

By: Representatives Brown, Scott

To: Public Health and Human Services; Appropriations

HOUSE BILL NO. 1115
(As Sent to Governor)

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. Provided,
170 however, that no funds shall be appropriated to The Partnership
171 for a Healthy Mississippi under authority of this subsection (5)
172 until the Partnership submits to the Legislative Budget Office a
173 complete audit of all expenditures made by the Partnership from
174 tobacco settlement payments beginning with fiscal year 1999
175 through fiscal year 2005. This audit shall include an accounting
176 of all expenditures made by The Partnership for a Healthy
177 Mississippi during this seven-year period for state contracts,
178 local governmental contracts, faith-based contracts and any other
179 expenditure made, to include all monies appropriated by the
180 Legislature and all monies not appropriated by the Legislature.
181 The audit shall be conducted by a certified public accountant firm
182 approved by the State Auditor. This program shall include, at a
183 minimum, the following components, and may include additional
184 components that are also contained within the federal Centers for
185 Disease Control Best Practices, as periodically amended, and that
186 are effective at accomplishing the purpose of this subsection:
187 (a) An advertising campaign to discourage the use of
188 tobacco and to educate people, especially youth, about the health
189 hazards of tobacco, which shall be designed to be effective at
190 achieving these goals and shall include, but need not be limited
191 to, television, radio and print advertising;
192 (b) Evidence-based curricula and programs to educate
193 youth about tobacco and to discourage their use of it, including,
194 but not limited to, programs that involve youth, educate youth
195 about the health hazards of tobacco, help youth develop skills to
196 refuse tobacco, and demonstrate to youth how to stop using
197 tobacco;

198 (c) Programs of local community-youth-based
199 partnerships that discourage the use of tobacco and work to
200 educate people, especially youth, about the health hazards of
201 tobacco, with an emphasis on programs that involve youth and
202 emphasize the prevention and cessation of tobacco use;

203 (d) Enforcement of laws, regulations and policies
204 against the sale or other provision of tobacco to minors, and the
205 possession of tobacco by minors;

206 (e) Programs assisting and encouraging participation in
207 tobacco cessation throughout Mississippi; and

208 (f) Publicly reported annual fiscal and programmatic
209 evaluations and reviews to ensure that monies appropriated under
210 this subsection are spent properly, which shall include evaluation
211 of the program's effectiveness in reducing the preventing tobacco
212 use, and annual recommendations for improvements to enhance the
213 program's effectiveness.

214 (6) All income from the investment of the funds in the
215 Health Care Expendable Fund shall be credited to the account of
216 the Health Care Expendable Fund. Any funds in the Health Care
217 Expendable Fund at the end of a fiscal year shall not lapse into
218 the State General Fund.

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

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

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

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

232 43-13-409. (1) There is established a board of directors to
233 invest the funds in the Health Care Trust Fund and the Health Care
234 Expendable Fund. The board of directors shall consist of thirteen
235 (13) members as follows:

236 (a) Eight (8) voting members as follows: the State
237 Treasurer, or his designee, the Attorney General, or his
238 designee, * * * one (1) member from each congressional district as
239 existing on January 1, 2006, and two (2) members from the state at
240 large, to be appointed by the Governor with the advice and consent
241 of the Senate. Of the members appointed by the Governor, one (1)
242 member shall be appointed for an initial term that expires on
243 March 1, 2000; one (1) member shall be appointed for an initial
244 term that expires on March 1, 2001; one (1) member shall be
245 appointed for an initial term that expires on March 1, 2002; one
246 (1) member shall be appointed for an initial term that expires on
247 March 1, 2003; * * * one (1) member shall be appointed for an
248 initial term that expires on March 1, 2004; and one (1) member
249 shall be appointed for an initial term that begins on July 1,
250 2006, and expires on March 1, 2011. Upon the expiration of any of
251 the initial terms of office, the Governor shall appoint successors
252 by and with the advice and consent of the Senate for terms of five
253 (5) years from the expiration date of the previous term. Any
254 member appointed by the Governor shall be eligible for
255 reappointment. Each member appointed by the Governor shall
256 possess knowledge, skill and experience in business or financial
257 matters commensurate with the duties and responsibilities of the
258 board of directors in administering the Health Care Trust Fund and
259 the Health Care Expendable Fund.

