

GENERAL ASSEMBLY OF NORTH CAROLINA

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HOUSE BILL 1431

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Short Title: Tobacco and Health Trust Funds.

(Public)

Sponsors:

Referred to:

April 29, 1999

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR THE CREATION OF THE HEALTH AND WELLNESS TRUST FUND AND ITS COMMISSION, THE CREATION OF THE TOBACCO TRUST FUND AND ITS COMMISSION, TO AMEND THE AUTHORITY OF THE GENERAL ASSEMBLY RELATIVE TO THE NONPROFIT CORPORATION ESTABLISHED PURSUANT TO THE TOBACCO SETTLEMENT CONSENT DECREE, AND TO MAKE CONFORMING CHANGES.

The General Assembly of North Carolina enacts:

PART I. ALLOCATION OF FUNDS

Section 1. G.S. 143-16.4 reads as rewritten:

"§ 143-16.4. Settlement Reserve Fund.

(a) The 'Settlement Reserve Fund' is established as a restricted reserve in the General Fund. Funds—Except as otherwise provided in this section, funds shall be expended from the Settlement Reserve Fund only by specific appropriation by the General Assembly.

1 (a1) A Health Trust Account is established in the Settlement Reserve Fund. The
2 portion of each Master Settlement Agreement payment identified in Section 6(2) of S.L.
3 1999-2 shall be credited to the Health Trust Account. The State Controller shall transfer
4 all funds in the Health Trust Account to the Health and Wellness Trust Fund created in
5 Article 6C of Chapter 147 of the General Statutes.

6 (a2) A Tobacco Trust Account is established in the Settlement Reserve Fund. The
7 portion of each Master Settlement Agreement payment identified in Section 6(3) of S.L.
8 1999-2 shall be credited to the Tobacco Trust Account. The State Controller shall
9 transfer all funds in the Tobacco Trust Account to the Tobacco Trust Fund created in
10 Article 75 of Chapter 143 of the General Statutes.

11 (b) Unless prohibited by federal law, federal funds provided to the State by block
12 grant or otherwise as part of federal legislation implementing a settlement between
13 United States tobacco companies and the states shall be credited to the Settlement
14 Reserve Fund. Unless otherwise encumbered or distributed under a settlement agreement
15 or final order or judgment of the court, funds paid to the State or a State agency pursuant
16 to a tobacco litigation settlement agreement, or a final order or judgment of a court in
17 litigation between tobacco companies and the states, shall be credited to the Settlement
18 Reserve Fund."

19 20 **PART II. HEALTH AND WELLNESS TRUST FUND AND HEALTH AND** 21 **WELLNESS COMMISSION**

22 Section 2. Chapter 147 of the General Statutes is amended by adding a new
23 Article to read:

24 **"ARTICLE 6C.**

25 **"HEALTH AND WELLNESS TRUST FUND.**

26 **"§ 147-86.30. Health and Wellness Trust Fund established.**

27 (a) Fund Established. – There is established the Health and Wellness Trust Fund in
28 the Office of the State Treasurer that shall be used to develop a comprehensive
29 community-based plan and to finance programs and initiatives to improve the health and
30 wellness of the people of North Carolina. As used in this Article, the term 'Fund' means
31 the Health and Wellness Trust Fund. It is the intent of the General Assembly that the
32 funds provided pursuant to this Article to address the health needs of North Carolinians
33 be used to supplement, not supplant, existing funding of health and wellness programs.

34 (b) Fund Earnings, Assets, and Balances. – The State Treasurer shall hold the
35 Fund separate and apart from all other moneys, funds, and accounts. The State Treasurer
36 shall be the custodian of the Fund and shall invest its assets in accordance with G.S. 147-
37 69.2 and G.S. 147-69.3. Investment earnings credited to the assets of the Fund shall
38 become part of the Fund. Any balance remaining in the Fund at the end of any fiscal year
39 shall be carried forward in the Fund for the next succeeding fiscal year. Payments from
40 the Fund shall be made on the warrant of the chair of the Commission, pursuant to
41 directives of the Commission. The Commission may expend moneys in the Fund only as
42 provided in subsections (c) and (d) of this section.

1 (c) Creation of Fund Reserve. – The Commission shall reserve, and shall not
2 expend, fifty percent (50%) of each annual payment allocated to the Health and Wellness
3 Trust Fund pursuant to G.S. 143-16.4 during years 2001 through 2025 to create and build
4 the Fund Reserve. During years 2001 through 2025 the Commission may not expend any
5 investment earnings on the reserved funds. Beginning in year 2026, and thereafter, the
6 Commission shall not expend the reserved funds but may expend any investment
7 earnings on the reserved funds.

8 (d) Use of Nonreserved Funds. – The Commission may expend all of the annual
9 payments for years 1998, 1999, and 2000 and may expend the remaining fifty percent
10 (50%) portion of each annual payment thereafter through the year 2025 that is not
11 reserved pursuant to subsection (c) of this section. Any unexpended portion of the
12 nonreserved portion of each annual payment for years 2001 through 2025 that has not
13 been expended by the second June 30th following the date of the receipt of the payment
14 shall be reserved pursuant to subsection (c) of this section. The Commission may expend
15 any investment earnings on the nonreserved funds in the year in which the investment
16 earnings are received by the Fund.

