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**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



28 provides that the tobacco companies would offer a single lump-sum cash payment for attorneys'
29 fees. If the law firms were not satisfied with that offer, the law firms and the tobacco companies
30 would arbitrate the amount of the attorneys' fees to be paid by the tobacco companies. The law
31 firms party to the contingent fee agreement with the state of Utah rejected the cash offer and
32 pursued their remedy against the tobacco companies and were awarded \$64,850,000 as "reasonable
33 compensation," to be paid at the rate of \$2.5 million per year. This fee was awarded on the
34 assumption that the law firms had logged 26,000 hours in representing the state in the tobacco
35 litigation;

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

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

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

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

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

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

59 firms;

60 WHEREAS, the entire settlement sum of \$9,950,000 is to be paid out of the tobacco
61 settlement funds being held in escrow by the United States District Court for the District of Utah,
62 thus eliminating the need for appropriation by the state;

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

65 WHEREAS, Section 63-38b-104 requires the Legislature's approval before a state agency
66 can execute a legally binding settlement agreement that might cost government entities more than
67 \$1 million to implement;

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

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

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

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

Legislative Review Note
as of 6-20-01 1:54 PM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel