



**WRITTEN TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
THIRTY-FIRST LEGISLATURE, 2022**

ON THE FOLLOWING MEASURE:

H.B. NO. 2076, H.D. 1, S.D. 1, RELATING TO TOBACCO MANUFACTURER QUALIFIED ESCROW FUNDS.

BEFORE THE:

SENATE COMMITTEES ON JUDICIARY AND ON WAYS AND MEANS

DATE: Tuesday, April 5, 2022 **TIME:** 10:05 a.m.

LOCATION: State Capitol, Room 211 and Videoconference

TESTIFIER(S): **WRITTEN TESTIMONY ONLY.**
(For more information, contact Richard W. Stacey,
Deputy Attorney General, at (808) 586-1203)

Chairs Rhoads and Dela Cruz and Members of the Committees:

The Department of the Attorney General (Department) strongly supports this bill and offers the following comments.

The purpose of this bill is to allow a "Non-Participating Manufacturer" (NPM) of tobacco products that places funds in a qualified escrow account pursuant to chapter 675, Hawaii Revised Statutes (HRS), to assign its interest in the qualified escrow account to the State. The bill would further allow a financial institution, acting as the escrow agent, to petition in Circuit Court to transfer funds to the State when an account is abandoned.

In 1998, Hawaii and 45 other states settled a long-running claim against the four largest tobacco manufacturers for smoking-related claims. The resulting Master Settlement Agreement (MSA) stipulated that tobacco companies provide annual payments to the signing states, including Hawaii. Pursuant to the MSA, the State of Hawaii enacted the Tobacco Liability Act, chapter 675, HRS.

Tobacco product manufacturers that were not one of the original four parties to the MSA have two options if they want to sell tobacco products in Hawaii: (1) become a "Subsequent Participating Manufacturer" (SPM) and perform the obligations associated with the MSA, or (2) become an NPM and make certain payments into a qualified escrow account based on their cigarette sales in the State of Hawaii.

The Tobacco Liability Act provides three options for releasing funds from these qualified escrow accounts: (1) to pay a judgment or settlement on any released claim brought against such tobacco product manufacturer by the State or any releasing party located or residing in the State; (2) to repay a tobacco product manufacturer who placed an amount into the escrow account in a particular year that was greater than the MSA payments; or (3) to revert funds back to the tobacco product manufacturer twenty-five years after the date on which the funds were placed into escrow. Each NPM is required to open and manage its own escrow account, and rights to the escrow account belong only to the NPM and the State of Hawaii. See section 675-3(b)(2)(A) to (C), HRS.

Hawaii's statutes are silent as to how a tobacco product manufacturer that decides to no longer do business in the State should close an account, or what processes are available for financial institutions when an escrow account is abandoned. Many NPMs that established escrow accounts in the early 2000s are no longer in the tobacco business and no longer wish to pay fees or otherwise maintain their escrow accounts. In 2018, one identified NPM indicated a willingness to assign its interest in its qualified escrow account, totaling more than \$160,000, to the State of Hawaii, so the escrow account can be closed. According to the NPM, it stopped selling tobacco products and had no plan to re-enter the market in the United States. However, the State of Hawaii did not have the statutory authority under the current statutes to accept the assignment of interest in this escrow account.

Settling states such as Arizona, California, Kentucky, Michigan, Nevada, North Carolina, and Oregon have amended their Tobacco Liability Act statutes to allow the NPM to make an irrevocable assignment of its interests in the funds to the benefit of the respective state.

This bill will allow the closure of abandoned escrow accounts in a timelier fashion, thus making continued administrative monitoring unnecessary. Further, this measure will support tobacco prevention and control as it seeks to allow the assignment of qualified escrow funds to the State for disbursement into the State's Tobacco Settlement Special Fund, provided in chapter 328L, HRS. An assignment would not

prevent the State from later bringing a claim against the tobacco manufacturer, nor would it relieve an NPM of obligations under chapters 245, 486P, and 675, HRS.

The Department recommends adding the word "the" before "State" on page 1, line 5, for the title of the new section, so that the title would read, "**Assignment of interest in qualified escrow fund to the State.**"

We respectfully ask the Committees to pass this bill. Thank you for the opportunity to provide comments on this bill.