

3. Section 8.33 shall not apply to moneys in the fund. Notwithstanding section 12C.7, moneys earned as income or interest from the fund shall remain in the fund until expended as provided in this section.

Approved May 23, 2001

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## CHAPTER 163

### UNEMPLOYMENT COMPENSATION — NATURAL DISASTERS

S.F. 98

**AN ACT** concerning unemployment compensation by relieving unemployment compensation charges for employees who become unemployed due to a presidentially declared disaster and providing effective and retroactive applicability dates.

*Be It Enacted by the General Assembly of the State of Iowa:*

Section 1. Section 96.7, subsection 2, paragraph a, subparagraph (2), Code 2001, is amended by adding the following new unnumbered paragraph:

NEW UNNUMBERED PARAGRAPH. The account of an employer shall not be charged with benefits paid to an individual for unemployment that is directly caused by a major natural disaster declared by the president of the United States, pursuant to the federal Disaster Relief Act of 1974, if the individual would have been eligible for federal disaster unemployment assistance benefits with respect to that unemployment but for the individual's receipt of regular benefits.

Sec. 2. **EFFECTIVE AND RETROACTIVE APPLICABILITY DATES.** This Act, being deemed of immediate importance, takes effect upon enactment, and applies retroactively to January 1, 2001, to employer accounts for benefits paid to individuals as provided in section 1 of this Act.

Approved May 25, 2001

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## CHAPTER 164

### TOBACCO SETTLEMENT PROGRAM — MISCELLANEOUS CHANGES

S.F. 532

**AN ACT** relating to matters related to the tobacco settlement including the tobacco settlement authority, the tobacco settlement trust fund, and the tobacco settlement endowment fund, and providing an effective date.

*Be It Enacted by the General Assembly of the State of Iowa:*

Section 1. Section 12.65, Code 2001, is amended to read as follows:

12.65 ~~HEALTHY IOWANS TOBACCO SETTLEMENT ENDOWMENT FUND TRUST.~~

1. A healthy Iowans tobacco ~~settlement endowment fund~~ trust is created in the office of

the treasurer of state. ~~After payment of litigation costs, all moneys paid to the state pursuant to the master settlement agreement, as defined in section 453C.1, Moneys transferred to the healthy Iowans tobacco trust from the endowment for Iowa's health account of the tobacco settlement trust fund established in section 12E.12 and appropriated or transferred from any other source shall be deposited in the fund healthy Iowans tobacco trust.~~

~~2. Any moneys paid to the state by the tobacco settlement authority pursuant to chapter 12E shall be deposited in the fund. Additionally, the state's share of the moneys which are not sold to the tobacco settlement authority pursuant to chapter 12E shall be deposited in the fund.~~

~~3. 2. Moneys deposited in the fund healthy Iowans tobacco trust shall be used only in accordance with appropriations from the fund healthy Iowans tobacco trust for purposes related to health care, substance abuse treatment and enforcement, tobacco use prevention and control, and other purposes related to the needs of children, adults, and families in the state.~~

~~4. A savings account for healthy Iowans is created within the tobacco settlement endowment fund. Moneys, appropriated annually, shall be deposited in the account and shall be invested to provide an ongoing source of investment earnings.~~

~~5. 3. Notwithstanding section 8.33, any unexpended balance in the fund healthy Iowans tobacco trust at the end of the fiscal year shall be retained in the fund trust. Notwithstanding section 12C.7, subsection 2, interest or earnings on investments or time deposits of the moneys in the healthy Iowans tobacco settlement endowment fund, in the savings account for healthy Iowans, and in any other account established within the fund trust shall be credited to the healthy Iowans tobacco settlement endowment fund, to the savings account for healthy Iowans, or to any other account established, respectively trust.~~

~~6. For the purposes of this section, "litigation costs" are those costs itemized by the attorney general and submitted to and approved by the attorney general.~~

~~7. 4. Moneys in the fund healthy Iowans tobacco trust shall be considered part of the general fund of the state for cash flow purposes only, provided any moneys used for cash flow purposes are returned to the fund trust by the close of each fiscal year.<sup>1</sup>~~

Sec. 2. Section 12E.2, Code 2001, is amended by adding the following new subsections:  
NEW SUBSECTION. 4A. "Healthy Iowans tobacco trust" means the healthy Iowans tobacco trust created in section 12.65.