260 (b) Three (3) nonvoting, advisory members of the Senate
261 shall be appointed by the Lieutenant Governor, and one (1)
262 nonvoting, advisory representative of the health care community

263 shall be appointed by the Lieutenant Governor, who shall serve for
264 the length of the term of the appointing official and shall be
265 eligible for reappointment.

266 (c) Three (3) nonvoting, advisory members of the House
267 of Representatives shall be appointed by the Speaker of the House,
268 and one (1) nonvoting, advisory representative of the health care
269 community shall be appointed by the Speaker of the House, who
270 shall serve for the length of the term of the appointing official
271 and shall be eligible for reappointment.

272 (d) Any person appointed to fill a vacancy on the board
273 of directors shall be appointed in the same manner as for a
274 regular appointment and shall serve for the remainder of the
275 unexpired term only.

276 (2) Nonlegislative members of the board of directors shall
277 serve without compensation, but shall be reimbursed for each day's
278 official duties of the board at the same per diem as established
279 by Section 25-3-69, and actual travel and lodging expenses as
280 established by Section 25-3-41. Legislative members of the board
281 of directors shall receive the same per diem and expense
282 reimbursement as for attending committee meetings when the
283 Legislature is not in regular session.

284 (3) The State Treasurer shall be the chairman of the board
285 of directors. The board of directors shall annually elect one (1)
286 member to serve as vice chairman of the board. The vice chairman
287 shall act as chairman in the absence of or upon the disability of
288 the chairman or if there is a vacancy in the office of chairman.

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

294 (5) The board of directors shall invest the funds in the
295 Health Care Trust Fund and the Health Care Expendable Fund in any

296 of the investments authorized for the Mississippi Prepaid
297 Affordable College Tuition Program under Section 37-155-9, and
298 those investments shall be subject to the limitations prescribed
299 by Section 37-155-9.

300 (6) In furtherance of the powers granted under subsection
301 (5) of this section, the board of directors shall have such powers
302 as necessary or convenient to carry out the purposes and
303 provisions of this article, including, but not limited to, the
304 following express powers:

305 (a) To contract for necessary goods and services, to
306 employ necessary personnel, and to engage the services of
307 consultants for administrative and technical assistance in
308 carrying out its duties and responsibilities in administering the
309 Health Care Trust Fund and the Health Care Expendable Fund;

310 (b) To administer the Health Care Trust Fund and the
311 Health Care Expendable Fund in a manner that is sufficiently
312 actuarially sound to meet the obligations of this article and to
313 establish a comprehensive investment plan for the purposes of this
314 article, which shall specify the investment policies to be
315 utilized by the board of directors in administering the funds;

316 (c) Subject to the terms, conditions, limitations and
317 restrictions specified in Section 37-155-9, the board of directors
318 shall have power to sell, assign, transfer and dispose of any of
319 the securities and investments of the Health Care Trust Fund and
320 the Health Care Expendable Fund, provided that any such sale,
321 assignment or transfer has the majority approval of the entire
322 board; * * *

323 (d) To annually prepare or cause to be prepared a
324 report setting forth in appropriate detail an accounting of the
325 Health Care Trust Fund and the Health Care Expendable Fund and a
326 description of the financial condition of the funds at the close
327 of each fiscal year, including any recommendations for legislation
328 regarding the investment authority of the board of directors over

329 the funds. The report shall be submitted to the Governor and the
330 Legislative Budget Office on or before September 1 of each fiscal
331 year; and

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

336 (i) An accounting of the organization and a
337 description of the financial condition of the funds at the close
338 of each fiscal year as certified from a review of public
339 accountants; and

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

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