

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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HOUSE BILL 1431
Committee Substitute Favorable 6/28/99
Committee Substitute #2 Favorable 7/6/99

Short Title: Tobacco and Health Trust Funds.

(Public)

Sponsors:

Referred to:

April 29, 1999

A BILL TO BE ENTITLED
AN ACT TO PROVIDE FOR THE CREATION OF A TOBACCO TRUST FUND AND
A HEALTH TRUST FUND AND COMMISSIONS TO ADMINISTER THOSE
FUNDS AND TO PROVIDE IMMUNITY FOR PHASE II OFFICIALS.

The General Assembly of North Carolina enacts:

PART I. HEALTH TRUST FUND AND HEALTH COMMISSION

Section 1. Chapter 130A of the General Statutes is amended by adding a new
Article to read:

“ARTICLE 21.
"HEALTH TRUST FUND AND COMMISSION.
"§ 130A-470. Purpose; funding initiatives.

(a) The purpose of this Article is to improve the health and wellness of the people of North Carolina through the establishment of a North Carolina Health Trust Fund that will fund initiatives in prevention, education, treatment, research, and related areas in addressing health problems and in increasing the capacity of communities to respond to the public's health needs.

1 (b) The Health Trust Fund shall be used to develop a comprehensive, community-
2 based plan with goals and objectives to improve the health and wellness of the people of
3 North Carolina with a priority on preventing, reducing, and remedying the negative
4 health effects of tobacco use and with an emphasis on reducing youth tobacco use. The
5 goals and objectives shall have measurable health and wellness outcomes and a proposed
6 timetable to achieve these outcomes.

7 (c) The priority in funding all initiatives pursuant to this Article shall be to address
8 the health needs of vulnerable and underserved populations. Advice and technical
9 support shall be provided in addressing those needs.

10 **"§ 130A-471. Definitions.**

11 As used in this Article:

12 (1) 'Council' means the Advisory Council for the Health Trust Fund.

13 (2) 'Commission' means the Health Trust Fund Commission.

14 (3) 'Fund' means the Health Trust Fund.

15 (4) 'Principal' means the annual payment allocated to the Health Trust
16 Reserve Fund pursuant to G.S. 143-16.4.

17 (5) 'Trustees' means the Board of Trustees of the Health Trust Fund
18 Commission.

19 **"§ 130A-472. Commission.**

20 (a) Creation. – The Health Trust Fund Commission is created. The Commission
21 shall have the powers and duties as set forth in G.S. 130A-473.

22 (b) Membership. – The Board of Trustees of the Commission shall consist of 15
23 members. The Board of Trustees members shall not be employed by or be agents of
24 tobacco product manufacturing companies. The Board of Trustees shall be appointed as
25 follows: five members by the Governor, five members by the General Assembly upon the
26 recommendation of the President Pro Tempore of the Senate, and five members by the
27 General Assembly upon the recommendation of the Speaker of the House of
28 Representatives. These members shall be appointed as follows:

29 (1) The Governor shall make the following appointments:

30 a. A community leader.

31 b. A person involved in public health.

32 c. A person involved in health research.

33 d. A person involved in the operation of healthcare delivery
34 systems.

35 e. A health care practitioner.

36 (2) The General Assembly shall make the following appointments upon the
37 recommendation of the President Pro Tempore of the Senate:

38 a. A community leader.

39 b. A person involved in the health care needs of special populations.

40 c. A person involved in health policy trends.

41 d. A person involved in tobacco-related health care issues.

42 e. A person involved in health promotion and disease prevention.

1 (3) The General Assembly shall make the following appointments upon the
2 recommendation of the Speaker of the House of Representatives:

3 a. A community leader.

4 b. A person involved in health policy trends.

5 c. A person involved in tobacco-related health care issues.

6 d. A person involved with health care for underserved populations.

7 e. A person involved with child health care.

8 Except as provided for the initial Board of Trustees under subsection (c) of
9 this section, members shall serve four-year terms. No member may serve more than two full
10 consecutive terms. A vacancy in a position appointed by the Governor shall be filled for
11 the unexpired term by the Governor. A vacancy in a position appointed by the General
12 Assembly shall be filled in accordance with G.S. 120-122.

