

By: Representatives Bondurant, Holland,
Eaton, Evans, Fredericks, Gibbs, Hudson,
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Brown, Clarke

To: Public Health and Human
Services; Appropriations

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 349

1 AN ACT TO PROVIDE FOR A COMPREHENSIVE AND STATEWIDE TOBACCO
2 EDUCATION, PREVENTION AND CESSATION PROGRAM THAT IS CONSISTENT
3 WITH FEDERAL GUIDELINES; TO CREATE THE MISSISSIPPI TOBACCO CONTROL
4 COMMISSION TO DEVELOP AND IMPLEMENT THE PROGRAM; TO PROVIDE FOR
5 THE APPOINTMENT OF THE MEMBERSHIP OF THE COMMISSION; TO PROVIDE
6 THAT THE COMMISSION SHALL EMPLOY AN EXECUTIVE DIRECTOR; TO PROVIDE
7 FOR THE DUTIES OF THE COMMISSION; TO PRESCRIBE THE MINIMUM
8 COMPONENTS OF THE PROGRAM; TO PROVIDE GUIDELINES FOR PRIORITY FOR
9 FUNDING THE COMPONENTS OF THE PROGRAM; TO ESTABLISH IN THE STATE
10 TREASURY A SPECIAL FUND TO BE KNOWN AS THE TOBACCO CONTROL
11 COMMISSION FUND; TO PROVIDE THAT A CERTAIN AMOUNT FROM THE TOBACCO
12 SETTLEMENT INSTALLMENT PAYMENTS RECEIVED BY THE STATE EACH YEAR
13 SHALL BE DEPOSITED INTO THE SPECIAL FUND; TO PROVIDE THAT THE
14 LEGISLATURE SHALL ANNUALLY APPROPRIATE THE FUNDS IN THE SPECIAL
15 FUND TO THE COMMISSION, WHICH SHALL EXPEND THE FUNDS SOLELY FOR
16 THE PURPOSES SPECIFIED IN THIS ACT; TO AMEND SECTION 43-13-405,
17 MISSISSIPPI CODE OF 1972, TO CONFORM TO THE PRECEDING PROVISION;
18 AND FOR RELATED PURPOSES.

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

20 **SECTION 1.** (1) The Mississippi Legislature recognizes the
21 devastating impact that tobacco use has on the citizens of our
22 state. Tobacco use is the single most preventable cause of death
23 and disease in this country and this state. Each year, thousands
24 of Mississippians lose their lives to diseases caused by tobacco
25 use, and the cost to the state is hundreds of millions of dollars.
26 Tobacco use also is a large burden on the families and businesses
27 of Mississippi. It is therefore the intent of the Legislature
28 that there be developed, implemented and fully funded a
29 comprehensive and statewide tobacco education, prevention and
30 cessation program that is consistent with the Best Practices for
31 Tobacco Control Programs of the federal Centers for Disease
32 Control and Prevention, as periodically amended. It is also the
33 intent of the Legislature that all reasonable efforts be made to
34 maximize the amount of federal funds available for this program.

35 (2) The goals of the tobacco education, prevention and
36 cessation program include, but are not limited to, the following:

37 (a) Preventing the initiation of use of tobacco
38 products by youth;

39 (b) Encouraging and helping smokers to quit and
40 reducing the numbers of youth and adults who use tobacco products;

41 (c) Assisting in the protection from secondhand smoke;

42 (d) Supporting the enforcement of laws prohibiting
43 youth access to tobacco products;

44 (e) Eliminating the racial and cultural disparities
45 related to use of tobacco products; and

46 (f) Educating the public and changing the cultural
47 perception of use of tobacco products in Mississippi.

48 **SECTION 2.** (1) There is created the Mississippi Tobacco
49 Control Commission, which shall consist of twenty-seven (27)
50 members, fifteen (15) of which shall be voting members and twelve
51 (12) of which shall be nonvoting members.

52 (2) The fifteen (15) voting members of the commission shall
53 consist of the following:

54 (a) Four (4) members appointed by the Governor, with
55 one (1) member each from a list of three (3) individuals
56 recommended by the Mississippi Primary Care Association, a list of
57 three (3) individuals recommended by the Mississippi State Medical
58 Association, and a list of three (3) individuals recommended by
59 the American Heart Association, and one (1) member who has
60 experience in financial planning and accounting;

61 (b) Three (3) members appointed by the Lieutenant
62 Governor, with one (1) member each from a list of three (3)
63 individuals recommended by the Mississippi Chapter of the American
64 Lung Association, a list of three (3) individuals recommended by
65 the Mississippi Chapter of the American Academy of Family Practice
66 Physicians, and a list of three (3) individuals recommended by the
67 American Cancer Society;

68 (c) One (1) member appointed by the Attorney General
69 who has experience in law enforcement;

70 (d) The State Health Officer or his or her designee;

71 (e) The State Superintendent of Public Education or his
72 or her designee;

73 (f) The Vice-Chancellor of Health Affairs of the
74 University of Mississippi Medical Center or his or her designee;

75 (g) The Dean of the College of Health at the University
76 of Southern Mississippi or his or her designee;

77 (h) The Administrator of the School of Health Sciences
78 of the College of Public Service at Jackson State University or
79 his or her designee;

80 (i) The President of the Mississippi Medical and
81 Surgical Association or his or her designee; and

82 (j) The President of the Mississippi Nurses'
83 Association or his or her designee.

84 (3) (a) Eight (8) of the nonvoting members of the
85 commission shall be individuals who are not affiliated with the
86 tobacco industry who possess knowledge, skill, and prior
87 experience in scientifically proven smoking prevention, reduction
88 and cessation programs, health care services or preventive health
89 measures, and shall consist of the following:

90 (i) One (1) member appointed by the Governor;

91 (ii) One (1) member appointed by the Lieutenant
92 Governor;

93 (iii) Four (4) members appointed by the Speaker of
94 the House of Representatives, with one (1) of those members being
95 appointed from a list of three (3) individuals recommended by the
96 Mississippi School Nurse Association; and

97 (iv) Two (2) members appointed by the Attorney
98 General.

99 (b) Four (4) of the nonvoting members of the commission
100 shall be members of the Legislature, as follows:

101 (i) The Chairman of the House Public Health and
102 Human Services Committee and one (1) other member of that
103 committee appointed by the Speaker of the House of
104 Representatives; and

105 (ii) The Chairman of the Senate Public Health and
106 Welfare Committee and one (1) other member of that committee
107 appointed by the Lieutenant Governor.

108 (4) For those members that are required to be appointed from
109 lists of individuals recommended by certain nominating groups, if
110 none of the recommended names are acceptable to the appointing
111 official, then the nominating group shall submit another list of
112 three (3) different individuals until an acceptable individual is
113 submitted to the appointing official.

114 (5) (a) Of the voting members appointed by the Governor,
115 two (2) shall be appointed for terms ending on June 30, 2010, and
116 two (2) shall be appointed for terms ending on June 30, 2012. Of
117 the voting members appointed by the Lieutenant Governor, one (1)
118 shall be appointed for a term ending on June 30, 2009, and two (2)
119 shall be appointed for terms ending on June 30, 2011. The voting
120 member appointed by the Attorney General shall be appointed for a
121 term ending on June 30, 2009. After the expiration of the initial
122 terms, all later appointments of the voting members shall be made
123 by the original appointing officials for terms of five (5) years
124 from the expiration date of the previous term. All appointed
125 voting members shall serve until their successors are appointed
126 and qualified.

127 (b) The voting members who are state officials or
128 university officials shall serve as members for as long as they
129 hold the designated office or university position.

130 (c) The nonvoting members shall serve for terms that
131 are concurrent with the terms of the appointing officials, or
132 until their successors are appointed and qualified.

133 (d) Any vacancy in an appointed member position shall
134 be filled within thirty (30) days of the vacancy by the original
135 appointing official, and the individual appointed to fill the
136 vacancy shall meet the same qualifications as required for the
137 former member.

138 (e) The initial appointments to the commission shall be
139 made not later than forty-five (45) days after the effective date
140 of this act, and the first meeting of the commission shall be held
141 within sixty (60) days after the effective date of this act at a
142 time, date and location specified by the Governor.