17 (e) Fund Purposes. – Moneys from the Fund may be used for any of the following
18 purposes:

19 (1) To fund programs and initiatives that include research, education,
20 prevention, and treatment of health problems in North Carolina and to
21 increase the capacity of communities to respond to the public's health
22 needs.

23 (2) To develop a comprehensive, community-based plan to improve the
24 health and wellness of the people of North Carolina with a priority on
25 preventing, reducing, and remedying the health effects of tobacco use
26 and with an emphasis on reducing youth tobacco use.

27 (f) Limit on Operating and Administrative Expenses. – No more than two and
28 one-half percent (2 1/2%) of the annual receipts of the Fund for the fiscal year beginning
29 July 1 or a total sum of one million dollars (\$1,000,000), whichever is less, may be used
30 each fiscal year for administrative and operating expenses of the Commission and its
31 staff. All administrative expenses of the Commission shall be paid from the Fund.

32 **"§ 147-86.31. Health and Wellness Trust Fund; eligibility for grants.**

33 Eligible Grant Applicants. – Any of the following are eligible to apply for a grant
34 from the Fund:

35 (1) A State agency.

36 (2) A local government or other political subdivision of the State or a
37 combination of such entities.

38 (3) A nonprofit corporation which has as a significant purpose promoting
39 the public's health, limiting youth access to tobacco products, or
40 reducing the health consequences of tobacco use.

41 **"§ 147-86.32. Health and Wellness Trust Fund; Commission established;**
42 **membership qualifications; vacancies.**

1 (a) Commission Established. – There is established the Health and Wellness Trust
2 Fund Commission. As used in this Article, the term ‘Commission’ means the Health and
3 Wellness Trust Fund Commission. The Commission shall exercise its powers
4 independently, but for administrative purposes, the Commission shall be located within
5 the Office of the State Treasurer.

6 (b) Membership. – The Commission shall consist of 15 members as follows:

7 (1) Five appointed by the Governor;

8 (2) Five appointed by the General Assembly upon the recommendation of
9 the Speaker of the House of Representatives under G.S. 120-121; and

10 (3) Five appointed by the General Assembly upon the recommendation of
11 the President Pro Tempore of the Senate under G.S. 120-121.

12 In appointing members, the appointing authorities shall consider persons who are
13 affiliated with nonprofit organizations, medical institutions, organizations involved in the
14 delivery of health care services or products, governmental or law enforcement agencies,
15 or individuals who are involved in the delivery of medical services or sale of products
16 which have a major principle purpose of promoting the public's health, reducing youth
17 access to tobacco products, and reducing the health consequences of tobacco use, and
18 other persons from the general public. It is the intent of the General Assembly that the
19 appointing authorities, in appointing members, shall appoint members who represent the
20 geographic, political, gender, and racial diversity of the State.

21 (c) Initial Appointments. – Each appointing authority shall designate two of the
22 authority's initial appointments to serve one-year terms ending June 30, 2001, two to
23 serve two-year terms ending June 30, 2002, and one to serve a three-year term ending
24 June 30, 2003. Thereafter, as the term of each member expires, that member's successor
25 shall be appointed for a term of four years beginning July 1. Members may continue to
26 serve beyond their terms until their successors are duly appointed, but any holdover shall
27 not affect the expiration date of the succeeding term. A member may be removed from
28 the Commission for cause by the authority that appointed the member.

29 The Commission shall elect from its membership a chair, vice-chair and other officers
30 as necessary for two-year terms beginning July 1 at the first meeting of the Commission
31 held on or after July 1 of every even numbered year. The vice-chair may act for the chair
32 in the absence of the chair as authorized by the Commission.

33 (d) Vacancies. – Vacancies shall be filled by the designated appointing authority
34 for the remainder of the unexpired term in accordance with G.S. 120-122.

35 (e) Frequency of Meetings. – The Commission shall meet at least twice each year
36 and may hold special meetings at the call of the chair or a majority of the voting
37 members. The Governor shall call the initial meeting of the Commission.

38 (f) Quorum; Majority. – Eight members shall constitute a quorum of the
39 Commission. The Commission may act upon a majority vote of all the members of the
40 Commission on matters involving the disbursement of funds and personnel matters
41 properly before the Commission. On all other matters, the Commission may act by
42 majority vote of the members of the Commission at a meeting at which a quorum is
43 present.

1 (g) Meeting Facilities. – The Office of the State Treasurer shall provide meeting
2 facilities for the Commission and its staff as requested by the chair of the Commission.

3 (h) Per Diem and Expenses. – The members of the Commission shall receive per
4 diem and necessary travel and subsistence expenses in accordance with the provisions of
5 G.S. 138-5. Per diem, subsistence, and travel expenses of the members shall be paid
6 from the Fund.