13 The Board of Trustees shall select its chair for a two-year term.

14 It is the intent of the General Assembly that the appointing authorities, in appointing
15 trustees, shall appoint trustees that represent the geographic, gender, and racial diversity
16 of the State.

17 (c) Initial Membership; Staggering. – To provide for a staggered Board
18 membership, the members initially appointed pursuant to sub-subdivisions 1a., 1b., 2d.,
19 and 3a. of subsection (b) of this section shall serve one-year terms. The members
20 initially appointed pursuant to sub-subdivisions (1)c., (2)a., (3)b., and (3)c. shall serve
21 two-year terms. The members initially appointed pursuant to sub-subdivisions (1)d.,
22 (2)c., and (3)e. of subsection (b) of this section shall serve three-year terms. The
23 members initially appointed pursuant to the remaining sub-subdivisions of subsection (c)
24 of this section shall serve four-year terms.

25 (d) Compensation. – The trustees shall receive per diem and necessary travel and
26 subsistence expenses in accordance with G.S. 138-5. Per diem, subsistence, and travel
27 expenses of the trustees shall be paid from the Fund.

28 (e) Frequency of Meetings. – The Board of Trustees shall meet at least quarterly
29 each year and may hold special meetings at the call of the chair or a majority of members.

30 (f) Conflict of Interest. – Trustee members shall comply with the provisions of
31 G.S. 14-234 prohibiting conflicts of interest. A trustee shall not vote on, participate in
32 the deliberation of, or otherwise attempt through his or her official capacity to influence
33 the vote on a grant or other financial assistance award by the Board of Trustees to a
34 nonprofit entity of which the trustee is an officer, director, or employee or to a
35 governmental entity of which the trustee is an employee or a member of the governing
36 board.

37 (g) Limit on Operating and Administrative Expenses. – No more than two and
38 one-half percent (2 1/2%) of the annual balance of the Fund on July 1 or a total sum of
39 one million dollars (\$1,000,000), whichever is less, may be used each fiscal year for
40 administrative and operating expenses of the Board of Trustees and its staff.

41 **"§ 130A-473. Powers and duties.**

42 The Commission shall have the following powers and duties:

43 (1) To administer the provisions of this Article.

- 1 (2) To disburse funds or otherwise provide financial assistance to eligible
2 State agencies, local governments and other political subdivisions of the
3 State or a combination of such entities, or nonprofit organizations,
4 consistent with the purposes of this Article and pursuant to the
5 recommendations of the Board of Trustees, and to develop guidelines or
6 criteria for eligibility and disbursement of funds and the provision of
7 financial assistance.
- 8 (3) To hire staff or contract for other expertise for the administration of the
9 Fund. All administrative expenses of the Commission shall be paid
10 from funds in the Fund.
- 11 (4) To accept gifts or grants from other sources.
- 12 (5) To require grant or financial assistance recipients which are non-State
13 agencies to submit an annual report to the Board of Trustees. The report
14 shall include information concerning how the funds are used, the
15 intended goals and objectives of the recipient's grant proposal or
16 program initiative, and the results of an evaluation of the extent to
17 which the outcomes of the initiative or proposal achieved those goals
18 and objectives.

19 **§ 130A-474. Health Trust Fund.**

20 (a) Fund Established. – There is established the Health Trust Fund in the State
21 Treasurer's Office that shall be used to promote the health and wellness of the people of
22 North Carolina in accordance with this Article.

23 (b) Fund Earnings, Assets, and Balances. – The State Treasurer shall hold the
24 Fund separate and apart from all other moneys, funds, and accounts. The State Treasurer
25 shall be the custodian of the Fund and shall invest its assets in accordance with G.S. 147-
26 69.2 and G.S. 147-69.3. Investment earnings credited to the assets of the Fund shall
27 become part of the Fund. Any balance remaining in the Fund at the end of any fiscal year
28 shall be carried forward in the Fund for the next succeeding fiscal year. Payments from
29 the Fund shall be made on the warrant of the chair of the Board of Trustees, pursuant to
30 the directives of the Board of Trustees. Except as provided in subsection (c) of this
31 section, the Board of Trustees may expend only the investment earnings.

