



# House of Representatives

General Assembly

**File No. 692**

January Session, 2023

House Bill No. 6924

*House of Representatives, May 3, 2023*

The Committee on Finance, Revenue and Bonding reported through REP. HORN of the 64th Dist., Chairperson of the Committee on the part of the House, that the bill ought to pass.

***AN ACT CONCERNING THE ASSIGNMENT OF FUNDS IN QUALIFIED ESCROW FUNDS AND THE APPOINTMENT OF AN AGENT BY CERTAIN TOBACCO PRODUCT MANUFACTURERS.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective October 1, 2023*) (a) Any tobacco product  
2 manufacturer that places funds into escrow pursuant to subsection (a)  
3 of section 4-28i of the general statutes, or a third party to which a tobacco  
4 product manufacturer has transferred such manufacturer's interests in  
5 such funds, may make an assignment to the state of all or part of its  
6 interest in any funds in the qualified escrow fund. Such assignment shall  
7 (1) be permanent and irrevocable, (2) apply to all assigned funds in the  
8 qualified escrow fund, including all assigned funds deposited in such  
9 fund prior to and on or after the assignment is executed and all interest  
10 or other appreciation on the assigned funds, (3) be in writing and signed  
11 by a duly authorized representative of the assignor, and (4) become  
12 effective upon delivery of the assignment to the Attorney General and  
13 the financial institution where the qualified escrow fund is maintained.  
14 The tobacco product manufacturer, its transferee, the Attorney General

15 or the financial institution where the qualified escrow fund is  
16 maintained may make such amendments to the qualified escrow fund  
17 agreement as may be necessary to effectuate an assignment of funds  
18 executed pursuant to this subdivision or a withdrawal of funds from  
19 such qualified escrow fund pursuant to subsection (b) of section 4-28i of  
20 the general statutes.

21 (b) Any funds assigned to the state pursuant to subsection (a) of this  
22 section shall be deposited in the Tobacco and Health Trust Fund created  
23 in section 4-28f of the general statutes.

24 (c) Any financial institution in which a qualified escrow fund is  
25 maintained for which an assignment of funds has been executed  
26 pursuant to subsection (a) of this section may file a petition in the  
27 Superior Court for an order authorizing a transfer of funds in such  
28 qualified escrow fund to the Tobacco and Health Trust Fund. The  
29 petition shall state the factual and legal basis for the relief sought. The  
30 financial institution shall serve the petition on the Attorney General at  
31 the time the petition is filed in the Superior Court.

32 (d) Nothing in this section shall be construed to (1) waive the right of  
33 the state to bring a claim against a tobacco product manufacturer under  
34 section 4-28j of the general statutes, or (2) relieve a tobacco product  
35 manufacturer from any past, current or future obligations such  
36 manufacturer may have pursuant to chapter 47 of the general statutes.  
37 Any funds assigned to the state pursuant to subsection (a) of this section  
38 shall be credited on a dollar-for-dollar basis against any judgment or  
39 settlement applicable to the escrow obligation the assigned funds were  
40 initially deposited to satisfy.

41 Sec. 2. Section 4-28n of the general statutes is repealed and the  
42 following is substituted in lieu thereof (*Effective October 1, 2023*):

43 (a) (1) Any nonparticipating manufacturer that has not registered to  
44 do business in this state, pursuant to title 33 or 34, as a foreign  
45 corporation or business entity shall, as a condition precedent to having  
46 its brand families listed or retained in the directory maintained pursuant

47 to section 4-28m, appoint and continually engage without interruption  
48 the services of an agent in this state to act as agent for the service of  
49 process on whom all process and any action or proceeding against it  
50 concerning or arising out of the enforcement of the provisions of  
51 sections 4-28h to 4-28r, inclusive, may be served in any manner  
52 authorized by law.

53 (2) Any nonparticipating manufacturer that maintains funds in  
54 escrow pursuant to subsection (a) of section 4-28i shall appoint and  
55 continually engage without interruption the services of an agent in this  
56 state to act as agent for the service of process on whom all process and  
57 any action or proceeding against it concerning or arising out of the  
58 enforcement of the provisions of sections 4-28h to 4-28r, inclusive, may  
59 be served in any manner authorized by law.