NEW SUBSECTION. 4B. "Interest rate agreement" means an interest rate swap or exchange agreement, an agreement establishing an interest rate floor or ceiling or both, or any similar agreement. Any such agreement may include the option to enter into or cancel the agreement or to reverse or extend the agreement.

NEW SUBSECTION. 5A. "Net proceeds" means the amount of proceeds remaining following each sale of bonds which are not required by the authority to establish and fund reserve funds and to pay the costs of issuance and other expenses and fees directly related to the authorization and issuance of bonds.

Sec. 3. Section 12E.2, subsections 7, 8, and 10, Code 2001, are amended to read as follows:

7. "Program plan" means the tobacco settlement program plan established in this chapter dated February 14, 2001, including exhibits to the program plan, submitted by the authority to the legislative council and the executive council, to provide the state with a secure and stable source of funding for the purposes designated by this chapter and section 12.65.

8. "Qualified investments" means investments of the authority authorized by pursuant to this chapter.

10. "State's share" means all of the state's monetary rights and interests, all rights of enforcement, and all rights necessary and convenient for enforcement of those monetary rights and interests in the master settlement agreement following:

a. All payments required to be made by tobacco product manufacturers to the state, and the state's rights to receive such payments, under the master settlement agreement.

<sup>1</sup> See chapter 184, §§, 16 herein

b. To the extent that such amounts have been assigned to the state, all payments of attorney fees required to be made by tobacco product manufacturers under the master settlement agreement, and all rights to receive such attorney fees.

Sec. 4. Section 12E.2, Code 2001, is amended by adding the following new subsections:  
NEW SUBSECTION. 10A. "Tax-exempt bonds" means bonds issued by the authority that are accompanied by a written opinion of legal counsel to the authority that the bonds are excluded from the gross income of the recipients for federal income tax purposes.

NEW SUBSECTION. 10B. "Taxable bonds" means bonds issued by the authority that are not accompanied by a written opinion of legal counsel to the authority that the bonds are excluded from the gross income of the recipients for federal income tax purposes.

Sec. 5. Section 12E.2, subsection 11, Code 2001, is amended by striking the subsection.

Sec. 6. Section 12E.3, subsection 2, paragraphs a and d, Code 2001, are amended to read as follows:

a. To implement and administer the program plan and to establish a stable source of revenue to be used for the purposes designated in this chapter and section 12.65.

d. To sell, pledge, or assign, as security or consideration, all or a portion of the state's share sold to the authority pursuant to a sales agreement, to provide for and secure the issuance and repayment of its bonds.

Sec. 7. Section 12E.8, subsection 1, paragraphs g and h, Code 2001, are amended to read as follows:

g. The power to invest or deposit moneys of or held by the authority in any manner determined by the authority, notwithstanding chapter 12B or 12C.

h. The power to procure insurance, other credit enhancements, and other financing arrangements, and to execute instruments and contracts and to enter into agreements convenient or necessary to facilitate financing arrangements of the authority and to fulfill the purposes of the authority under this chapter, including but not limited to such arrangements, instruments, contracts, and agreements as municipal bond insurance, liquidity facilities, interest rate agreements, and letters of credit.

Sec. 8. Section 12E.8, subsection 1, Code 2001, is amended by adding the following new paragraphs:

NEW PARAGRAPH. k. The power to acquire, own, hold, administer, and dispose of property.

NEW PARAGRAPH. l. The power to determine, in connection with the issuance of bonds, and subject to the sales agreement, the terms and other details of financing, and the method of implementation of the program plan.

NEW PARAGRAPH. m. The power to perform any act not inconsistent with federal or state law necessary to carry out the purposes of the authority.

