments and Implementation of Equity Fees

The bill terminates an NPM's ongoing obligation to deposit annually, into a qualified escrow fund, $0.0188482 (as adjusted for inflation) for each cigarette it sells in Maryland. That obligation is maintained for each cigarette sold through December 31, 2025, with the escrow amount required to be in place by April 15, 2026. However, for each cigarette sold in the State beginning on January 1, 2026, the bill requires that an NPM instead pay an equity fee of $0.0188482, as adjusted for inflation, to the Attorney General. Under the bill, by April 30, 2027, and each April 30 thereafter, an NPM must remit the equity fee to the Attorney General.

Certifications to the Attorney General

In its annual certification to OAG, an NPM must certify that it has paid the required equity fee and must include (1) the amount of the payment the NPM has paid for cigarettes sold in the State during the preceding calendar year; (2) the date and amount of the payment; and (3) any additional information that the Attorney General considers to be necessary. The Attorney General must develop and make available for public inspection a directory listing all tobacco product manufacturers that *the Attorney General determines* have provided current and accurate certifications that comply with *all applicable federal, State, and local laws* and all *compliant* brand families that are listed in such certifications. An NPM and any brand family affiliated with the NPM may not be included or retained in the directory if any required equity fee has not been fully paid to the Attorney General.

Nonpayment of Equity Fees

The Attorney General may bring a civil action on behalf of the State against any NPM that fails to pay the equity fee it owes. The Attorney General is entitled to recover the attorney's fees, costs, and expenses of the action for the use of the State and must deposit any recovered funds into CRF.

As under current law for failure to place funds into escrow, a court, upon a finding that an NPM has failed to pay the equity fee, may impose a civil penalty in an amount not to exceed 5% of the amount improperly withheld per day of the violation, up to a total of 100% of the original amount improperly withheld. An NPM that knowingly failed to pay the equity fee to the Comptroller must be required by the court to pay the fee within 15 days. Upon a finding that an NPM has knowingly failed to pay the equity fee, the court may impose a civil penalty of up to 15% of the amount improperly withheld per day of the violation and in a total amount up to 300% of the original amount improperly withheld. Each failure to pay the equity fee constitutes a separate violation.

Nonseverability – Equity Act and the Master Settlement Agreement

The provisions of the bill are not severable. If any provision of the bill or its application is held invalid for any reason in a court, no other provision or application of the bill may be given effect. Additionally, if all or any portion of the equity fee established under the bill results in a determination by the Firm (as that term is defined by the MSA) that the Equity Act no longer constitutes a qualifying statute (as defined in the MSA), no other provision or application of the bill may be given effect.

Current Law:

Escrow Act Generally

In 1999, the State enacted the Escrow Act, under which a tobacco product manufacturer must either (1) become a participating manufacturer by joining the MSA and generally comply with its financial obligations or (2) establish and pay into an escrow account as an

NPM. Each calendar year, an NPM must place a specified amount per cigarette sold in the State into a qualified escrow fund by April 15 of the following calendar year. Since 2007, an NPM has been required to pay $0.0188482 per cigarette sold, as adjusted by inflation.

A "qualified escrow fund" means an escrow arrangement with a federally or State-chartered financial institution having no affiliation with any tobacco product manufacturer and having assets of at least $1.0 billion where such arrangement requires that such financial institution hold the principal of the escrowed funds for the benefit of releasing parties and prohibits the tobacco product manufacturer that places the funds into escrow from using, accessing, or directing the use of the principal of the funds, except as specified.

In general, funds from the escrow fund may only be released to pay a judgment or claim brought by the State or any releasing party located or residing in the State. A releasing party includes public entities and educational institutions, and persons or entities seeking relief on behalf of the general public or seeking to recover health care expenses paid or reimbursed by the State. Funds can be released early from escrow under certain circumstances; otherwise, the escrow funds are released after 25 years. Interest or other appreciation earned on escrow payments reverts back to the NPM.

Cigarette Restitution Fund

Chapters 172 and 173 of 1999 established CRF, which is supported by payments made under the MSA. Through the MSA, settling tobacco manufacturers pay the litigating parties (46 states, 5 territories, and the District of Columbia) substantial annual payments in perpetuity. The distribution of MSA funds among the states is determined by formula; as of April 2024, Maryland had received $3.6 billion since 1999.

The use of CRF funds is restricted by statute. The Governor must include appropriations from CRF in the annual budget bill equivalent to the lesser of $100.0 million or 90% of the funds estimated to be available to CRF in the fiscal year for which the appropriations are made. At least 30% of the appropriations must be made to Medicaid. At least 50% of the appropriations must be dedicated to the Tobacco Use Prevention and Cessation Program; the Cancer Prevention, Education, Screening, and Treatment Program; specified activities of the Southern Maryland Agricultural Development Commission; and other programs that serve specified purposes.

Certifications to the Attorney General – Escrow Act

By April 30 each year, a tobacco product manufacturer whose cigarettes are sold in this State, whether directly or through a distributor, retailer, or similar intermediary, must execute and deliver a certification to the Attorney General. Among other things, in this certification, an NPM must (1) include a complete list of all its brand families and (2) certify that it has established and continues to maintain a qualified escrow fund and has executed a qualified escrow agreement that has been reviewed and approved by the Attorney General and that governs the fund.

OAG must subsequently develop and make available for public inspection a directory listing all tobacco product manufacturers that have complied with the certification requirement and all associated brand families that are listed in the provided certifications. OAG may not include or retain in the directory the name or brand families of any NPM that fails to provide the required certification or whose certification is determined to be out of compliance, unless OAG determines that the violation has been cured.

Nonpayment of Equity Fees – Escrow Act

The Attorney General may bring a civil action on behalf of the State against any NPM that fails to place into escrow the funds it is required to collect for each cigarette sold in the State. An NPM that fails in any year to place funds into escrow must be required within 15 days to place such funds into escrow.

A court, upon a finding that an NPM has failed to place the required funds into escrow, may impose a civil penalty of up to 5% of the amount improperly withheld per day of the violation and in total up to 100% of the original amount improperly withheld from escrow. An NPM that has knowingly failed to place the required funds into escrow is subject to a civil penalty of up to 15% of the amount improperly withheld per day of the violation and in total up to 300% of the original amount withheld from escrow.

State Revenues: According to OAG, three NPMs are registered to operate in Maryland. Escrow funds are held with an eligible federally or State-chartered financial institution and are not held by the State. Funds held in escrow for an NPM are only disbursed to the State (1) to pay a judgment or claim brought by the State or any releasing party located or residing in the State or (2) if the NPM joins the MSA. Escrow funds only become realizable as CRF revenues if one of those two situations materializes.

Under the bill, instead of continuing to put funds into escrow, each NPM must pay an equity fee, which is equivalent to the same amount per unit of cigarettes sold that must now be placed into escrow, as both are adjusted for inflation. This equity fee must be paid to the Attorney General by April 30, 2027, and each April 30 thereafter, and is paid into CRF and, thus, received as CRF special fund revenues in the same year. Therefore, although the dollar amount per cigarette that NPMs must set aside for the equity fee in 2026 is essentially the same amount they would be required to deposit into escrow in the absence of the bill, the bill's impact on CRF revenues is meaningful.

OAG advises that, over the five-year period between 2020 and 2024, NPMs deposited an average of $595,000 annually into escrow, which included one high outlier year. Since 2022, the amount deposited into escrow has increased by 20% annually. OAG estimates that NPMs will deposit $777,000 into escrow for calendar 2025 cigarette sales. Thus, assuming this rate of growth continues, OAG estimates that NPMs will remit equity fee payments of as much as $933,000 for calendar 2026.

Accordingly, CRF revenues increase by *as much as* $933,000 annually, beginning in fiscal 2027. This amount depends on actual cigarette sales volume by NPMs in calendar 2026. The Department of Legislative Services (DLS) notes that, as NPMs are required to make an equity fee payment for calendar 2026 by April 30, 2027, this analysis reflects receipt of those CRF revenues in the final quarter of fiscal 2027.

The analysis assumes that none of the three NPMs (1) joins the MSA at any point during the period covered by this fiscal and policy note (fiscal 2026 through 2030) or (2) is required to pay a judgment or claim brought by the State or any releasing party located or residing in the State during that time period. To the extent either of those circumstances occurs, DLS notes that CRF revenues would likely have increased even in the absence of the bill (thus, negating at least some of the CRF revenue increase assumed to result from the bill). This is because, in the absence of the bill, should an NPM join the MSA, the NPM's escrow payments would be distributed to the State as part of its initial MSA payment and those funds would accrue to CRF.

OAG advises that, while the bill authorizes the Attorney General to recover the attorney's fees, costs, and expenses of any action brought against an NPM for failure to pay the equity fee, the potential for recovery due to litigation is expected to be minimal.

State Expenditures: OAG advises that it can handle the receipt and processing of equity fee payments from NPMs with existing budgeted resources.

DLS also notes that, with the increase in revenues, additional funds become available to OAG and for other authorized purposes of CRF; however, the bill does not require additional spending under CRF.

Additional Information

Recent Prior Introductions: Similar legislation has been introduced within the last three years. See HB 1173 and SB 1018 of 2024.

Designated Cross File: None.

Information Source(s): Alcohol, Tobacco, and Cannabis Commission; Office of the Attorney General; Comptroller's Office; Department of Budget and Management; Maryland Department of Health; Department of Legislative Services

Fiscal Note History: First Reader - February 18, 2025
rh/ljm

Analysis by: Jennifer B. Chasse

Direct Inquiries to:
(410) 946-5510
(301) 970-5510