

FIRST REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR

SENATE BILL NO. 454

91ST GENERAL ASSEMBLY

Reported from the Committee on Pensions and General Laws, February 28, 2001, with recommendation that the Senate Committee Substitute do pass.

TERRY L. SPIELER, Secretary.

1659S.07C

AN ACT

To amend chapter 196, RSMo, by adding thereto eleven new sections relating to the establishment of the Missouri tobacco settlement attorney fee trust fund, with an emergency clause.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Chapter 196, RSMo, is amended by adding thereto eleven new sections, to be known as sections 196.1050, 196.1053, 196.1056, 196.1059, 196.1062, 196.1065, 196.1067, 196.1068, 196.1069, 196.1070 and 196.1071, to read as follows:

196.1050. Sections 196.1050 to 196.1071 shall be known as "The Missouri Tobacco Settlement Attorney Compensation Act".

196.1053. The state attorney general shall have the authority to enter into an agreement with any company which manufactures, sells or promotes tobacco or tobacco products for recovery of attorneys' fees, costs and expenses contained in the master settlement agreement between the parties to the case *State of Missouri ex rel. Nixon v. The American Tobacco Co., et al.*, pursuant to the provisions of the Missouri tobacco settlement attorney compensation act.

196.1056. 1. There is hereby created in the state treasury the "Missouri Tobacco Settlement Attorney-Fee Trust Fund".

2. The state treasurer shall deposit in the Missouri tobacco settlement attorney-fee trust fund all moneys received by the state which are the proceeds of any award or settlement resulting from any and all attorneys' fees, costs and expenses paid pursuant to the settlement relating to the case of *State of Missouri ex rel. Nixon v. The American Tobacco Co., et al.*, hereinafter referred to as "the tobacco case".

3. Notwithstanding the provisions of section 33.080, RSMo, to the contrary,

moneys deposited in the Missouri tobacco settlement attorney-fee trust fund, including any interest thereon, shall not revert to the credit of the general revenue fund at the end of the biennium.

4. The moneys deposited in the Missouri tobacco settlement attorney-fee trust fund, including any interest thereon, shall not be appropriated by the general assembly until after July 1, 2002.

5. The commissioner of administration shall maintain data in an electronic format on receipts to and expenditures from the Missouri tobacco settlement attorney-fee trust fund. Such data shall be updated at least quarterly, shall indicate expenditures by object type and class, and shall be available to the public on the Internet.

196.1059. 1. The attorney general shall zealously collect all attorneys' fees, costs and expenses due pursuant to the terms of the settlement agreement entered into by the parties to the tobacco case, on behalf of the state, its subcontractors, agents or assigns. The attorney general shall deposit the proceeds of any award or settlement with the state treasurer.

2. In all cases involving claims for attorneys fees, costs and expenses against any company which manufactures, sells or promotes tobacco or tobacco products, the attorney general shall represent the lead special assistant attorney general, all special assistant attorney generals, their subcontractors, agents and assigns.

3. All special assistant attorney generals, their subcontractors, agents and assigns are expressly prohibited from receiving direct payments or settlements from any company which was a party to the tobacco case settlement, for any attorneys' fees, costs and expenses relating to such litigation.

4. All persons seeking payment for legal services provided to the state in connection with litigation against any company which manufactures, sells or promotes tobacco or tobacco products shall assist the attorney general in obtaining payment for their attorneys' fees, costs and expenses.

5. Payments to special assistant attorney generals, their subcontractors, agents or assigns shall be made by the state of Missouri from the tobacco settlement attorney-fee trust fund pursuant to the procedures outlined in sections 196.1050 to 196.1071.

6. The payments made by the defendants to the tobacco case which are deposited into the tobacco settlement attorney-fee trust fund and disbursed pursuant to sections 196.1050 to 196.1071 are hereby deemed to be payment of an attorneys' fee from the tobacco case defendants to the special assistants attorneys general by negotiation.

196.1062. 1. The "Missouri Commission on Tobacco Attorney-Fee Compensation"

is hereby established. The supreme court of Missouri shall provide clerical and administrative support to the commission.

