

**USE OF TOBACCO SETTLEMENT REVENUES**

2000 GENERAL SESSION

STATE OF UTAH

**Sponsor: L. Steven Poulton**

AN ACT RELATING TO THE TOBACCO SETTLEMENT ACCOUNT; CREATING THE TOBACCO SETTLEMENT ENDOWMENT AND RENAMING THE TOBACCO SETTLEMENT ACCOUNT; APPORTIONING TOBACCO SETTLEMENT FUNDS BETWEEN THE ACCOUNT AND THE ENDOWMENT; REQUIRING THAT FUNDS IN THE TOBACCO SETTLEMENT RESTRICTED ACCOUNT BE ALLOCATED EACH YEAR IN THE FOLLOWING ORDER: \$5,500,000 FOR THE CHILDREN'S HEALTH INSURANCE PROGRAM, \$4,000,000 FOR TOBACCO AND SUBSTANCE ABUSE PREVENTION, \$1,590,000 FOR THE DRUG COURT PROGRAM, \$410,000 FOR A DRUG BOARD PILOT PROGRAM, AND \$4,000,000 FOR THE UNIVERSITY OF UTAH HEALTH SCIENCES CENTER; IMPOSING AN ANNUAL REPORTING REQUIREMENT; DIRECTING THE APPROPRIATION OF FUNDS FOR FISCAL YEAR 2000-01; REPEALING THE HOSPITAL PROVIDER ASSESSMENT; PROVIDING AN EFFECTIVE DATE; AND PROVIDING A COORDINATING CLAUSE TO ALLOCATE TOBACCO SETTLEMENT FUNDS TO A CONSTITUTIONALLY CREATED TRUST FUND.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

**26-40-102**, as enacted by Chapter 360, Laws of Utah 1998

**26-40-103**, as last amended by Chapters 21 and 61, Laws of Utah 1999

**63-97-101**, as enacted by Chapter 78, Laws of Utah 1999

ENACTS:

**51-7-12.1**, Utah Code Annotated 1953

**63-97-301**, Utah Code Annotated 1953

RENUMBERS AND AMENDS:

**63-97-201**, (Renumbered from 63-97-102, as enacted by Chapter 78, Laws of Utah 1999)

REPEALS:

**26-40-111**, as enacted by Chapter 360, Laws of Utah 1998

**26-40-112**, as last amended by Chapter 78, Laws of Utah 1999

**26-40-113**, as enacted by Chapter 360, Laws of Utah 1998

**26-40-114**, as enacted by Chapter 360, Laws of Utah 1998

*Be it enacted by the Legislature of the state of Utah:*

Section 1. Section **26-40-102** is amended to read:

**26-40-102. Definitions.**

As used in this chapter:

~~[(1) "Assessment" means the hospital provider assessment established in Section 26-40-111.]~~

~~[(2)] (1) "Child" means a person who is under 19 years of age.~~

~~[(3)] (2) "Eligible child" means a child who qualifies for enrollment in the program as provided in Section 26-40-105.~~

~~[(4)] (3) "Enrollee" means any child enrolled in the program.~~

~~[(5) "Freestanding ambulatory surgical facility" means an urban or rural nonhospital-based or nonhospital-affiliated licensed facility, as defined in Section 26-21-2, as an ambulatory surgical facility, with an organized professional staff that provides surgical services to patients who do not require an inpatient bed.]~~

~~[(6) (a) "Hospital" means any general acute hospital, as defined in Section 26-21-2, operating in this state.]~~

~~[(b) "Hospital" does not include:]~~

~~[(i) a residential care or treatment facility, as defined in Subsections 62A-2-101(16), (17), and (19);]~~

~~[(ii) the Utah State Hospital;]~~

~~[(iii) any rural hospital that operates outside of a metropolitan statistical area, a metropolitan area, or an urbanized area as designated by the U.S. Bureau of Census; or]~~

~~[(iv) any specialty hospital operating in this state, as defined in Section 26-21-2, that is engaged exclusively in rendering psychiatric or other mental health treatment.]~~

~~[(7) "Hospital-based ambulatory surgical facility" means an urban or rural on-hospital campus or hospital-affiliated licensed facility with an organized professional staff that provides surgical services to patients who do not require an inpatient bed.]~~

~~[(8)]~~ (4) "Plan" means the department's plan submitted to the United States Department of Health and Human Services pursuant to 42 U.S.C. Sec. 1397ff.

~~[(9)]~~ (5) "Program" means the Utah Children's Health Insurance Program created by this chapter.