7 (i) Conflict of Interest. – The members of the Commission shall comply with the
8 provisions of G.S. 14-234 prohibiting conflicts of interest. In addition to the restrictions
9 imposed under G.S. 14-234, a member shall not vote on, participate in the deliberations
10 of, or otherwise attempt through his or her official capacity to influence the vote on a
11 grant or other financial assistance award by the Commission to a nonprofit entity of
12 which the member is an officer, director, or employee or to a governmental entity of
13 which the member is an employee or a member of the governing board. A violation of
14 this subsection is a Class 1 misdemeanor.

15 **"§ 147-86.33. Health and Wellness Trust Fund; powers and duties.**

16 (a) The Commission shall do the following:

17 (1) Allocate moneys from the Fund as grants. A grant may be awarded
18 only for a program or initiative that satisfies the criteria and furthers the
19 purposes of this Article.

20 (2) Develop criteria for awarding grants under this Article. The criteria
21 shall include types of programs and initiatives to be funded, including
22 programs which address the short- and long-term health and wellness of
23 the citizens of North Carolina.

24 (3) Develop criteria by which to measure the outcomes of funded programs
25 to evaluate the extent to which those programs achieved the goals for
26 which funds were awarded.

27 (4) Develop a mechanism with which to evaluate individual applications.

28 (5) Ensure that good faith efforts are made to achieve federal mandates
29 targeting the reduction of youth access to tobacco products.

30 (6) Administer the provisions of this Article.

31 (7) Adopt rules to implement this Article.

32 (b) The Commission is authorized to hire staff or contract for other expertise for
33 the administration of the Fund. The Dean of the UNC School of Public Health and the
34 State Health Director may be consulted by the Commission.

35 (c) Gifts and Grants. – The Commission is authorized to accept gifts or grants
36 from other sources.

37 **"§ 147-86.34. Health and Wellness Trust Fund; reporting requirements.**

38 (a) The chair of the Commission shall report each year by November 1 to the Joint
39 Legislative Committee on Governmental Operations and to the chairs of the Joint
40 Legislative Health Care Oversight Commission regarding implementation of this Article,
41 including a report on funds disbursed during the fiscal year by amount, purpose and
42 category of recipient, and other information as requested by the Joint Legislative
43 Commission on Governmental Operations. A written copy of the annual report shall also

1 be sent to the Legislative Library by November 1 each year. Written reports shall also be
2 sent on a quarterly basis to the Joint Legislative Committee on Governmental Operations.

3 (b) Any non-State corporation, organization, or institution that receives, uses, or
4 expends any funds from the Commission is subject to the applicable reporting
5 requirements of G.S. 143-6.1.

6 **"§ 147-86.35. Health and Wellness Trust Fund; open meeting and public records**
7 **requirements.**

8 The Open Meetings Law (Article 33 of Chapter 143 of the General Statutes) and the
9 Public Records Act (Chapter 132 of the General Statutes) shall apply to the Fund and the
10 Commission, and the Fund and the Commission shall be subject to audit by the State
11 Auditor as provided by law."

12
13 **PART III. TOBACCO TRUST FUND AND TOBACCO COMMISSION**

14 Section 3. Chapter 143 of the General Statutes is amended by adding a new
15 Article to read:

16 **"ARTICLE 75.**

17 **"TOBACCO TRUST FUND.**

18 **"§ 143-715. Policy; purpose.**

19 The General Assembly finds:

20 (1) For many years, the State and its prosperity have been supported by its
21 agricultural economy and particularly by the tobacco-related segment of
22 the agricultural economy. The Master Settlement Agreement is
23 expected to cause significant economic hardship upon the tobacco-
24 related segment of the agricultural economy in that it is expected to
25 result in reduced demand, sales, and prices for tobacco as an agricultural
26 product.

27 (2) Tobacco growers, tobacco allotment holders, and persons engaged in
28 tobacco-related businesses are entitled to indemnification for the
29 adverse economic effects in the State resulting from the Master
30 Settlement Agreement, tobacco growers and allotment holders are
31 entitled to compensation for the economic losses resulting from lost
32 quota value in this State, and tobacco growers are entitled to
33 compensation for the decline in value of tobacco-related personal
34 property assets and declining market conditions in this State resulting
35 from the Master Settlement Agreement, to the extent that funds are
36 available in the Tobacco Trust Fund to address those purposes.

37 (3) Even in the absence of the Master Settlement Agreement, the tobacco-
38 related segment of the State's economy is experiencing severe economic
39 hardship as it confronts a national decline in the use of, and demand for,
40 tobacco products, which decline is expected to continue. At present, the
41 tobacco growers, tobacco allotment holders, and persons engaged in
42 tobacco-related businesses are facing an economic crisis that threatens
43 their health and survival. Therefore, in addition to indemnification and

1 compensation for losses in this State resulting from the Master
2 Settlement Agreement, the public interest will be served by the funding
3 of qualified agricultural programs that support, foster, encourage, and
4 facilitate a strong agricultural economy in North Carolina. To the extent
5 that funds are available in the Tobacco Trust Fund, expenditure of those
6 funds to finance qualified agricultural programs is in the public interest.

