

**[CHAPTER 328L]**  
**HAWAII TOBACCO SETTLEMENT MONEYS**

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## Cross References

Tobacco liability act, see chapter 675.

Tobacco products reporting, see chapter 486P.

" **[§328L-1] Definitions.** Whenever used in this chapter, unless the context otherwise requires:

"Children's health program" means health care for needy children.

"Department" means the department of health.

"Director" means the director of health.

"Health promotion and disease prevention programs" means those public health programs that attempt to reduce resources spent on treating preventable illness and functional impairment, enhance the quality of life, and reduce disparities in the health status of populations.

"Tobacco prevention and control" means activities or programs that attempt to reduce tobacco consumption.

"Tobacco settlement moneys" refers to moneys received by the State pursuant to the tobacco master settlement agreement. [L 1999, c 304, pt of §2]

" **§328L-2 Hawaii tobacco settlement special fund.** (a)

There is established in the state treasury the Hawaii tobacco settlement special fund into which shall be deposited:

- (1) All tobacco settlement moneys; and
- (2) All interest and earnings accruing from the investment of moneys in the fund;

provided that of all tobacco settlement moneys received by the State each fiscal year, the sum representing the first \$350,000 of those moneys shall first be deposited in the state treasury in each fiscal year to the credit of the tobacco enforcement special fund. The Hawaii tobacco settlement special fund shall be administered by the department.

(b) The fund shall be used for the purpose of receiving, allocating, and appropriating the tobacco settlement moneys as follows:

- (1) Fifteen per cent shall be appropriated into the emergency and budget reserve fund under section 328L-3;
- (2) Twelve and one-half per cent shall be appropriated into the Hawaii tobacco prevention and control trust fund under section 328L-5;
- (3) Twenty-six per cent shall be appropriated into the university revenue-undertakings fund created in section 304A-2167.5, to be applied to the payment of the principal of and interest on, and to generate

required coverage, if any, for, revenue bonds issued by the board of regents of the University of Hawaii to finance the cost of construction of a university health and wellness center, including a new medical school facility, to be situated on the island of Oahu; and

- (4) Any remaining amounts shall be deposited to the credit of the state general fund;

in the succeeding fiscal year. [L 1999, c 304, pt of §2; am L 2001, c 270, §11; am L Sp 2001 3d, c 14, §2; am L 2003, c 177, §6 and c 178, §57; am L 2006, c 75, §11; am L 2007, c 264, §§1, 4; am L 2008, c 16, §22; am L 2009, c 119, §§2, 6; am L 2010, c 138, §2; am L 2011, c 124, §59; am L 2012, c 2, §§2, 6; am L 2015, c 118, §2]

### Case Notes

Where plaintiffs, Hawai'i medicaid recipients who suffered from tobacco-related illnesses, alleged that state officials violated and continued to violate federal disbursement rules for medicaid recovery: plaintiffs had standing; plaintiffs' claims were ripe for adjudication; suit not barred by sovereign immunity under the Eleventh Amendment; plain language of amendment to federal medicaid statute barred plaintiffs' claims to any portion of master settlement agreement funds. 311 F.3d 929.

" **§328L-3 Emergency and budget reserve fund.** (a) There is established in the state treasury the emergency and budget reserve fund which shall be a special fund administered by the director of finance, into which shall be deposited:

- (1) Twenty-four and one-half per cent of the moneys received from the tobacco settlement moneys under section 328L-2(b)(1);
- (2) Appropriations made by the legislature to the fund; and
- (3) Five per cent of the state general fund balance at the close of the fiscal year, whenever state general fund revenues for each of two successive fiscal years exceeds revenues for each of the preceding fiscal years by five per cent, pursuant to article VII, section 6 of the Hawaii constitution. For the purpose of this section, the general fund balance at the close of the fiscal year shall be calculated before any tax refund or tax credit is authorized by the legislature, pursuant to article VII, section 6 of the Hawaii constitution, that is provided during the same regular

session as the transfer depositing such moneys to the emergency and budget reserve fund; provided that transfers shall not be made to the emergency and budget reserve fund whenever the balance of the emergency and budget reserve fund is equal to or more than ten per cent of general fund revenues for the preceding fiscal year. The transfer shall be executed by the director of finance;

provided that all moneys deposited into the emergency and budget reserve fund under paragraphs (1) and (2) and all moneys deposited under paragraph (3) shall be kept in separate and distinct accounts.

