

**Representative Jeff Alexander** proposes to substitute the following bill:

**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, ~~h~~ ~~[\$3,000,000]~~ ~~h~~ **\$4,000,000** ~~h~~ FOR TOBACCO AND SUBSTANCE ABUSE PREVENTION, ~~h~~ ~~[\$3,000,000]~~ ~~h~~ **\$2,000,000** ~~h~~ FOR THE DRUG COURT 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:

~~h~~ ~~[52-7-12.1]~~ ~~h~~ **51-7-12.1** ~~h~~ , Utah Code Annotated 1953

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

26 RENUMBERS AND AMENDS:

27 **63-97-201**, (Renumbered from 63-97-102, as enacted by Chapter 78, Laws of Utah 1999)

28 REPEALS:

29 **26-40-111**, as enacted by Chapter 360, Laws of Utah 1998

30 **26-40-112**, as last amended by Chapter 78, Laws of Utah 1999

31 **26-40-113**, as enacted by Chapter 360, Laws of Utah 1998

32 **26-40-114**, as enacted by Chapter 360, Laws of Utah 1998

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

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

35 **26-40-102. Definitions.**

36 As used in this chapter:

37 [~~(1) "Assessment" means the hospital provider assessment established in Section~~  
38 ~~26-40-111.~~]

39 [~~(2)~~ (1) "Child" means a person who is under 19 years of age.

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

42 [~~(4)~~ (3) "Enrollee" means any child enrolled in the program.

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

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

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

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

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

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

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

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

60 ~~[(8)]~~ (4) "Plan" means the department's plan submitted to the United States Department  
61 of Health and Human Services pursuant to 42 U.S.C. Sec. 1397ff.

62 ~~[(9)]~~ (5) "Program" means the Utah Children's Health Insurance Program created by this  
63 chapter.

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

65 **26-40-103. Creation and administration of the Utah Children's Health Insurance**  
66 **Program.**

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

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

71 (2) The department shall:

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

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

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

85 ~~[(vi) the provider assessment, including:]~~

86 ~~[(A) the factor for the assessment;]~~

87 ~~[(B) the administration, collection, and enforcement of the assessment, including:]~~

88           ~~[(I) auditing a provider's records; and]~~  
89           ~~[(H) imposing penalties for failure to pay the assessment as required; and]~~  
90           ~~[(C) reducing the amount of the assessment to the extent funds are deposited into the~~  
91 ~~Hospital Provider Assessment Account created in Section 26-40-112 as a result of private~~  
92 ~~contributions to the program.]~~

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

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

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

99           **51-7-12.1. Deposit or investment of Tobacco Settlement Endowment -- Authorized**  
100 **deposits and investment -- Asset manager.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

151 **CHAPTER 97. TOBACCO SETTLEMENT FUNDS**

152 **63-97-101. Title.**

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

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

156 **Part 2. Tobacco Settlement Restricted Account**

157 [~~63-97-102~~]. **63-97-201. Creation of Tobacco Settlement Restricted Account.**

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

160 (2) The account shall earn interest.

161 [~~(2)~~] (3) The account shall consist of:

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

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

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

170 (c) interest earned on the account.

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

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

175 (b) ~~h~~ [~~\$2,000,000~~] ~~h~~ [~~\$3,000,000~~] \$4,000,000 ~~h~~ ~~h~~ to the Department of Health for ~~h~~ [~~f~~]  
176 alcohol,<sup>175a</sup> tobacco, and other drug [~~h~~] [~~TOBACCO~~] ~~h~~ prevention,

177 reduction, cessation, and control programs that promote unified messages and make use of media  
178 outlets, including radio, newspaper, billboards and television, and with a preference in funding  
179 given to tobacco-related programs;

180 ~~h~~ [~~(c) \$1,000,000 to the Department of Health to be distributed to local health departments~~  
~~to continue tobacco prevention, reduction, cessation, and control programs;]~~ ~~h~~

181 h [(d) (c) h h [-\$297,600] h [\$300,000] \$193,700 h h to the Administrative Office of the Courts  
and

181a h [\$1,991,300] h [\$1,700,000] \$1,296,300 h h to the Department

182 of Human Services for the statewide expansion of the drug court program;

182a h (d) \$77,400 TO THE BOARD OF PARDONS, \$81,700 TO THE DEPARTMENT OF

182b CORRECTIONS, AND \$350,900 TO THE DEPARTMENT OF HUMAN SERVICES FOR A DRUG BOARD

182c PILOT PROGRAM; h

183 h [(e) \$77,400 to the Board of Pardons, \$108,700 to the Department of Corrections, and

184 \$525,000 to the Department of Human Service for a drug board pilot program;] h

185 h [(f) h [(d) ] (e) h h \$4,000,000 to the State Board of Regents for the University of Utah

185a1 Health

185a Sciences

186 Center to benefit the health and well-being of Utah citizens through in-state research, treatment,

187 and educational activities; and

188 h [(g) h [(e) (f) h h any remaining funds as directed by the Legislature through

188a appropriation.

189 (5) (a) If tobacco funds in dispute for attorneys fees are received by the state, those funds

190 shall be divided and deposited in accordance with Subsection (3) and Section 63-97-301.