- 7 (4) It is a public purpose for these funds to be expended in this manner, and
8 it is public service for these persons to accept these funds to the end that
9 conditions of unemployment and fiscal distress may be alleviated or
10 avoided, more stable local economies may be created, local tax bases
11 may be stabilized and maintained, natural resources may be optimally
12 used, and the general public may be benefited.

13 **"§ 143-716. Definitions.**

14 The following definitions apply in this Article:

- 15 (1) Commission. – The Tobacco Trust Fund Commission.
16 (2) Compensatory programs. – Programs developed by the Commission to
17 identify, locate, compensate, and indemnify tobacco growers, allotment
18 holders, and persons engaged in tobacco-related businesses who have
19 suffered actual economic losses in this State due to lost quota, the
20 decline in value of tobacco-related personal property assets, and
21 declining market conditions resulting from the Master Settlement
22 Agreement or declines in the tobacco-related segment of the State's
23 economy.
24 (3) Fund. – The Tobacco Trust Fund.
25 (4) Master Settlement Agreement. – The settlement agreement between
26 certain tobacco manufacturers and the states, as incorporated in the
27 consent decree entered in the action of State of North Carolina v. Philip
28 Morris, Incorporated, et al., 98 CVS 14377, in the General Court of
29 Justice, Superior Court Division, Wake County, North Carolina.
30 (5) National Tobacco Grower Settlement Trust. – The trust established by
31 tobacco companies to provide payments to tobacco growers and
32 allotment holders in 14 states for the purposes of ameliorating potential
33 adverse economic consequences of likely reduction in demand, sales,
34 and prices for tobacco as an agricultural product as a result of the
35 Master Settlement Agreement.
36 (6) Qualified agricultural programs. – Programs developed by the
37 Commission to support and foster the vitality and solvency of the
38 tobacco-related segment of the State's agricultural economy, particularly
39 the segment adversely affected by the Master Settlement Agreement,
40 with the objective of alleviating and avoiding unemployment,
41 preserving and increasing local tax bases, and encouraging the
42 economic stability of participants in the State's agricultural economy.
43 Examples of qualified agricultural programs include programs to

1 finance the modernization of farming equipment, programs to finance
2 the conversion of existing equipment to conform to environmental and
3 other regulatory requirements, and programs to finance the conversion
4 or replacement of equipment in order to cultivate crops that are more
5 profitable than are currently being cultivated.

6 (7) Tobacco product component business. – An individual, partnership,
7 limited liability company, corporation, or other commercial entity that
8 engages in the manufacture of component products for use in the
9 manufacture of tobacco products.

10 (8) Tobacco-related business. – An individual, partnership, limited liability
11 company, corporation, or other commercial entity that provides products
12 or services used directly in (i) the production of tobacco, or (ii) support
13 of the business of the production of tobacco. The term does not include
14 the manufacturing of tobacco products or the sale of tobacco products at
15 wholesale or retail.

16 (9) Tobacco-related employment. – Employment in a tobacco-related
17 business, or in the manufacturing of tobacco products or the component
18 products used in the manufacture of tobacco products. The term does
19 not include persons employed in the sale of tobacco products at
20 wholesale or retail.

21 **"§ 143-717. Commission.**

22 (a) Creation. – The Tobacco Trust Fund Commission is created. The Commission
23 shall be administratively located within the Department of Agriculture and Consumer
24 Services but shall exercise its powers independently of the Commissioner of Agriculture
25 and the Department. All administrative expenses of the Commission shall be paid from
26 the Fund.

27 (b) Membership. – The Commission shall consist of 18 members. The
28 Commission shall be appointed as follows: six members by the Governor, six members
29 by the General Assembly upon the recommendation of the President Pro Tempore of the
30 Senate in accordance with G.S. 120-121, and six members by the General Assembly upon
31 the recommendation of the Speaker of the House of Representatives in accordance with
32 G.S. 120-121. It is the intent of the General Assembly that the appointing authorities, in
33 appointing members, shall appoint members who represent the geographic, political,
34 gender, and racial diversity of the State, and represent flue-cured tobacco farmers, burley
35 tobacco farmers, flue-cured tobacco allotment holders, burley tobacco allotment holders,
36 persons in or displaced from tobacco-related employment, as well as the general public.

37 Except as provided for the initial members under subsection (c) of this section,
38 members shall serve four-year terms beginning July 1. A vacancy in a position appointed
39 by the Governor shall be filled for the unexpired term by the Governor. A vacancy in a
40 position appointed by the General Assembly shall be filled in accordance with G.S. 120-
41 122. A member may be removed from office for cause by the authority that appointed
42 that member.

