

By: Representative Brown

To: Public Health and Human  
Services; Appropriations

## HOUSE BILL NO. 1115

1 AN ACT TO AMEND SECTION 43-13-403, MISSISSIPPI CODE OF 1972,  
2 TO DEFINE CERTAIN TERMS IN THE HEALTH CARE TRUST FUND LAW; TO  
3 AMEND SECTION 43-13-405, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT  
4 ALL TOBACCO SETTLEMENT INSTALLMENT PAYMENTS MADE TO THE STATE  
5 SHALL BE DEPOSITED INTO THE HEALTH CARE TRUST FUND, INCLUDING ANY  
6 SETTLEMENT PAYMENTS MADE UNDER COURT ORDER FOR TOBACCO CESSATION  
7 PROGRAMS, EXCEPT AS OTHERWISE PROVIDED IN THIS ACT; TO EXTEND THE  
8 DATE OF THE REPEALER ON THAT SECTION; TO AMEND SECTION 43-13-407,  
9 MISSISSIPPI CODE OF 1972, TO DIRECT THE LEGISLATURE TO APPROPRIATE  
10 A CERTAIN SUM ANNUALLY FROM THE TOBACCO SETTLEMENT PAYMENTS TO THE  
11 PARTNERSHIP FOR A HEALTHY MISSISSIPPI TO FUND A COMPREHENSIVE  
12 STATEWIDE TOBACCO EDUCATION AND PREVENTION PROGRAM; TO SPECIFY THE  
13 MINIMUM COMPONENTS OF THE PROGRAM; TO EXTEND THE DATE OF THE  
14 REPEALER ON THAT SECTION; TO AMEND SECTION 43-13-409, MISSISSIPPI  
15 CODE OF 1972, TO EXPAND THE MEMBERSHIP OF THE BOARD OF DIRECTORS  
16 OF THE HEALTH CARE TRUST FUND; TO PROVIDE THAT THE BOARD SHALL  
17 REVIEW THE EXPENDITURES AND OUTCOMES OF THE PARTNERSHIP FOR A  
18 HEALTHY MISSISSIPPI; TO REQUIRE THE PARTNERSHIP TO PREPARE AN  
19 ANNUAL REPORT FOR THE BOARD; AND FOR RELATED PURPOSES.

20 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

21 **SECTION 1.** Section 43-13-403, Mississippi Code of 1972, is  
22 amended as follows:

23 43-13-403. When used in this article, the following  
24 definitions shall apply, unless the context requires otherwise:

25 (a) "Health Care Trust Fund" means the trust fund  
26 established by Section 43-13-405 for the deposit of the funds  
27 received by the State of Mississippi as a result of the tobacco  
28 settlement, including income from the investment of those funds.

29 (b) "Health Care Expendable Fund" means the fund  
30 established by Section 43-13-407 for the annual transfer of  
31 certain funds from the Health Care Trust Fund that are available  
32 for appropriation by the Legislature.

33 (c) "Income" means all interest and dividends derived  
34 from the investment of any tobacco settlement funds and any  
35 capital gains from the sale or exchange of those investments.

36 (d) "Tobacco settlement" means the settlement of the  
37 case of Mike Moore, Attorney General ex rel. State of Mississippi  
38 v. The American Tobacco Company et al. (Chancery Court of Jackson  
39 County, Mississippi, Cause No. 94-1429) and the settlement of any  
40 case brought against tobacco companies by another state, and  
41 includes any later amendments and successor agreements.

42 (e) "Tobacco" means any cigarettes, cigars, cheroots,  
43 stogies, smoking tobacco (including granulated, plug cut, crimp  
44 cut, ready rubbed, and other kinds and forms of tobacco, or  
45 substitutes therefor, prepared in such manner as to be suitable  
46 for smoking in a pipe or cigarette) and including plug and twist  
47 chewing tobacco and snuff, when that "tobacco" is manufactured and  
48 prepared for sale or personal consumption. All words used in this  
49 paragraph shall be given the meaning as defined in the regulations  
50 of the Treasury Department of the United States of America.

