

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

Article - Business Regulation

**SUBTITLE 5. ESCROW 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 subsection 2(e) of the Escrow 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 Act" means Chapter 169 of the Acts of the General Assembly of 1999 as amended by Chapter 141 of the Acts of the General Assembly of 2001.
- (F) "Licensed Wholesaler" means a wholesaler who is licensed under Title 16, Subtitle 2, of this Article to act as a wholesaler and any person who is an authorized agent of the licensed wholesaler for the stamping and distribution of cigarettes.
- (G) "Master Settlement Agreement" has the meaning stated in subsection 2(f) of the Escrow Act.
- (H) "Nonparticipating Manufacturer" means any tobacco product manufacturer that is not a participating manufacturer.

¹ Prepared by the Office of the Attorney General of Maryland.

- (I) "Participating Manufacturer" has the meaning stated in section ii(jj) of the Master Settlement Agreement and all amendments to the Agreement.
- (J) "Qualified Escrow Fund" has the meaning stated in subsection 2(g) of the Escrow Act.
- (K) "Tobacco Product Manufacturer" has the meaning stated in Subsection 2(j) of the Escrow Act.
- (L) "Units Sold" has the meaning stated in subsection 2(k) of the Escrow Act.

16-502.

- (A) Violations of the Escrow Act, an act concerning nonparticipating manufacturers and deposits of funds into escrow Accounts, threaten the integrity of the tobacco Master Settlement Agreement, the fiscal soundness of the State, and the public health.
- (B) Enacting procedural enhancements will help prevent violations and aid the enforcement of the Escrow Act and thereby safeguard the Master Settlement Agreement, the fiscal soundness of the State, and the public health.
- (C) The provisions of this Subtitle are not intended to and may not be interpreted to amend the Escrow 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) Is a participating manufacturer; or
 - (2) Is in full compliance with the Escrow Act.
- (B)
 - (1) A participating manufacturer shall include in its certification a list of its brand families.
 - (2) The participating manufacturer shall update the list at least 30 calendar days prior to any addition or modification to its brand families by executing and delivering a supplemental certification to the Attorney General.
- (C)
 - (1) A nonparticipating manufacturer shall include in its certification a complete list of all of its brand families.

- (2) The certification shall:
 - (i) separately list each brand family of cigarettes and the number of units sold for each brand family that was sold in the State during the preceding calendar year;
 - (ii) list each of its brand families that have been sold in the State at any time during the current calendar year;
 - (iii) indicate by an asterisk any brand family sold in the State during the preceding calendar year that is no longer being sold in the State as of the date of such certification; and
 - (iv) identify by name and address any other manufacturer of such brand families in the preceding or current calendar year.
- (3) The nonparticipating manufacturer shall update the list at least 30 calendar days prior to any addition or modification of its brand families by executing and delivering a supplemental certification to the Attorney General.
- (D) (1) In the case of a nonparticipating manufacturer, the certification shall further certify that the nonparticipating manufacturer:
 - (i) is registered to do business in the State or has appointed a resident agent for service of process and provided notice of the appointment as required by § 16-505 of this Subtitle;
 - (ii) 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 qualified escrow fund; and
 - (iii) is in full compliance with the Escrow Act and this Subtitle and any regulations adopted in accordance with the Escrow Act and this Subtitle.
- (2) The certification shall include:
 - (i) the name, address and telephone number of the financial institution in which the nonparticipating manufacturer has established a qualified escrow fund required under subsection 3(a)(2) of the Escrow Act and all regulations adopted under it;
 - (ii) the account number of the qualified escrow fund and subaccount number for the State of Maryland;