Sec. 9. Section 12E.9, subsection 1, Code 2001, is amended by striking the subsection and inserting in lieu thereof the following:

1. a. The governor or the governor's designee shall sell and assign all or a portion of the state's share to the authority pursuant to one or more sales agreements for the purpose of securitization as described in the program plan and as specified in section 12E.10. The attorney general shall assist the governor in the preparation and review of all necessary documentation to effect such a sale as soon as reasonably practicable.

b. Any sales agreement shall be consistent with the program plan and this chapter. The terms and conditions of the sale established in such sales agreement may include but are not limited to any of the following:

(1) A requirement that the state enforce, at the sole expense of the authority, the provisions of the master settlement agreement that require payment of the state's share that has been sold to the authority under a sales agreement.

(2) A requirement that the state not agree to any amendment of the master settlement agreement that materially and adversely affects the authority's ability to receive the state's share that has been sold to the authority.

(3) An agreement that the anticipated use by the state of bond proceeds received pursuant to the sales agreement shall be for capital projects, certain debt service on outstanding obligations that funded capital projects, payment of attorney fees related to the master settlement agreement, and to provide a secure and stable source of funding to the state for purposes designated by this chapter and section 12.65.

(4) A statement that the net proceeds from the sale of bonds shall be deposited in the tobacco settlement trust fund established under section 12E.12 and that in no event shall the amounts in the trust fund be available or be applied for payment of bonds or any claim against the authority or any debt or obligation of the authority.

(5) A requirement that the net proceeds received by the authority from the sale of any tax-exempt bonds issued to provide funds for capital projects, certain debt service, and attorney fees related to the master settlement agreement be paid by the authority to the state as consideration for the sale of that portion of the state's share, that such net proceeds be deposited by the state upon receipt in the tax-exempt bond proceeds restricted capital funds account of the tobacco settlement trust fund, and that such proceeds are to be held by the authority solely for the benefit of the state, subject to annual appropriation by the state in accordance with section 12E.10, subsection 1, paragraph "b".

(6) A requirement that the net proceeds received by the authority from the sale of taxable bonds or tax-exempt bonds issued to provide funds for the purposes specified in section 12.65 be deposited in the endowment for Iowa's health account of the tobacco settlement trust fund as moneys of the authority until transferred to the state pursuant to section 12E.12, subsection 1, paragraph "b", subparagraph (2). Each amount transferred shall be the consideration received by the state for that portion of the state's share.

(7) An agreement that the effective date of the sale is the date of receipt of the bond proceeds by the authority and the deposits of the net proceeds of the tax-exempt bonds and any taxable bonds in the respective accounts of the tobacco settlement trust fund.

Sec. 10. Section 12E.9, subsection 5, Code 2001, is amended to read as follows:

5. The authority, the treasurer of state, and the attorney general shall report to the legislative council and the executive council on or before the date ~~specified in the program plan of the sale~~, advising them of the ~~accomplishment~~ status of the sale, its terms, and conditions.

Sec. 11. Section 12E.10, Code 2001, is amended by striking the section and inserting in lieu thereof the following:

12E.10 TOBACCO SETTLEMENT PROGRAM PLAN.

1. a. (1) The authority shall implement the program plan and shall proceed with a securitization to maximize the transference of risks associated with the master settlement agreement.

(2) The authority shall issue tax-exempt bonds in an amount that is sufficient to provide net proceeds in an amount of not more than five hundred forty million dollars for deposit in the tax-exempt bond proceeds restricted capital funds account of the tobacco settlement trust fund, to be used for capital projects, certain debt service on outstanding obligations which funded capital projects, and attorney fees related to the master settlement agreement.

(3) The authority may also issue taxable bonds or tax-exempt bonds to provide additional amounts to be used for the purposes specified in section 12.65.

(4) Notwithstanding subparagraphs (1) and (2), the authority is not required to issue tax-exempt bonds if the authority determines that the issuance would not be in the best interest of the state due to market conditions.

b. It is the expectation of the state that not less than eighty-five percent of the proceeds deposited in the tax-exempt bond proceeds restricted capital funds account of the tobacco

settlement trust fund will be expended within five years from the effective date of the sale, consistent with the requirements of federal law, and that the specific capital projects, debt service, and attorney fees payments shall be determined, annually, through appropriations authorized by a constitutional majority of each house of the general assembly and approved by the governor.<sup>2</sup>

2. The authority shall periodically report to the legislative council and the governor regarding implementation of the program plan and shall, prior to any public offering of bonds, submit a report to the legislative council and the governor describing the terms of the proposed bond issue.