51 (f) "Youth" includes minors and young adults.

52 **SECTION 2.** Section 43-13-405, Mississippi Code of 1972, is  
53 amended as follows:

54 43-13-405. (1) In accordance with the purposes of this  
55 article, there is established in the State Treasury the Health  
56 Care Trust Fund, into which shall be deposited Two Hundred Eighty  
57 Million Dollars (\$280,000,000.00) of the funds received by the  
58 State of Mississippi as a result of the tobacco settlement as of  
59 the end of fiscal year 1999, and all tobacco settlement  
60 installment payments made in subsequent years, including any  
61 settlement payments made under court order for tobacco cessation  
62 programs, except as otherwise provided in Section 43-13-407(1),  
63 (2), (3) and (5). All income from the investment of the funds in  
64 the Health Care Trust Fund shall be credited to the account of the  
65 Health Care Trust Fund. The funds in the Health Care Trust Fund  
66 at the end of a fiscal year shall not lapse into the State General  
67 Fund.

68           (2) The Health Care Trust Fund shall remain inviolate and  
69 shall never be expended, except as provided in this article. The  
70 Legislature shall appropriate from the Health Care Trust Fund such  
71 sums as are necessary to recoup any funds lost as a result of any  
72 of the following actions:

73           (a) The federal Centers for Medicare and Medicaid  
74 Services, or other agency of the federal government, is successful  
75 in recouping tobacco settlement funds from the State of  
76 Mississippi;

77           (b) The federal share of funds for the support of the  
78 Mississippi Medicaid Program is reduced directly or indirectly as  
79 a result of the tobacco settlement; or

80           (c) Federal funding for any other program is reduced as  
81 a result of the tobacco settlement.

82           \* \* \*

83           (3) This section shall stand repealed on July 1, 2011.

84           **SECTION 3.** Section 43-13-407, Mississippi Code of 1972, is  
85 amended as follows:

86           43-13-407. (1) In accordance with the purposes of this  
87 article, there is established in the State Treasury the Health  
88 Care Expendable Fund, into which shall be transferred from the  
89 Health Care Trust Fund the following sums:

90           (a) In fiscal year 2005, Four Hundred Fifty-six Million  
91 Dollars (\$456,000,000.00);

92           (b) In fiscal year 2006, One Hundred Eighty-six Million  
93 Dollars (\$186,000,000.00);

94           (c) In fiscal year 2007, One Hundred Forty-six Million  
95 Dollars (\$146,000,000.00);

96           (d) In fiscal year 2008, One Hundred Six Million  
97 Dollars (\$106,000,000.00);

98           (e) In fiscal year 2009, Sixty-six Million Dollars  
99 (\$66,000,000.00);

100           (f) In fiscal year 2010 and each fiscal year  
101 thereafter, a sum equal to the average annual amount of the  
102 dividends, interest and other income, including increases in value  
103 of the principal, earned on the funds in the Health Care Trust  
104 Fund during the preceding four (4) fiscal years.

105           (2) In any fiscal year in which interest, dividends and  
106 other income from the investment of the funds in the Health Care  
107 Trust Fund are not sufficient to fund the full amount of the  
108 annual transfer into the Health Care Expendable Fund as required  
109 in subsection (1)(f) of this section, the State Treasurer shall  
110 transfer from tobacco settlement installment payments an amount  
111 that is sufficient to fully fund the amount of the annual  
112 transfer.

113           (3) (a) On March 6, 2002, the State Treasurer shall  
114 transfer the sum of Eighty-seven Million Dollars (\$87,000,000.00)  
115 from the Health Care Trust Fund into the Health Care Expendable  
116 Fund. In addition, at the time the State of Mississippi receives  
117 the tobacco settlement installment payments for each of the  
118 calendar years 2002 and 2003, the State Treasurer shall deposit  
119 the full amount of each of those installment payments into the  
120 Health Care Expendable Fund.

