

## THE GENERAL ASSEMBLY OF PENNSYLVANIA

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**SENATE BILL****No. 2**Session of  
2001

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FEBRUARY 27, 2001

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SENATOR EARLL, FINANCE, AS AMENDED, MARCH 14, 2001

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## AN ACT

1 Establishing a special fund and accounts for money received by  
2 the Commonwealth from the Master Settlement Agreement with  
3 tobacco manufacturers; and establishing the Tobacco  
4 Settlement Investment Board.

5 The General Assembly of the Commonwealth of Pennsylvania  
6 hereby enacts as follows:

7 Section 1. Short title.

8 This act shall be known and may be cited as the Health  
9 Investment Act.

10 Section 2. Definitions.

11 The following words and phrases when used in this act shall  
12 have the meanings given to them in this section unless the  
13 context clearly indicates otherwise:

14 "Accounts." The Health Endowment Account for Long-Term Hope  
15 established in section 3(b) and the Health Venture Investment  
16 Account established in section 3(c).

17 "Board." The Tobacco Settlement Investment Board established



1 in section 4(a).

2 "Fund." The Tobacco Settlement Fund established in section  
3 3(a).

4 "Health Venture Investment Account." The account established  
5 in section 3(c).

6 "Health Account." The Health Endowment Account for Long-Term  
7 Hope established in section 3(b).

8 "Jurisdictional payment." A payment received by the  
9 Commonwealth resulting from a court retaining jurisdiction over  
10 the Escrow Agreement pursuant to section IX(b) of the Master  
11 Settlement Agreement.

12 "Master Settlement Agreement." The settlement agreement and  
13 related documents entered into on November 23, 1998, by the  
14 Commonwealth and leading United States tobacco product  
15 manufacturers approved by the Court of Common Pleas,  
16 Philadelphia County, on January 13, 1999.

17 "Strategic contribution payment." A payment received by the  
18 Commonwealth pursuant to section IX(c)(2) of the Master  
19 Settlement Agreement.

20 "Tobacco Settlement Fund." The Tobacco Settlement Fund  
21 established in section 3(a).

22 Section 3. Establishment of special fund and account.

23 (a) Tobacco Settlement Fund.--There is hereby established a  
24 special fund known as the Tobacco Settlement Fund. Except as  
25 provided in subsection (b), all payments received by the  
26 Commonwealth pursuant to the Master Settlement Agreement shall  
27 be deposited by the Treasury Department in the fund.

28 (b) Health Account.--There is hereby established within the  
29 fund the Health Endowment Account for Long-Term Hope. The  
30 following amounts shall be deposited by the Treasury Department



1 into the account:

2 (1) The jurisdictional payment received by the  
3 Commonwealth pursuant to the Master Settlement Agreement.

4 (2) The strategic contribution payments received by the  
5 Commonwealth pursuant to the Master Settlement Agreement.

6 (3) Ten percent of any other payment received by the  
7 Commonwealth pursuant to the Master Settlement Agreement.

8 (4) Earnings derived from the investment of the money in  
9 the fund after deduction of investment expenses, including  
10 such earnings as may have accrued prior to the effective date  
11 of this act.

12 (5) Earnings derived from the investment of the money in  
13 the Health Account after deduction of investment expenses and  
14 the approved expenses of the board.

15 (6) Money received as a result of investment of the  
16 money in the Health Venture Investment Account.

17 (7) Money from an appropriation pursuant to section 6  
18 which lapses.

19 (c) Health Venture Investment Account.--There is hereby  
20 established within the fund the Health Venture Investment  
21 Account.

22 Section 4. Tobacco Settlement Investment Board.

23 (a) Establishment.--There is hereby established the Tobacco  
24 Settlement Investment Board, consisting of 11 members as  
25 follows: the Governor or a designee; the Secretary of the  
26 Budget; the State Treasurer or a designee; one member appointed  
27 by the President pro tempore of the Senate and one member  
28 appointed by the Minority Leader of the Senate; one member  
29 appointed by the Speaker of the House of Representatives and one  
30 member appointed by the Minority Leader of the House of



1 Representatives; three members appointed by the Governor; and  
2 one member appointed by the State Treasurer. Legislative  
3 appointments shall serve at the pleasure of the appointing  
4 authority. Other appointed members shall serve for a term of  
5 four years and until a successor is appointed. Members of the  
6 board shall serve without compensation, but shall be reimbursed  
7 for actual and reasonable expenses incurred in the performance  
8 of their official duties. The Governor shall select one member  
9 as chairperson, and the members of the board shall select one  
10 member as secretary.

