

By: Senator(s) Burton

To: Appropriations

SENATE BILL NO. 2760

1 AN ACT TO AMEND SECTIONS 43-13-403, 43-13-405, 43-13-407 AND  
 2 43-13-409, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT TOBACCO  
 3 SETTLEMENT PAYMENTS MADE PURSUANT TO COURT ORDER FOR TOBACCO  
 4 CESSATION PROGRAMS SHALL BE DEPOSITED INTO THE HEALTH CARE TRUST  
 5 FUND, TO PROVIDE THAT SUCH FUNDS SHALL BE APPROPRIATED BY THE  
 6 LEGISLATURE TO THE PARTNERSHIP FOR A HEALTHY MISSISSIPPI FOR  
 7 CERTAIN STATEWIDE TOBACCO EDUCATION AND PREVENTION PROGRAMS, TO  
 8 EXPAND THE MEMBERSHIP OF THE BOARD OF DIRECTORS FOR THE HEALTH  
 9 CARE TRUST FUND, TO SPECIFICALLY CHARGE THE BOARD WITH THE  
 10 RESPONSIBILITY OF REVIEWING THE OUTCOMES OF THE EXPENDITURES FOR  
 11 SUCH TOBACCO CESSATION PROGRAMS, AND TO EXTEND THE AUTOMATIC  
 12 REPEALER ON THE HEALTH CARE TRUST FUND; AND FOR RELATED PURPOSES.

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

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

16 43-13-403. When used in this article, the following  
 17 definitions shall apply, unless the context requires otherwise:

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

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

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

29 (d) "Tobacco settlement" means the settlement of the  
 30 case of Mike Moore, Attorney General ex rel. State of Mississippi  
 31 v. The American Tobacco Company et al. (Chancery Court of Jackson  
 32 County, Mississippi, Cause No. 94-1429) and the settlement of any

33 case brought against tobacco companies by another state, and  
34 includes any subsequent amendments and successor agreements.

35 (e) "Tobacco" means any cigarettes, cigars, cheroots,  
36 stogies, smoking tobacco (including granulated, plug cut, crimp  
37 cut, ready rubbed, and other kinds and forms of tobacco, or  
38 substitutes therefor, prepared in such manner as to be suitable  
39 for smoking in a pipe or cigarette) and including plug and twist  
40 chewing tobacco and snuff, when such "tobacco" is manufactured and  
41 prepared for sale or personal consumption. All words used herein  
42 shall be given the meaning as defined in the regulations of the  
43 Treasury Department of the United States of America.

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

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

47 43-13-405. (1) In accordance with the purposes of this  
48 article, there is established in the State Treasury the Health  
49 Care Trust Fund, into which shall be deposited Two Hundred Eighty  
50 Million Dollars (\$280,000,000.00) of the funds received by the  
51 State of Mississippi as a result of the tobacco settlement as of  
52 the end of fiscal year 1999, and all tobacco settlement  
53 installment payments made in subsequent years, including any  
54 settlement payments made pursuant to court order for tobacco  
55 cessation programs, except as otherwise provided in Section  
56 43-13-407(1), (2), (3) and (5). All income from the investment of  
57 the funds in the Health Care Trust Fund shall be credited to the  
58 account of the Health Care Trust Fund. The funds in the Health  
59 Care Trust Fund at the end of a fiscal year shall not lapse into  
60 the State General Fund.

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

66 (a) The federal Centers for Medicare and Medicaid  
67 Services, or other agency of the federal government, is successful  
68 in recouping tobacco settlement funds from the State of  
69 Mississippi;

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

73 (c) Federal funding for any other program is reduced as  
74 a result of the tobacco settlement. \* \* \*

75 \* \* \*

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

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

79 43-13-407. (1) In accordance with the purposes of this  
80 article, there is established in the State Treasury the Health  
81 Care Expendable Fund, into which shall be transferred from the  
82 Health Care Trust Fund the following sums:

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

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

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

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

91 (e) In fiscal year 2009, Sixty-six Million Dollars  
92 (\$66,000,000.00);

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

98           (2) In any fiscal year in which interest, dividends and  
99 other income from the investment of the funds in the Health Care  
100 Trust Fund are not sufficient to fund the full amount of the  
101 annual transfer into the Health Care Expendable Fund as required  
102 in subsection (1)(f) of this section, the State Treasurer shall  
103 transfer from tobacco settlement installment payments an amount  
104 that is sufficient to fully fund the amount of the annual  
105 transfer.

106           (3) (a) On March 6, 2002, the State Treasurer shall  
107 transfer the sum of Eighty-seven Million Dollars (\$87,000,000.00)  
108 from the Health Care Trust Fund into the Health Care Expendable  
109 Fund. In addition, at the time the State of Mississippi receives  
110 the tobacco settlement installment payments for each of the  
111 calendar years 2002 and 2003, the State Treasurer shall deposit  
112 the full amount of each of those installment payments into the  
113 Health Care Expendable Fund.

