

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 1999

HOUSE BILL 1431  
RATIFIED BILL

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, 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.

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

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

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

**PART II. HEALTH AND WELLNESS TRUST FUND AND HEALTH AND WELLNESS COMMISSION**

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

**"ARTICLE 6C.**

**"HEALTH AND WELLNESS TRUST FUND.**

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

(a) Fund Established. – There is established the Health and Wellness Trust Fund in the Office of the State Treasurer that shall be used to develop a comprehensive plan to finance programs and initiatives to improve the health and wellness of the people of North Carolina. As used in this Article, the term 'Fund' means the Health and Wellness Trust Fund. It is the intent of the General Assembly that the funds provided pursuant to

this Article to address the health needs of North Carolinians be used to supplement, not supplant, existing funding of health and wellness programs.

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

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

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

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

- (1) To address the health needs of vulnerable and underserved populations in North Carolina.
- (2) To fund programs and initiatives that include research, education, prevention, and treatment of health problems in North Carolina and to increase the capacity of communities to respond to the public's health needs.
- (3) To develop a comprehensive, community-based plan with goals and objectives to improve the health and wellness of the people of North Carolina with a priority on preventing, reducing, and remedying the health effects of tobacco use and with an emphasis on reducing youth tobacco use. The plan shall include measurable health and wellness objectives and a proposed timetable for achieving these objectives. In developing the plan, the Commission shall consider all facets of health, including prevention, education, treatment, research, and related areas.

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

**"§ 147-86.31. Health and Wellness Trust Fund; eligibility for grants; annual reports from non-State agencies.**

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

- (1) A State agency.

- (2) A local government or other political subdivision of the State or a combination of such entities.
- (3) A nonprofit corporation which has as a significant purpose promoting the public's health, limiting youth access to tobacco products, or reducing the health consequences of tobacco use.

(b) Annual Report From Non-State Agencies. – Grant or financial assistance recipients that are non-State agencies shall submit an annual report to the Commission. The report shall include information concerning how the funds are used, the intended goals and objectives of the recipient's grant proposal or program initiative, and the results of an evaluation of the extent to which the outcomes of the initiatives or proposal achieved those goals and objectives.

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

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

(b) Membership. – The Commission shall consist of 18 members. The members shall not be employed by or be agents of tobacco product manufacturing companies. The Commission shall be appointed as follows: six members by the Governor, six members by the President Pro Tempore of the Senate, and six members by the Speaker of the House of Representatives. These members shall be appointed as follows:

- (1) The Governor shall make the following appointments:
  - a. A person involved in public health.
  - b. A person involved in the operation of health care delivery systems.
  - c. A health care practitioner.
  - d. An at-large appointee.
  - e. An at-large appointee.
  - f. An at-large appointee.
- (2) The President Pro Tempore of the Senate shall make the following appointments:
  - a. A person involved in health research.
  - b. A person involved in tobacco-related health care issues.
  - c. A person involved in health promotion and disease prevention.
  - d. An at-large appointee.
  - e. An at-large appointee.
  - f. An at-large appointee.
- (3) The Speaker of the House of Representatives shall make the following appointments:
  - a. A person involved in health policy trends.
  - b. A person involved with health care for underserved populations.
  - c. A person involved with child health care.
  - d. An at-large appointee.
  - e. An at-large appointee.
  - f. An at-large appointee.

It is the intent of the General Assembly that the appointing authorities, in appointing members, shall appoint members who represent the geographic, political, gender, and racial diversity of the State.

(c) Initial Appointments; Term Limits; Officers. – To provide for a staggered membership, the members initially appointed pursuant to sub-subdivisions (b)(1)a., (1)b., (2)d., and (3)d. of this section shall serve one-year terms ending on June 30, 2001. The members initially appointed pursuant to sub-subdivisions (b)(2)c., (2)e., (3)a., and (3)e. shall serve two-year terms ending on June 30, 2002. The members initially

appointed pursuant to sub-subdivisions (b)(1)c., (1)d., (1)e., (2)b., and (3)c. shall serve three-year terms ending June 30, 2003. The remaining members initially appointed pursuant to subsection (b) of this section shall serve four-year terms ending June 30, 2004.

Except as provided for the initial members under this subsection, members shall serve four-year terms beginning July 1. No member may serve more than two full consecutive terms. Members may continue to serve beyond their terms until their successors are duly appointed, but any holdover shall not affect the expiration date of the succeeding term. A member may be removed from the Commission for cause by the authority that appointed the member.

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

(d) Vacancies. – Vacancies shall be filled by the designated appointing authority for the remainder of the unexpired term.

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

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

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

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

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

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

(a) The Commission shall do the following:

- (1) Allocate moneys from the Fund as grants. A grant may be awarded only for a program or initiative that satisfies the criteria and furthers the purposes of this Article, but the provisions of this Article shall be liberally construed. The Commission shall strive to avoid imposing any unnecessary barriers in the grant application process.
- (2) Develop criteria for awarding grants under this Article. The criteria shall include types of programs and initiatives to be funded, including programs which address the short- and long-term health and wellness of the citizens of North Carolina.
- (3) Develop criteria by which to measure the outcomes of funded programs to evaluate the extent to which those programs achieved the goals for which funds were awarded.
- (4) Develop a mechanism with which to evaluate individual applications.

- (5) Ensure that good faith efforts are made to achieve federal mandates targeting the reduction of youth access to tobacco products.
- (6) Administer the provisions of this Article.
- (7) Adopt rules to implement this Article.

(b) The Commission is authorized to hire staff or contract for other expertise for the administration of the Fund.

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

**"§ 147-86.34. Advisory Council.**

The Commission shall create an Advisory Council to advise it with regard to issues as requested by the Commission. The Advisory Council shall include the Secretary of the Department of Health and Human Services, the State Health Director, the Dean of the School of Public Health of the University of North Carolina, and others the Commission considers necessary.

**"§ 147-86.35. Health and Wellness Trust Fund; reporting requirements.**

(a) The chair of the Commission shall report each year by November 1 to the Joint Legislative Commission on Governmental Operations and to the chairs of the Joint Legislative Health Care Oversight Committee regarding implementation of this Article, including a report on funds disbursed during the fiscal year by amount, purpose, and category of recipient, and other information as requested by the Joint Legislative Commission on Governmental Operations. The annual report shall also include a summary of each recipient's annual report submitted to the Health and Wellness Trust Fund Commission pursuant to G.S. 147-86.31(b) and an analysis of progress toward the goals and objectives of any comprehensive, community-based plan established pursuant to G.S. 147-86.30(e)(3). A written copy of the annual report shall also be sent to the Legislative Library by November 1 each year. Written reports shall also be sent on a quarterly basis to the Joint Legislative Commission on Governmental Operations.

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

**"§ 147-86.36. Health and Wellness Trust Fund; open meeting and public records requirements.**

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

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

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

**"ARTICLE 75.**

**"TOBACCO TRUST FUND.**

**"§ 143-715. Policy; purpose.**

The General Assembly finds:

- (1) For many years, the State and its prosperity have been supported by its agricultural economy and particularly by the tobacco-related segment of the agricultural economy. The Master Settlement Agreement is expected to cause significant economic hardship upon the tobacco-related segment of the agricultural economy in that it is expected to result in reduced demand, sales, and prices for tobacco as an agricultural product.
- (2) Tobacco producers, tobacco allotment holders, and persons engaged in tobacco-related businesses are entitled to indemnification for the adverse economic effects in the State resulting from the Master

- Settlement Agreement, tobacco producers, allotment holders, and persons engaged in tobacco-related businesses are entitled to compensation for the economic losses resulting from lost quota in this State, and tobacco producers are entitled to compensation for the decline in value of tobacco-related personal property assets and declining market conditions in this State resulting from the Master Settlement Agreement, to the extent that funds are available in the Tobacco Trust Fund to address those purposes.
- (3) Even in the absence of the Master Settlement Agreement, the tobacco-related segment of the State's economy is experiencing severe economic hardship as it confronts a national decline in the use of, and demand for, tobacco products, which decline is expected to continue. At present, the tobacco producers, tobacco allotment holders, and persons engaged in tobacco-related businesses are facing an economic crisis that threatens their health and survival. Therefore, in addition to indemnification and compensation for losses in this State resulting from the Master Settlement Agreement, the public interest will be served by the funding of qualified agricultural programs that support, foster, encourage, and facilitate a strong agricultural economy in North Carolina. To the extent that funds are available in the Tobacco Trust Fund, expenditure of those funds to finance qualified agricultural programs is in the public interest.
- (4) It is a public purpose for these funds to be expended in this manner, and it is public service for these persons to accept these funds to the end that conditions of unemployment and fiscal distress may be alleviated or avoided, more stable local economies may be created, local tax bases may be stabilized and maintained, natural resources may be optimally used, and the general public may be benefited.

**"§ 143-716. Definitions.**

The following definitions apply in this Article:

- (1) Commission. – The Tobacco Trust Fund Commission.
- (2) Compensatory programs. – Programs developed by the Commission to identify, locate, compensate, and indemnify tobacco producers, allotment holders, and persons engaged in tobacco-related businesses who have suffered actual economic losses in this State due to lost quota, the decline in value of tobacco-related personal property assets, and declining market conditions resulting from the Master Settlement Agreement or declines in the tobacco-related segment of the State's economy.
- (3) Fund. – The Tobacco Trust Fund.
- (4) Master Settlement Agreement. – The settlement agreement between certain tobacco manufacturers and the states, as incorporated in the consent decree entered in the action of State of North Carolina v. Philip Morris, Incorporated, et al., 98 CVS 14377, in the General Court of Justice, Superior Court Division, Wake County, North Carolina.
- (5) National Tobacco Grower Settlement Trust. – The trust established by tobacco companies to provide payments to tobacco growers and allotment holders in 14 states for the purposes of ameliorating potential adverse economic consequences of likely reduction in demand, sales, and prices for tobacco as an agricultural product as a result of the Master Settlement Agreement.
- (6) Qualified agricultural programs. – Programs developed by the Commission to support and foster the vitality and solvency of the tobacco-related segment of the State's agricultural economy.

particularly the segment adversely affected by the Master Settlement Agreement, with the objective of alleviating and avoiding unemployment, preserving, and increasing local tax bases, and encouraging the economic stability of participants in the State's agricultural economy. Examples of qualified agricultural programs include programs to finance the modernization of farming equipment, programs to finance the conversion of existing equipment to conform to environmental and other regulatory requirements, and programs to finance the conversion or replacement of equipment in order to cultivate crops that are more profitable than are currently being cultivated.

- (7) Tobacco product component business. – An individual, partnership, limited liability company, corporation, or other commercial entity that engages in the manufacture of component products for use in the manufacture of tobacco products.
- (8) Tobacco-related business. – An individual, partnership, limited liability company, corporation, or other commercial entity that provides products or services used directly in (i) the production of tobacco, or (ii) support of the business of the production or sale of tobacco. The term does not include the manufacturing of tobacco products or the sale of tobacco products at wholesale or retail.
- (9) Tobacco-related employment. – Employment in a tobacco-related business, or in the manufacturing of tobacco products or the component products used in the manufacture of tobacco products. The term does not include persons employed in the sale of tobacco products at wholesale or retail.

**"§ 143-717. Commission.**

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

(b) Membership. – The Commission shall consist of 18 members. The Commission shall be appointed as follows: six members by the Governor, six members by the President Pro Tempore of the Senate, and six members by the Speaker of the House of Representatives. The members shall be appointed as follows:

- (1) The Governor shall make the following appointments:
  - a. A flue-cured tobacco farmer.
  - b. A flue-cured tobacco farmer.
  - c. A person in or displaced from tobacco-related employment.
  - d. An at-large appointee.
  - e. An at-large appointee.
  - f. An at-large appointee.
- (2) The President Pro Tempore of the Senate shall make the following appointments:
  - a. A flue-cured tobacco farmer.
  - b. A flue-cured tobacco farmer.
  - c. A burley allotment holder who is also a burley tobacco farmer.
  - d. An at-large appointee.
  - e. An at-large appointee.
  - f. An at-large appointee.
- (3) The Speaker of the House of Representatives shall make the following appointments:
  - a. A flue-cured tobacco farmer.

- b. A flue-cured allotment holder who is not also a flue-cured tobacco farmer.
- c. A burley tobacco farmer.
- d. An at-large appointee.
- e. An at-large appointee.
- f. An at-large appointee.

It is the intent of the General Assembly that the appointing authorities, in appointing members, shall appoint members who represent the geographic, political, gender, and racial diversity of the State. It is the intent of the General Assembly that at least one-half of the members of the Commission be tobacco farmers.