11 (b) Professional personnel.--The board may employ investment  
12 advisors, fund managers and staff as the board deems advisable.

13 (c) Expenses.--All approved expenses of the board and  
14 related professional personnel expenses shall be paid and  
15 deducted from investment earnings of the Health Account. The  
16 board shall, through the Governor, submit to the General  
17 Assembly an annual budget covering its proposed administrative  
18 expenses. Concurrently with its annual budget request, the board  
19 shall submit to the General Assembly a list of proposed  
20 expenditures for the period covered by the budget request that  
21 the board intends to pay through the use of directed  
22 commissions, together with a list of the actual expenditures  
23 from the previous year actually paid by the board through the  
24 use of directed commissions. All such directed commission  
25 expenditures shall be made by the board for the exclusive  
26 benefit of the fund and the ~~Tobacco Endowment~~ HEALTH Account. <—

27 (d) Records and meetings.--The board shall keep a record of  
28 its proceedings, which shall be open to inspection by the  
29 public. Meetings of the board shall be conducted under 65  
30 Pa.C.S. Ch 7 (relating to open meetings).



1 Section 5. Investment of the fund and accounts.

2 (a) Control and management.--Notwithstanding any other  
3 provision of law, the board shall have exclusive control and  
4 authority to manage, invest and reinvest money in the fund and  
5 the Health Account in accordance with this section, subject,  
6 however, to the exercise of that degree of judgment, skill and  
7 care under the circumstances then prevailing that persons of  
8 prudence, discretion and intelligence, who are familiar with  
9 investment matters, exercise in the management of their own  
10 affairs, not in regard to speculation but in regard to permanent  
11 disposition of the funds, considering the probable income to be  
12 derived from the investments and the probable safety of their  
13 capital. The board may hold, purchase, sell, lend, assign,  
14 transfer or dispose of any securities and investments, including  
15 equity securities, in which money in the fund or the accounts  
16 has been invested and of the proceeds of the investments,  
17 including any directed commissions that have accrued to the  
18 benefit of the fund or the accounts as a consequence of the  
19 investments, and of money belonging to the fund or the accounts  
20 subject to the standard of prudence in this section.

21 (b) Fiduciary status of board.--The members of the board and  
22 their professional personnel shall stand in a fiduciary  
23 relationship to the Commonwealth and its citizens regarding the  
24 investments of the money of the fund and the accounts and shall  
25 not profit, either directly or indirectly, with respect thereto.

26 (c) Custodian.--The State Treasurer shall be the custodian  
27 of the fund and the accounts. All investment draws from the fund  
28 or the accounts shall be made by the State Treasurer in  
29 accordance with requisitions signed by the secretary of the  
30 board and ratified by resolution of the board.



1 (d) Authorized investment vehicles for the fund and the  
2 Health Account.--The board may invest the money in the fund and  
3 the Health Account in investments that meet the standard of  
4 prudence set forth in subsection (a) by becoming a limited  
5 partner in partnerships that will hold such investments; or by  
6 acquiring shares or units of participation or otherwise  
7 participating beneficially in bank collective trusts or in the  
8 separate accounts of any insurance company authorized to do  
9 business in this Commonwealth; or by acquiring stocks or shares  
10 or units of participation or otherwise participating  
11 beneficially in a corporate fund or trust organized or created  
12 and existing under the laws of the United States or of any  
13 state, district or territory thereof, if the corporate funds or  
14 trusts are maintained for and consist of assets of employees'  
15 benefit trusts, including governmental plans as defined in  
16 section 414(d) of the Internal Revenue Code of 1986 (Public Law  
17 99-514, 26 U.S.C. § 414(d)), or which meet the requirements for  
18 qualification under section 401 of the Internal Revenue Code of  
19 1986 (26 U.S.C. § 401). The liability of the fund or the  
20 accounts shall be limited to the amount of their investment  
21 under this subsection.

