

CHAPTER 339

GOVERNMENT - STATE

SENATE BILL 99-231

BY SENATORS Lacy, Owen, Tanner, Anderson, Epps, Hernandez, Phillips, Powers, Tebedo, Weddig, and Wham;
also REPRESENTATIVES Tool, Berry, Saliman, Alexander, Bacon, Coleman, Decker, George, Hagedorn, Hoppe, Kaufman,
Leyba, Plant, S. Williams, and Zimmerman.

AN ACT

CONCERNING TOBACCO LITIGATION SETTLEMENT MONEYS, AND, IN CONNECTION THEREWITH,
REPLACING THE TOBACCO LITIGATION SETTLEMENT FUND WITH THE TOBACCO LITIGATION
SETTLEMENT CASH FUND, CREATING THE TOBACCO LITIGATION SETTLEMENT TRUST FUND, AND
AUTHORIZING INVESTMENT OF TOBACCO LITIGATION SETTLEMENT MONEYS HELD IN ESCROW FOR THE
STATE IN ACCORDANCE WITH THE ESCROW AGREEMENT ENTERED INTO IN CONNECTION WITH THE
MASTER SETTLEMENT AGREEMENT.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. 24-22-115, Colorado Revised Statutes, as enacted by Senate Bill 99-172, enacted at the First Regular Session of the Sixty-second General Assembly, is amended to read:

24-22-115. Tobacco litigation settlement cash fund - creation. There is hereby created in the state treasury the tobacco litigation settlement CASH fund. The CASH fund shall consist of all moneys transmitted to the state treasurer in accordance with the terms of the master settlement agreement, the smokeless tobacco master settlement agreement, and the consent decree approved and entered by the court in the case denominated *State of Colorado, ex rel. Gale A. Norton, Attorney General v. R.J. Reynolds Tobacco Co.; American Tobacco Co., Inc.; Brown & Williamson Tobacco Corp.; Liggett Group Inc.; Lorillard Tobacco Company; Phillip Morris, Inc.; United States Tobacco Co.; B.A.T. Industries, P.L.C.; The Council For Tobacco Research --U.S.A., Inc.; and Tobacco Institute, Inc.*, Case No. 97 CV 3432, in the district court for the city and county of Denver OTHER THAN MONEYS CREDITED TO THE TOBACCO LITIGATION SETTLEMENT TRUST FUND PURSUANT TO SECTION 24-22-115.5. All interest derived from the deposit and investment of moneys in the CASH fund shall be credited to the CASH fund. All moneys in the CASH fund shall be subject to appropriation by the general assembly for such purposes as

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

may be authorized by law in accordance with the terms of the settlement agreements and the consent decree. At the end of any fiscal year, all unexpended and unencumbered moneys AND ALL MONEYS NOT APPROPRIATED FOR THE FOLLOWING FISCAL YEAR in the CASH fund shall ~~remain therein and shall not~~ be transferred or credited to the ~~general fund or any other~~ TOBACCO LITIGATION SETTLEMENT TRUST fund.

SECTION 2. Article 22 of title 24, Colorado Revised Statutes, is amended BY THE ADDITION OF THE FOLLOWING NEW SECTIONS to read:

24-22-115.5. Legislative declaration - tobacco litigation settlement trust fund - creation. (1) THE GENERAL ASSEMBLY HEREBY FINDS AND DECLARES THAT:

(a) THE PURPOSE OF THE TOBACCO LITIGATION SETTLEMENT TRUST FUND CREATED BY THIS SECTION IS TO PROVIDE A PERMANENT SOURCE OF TOBACCO LITIGATION SETTLEMENT MONEYS SO THAT ALL PROGRAMS OR FUNDS AUTHORIZED BY LAW TO BE FUNDED WITH TOBACCO LITIGATION SETTLEMENT MONEYS CAN BE FULLY FUNDED WITHOUT APPROPRIATIONS OF GENERAL FUND MONEYS; AND

(b) IT IS THE INTENT OF THE GENERAL ASSEMBLY THAT ALL INTEREST DERIVED FROM THE DEPOSIT AND INVESTMENT OF MONEYS IN THE TOBACCO LITIGATION SETTLEMENT TRUST FUND BE RETAINED IN THE TRUST FUND UNTIL SUCH TIME AS ACTUARIALLY SOUND PROJECTIONS OF FUTURE INTEREST EARNINGS INDICATE THAT THE INTEREST TO BE DERIVED FROM THE DEPOSIT AND INVESTMENT OF MONEYS IN THE TRUST FUND WILL BE SUFFICIENT TO FULLY FUND ANY PROGRAMS OR FUNDS AUTHORIZED BY LAW TO BE FUNDED BY TOBACCO LITIGATION SETTLEMENT MONEYS.