32 (c) Use of Fund Principal. – The Board of Trustees shall reserve, and not expend,
33 fifty percent (50%) of each annual payment allocated to the Health Trust Fund pursuant
34 to G.S. 143-16.4 during years 2000 through 2025 to create a Reserve. The Board of
35 Trustees shall not expend the Reserve but may expend any investment earnings on the
36 Reserve. Notwithstanding any other provision of this section, the Board of Trustees may
37 not expend more than forty million dollars (\$40,000,000) annually through the year 2005.

38 The Board of Trustees may expend the remaining principal that is not reserved
39 pursuant to this subsection. Any unexpended portion of the nonreserved portion of the
40 principal for years 2000 through 2025 that could have been expended under this
41 subsection may be carried forward to subsequent years and may be expended during any
42 subsequent year in addition to the nonreserved portion of the principal allowed to be
43 expended under this subsection.

"§ 130A-475. Reporting.

(a) The chair of the Commission shall report each year by November 1 to the Joint Legislative Commission on Governmental Operations and the chairs of the Joint Health Care Oversight Committee regarding the implementation of this Article. The report shall include a summary of each recipient's annual report submitted to the Health Trust Fund Commission pursuant to G.S. 130A-473 and an analysis of the extent to which the Commission is achieving its goals, objectives, and outcomes established pursuant to G.S. 130A-470(b). A written copy of the report shall also be sent to the Legislative Library by November 1 each year.

(b) No later than November 1, 2000, and quarterly thereafter, the chair of the Board of Trustees shall submit to the Joint Legislative Commission on Governmental Operations a list of the initiatives funded from the Fund for the previous quarter. The list shall include a description of each initiative, including the recipient, the amount of the grant awarded or financial assistance provided, the evaluation methods or process the recipient will use to measure whether the initiative's purpose is achieved, and the extent to which it is anticipated each initiative will be funded through each recipient. A written copy of the list and other information regarding the initiatives shall also be sent to the Legislative Library by November 1, 2000, and for each subsequent quarter.

(c) Any non-State agency that receives, uses, or expends any funds from the Commission is subject to the applicable reporting requirements of G.S. 143-6.1.

"§ 130A-476. Health Trust Fund: Advisory Council.

The Board of Trustees shall create an Advisory Council to advise the trustees with regard to issues as requested by the Trustees. The Advisory Council shall include the Secretary of the Department of Health and Human Services, the State Health Director, the Dean of the School of Public Health, and others as deemed necessary by the Board of Trustees.

"§ 130A-477. Open meeting and public records requirements.

The Open Meetings Law (Article 33 of Chapter 143 of the General Statutes) and the Public Records Act (Chapter 132 of the General Statutes) shall apply to the Commission, and it shall be subject to audit by the State Auditor as provided by law."

PART II. TOBACCO TRUST FUND AND TOBACCO COMMISSION

Section 2. Chapter 143 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 74.
"TOBACCO TRUST FUND.

"§ 143-715. Policy; purpose.

Tobacco growers, tobacco allotment holders, and persons engaged in tobacco-related businesses are entitled to indemnification for the adverse economic effects resulting from the Master Settlement Agreement; tobacco growers and allotment holders are entitled to compensation for the economic losses resulting from lost quota; and tobacco growers are entitled to compensation for the decline in value of tobacco-related personal property assets and declining market conditions resulting from the Master Settlement Agreement;

1 to the extent that funds are available in the Tobacco Trust Fund to address those
2 purposes. The General Assembly finds that it is a public purpose for these funds to be
3 expended in this manner, and that it is public service for applicants to accept these funds
4 to the end that conditions of unemployment and fiscal distress may be alleviated or
5 avoided, more stable local economies may be created, local tax bases may be stabilized
6 and maintained, natural resources may be optimally used, and the general public may be
7 benefited.

8 **"§ 143-716. Definitions.**

9 As used in this Article:

10 (1) 'Commission' means the Tobacco Trust Fund Commission.

11 (2) 'Fund' means the Tobacco Trust Fund.

12 (3) 'Master Settlement Agreement' means the settlement agreement
13 between the tobacco manufacturers and the states, as incorporated in the
14 consent decree entered in the action of State of North Carolina v. Philip
15 Morris Incorporated, et al., 98 CVS 14377, in the General Court of
16 Justice, Superior Court Division, Wake County, North Carolina.