3. Any amendment to the program plan shall be authorized by a constitutional majority of each house of the general assembly and approved by the governor.

4. To the extent that any provision of the program plan is inconsistent with this chapter, the provisions of this chapter shall govern.

Sec. 12. Section 12E.11, subsections 1, 4, and 5, Code 2001, are amended to read as follows:

1. The authority may issue bonds and ~~use, if bonds are issued, shall make the proceeds from the bonds for the purpose of providing available to the state pursuant to the sales agreement to fund capital projects, certain debt service on outstanding obligations that funded capital projects, and attorney fees related to the master settlement agreement, and to provide~~ a secure and stable source of funding to the state, consistent with the purposes of this chapter ~~and section 12.65. In connection with the issuance of bonds and subject to the terms of the sales agreement, the authority shall determine the terms and other details of the financing and the method of implementation of the program plan.~~ Bonds issued pursuant to this section may be secured by a pledge of all or a portion of the state's share and any moneys derived from the state's share, and any other sources available to the authority with the exception of moneys in the tobacco settlement trust fund. The authority may also issue refunding bonds, including advance refunding bonds, for the purpose of refunding previously issued bonds, and may issue other types of bonds, debt obligations, and financing arrangements necessary to fulfill its purposes or the purposes of this chapter.

4. Bonds shall state on their face that they are payable both as to principal and interest solely out of the assets of the authority pledged for their purpose and do not constitute an indebtedness of the state or any political subdivision of the state; are secured solely by and payable solely from ~~receipts under the master settlement agreement~~ assets of the authority pledged for such purpose; constitute neither a general, legal, or moral obligation of the state or any of its political subdivisions; and that the state has no obligation or intention to satisfy any deficiency or default of any payment of the bonds.

5. Any amount pledged by the authority to be received under the master settlement agreement shall be valid and binding at the time the pledge is made. ~~Receipts~~ Amounts so pledged and then or thereafter received by the authority shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act. The lien of any such pledge shall be valid and binding as against all parties having claims of any kind against the authority, whether such parties have notice of the lien. Notwithstanding any other provision to the contrary, the resolution of the authority or any other instrument by which a pledge is created need not be recorded or filed to perfect such pledge.

Sec. 13. Section 12E.11, subsection 7, paragraph c, Code 2001, is amended to read as follows:

c. The bonds shall be subject to the terms, conditions, and covenants providing for the payment of the principal, redemption premiums, if any, interest which may be fixed or variable during any period the bonds are outstanding, and other terms, conditions, covenants, and protective provisions safeguarding payment, not inconsistent with this chapter and as determined by resolution of the board authorizing their issuance.

<sup>2</sup> See chapter 185, §48 herein

Sec. 14. Section 12E.11, Code 2001, is amended by adding the following new subsection:

**NEW SUBSECTION.** 11. The state reserves the right at any time to alter, amend, repeal, or otherwise change the structure, organization, programs, or activities of the authority, including the power to terminate the authority, except that a law shall not be enacted that impairs any obligation made pursuant to a sales agreement or any contract entered into by the authority with or on behalf of the holders of the bonds to the extent that any such law would contravene Article I, section 21, of the Constitution of the State of Iowa or Article I, section 10, of the Constitution of the United States.

Sec. 15. Section 12E.12, subsection 1, Code 2001, is amended to read as follows:

1. a. A tobacco settlement trust fund is established, separate and apart from all other public moneys or funds of the state, under the control of the authority. The fund shall consist of moneys paid to the authority and not pledged to the payment of bonds or otherwise obligated. Such moneys shall include but are not limited to payments received from the master settlement agreement which are not pledged to the payment of bonds or which are subsequently released from a pledge to the payment of any bonds; payments which, in accordance with any sales agreement with the state, are to be paid to the state and not pledged to the bonds, including that portion of the proceeds of any bonds designated for purchase of all or a portion of the state's share, which are designated for deposit in the fund, together with all interest, dividends, and rents on the bonds; and all securities or investment income and other assets acquired by and through the use of the moneys belonging to the fund and any other moneys deposited in the fund. Moneys in the fund are to be used solely and only for the payment of all amounts due and to become due to the state, and shall not be used for any other purpose. Such moneys shall not be available for the payment of any claim against the authority or any debt or obligation of the authority.