22 (e) Additional authorized investment vehicles for the Health  
23 Account.--The board may invest the money in the Health Account  
24 in investments that meet the standard of prudence set forth in  
25 subsection (a) by becoming a limited partner in partnerships  
26 that make venture capital investments by acquiring equity  
27 interests or a combination of debt and equity interests in  
28 businesses which are expected to grow substantially in the  
29 future and in which the expected returns on investment are to  
30 come predominantly from an increase in value of the equity



1 interests and are not interests in or secured by real estate.  
2 Venture capital investments shall be limited to not more than 2%  
3 of the book value of the total assets of the Health Account as  
4 determined for financial purposes as of June 30 next preceding  
5 the date of investment. A venture capital investment may only be  
6 made if, in the judgment of the board, the investment is  
7 reasonably likely to enhance the general welfare of this  
8 Commonwealth and its citizens. In determining whether an  
9 investment meets the standard of prudence required by subsection  
10 (a), the board may consider, together with the expected return  
11 on and the risk characteristics of the particular investment,  
12 the actual and expected future returns and the risk  
13 characteristics of the total venture capital investments held by  
14 the board at the time and the degree to which the proposed new  
15 investment would promote further diversification within the  
16 venture capital asset class. The liability of the fund or the  
17 Health Account shall be limited to the amount of their  
18 investment under this subsection.

19 (f) Authorized investment vehicles for the Health Venture  
20 Investment Account.--The board may invest the money in the  
21 Health Venture Investment Account in investments that meet the  
22 standard of prudence set forth in subsection (a) by becoming a  
23 limited partner in partnerships that make venture capital  
24 investments by acquiring equity interests or a combination of  
25 debt and equity interests in health care, biotechnology or any  
26 other health-related businesses that are expected to grow  
27 substantially in the future and in which the expected returns on  
28 investment are to come predominantly from increases in value of  
29 the equity interests and are not interests in or secured by real  
30 estate. The board may invest in one or more limited partnerships



1 or comparable investment entities provided that the investment  
2 guidelines and strategies of each investment entity require that  
3 at least 70% of the investments will be made in companies  
4 located primarily in Pennsylvania or in companies willing to  
5 relocate significant business operations to Pennsylvania. The  
6 liability of the fund or the Health Venture Investment Account  
7 shall be limited to the amount of their investment under this  
8 section.

9 (g) Requirements for venture capital investments.--The  
10 following are the requirements to participate in a venture  
11 capital investment program undertaken by the board under  
12 subsection (d) or (f):

13 (1) Each general partner must:

14 (i) contribute 2% of the aggregate committee capital  
15 as a general partner; and

16 (ii) subordinate 5% of the board's contribution in  
17 terms of the distribution schedule, putting the general  
18 partner in a first loss position with respect to the  
19 board.

20 (2) The partnership must provide a preferred return of  
21 no less than 5% to all limited partners.

22 (3) The partnership must agree to operate under a  
23 prudent expert standard of care.

24 (4) The board must be given a seat on any limited  
25 partner advisory/valuation committee.

26 (5) The board must be reimbursed for expenses for  
27 attending limited partner advisory/valuation committee  
28 meetings and partnership annual meetings.

29 (6) The partnership must issue to the board audited  
30 financial statements on the basis of Generally Accepted



Accounting Principles.

(h) Legislative declaration.--The General Assembly finds and declares that authorized investments of the fund or the accounts made by or on behalf of the board under this section, whereby the board becomes a joint owner, limited partner or stockholder in a company, corporation, limited partnership or association, are outside the scope of the original intent of, and do not violate, the prohibition set forth in section 8 of Article VIII of the Constitution of Pennsylvania.

Section 6. Use of Tobacco Settlement Fund.

The Governor shall include a spending plan for the fund in the annual budget. The General Assembly shall appropriate the fund for health-related purposes.

Section 7. Use of the Health Account.

Whenever the Governor determines that money from the Health Account is necessary to meet the extraordinary or emergency health care needs of the citizens of this Commonwealth, the Governor shall present a detailed spending proposal with a request for an appropriation and any necessary legislation to the chairman of the Appropriations Committee of the Senate and the chairman of the Appropriations Committee of the House of Representatives. The General Assembly may, through approval of a separate appropriation bill by a vote of two-thirds of the members elected to the Senate and to the House of Representatives, appropriate money from the Health Account to meet the needs identified in the Governor's request. Any money appropriated under this section that lapses shall be returned to the Health Account.

Section 8. Annual report.

By October 1 of each year, the board shall submit a report to



1 the Governor and the General Assembly. The report shall provide  
2 an analysis of the status of the current investments and  
3 transactions made over the last fiscal year for the fund and the  
4 accounts.

5 Section 9. Effective date.

6 This act shall take effect July 1, 2001, or immediately,  
7 whichever is later.