17 (4) 'Trustees' means the Board of Trustees of the Tobacco Trust Fund
18 Commission.

19 **"§ 143-717. Commission.**

20 (a) Creation. – The Tobacco Trust Fund Commission is created. The Commission
21 shall be administratively located within the Department of Agriculture and Consumer
22 Services but shall exercise its powers independently of the Commissioner of Agriculture
23 and the Department.

24 (b) Membership. – The Board of Trustees of the Commission shall consist of 16
25 members. The Board shall be appointed as follows: five members by the Governor, five
26 members by the General Assembly upon the recommendation of the President Pro
27 Tempore of the Senate, and five members by the General Assembly upon the
28 recommendation of the Speaker of the House of Representatives. The Commissioner of
29 Agriculture shall serve as an ex officio member. The appointed members shall be
30 appointed as follows:

31 (1) The Governor shall make the following appointments:

32 a. A flue-cured tobacco farmer.

33 b. A flue-cured tobacco farmer.

34 c. A burley tobacco farmer.

35 d. A person in or displaced from tobacco-related employment.

36 e. An at-large appointee.

37 (2) The General Assembly shall make the following appointments upon the
38 recommendation of the President Pro Tempore of the Senate:

39 a. A flue-cured tobacco farmer.

40 b. A flue-cured tobacco farmer.

41 c. A burley allotment holder who is not also a burley tobacco
42 farmer.

43 d. A person in or displaced from tobacco-related employment.

- 1 e. An at-large appointee.
2 (3) The General Assembly shall make the following appointments upon the
3 recommendation of the Speaker of the House of Representatives:
4 a. A flue-cured tobacco farmer.
5 b. A flue-cured tobacco farmer.
6 c. A flue-cured allotment holder who is not also a flue-cured
7 tobacco farmer.
8 d. A burley tobacco farmer.
9 e. An at-large appointee.

10 Except as provided for the initial board under subsection (c) of this section,
11 members shall serve four-year terms. No member may serve more than two full
12 consecutive terms. A vacancy in a position appointed by the Governor shall be filled for
13 the unexpired term by the Governor. A vacancy in a position appointed by the General
14 Assembly shall be filled in accordance with G.S. 120-122. A member may be removed
15 from office for cause by the authority that appointed that member.

16 (c) Initial Membership; Staggering. – To provide for a staggered board
17 membership, the members initially appointed pursuant to sub-subdivisions (1)a., (1)b.,
18 (2)d., and (3)a. of subsection (b) of this section shall serve one-year terms. The members
19 initially appointed pursuant to sub-subdivisions (1)c., (2)a., (3)b., and (3)c. shall serve
20 two-year terms. The members initially appointed pursuant to sub-subdivisions (1)d.,
21 (2)c., and (3)e. of subsection (b) of this section shall serve three-year terms. The
22 members initially appointed pursuant to the remaining sub-subdivisions of subsection (b)
23 of this section shall serve four-year terms.

24 (d) The Board shall elect from its membership a chair and other officers as necessary.
25 The term of office for a chair or other officer is two years.

26 **"§ 143-718. Powers and duties.**

27 The Commission shall have the following powers and duties:

- 28 (1) To administer the provisions of this Article.
29 (2) To develop guidelines and criteria for eligibility for and disbursement of
30 funds, the forms of direct and indirect economic assistance to be
31 awarded, and procedures for applying for and reviewing applications for
32 assistance from the Fund. In developing guidelines and criteria for
33 eligibility and disbursement of funds, the Commission may consult with
34 and otherwise obtain assistance from the State and local offices of the
35 Farm Service Agency and other agencies of the United States
36 Department of Agriculture. The Commission shall publish the proposed
37 guidelines and criteria under this subdivision in the North Carolina
38 Register and any other publications deemed appropriate by the
39 Commission at least 30 days in advance. A public hearing on the
40 proposed guidelines and criteria shall be held prior to adoption of the
41 guidelines or criteria.
42 (3) To provide financial assistance to eligible recipients.