(b) All interest earned from moneys in the emergency and budget reserve fund shall be credited to the emergency and budget reserve fund.

(c) Expenditures from the emergency and budget reserve fund shall be a temporary supplemental source of funding for the State during times of emergency, severe economic downturn, or unforeseen reduction in revenues. No expenditures shall be made from the emergency and budget reserve fund except pursuant to appropriations. The general appropriations bill or the supplemental appropriations bill, as defined in section 9 of article VII of the Hawaii constitution, shall not be used to appropriate moneys from the emergency and budget reserve fund. The governor, through an appropriations bill, may recommend expenditures from the emergency and budget reserve fund by setting forth the purposes of the expenditures consistent with subsection (d), the amounts, and the reasons justifying the necessity for the appropriations.

(d) The legislature may make appropriations from the fund for the following purposes:

- (1) To maintain levels of programs determined to be essential to public health, safety, welfare, and education;
- (2) To provide for counter cyclical economic and employment programs in periods of economic downturn;
- (3) To restore facilities destroyed or damaged or services disrupted by disaster in any county; and
- (4) To meet other emergencies when declared by the governor or determined to be urgent by the legislature.

Any act making appropriations from the emergency and budget reserve fund shall include a declaration of findings and purposes setting forth the purposes, the amounts, and the reasons why the appropriations are necessary and shall require a two-thirds majority vote of each house of the legislature.

- (e) Appropriations for the following purposes from the emergency and budget reserve fund are specifically prohibited:
- (1) To meet expenses of the legislature;
  - (2) To provide for salary adjustments for officials appointed pursuant to article V, section 6 or article VI, section 3 of the Constitution of the State of Hawaii and for others whose salaries are directly related to salaries of these officials; and
  - (3) To fund cost items in any collective bargaining contract. [L 1999, c 304, pt of §2; am L 2002, c 16, §24 and c 178, §§3, 6; am L 2009, c 119, §6; am L 2010, c 138, §§1, 2]

" **§328L-4 REPEALED.** L 2015, c 118, §4.

#### **Note**

L 2015, c 35, §49 purports to amend this section.

" **§328L-5 Hawaii tobacco prevention and control trust fund.**

(a) There is established the Hawaii tobacco prevention and control trust fund as a separate fund of a nonprofit entity having a board of directors and qualifying under section 501(c)(3) of the Internal Revenue Code of 1986, as amended, into which shall be deposited moneys received as provided under section 328L-2(b)(2). The director of health with the concurrence of the governor, shall select, in accordance with law, the entity based upon the proven record of accomplishment of the entity in administering a similar trust fund.

(b) Notwithstanding that the Hawaii tobacco prevention and control trust fund is established within a private entity, the department of budget and finance shall have oversight authority over the fund and may make periodic financial audits of the fund; provided that the director of finance may contract with a certified public accountancy firm for this purpose. The director of health with the concurrence of the governor in their sole discretion may rescind the selection of the entity. If the selection of the entity [is] rescinded, moneys in the trust fund shall revert back to the State and shall be deemed to be trust moneys.

(c) The entity selected under subsection (a), for each fiscal year, may expend up to fifty per cent of the total market value of the Hawaii tobacco prevention and control trust fund on the preceding June 30, for tobacco prevention and control, including but not limited to, reducing cigarette smoking and tobacco use among youth and adults through education and

enforcement activities, and controlling and preventing chronic diseases where tobacco is a risk factor.

