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BILL ANALYSIS

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Senate Bill 781 (as enrolled)  
Sponsor: Senator Buzz Thomas  
Committee: Finance

### **CONTENT**

The bill would amend Public Act 244 of 1999, which implements provisions of the tobacco Master Settlement Agreement, to revise the determination of the amounts that nonparticipating manufacturers must be refunded from escrow, and base the revised calculation on the number of cigarettes a nonparticipating manufacturer sold in this State.

(A nonparticipating manufacturer is a tobacco manufacturer that did not participate in the Master Settlement Agreement, which was reached on November 23, 1998, between 46 states and the five major United States tobacco companies.)

Under Public Act 244, a nonparticipating manufacturer must place in an escrow fund, by April 15 each year, an amount specified in the Act. The amount is determined according to a formula prescribed by Sections IX(i)(2) and IX(i)(3) of the Master Settlement Agreement. To the extent a nonparticipating manufacturer establishes that the amount it was required to place into escrow in a particular year, was greater than the State's allocable share of the total payments the manufacturer would have been required to make in that year under the Master Settlement Agreement had it been a participating manufacturer, the excess must be released to the nonparticipating manufacturer.

The bill would revise the escrow determination by providing that to the extent a tobacco product manufacturer established that the amount it was required to place into escrow on account of units (cigarettes) *sold in the State* in a particular year was greater than the Master Settlement Agreement payments, as determined pursuant to Section IX(i) of the agreement including after final determination of all adjustments, that the manufacturer would have been required to make on account of such units sold had it been a participating manufacturer, the excess would have to be released to the nonparticipating manufacturer.

The bill specifies that if a court found unconstitutional the provision allowing escrow excess to be released to a nonparticipating manufacturer, as amended by the bill, then the original provision would not apply. Further, if following such a finding a court determined that all of the provisions for the release of escrow funds were unconstitutional, then provisions added by the bill would apply. (The bill would add identical provisions that would replace the current provisions for the release of escrow funds.)

MCL 445.2052

Legislative Analyst: George Towne

### **FISCAL IMPACT**

This bill would not have any immediate measurable impact on State government, but it would help preserve the flow of tobacco settlement revenue to Michigan over the long run. Michigan received about \$316 million in tobacco settlement revenue in FY 2002-03 and will receive an estimated \$274 million in FY 2003-04. To help keep tobacco manufacturers that are part of the Master Settlement Agreement from facing a price disadvantage with manufacturers (mostly

foreign) that are not part of the Master Settlement Agreement, the Agreement included a provision, which Michigan adopted, requiring nonparticipating manufacturers (NPMs) to pay an annual escrow payment to the states in which they sell cigarettes. It was intended that this escrow payment be large enough to increase the costs of the NPMs by about the same amount as the added costs the participating manufacturers face to make the settlement payments. However, the way the escrow payment language was written actually has allowed NPMs to withdraw a large amount of their escrow payments, which is giving them a competitive price advantage. If the market share of the participating cigarette manufacturers declines, then their scheduled payments under the Master Settlement Agreement will decline due to a so-called "volume adjustment factor" that is part of the master agreement.

This bill would help fix the provisions under which NPMs can withdraw some of their escrow payments in Michigan, and thus help preserve a more competitive environment between the participating cigarette manufacturers and the NPMs, as originally intended. According to the Attorney General's Office, a number of states, including Michigan's neighboring states of Illinois, Indiana, and Ohio, already have adopted this corrective language.

Date Completed: 11-10-03

Fiscal Analyst: Jay Wortley

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.