Section 3. Section **26-40-103** is amended to read:

**26-40-103. Creation and administration of the Utah Children's Health Insurance Program.**

(1) There is created the Utah Children's Health Insurance Program to be administered by the department in accordance with the provisions of:

- (a) this chapter; and
- (b) the State Children's Health Insurance Program, 42 U.S.C. Sec. 1397aa et seq.

(2) The department shall:

(a) prepare and submit the state's children's health insurance plan before May 1, 1998, and any amendments to the federal Department of Health and Human Services in accordance with 42 U.S.C. Sec. 1397ff; and

(b) make rules in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act regarding:

- (i) eligibility requirements consistent with Subsection 26-18-3(6);
- (ii) program benefits;
- (iii) the level of coverage for each program benefit;
- (iv) cost-sharing requirements for enrollees, which may not:
  - (A) exceed the guidelines set forth in 42 U.S.C. Sec. 1397ee; or
  - (B) impose deductible, copayment, or coinsurance requirements on an enrollee for well-child, well-baby, and immunizations; and
- (v) the administration of the program~~[-and]~~.

~~[(vi) the provider assessment, including:]~~  
~~[(A) the factor for the assessment;]~~  
~~[(B) the administration, collection, and enforcement of the assessment, including:]~~  
~~[(F) auditing a provider's records; and]~~  
~~[(H) imposing penalties for failure to pay the assessment as required; and]~~  
~~[(C) reducing the amount of the assessment to the extent funds are deposited into the Hospital Provider Assessment Account created in Section 26-40-112 as a result of private contributions to the program.]~~

(3) Before July 1, 2001, the Governor's Office of Planning and Budget shall study the effectiveness of the department's administration of the program and report any findings to:

- (a) the Health and Human Services Interim Committee of the Legislature;
- (b) the Health Policy Commission; and
- (c) the department.

Section 2. Section **51-7-12.1** is enacted to read:

**51-7-12.1. Deposit or investment of Tobacco Settlement Endowment -- Authorized deposits and investment -- Asset manager.**

(1) Notwithstanding the requirements of Section 51-7-11, monies in the Tobacco Settlement Endowment established by Section 63-97-301 shall be deposited or invested only in the following:

- (a) any deposit or investment authorized by Section 51-7-11;
- (b) equity securities, including common and preferred stock issued by corporations listed on a major securities exchange, in accordance with the following criteria applied at the time of investment:

(i) the treasurer may not invest more than 5%, determined on a cost basis, of the total endowment assets in the securities of any one issuer;

(ii) the treasurer may not invest more than 25%, determined on a cost basis, of the total endowment assets in a particular industry;

(iii) the treasurer may not invest more than 5%, determined on a cost basis, of the total endowment assets in securities of corporations that have been in continuous operation for less than

three years;

(iv) the endowment may not hold in excess of 5% of the outstanding voting securities of any one corporation; and

(v) at least 75% of the corporations in which investments are made under Subsection (1)(b) must appear on the Standard and Poor's 500 Composite Stock Price Index;

(c) fixed-income securities, including bonds, notes, mortgage securities, zero coupon securities, and convertible securities issued by domestic corporations rated A or higher by Moody's Investor's Service, Inc. or by Standard and Poor's Corporation in accordance with the following criteria applied at the time of investment:

(i) the treasurer may not invest more than 5%, determined on a cost basis, of the total endowment assets in the securities of any one issuer;

(ii) the treasurer may not invest more than 25%, determined on a cost basis, of the total endowment assets in a particular industry;

(iii) the treasurer may not invest more than 5%, determined on a cost basis, of the total fund assets in the securities of corporations that have been in continuous operation for less than three years; and

(iv) the dollar-weighted average maturity of fixed-income securities acquired under Subsection (1)(c) may not exceed ten years;

(d) fixed-income securities issued by agencies of the United States and government-sponsored organizations, including mortgage-backed pass-through certificates and mortgage-backed bonds;

(e) shares of an open-end diversified management investment company established under the Investment Companies Act of 1940; and

(f) shares of or deposits in a pooled-investment program.

(2) (a) No more than 65% of the total fund assets of any of this endowment, on a cost basis, may be invested in common or preferred stocks at any one time.

(b) At least 35% of the total assets of this endowment shall be invested in fixed-income securities authorized by Subsections (1)(a), (c), and (d).

(3) The treasurer shall use appropriate investment strategies to protect the principal of the endowment administered under this section during periods of financial market volatility.

(4) (a) The treasurer may employ professional asset managers to assist in the investment of assets of the endowment.

