

CHAPTER 66

GOVERNMENT - STATE

SENATE BILL 99-172

BY SENATORS Lacy, Owen, Tanner, and Hernandez;
also REPRESENTATIVES Tool, Berry, Saliman, Alexander, Bacon, Clarke, Gotlieb, Hagedorn, Lawrence, Leyba, Mace,
Morrison, Plant, Smith, Spradley, Swenson, Tupa, and Vigil.

AN ACT

CONCERNING THE CREATION OF THE TOBACCO LITIGATION SETTLEMENT FUND.

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

SECTION 1. Article 22 of title 24, Colorado Revised Statutes, is amended BY THE ADDITION OF THE FOLLOWING NEW SECTIONS to read:

24-22-115. Tobacco litigation settlement fund - creation. THERE IS HEREBY CREATED IN THE STATE TREASURY THE TOBACCO LITIGATION SETTLEMENT FUND. THE 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. ALL INTEREST DERIVED FROM THE DEPOSIT AND INVESTMENT OF MONEYS IN THE FUND SHALL BE CREDITED TO THE FUND. ALL MONEYS IN THE FUND SHALL BE SUBJECT TO APPROPRIATION BY THE GENERAL ASSEMBLY FOR SUCH PURPOSES AS 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 IN THE FUND SHALL REMAIN THEREIN AND SHALL NOT BE TRANSFERRED OR CREDITED TO THE GENERAL FUND OR ANY OTHER FUND.

24-22-116. Legislative declaration - exclusion of revenue in tobacco litigation settlement fund from fiscal year spending. (1) THE GENERAL ASSEMBLY HEREBY

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

FINDS AND DECLARES THAT:

(a) IN 1992, THE VOTERS OF THIS STATE APPROVED SECTION 20 OF ARTICLE X OF THE STATE CONSTITUTION, WHICH LIMITS FISCAL YEAR SPENDING OF STATE GOVERNMENT;

(b) SECTION 20 (2) (e) OF ARTICLE X DEFINES "FISCAL YEAR SPENDING" TO INCLUDE ALL REVENUES AND EXPENDITURES EXCEPT THOSE FOR REFUNDS AND THOSE FROM CERTAIN SOURCES, SUCH AS FEDERAL FUNDS AND DAMAGE AWARDS;

(c) IN EXERCISING ITS LEGISLATIVE PREROGATIVE TO ENACT LEGISLATION TO IMPLEMENT SECTION 20 OF ARTICLE X AS IT RELATES TO STATE GOVERNMENT, THE GENERAL ASSEMBLY ENACTED ARTICLE 77 OF THIS TITLE DURING THE 1993 REGULAR SESSION;

(d) AS PART OF THIS IMPLEMENTING LEGISLATION, THE GENERAL ASSEMBLY DEFINED CERTAIN TERMS THAT WERE NECESSARY FOR THE IMPLEMENTATION OF SECTION 20 OF ARTICLE X BUT WERE NOT DEFINED BY THE CONSTITUTIONAL PROVISION;

(e) THE GENERAL ASSEMBLY DEFINED "DAMAGE AWARD" TO INCLUDE ANY PECUNIARY COMPENSATION RECEIVED BY THE STATE AS A RESULT OF ANY JUDGMENT OR ALLOWANCE IN FAVOR OF THE STATE;

(f) THE EXCLUSION FROM STATE FISCAL YEAR SPENDING OF MONETARY AWARDS TO THE STATE AS THE RESULT OF COURT ACTION IS CONSISTENT WITH THE PURPOSE OF SECTION 20 OF ARTICLE X, WHICH IS TO PROTECT TAXPAYERS FROM UNWARRANTED TAX INCREASES, SINCE SUCH MONETARY AWARDS ARE NOT REVENUE RAISED BY THE STATE FROM TAXPAYERS;

(g) THE INCLUSION IN STATE FISCAL YEAR SPENDING OF REVENUE OVER WHICH THE STATE HAS NO CONTROL MIGHT IMPERIL OTHER STATE PROJECTS AND PROGRAMS, SINCE FLUCTUATIONS IN SUCH REVENUE CAN CAUSE THE STATE TO EXCEED ITS CONSTITUTIONAL SPENDING LIMIT AND THE REFUND OF EXCESS REVENUE COULD TAKE AWAY FROM ANOTHER PART OF THE STATE'S BUDGET;

(h) DUE TO THIS POTENTIAL IMPACT, THE INCLUSION OF SUCH MONETARY AWARDS IN STATE FISCAL YEAR SPENDING WOULD DISCOURAGE OR PREVENT THE STATE FROM PURSUING LEGAL ACTION TO PROTECT THE STATE'S INTERESTS AS AUTHORIZED BY LAW;

(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 FUND CREATED

IN SECTION 24-22-115 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;

(j) (I) THE MONEYS RECEIVED BY THE STATE IN ACCORDANCE WITH SAID MASTER SETTLEMENT AGREEMENTS AND SAID CONSENT DECREE ARE IN SETTLEMENT OF NINE STATUTORY CLAIMS FOR RELIEF MADE BY THE STATE AGAINST DEFENDANTS IN SAID ACTION, THREE OF WHICH WERE BASED UPON VIOLATIONS OF THE "COLORADO CONSUMER PROTECTION ACT", TWO OF WHICH WERE BASED UPON VIOLATIONS OF THE "COLORADO ORGANIZED CRIME CONTROL ACT", TWO OF WHICH WERE BASED UPON VIOLATIONS OF STATE PUBLIC NUISANCE STATUTES, AND ONLY ONE OF WHICH WAS BASED UPON VIOLATIONS OF THE "COLORADO ANTITRUST ACT OF 1992" AND THE IMPACT OF SUCH VIOLATIONS ON INCREASED HEALTH CARE COSTS AND EXPENDITURES OF THE STATE; AND

(II) THE STATE WILL TAKE ANY LEGAL ACTION NECESSARY TO OPPOSE ANY CLAIM OF THE FEDERAL GOVERNMENT TO ANY PORTION OF THE MONEYS RECEIVED BY THE STATE IN ACCORDANCE WITH SAID MASTER SETTLEMENT AGREEMENTS AND SAID CONSENT DECREES FOR CLAIMS NOT RELATED TO SUCH INCREASED HEALTH CARE COSTS AND EXPENDITURES AND FOR ANY AMOUNT OF SUCH MONEYS IN EXCESS OF FEDERAL PAYMENTS MADE FOR SUCH INCREASED HEALTH CARE COSTS AND EXPENDITURES;

(k) MONETARY AWARDS TO THE STATE AS THE RESULT OF SAID COURT ACTION, INCLUDING THOSE DISTRIBUTED TO LOCAL GOVERNMENTS, SATISFY THE DEFINITION OF "DAMAGE AWARDS" AND THEREFORE ARE EXCLUDED FROM FISCAL YEAR SPENDING.

(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 FUND IN ACCORDANCE WITH SECTION 24-22-115 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 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 FUND CREATED IN SECTION 24-22-115 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 2. 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.

Approved: March 31, 1999