

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1999

SESSION LAW 1999-2
SENATE BILL 6

AN ACT TO APPROVE THE CREATION OF THE NONPROFIT CORPORATION ESTABLISHED PURSUANT TO COURT ORDER FOR THE PURPOSES OF RECEIPT AND DISTRIBUTION OF FIFTY PERCENT OF THE FUNDS RECEIVED BY THE STATE IN STATE OF NORTH CAROLINA V. PHILIP MORRIS INCORPORATED, ET AL., INCLUDING THE MANNER, TERMS, AND CONDITIONS OF APPOINTMENT OF THE CORPORATION'S BOARD OF DIRECTORS, TO CONDITIONALLY ASSIGN TO THE NONPROFIT CORPORATION THE RIGHT, TITLE, AND INTEREST IN THE ANNUAL PAYMENTS CONSTITUTING FIFTY PERCENT OF NORTH CAROLINA'S STATE SPECIFIC ACCOUNT, TO REQUIRE THE ATTORNEY GENERAL TO DRAFT AND FILE ARTICLES OF INCORPORATION FOR THE NONPROFIT CORPORATION CONCERNING CONSULTATION AND REVIEW, APPLICABILITY OF PUBLIC RECORDS AND OPEN MEETINGS LAWS, TRANSFER OF ASSETS AND DISSOLUTION, AND CHARTER REPEAL AND AMENDMENT AS A CONDITION PRECEDENT TO THE ASSIGNMENT OF PAYMENTS TO THE CORPORATION, TO EXPRESS THE INTENT OF THE GENERAL ASSEMBLY THAT TOBACCO PRODUCTION INTERESTS, TOBACCO MANUFACTURING INTERESTS, TOBACCO-RELATED EMPLOYMENT INTERESTS, HEALTH INTERESTS, AND ECONOMIC DEVELOPMENT INTERESTS SHALL BE REPRESENTED ON THE CORPORATION'S BOARD OF DIRECTORS, TO EXPRESS THE INTENT OF THE GENERAL ASSEMBLY TO ESTABLISH A TRUST FUND TO RECEIVE AND DISTRIBUTE TWENTY-FIVE PERCENT OF THE TOBACCO LITIGATION MASTER SETTLEMENT AGREEMENT FUNDS FOR THE BENEFIT OF TOBACCO PRODUCERS, TOBACCO ALLOTMENT HOLDERS, AND PERSONS ENGAGED IN TOBACCO-RELATED BUSINESSES, INCLUDING DIRECT AND INDIRECT FINANCIAL ASSISTANCE AND INDEMNIFICATION TO THESE BENEFICIARIES TO THE EXTENT ALLOWED BY LAW AND IN ACCORDANCE WITH CRITERIA ESTABLISHED BY THE TRUST FUND'S BOARD OF TRUSTEES, WITH THE TRUST FUND GOVERNED BY TRUSTEES REPRESENTING THESE INTERESTS, AND TO EXPRESS THE INTENT OF THE GENERAL ASSEMBLY TO ESTABLISH A SEPARATE TRUST FUND TO RECEIVE AND DISTRIBUTE TWENTY-FIVE PERCENT OF THE TOBACCO LITIGATION MASTER SETTLEMENT AGREEMENT FUNDS FOR THE BENEFIT OF HEALTH, WITH THE TRUST FUND GOVERNED BY A BOARD OF

TRUSTEES COMPRISED 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,

The General Assembly of North Carolina enacts:

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

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

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

Section 2(c). The General Assembly also approves the provisions in the Consent Decree concerning the governance of the nonprofit corporation by 15 directors holding staggered, four-year terms, five directors to be appointed by the Governor of the

State of North Carolina, five by the President Pro Tempore of the North Carolina Senate, and five by the Speaker of the North Carolina House of Representatives, respectively in their sole discretion; and that the Governor shall appoint the first Chair among his appointees, and the directors shall elect their own Chair from among their number for subsequent terms. Members of the General Assembly may not be appointed to serve on the board of directors while serving in the General Assembly.