(b) The treasurer may provide compensation to asset managers from earnings generated by the funds' investments.

(5) The council shall give suggestions, advice, and opinions to the treasurer in regard to this section.

Section 4. Section **63-97-101** is amended to read:

**CHAPTER 97. TOBACCO SETTLEMENT FUNDS**

**63-97-101. Title.**

This chapter is known as the "Tobacco Settlement [~~Account~~] Funds."

Section 5. Section **63-97-201**, which is renumbered from Section 63-97-102 is renumbered and amended to read:

**Part 2. Tobacco Settlement Restricted Account**

~~[63-97-102].~~      **63-97-201. Creation of Tobacco Settlement Restricted Account.**

(1) There is created within the General Fund a restricted account known as the Tobacco Settlement Restricted Account.

(2) The account shall earn interest.

~~[(2)]~~ (3) The account shall consist of:

(a) until July 1, 2003, 50% of all funds of every kind that are received by the state that are related to the settlement agreement that the state entered into with leading tobacco manufacturers on November 23, 1998[-];

~~[(3) Funds in the account may only be used as directed by the Legislature through appropriation.]~~

(b) on and after July 1, 2003, 40% of all funds of every kind that are received by the state that are related to the settlement agreement that the state entered into with leading tobacco manufacturers on November 23, 1998; and

(c) interest earned on the account.

(4) To the extent that funds will be available for appropriation in a given fiscal year, those funds shall be appropriated from the account in the following order:

(a) \$5,500,000 to the Department of Health for the Children's Health Insurance Program created in Section 26-40-103;

(b) \$4,000,000 to the Department of Health for alcohol, tobacco, and other drug prevention, reduction, cessation, and control programs that promote unified messages and make use of media outlets, including radio, newspaper, billboards, and television, and with a preference in funding given to tobacco-related programs;

(c) \$193,700 to the Administrative Office of the Courts and \$1,296,300 to the Department of Human Services for the statewide expansion of the drug court program;

(d) \$77,400 to the Board of Pardons, \$81,700 to the Department of Corrections, and \$350,900 to the Department of Human Services for a drug board pilot program;

(e) \$4,000,000 to the State Board of Regents for the University of Utah Health Sciences Center to benefit the health and well-being of Utah citizens through in-state research, treatment, and educational activities; and

(f) any remaining funds as directed by the Legislature through appropriation.

(5) (a) If tobacco funds in dispute for attorneys fees are received by the state, those funds shall be divided and deposited in accordance with Subsection (3) and Section 63-97-301.

(b) The amount appropriated to the Department of Health for alcohol, tobacco, and other drug programs described in Subsection (4)(b), including the funding preference for tobacco-related programs, shall be increased by up to \$2,000,000 in a given fiscal year to the extent that funds in dispute for attorneys fees are available to the state for appropriation from the account.

(6) Each state agency identified in Subsection (4) shall provide an annual report on the program and activities funded under Subsection (4) to:

(a) the Health and Human Services Interim Committee no later than September 1; and

(b) the Health and Human Services Joint Appropriations Subcommittee.

Section 6. Section **63-97-301** is enacted to read:

**Part 3. Tobacco Settlement Endowment.**

**63-97-301. Tobacco Settlement Endowment.**

(1) There is created within the General Fund a restricted account known as the Tobacco Settlement Endowment.

(2) Monies in the account shall be deposited or invested pursuant to Section 51-7-12.1.

(3) The account shall consist of:

(a) until July 1, 2003, 50% of all funds of every kind that are received by the state that are related to the settlement agreement that the state entered into with leading tobacco manufacturers on November 23, 1998;

(b) on and after July 1, 2003, 60% of all funds of every kind that are received by the state that are related to the settlement agreement that the state entered into with leading tobacco manufacturers on November 23, 1998;

(c) capital gains on assets in the account; and

(d) interest and dividends earned on investments.

(4) Tobacco settlement funds and capital gains in the account pursuant to Subsections (3)(a), (b), and (c) shall be treated as principal and may not be appropriated for any purpose, but shall remain in the account for the purpose of earning interest and dividends to be appropriated in accordance with Subsection (5).

(5) (a) Fifty percent of the interest and dividends earned annually on the account shall remain in the account and be deposited or invested as principal.

(b) Any annual interest earned on the account that remains after Subsection (5)(a) may be appropriated by the Legislature.