Except as provided for the initial members under subsection (c) of this section, members shall serve four-year terms beginning July 1. No member may serve more than two full consecutive terms. Members may continue to serve beyond their terms until their successors are duly appointed, but any holdover shall not affect the expiration date of the succeeding term. Vacancies shall be filled by the designated appointing authority for the remainder of the unexpired term. A member may be removed from office for cause by the authority that appointed that member.

(c) Initial Membership; Staggering. – To provide for a staggered membership, the members initially appointed to the Commission shall be appointed to staggered terms. Of the initial appointments to the Commission, the members initially appointed pursuant to sub-subdivisions (b)(1)a., (1)b., (2)d., and (3)d. of this section shall serve one-year terms ending on June 30, 2001. The members initially appointed pursuant to sub-subdivisions (b)(2)c., (2)e., (3)a., and (3)e. shall serve two-year terms ending on June 30, 2002. The members initially appointed pursuant to sub-subdivisions (b)(1)c., (1)d., (1)e., (2)b., and (3)c. of this section shall serve three-year terms ending June 30, 2003. The remaining members initially appointed pursuant to subsection (b) of this section shall serve four-year terms ending June 30, 2004.

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

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

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

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

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

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



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

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

**"§ 143-718. Powers and duties.**

The Commission shall have the following powers and duties:

- (1) To administer the provisions of this Article.
- (2) To develop compensatory programs and qualified agriculture programs, including guidelines and criteria for eligibility for and disbursement of funds, the forms of direct and indirect economic assistance to be awarded, and procedures for applying for and reviewing applications for assistance from the Fund. In developing guidelines and criteria for eligibility and disbursement of funds, the Commission may consult with and otherwise obtain assistance from the State and local offices of the Farm Service Agency and other agencies of the United States Department of Agriculture.
- (3) To provide financial assistance to eligible recipients, in carrying out compensatory programs and qualified agricultural programs.
- (4) To hire staff for the administration of the Fund.
- (5) To contract with other persons to assist in the administration of the Commission's programs.
- (6) To accept gifts or grants from other sources.
- (7) To adopt rules to implement this Article.

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

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

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

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

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

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

- (1) Indemnify tobacco producers, allotment holders, and persons engaged in tobacco-related businesses from the adverse economic effects in this State of the Master Settlement Agreement.
- (2) Compensate tobacco producers, allotment holders, and persons engaged in tobacco-related businesses for economic loss resulting from lost quota and compensate tobacco producers for the decline in value of tobacco-related personal property assets and declining market conditions resulting from the Master Settlement Agreement in this State.

- (3) Compensate individuals displaced from tobacco-related employment in this State as a result of the adverse economic effects of the Master Settlement Agreement.
- (4) Compensate tobacco product component businesses that are (i) adversely impacted by the Master Settlement Agreement and that (ii) need financial assistance to retool machinery or equipment or to retrain workers, in order to convert to the production of new products or nontobacco use of existing products, or to effect other similar changes.

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

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

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

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

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

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

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

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

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

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

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

**"§ 143-722. Reporting.**

(a) The chair of the Commission shall report each year by November 1 to the Joint Legislative Commission on Governmental Operations and the chairs of the House and Senate Appropriations Committees regarding the implementation of this Article, including a report on funds disbursed during the fiscal year by amount, purpose, and category of recipient, and other information as requested by the Joint Legislative

Commission on Governmental Operations. A written copy of the report shall also be sent to the Legislative Library by November 1 each year.