(d) The Hawaii tobacco prevention and control trust fund may receive appropriations, contributions, grants, endowments, or gifts in cash or otherwise from any source, including the State, corporations or other businesses, foundations, government, individuals, and other interested parties; provided that any appropriations made by the State shall not supplant or diminish the funding of existing tobacco prevention and control programs or any health related programs funded in whole or in part by the State.

(e) The assets of the Hawaii tobacco prevention and control trust fund shall consist of:

- (1) Moneys appropriated under section 328L-2(b)(2);
- (2) Moneys appropriated to the Hawaii tobacco prevention and control trust fund by the state, county, or federal government;
- (3) Private contributions of cash or property; and
- (4) Income and capital gains earned by the trust fund.

(f) The aggregate principal sum deposited in the Hawaii tobacco prevention and control trust fund shall be invested by the entity selected under subsection (a) in a manner intended to maximize the rate of return on investment of the trust fund consistent with the objective of preserving the trust fund's principal.

(g) If the entity selected under subsection (a) is dissolved, the director of health, with the concurrence of the governor, shall select a successor entity. If the Hawaii tobacco prevention and control trust fund is terminated, the moneys remaining in the trust fund shall revert back to the State and shall be deemed to be trust moneys.

(h) The administration of the Hawaii tobacco prevention and control trust fund shall be advised by the tobacco prevention and control advisory board created under section 328L-6. [L 1999, c 304, pt of §2; am L Sp 2001 3d, c 14, §3; am L 2015, c 118, §3]

#### **Note**

The L 2010, c 138 amendment is exempt from the repeal and reenactment condition of L 2009, c 119, §6. L 2010, c 138, §4.

" **[§328L-6] Tobacco prevention and control advisory board.**

(a) There is established a tobacco prevention and control advisory board under the department for administrative purposes.

(b) The tobacco prevention and control advisory board shall consist of members who are involved in tobacco prevention and control. Membership of the board shall be as follows:

- (1) One member of the governor's staff, appointed by the governor;
- (2) One member to be appointed by the governor from a list of two names submitted by the president of the senate;
- (3) One member to be appointed by the governor from a list of two names submitted by the speaker of the house of representatives;
- (4) The director or the director's designee;
- (5) The superintendent of education or the superintendent's designee;
- (6) Three members having demonstrated interest in and having backgrounds beneficial to controlling and preventing the use of tobacco, appointed by the director of health; and
- (7) Three members representing populations at risk for tobacco use, appointed by the governor.

(c) Members shall:

- (1) Be appointed or designated, as applicable, without regard to section 26-34;
- (2) Serve without compensation; and
- (3) Serve for a term of three years.

(d) The tobacco prevention and control advisory board, in collaboration with the department, shall develop a strategic plan for tobacco prevention and control, including:

- (1) Developing and implementing effective and cost efficient programs, including health promotion and disease prevention;
- (2) Developing adequate standards and benchmarks by which measures of program success under paragraph (1) of this subsection may be appropriately evaluated; and
- (3) Assessing the effectiveness of programs engaged in health promotion and disease prevention.

The strategic plan shall be in writing and shall be a public document.

(e) The tobacco prevention and control advisory board shall advise the on the administration of the Hawaii tobacco prevention and control trust fund. [L 1999, c 304, pt of §2]

#### **Note**

Subsection (e) is printed as enacted.

" **[§328L-7] Limitation on bond requirements in litigation involving master settlement agreement signatories, successors,**

**and affiliates.** (a) In civil litigation under any legal theory involving a signatory, a successor of a signatory, or an affiliate of a signatory to the tobacco master settlement agreement, the supersedeas bond to be furnished to stay the execution of the judgment during the entire course of appellate review shall be set in accordance with applicable laws or court rules, except that the total bond that is required of all appellants collectively shall not exceed \$150,000,000, regardless of the amount of the judgment.

(b) Notwithstanding subsection (a), if an appellee proves by a preponderance of the evidence that an appellant is dissipating assets outside the ordinary course of business to avoid the payment of a judgment, a court may require the appellant to post a bond in an amount up to the full amount of the judgment. [L 2004, c 157, §8]