

ACT 304

S.B. NO. 1034

A Bill for an Act Relating to the Hawaii Tobacco Settlement Special Fund.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Research has shown that cigarette smoking and tobacco use are the leading causes of preventable morbidity and mortality in Hawaii and the nation. In Hawaii, more than 1,300 residents die annually as a result of tobacco-related

illness which is sixteen per cent of all resident deaths. Tobacco-related illnesses also account for more than \$320,000,000 in health care costs and expenditures of about \$40,000,000 in Medicaid payments. The economic impact is substantial.

Smoking by women during pregnancy is likewise correlated with miscarriages, premature births, hospitalized child abuse cases, learning disabilities, and behavioral problems, and represents a major cause of illness and death among infants and children. Federal and state health objectives for the years 2000 and 2010, which offer a vision for the new century, call for improvements in health status. These improvements can be achieved through prevention, intervention, reductions in preventable death and disability, enhanced quality of life, and reduced disparities in the health of populations within Hawaii, the Pacific, and the nation.

The purpose of this Act is to establish the Hawaii tobacco settlement special fund with moneys received from the settlement from a class action lawsuit against the tobacco companies. The fund will serve as a medium for a public-private partnership to:

- (1) Reduce tobacco consumption in Hawaii;
- (2) Control and prevent chronic diseases where tobacco is a risk factor;
- (3) Promote healthy lifestyles through better nutrition and improved physical activity; and
- (4) Promote children's health.

The fund shall serve as a mechanism to maximize financial resources for tobacco prevention and control, health promotion and disease prevention programs, children's health programs, and to serve as a long-term source of stable funding for prevention-oriented public health efforts.

An emergency and budget reserve account is also established to provide the State with a financial reserve to be used when there is an emergency or economic downturn.

SECTION 2. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

“CHAPTER HAWAII TOBACCO SETTLEMENT MONEYS

§ -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.

§ -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.

The Hawaii tobacco settlement special fund shall be administered by the department.

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

- (1) Forty per cent shall be appropriated into the emergency and budget reserve fund under section -3;
- (2) Thirty-five per cent shall be appropriated to the department for purpose of section -4; and
- (3) Twenty-five per cent shall be appropriated into the Hawaii tobacco prevention and control trust fund under section -5.

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

- (1) Forty per cent of the moneys received from the tobacco settlement moneys under section -2(b)(1);
- (2) Appropriations made by the legislature to the fund.

(b) All interest earned from moneys in the emergency and budget reserve fund shall be credited to the general 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, 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 Constitution of the State of Hawaii, 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 the public health, safety, and welfare;
- (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.

§ -4 **Use of funds appropriated to the department.** The department, immediately upon receipt of the thirty-five per cent of moneys appropriated pursuant to section -2(b)(2) shall:

- (1) Transfer up to ten per cent of the total moneys received by the State from tobacco settlement moneys to the department of human services for the children's health insurance program; and
- (2) Expend the remainder of the moneys received by the department for health promotion and disease prevention programs, including but not limited to, maternal child health and child development programs, promotion of healthy lifestyles (including fitness, nutrition, and tobacco control), and prevention oriented public health programs.

For purposes of paragraph (2), the director shall convene an advisory group that shall be separate from the tobacco prevention and control advisory board, to strategically plan the development and implementation of preventive systems to achieve measurable outcomes and to make recommendations for the expenditure of these moneys. The advisory group shall be composed of nine members with expertise in the programs under paragraph (2), and shall be selected at the discretion of the director.

§ -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 twenty-five per cent of moneys received as provided under section -2(b)(3). 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 and 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 in 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) shall expend moneys from the Hawaii tobacco prevention and control trust fund 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 use 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 -2(b)(3);
- (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 -6.

§ -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 the¹ on the administration of the Hawaii tobacco prevention and control trust fund."

SECTION 3. Section 36-27, Hawaii Revised Statutes, is amended to read as follows:

“§36-27 Transfers from special funds for central service expenses.