1 (c) Initial Membership; Staggering. – To provide for a staggered membership, the
2 members initially appointed to the Commission shall be appointed to staggered terms. Of
3 the initial appointments to the Commission made by the Governor, two members shall
4 serve one-year terms ending on June 30, 2001, two members shall serve two-year terms
5 ending on June 30, 2002, one member shall serve a three-year term ending on June 30,
6 2003, and one member shall serve a four-year term ending on June 30, 2004. Of the
7 initial appointments to the Commission made by the General Assembly upon the
8 recommendation of the President Pro Tempore of the Senate, one member shall serve a
9 one-year term ending on June 30, 2001, one member shall serve a two-year term ending
10 on June 30, 2002, two members shall serve three-year terms ending on June 30, 2003,
11 and two members shall serve four-year terms ending on June 30, 2004. Of the initial
12 appointments to the Commission made by the General Assembly upon the
13 recommendation of the Speaker of the House of Representatives, one member shall serve
14 a one-year term ending on June 30, 2001, one member shall serve a two-year term ending
15 on June 30, 2002, two members shall serve three-year terms ending on June 30, 2003,
16 and two members shall serve four-year terms ending on June 30, 2004.

17 Members may continue to serve beyond their terms until their successors are duly
18 appointed, but any holdover shall not affect the expiration date of the succeeding term.

19 (d) Officers. – The Commission shall elect from its membership a chair, vice-
20 chair, and other officers as necessary for two-year terms beginning July 1 at the first
21 meeting of the Commission held on or after July 1 of every even-numbered year. The
22 vice-chair may act for the chair in the absence of the chair as authorized by the
23 Commission.

24 (e) Frequency of Meetings. – The Commission shall meet at least quarterly each
25 year and may hold special meetings at the call of the chair or a majority of members. The
26 Governor shall call the initial meeting of the Commission.

27 (f) Quorum; Majority. – Ten members shall constitute a quorum of the
28 Commission. The Commission may act upon a majority vote of the members of the
29 Commission on matters involving the disbursement of funds and personnel matters
30 properly before the Commission. On all other matters, the Commission may act by
31 majority vote of the members of the Commission at a meeting at which a quorum is
32 present.

33 (g) Conflict of Interest. – Members of the Commission shall comply with the
34 provisions of G.S. 14-234 prohibiting conflicts of interest, except that G.S. 14-234(a)
35 shall not apply to an application for or the receipt of a grant or other financial assistance
36 award by a member of the Commission from the Fund created under this Article, or an
37 entity in which a member of the Commission has an interest, if both of the following
38 conditions are met:

- 39 (1) A member does not vote on, participate in the deliberation of, or
40 otherwise attempt through his or her official capacity to influence the
41 vote on, a grant or other financial assistance award by the Commission
42 to the member.

1 (2) The Commissioner of Agriculture determines that any award to a
2 member is in accordance with general criteria adopted by the
3 Commission for the distribution of funds from the Fund.

4 (h) Limit on Operating and Administrative Expenses. – No more than two and
5 one-half percent (2 1/2%) of the annual receipts of the Fund for the fiscal year beginning
6 July 1 or a total sum of one million dollars (\$1,000,000), whichever is less, may be used
7 each fiscal year for administrative and operating expenses of the Commission and its
8 staff. All administrative expenses of the Commission shall be paid from the Fund.

9 **"§ 143-718. Powers and duties.**

10 The Commission shall have the following powers and duties:

11 (1) To administer the provisions of this Article.

12 (2) To develop compensatory programs and qualified agriculture programs,
13 including guidelines and criteria for eligibility for and disbursement of
14 funds, the forms of direct and indirect economic assistance to be
15 awarded, and procedures for applying for and reviewing applications for
16 assistance from the Fund. In developing guidelines and criteria for
17 eligibility and disbursement of funds, the Commission may consult with
18 and otherwise obtain assistance from the State and local offices of the
19 Farm Service Agency and other agencies of the United States
20 Department of Agriculture.

21 (3) To provide financial assistance to eligible recipients, in carrying out
22 compensatory programs and qualified agricultural programs.

23 (4) To hire staff for the administration of the Fund.

24 (5) To contract with other persons to assist in the administration of the
25 Commission's programs.

26 (6) To accept gifts or grants from other sources.

27 (7) To adopt rules to implement this Article.

28 **"§ 143-719. Tobacco Trust Fund; creation; investment.**

29 (a) Fund Established. – The Tobacco Trust Fund is established in the Office of the
30 State Treasurer. The Fund shall be used to provide financial assistance in accordance
31 with this Article.

32 (b) Fund Earnings, Assets, and Balances. – The State Treasurer shall hold the
33 Fund separate and apart from all other moneys, funds, and accounts. The State Treasurer
34 shall be the custodian of the Fund and shall invest the assets in accordance with G.S. 147-
35 69.2 and G.S. 147-69.3. Investment earnings credited to the Fund shall become part of
36 the Fund. Any balance remaining in the Fund at the end of any fiscal year shall be
37 carried forward in the Fund for the next succeeding fiscal year. Payments from the Fund
38 shall be made on the warrant of the chair of the Commission, pursuant to the directives of
39 the Commission.

40 **"§ 143-720. Benefits and administration of Fund for compensatory programs.**

41 (a) Funds held in the Fund may be expended on compensatory programs as
42 provided in this section.