60 (3) Such service on such agent shall constitute legal and valid service  
61 of process on the nonparticipating manufacturer. The nonparticipating  
62 manufacturer shall provide the name, address, telephone number and  
63 proof of the appointment and availability of such agent to, and to the  
64 satisfaction of, the commissioner and the Attorney General.

65 (b) A nonparticipating manufacturer shall provide notice to the  
66 commissioner and the Attorney General at least thirty calendar days  
67 prior to termination of the authority of an agent and shall further  
68 provide proof, to the satisfaction of the commissioner and the Attorney  
69 General, of the appointment of a new agent no less than five calendar  
70 days prior to the termination of an existing agent appointment. In the  
71 event an agent terminates an agency, the nonparticipating manufacturer  
72 shall notify the commissioner and the Attorney General of such  
73 termination not later than five calendar days after such termination and  
74 shall include proof, to the satisfaction of the commissioner and the  
75 Attorney General, of the appointment of a new agent.

76 (c) Any nonparticipating manufacturer whose products are or  
77 previously have been sold in this state [without appointing or  
78 designating] and that has not appointed or designated an agent as  
79 required in this section shall be deemed to have appointed the Secretary

80 of the State as such agent and may be proceeded against in courts of this  
81 state by service of process upon the Secretary of the State, except that  
82 the appointment of the Secretary of the State as such agent shall not  
83 satisfy the condition precedent to having the brand families of the  
84 nonparticipating manufacturer listed or retained in the directory.

85 (d) As a condition precedent to having its brand families listed or  
86 retained in the directory, a nonparticipating manufacturer located  
87 outside of the United States shall cause each of its importers into the  
88 United States of each of its brand families to be sold in the state to  
89 appoint and maintain the services of an agent in the state, and shall  
90 provide notification to the commissioner and the Attorney General  
91 regarding the agents of its importers in the manner prescribed in  
92 subsections (a) and (b) of this section. Each importer of a  
93 nonparticipating manufacturer's cigarettes that are sold in the state who  
94 does not appoint or designate an agent as required in this section shall  
95 be deemed to have appointed the Secretary of the State as such agent  
96 and may be proceeded against in courts of this state by service of process  
97 upon the Secretary of the State, except that the appointment of the  
98 Secretary of the State as such agent shall not satisfy the condition  
99 precedent to having the brand families of the nonparticipating  
100 manufacturer listed or retained in the directory.

101 (e) (1) In conjunction with the certification required under section 4-  
102 28l and as a condition precedent to having its brand families listed or  
103 retained in the directory, each nonparticipating manufacturer shall post  
104 annually with the commissioner either a good and valid bond that is  
105 issued by a surety company authorized to do business in this state or  
106 other security acceptable to the commissioner. Any bond or other  
107 security shall be in favor of the state of Connecticut and shall be equal  
108 in amount to the greater of (A) twenty-five thousand dollars, or (B) the  
109 greatest amount of the total escrow owed for a calendar year in any of  
110 the five calendar years preceding the posting of such bond or other  
111 security. The commissioner may, in consultation with the Attorney  
112 General, authorize the release of such bond or other security once it has  
113 been established that the nonparticipating manufacturer has met the

114 requirements of section 4-28i.

115 (2) If the nonparticipating manufacturer that posted a bond has failed  
 116 to make, or have made on its behalf, escrow deposits equal to the full  
 117 amount owed for a quarter not later than fifteen days following the due  
 118 date for the quarter under section 4-28i, the commissioner may execute  
 119 on the bond, to (A) recover the delinquent escrow, which amount shall  
 120 be deposited into a qualified escrow account as defined in section 4-28h,  
 121 or a reasonable alternative account as determined by the commissioner,  
 122 and (B) recover civil penalties and costs authorized under section 4-28j.  
 123 Escrow amounts above the amount collected on the bond shall remain  
 124 due from the nonparticipating manufacturer and, as provided in  
 125 subsection (d) of section 4-28j, from the importers that sold such  
 126 nonparticipating manufacturer's cigarettes in this state during such  
 127 calendar quarter.

This act shall take effect as follows and shall amend the following sections:		
Section 1	October 1, 2023	New section
Sec. 2	October 1, 2023	4-28n

**FIN** Joint Favorable

*The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.*

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**OFA Fiscal Note**

**State Impact:**

Agency Affected	Fund-Effect	FY 24 \$	FY 25 \$
See Below	Tobacco Health Trust Fund - See Below	See Below	See Below

**Municipal Impact:** None

**Explanation**

The bill would enable recovery of certain tobacco funds placed in escrow for the benefit of Connecticut. According to testimony by the Office of the Attorney General, some non-participating manufacturers may be defunct or have very few funds in their accounts. The bill would allow them (or banks holding the accounts, if the non-participating manufacturer has abandoned them) to close the account and transfer the money to the state Tobacco and Health Trust Fund.