Except as provided in this section, and notwithstanding any other law to the contrary, from time to time the director of finance, for the purpose of defraying the prorated estimate of central service expenses of government in relation to all special funds, except the:

- (1) Special summer school and intersession fund under section 302A-1310;
- (2) School cafeteria special funds of the department of education;
- (3) Special funds of the University of Hawaii;
- (4) State educational facilities improvement special fund;
- (5) Convention center capital special fund under section 206X-10.5 and the convention center operations special fund under section 206X-10.6;
- (6) Special funds established by section 206E-6;
- (7) Housing loan program revenue bond special fund;
- (8) Housing project bond special fund;
- (9) Aloha Tower fund created by section 206J-17;
- (10) Domestic violence prevention special fund under section 321-1.3;
- (11) Spouse and child abuse special account under section 346-7.5;
- (12) Spouse and child abuse special account under section 601-3.6;
- (13) Funds of the employees' retirement system created by section 88-109;
- (14) Unemployment compensation fund established under section 383-121;
- (15) Hawaii hurricane relief fund established under chapter 431P;
- (16) Hawaii health systems corporation special funds;
- (17) Boiler and elevator safety revolving fund established under section 397-5.5;
- (18) Tourism special fund established under section [[201B-11]]; [and]
- (19) Department of commerce and consumer affairs' special funds;
- (20) Hawaii tobacco settlement special fund under section -2; and
- (21) Emergency budget and reserve fund under section -3;

shall deduct five per cent of all receipts of all other special funds, which deduction shall be transferred to the general fund of the State and become general realizations of the State. All officers of the State and other persons having power to allocate or disburse any special funds shall cooperate with the director in effecting these transfers. To determine the proper revenue base upon which the central service assessment is to be calculated, the director shall adopt rules pursuant to chapter 91 for the purpose of suspending or limiting the application of the central service assessment of any fund. No later than twenty days prior to the convening of each regular session of the legislature, the director shall report all central service assessments made during the preceding fiscal year.”

SECTION 4. Section 36-30, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Each special fund, except the:

- (1) Transportation use special fund established by section 261D-1;
- (2) Special summer school and intersession fund under section 302A-1310;
- (3) School cafeteria special funds of the department of education;
- (4) Special funds of the University of Hawaii;
- (5) State educational facilities improvement special fund;
- (6) Special funds established by section 206E-6;
- (7) Aloha Tower fund created by section 206J-17;
- (8) Domestic violence prevention special fund under section 321-1.3;
- (9) Spouse and child abuse special account under section 346-7.5;
- (10) Spouse and child abuse special account under section 601-3.6;
- (11) Funds of the employees' retirement system created by section 88-109;

- (12) Unemployment compensation fund established under section 383-121;
- (13) Hawaii hurricane relief fund established under chapter 431P;
- (14) Convention center capital special fund established under section 206X-10.5 and the convention center operations special fund established under section 206X-10.6;
- (15) Hawaii health systems corporation special funds; [and]
- (16) Tourism special fund established under section [[]201B-11[]];
- (17) Hawaii tobacco settlement special fund under section -2; and
- (18) Emergency and budget reserve fund under section -3;

shall be responsible for its pro rata share of the administrative expenses incurred by the department responsible for the operations supported by the special fund concerned.”

SECTION 5. There is appropriated out of the Hawaii tobacco settlement special fund the sum of \$5,777,903, or so much thereof as may be necessary, for fiscal year 1999-2000, and the sum of \$15,436,031, or so much thereof as may be necessary, for fiscal year 2000-2001, to be deposited into the emergency and budget reserve fund.

SECTION 6. There is appropriated out of the Hawaii tobacco settlement special fund the sum of \$5,055,665, or so much thereof as may be necessary, for fiscal year 1999-2001¹, and the sum of \$13,506,527, or so much thereof as may be necessary, for fiscal year 2000-2001, to the department of health to be expended for the purposes specified in section -4, Hawaii Revised Statutes. The sums appropriated shall be expended by the department of health.

Of the appropriation for fiscal years 1999-2000, up to the sum of \$1,400,000, and for fiscal year 2000-2001, up to the sum of \$3,859,000, shall be transferred to the department of human services to be expended for the children’s health insurance program; provided that the amount of moneys to be transferred shall not exceed the amount of moneys needed by the childrens health insurance program.

SECTION 7. There is appropriated out of the Hawaii tobacco settlement special fund the sum of \$3,611,189, or so much thereof as may be necessary, for fiscal year 1999-2000, and the sum of \$9,647,519, or so much thereof as may be necessary, for fiscal year 2000-2001, to be deposited into the Hawaii tobacco prevention and control trust fund.

SECTION 8. If any provision of this Act, or its application to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the Act which may be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 9. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 10. This Act shall take effect on July 1, 1999; provided that:

- (1) The amendments made to sections 36-27 and 36-30, Hawaii Revised Statutes, by this Act shall not be repealed when those sections are reenacted on July 1, 2000, pursuant to section 13 of Act 216, Session Laws of Hawaii 1997; and
- (2) The amendments made to section 36-27, Hawaii Revised Statutes, by this Act shall not be repealed when that section is reenacted on July 31,

2003, pursuant to section 9 of Act 142, Session Laws of Hawaii 1998.
(Approved July 7, 1999.)

Note

1. So in original.