1 (4) To hire staff for the administration of the Trust Fund. All
2 administrative expenses of the Commission shall be paid from funds in
3 the Trust Fund.

4 (5) To accept gifts or grants from other sources.

5 **"§ 143-719. Tobacco Trust Fund; creation; investment.**

6 (a) Fund Established. – There is established the Tobacco Trust Fund in the State
7 Treasurer's Office that shall be used to provide financial assistance in accordance with
8 this Article.

9 (b) Fund Earnings, Assets, and Balances. – The State Treasurer shall hold the
10 Fund separate and apart from all other moneys, funds, and accounts. The State Treasurer
11 shall be the custodian of the Fund and shall invest the assets in accordance with G.S. 147-
12 69.2 and G.S. 147-69.3. Investment earnings credited to the assets of the Fund shall
13 become part of the Fund. Any balance remaining in the Fund at the end of any fiscal year
14 shall be carried forward in the Fund for the next succeeding fiscal year. Payments from
15 the Fund shall be made on the warrant of the chair of the Board of Trustees.

16 **"§ 143-720. Benefits and administration of Trust Fund.**

17 (a) The monies in the Fund may be expended as received.

18 (b) The Fund may provide direct and indirect financial assistance, in accordance
19 with criteria established by the trustees and to the extent allowed by law, to accomplish
20 the following:

21 (1) Indemnify tobacco producers, allotment holders, and persons engaged in
22 tobacco-related businesses from the adverse economic effects of the
23 Master Settlement Agreement. For purposes of this Article, 'persons
24 engaged in tobacco-related businesses' does not include those persons
25 engaged in the manufacturing of tobacco products or the sale of tobacco
26 products at wholesale or retail.

27 (2) Compensate tobacco producers and allotment holders for economic loss
28 resulting from lost quota and tobacco producers for the decline in value
29 of tobacco-related personal property assets and declining market
30 conditions resulting from the Master Settlement Agreement.

31 (c) Only tobacco producers, tobacco allotment holders, and persons engaged in
32 tobacco-related businesses are eligible to apply for and receive assistance pursuant to
33 subsection (b) of this section. An applicant may be a natural person, partnership, limited
34 liability company, or corporation. Direct payments made to tobacco producers and
35 tobacco allotment holders shall be based on losses resulting in 1998 and thereafter. Lost
36 quota value shall be a primary determinative factor in calculating the amount of
37 compensable economic loss for tobacco farmers and allotment holders.

38 (d) The trustees shall determine the priority of awards among the categories in
39 subsection (b) of this section and within each of those categories.

40 (e) Financial assistance awards shall be for no more than one year at a time. An
41 award may be renewed annually, without limitation.

42 (f) The trustees may require applicants to provide copies of documents necessary
43 to determine compensable economic loss.

1 (g) In no event shall the amount paid to a tobacco grower or allotment holder
2 pursuant to this Article, when combined with the amount received through the Phase II
3 payment agreement between the tobacco manufacturers and the tobacco producers and
4 allotment holders, exceed the compensable economic loss of the grower or allotment
5 holder.

6 (h) The trustees may consider the criteria used for Phase II payments and may
7 correspond with the Phase II certification entity to ensure that tobacco farmers and
8 allotment holders are treated fairly.

9 **"§ 143-721. Reporting.**

10 The chair of the Commission shall report each year by November 1 to the Joint
11 Legislative Commission on Governmental Operations regarding the implementation of
12 this Article, including a report on funds disbursed during the fiscal year by amount and
13 by category of recipient.

14 **"§ 143-722. Open meetings; public records; audit.**

15 The Open Meetings Law (Article 33 of Chapter 143 of the General Statutes) and the
16 Public Records Law (Chapter 132 of the General Statutes) shall apply to the Commission,
17 and the Commission shall be subject to audit by the State Auditor as provided by law."
18

19 **PART III. APA RULE-MAKING EXEMPTION (TOBACCO)**

20 Section 3. G.S. 150B-1(d) reads as rewritten:

21 "(d) Exemptions from Rule Making. – Article 2A of this Chapter does not apply to
22 the following:

- 23 (1) The Commission.
- 24 (2) The North Carolina Low-Level Radioactive Waste Management
25 Authority in administering the provisions of G.S. 104G-10 and G.S.
26 104G-11.
- 27 (3) The North Carolina Hazardous Waste Management Commission in
28 administering the provisions of G.S. 130B-13 and G.S. 130B-14.
- 29 (4) The Department of Revenue, with respect to the notice and hearing
30 requirements contained in Part 2 of Article 2A.
- 31 (5) The North Carolina Global TransPark Authority with respect to the
32 acquisition, construction, operation, or use, including fees or charges, of
33 any portion of a cargo airport complex.
- 34 (6) The Department of Correction, with respect to matters relating solely to
35 persons in its custody or under its supervision, including prisoners,
36 probationers, and parolees.
- 37 (7) The North Carolina Teachers' and State Employees' Comprehensive
38 Major Medical Plan in administering the provisions of Parts 2 and 3 of
39 Article 3 of Chapter 135 of the General Statutes.
- 40 (8) The Tobacco Trust Fund Commission established in Article 74 of
41 Chapter 143 of the General Statutes."

42
43 **PART IV. STATE PERSONNEL ACT EXEMPTION**

1 Section 4. G.S. 126-5(c1) reads as rewritten:

2 "(c1) Except as to the provisions of Articles 6 and 7 of this Chapter, the provisions
3 of this Chapter shall not apply to:

- 4 (1) Constitutional officers of the State.
- 5 (2) Officers and employees of the Judicial Department.
- 6 (3) Officers and employees of the General Assembly.
- 7 (4) Members of boards, committees, commissions, councils, and advisory
8 councils compensated on a per diem basis.
- 9 (5) Officials or employees whose salaries are fixed by the General
10 Assembly, or by the Governor, or by the Governor and Council of State,
11 or by the Governor subject to the approval of the Council of State.
- 12 (6) Employees of the Office of the Governor that the Governor, at any time,
13 in his discretion, exempts from the application of the provisions of this
14 Chapter by means of a letter to the State Personnel Director designating
15 these employees.
- 16 (7) Employees of the Office of the Lieutenant Governor, that the Lieutenant
17 Governor, at any time, in his discretion, exempts from the application of
18 the provisions of this Chapter by means of a letter to the State Personnel
19 Director designating these employees.
- 20 (8) Instructional and research staff, physicians, and dentists of The
21 University of North Carolina.
- 22 (9) Employees whose salaries are fixed under the authority vested in the
23 Board of Governors of The University of North Carolina by the
24 provisions of G.S. 116-11(4), 116-11(5), and 116-14.
- 25 (10) Repealed by Session Laws 1991, c. 84, s. 1.
- 26 (11) North Carolina School of Science and Mathematics' employees whose
27 salaries are fixed in accordance with the provisions of G.S. 116-
28 235(c)(1) and G.S. 116-235(c)(2).
- 29 (12) Employees of the North Carolina Low-Level Radioactive Waste
30 Management Authority whose salaries are fixed pursuant to G.S. 104G-
31 5(g)(1) and G.S. 104G-5(g)(2).
- 32 (13) Employees of the North Carolina Hazardous Waste Management
33 Commission whose salaries are fixed pursuant to G.S. 130B-6(g)(1) and
34 G.S. 130B-6(g)(2).
- 35 (14) Employees of the North Carolina State Ports Authority.
- 36 (15) Employees of the North Carolina Global TransPark Authority.
- 37 (16) The executive director and one associate director of the North Carolina
38 Center for Nursing established under Article 9F of Chapter 90 of the
39 General Statutes.
- 40 (17) Employees of the Tobacco Trust Fund Commission established under
41 Article 74 of Chapter 143 of the General Statutes.
- 42 (18) Employees of the Health Trust Fund Commission established under
43 Article 21 of Chapter 130A of the General Statutes."

1
2 **PART V. NO LEGISLATORS ON COMMISSIONS**

3 Section 5. G.S. 120-123 is amended by adding a new subdivision to read:

4 "(70) The Tobacco Trust Fund Commission established under Article 74 of
5 Chapter 143 of the General Statutes.

6 (71) The Health Trust Fund Commission established under Article 21 of
7 Chapter 130A of the General Statutes."