1 (b) The Fund may provide direct and indirect financial assistance, in accordance
2 with criteria established by the Commission and to the extent allowed by law, to
3 accomplish the following:

4 (1) Indemnify tobacco producers, allotment holders, and persons engaged in
5 tobacco-related businesses from the adverse economic effects in this
6 State of the Master Settlement Agreement.

7 (2) Compensate tobacco producers and allotment holders for economic loss
8 resulting from lost quota value and compensate tobacco producers for
9 the decline in value of tobacco-related personal property assets and
10 declining market conditions resulting from the Master Settlement
11 Agreement in this State.

12 (3) Compensate individuals displaced from tobacco-related employment in
13 this State as a result of the adverse economic effects of the Master
14 Settlement Agreement.

15 (4) Compensate tobacco product component businesses that are (i)
16 adversely impacted by the Master Settlement Agreement and that (ii)
17 need financial assistance to retool machinery or equipment or to retrain
18 workers, in order to convert to the production of new products or
19 nontobacco use of existing products, or to effect other similar changes.

20 (c) Only tobacco producers, persons engaged in tobacco-related businesses,
21 individuals displaced from tobacco-related employment, and tobacco product component
22 businesses in this State, and holders of North Carolina tobacco allotments, are eligible to
23 apply for and receive assistance pursuant to subsection (b) of this section. Direct
24 payments made to tobacco producers and tobacco allotment holders shall be based on
25 losses resulting in 1998 and thereafter. Lost quota value shall be a primary determinative
26 factor in calculating the amount of compensable economic loss for tobacco producers and
27 allotment holders.

28 (d) The Commission shall determine the priority of awards among the categories in
29 subsection (b) of this section and within each of those categories.

30 (e) Financial assistance awards shall be for no more than one year at a time. An
31 award may be renewed annually, without limitation.

32 (f) The Commission may require applicants to provide copies of documents
33 necessary to determine compensable economic loss.

34 (g) In no event shall the amount paid to a tobacco producer or allotment holder
35 pursuant to this Article, when combined with the amount received through the National
36 Tobacco Grower Settlement Trust, exceed the compensable economic loss of the
37 producer or allotment holder.

38 (h) The Commission may consider the criteria used for National Tobacco Grower
39 Settlement Trust payments and may correspond with the National Tobacco Grower
40 Settlement Trust certification entity to ensure that tobacco farmers and allotment holders
41 are treated fairly.

42 **"§ 143-721. Benefits and administration of Fund for qualified agricultural**
43 **programs.**

1 (a) Funds held in the Fund may be expended on qualified agricultural programs as
2 provided in this section.

3 (b) In implementing qualified agricultural programs, the Commission shall
4 endeavor to identify those areas of the tobacco-related segment of the State's economy in
5 need of assistance to be provided by the Fund in order to assure the continued vitality and
6 solvency of those areas. The Commission shall endeavor to select for funding qualified
7 agricultural programs that will have the greatest favorable impact on the long-term health
8 of the tobacco-related economy of the State.

9 (c) The benefits of qualified agricultural programs are not limited to persons
10 suffering economic loss resulting from the Master Settlement Agreement, but these
11 programs shall be designed to foster, support, and assist the tobacco-related segment of
12 the agricultural economy.

13 (d) The Commission may solicit and accept proposals from agencies and
14 departments of the State, including institutions of The University of North Carolina, local
15 units of government, the federal government, and members of the private sector for
16 qualified agricultural programs to be funded with money held in the Fund.

17 **"§ 143-722. Reporting.**

18 (a) The chair of the Commission shall report each year by November 1 to the Joint
19 Legislative Commission on Governmental Operations and the chairs of the House and
20 Senate Appropriation Committees regarding the implementation of this Article, including
21 a report on funds disbursed during the fiscal year by amount, purpose and category of
22 recipient, and other information as requested by the Joint Legislative Commission on
23 Governmental Operations. A written copy of the report shall also be sent to the
24 Legislative Library by November 1 each year.

25 (b) Any non-State corporation, organization, or institution that receives, uses, or
26 expends any funds from the Commission is subject to the applicable reporting
27 requirements of G.S 143-6.1.

28 **"§ 143-723. Open meetings; public records; audit.**

29 The Open Meetings Law (Article 33 of Chapter 143 of the General Statutes) and the
30 Public Records Act (Chapter 132 of the General Statutes) shall apply to the Fund and the
31 Commission, and the Fund and the Commission shall be subject to audit by the State
32 Auditor as provided by law."

33
34 **PART IV. STATE PERSONNEL ACT EXEMPTION**

35 Section 4. G.S. 126-5(c1) reads as rewritten:

36 "(c1) Except as to the provisions of Articles 6 and 7 of this Chapter, the provisions
37 of this Chapter shall not apply to:

- 38 (1) Constitutional officers of the State.
- 39 (2) Officers and employees of the Judicial Department.
- 40 (3) Officers and employees of the General Assembly.
- 41 (4) Members of boards, committees, commissions, councils, and advisory
42 councils compensated on a per diem basis.

