

RESOLUTION APPROVING TOBACCO**LAWSUIT SETTLEMENT**

2001 FIRST SPECIAL SESSION

STATE OF UTAH

Sponsor: David H. Steele

A joint resolution of the Legislature approving the settlement agreement between the state of Utah and the law firms of Bendinger, Crockett, Peterson and Casey and Ness, Motley, Loadholt, Richardson and Poole. This joint resolution has an immediate effective date.

Be it resolved by the Legislature of the state of Utah:

WHEREAS, on or about October 22, 1996, the Utah Attorney General's Office entered into a contingent fee agreement on behalf of the state of Utah with the outside law firms of Bendinger, Crockett, Peterson and Casey (of Salt Lake City, Utah) and Ness, Motley, Loadholt, Richardson and Poole (of Charleston, South Carolina), wherein, among other things, the state agreed to pay to the law firms 25% of the amounts, if any, received by the state from the tobacco companies in the state's tobacco reimbursement litigation;

WHEREAS, the state's tobacco reimbursement litigation (in the United States District Court for the District of Utah) was settled in 1998, through the signing by the state of Utah and other participating states of a Master Settlement Agreement with the tobacco companies;

WHEREAS, the Master Settlement Agreement provides, among other things, that the tobacco companies will pay settlement sums to the state over a period of approximately 25-30 years. The Utah Attorney General's Office has estimated that such payments could total as much as \$1 billion and that sums paid to the state thus far approximate \$64 million;

WHEREAS, at the insistence of the attorneys general of the participating states, the Master Settlement Agreement included a process for payment of attorneys' fees by the tobacco companies separate from and in addition to the settlement payments due the states under the Master Settlement Agreement. Pursuant to that process, the law firms entered into a February 4, 1999 Utah Fee Payment Agreement with the tobacco companies. The Utah Fee Payment Agreement provides that the tobacco companies would offer a single lump-sum cash payment for attorneys' fees. If the law firms were not satisfied with that offer, the law firms and the tobacco companies would arbitrate

the amount of the attorneys' fees to be paid by the tobacco companies. The law firms party to the contingent fee agreement with the state of Utah rejected the cash offer and pursued their remedy against the tobacco companies and were awarded \$64,850,000 as "reasonable compensation," to be paid at the rate of \$2.5 million per year. This fee was awarded on the assumption that the law firms had logged 26,000 hours in representing the state in the tobacco litigation;

WHEREAS, the Utah Fee Payment Agreement (which is part of the Master Settlement Agreement signed by the Utah Attorney General) also provides that the rights and obligations of the state and the law firms (i.e., under the contingent fee agreement) "shall be unaffected by this Utah Fee Payment Agreement" and that the fees paid by the tobacco companies directly to the law firms are to be "credited, on a dollar-for-dollar basis, against any amount payable" to the law firms by the state;

WHEREAS, the state and the law firms have been litigating (in the Third Judicial District Court for Salt Lake County) the amount of attorneys' fees payable to the law firms as a result of the tobacco reimbursement litigation settlement, as well as the method and timing of the payment of fees;

WHEREAS, based upon the estimated total payout of \$1 billion, the total attorneys' fees which could be awarded in the litigation under the contingent fee agreement could possibly be as high as \$250 million (i.e., 25% of \$1 billion), minus the \$65 million being paid under the Utah Fee Payment Agreement, for a net possible sum of approximately \$185 million;

WHEREAS, approximately 25% of all payments received by the state from the tobacco companies are being held in an escrow account in the United States District Court for the District of Utah, pending resolution of the litigation between the state and the law firms. The current balance in the escrow account is approximately \$16.5 million;

WHEREAS, the state and the law firms have entered into a stipulation and settlement agreement which, subject to approval by the Legislature, resolves all claims and disputes between the state and the law firms;

WHEREAS, in the stipulation and settlement agreement, the state has agreed to pay to the law firms the sum of \$9,950,000, in complete satisfaction of the state's obligations to the law firms;

WHEREAS, the entire settlement sum of \$9,950,000 is to be paid out of the tobacco settlement funds being held in escrow by the United States District Court for the District of Utah,

thus eliminating the need for appropriation by the state;

WHEREAS, Utah Attorney General Mark Shurtleff recommends that the Legislature approve the stipulation and settlement;

WHEREAS, Section 63-38b-104 requires the Legislature's approval before a state agency can execute a legally binding settlement agreement that might cost government entities more than \$1 million to implement;

WHEREAS, the governor has approved the settlement agreement and is submitting it to the Legislature for approval, as required by Subsection 63-38b-104(2)(a); and

WHEREAS, the Legislature believes that execution and performance of the stipulation and settlement agreement are in the best interests of the state of Utah, given the facts of the case, applicable case law, and the risks of litigation:

NOW, THEREFORE, BE IT RESOLVED that the Legislature of the state of Utah approves the stipulation and settlement agreement the Attorney General's Office has negotiated with the law firms of Bendinger, Crockett, Peterson and Casey and Ness, Motley, Loadholt, Richardson and Poole and approves the payment of \$9,950,000 to the law firms from the escrowed funds held by the United States District Court for the District of Utah in complete satisfaction of the state's obligations to the law firms.

BE IT FURTHER RESOLVED, if approved by two-thirds of all the members elected to each house, this resolution takes effect upon approval by the governor, or the day following the constitutional time limit of Utah Constitution Article VII, Section 8, without the governor's signature, or in the case of a veto, the date of veto override.