121           (b) If during any fiscal year after March 6, 2002, the  
122 general fund revenues received by the state exceed the general  
123 fund revenues received during the previous fiscal year by more  
124 than five percent (5%), the Legislature shall repay to the Health  
125 Care Trust Fund one-third (1/3) of the amount of the general fund  
126 revenues that exceed the five percent (5%) growth in general fund  
127 revenues. The repayment required by this paragraph shall continue  
128 in each fiscal year in which there is more than five percent (5%)  
129 growth in general fund revenues, until the full amount of the  
130 funds that were transferred and deposited into the Health Care  
131 Expendable Fund under the provisions of paragraph (a) of this  
132 subsection have been repaid to the Health Care Trust Fund.

133           (4) The total sum of Two Hundred Forty Million Dollars  
134 (\$240,000,000.00) plus interest at the rate of five percent (5%)  
135 per annum shall be transferred into the Health Care Trust Fund  
136 from the State General Fund during fiscal years 2007 through 2013  
137 to repay the trust fund for Two Hundred Forty Million Dollars  
138 (\$240,000,000.00) of the total sum that is transferred from the  
139 trust fund to the Health Care Expendable Fund during fiscal year  
140 2005 under subsection (1)(a) of this section. The repayment shall  
141 be made according to the following schedule: During each of  
142 fiscal years 2007 through 2012, the State Fiscal Officer shall  
143 transfer from the General Fund to the Health Care Trust Fund the  
144 sum of Thirty-eight Million Dollars (\$38,000,000.00), and during  
145 fiscal year 2013 the State Fiscal Officer shall transfer from the  
146 State General Fund to the Health Care Trust Fund a sum in the  
147 amount certified by the State Treasurer as necessary to fully  
148 repay the balance of the Two Hundred Forty Million Dollars  
149 (\$240,000,000.00) plus interest at the rate of five percent (5%)  
150 per annum.

151           (5) The Legislature shall appropriate annually, for the  
152 purpose expressed in this subsection, from the total gross funds  
153 that tobacco companies pay to the State of Mississippi under the  
154 tobacco settlement, an amount equal to Twenty Million Dollars  
155 (\$20,000,000.00), and the appropriation required by this  
156 subsection shall be adjusted annually for inflation, using the  
157 Consumer Price Index as published by the United States Department  
158 of Labor. The money appropriated under this subsection shall be  
159 used to fund a comprehensive statewide tobacco education and  
160 prevention program consistent with the recommendations for  
161 effective program components in the 1999 Best Practices for  
162 Comprehensive Tobacco Control Programs of the federal Centers for  
163 Disease Control, as those Best Practices may be amended by the  
164 federal Centers for Disease Control. The money appropriated for  
165 the programs listed in this subsection shall be appropriated to

166 The Partnership for a Healthy Mississippi, a not-for-profit  
167 Mississippi corporation, that was organized under the tobacco  
168 settlement and that is charged by the court overseeing the  
169 settlement to reduce tobacco use rates in Mississippi. This  
170 program shall include, at a minimum, the following components, and  
171 may include additional components that are also contained within  
172 the federal Centers for Disease Control Best Practices, as  
173 periodically amended, and that are effective at accomplishing the  
174 purpose of this subsection:

175 (a) An advertising campaign to discourage the use of  
176 tobacco and to educate people, especially youth, about the health  
177 hazards of tobacco, which shall be designed to be effective at  
178 achieving these goals and shall include, but need not be limited  
179 to, television, radio and print advertising;

180 (b) Evidence-based curricula and programs to educate  
181 youth about tobacco and to discourage their use of it, including,  
182 but not limited to, programs that involve youth, educate youth  
183 about the health hazards of tobacco, help youth develop skills to  
184 refuse tobacco, and demonstrate to youth how to stop using  
185 tobacco;

