

HOUSE BILL 870

C2
HB 1173/24 – HGO

5lr2620
CF 5lr3063

By: **Delegate Rosenberg**

Introduced and read first time: January 30, 2025

Assigned to: Health and Government Operations

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. Certification
18 Requirements for Tobacco Product Manufacturers”

19 Annotated Code of Maryland

20 (2024 Replacement Volume)

21 BY adding to

22 Article – Business Regulation

23 Section 16–404

24 Annotated Code of Maryland

25 (2024 Replacement Volume)

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

to prevent them from deriving large, short-term profits and then becoming judgment-proof before liability may arise] **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 MASTER SETTLEMENT AGREEMENT.**

(G) 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 MASTER SETTLEMENT AGREEMENT 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 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; AND

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

16-403.

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

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

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

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

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

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

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

1 [(v)] **5.** for 2007 [and each year thereafter] **THROUGH 2025,**
2 \$.0188482 per unit sold; **AND**

3 **(II) BEGINNING IN 2026 AND EACH YEAR THEREAFTER, PAY TO**
4 **THE ATTORNEY GENERAL AN EQUITY FEE OF \$.0188482 PER UNIT SOLD, AS**
5 **ADJUSTED FOR INFLATION.**

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

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

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

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

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

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

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

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

30 **(D) (1) THE ATTORNEY GENERAL SHALL DISTRIBUTE THE EQUITY FEES**
31 **PAID UNDER SUBSECTION (A)(2)(II) OF THIS SECTION TO THE CIGARETTE**
32 **RESTITUTION FUND ESTABLISHED UNDER § 7-317 OF THE STATE FINANCE AND**
33 **PROCUREMENT ARTICLE.**

(2) EQUITY FEES DISTRIBUTED TO THE CIGARETTE RESTITUTION FUND UNDER PARAGRAPH (1) OF THIS SUBSECTION SHALL BE APPROPRIATED FOR PURPOSES CONSISTENT WITH § 7-317(F)(1)(VI)1 OF THE STATE FINANCE AND PROCUREMENT ARTICLE.

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

(I) is in compliance with subsections (a)(2) and (b) of this section;
AND

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

2. HAS PAID THE EQUITY FEE UNDER SUBSECTION (A)(2)(II) OF THIS SECTION.

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

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

(III) 1. THE ATTORNEY GENERAL SHALL DEPOSIT ANY FUNDS RECEIVED UNDER SUBPARAGRAPH (II) OF THIS PARAGRAPH INTO THE CIGARETTE RESTITUTION FUND ESTABLISHED UNDER § 7-317 OF THE STATE FINANCE AND PROCUREMENT ARTICLE.

2. EQUITY FEES DISTRIBUTED TO THE CIGARETTE RESTITUTION FUND UNDER SUBSECTION (D) OF THIS SECTION SHALL BE APPROPRIATED FOR PURPOSES CONSISTENT WITH § 7-317(F)(1)(VI)1 OF THE STATE FINANCE AND PROCUREMENT ARTICLE.

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

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

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

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

(4) (i) If a tobacco product manufacturer has knowingly violated subsection (a)(2) or (b) of this section, the manufacturer shall be required within 15 days to place such funds into escrow **OR PAY THE EQUITY FEE** as will bring it into compliance with this section.

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

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

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

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

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

16-404.

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

Subtitle 5. [Escrow] **CERTIFICATION** Requirements for [Nonparticipating] Tobacco Product Manufacturers.

16-501.

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

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

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

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

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

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

(f) “Executive Director” includes an agent or employee of the Alcohol, Tobacco, and Cannabis Commission responsible for the enforcement of State tobacco laws and regulations.

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

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

(i) “Nonparticipating manufacturer” means any tobacco product manufacturer that is not a participating manufacturer.

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

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

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

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

16–503.

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

1 (1) is a participating manufacturer; or

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

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

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

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

10 (2) The certification shall:

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

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

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

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

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

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

26 (i) is registered to do business in the State or has appointed a
27 resident agent for service of process and provided notice of the appointment as required by
28 § 16–505 of this subtitle;

29 (ii) **1. REGARDING SALES MADE ON OR BEFORE DECEMBER**
30 **31, 2025**, has established and continues to maintain a qualified escrow fund, and has
31 executed a qualified escrow agreement that has been reviewed and approved by the
32 Attorney General and that governs the qualified escrow fund; [and] **OR**

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

3 (iii) is in full compliance with the [Escrow] **EQUITY** Act and this
4 subtitle and any regulations adopted in accordance with the [Escrow] **EQUITY** Act and this
5 subtitle.

6 (2) The certification shall include:

7 (i) **FOR NONPARTICIPATING MANUFACTURERS THAT**
8 **ESTABLISHED AN ESCROW FUND:**

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

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

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

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

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

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

32 (i) in the case of a participating manufacturer, the participating
33 manufacturer affirms that the brand family is deemed to be its cigarettes for purposes of
34 calculating its payments under the Master Settlement Agreement for the relevant year, in

the volume and shares determined in accordance with the Master Settlement Agreement;
and

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

(2) Nothing in this section may be construed as limiting or otherwise affecting the State's right to maintain that a brand family constitutes cigarettes of a different tobacco product manufacturer for purposes of calculating payments under the Master Settlement Agreement or for purposes of the [Escrow] **EQUITY** Act.

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

16-504.

(a) Except as provided in subsection (b) of this section, the Attorney General shall 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 conforming to the requirements of § 16-503 of this subtitle **AND WITH ALL APPLICABLE FEDERAL, STATE, AND LOCAL LAWS** and all **COMPLIANT** brand families that are listed in such certifications.

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

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

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

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

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

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

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

10 (c) A person may not:

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

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

16 16-506.

17 (e) (1) To promote compliance with this subtitle, the Attorney General may
18 adopt regulations requiring a tobacco product manufacturer subject to the requirements of
19 § 16-503(a) of this subtitle to make the escrow deposits **OR PAY THE EQUITY FEE** required
20 in quarterly installments during the year in which the sales covered by the deposits **OR**
21 **PAYMENTS** are made.

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

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

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

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

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

9 SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall take effect
10 October 1, 2025.