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

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

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

**PART IV. STATE PERSONNEL ACT EXEMPTION**

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

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

- (1) Constitutional officers of the State.
- (2) Officers and employees of the Judicial Department.
- (3) Officers and employees of the General Assembly.
- (4) Members of boards, committees, commissions, councils, and advisory councils compensated on a per diem basis.
- (5) Officials or employees whose salaries are fixed by the General Assembly, or by the Governor, or by the Governor and Council of State, or by the Governor subject to the approval of the Council of State.
- (6) Employees of the Office of the Governor that the Governor, at any time, in his discretion, exempts from the application of the provisions of this Chapter by means of a letter to the State Personnel Director designating these employees.
- (7) Employees of the Office of the Lieutenant Governor, that the Lieutenant Governor, at any time, in his discretion, exempts from the application of the provisions of this Chapter by means of a letter to the State Personnel Director designating these employees.
- (8) Instructional and research staff, physicians, and dentists of The University of North Carolina.
- (9) Employees whose salaries are fixed under the authority vested in the Board of Governors of The University of North Carolina by the provisions of G.S. 116-11(4), 116-11(5), and 116-14.
- (10) Repealed by Session Laws 1991, c. 84, s. 1.
- (11) North Carolina School of Science and Mathematics' employees whose salaries are fixed in accordance with the provisions of G.S. 116-235(c)(1) and G.S. 116-235(c)(2).
- (12) Employees of the North Carolina Low-Level Radioactive Waste Management Authority whose salaries are fixed pursuant to G.S. 104G-5(g)(1) and G.S. 104G-5(g)(2).
- (13) Employees of the North Carolina Hazardous Waste Management Commission whose salaries are fixed pursuant to G.S. 130B-6(g)(1) and G.S. 130B-6(g)(2).
- (14) Employees of the North Carolina State Ports Authority.
- (15) Employees of the North Carolina Global TransPark Authority.
- (16) The executive director and one associate director of the North Carolina Center for Nursing established under Article 9F of Chapter 90 of the General Statutes.

- (17) The executive director of the independent staff of the Information Resources Management Commission established under G.S. 143B-472.41A.
- (18) Employees of the Tobacco Trust Fund Commission established in Article 75 of Chapter 143 of the General Statutes.
- (19) Employees of the Health and Wellness Trust Fund Commission established in Article 21 of Chapter 130A of the General Statutes."

#### **PART V. NO LEGISLATORS ON COMMISSIONS**

Section 5. G.S. 120-123 is amended by adding two new subdivisions to read:

#### **"§ 120-123. Service by members of the General Assembly on certain boards and commissions.**

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

- (70) The Tobacco Trust Fund Commission established in Article 75 of Chapter 143 of the General Statutes.
- (71) The Health and Wellness Trust Fund Commission established in Article 21 of Chapter 130A of the General Statutes."

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

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

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

#### **PART VII. NATIONAL TOBACCO GROWER SETTLEMENT DISCRETIONARY TRUST CLARIFICATION**

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

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

- (1) Discretionary Trust. – A trust wherein the amount to be received by the beneficiary, including whether or not the beneficiary is to receive anything at all, is within the discretion of the trustee. A discretionary trust within the meaning of this subsection shall also include a trust for the benefit of one or more classes of beneficiaries as defined in the trust, wherein the amount to be received by any beneficiary or class of beneficiaries, including whether or not that beneficiary or class of beneficiaries is to receive anything at all, is determined by the board of directors of a certification entity. A certification entity is one that delivers on a yearly basis to the trustee a plan describing the categories of persons or entities to whom trust distributions will be made and explaining how each category falls within the definition of class or classes of beneficiaries defined in the trust.
- (2) Support Trust. – A trust wherein the trustee has no duty to pay or distribute any particular amount to the beneficiary, but has only a duty to pay or distribute to the beneficiary, or to apply on behalf of the beneficiary such sums as the trustee shall, in his discretion, determine are appropriate for the support, education or maintenance of the beneficiary.
- (3) Protective Trust. – A trust wherein the creating instrument provides that the interest of the beneficiary shall cease if

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

**PART VIII. APPLICABILITY AND EFFECTIVE DATE**

Section 8.(a) Interpretation of Act. – The foregoing sections of this act provide an additional and alternative method for the doing of the things authorized by the act, are supplemental and additional to powers conferred by other laws, and do not derogate any powers now existing.

Section 8.(b) References in this act to specific sections or Chapters of the General Statutes are intended to be references to those sections or Chapters as amended and as they may be amended from time to time by the General Assembly.

Section 8.(c) This act, being necessary for the health and welfare of the people of the State, shall be liberally construed to effect its purposes.

Section 8.(d) If any provision of this act or its application is held invalid, the invalidity does not affect other provisions or applications of this act that can be given effect without the invalid provisions or application, and to this end the provisions of this act are severable.

Section 9. Effective Date. – This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 13th day of July, 2000.

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Marc Basnight  
President Pro Tempore of the Senate

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James B. Black  
Speaker of the House of Representatives

\_\_\_\_\_  
James B. Hunt, Jr.  
Governor

Approved \_\_\_\_\_ .m. this \_\_\_\_\_ day of \_\_\_\_\_ , 2000