143 (6) The commission shall annually elect a chairman from
144 among its members. The commission shall meet at least quarterly.
145 A quorum for meetings of the commission shall be a majority of the
146 voting members of the commission. The members of the commission
147 shall serve without compensation.

148 **SECTION 3.** (1) The commission shall employ an executive
149 director, who shall serve at the will and pleasure of the
150 commission. The executive director shall be an individual who has
151 knowledge and experience in public health, medical care, health
152 care services, preventive health measures or tobacco use control.
153 The executive director shall be the administrative officer of the
154 commission, and shall perform the duties that are required of him
155 or her by law and such other duties as may be assigned to him or
156 her by the commission. The executive director shall receive such
157 compensation as may be fixed by the commission, subject to the
158 approval of the State Personnel Board.

159 (2) The commission may employ such other persons as may be
160 necessary to carry out the provisions of this act. The
161 compensation and the terms and conditions of their employment
162 shall be determined by the commission in accordance with
163 applicable state law and rules and regulations of the State
164 Personnel Board.

165 **SECTION 4.** The commission shall perform the following
166 duties:

167 (a) Develop and implement appropriate policies and
168 procedures for the operation of the tobacco education, prevention
169 and cessation program;

170 (b) Develop and implement a five-year strategic plan
171 for the tobacco education, prevention and cessation program;

172 (c) Develop and maintain an annual operating budget and
173 oversee fiscal management of the tobacco education, prevention and
174 cessation program;

175 (d) Execute any contracts, agreements or other
176 documents with any governmental agency or any person, corporation,
177 association, partnership or other organization or entity that are
178 necessary to accomplish the purposes of this act;

179 (e) Receive grants, bequeaths, gifts, donations or any
180 other contributions made to the commission to be used for specific
181 purposes related to the goals of this act;

182 (f) Submit an annual report to the Legislature
183 regarding the operation of the commission;

184 (g) Submit to the State Auditor any financial records
185 that are necessary for the Auditor to perform an annual audit of
186 the commission as required by law;

187 (h) Adopt any rules or regulations that are necessary
188 to carry out the purposes of this act; and

189 (i) Take any other actions that are necessary to carry
190 out the purposes of this act.

191 **SECTION 5.** (1) The commission shall develop and implement a
192 comprehensive and statewide tobacco education, prevention and
193 cessation program that is consistent with the recommendations for
194 effective program components and funding recommendations in the
195 1999 Best Practices for Comprehensive Tobacco Control Programs of
196 the federal Centers for Disease Control and Prevention, as those

197 Best Practices may be periodically amended by the Centers for
198 Disease Control and Prevention.

199 (2) At a minimum, the program shall include the following
200 components, and may include additional components that are
201 contained within the Best Practices for Comprehensive Tobacco
202 Control Programs of the federal Centers for Disease Control and
203 Prevention, as periodically amended, and that based on scientific
204 data and research have been shown to be effective at accomplishing
205 the purposes of this section:

206 (a) The use of mass media, including paid advertising
207 and other communication tools to discourage the use of tobacco
208 products and to educate people, especially youth, about the health
209 hazards from the use of tobacco products, which shall be designed
210 to be effective at achieving these goals and shall include, but
211 need not be limited to, television, radio, and print advertising,
212 as well as sponsorship, exhibits and other opportunities to raise
213 awareness statewide;

214 (b) Evidence-based curricula and programs implemented
215 in schools to educate youth about tobacco and to discourage their
216 use of tobacco products, including, but not limited to, programs
217 that involve youth, educate youth about the health hazards from
218 the use of tobacco products, help youth develop skills to refuse
219 tobacco products, and demonstrate to youth how to stop using
220 tobacco products;

221 (c) Local community programs, including, but not
222 limited to, youth-based partnerships that discourage the use of
223 tobacco products and involve community based organizations in
224 tobacco education, prevention and cessation programs in their
225 communities;

226 (d) Enforcement of laws, regulations and policies
227 against the sale or other provision of tobacco products to minors,
228 and the possession of tobacco products by minors;

229 (e) Programs to assist and help people to stop using
230 tobacco products; and

231 (f) A surveillance and evaluation system that monitors
232 program accountability and results, produces publicly available
233 reports that review how monies expended for the program are spent,
234 and includes an evaluation of the program's effectiveness in
235 reducing and preventing the use of tobacco products, and annual
236 recommendations for improvements to enhance the program's
237 effectiveness.