- (iii) the amount the nonparticipating manufacturer placed in the fund for cigarettes sold in the State during the preceding calendar year, the date and amount of each deposit, and any additional information the Attorney General considers necessary to confirm the information required by this subparagraph; and
 - (iv) the amount of and date of any withdrawal or transfer of funds the nonparticipating manufacturer made at any time from the fund or from any other qualified escrow fund into which the nonparticipating manufacturer made escrow payments under subsection 3(a)(2) of the Escrow Act and all regulations adopted under that section.
- (E)
 - (1) A tobacco product manufacturer may not include a brand family in its certification unless:
 - (i) in the case of a participating manufacturer, the participating manufacturer affirms that the brand family is deemed to be its cigarettes for purposes of 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 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 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 have provided current and accurate certifications conforming to the requirements of § 16-503 of this subtitle and all 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) any escrow payment required under subsection 3(a)(2) of the Escrow 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
 - (ii) any outstanding final judgment, including interest on the judgment, for a violation of the Escrow Act has not been fully satisfied for the brand family or the manufacturer.
 - (3) The Attorney General shall update the directory as necessary in order to correct mistakes and to add or remove a tobacco product manufacturer or brand family to keep the directory in conformity with the requirements of this Subtitle.
 - (4) Each licensed wholesaler shall provide and update as necessary an electronic mail address to the Attorney General for the purpose of receiving any notifications that may be required by this Subtitle.
- (C) A person may not:
- (1) Affix a stamp to a package or other container of cigarettes of a tobacco product manufacturer or brand family not included in the directory; or
 - (2) Sell, offer or possess for sale in this state, or import for personal consumption in this State, cigarettes of a tobacco product manufacturer or brand family not included in the directory.

16-505.

- (A) (1) Any nonresident or foreign nonparticipating manufacturer that has not registered to do business in the State as a foreign corporation or business entity shall, as a condition precedent to having its brand families included or retained in the directory described in § 16-504 of this Subtitle, appoint and continually engage without interruption the services of an agent in the United States to act as an agent for the service of process on the nonresident or foreign nonparticipating manufacturer.

- (2) Any process and any action or proceeding against the nonresident or foreign nonparticipating manufacturer concerning or arising out of the enforcement of this Subtitle or the Escrow Act may be served in any manner authorized by law.
 - (3) The service of process shall constitute legal and valid service of process on the nonparticipating manufacturer. The nonparticipating manufacturer shall provide, to the satisfaction of the Attorney General, the name, address, phone number, and proof of the appointment and availability of the agent to the Attorney General.
- (B) (1) The nonparticipating manufacturer shall provide:
- (i) notice to the Attorney General at least 30 calendar days prior to termination of the authority of an agent; and
 - (ii) proof to the satisfaction of the Attorney General of the appointment of a new agent not less than 5 calendar days prior to the termination of an existing agent appointment.
- (2) If an agent terminates an agency appointment, the nonparticipating manufacturer shall:
- (i) notify the Attorney General of the termination within 5 calendar days; and
 - (ii) include proof to the satisfaction of the Attorney General of the appointment of a new agent.

16-506.

- (A) (1) Not later than 21 days after the end of each calendar quarter, and more frequently if so directed by the Comptroller, each licensed wholesaler shall submit information in the form and manner the Comptroller requires to facilitate compliance with this Subtitle, including a list by brand family of the total number of cigarettes, or in the case of roll-your-own cigarettes, the equivalent stick count for which the licensed wholesaler affixed stamps during the previous calendar quarter or otherwise paid the tax due for the cigarettes.
- (2) The licensed wholesaler shall maintain and make available to the Comptroller for a period of 5 years all invoices and documentation of sales of all nonparticipating manufacturer cigarettes and any other information relied on in reporting to the Comptroller.
- (B) (1) The Comptroller may disclose to the Attorney General any information received under this Subtitle and requested by the Attorney General for purposes of determining compliance with and enforcement of the provisions of this Subtitle.

- (2) The Comptroller and the Attorney General shall share with each other the information received under this Subtitle and may share the information with other federal, state or local agencies only for purposes of enforcement of this Subtitle, the Escrow Act, or corresponding laws of other states.
- (C) The Attorney General may require at any time from a nonparticipating manufacturer proof, from the financial institution in which the manufacturer has established a qualified escrow fund for the purpose of compliance with the Escrow Act, of the amount of money in the escrow fund, exclusive of interest, the amount and date of each deposit to the escrow fund and the amount and date of each withdrawal from the escrow fund.
- (D) In addition to any other information required to be submitted by law, the Comptroller or the Attorney General may require a licensed wholesaler or tobacco product manufacturer to submit any additional information, including samples of the packaging or labeling of each brand family, as is necessary to enable the Attorney General to determine whether a tobacco product manufacturer is in compliance with this Subtitle.
- (E)
 - (1) To promote compliance with this Subtitle, the Attorney General may adopt regulations requiring a tobacco product manufacturer subject to the requirements of § 16-503(a) of this Subtitle to make the escrow deposits required in quarterly installments during the year in which the sales covered by the deposits are made.
 - (2) The Attorney General may require production of information sufficient to enable the Attorney General to determine the adequacy of the amount of the installment deposit.