191 (b) The amount appropriated to the Department of Health for alcohol, tobacco, and other

192 drug programs described in Subsection (4)(b), including the funding preference for tobacco-related

193 programs, shall be increased by up to h [f] \$2,000,000 [f] [\$4,500,000] h in a given fiscal year to the

193a extent that funds in

194 dispute for attorneys fees are available to the state for appropriation from the account.

195 (6) Each state agency identified in Subsection (4) shall provide an annual report on the

196 program and activities funded under Subsection (4) to:

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

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

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

200 **Part 3. Tobacco Settlement Endowment.**

201 **63-97-301. Tobacco Settlement Endowment.**

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

203 Settlement Endowment.





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

205           (3) The account shall consist of:

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

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

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

213 (d) interest and dividends earned on investments.

214 (4) Tobacco settlement funds and capital gains in the account pursuant to Subsections

215 (3)(a), (b), and (c) shall be treated as principal and may not be appropriated for any purpose, but

216 shall remain in the account for the purpose of earning interest and dividends to be appropriated in

217 accordance with Subsection (5).

218 (5) (a) 50% of the interest and dividends earned annually on the account shall remain in

219 the account and be deposited or invested as principal.

220 (b) Any annual interest earned on the account that remains after Subsection (6)(a) may be

221 appropriated by the Legislature.

222 **Section 7. Repealer.**

223 This act repeals:

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

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

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

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

228 **Section 8. Appropriation.**

229 (1) Fifty percent of the tobacco settlement funds in the Tobacco Settlement Account

230 created by Section 63-97-201 as of June 30, 2000, shall be deposited into the Tobacco Settlement

231 Endowment created by Section 63-97-301 on July 1, 2000.

232 (2) Funds remaining in the Tobacco Settlement Account after Subsection (1) are

233 appropriated for fiscal year 2000-01 in the following order:

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

235 (b) ~~h~~ ~~[\$2,000,000]~~ ~~h~~ ~~[\$3,000,000]~~ \$4,000,000 ~~h~~ ~~h~~ to the Department of Health for ~~h~~ [f] alcohol,

235a tobacco, and other drug [f] ~~[TOBACCO]~~ ~~h~~ prevention,

236 reduction, cessation, and control programs as described in Section 63-97-201, including the

237 funding preference for tobacco-related programs;

238 ~~h~~ ~~[(c) \$1,000,000 to the Department of Health to be distributed to local health departments~~

239 ~~to continue tobacco prevention, reduction, cessation, and control programs;]~~ ~~h~~

240 ~~h~~ ~~[(d)](c) ~~h~~ ~~h~~ ~~[\$297,600]~~ ~~h~~ ~~[\$300,000]~~ \$193,700 ~~h~~ ~~h~~ to the Administrative Office of the~~

240a Courts and

240a ~~h [\$1,991,300] h [ \$1,700,000 ] \$1,296,300 h h~~ to the Department  
241 of Human Services for the drug court program as provided in Section 63-97-201;  
241a ~~h (d) \$77,400 TO THE BOARD OF PARDONS, \$81,700 TO THE DEPARTMENT OF~~  
241b ~~CORRECTIONS, AND \$350,900 TO THE DEPARTMENT OF HUMAN SERVICES FOR A DRUG BOARD~~  
241c ~~PILOT PROGRAM; h~~  
242 ~~h [(e) \$77,400 to the Board of Pardons, \$108,700 to the Department of Corrections, and] h~~

243 h [\$525,000 to the Department of Human Service for a drug board pilot program; and] h

244 h [(f)] h [(d)] (e) h h \$4,000,000 to the State Board of Regents for the University of Utah

244a1 Health

244a Sciences

245 Center as provided in Section 63-97-201.

246 (3) If tobacco funds in dispute for attorneys fees are received by the state during fiscal year  
247 2000-01:

248 (a) those funds shall be divided and deposited in accordance with Section 63-97-201 and  
249 63-97-301; and

250 (b) the amount appropriated to the Department of Health for alcohol, tobacco, and other  
251 drug programs described in Subsection (2)(b), including the funding preference for tobacco-related  
252 programs, shall be increased by up to h [(f)] \$2,000,000 [(f)] [\$4,500,000 ] h to the extent that funds in  
252a1 dispute

252a for attorneys

253 fees are available to the state for appropriation from the account created by Section 63-97-201.

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

257 (5) The appropriation in this section is the only appropriation that may be made for  
258 tobacco settlement funds for fiscal year 2000-01.

259 (6) Any funds remaining in the Hospital Providers Assessment Account as of June 30,  
260 2000, shall lapse into the General Fund.

261 **Section 9. Effective date.**

262 This act takes effect on July 1, 2000.

263 **Section 10. Coordination clause.**

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

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

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

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

274 of January 1, 2001:

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

276 "63-97-301. **Permanent state trust fund.**

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

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

285 (3) Funds in the permanent state trust fund shall be deposited or invested pursuant to  
286 Section 51-7-12.1.

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

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

291 (b) The reference to "the Tobacco Settlement Endowment established by Section  
292 63-97-301" in Subsection 51-7-12.1(1) be amended to read "the permanent state trust fund created  
293 by and operated under Utah Constitution Article XXII, Section 4".

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

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