**Washington State**
**House of Representatives**
**Office of Program Research**

# BILL ANALYSIS

## Finance Committee

# HB 2038

**Brief Description:** Modifying tobacco escrow refund provisions.

**Sponsors:** Representatives Gombosky and McIntire; by request of Attorney General.

**Brief Summary of Bill**

- Modifies escrow provisions under the Tobacco Master Settlement Agreement to prevent excessive refunds to Non-Participating Manufacturers.

**Hearing Date:** 4/1/03

**Staff:** Bob Longman (786-7139).

**Background:**

The Tobacco Master Settlement Agreement is an agreement between two groups known as the "Settling States" and the "Participating Manufacturers." The Settling States consist of 46 states, the District of Columbia, and six territories. The Participating Manufacturers include the major tobacco companies and several smaller manufacturers. A group of tobacco manufacturers that did not sign the agreement are known as Non-Participating Manufacturers.

Under the agreement, Participating Manufacturers will make specified payments to the states and agree to abide by extensive public health restrictions on the advertising, promotion and marketing of cigarettes. In exchange, the states agreed to release the Participating Manufacturers from claims by the states. Non-Participating Manufacturers were not released from potential state claims and did not undertake any of the payment obligations or agree to abide by the public health restrictions. The agreement included a proposed escrow statute (Model Statute) for states to adopt. The Model Statute requires Non-Participating Manufacturers to make annual payments into an escrow fund based on the number of cigarettes sold in the state. The Model Statute is intended to prevent Non-Participating Manufacturers from taking advantage of the fact that they do not make payments under the settlement agreement and are not bound by the public health, advertising and other restrictions under the settlement agreement. It is also intended to provide a fund from which a state that successfully sues a Non-Participating Manufacturer in the future can recover any judgment or settlement moneys. All Settling States enacted a Model Statute.

Money deposited in an escrow account is released to the Non-Participating Manufacturer after 25 years if not used before then to pay a judgment. The Model Statute permits a Non-Participating Manufacturer to obtain an earlier release of money from escrow to the extent that its escrow payments are greater than the state's allocable share of the total payments that manufacturer would have paid if the manufacturer had signed the settlement agreement. It appears that if a Non-Participating Manufacturer concentrates its sales in a single state or a few states, the early release formula in the Model Statute could result in refunds of the vast majority of the manufacturer's escrow deposits. A Non-Participating Manufacturer who is able to obtain these refunds could lower the price of its cigarettes in comparison to manufacturers who are making full payments under the settlement agreement, thereby obtaining a competitive advantage. In addition, the reduced escrow funds might not be sufficient for a state to recover judgments or settlement moneys against a Non-Participating Manufacturer. This depletion of escrow funds by certain Non-Participating Manufacturers was not contemplated when the Model Statue was enacted.

**Summary of Bill:**

The formula for early release of escrow funds to a Non-Participating Manufacturer is altered so that the amount remaining in escrow is not less than the amount the manufacturer would have been required to pay if it had signed the Tobacco Master Settlement Agreement.

If a court finds this revision of the escrow release provisions is unconstitutional, the early escrow release provisions shall be eliminated entirely. If a court finds that elimination of the early escrow release provisions is also unconstitutional, the early escrow release provisions shall be restored as if no amendments had been made.

**Appropriation:** None.

**Fiscal Note:** Requested on March 24, 2003.

**Effective Date:** The bill takes effect 90 days after adjournment of session in which bill is passed.