

CHAPTER 181

GOVERNMENT - STATE

SENATE BILL 00-074

BY SENATORS Lacy, Owen, Tanner, and Tebedo;
also REPRESENTATIVES Tool, Berry, Saliman, Gotlieb, and Scott.**AN ACT**

CONCERNING THE CREATION OF THE TOBACCO SETTLEMENT DEFENSE ACCOUNT WITHIN THE TOBACCO LITIGATION SETTLEMENT CASH FUND TO BE COMPRISED OF TOBACCO LITIGATION SETTLEMENT MONEYS TO COMPENSATE THE STATE FOR ATTORNEY FEES, COURT COSTS, AND EXPENSES.

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

SECTION 1. 24-22-115, Colorado Revised Statutes, is amended to read:

24-22-115. Tobacco litigation settlement cash fund - creation. (1) 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. EXCEPT AS PROVIDED IN SUBSECTION (2) OF THIS SECTION, all interest derived from the deposit and investment of moneys in the cash fund shall be credited to the cash fund. EXCEPT AS PROVIDED IN SUBSECTION (2) OF THIS SECTION, all moneys in the cash 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. EXCEPT AS PROVIDED IN SUBSECTION (2) OF THIS SECTION, 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 be transferred to the tobacco litigation settlement trust fund.

(2) (a) THERE IS HEREBY CREATED IN THE STATE TREASURY, AS AN ACCOUNT WITHIN THE TOBACCO LITIGATION SETTLEMENT CASH FUND ESTABLISHED PURSUANT TO

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

SUBSECTION (1) OF THIS SECTION, THE TOBACCO SETTLEMENT DEFENSE ACCOUNT, WHICH SHALL BE USED BY THE DEPARTMENT OF LAW IN DEFENDING THE STATE IN LAWSUITS ARISING OUT OF CHALLENGES TO 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; CHALLENGES TO DULY ENACTED COLORADO LAWS RELATED TO THE TOBACCO LITIGATION SETTLEMENT, INCLUDING, BUT WITHOUT LIMITATION, SECTIONS 24-22-115, 24-22-115.5, AND 24-22-116 AND PART 2 OF ARTICLE 28 OF TITLE 39, C.R.S.; OR CLAIMS OF ENTITLEMENT TO TOBACCO LITIGATION SETTLEMENT MONEYS BY ANY PERSON, AS DEFINED IN SECTION 2-4-401 (8), C.R.S. NOTWITHSTANDING THE PROVISIONS OF SUBSECTION (1) OF THIS SECTION AND SECTION 24-22-115.5, THE TOBACCO SETTLEMENT DEFENSE ACCOUNT SHALL CONSIST OF ALL TOBACCO LITIGATION SETTLEMENT MONEYS RECEIVED BY THE ATTORNEY GENERAL AND TRANSMITTED TO THE STATE TREASURER TO COMPENSATE THE STATE FOR ATTORNEY FEES, COURT COSTS, OR OTHER EXPENSES INCURRED BY THE STATE IN OBTAINING THE TOBACCO LITIGATION SETTLEMENT AND ALL INTEREST DERIVED FROM THE DEPOSIT AND INVESTMENT OF MONEYS IN THE TOBACCO SETTLEMENT DEFENSE ACCOUNT. ANY MONEYS RECEIVED BY THE STATE TREASURER TO COMPENSATE THE STATE FOR ATTORNEY FEES, COURT COSTS, OR OTHER EXPENSES, INCLUDING ALL INTEREST DERIVED FROM THE DEPOSIT AND INVESTMENT OF SUCH MONEYS AFTER RECEIPT BY THE STATE TREASURER, SHALL BE TRANSFERRED TO THE TOBACCO SETTLEMENT DEFENSE ACCOUNT FOR USE IN ACCORDANCE WITH THE PROVISIONS OF THIS SUBSECTION (2).

(b) ALL MONEYS IN THE TOBACCO SETTLEMENT DEFENSE ACCOUNT SHALL BE SUBJECT TO ANNUAL APPROPRIATION BY THE GENERAL ASSEMBLY TO THE DEPARTMENT OF LAW. NOTWITHSTANDING THE PROVISIONS OF SUBSECTION (1) OF THIS SECTION, AT THE END OF ANY FISCAL YEAR, ALL UNEXPENDED AND UNENCUMBERED MONEYS AND ALL MONEYS NOT APPROPRIATED FOR THE FOLLOWING FISCAL YEAR IN THE TOBACCO SETTLEMENT DEFENSE ACCOUNT SHALL REMAIN IN THE TOBACCO SETTLEMENT DEFENSE ACCOUNT TO BE USED FOR THE PURPOSES SET FORTH IN THIS SUBSECTION (2).

SECTION 2. 24-22-116 (1) (i) and (2), Colorado Revised Statutes, are amended to read:

24-22-116. Legislative declaration - exclusion of revenue in tobacco litigation settlement 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~~ SECTION 24-22-115 (1), INCLUDING

MONEYS TRANSFERRED TO THE TOBACCO SETTLEMENT DEFENSE ACCOUNT CREATED IN SAID CASH FUND PURSUANT TO SECTION 24-22-115 (2), 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~~ SECTION 24-22-115 (1), INCLUDING MONEYS TRANSFERRED TO THE TOBACCO SETTLEMENT DEFENSE ACCOUNT CREATED IN SAID CASH FUND PURSUANT TO SECTION 24-22-115 (2), 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, INCLUDING THE TOBACCO SETTLEMENT DEFENSE ACCOUNT, 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~~ SECTION 24-22-115 (1), INCLUDING THE TOBACCO SETTLEMENT DEFENSE ACCOUNT CREATED IN SAID CASH FUND PURSUANT TO SECTION 24-22-115 (2), 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 3. 24-22-115.6, Colorado Revised Statutes, is amended to read:

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~~ BY THE STATE 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~~ THAT ANY TOBACCO LITIGATION SETTLEMENT MONEYS ARE CUSTODIAL IN NATURE, 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 4. Applicability. This act shall apply to all moneys transmitted to the state treasurer before, on, or after the applicable effective date of this act to compensate the state for attorney fees, court costs, and other expenses incurred by the state in obtaining the tobacco litigation settlement.

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.

Approved: May 23, 2000