186 (c) Programs of local community-youth-based  
187 partnerships that discourage the use of tobacco and work to  
188 educate people, especially youth, about the health hazards of  
189 tobacco, with an emphasis on programs that involve youth and  
190 emphasize the prevention and cessation of tobacco use;

191 (d) Enforcement of laws, regulations and policies  
192 against the sale or other provision of tobacco to minors, and the  
193 possession of tobacco by minors;

194 (e) Programs assisting and encouraging participation in  
195 tobacco cessation throughout Mississippi; and

196 (f) Publicly-reported annual fiscal and programmatic  
197 evaluations and reviews to ensure that monies appropriated under  
198 this subsection are spent properly, which shall include evaluation

199 of the program's effectiveness in reducing the preventing tobacco  
200 use, and annual recommendations for improvements to enhance the  
201 program's effectiveness.

202       (6) All income from the investment of the funds in the  
203 Health Care Expendable Fund shall be credited to the account of  
204 the Health Care Expendable Fund. Any funds in the Health Care  
205 Expendable Fund at the end of a fiscal year shall not lapse into  
206 the State General Fund.

207       (7) The funds in the Health Care Expendable Fund shall be  
208 available for expenditure under specific appropriation by the  
209 Legislature beginning in fiscal year 2000, and shall be expended  
210 exclusively for health care purposes.

211       (8) The provisions of subsection (1) of this section may not  
212 be changed in any manner except upon amendment to that subsection  
213 by a bill enacted by the Legislature with a vote of not less than  
214 three-fifths (3/5) of the members of each house present and  
215 voting.

216       (9) Subsections (1), (2), (5), (6) and (7) of this section  
217 shall stand repealed on July 1, 2011.

218       **SECTION 4.** Section 43-13-409, Mississippi Code of 1972, is  
219 amended as follows:

220       43-13-409. (1) There is established a board of directors to  
221 invest the funds in the Health Care Trust Fund and the Health Care  
222 Expendable Fund. The board of directors shall consist of thirteen  
223 (13) members as follows:

224       (a) Eight (8) voting members as follows: the State  
225 Treasurer, or his designee, the Attorney General, or his  
226 designee, \* \* \* one (1) member from each congressional district as  
227 existing on January 1, 2006, and two (2) members from the state at  
228 large, to be appointed by the Governor with the advice and consent  
229 of the Senate. Of the members appointed by the Governor, one (1)  
230 member shall be appointed for an initial term that expires on  
231 March 1, 2000; one (1) member shall be appointed for an initial

232 term that expires on March 1, 2001; one (1) member shall be  
233 appointed for an initial term that expires on March 1, 2002; one  
234 (1) member shall be appointed for an initial term that expires on  
235 March 1, 2003; \* \* \* one (1) member shall be appointed for an  
236 initial term that expires on March 1, 2004; and one (1) member  
237 shall be appointed for an initial term that begins on July 1,  
238 2006, and expires on March 1, 2011. Upon the expiration of any of  
239 the initial terms of office, the Governor shall appoint successors  
240 by and with the advice and consent of the Senate for terms of five  
241 (5) years from the expiration date of the previous term. Any  
242 member appointed by the Governor shall be eligible for  
243 reappointment. Each member appointed by the Governor shall  
244 possess knowledge, skill and experience in business or financial  
245 matters commensurate with the duties and responsibilities of the  
246 board of directors in administering the Health Care Trust Fund and  
247 the Health Care Expendable Fund.

248 (b) Three (3) nonvoting, advisory members of the Senate  
249 shall be appointed by the Lieutenant Governor, and one (1)  
250 nonvoting, advisory representative of the health care community  
251 shall be appointed by the Lieutenant Governor, who shall serve for  
252 the length of the term of the appointing official and shall be  
253 eligible for reappointment.

254 (c) Three (3) nonvoting, advisory members of the House  
255 of Representatives shall be appointed by the Speaker of the House,  
256 and one (1) nonvoting, advisory representative of the health care  
257 community shall be appointed by the Speaker of the House, who  
258 shall serve for the length of the term of the appointing official  
259 and shall be eligible for reappointment.

