

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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SENATE BILL 6
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Short Title: Approve Tobacco Sett. Nonprofit Corp.

(Public)

Sponsors:

Referred to:

January 28, 1999

1 A BILL TO BE ENTITLED
2 AN ACT TO APPROVE THE CREATION OF THE NONPROFIT CORPORATION
3 ESTABLISHED PURSUANT TO COURT ORDER FOR THE PURPOSES OF
4 RECEIPT AND DISTRIBUTION OF FIFTY PERCENT OF THE FUNDS
5 RECEIVED BY THE STATE IN STATE OF NORTH CAROLINA V. PHILIP
6 MORRIS INCORPORATED, ET AL., INCLUDING THE MANNER, TERMS,
7 AND CONDITIONS OF APPOINTMENT OF THE CORPORATION'S BOARD OF
8 DIRECTORS, TO CONDITIONALLY ASSIGN TO THE NONPROFIT
9 CORPORATION THE RIGHT, TITLE, AND INTEREST IN THE ANNUAL
10 PAYMENTS CONSTITUTING FIFTY PERCENT OF NORTH CAROLINA'S
11 STATE SPECIFIC ACCOUNT, TO REQUIRE THE ATTORNEY GENERAL TO
12 DRAFT AND FILE ARTICLES OF INCORPORATION FOR THE NONPROFIT
13 CORPORATION CONCERNING CONSULTATION AND REVIEW,
14 APPLICABILITY OF PUBLIC RECORDS AND OPEN MEETINGS LAWS,
15 TRANSFER OF ASSETS AND DISSOLUTION, AND CHARTER REPEAL AND
16 AMENDMENT AS A CONDITION PRECEDENT TO THE ASSIGNMENT OF

1 PAYMENTS TO THE CORPORATION, TO EXPRESS THE INTENT OF THE
2 GENERAL ASSEMBLY THAT TOBACCO PRODUCTION INTERESTS,
3 TOBACCO MANUFACTURING INTERESTS, TOBACCO-RELATED
4 EMPLOYMENT INTERESTS, HEALTH INTERESTS, AND ECONOMIC
5 DEVELOPMENT INTERESTS SHALL BE REPRESENTED ON THE
6 CORPORATION'S BOARD OF DIRECTORS, TO EXPRESS THE INTENT OF
7 THE GENERAL ASSEMBLY TO ESTABLISH A TRUST FUND TO RECEIVE
8 AND DISTRIBUTE TWENTY-FIVE PERCENT OF THE TOBACCO
9 LITIGATION MASTER SETTLEMENT AGREEMENT FUNDS FOR THE
10 BENEFIT OF TOBACCO PRODUCERS, TOBACCO ALLOTMENT HOLDERS,
11 AND PERSONS ENGAGED IN TOBACCO-RELATED BUSINESSES,
12 INCLUDING DIRECT AND INDIRECT FINANCIAL ASSISTANCE AND
13 INDEMNIFICATION TO THESE BENEFICIARIES TO THE EXTENT
14 ALLOWED BY LAW AND IN ACCORDANCE WITH CRITERIA
15 ESTABLISHED BY THE TRUST FUND'S BOARD OF TRUSTEES, WITH THE
16 TRUST FUND GOVERNED BY TRUSTEES REPRESENTING THESE
17 INTERESTS, AND TO EXPRESS THE INTENT OF THE GENERAL ASSEMBLY
18 TO ESTABLISH A SEPARATE TRUST FUND TO RECEIVE AND DISTRIBUTE
19 TWENTY-FIVE PERCENT OF THE TOBACCO LITIGATION MASTER
20 SETTLEMENT AGREEMENT FUNDS FOR THE BENEFIT OF HEALTH, WITH
21 THE TRUST FUND GOVERNED BY A BOARD OF TRUSTEES COMPRISED
22 OF A BROAD REPRESENTATION OF HEALTH INTERESTS.

Whereas, the State of North Carolina filed an action against Philip Morris Incorporated, R.J. Reynolds Tobacco Company, Brown & Williamson Tobacco Corporation (individually and as successor by merger to The American Tobacco Company), Lorillard Tobacco Company, and Liggett Group, Inc., on December 21, 1998, entitled 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; and

Whereas, the State of North Carolina entered into a Consent Decree and Final Judgment with the defendants to resolve the action in a manner that addresses the State's claims, while conserving the resources of the parties and the Court; and

Whereas, the Consent Decree and Final Judgment directs the Attorney General to create a nonprofit corporation for purposes of receipt and distribution of fifty percent of the funds allocated to North Carolina; and

Whereas, the Consent Decree and Final Judgment provides that, as a condition precedent to the organization of the nonprofit corporation, the creation of the corporation must be approved by the North Carolina General Assembly not later than March 15, 1999, unless extended by the Court, and must be approved by the Court; Now, therefore,

23 The General Assembly of North Carolina enacts:

24 Section 1. The creation of the nonprofit corporation pursuant to subparagraph
25 VI.A.1 of the Consent Decree and Final Judgment entered in that action of 98 CVS
26 14377 on December 21, 1998, is hereby approved for the purposes and on the terms and
27 conditions set forth in subparagraph VI.A.1 of the Consent Decree and Final Judgment.

