

JAN 26 2022

A BILL FOR AN ACT

RELATING TO TOBACCO MANUFACTURER QUALIFIED ESCROW FUNDS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Chapter 675, Hawaii Revised Statutes, is
2 amended by adding a new section to be appropriately designated
3 and to read as follows:

4 "§675- Assignment of interest in qualified escrow fund
5 to state. (a) A tobacco product manufacturer that elects to
6 place funds into a qualified escrow fund pursuant to section
7 675-3(b), may assign to the State the tobacco product
8 manufacturer's interest in any moneys in the qualified escrow
9 fund.

10 (b) An assignment executed pursuant to subsection (a) is
11 permanent and irrevocable and applies to all moneys in the
12 qualified escrow fund, including all moneys deposited into the
13 qualified escrow fund before the tobacco product manufacturer
14 executes the assignment, all moneys deposited into the qualified
15 escrow fund after the tobacco product manufacturer executes the
16 assignment, and any interest or other appreciation earned on any
17 moneys in the qualified escrow fund.

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1 (c) A qualified escrow agreement, as referenced in section
2 486P-5(c)(4), may be amended by the parties to the agreement for
3 the purpose of executing an assignment pursuant to subsection
4 (a).

5 (d) An assignment executed pursuant to subsection (a) must
6 be in writing and be signed by the assignee and the assignor or
7 by an authorized agent or representative thereof. An executed
8 assignment becomes enforceable after a copy of the assignment is
9 delivered to the attorney general and the financial institution
10 where the qualified escrow fund is maintained.

11 (e) Notwithstanding the provisions of section 675-3(b),
12 funds assigned to the State shall be deposited in the Hawaii
13 tobacco settlement special fund established pursuant to section
14 328L-2.

15 (f) Nothing in this section operates to:

16 (1) Waive the right of the State to bring a claim against
17 a tobacco product manufacturer, except that any funds
18 assigned to the State under this section shall be
19 credited on a dollar-for-dollar basis against any
20 judgment or settlement; or

21 (2) Relieve a tobacco product manufacturer from any
22 obligation or duty imposed pursuant to chapter 245,
23 chapter 486P, or chapter 675.

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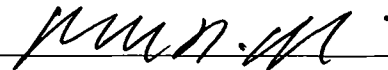
(g) The attorney general may adopt rules pursuant to chapter 91 necessary to implement this section.

(h) When a qualified escrow fund has been deemed abandoned by a tobacco product manufacturer according to the criteria set by each financial institution, the financial institution maintaining the qualified escrow fund and acting as the escrow agent may file a petition in circuit court for an order authorizing a transfer of funds in the qualified escrow fund to the State. The petition must state the factual and legal bases for the relief sought. The financial institution shall serve the petition on the attorney general at the time the petition is filed. Upon a finding that the account has been abandoned, the court may order the transfer of funds in the qualified escrow fund to the Hawaii tobacco settlement special fund established pursuant to section 328L-2."

SECTION 3. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

INTRODUCED BY:



BY REQUEST

S.B. NO. 3044

Report Title:

Tobacco manufacturer qualified escrow funds; Assignment

Description:

Provides a mechanism to assign non-participating tobacco manufacturers' qualified escrow account balances to the State of Hawaii. Also provides a mechanism for the financial institution acting as the escrow agent of the qualified escrow account to petition the courts to authorize transfer of funds to the State when the qualified escrow account is abandoned.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

JUSTIFICATION SHEET

SB. NO. 3044

DEPARTMENT: Attorney General.

TITLE: A BILL FOR AN ACT RELATING TO TOBACCO MANUFACTURER QUALIFIED ESCROW FUNDS.

PURPOSE: To provide a mechanism to assign non-participating tobacco manufacturers' qualified escrow account balances to the State of Hawaii. This bill also provides a mechanism for the escrow agent of the qualified escrow account to petition the courts to authorize transfer of funds to the State when the qualified escrow account is abandoned.

MEANS: Addition of a new section to chapter 675, Hawaii Revised Statutes (HRS).

JUSTIFICATION: In 1999, the State of Hawaii enacted chapter 675, HRS, the Tobacco Liability Act. The Act requires certain tobacco product manufacturers that are not signatories to the Master Settlement Agreement (known as "Non-Participating Manufacturers" or "NPMs") to make certain payments into a qualified escrow account based on their cigarette sales in the State of Hawaii. 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.

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 has no plan to re-enter the market in the United States. However, the State of Hawaii does not have the statutory authority under the current statutes to accept the assignment of interest in this escrow account.

The cost of managing the escrow funds is high and it is likely there will be more NPMs who are willing to assign their interests in their escrow accounts to the State of Hawaii or abandon them due to various reasons.

Under section 675-3, HRS, there are currently three ways for funds to be released from escrow: (1) to pay a judgment or settlement on any related 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 funds into the escrow account in a particular year that was greater than the Master Settlement Agreement payments; or (3) funds shall be released from escrow and revert to the tobacco product manufacturer twenty-five years after the date on which the funds were placed into escrow.

Accordingly, the State currently lacks the statutory authority to accept assignment of interest from NPMs or receive funds of abandoned escrow accounts.

This bill, modeled after section 323.807, Oregon Revised Statutes, would allow a tobacco product manufacturer, who places funds in a qualified escrow account pursuant to chapter 675, HRS, to assign its interest in the qualified escrow account to the State, while not waiving State claims, nor relieving NPM obligations under chapters 245, 486P, and 675, HRS. It 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.

Impact on the public: This measure will have a positive impact on the public as it seeks to allow the assignment of qualified escrow funds to the State for disbursement into the State's

Tobacco Settlement Special Fund (chapter 328L, HRS).

Impact on the department and other agencies:
This measure will have a positive impact for the Department of the Attorney General and Department of Health. Assignment of escrow account balances will alleviate administrative monitoring, and the additional funds will support tobacco prevention and control.

GENERAL FUND:	None.
OTHER FUNDS:	None.
PPBS PROGRAM DESIGNATION:	None.
OTHER AFFECTED AGENCIES:	Department of Health.
EFFECTIVE DATE:	Upon approval.