260 (d) Any person appointed to fill a vacancy on the board  
261 of directors shall be appointed in the same manner as for a  
262 regular appointment and shall serve for the remainder of the  
263 unexpired term only.



264           (2) Nonlegislative members of the board of directors shall  
265 serve without compensation, but shall be reimbursed for each day's  
266 official duties of the board at the same per diem as established  
267 by Section 25-3-69, and actual travel and lodging expenses as  
268 established by Section 25-3-41. Legislative members of the board  
269 of directors shall receive the same per diem and expense  
270 reimbursement as for attending committee meetings when the  
271 Legislature is not in regular session.

272           (3) The State Treasurer shall be the chairman of the board  
273 of directors. The board of directors shall annually elect one (1)  
274 member to serve as vice chairman of the board. The vice chairman  
275 shall act as chairman in the absence of or upon the disability of  
276 the chairman or if there is a vacancy in the office of chairman.

277           (4) All expenses of the board of directors in carrying out  
278 its duties and responsibilities under this article, including the  
279 payment of per diem and expenses of the nonlegislative members of  
280 the board, shall be paid from funds appropriated to the State  
281 Treasurer's office for that purpose.

282           (5) The board of directors shall invest the funds in the  
283 Health Care Trust Fund and the Health Care Expendable Fund in any  
284 of the investments authorized for the Mississippi Prepaid  
285 Affordable College Tuition Program under Section 37-155-9, and  
286 those investments shall be subject to the limitations prescribed  
287 by Section 37-155-9.

288           (6) In furtherance of the powers granted under subsection  
289 (5) of this section, the board of directors shall have such powers  
290 as necessary or convenient to carry out the purposes and  
291 provisions of this article, including, but not limited to, the  
292 following express powers:

293           (a) To contract for necessary goods and services, to  
294 employ necessary personnel, and to engage the services of  
295 consultants for administrative and technical assistance in

296 carrying out its duties and responsibilities in administering the  
297 Health Care Trust Fund and the Health Care Expendable Fund;

298 (b) To administer the Health Care Trust Fund and the  
299 Health Care Expendable Fund in a manner that is sufficiently  
300 actuarially sound to meet the obligations of this article and to  
301 establish a comprehensive investment plan for the purposes of this  
302 article, which shall specify the investment policies to be  
303 utilized by the board of directors in administering the funds;

304 (c) Subject to the terms, conditions, limitations and  
305 restrictions specified in Section 37-155-9, the board of directors  
306 shall have power to sell, assign, transfer and dispose of any of  
307 the securities and investments of the Health Care Trust Fund and  
308 the Health Care Expendable Fund, provided that any such sale,  
309 assignment or transfer has the majority approval of the entire  
310 board; \* \* \*

311 (d) To annually prepare or cause to be prepared a  
312 report setting forth in appropriate detail an accounting of the  
313 Health Care Trust Fund and the Health Care Expendable Fund and a  
314 description of the financial condition of the funds at the close  
315 of each fiscal year, including any recommendations for legislation  
316 regarding the investment authority of the board of directors over  
317 the funds. The report shall be submitted to the Governor and the  
318 Legislative Budget Office on or before September 1 of each fiscal  
319 year; and

320 (e) To review the expenditures and outcomes of The  
321 Partnership for a Healthy Mississippi, which shall annually  
322 prepare a report for the board of directors, the Governor and the  
323 Legislature setting forth in appropriate detail:

324 (i) An accounting of the organization and a  
325 description of the financial condition of the funds at the close  
326 of each fiscal year as certified from a review of public  
327 accountants; and

328                    (ii) The programs and outcomes of the program's  
329 objectives, as prescribed in Section 43-13-407(5).

330            **SECTION 5.** This act shall take effect and be in force from  
331 and after its passage.