238 (3) All programs or activities funded by the commission
239 through the tobacco education, prevention and cessation program,
240 whether part of a component described in subsection (2) or an
241 additional component, must be consistent with the Best Practices
242 for Comprehensive Tobacco Control Programs of the federal Centers
243 for Disease Control and Prevention, as periodically amended, and
244 all funds received by any person or entity under any such program
245 or activity must be expended for purposes that are consistent with
246 those Best Practices.

247 (4) Funding for the different components of the program
248 shall be apportioned between the components based on the
249 recommendations in the Best Practices for Comprehensive Tobacco
250 Control Programs of the federal Centers for Disease Control and
251 Prevention, as periodically amended, to provide adequate program
252 development, implementation and evaluation for effective control
253 of the use of tobacco products. While the commission shall
254 develop annual budgets based on strategic planning, components of
255 the program shall be funded using the following areas as
256 guidelines for priority:

- 257 (a) School programs;
- 258 (b) Mass media (counter-marketing);
- 259 (c) Cessation programs (including media promotions);
- 260 (d) Community programs;
- 261 (e) Surveillance and evaluation;

262 (f) Law enforcement; and
263 (g) Administration and management; however, not more
264 than five percent (5%) of the total budget may be expended for
265 administration and management purposes.

266 (5) In funding the components of the program, the commission
267 may provide funding for health care programs at the University of
268 Mississippi Medical Center that are related to the prevention and
269 cessation of the use of tobacco products and the treatment of
270 illnesses that are related to the use of tobacco products.

271 **SECTION 6.** (1) There is established in the State Treasury a
272 special fund to be known as the Tobacco Control Commission Fund,
273 which shall be comprised of the funds specified in subsection (2)
274 of this section and any other funds that are authorized or
275 required to be deposited into the special fund.

276 (2) From the tobacco settlement installment payments that
277 the State of Mississippi receives during each calendar year, the
278 sum of Twenty Million Dollars (\$20,000,000.00) shall be deposited
279 into the special fund.

280 (3) The Legislature shall annually appropriate the funds in
281 the special fund to the commission, which shall expend the funds
282 solely for the purposes specified in Sections 1 through 5 of this
283 act. None of the funds in the special fund may be transferred to
284 any other fund or appropriated or expended for any other purpose.

285 (4) All income from the investment of the funds in the
286 special fund shall be credited to the account of the special fund.
287 Any funds in the special fund at the end of a fiscal year shall
288 not lapse into the State General Fund.

289 **SECTION 7.** Section 43-13-405, Mississippi Code of 1972, is
290 amended as follows:

291 43-13-405. (1) In accordance with the purposes of this
292 article, there is established in the State Treasury the Health
293 Care Trust Fund, into which shall be deposited Two Hundred Eighty
294 Million Dollars (\$280,000,000.00) of the funds received by the

295 State of Mississippi as a result of the tobacco settlement as of
296 the end of fiscal year 1999, and all tobacco settlement
297 installment payments made in subsequent years for which the use or
298 purpose for expenditure is not restricted by the terms of the
299 settlement, except as otherwise provided in Section 43-13-407(2)
300 and (3) and Section 6 of this act. All income from the investment
301 of the funds in the Health Care Trust Fund shall be credited to
302 the account of the Health Care Trust Fund. The funds in the
303 Health Care Trust Fund at the end of a fiscal year shall not lapse
304 into the State General Fund.

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

310 (a) The federal Centers for Medicare and Medicaid
311 Services, or other agency of the federal government, is successful
312 in recouping tobacco settlement funds from the State of
313 Mississippi;

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

317 (c) Federal funding for any other program is reduced as
318 a result of the tobacco settlement; or

319 (d) Tobacco cessation programs are mandated by the
320 federal government or court order.

321 (3) This section shall stand repealed on July 1, 2010.

322 **SECTION 8.** This act shall take effect and be in force from
323 and after its passage.