b. The fund shall consist of the following accounts:

(1) The tax-exempt bond proceeds restricted capital funds account. The net proceeds of tax-exempt bonds issued to provide funds for capital projects, certain debt service, and attorney fees related to the master settlement agreement which the state treasurer is authorized and directed to deposit on behalf of the state, shall be deposited in the account and shall be used to fund capital projects, certain debt service, and the payment of attorney fees related to the master settlement agreement. With respect to capital projects, it is the intent of the general assembly to fund capital projects that qualify as vertical infrastructure projects as defined in section 8.57, subsection 5, paragraph "c", to the extent practicable in any fiscal year and without limiting other qualifying capital expenditures considered and approved by a constitutional majority of each house of the general assembly and the governor.

(2) The endowment for Iowa's health account. The net proceeds of any taxable bonds or tax-exempt bonds issued to provide funds for the purposes specified in section 12.65 which the authority is directed to deposit in the account, any portion of the state's share which is not sold to the authority, and any other moneys appropriated by the state for deposit in the account shall be deposited in the account and shall be used for the purposes specified in section 12.65.

(a) There is transferred from the endowment for Iowa's health account of the tobacco settlement trust fund to the healthy Iowans tobacco trust for the fiscal year beginning July 1, 2001, and ending June 30, 2002, the amount of fifty-five million dollars, to be used for the purposes specified in section 12.65.

(b) For each fiscal year beginning July 1, 2002, and annually thereafter, there is transferred from the endowment for Iowa's health account of the tobacco settlement trust fund to the healthy Iowans tobacco trust fifty-five million dollars plus an inflationary factor of one and one-half percent of the amount transferred in the previous fiscal year. Any transfer in an amount not in accordance with this subparagraph shall not be made unless authorized by a three-fifths majority of each house and approved by the governor.

Sec. 16. Section 12E.12, subsection 3, Code 2001, is amended by adding the following new paragraph:

NEW PARAGRAPH. e. If consistent with the investment policy established by the board, the authority may invest moneys of or held by the authority in structured notes and investment agreements, the repayment of the principal amount of which is protected or guaranteed.

Sec. 17. Section 12E.13, subsection 5, Code 2001, is amended to read as follows:

5. All moneys of the authority or moneys held by the authority shall be invested and held in the name of the authority, whether they are held for the benefit, security, or future payment to holders of bonds or to the state. All such moneys and investments shall be considered moneys and investments of the authority with the exception of moneys in the tax-exempt bond proceeds restricted capital funds account of the tobacco settlement trust fund which are moneys of the state.

Sec. 18. Section 12E.17, Code 2001, is amended to read as follows:

12E.17 DISSOLUTION OF THE AUTHORITY.

The authority shall dissolve no later than two years from the date of final payment of all outstanding bonds and the satisfaction of all outstanding obligations of the authority, except to the extent necessary to remain in existence to fulfill any outstanding covenants or provisions with bondholders or third parties made in accordance with this chapter. Upon dissolution of the authority, all assets of the authority shall be returned to the state and shall be deposited in the healthy Iowans tobacco settlement endowment fund trust, unless otherwise directed by the general assembly, and the authority shall execute any necessary assignments or instruments, including any assignment of any right, title, or ownership to the state for receipt of payments under the master settlement agreement.

Sec. 19. 2000 Iowa Acts, chapter 1208, section 24, as amended by 2001 Iowa Acts, Senate File 258,<sup>3</sup> section 1, is repealed.

Sec. 20. EFFECTIVE DATE — DEPOSIT OF FUNDS. Until the effective date of the sale as provided in section 12E.9, the state's share shall be deposited in the healthy Iowans tobacco trust created in section 12.65. Upon the effective date of the sale, the state's share shall be transferred or deposited in accordance with any sales agreement and chapter 12E.

Sec. 21. EFFECTIVE DATE. This Act, being deemed of immediate importance, takes effect upon enactment.

Approved May 29, 2001

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<sup>3</sup> Chapter 5 herein