(2) THERE IS HEREBY CREATED IN THE STATE TREASURY THE TOBACCO LITIGATION SETTLEMENT TRUST FUND. THE PRINCIPAL OF THE TRUST FUND SHALL CONSIST OF THE FIRST THIRTY-THREE MILLION DOLLARS OF ALL MONEYS, OTHER THAN ATTORNEYS FEES AND COSTS, PAID TO THE STATE TREASURER IN ACCORDANCE WITH THE TERMS OF THE MASTER SETTLEMENT AGREEMENT, THE SMOKELESS TOBACCO MASTER SETTLEMENT AGREEMENT, AND THE CONSENT DECREE APPROVED AND ENTERED BY THE COURT IN THE CASE DENOMINATED *STATE OF COLORADO, EX REL. GALE A. NORTON, ATTORNEY GENERAL V. R.J. REYNOLDS TOBACCO Co.; AMERICAN TOBACCO Co., Inc.; BROWN & WILLIAMSON TOBACCO CORP.; LIGGETT GROUP INC.; LORILLARD TOBACCO COMPANY; PHILLIP MORRIS, Inc.; UNITED STATES TOBACCO Co.; B.A.T. INDUSTRIES, P.L.C.; THE COUNCIL FOR TOBACCO RESEARCH --U.S.A., Inc.; AND TOBACCO INSTITUTE, Inc.*, CASE No. 97 CV 3432, IN THE DISTRICT COURT FOR THE CITY AND COUNTY OF DENVER, NOT LESS THAN TWENTY PERCENT OF ALL ADDITIONAL MONEYS, OTHER THAN ATTORNEYS FEES AND COSTS, PAID TO THE STATE TREASURER IN ACCORDANCE WITH THE SETTLEMENT AGREEMENTS AND THE CONSENT DECREE, AND ANY MONEYS TRANSFERRED TO THE TRUST FUND FROM THE TOBACCO LITIGATION SETTLEMENT CASH FUND AT THE END OF ANY FISCAL YEAR PURSUANT TO SECTION 24-22-115. THE PRINCIPAL OF THE TRUST FUND SHALL NOT BE EXPENDED OR APPROPRIATED FOR ANY PURPOSE. ALL INTEREST DERIVED FROM THE DEPOSIT AND INVESTMENT OF MONEYS IN THE TRUST FUND SHALL BE CREDITED TO THE TRUST FUND. SUCH INTEREST SHALL BECOME SUBJECT TO APPROPRIATION BY THE GENERAL ASSEMBLY FOR THE FUNDING OF ANY PROGRAMS OR FUNDS AUTHORIZED BY LAW TO BE FUNDED BY TOBACCO LITIGATION SETTLEMENT MONEYS AT SUCH TIME AS THE STATE AUDITOR CERTIFIES THAT ACTUARIALLY SOUND PROJECTIONS OF FUTURE

INTEREST EARNINGS INDICATE THAT SUCH INTEREST WILL BE SUFFICIENT TO FULLY FUND SUCH PROGRAMS AND FUNDS. NO PART OF SUCH TRUST FUND, PRINCIPAL OR INTEREST, SHALL BE TRANSFERRED TO THE GENERAL FUND OR ANY OTHER FUND OR USED OR APPROPRIATED EXCEPT AS PROVIDED IN THIS SECTION.

24-22-115.6. Miscellaneous tobacco litigation settlement moneys.

(1) NOTWITHSTANDING THE PROVISIONS OF SECTIONS 24-22-115 AND 24-22-115.5, ANY TOBACCO LITIGATION SETTLEMENT MONEYS RECEIVED TO COMPENSATE THE STATE FOR ATTORNEY FEES, COURT COSTS, OR OTHER EXPENSES INCURRED SHALL BE SUBJECT TO APPROPRIATION BY THE GENERAL ASSEMBLY IF THE PURPOSE FOR WHICH SUCH MONEYS MAY BE EXPENDED IS NOT SPECIFIED OR APPROVED BY A COURT OR OTHER NON-COLORADO AUTHORITY.

(2) WHEN ANY AGENCY OF STATE GOVERNMENT PROPOSES TO EXPEND CUSTODIAL MONEYS THAT ARE TOBACCO LITIGATION SETTLEMENT MONEYS RECEIVED TO COMPENSATE THE STATE FOR ATTORNEY FEES, COURT COSTS, OR OTHER EXPENSES INCURRED, THE AGENCY SHALL NOTIFY THE JOINT BUDGET COMMITTEE IN WRITING AND SHALL EXPLAIN THE BASIS FOR DETERMINING THAT THE MONEYS ARE CUSTODIAL AND SHALL SET FORTH THE PURPOSE FOR WHICH THE AGENCY INTENDS TO EXPEND SUCH MONEYS.