**Section 7. Repealer.**

This act repeals:

**Section 26-40-111, Provider assessment.**

**Section 26-40-112, Hospital Provider Assessment Account.**

**Section 26-40-113, Intergovernmental transfers.**

**Section 26-40-114, Repeal of assessment.**



Section 8. **Appropriation.**

(1) Fifty percent of the tobacco settlement funds in the Tobacco Settlement Account created by Section 63-97-201 as of June 30, 2000, shall be deposited into the Tobacco Settlement Endowment created by Section 63-97-301 on July 1, 2000.

(2) Funds remaining in the Tobacco Settlement Account after Subsection (1) are appropriated for fiscal year 2000-01 in the following order:

(a) \$5,500,000 to the Department of Health for the Children's Health Insurance Program;

(b) \$4,000,000 to the Department of Health for alcohol, tobacco, and other drug prevention, reduction, cessation, and control programs as described in Section 63-97-201, including the funding preference for tobacco-related programs;

(c) \$193,700 to the Administrative Office of the Courts and \$1,296,300 to the Department of Human Services for the drug court program as provided in Section 63-97-201;

(d) \$77,400 to the Board of Pardons, \$81,700 to the Department of Corrections, and \$350,900 to the Department of Human Services for a drug board pilot program;

(e) \$4,000,000 to the State Board of Regents for the University of Utah Health Sciences Center as provided in Section 63-97-201.

(3) If tobacco funds in dispute for attorneys fees are received by the state during fiscal year 2000-01:

(a) those funds shall be divided and deposited in accordance with Sections 63-97-201 and 63-97-301; and

(b) the amount appropriated to the Department of Health for alcohol, tobacco, and other drug programs described in Subsection (2)(b), including the funding preference for tobacco-related programs, shall be increased by up to \$2,000,000 to the extent that funds in dispute for attorneys fees are available to the state for appropriation from the account created by Section 63-97-201.

(4) It is the intent of the Legislature that funds deposited into the Tobacco Settlement Account after July 1, 2000, and before July 1, 2001, may be used, as they become available, if necessary for the appropriation in Subsection (2).

(5) The appropriation in this section is the only appropriation that may be made for tobacco

settlement funds for fiscal year 2000-01.

(6) Any funds remaining in the Hospital Providers Assessment Account as of June 30, 2000, shall lapse into the General Fund.

**Section 9. Effective date.**

This act takes effect on July 1, 2000.

**Section 10. Coordination clause.**

(1) If this bill and H.B. 390, Endowment Fund for Tobacco Settlement Monies, both pass it is the intent of the Legislature that:

(a) The amendments to Section 51-7-12.1 in H.B. 390 supercede the amendments to Section 51-7-12.1 in this bill and that the reference to "Section 63-97-102" in Section 51-7-12.1 in H.B. 390 be amended to read "63-97-301".

(b) The renumbering and amendments to Section 63-97-102 in this bill supercede the amendments to Section 63-97-102 in H.B. 390.

(2) If this bill passes and if S.J.R.14, Resolution Creating Constitutional Trust Fund, passes the Legislature and is approved by a majority of those voting at the next general election and thus becomes effective on January 1, 2001, it is the intent of the Legislature that effective as of January 1, 2001:

(a) Section 63-97-301 be repealed and reenacted to read as follows:

"63-97-301. Permanent state trust fund.

(1) Until July 1, 2003, 50% of all funds of every kind that are received by the state that are related to the settlement agreement that the state entered into with leading tobacco manufacturers on November 23, 1998, shall be deposited into the permanent state trust fund created by and operated under Utah Constitution Article XXII, Section 4.

(2) On and after July 1, 2003, 60% of all funds of every kind that are received by the state that are related to the settlement agreement that the state entered into with leading tobacco manufacturers on November 23, 1998, shall be deposited into the permanent state trust fund created by and operated under Utah Constitution Article XXII, Section 4.

(3) Funds in the permanent state trust fund shall be deposited or invested pursuant to Section

51-7-12.1.

(4) (a) 50% of the interest and dividends earned annually from the permanent state trust fund shall remain in the fund to be treated as principal.

(b) Any annual interest or dividends earned from the permanent state trust fund that remain after Subsection (4)(a) may be appropriated by the Legislature."

(b) The reference to "the Tobacco Settlement Endowment established by Section 63-97-301" in Subsection 51-7-12.1(1) be amended to read "the permanent state trust fund created by and operated under Utah Constitution Article XXII, Section 4".

(c) Any and all funds in the Tobacco Settlement Endowment created in Section 6 of this bill shall be deposited into the permanent state trust fund created by and operated under Utah Constitution Article XXII, Section 4.

(d) The Office of Legislative Research and General Counsel shall prepare the database for publication to reflect the statutory changes in Subsections (2)(a) and (b).