2. The commission shall be composed of four members. Commission members shall be reimbursed for expenses. All members of the commission shall be members of the Missouri general assembly and shall be selected in the following manner:

(1) The speaker of the house of representatives shall select two members of the commission. The majority and minority floor leaders of the house of representatives shall each submit a list of three names to the speaker. The speaker shall select one commission member from each list. The two committee members selected shall not be members of the same political party;

(2) The president pro tem of the senate shall select two members of the commission. The majority and minority floor leaders of the senate shall each submit a list of three names to the president pro tem. The president pro tem shall select one commission member from each list. The two committee members selected shall not be members of the same political party.

3. The members shall be appointed as soon as possible after the effective date of this act.

4. No business of this committee shall be conducted without at least three members present.

5. No money shall be paid to attorneys from the tobacco settlement attorney-fee trust fund without the written opinion of a majority of the members of the Missouri commission on tobacco attorney-fee compensation.

196.1065. 1. All special assistant attorney generals, subcontracting attorneys, their agents and assigns shall submit written requests for payment of attorneys' fees, costs and expenses to the commission by December 31, 2001. All payment requests for attorneys' fees, costs and expenses received after December 31, 2001, shall not be considered by the commission.

2. Attorneys submitting requests for payment shall include a copy of their contracts for legal services, evidence of the hours worked on the case, expenses incurred, the aggregate fee amount requested, and shall submit a copy of the request for payment and supporting documentation to the attorney general.

196.1067. Within thirty days after receipt of each request for payment and supporting documentation, the attorney general shall file a written recommendation with the commission stating what constitutes a reasonable fee for the attorney applicant. Any commissioner may request and any attorney applying for fee payment shall provide any work product or any other evidence relating to the attorney's fee request.

196.1068. 1. The commission shall hold at least one public hearing concerning each attorney's request for compensation. Members of the public shall be allowed to make comments and submit payment proposals for attorneys' fees, costs and expenses.

2. Attorneys shall be awarded reasonable fees, but in no event to exceed five hundred dollars per hour. The sum of all commission awards shall not exceed the amount of money payable to the Missouri tobacco settlement attorney-fee trust fund resulting from any and all attorneys' fees, costs and expenses relating to the tobacco case.

3. The commission shall determine the amounts to be awarded to all attorney applicants and a payment schedule by July 1, 2002, provided, however, that any payments appropriated in any year shall not exceed the amount deposited into the tobacco settlement attorney-fee trust fund in the previous fiscal year. After July 1, 2002, all money remaining in the tobacco settlement attorney-fee trust fund shall be subject to appropriation by the general assembly for health care and education.

196.1069. The lead special assistant attorney general in the tobacco case and any attorneys contracted by the lead special assistant attorney general in such case shall not accept any liquidated fee from any party defendant to the tobacco case. Any application for arbitration submitted by the lead special assistant attorney general in the tobacco case shall be null and void.

196.1070. If any fully adjudicated decision of any federal or state court finds the settlement in the tobacco case to be unlawful or unenforceable on antitrust, on constitutional or any other grounds, then:

(1) The lead special assistant attorney general and any subcontracting counsel shall not receive any payments, and shall refund any payments previously received from the state;

(2) The contract entered into between the state and the lead special assistant attorney general in June, 1998, is declared null and void; and

(3) The attorney general shall apply to the general assembly for authority to appoint or contract with any special assistant attorneys general which he believes to be in the state's best interest.

196.1071. If any provisions of sections 196.1050 to 196.1070 or the application thereof to anyone or to any circumstances is held invalid, the remainder of those sections and the application of such provisions to other circumstances shall not be affected thereby.

Section B. Because of the need to establish accounting for the tobacco settlement proceeds, the enactment of sections 196.1050, 196.1053, 196.1056, 196.1059, 196.1062, 196.1065, 196.1067, 196.1068, 196.1069, 196.1070 and 196.1071 of this act is deemed necessary for the immediate

preservation of the public health, welfare, peace and safety, and is hereby declared to be an emergency act within the meaning of the constitution, and the enactment of sections 196.1050, 196.1053, 196.1056, 196.1059, 196.1062, 196.1065, 196.1067, 196.1068, 196.1069, 196.1070 and 196.1071 of this act shall be in full force and effect upon its passage and approval.

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