**The Out Years**

The annualized ongoing fiscal impact identified above would continue into the future subject to the number and value of escrow accounts closed.

**OLR Bill Analysis****HB 6924*****AN ACT CONCERNING THE ASSIGNMENT OF FUNDS IN QUALIFIED ESCROW FUNDS AND THE APPOINTMENT OF AN AGENT BY CERTAIN TOBACCO PRODUCT MANUFACTURERS.*****SUMMARY**

This bill makes several changes in the state's tobacco settlement law. Under this law, tobacco product manufacturers selling cigarettes in Connecticut must either (1) enter into the master settlement agreement between Connecticut and four leading tobacco companies and comply with its terms and conditions or (2) pay into a qualified escrow fund a specified amount for each cigarette they sell in the state. Manufacturers that choose the latter option are considered "nonparticipating manufacturers."

Specifically, the bill:

1. allows nonparticipating manufacturers or their transferees to irrevocably assign their interest in qualified escrow funds to the state,
2. requires these assigned funds to be deposited in the Tobacco Health and Trust Fund, and
3. requires nonparticipating manufacturers that maintain a qualified escrow fund to designate an agent for service of process.

EFFECTIVE DATE: October 1, 2023

**ASSIGNMENT OF ESCROWED FUNDS*****Conditions***

The bill authorizes any tobacco product manufacturer that places funds into a qualified escrow fund under Connecticut's tobacco settlement law, or any third party to which the manufacturer has transferred its interest in the funds, to assign to the state all or part of its interest in the funds. Under the bill, the assignment:

1. is permanent and irrevocable;
2. applies to all of the qualified escrow fund's assigned funds, including (a) those deposited before, on, or after the assignment and (b) any interest or other appreciation on the funds;
3. must be in writing and signed by the assignor's duly authorized representative; and
4. is effective when delivered to the attorney general and financial institution that maintains the fund.

The tobacco product manufacturer, transferee, attorney general, or financial institution may amend the qualified escrow fund agreement as needed for this assignment or any withdrawal authorized under the tobacco settlement law (e.g., to pay a judgment or settlement on a claim brought against the manufacturer by the state).

### ***Tobacco and Health Trust Fund Deposit***

The bill requires any funds assigned to the state under this provision to be deposited in the state's Tobacco and Health Trust Fund. Any financial institution maintaining an assigned escrow fund may petition the Superior Court for an order authorizing a transfer of funds from the escrow fund to the Tobacco and Health Trust Fund. The financial institution must (1) state the factual and legal basis for the relief sought in its petition and (2) serve the petition on the attorney general when filing it in the court.

### ***Compliance With Escrow Requirements***

Under the bill, these provisions must not be construed to (1) waive the state's right to bring a claim against a tobacco product manufacturer



for failing to place required funds into escrow or (2) relieve a tobacco product manufacturer from any past, current, or future obligations it may have under the tobacco settlement law. Any assigned funds must be credited dollar-for-dollar against any judgment or settlement that applies to the escrow obligation the assigned funds were initially deposited to satisfy.

**AGENT FOR SERVICE OF PROCESS REQUIREMENT**

The bill requires any nonparticipating manufacturer that maintains a qualified escrow fund to appoint and continually engage the services of an agent for service of process in Connecticut for all legal proceedings arising out of the tobacco settlement law’s enforcement. The law already requires nonparticipating manufacturers to do so as a condition of selling their products in the state. As under current law, service on these agents is legal and valid service of process on the nonparticipating manufacturer. The nonparticipating manufacturer must provide the agent’s name, address, telephone number, and proof of appointment and availability to the revenue services commissioner and attorney general.

As under current law for nonparticipating manufacturers whose products are currently sold in the state, if a nonparticipating manufacturer whose products were previously sold in Connecticut does not comply with this requirement, the bill makes the secretary of the state its agent.

**COMMITTEE ACTION**

Finance, Revenue and Bonding Committee

Joint Favorable

Yea 51 Nay 0 (04/18/2023)