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

126           (4) The total sum of Two Hundred Forty Million Dollars  
127 (\$240,000,000.00) plus interest at the rate of five percent (5%)  
128 per annum shall be transferred into the Health Care Trust Fund  
129 from the State General Fund during fiscal years 2007 through 2013  
130 to repay the trust fund for Two Hundred Forty Million Dollars

131 (\$240,000,000.00) of the total sum that is transferred from the  
132 trust fund to the Health Care Expendable Fund during fiscal year  
133 2005 under subsection (1)(a) of this section. The repayment shall  
134 be made according to the following schedule: During each of  
135 fiscal years 2007 through 2012, the State Fiscal Officer shall  
136 transfer from the General Fund to the Health Care Trust Fund the  
137 sum of Thirty-eight Million Dollars (\$38,000,000.00), and during  
138 fiscal year 2013 the State Fiscal Officer shall transfer from the  
139 State General Fund to the Health Care Trust Fund a sum in the  
140 amount certified by the State Treasurer as necessary to fully  
141 repay the balance of the Two Hundred Forty Million Dollars  
142 (\$240,000,000.00) plus interest at the rate of five percent (5%)  
143 per annum.

144 (5) The Legislature shall annually appropriate, for the  
145 purpose expressed herein, from the total gross funds that tobacco  
146 companies pay to the State of Mississippi under the tobacco  
147 settlement, an amount equal to Twenty Million Dollars  
148 (\$20,000,000.00). The money appropriated pursuant to this  
149 subsection (5) shall be used to fund a comprehensive statewide  
150 tobacco education and prevention program consistent with the  
151 recommendations for effective program components in the 1999 Best  
152 Practices for Comprehensive Tobacco Control Programs of the  
153 federal Center for Disease Control, as such Best Practices may be  
154 amended by the federal Center for Disease Control. The money  
155 appropriated for the programs listed in this section shall be  
156 appropriated to The Partnership for a Healthy Mississippi, a  
157 not-for-profit Mississippi corporation, organized pursuant to the  
158 tobacco settlement which is charged by the court overseeing the  
159 settlement to reduce tobacco use rates in Mississippi. This  
160 program shall include, at a minimum, the following components, and  
161 may include additional components that are also contained within  
162 the federal Center for Disease Control Best Practices, as

163 periodically amended, and that are effective at accomplishing the  
164 purpose of this section:

165 (a) An advertising campaign to discourage the use of  
166 tobacco and to educate people, especially youth, about the health  
167 hazards of tobacco, which shall be designed to be effective at  
168 achieving these goals and shall include, but need not be limited  
169 to, television, radio and print advertising;

170 (b) Evidence-based curricula and programs to educate  
171 youth about tobacco and to discourage their use of it, including,  
172 but not limited to, programs that involve youth, educate youth  
173 about the health hazards of tobacco, help youth develop skills to  
174 refuse tobacco, and demonstrate to youth how to stop using  
175 tobacco;

176 (c) Programs of local community-youth based  
177 partnerships that discourage the use of tobacco and work to  
178 educate people, especially youth, about the health hazards of  
179 tobacco, with an emphasis on programs that involve youth and  
180 emphasize the prevention and cessation of tobacco use;

181 (d) Enforcement of laws, regulations and policies  
182 against the sale or other provision of tobacco to minors, and the  
183 possession of tobacco by minors;

184 (e) Programs assisting and encouraging participation in  
185 tobacco cessation throughout Mississippi; and

186 (f) Publicly-reported annual fiscal and programmatic  
187 evaluations and reviews to ensure that monies appropriated  
188 pursuant to this section are spent properly, which shall include  
189 evaluation of the program's effectiveness in reducing and  
190 preventing tobacco use, and annual recommendations for  
191 improvements to enhance the program's effectiveness.

192 (6) All income from the investment of the funds in the  
193 Health Care Expendable Fund shall be credited to the account of  
194 the Health Care Expendable Fund. Any funds in the Health Care

195 Expendable Fund at the end of a fiscal year shall not lapse into  
196 the State General Fund.

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

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

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

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

210 43-13-409. (1) There is established a board of directors to  
211 invest the funds in the Health Care Trust Fund and the Health Care  
212 Expendable Fund. The board of directors shall consist of sixteen  
213 (16) members as follows:

214 (a) Eight (8) voting members as follows: the State  
215 Treasurer, or his designee, the Attorney General, or his  
216 designee, \* \* \* one (1) member from each congressional district as  
217 currently existing and two (2) members from the state at large, to  
218 be appointed by the Governor with the advice and consent of the  
219 Senate. Of the members appointed by the Governor, one (1) member  
220 shall be appointed for an initial term that expires on March 1,  
221 2000; one (1) member shall be appointed for an initial term that  
222 expires on March 1, 2001; one (1) member shall be appointed for an  
223 initial term that expires on March 1, 2002; one (1) member shall  
224 be appointed for an initial term that expires on March 1,  
225 2003; \* \* \* one (1) member shall be appointed for an initial term  
226 that expires on March 1, 2004, and one (1) member shall be  
227 appointed for an initial term that commences on July 1, 2006, and

228 expires on March 1, 2011. Upon the expiration of any of the  
229 initial terms of office, the Governor shall appoint successors by  
230 and with the advice and consent of the Senate for terms of five  
231 (5) years from the expiration date of the previous term. Any  
232 member appointed by the Governor shall be eligible for  
233 reappointment. Each member appointed by the Governor shall  
234 possess knowledge, skill and experience in business or financial  
235 matters commensurate with the duties and responsibilities of the  
236 board of directors in administering the Health Care Trust Fund and  
237 the Health Care Expendable Fund.

238 (b) Three (3) nonvoting, advisory members of the Senate  
239 shall be appointed by the Lieutenant Governor, and one (1)  
240 nonvoting, advisory representative of the health care community  
241 shall be appointed by the Lieutenant Governor, who shall serve for  
242 the length of the term of the appointing official and shall be  
243 eligible for reappointment.

244 (c) Three (3) nonvoting, advisory members of the House  
245 of Representatives shall be appointed by the Speaker of the House,  
246 and one (1) nonvoting, advisory representative of the health care  
247 community shall be appointed by the Speaker of the House, who  
248 shall serve for the length of the term of the appointing official  
249 and shall be eligible for reappointment.

250 (d) Any person appointed to fill a vacancy on the board  
251 of directors shall be appointed in the same manner as for a  
252 regular appointment and shall serve for the remainder of the  
253 unexpired term only.

254 (2) Nonlegislative members of the board of directors shall  
255 serve without compensation, but shall be reimbursed for each day's  
256 official duties of the board at the same per diem as established  
257 by Section 25-3-69, and actual travel and lodging expenses as  
258 established by Section 25-3-41. Legislative members of the board  
259 of directors shall receive the same per diem and expense



260 reimbursement as for attending committee meetings when the  
261 Legislature is not in regular session.

262 (3) The State Treasurer shall be the chairman of the board  
263 of directors. The board of directors shall annually elect one (1)  
264 member to serve as vice chairman of the board. The vice chairman  
265 shall act as chairman in the absence of or upon the disability of  
266 the chairman or if there is a vacancy in the office of chairman.

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

272 (5) The board of directors shall invest the funds in the  
273 Health Care Trust Fund and the Health Care Expendable Fund in any  
274 of the investments authorized for the Mississippi Prepaid  
275 Affordable College Tuition Program under Section 37-155-9, and  
276 those investments shall be subject to the limitations prescribed  
277 by Section 37-155-9.

278 (6) In furtherance of the powers granted under subsection  
279 (5) of this section, the board of directors shall have such powers  
280 as necessary or convenient to carry out the purposes and  
281 provisions of this article, including, but not limited to, the  
282 following express powers:

283 (a) To contract for necessary goods and services, to  
284 employ necessary personnel, and to engage the services of  
285 consultants for administrative and technical assistance in  
286 carrying out its duties and responsibilities in administering the  
287 Health Care Trust Fund and the Health Care Expendable Fund;

288 (b) To administer the Health Care Trust Fund and the  
289 Health Care Expendable Fund in a manner that is sufficiently  
290 actuarially sound to meet the obligations of this article and to  
291 establish a comprehensive investment plan for the purposes of this

292 article, which shall specify the investment policies to be  
293 utilized by the board of directors in administering the funds;

294 (c) Subject to the terms, conditions, limitations and  
295 restrictions specified in Section 37-155-9, the board of directors  
296 shall have power to sell, assign, transfer and dispose of any of  
297 the securities and investments of the Health Care Trust Fund and  
298 the Health Care Expendable Fund, provided that any such sale,  
299 assignment or transfer has the majority approval of the entire  
300 board; \* \* \*

301 (d) To annually prepare or cause to be prepared a  
302 report setting forth in appropriate detail an accounting of the  
303 Health Care Trust Fund and the Health Care Expendable Fund and a  
304 description of the financial condition of the funds at the close  
305 of each fiscal year, including any recommendations for legislation  
306 regarding the investment authority of the board of directors over  
307 the funds. The report shall be submitted to the Governor and the  
308 Legislative Budget Office on or before September 1 of each fiscal  
309 year; and

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

314 (i) An accounting of the organization and a  
315 description of the financial condition of the funds at the close  
316 of each fiscal year as certified from a review of public  
317 accountants; and

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

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