SECTION 3. 24-22-116 (1) (i) and (2), Colorado Revised Statutes, as enacted by Senate Bill 99-172, enacted at the First Regular Session of the Sixty-second General Assembly, are amended to read:

24-22-116. Legislative declaration - exclusion of revenue in tobacco litigation settlement cash fund and tobacco litigation settlement trust fund from fiscal year spending. (1) The general assembly hereby finds and declares that:

(i) All of the moneys received by the state in accordance with the terms of the master settlement agreement, the smokeless tobacco master settlement agreement, and the consent decree entered by the court in the case denominated *State of Colorado, ex rel. Gale A. Norton, Attorney General v. R.J. Reynolds Tobacco Co.; American Tobacco Co., Inc.; Brown & Williamson Tobacco Corp.; Liggett Group Inc.; Lorillard Tobacco Company; Phillip Morris, Inc.; United States Tobacco Co.; B.A.T. Industries, P.L.C.; The Council For Tobacco Research --U.S.A., Inc.; and Tobacco Institute, Inc.*, Case No. 97 CV 3432, in the district court for the city and county of Denver, and credited to the tobacco litigation settlement CASH fund created in section 24-22-115 OR THE TOBACCO LITIGATION SETTLEMENT TRUST FUND CREATED IN SECTION 24-22-115.5 are in settlement of the state of Colorado's antitrust, consumer protection, public nuisance, racketeering, and other statutory claims for relief against defendants in said action;

(2) (a) For purposes of section 20 of article X of the state constitution and article 77 of this title, any moneys credited to the tobacco litigation settlement CASH fund in accordance with section 24-22-115 OR THE TOBACCO LITIGATION SETTLEMENT TRUST FUND IN ACCORDANCE WITH SECTION 24-22-115.5 are damage awards, as defined in section 24-77-102 (2), or interest accruing on such damage awards. Any moneys credited to or expended from the tobacco litigation settlement CASH fund OR THE TOBACCO LITIGATION SETTLEMENT TRUST FUND are not included in state fiscal year spending, as defined in section 24-77-102 (17), for any state fiscal year.

(b) For purposes of section 20 of article X of the state constitution and article 77 of this title, any moneys expended from the tobacco litigation settlement CASH fund created in section 24-22-115 OR THE TOBACCO LITIGATION SETTLEMENT TRUST FUND CREATED IN SECTION 24-22-115.5 and received by any local government are damage awards or interest accruing on such damage awards and are not included in the fiscal year spending of the receiving local government for any budget year.

SECTION 4. 24-36-113, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

24-36-113. Investment of state moneys - limitations. (6) NOTWITHSTANDING ANY RESTRICTIONS ON THE INVESTMENT OF STATE MONEYS SET FORTH IN THIS SECTION OR IN ANY OTHER PROVISION OF LAW, THE STATE TREASURER MAY AUTHORIZE THE ESCROW AGENT APPOINTED PURSUANT TO SECTION 1 OF THE ESCROW AGREEMENT ENTERED INTO IN CONNECTION WITH, AND ATTACHED AS EXHIBIT B TO, THE MASTER SETTLEMENT AGREEMENT ENTERED BY THE COURT IN THE CASE DENOMINATED *STATE OF COLORADO, EX REL. GALE A. NORTON, ATTORNEY GENERAL V. R.J. REYNOLDS TOBACCO CO.; AMERICAN TOBACCO CO., INC.; BROWN & WILLIAMSON TOBACCO CORP.; LIGGETT GROUP INC.; LORILLARD TOBACCO COMPANY; PHILLIP MORRIS, INC.; UNITED STATES TOBACCO CO.; B.A.T. INDUSTRIES, P.L.C.; THE COUNCIL FOR TOBACCO RESEARCH --U.S.A., INC.; AND TOBACCO INSTITUTE, INC.*, CASE No. 97 CV 3432, IN THE DISTRICT COURT FOR THE CITY AND COUNTY OF DENVER, TO INVEST ANY TOBACCO LITIGATION SETTLEMENT MONEYS HELD IN ESCROW FOR THE STATE OF COLORADO PURSUANT TO THE MASTER SETTLEMENT AGREEMENT AND THE ESCROW AGREEMENT IN ANY MANNER PERMITTED BY SECTION 5 OF THE ESCROW AGREEMENT.

SECTION 5. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Became Law: June 5, 1999