8
9 **PART VI. ALLOCATION OF FUNDS**

10 Section 6.1. G.S. 143-16.4 reads as rewritten:

11 **"§ 143-16.4. Settlement Reserve Fund.**

12 (a) The 'Settlement Reserve Fund' is established as a restricted reserve in the
13 General Fund. ~~Funds shall be expended from the Settlement Reserve Fund only by specific~~
14 ~~appropriation by the General Assembly.~~ The State Controller shall allocate and reserve the
15 funds in the Settlement Reserve Fund to the Health Trust Fund, the Tobacco Trust Fund,
16 and the nonprofit corporation in accordance with G.S. 143-15.3E.

17 (b) Unless prohibited by federal law, federal funds provided to the State by block
18 grant or otherwise as part of federal legislation implementing a settlement between
19 United States tobacco companies and the states shall be credited to the Settlement
20 Reserve Fund. Unless otherwise encumbered or distributed under a settlement agreement
21 or final order or judgment of the court, funds paid to the State or a State agency pursuant
22 to a tobacco litigation settlement agreement, or a final order or judgment of a court in
23 litigation between tobacco companies and the states, shall be credited to the Settlement
24 Reserve Fund."

25 Section 6.2. Chapter 143 of the General Statutes is amended by adding the
26 following new section to read:

27 **"§ 143-15.3E. Tobacco and Health Trust Funds.**

28 (a) The Tobacco Trust Fund is established in G.S. 143-719. The Health Trust
29 Fund is established in G.S. 130A-472.

30 (b) Notwithstanding Sections 2(a) and 2(b) of S.L. 1999-2, each annual installment
31 payment that would otherwise be assigned to the nonprofit corporation from the Master
32 Settlement Agreement is hereby transferred to the Settlement Reserve Fund established
33 pursuant to G.S. 143-16.4.

34 Of the funds to be received in the Settlement Reserve Fund for the years 1998 through
35 2025, the State Controller shall allocate monies as follows:

36 (1) During the payment period 1998 through 2005, the State Controller
37 shall annually allocate these monies as follows:

38 a. Fifty percent (50%) to the Tobacco Trust Fund established
39 pursuant to Article 74 of Chapter 143 of the General Statutes.

40 b. Fifty percent (50%) to the Health Trust Fund established
41 pursuant to Article 21 of Chapter 130A of the General Statutes.

42 (2) During the payment period 2006 through 2025, the State Controller
43 shall annually allocate these monies as follows:

- 1 a. Sixty-two and forty-two hundredths percent (62.42%) to the
2 nonprofit corporation.
3 b. Eighteen and seventy-nine hundredths percent (18.79%) to the
4 Tobacco Trust Fund established pursuant to Article 74 of Chapter
5 143 of the General Statutes.
6 c. Eighteen and seventy-nine hundredths percent (18.79%) to the
7 Health Trust Fund established pursuant to Article 21 of Chapter
8 130A of the General Statutes.

9 For purposes of Section 2(b) of S.L. 1999-2, this subsection constitutes a continuing
10 act preventing the transfer and assignment to the nonprofit corporation of the right, title,
11 and interest of the State to fifty percent (50%) of North Carolina's State Specific Account.
12 Funds shall be allocated to the nonprofit corporation only in accordance with this section.

13 (c) The funds in the Tobacco Trust Fund shall be used only in accordance with
14 Article 74 of Chapter 143 of the General Statutes. The funds in the Health Trust Fund
15 shall be used only in accordance with Article 21 of Chapter 130A of the General Statutes.

16 (d) For purposes of this section and G.S. 143-16.4, 'nonprofit corporation' means
17 the nonprofit corporation established pursuant to the consent decree in the action of State
18 of North Carolina v. Philip Morris et al., 98 CVS 14377, and approved by the General
19 Assembly in S.L. 1999-2.