- 1 (5) Officials or employees whose salaries are fixed by the General
2 Assembly, or by the Governor, or by the Governor and Council of State,
3 or by the Governor subject to the approval of the Council of State.
4 (6) Employees of the Office of the Governor that the Governor, at any time,
5 in his discretion, exempts from the application of the provisions of this
6 Chapter by means of a letter to the State Personnel Director designating
7 these employees.
8 (7) Employees of the Office of the Lieutenant Governor, that the Lieutenant
9 Governor, at any time, in his discretion, exempts from the application of
10 the provisions of this Chapter by means of a letter to the State Personnel
11 Director designating these employees.
12 (8) Instructional and research staff, physicians, and dentists of The
13 University of North Carolina.
14 (9) Employees whose salaries are fixed under the authority vested in the
15 Board of Governors of The University of North Carolina by the
16 provisions of G.S. 116-11(4), 116-11(5), and 116-14.
17 (10) Repealed by Session Laws 1991, c. 84, s. 1.
18 (11) North Carolina School of Science and Mathematics' employees whose
19 salaries are fixed in accordance with the provisions of G.S. 116-
20 235(c)(1) and G.S. 116-235(c)(2).
21 (12) Employees of the North Carolina Low-Level Radioactive Waste
22 Management Authority whose salaries are fixed pursuant to G.S. 104G-
23 5(g)(1) and G.S. 104G-5(g)(2).
24 (13) Employees of the North Carolina Hazardous Waste Management
25 Commission whose salaries are fixed pursuant to G.S. 130B-6(g)(1) and
26 G.S. 130B-6(g)(2).
27 (14) Employees of the North Carolina State Ports Authority.
28 (15) Employees of the North Carolina Global TransPark Authority.
29 (16) The executive director and one associate director of the North Carolina
30 Center for Nursing established under Article 9F of Chapter 90 of the
31 General Statutes.
32 (17) The executive director of the independent staff of the Information
33 Resources Management Commission established under G.S. 143B-
34 472.41A.
35 (18) Employees of the Tobacco Trust Fund Commission established in
36 Article 75 of Chapter 143 of the General Statutes.
37 (19) Employees of the Health and Wellness Trust Fund Commission
38 established in Article 21 of Chapter 130A of the General Statutes."
39

40 PART V. NO LEGISLATORS ON COMMISSIONS

41 Section 5. G.S. 120-123 is amended by adding two new subdivisions to read:
42 "**§ 120-123. Service by members of the General Assembly on certain boards and**
43 **commissions.**

1 No member of the General Assembly may serve on any of the following boards or
2 commissions:

3 ...
4 (70) The Tobacco Trust Fund Commission established in Article 75 of
5 Chapter 143 of the General Statutes.

6 (71) The Health and Wellness Trust Fund Commission established in Article
7 21 of Chapter 130A of the General Statutes."
8

9 **PART VI. CONFLICT OF INTEREST (TOBACCO)**

10 Section 6. G.S. 14-234 is amended by adding a new subsection to read:

11 "(d4) Subsection (a) of this section does not apply to an application for, or the receipt
12 of a grant or other financial assistance from, the Tobacco Trust Fund created under
13 Article 75 of Chapter 143 of the General Statutes by a member of the Tobacco Trust
14 Commission or an entity in which a member of the Commission has an interest provided
15 that the requirements of G.S. 143-717(g) are met."
16

17 **PART VII. NATIONAL TOBACCO GROWER SETTLEMENT** 18 **DISCRETIONARY TRUST CLARIFICATION**

19 Section 7. G.S. 36A-115(b) reads as rewritten:

20 "(b) Subsection (a) hereof shall not apply to a beneficiary's estate or interest in any
21 one or any combination of one or more of the trusts described below, in which the
22 beneficiary's estate or interest shall not be alienable either voluntarily or involuntarily.

23 (1) Discretionary Trust. – A trust wherein the amount to be received by the
24 beneficiary, including whether or not the beneficiary is to receive
25 anything at all, is within the discretion of the trustee. A discretionary
26 trust within the meaning of this subsection shall also include a trust for
27 the benefit of one or more classes of beneficiaries as defined in the trust,
28 wherein the amount to be received by any beneficiary or class of
29 beneficiaries, including whether or not that beneficiary or class of
30 beneficiaries is to receive anything at all, is determined by the board of
31 directors of a certification entity. A certification entity is one that
32 delivers on a yearly basis to the trustee a plan describing the categories
33 of persons or entities to whom trust distributions will be made and
34 explaining how each category falls within the definition of class or
35 classes of beneficiaries defined in the trust.

36 (2) Support Trust. – A trust wherein the trustee has no duty to pay or
37 distribute any particular amount to the beneficiary, but has only a duty
38 to pay or distribute to the beneficiary, or to apply on behalf of the
39 beneficiary such sums as the trustee shall, in his discretion, determine
40 are appropriate for the support, education or maintenance of the
41 beneficiary.

