

105TH CONGRESS
2D SESSION

S. 1570

To limit the amount of attorneys' fees that may be paid on behalf of States and other plaintiffs under the tobacco settlement.

IN THE SENATE OF THE UNITED STATES

JANUARY 27, 1998

Mr. FAIRCLOTH introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To limit the amount of attorneys' fees that may be paid on behalf of States and other plaintiffs under the tobacco settlement.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the "Public Health Funds
5 Preservation Act".

6 **SEC. 2. FINDINGS.**

7 Congress makes the following findings:

8 (1) The attorneys involved in the negotiation of
9 the proposed tobacco settlement on behalf of the

1 State attorneys general and other included plaintiffs
2 are entitled to reasonable fees.

3 (2) The proposed settlement requires the to-
4 bacco companies to pay \$368,500,000,000 to be al-
5 located among various public health programs.

6 (3) It is estimated that more than
7 \$100,000,000,000 stands to be diverted from public
8 health programs for attorneys' fees.

9 (4) Congressional approval is required to enact
10 the terms of the settlement, including provisions re-
11 lating to attorneys' fees, and the scope of these fees
12 is thus subject to the discretion of Congress.

13 (5) The attorneys responsible for suits against
14 the tobacco industry are entitled to fair compensa-
15 tion for their efforts, but, unlike other attorneys in
16 this matter, their fees will reduce the total monies
17 available for the ambitious health goals of the settle-
18 ment.

19 (6) It is the obligation of Congress to ensure
20 that settlement funds are not diverted from public
21 health programs to the payment of excessive attor-
22 neys' fees.

1 **SEC. 3. LIMIT ON DIVERSION OF PUBLIC HEALTH FUNDS**
2 **TO ATTORNEYS.**

3 (a) **GENERAL LIMITATION.**—Notwithstanding any
4 other provision of law, any attorneys' fees paid to attor-
5 neys acting on behalf of a State or political subdivision
6 of a State or other plaintiff in connection with the settle-
7 ment of an action maintained by a State against 1 or more
8 tobacco companies to recover tobacco-related medicaid ex-
9 penditures or for other causes of action involved in the
10 settlement agreement dated June 20, 1997, shall not ex-
11 ceed \$125 per hour, together with reimbursement of ac-
12 tual out-of-pocket expenses as approved by the court in
13 such action.

14 (b) **FEE ARRANGEMENTS.**—Subsection (a) shall
15 apply to attorneys' fees provided for or in connection with
16 an action of the type described in such subsection under
17 any—

- 18 (1) court order;
- 19 (2) settlement agreement;
- 20 (3) contingency fee arrangement;
- 21 (4) arbitration procedure;
- 22 (5) alternative dispute resolution procedure (in-
23 cluding mediation); or
- 24 (6) other arrangement providing for the pay-
25 ment of attorneys' fees.

1 (c) REQUIREMENTS.—No award of attorneys’ fees
2 shall be made under any national tobacco settlement until
3 the attorneys’ involved have—

4 (1) provided to the Congress a detailed time ac-
5 counting with respect to the work performed in rela-
6 tion to any legal action which is the subject of the
7 settlement or with regard to the settlement itself;
8 and

9 (2) made public disclosure of the time account-
10 ing under paragraph (1) and any fee arrangements
11 entered into, or fee arrangements made, with respect
12 to any legal action that is the subject of the settle-
13 ment.

14 (d) APPLICATION OF ACT AND RULE OF CONSTRUC-
15 TION.—

16 (1) APPLICATION.—This Act shall apply only to
17 fees to be paid to attorneys, under any arrangement
18 described in subsection (b), who acted on behalf of
19 a State or political subdivision of a State or another
20 plaintiff in connection with an action described in
21 subsection (a).

22 (2) RULE OF CONSTRUCTION.—Nothing in this
23 Act shall be construed to limit the amount of fees
24 that may be paid by manufacturers of tobacco prod-

1 ucts to attorneys representing such manufacturers in
2 connection with actions described in subsection (a).

3 (e) EFFECTIVE DATE.—The limitation on the pay-
4 ment of attorneys' fees contained in this section shall be-
5 come effective on the date of enactment of any Act enacted
6 in connection with the national tobacco settlement.

7 (f) REPORT.—Each attorney whose fees are subject
8 to this section shall, within 30 days of the date of the
9 enactment of this Act, submit to Committees on the Judi-
10 ciary of the House of Representatives and the Senate a
11 comprehensive record of the time and expenses for which
12 the fees are to be paid. Such record shall be subject to
13 section 1001(a) of title 18, United States Code.

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