20 (e) The Health Trust Fund and the Tobacco Trust Fund shall each contribute ten
21 percent (10%) of the annual payments they receive for the 1998-2005 payment period to
22 the nonprofit corporation to be used by the nonprofit corporation, in accordance with its
23 articles of incorporation and criteria, to provide economic assistance primarily to the
24 following:

- 25 (1) Individuals who, as a result of the Master Settlement Agreement, have
26 been or will be displaced from employment in tobacco product
27 manufacturing or the tobacco-related industries described in subdivision
28 (2) of this subsection or whose employment in those industries is or will
29 be adversely impacted as a result of the Master Settlement Agreement.
30 (2) Industries that (i) are involved in the manufacture of tobacco products or
31 component products used in the manufacture of tobacco products, (ii)
32 are adversely impacted by the Master Settlement Agreement, and (iii)
33 need the financial assistance to retool machinery or equipment, convert
34 to the production of new products, convert to a non-tobacco-related use
35 for an existing product, retrain workers, or effect similar changes.
36 Financial assistance shall be available under this subdivision only to the
37 extent that the manufacturer demonstrates that the assistance will retain
38 existing jobs at comparable wages at the manufacturer's plant.

39 The funds required to be contributed under this subsection by the Health Trust Fund
40 and the Tobacco Trust Fund shall be reallocated by the State Controller to the nonprofit
41 corporation annually during the 1998-2005 payment period."
42

43 **PART VII. CONFLICT OF INTEREST (TOBACCO)**

1 Section 7. G.S. 14-234 is amended by adding a new subsection to read:

2 "(d4) Subsection (a) of this section does not apply to an application for or the receipt
3 of a grant or other financial assistance from the Tobacco Trust Fund created under Article
4 74 of Chapter 143 of the General Statutes by a member of the Board of Trustees of the
5 Tobacco Trust Fund Commission, provided that (i) the member of the Board of Trustees
6 applying for assistance shall not participate in the discussion of, or vote on, the
7 application and (ii) the Commissioner of Agriculture determines that the award is in
8 accordance with general criteria adopted by the Commission for the distribution of funds
9 from the Tobacco Trust Fund."

10 11 **PART VIII. PHASE II IMMUNITY (TOBACCO)**

12 Section 8.(a) The General Assembly finds that:

- 13 (1) Philip Morris, Inc., Brown and Williamson Tobacco Corporation,
14 Lorillard Tobacco Company, and R.J. Reynolds Tobacco Company
15 (hereinafter, the "tobacco companies") have proposed to create a
16 National Tobacco Grower Settlement Trust under which the tobacco
17 companies will pay, during a 12-year period, a base amount of
18 approximately five billion one hundred fifty million dollars
19 (\$5,150,000,000) into a trust to provide payments to tobacco growers
20 and allotment holders in 14 grower states, including North Carolina, for
21 the purposes of ameliorating potential adverse economic consequences
22 of likely changes in the tobacco market on grower states.
- 23 (2) The tobacco companies desire that the money paid into trust be divided
24 among tobacco producers and allotment holders in accordance with a
25 plan designed and approved by a certification entity in each state.
- 26 (3) The tobacco companies desire that in larger grower states, including
27 North Carolina, the certification entity be a nonprofit corporation
28 governed by a board of directors consisting of the following public
29 officials and persons appointed by public officials: the Governor, who
30 shall serve as chair of the board of directors; the Commissioner of
31 Agriculture, who shall serve as vice-chair; the Attorney General, who
32 shall serve as secretary; a State Senator appointed by the President Pro
33 Tempore of the Senate; a State Representative appointed by the Speaker
34 of the House of Representatives; two members of the North Carolina
35 congressional delegation; and four to seven citizens appointed by the
36 Governor.
- 37 (4) It is in the public interest that these officials and citizens serve on the
38 board of directors and determine the distribution of these private trust
39 funds to tobacco producers and allotment holders in North Carolina.

40 Section 8.(b) The Governor, the Speaker of the House of Representatives, and the
41 President Pro Tempore of the Senate are authorized to appoint members of the board of
42 directors of the certification entity as provided in Section 8(b)(3), and the public officials
43 referred to in Section 8(b)(3) are authorized to serve on that board.

1 Section 8.(c) No member of the certification entity for the National Tobacco
2 Grower Trust Fund is subject to civil liability for any act or omission arising out of the
3 performance of the member's duties as a member or officer of the certification entity.
4 This section does not apply to liability arising from willful or wanton misconduct,
5 intentional wrongdoing, or the operation of a motor vehicle.
6

7 **PART IX. EFFECTIVE DATE**

8 Section 9. This act is effective when it becomes law.