42 (3) Protective Trust. – A trust wherein the creating instrument provides that
43 the interest of the beneficiary shall cease if

- 1 a. The beneficiary alienates or attempts to alienate that interest; or
- 2 b. Any creditor attempts to reach the beneficiary's interest by
- 3 attachment, levy, or otherwise; or
- 4 c. The beneficiary becomes insolvent or bankrupt."

6 PART VIII. GOLDEN L.E.A.F. AMENDMENTS

7 Section 8.(a) Section 2(a) of S.L. 1999-2 reads as rewritten:

8 "Section 2(a). ~~Except as provided in subsection 2(b), transfer~~ The transfer and
9 assignment to the nonprofit corporation referred to in Section 1 of this act of the right,
10 title, and interest of the State to each annual installment payment constituting the fifty
11 percent (50%) of North Carolina's State Specific Account specified in subparagraph
12 VI.A.1 of the Consent Decree is hereby approved."

13 Section 8.(b) Section 2(b) of S.L. 1999-2 reads as rewritten:

14 "Section 2(b). ~~Unless provided otherwise by an act of the General Assembly before~~
15 ~~the installment payment is received in North Carolina's State Specific Account, the~~ The
16 right, title, and interest to each installment payment vests in the nonprofit corporation
17 upon receipt of that payment in North Carolina's State Specific Account for the public
18 charitable purposes of providing economic impact assistance to economically affected or
19 tobacco dependent regions of North Carolina. These funds shall be distributed to the
20 nonprofit corporation under the Consent Decree and shall constitute support of the
21 nonprofit corporation from the State of North Carolina."

22 Section 8.(c) Section 3 of S.L. 1999-2 reads as rewritten:

23 "Section 3. The Attorney General shall draft articles of incorporation for the
24 nonprofit corporation to enable the nonprofit corporation to carry out its mission as set
25 out in the Consent Decree. The articles of incorporation shall provide for the following:

- 26 (1) Consultation; reporting. – The nonprofit corporation shall consult with
27 the Joint Legislative Commission on Governmental Operations
28 ("Commission") prior to the corporation's board of directors (i) adopting
29 bylaws and (ii) adopting the annual operating budget. The nonprofit
30 corporation shall also report on its programs and activities to the
31 Commission on or before March 1 of each fiscal year and more
32 frequently as requested by the Commission. The report shall include
33 information on the activities and accomplishments during the fiscal
34 year, itemized expenditures during the fiscal year, planned activities and
35 goals for at least the next 12 months, and itemized anticipated
36 expenditures for the next fiscal year. The nonprofit corporation shall
37 also annually provide to the Commission an itemized report of its
38 administrative expenses and copies of its annual report and tax return
39 information.
- 40 (2) Public records; open meetings. – The nonprofit corporation is subject to
41 the Open Meetings Law as provided in Article 33C of Chapter 143 of
42 the General Statutes and the Public Records Act as provided in Chapter
43 132 of the General Statutes. The nonprofit corporation shall publish at

1 least annually a report, available to the public and filed with the Joint
2 Legislative Commission on Governmental Operations, of every
3 expenditure or distribution in furtherance of the public charitable
4 purposes of the nonprofit corporation.

5 (3) ~~Transfer of assets.—The nonprofit corporation may not dispose of~~
6 ~~assets pursuant to G.S. 55A-12-02 without the approval of the General~~
7 ~~Assembly.~~

8 (4) Charter repeal. – The charter of the nonprofit corporation may be
9 repealed at any time by the legislature pursuant to Article VIII, Section
10 1 of the North Carolina Constitution. ~~The nonprofit corporation may not~~
11 ~~amend its articles of incorporation without the approval of the General~~
12 ~~Assembly.~~

13 (5) Dissolution. – The nonprofit corporation may be dissolved pursuant to
14 Chapter 55A of the General Statutes, ~~by the General Assembly, Statutes~~ or
15 by the Court pursuant to the Consent Decree. Upon dissolution, all
16 unencumbered assets and funds of the nonprofit corporation, including
17 the right to receive future funds pursuant to Section 2 of this act, are
18 transferred to the Settlement Reserve Fund established pursuant to G.S.
19 143-16.4."

21 PART IX. APPLICABILITY AND EFFECTIVE DATE

22 Section 9.(a) Interpretation of Act. – The foregoing sections of this act provide an
23 additional and alternative method for the doing of the things authorized by the act, are
24 supplemental and additional to powers conferred by other laws, and do not derogate any
25 powers now existing.

26 Section 9.(b) References in this act to specific sections or Chapters of the
27 General Statutes are intended to be references to those sections or Chapters as amended
28 and as they may be amended from time to time by the General Assembly.

29 Section 9.(c) This act, being necessary for the health and welfare of the people
30 of the State, shall be liberally construed to effect its purposes.

31 Section 9.(d) If any provision of this act or its application is held invalid, the
32 invalidity does not affect other provisions or applications of this act that can be given
33 effect without the invalid provisions or application, and to this end the provisions of this
34 act are severable.

35 Section 10. Effective Date. – This act is effective when it becomes law.