Section 3. The Attorney General shall draft articles of incorporation for the nonprofit corporation to enable the nonprofit corporation to carry out its mission as set out in the Consent Decree. The articles of incorporation shall provide for the following:

- (1) Consultation; reporting. – The nonprofit corporation shall consult with the Joint Legislative Commission on Governmental Operations ("Commission") prior to the corporation's board of directors (i) adopting bylaws and (ii) adopting the annual operating budget. The nonprofit corporation shall also report on its programs and activities to the Commission on or before March 1 of each fiscal year and more frequently as requested by the Commission. The report shall include information on the activities and accomplishments during the fiscal year, itemized expenditures during the fiscal year, planned activities and goals for at least the next 12 months, and itemized anticipated expenditures for the next fiscal year. The nonprofit corporation shall also annually provide to the Commission an itemized report of its administrative expenses and copies of its annual report and tax return information.
- (2) Public records; open meetings. – The nonprofit corporation is subject to the Open Meetings Law as provided in Article 33C of Chapter 143 of the General Statutes and the Public Records Act as provided in Chapter 132 of the General Statutes. The nonprofit corporation shall publish at least annually a report, available to the public and filed with the Joint Legislative Commission on Governmental Operations, of every expenditure or distribution in furtherance of the public charitable purposes of the nonprofit corporation.
- (3) Transfer of assets. – The nonprofit corporation may not dispose of assets pursuant to G.S. 55A-12-02 without the approval of the General Assembly.
- (4) Charter repeal. – The charter of the nonprofit corporation may be repealed at any time by the legislature pursuant to Article VIII, Section 1 of the North Carolina Constitution. The nonprofit corporation may not amend its articles of incorporation without the approval of the General Assembly.
- (5) Dissolution. – The nonprofit corporation may be dissolved pursuant to Chapter 55A of the General Statutes, by the General Assembly, or by the Court pursuant to the Consent Decree. Upon dissolution, all unencumbered assets and funds of the nonprofit corporation, including the right to receive future funds pursuant to Section 2 of this act, are

transferred to the Settlement Reserve Fund established pursuant to G.S. 143-16.4.

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

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

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

- (1) Fifty percent (50%) to the nonprofit corporation as provided by the Consent Decree.
- (2) Twenty-five percent (25%) to a trust fund to be established by the General Assembly for the benefit of tobacco producers, tobacco allotment holders, and persons engaged in tobacco-related businesses, with this trust fund to be governed by a board of trustees representing these interests. To carry out this purpose, this trust fund may provide direct and indirect financial assistance, in accordance with criteria established by the trustees of the trust fund and to the extent allowed by law, to (i) indemnify tobacco producers, allotment holders, and persons engaged in tobacco-related businesses from the adverse economic effects of the Master Settlement Agreement, (ii) compensate tobacco producers and allotment holders for the economic loss resulting from lost quota, and (iii) revitalize tobacco dependent communities.
- (3) Twenty-five percent (25%) to a trust fund to be established by the General Assembly for the benefit of health, with this trust fund to be governed by a board of trustees comprised of a broad representation of health interests.

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

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

Any corporation organized under this Chapter under the terms of any consent decree and final judgment in any civil action calling on a state officer to create the corporation, for the purposes of receipt and distribution of funds allocated to the State of North Carolina to provide economic impact assistance on account of one industry, is subject to

the Public Records Act (Chapter 132 of the General Statutes) and the Open Meetings Law (Article 33C of Chapter 143 of the General Statutes)."

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

In the General Assembly read three times and ratified this the 16th day of March, 1999.

s/ Dennis A. Wicker
President of the Senate

s/ James B. Black
Speaker of the House of Representatives

s/ James B. Hunt, Jr.
Governor

Approved 5:21 p.m. this 16th day of March, 1999