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

6 Section 2(b). Unless provided otherwise by an act of the General Assembly
7 before the installment payment is received in North Carolina's State Specific Account, the
8 right, title, and interest to each installment payment vests in the nonprofit corporation
9 upon receipt of that payment in North Carolina's State Specific Account for the public
10 charitable purposes of providing economic impact assistance to economically affected or
11 tobacco dependent regions of North Carolina. These funds shall be distributed to the
12 nonprofit corporation under the Consent Decree and shall constitute support of the
13 nonprofit corporation from the State of North Carolina.

14 Section 2(c). The General Assembly also approves the provisions in the
15 Consent Decree concerning the governance of the nonprofit corporation by 15 directors
16 holding staggered, four-year terms, five directors to be appointed by the Governor of the
17 State of North Carolina, five by the President Pro Tempore of the North Carolina Senate,
18 and five by the Speaker of the North Carolina House of Representatives, respectively in
19 their sole discretion; and that the Governor shall appoint the first Chair among his
20 appointees, and the directors shall elect their own Chair from among their number for
21 subsequent terms. Members of the General Assembly may not be appointed to serve on
22 the board of directors while serving in the General Assembly.

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
11 not amend its articles of incorporation without the approval of the
12 General Assembly.

13 (5) Dissolution. – The nonprofit corporation may be dissolved pursuant to
14 Chapter 55A of the General Statutes, by the General Assembly, or by
15 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.

20 Section 4. The nonprofit corporation's right to receive funds pursuant to
21 Section 2 of this act is contingent upon the filing of articles of incorporation that comply
22 with Section 3 of this act.

23 Section 5. It is the intent of the General Assembly that the Governor, Speaker
24 of the House of Representatives, and President Pro Tempore of the Senate, in appointing
25 directors to the nonprofit corporation, shall, in their sole discretion, include among their
26 appointments representatives of tobacco production, tobacco manufacturing, tobacco-
27 related employment, health, and economic development interests, with each appointing
28 authority selecting at least two directors from these interests. It is also the intent of the
29 General Assembly that the appointing authorities, in appointing directors, shall appoint
30 members that represent the geographic, gender, and racial diversity of the State.

31 Section 6. It is the intent of the General Assembly that the funds under the
32 Master Settlement Agreement, which is incorporated into the Consent Decree, be
33 allocated as follows:

34 (1) Fifty percent (50%) to the nonprofit corporation as provided by the
35 Consent Decree.

36 (2) Twenty-five percent (25%) to a trust fund to be established by the
37 General Assembly for the benefit of tobacco producers, tobacco
38 allotment holders, and persons engaged in tobacco-related businesses,
39 with this trust fund to be governed by a board of trustees representing
40 these interests. To carry out this purpose, this trust fund may provide
41 direct and indirect financial assistance, in accordance with criteria
42 established by the trustees of the trust fund and to the extent allowed by
43 law, to (i) indemnify tobacco producers, allotment holders, and persons

1 engaged in tobacco-related businesses from the adverse economic
2 effects of the Master Settlement Agreement, (ii) compensate tobacco
3 producers and allotment holders for the economic loss resulting from
4 lost quota, and (iii) revitalize tobacco dependent communities.

- 5 (3) Twenty-five percent (25%) to a trust fund to be established by the
6 General Assembly for the benefit of health, with this trust fund to be
7 governed by a board of trustees comprised of a broad representation of
8 health interests.

9 Section 7. Chapter 55A of the General Statutes is amended by adding a new
10 section to read:

11 "**§ 55A-3-07. Certain corporations subject to Public Records Act and Open Meetings**

12 **Law.**

13 Any corporation organized under this Chapter under the terms of any consent decree
14 and final judgment in any civil action calling on a state officer to create the corporation,
15 for the purposes of receipt and distribution of funds allocated to the State of North
16 Carolina to provide economic impact assistance on account of one industry, is subject to
17 the Public Records Act (Chapter 132 of the General Statutes) and the Open Meetings
18 Law (Article 33C of Chapter 143 of the General Statutes)."

19 Section 8. This act is effective when it becomes law.