16-507.

- (A)
 - (1) In addition to or instead of any other civil or criminal remedy provided by law, on a determination that a licensed wholesaler has violated § 16-504(c) or § 16-506(a) of this Subtitle or any regulation adopted under this Subtitle, the Comptroller may revoke or suspend the license of any licensed wholesaler in the manner provided under §§ 16-211 and 16-212 of this Title.
 - (2) Each stamp affixed and each offer to sell cigarettes in violation of § 16-504(c) of this Subtitle shall constitute a separate violation.
 - (3) The Comptroller may also impose a civil penalty in an amount not to exceed the greater of 500% of the retail value of the cigarettes sold or \$5,000 on a determination of violation of § 16-504(c) of this Subtitle or any regulations adopted under that section.
- (B)
 - (1) Any cigarettes that have been sold, offered for sale or possessed for sale in this State, or imported for personal consumption in this State in violation of § 16-504(c) of this Subtitle shall be deemed contraband under §§ 13-836, 13-837, and

13-839 of the Tax - General Article, and those cigarettes shall be subject to seizure and forfeiture as provided in those sections.

- (2) All cigarettes seized and forfeited may not be resold and shall be destroyed.
- (C) (1) The Attorney General, on behalf of the Comptroller, may seek an injunction to restrain a threatened or actual violation of § 16-504(c), § 16-506(a) or § 16-506(d) of this Subtitle by a licensed wholesaler and compel the licensed wholesaler to comply with those sections.
- (2) In any action brought under this section, the State shall be entitled to recover the costs of investigation, costs of the action, and reasonable attorney's fees.
- (D) A person who sells, distributes, acquires, holds, owns, possesses, transports, imports, or causes to be imported, cigarettes that the person knows or should know are intended for distribution or sale in the State in violation of § 16-504(c) of this Subtitle is guilty of a misdemeanor, and on conviction is subject to a fine not exceeding \$5,000 or imprisonment not exceeding 1 year or both.

16-508.

- (A) A determination by the Attorney General to omit or to delete from the directory described in § 16-504 of this Subtitle a brand family or tobacco product manufacturer shall be subject to review in accordance with Title 10, Subtitle 2 of the State Government Article.
- (B) The Attorney General and the Comptroller may adopt regulations necessary to effectuate the purposes of this Subtitle.
- (C) In any action brought by the State to enforce this Subtitle, the State shall be entitled to recover the costs of investigation, expert witness fees, costs of the action, and reasonable attorney's fees.
- (D) (1) If a court determines that a person has violated this Subtitle, the court shall order any profits, gain, gross receipts, or other benefit from the violation to be paid to the State Treasurer for deposit into the Cigarette Restitution Fund established under § 7-317 of the State Finance and Procurement Article.
- (2) Unless otherwise expressly provided, the remedies or penalties provided by this Subtitle are cumulative to each other, and to the remedies or penalties available under all other laws of this State.

SECTION 2. AND BE IT FURTHER ENACTED, that if a court of competent jurisdiction finds that the provisions of this Act and of Chapter 169 of the Acts of the General Assembly of 1999, as amended by Chapter 141 of the Acts of the General Assembly of 2001, conflict and cannot be harmonized, then the provisions of Chapter 169 of the Acts of the General Assembly of 1999, as amended by Chapter 141 of the Acts of the General Assembly of 2001, shall control. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Act causes Chapter 169 of the Acts of the General Assembly of 1999, as amended by Chapter 141 of the Acts of the General Assembly of 2001, to no longer constitute a qualifying or model statute, as those terms are defined in the Master Settlement Agreement, then that portion of this Act shall not be valid. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Act is for any reason held by a court of competent jurisdiction to be invalid, unlawful, or unconstitutional, the decision of the court does not affect the validity of the remaining portions of this Act or any part of this Act.

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

- (a) The first report of licensed wholesalers required by § 16-506(a) of the Business Regulation Article, as added by section 1 of this Act, shall be due no later than October 21, 2003, covering the period July 1, 2003 through September 30, 2003;
- (b) The first certification by a tobacco product manufacturer required by § 16-503(a) of the Business Regulation Article, as added by section 1 of this act, shall be due no later than August 15, 2003; and
- (c) The directory required by § 16-504(a) of the Business Regulation Article, as added by section 1 of this Act, shall be made available by Attorney General no later than September 15, 2003.

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