

S T A T E O F N E W Y O R K

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1999-2000 Regular Sessions  
I N A S S E M B L Y  
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Introduced by M. of A. GRANNIS, GOTTFRIED, DINOWITZ, HOCHBERG, LUSTER, EVE, CLARK -- Multi-Sponsored by -- M. of A. CANESTRARI, HARENBERG, McENENY, McLAUGHLIN, ORTIZ -- read once and referred to the Committee on Health -- reported and referred to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the public health law and the public officers law, in relation to establishing the New York tobacco use prevention and control foundation

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. The public health law is amended by adding a new article  
2 8-A to read as follows:

3 ARTICLE 8-A

4 NEW YORK TOBACCO USE PREVENTION AND CONTROL FOUNDATION

5 SECTION 820. LEGISLATIVE FINDINGS AND PURPOSE.

6 821. DEFINITIONS.

7 822. NEW YORK TOBACCO USE PREVENTION AND CONTROL FOUNDATION;  
8 CREATION AND PURPOSE.

9 823. POWERS AND DUTIES OF THE FOUNDATION.

10 824. BOARD OF DIRECTORS OF THE FOUNDATION.

11 825. COOPERATION AND COORDINATION.

12 826. STATEWIDE, COMPREHENSIVE TOBACCO USE PREVENTION AND CONTROL  
13 PLAN.

14 827. GRANTS; CRITERIA.

15 828. EVALUATION.

16 829. REPORT.

17 830. LIMITATION ON LIABILITY.

18 831. INCONSISTENT PROVISIONS OF OTHER LAWS SUPERSEDED.

19 832. SEPARABILITY.

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1 § 820. LEGISLATIVE FINDINGS AND PURPOSE. THE LEGISLATURE FINDS THAT  
2 TOBACCO USE AMONG YOUNG PEOPLE IS THE MOST SERIOUS PREVENTABLE PUBLIC  
3 HEALTH PROBLEM IN NEW YORK. YOUNG PEOPLE ARE PARTICULARLY VULNERABLE TO  
4 THE ADDICTIVE QUALITIES OF TOBACCO AND THE LURE OF TOBACCO COMPANY  
5 ADVERTISEMENTS AND PROMOTIONAL PRODUCTS. THIS YEAR, EIGHTY-SEVEN THOU-  
6 SAND NEW YORK CHILDREN WILL START SMOKING AND UNLESS CURRENT SMOKING  
7 TRENDS ARE REVERSED, THREE HUNDRED SEVENTY-SEVEN THOUSAND CHILDREN ALIVE  
8 TODAY WILL DIE PREMATURELY FROM TOBACCO USE.

9 THE LEGISLATURE FURTHER FINDS THAT THE HUMAN AND ECONOMIC LOSSES DUE  
10 TO TOBACCO USE IN NEW YORK ARE ENORMOUS. EACH YEAR, TOBACCO-RELATED  
11 ILLNESSES RESULT IN OVER THIRTY THOUSAND DEATHS IN THE STATE. ANNUAL  
12 MEDICAID COSTS TO TREAT PEOPLE WITH SMOKING-RELATED DISEASE ARE ESTI-  
13 MATED TO BE UP TO TWO BILLION DOLLARS.

14 CIGARETTE SMOKING IS THE LEADING CAUSE OF PREVENTABLE DEATH AND  
15 DISEASE IN THE STATE. SMOKING IS KNOWN TO CAUSE HEART DISEASE, STROKE,  
16 LUNG AND ESOPHAGEAL CANCER, CHRONIC LUNG DISEASE, AND EMPHYSEMA. EXPO-  
17 SURE TO ENVIRONMENTAL TOBACCO SMOKE HAS BEEN CAUSALLY LINKED WITH LUNG  
18 CANCER, CHILDHOOD ASTHMA, SUDDEN INFANT DEATH SYNDROME, AND LOWER-RESPI-  
19 RATORY TRACT INFECTIONS. SMOKELESS TOBACCO USE CAUSES CANCER OF THE GUM,  
20 MOUTH, PHARYNX, LARYNX, AND ESOPHAGUS.

21 THE LEGISLATURE FURTHER FINDS THAT IT IS IN THE BEST INTERESTS OF THE  
22 STATE TO IMPROVE THE HEALTH, QUALITY OF LIFE, AND ECONOMIC WELL-BEING OF  
23 ALL ITS CITIZENS BY PROMOTING PROGRAMS AND ACTIVITIES TO ENCOURAGE THE  
24 PREVENTION AND REDUCTION OF TOBACCO USE IN NEW YORK.

25 FOR THESE PURPOSES, THERE SHALL BE CREATED A NON-PROFIT CORPORATION  
26 KNOWN AS THE NEW YORK TOBACCO USE PREVENTION AND CONTROL FOUNDATION TO

27 SERVE AS AN EXPERT, INDEPENDENT ENTITY TO UNDERTAKE, PROMOTE AND ADMIN-  
28 ISTER PROGRAMS AND ACTIVITIES TO PREVENT TOBACCO USE AMONG YOUNG PEOPLE  
29 AND TO REDUCE TOBACCO USE AMONG ALL POPULATIONS AS RAPIDLY AS POSSIBLE.

30 IT IS THE INTENT OF THE LEGISLATURE THAT THE FOUNDATION SHALL BE FUND-  
31 ED BY A PORTION OF REVENUES RECEIVED BY THE STATE FROM ANY SOURCE AS A  
32 DIRECT OR INDIRECT RESULT OF ANY JUDGMENT AGAINST OR SETTLEMENT WITH  
33 TOBACCO PRODUCT MANUFACTURERS, TOBACCO RESEARCH ASSOCIATIONS, OR ANY  
34 OTHER PERSON IN THE TOBACCO INDUSTRY RELATING TO LITIGATION, ADMINISTRA-  
35 TIVE PROCEEDINGS OR ANY OTHER CLAIM MADE OR PROSECUTED BY THE STATE TO  
36 RECOVER DAMAGES FOR VIOLATION OF STATE LAWS; OTHER FUNDS MADE AVAILABLE  
37 FROM THE LEGISLATURE BY APPROPRIATION FROM THE GENERAL FUND OR BY DEDI-  
38 CATION OF SPECIAL FUNDS FOR THE PURPOSES OF THIS ARTICLE; AND ANY  
39 PRIVATE OR OTHER FUNDS RECEIVED BY THE FOUNDATION.

40 MONIES DEDICATED OR APPROPRIATED FOR THE PURPOSES OF THIS ARTICLE  
41 SHALL NOT BE USED TO SUPPLANT EXISTING GENERAL FUND OR OTHER REVENUE  
42 ALLOCATED TO MEET EXISTING PROGRAM OBLIGATIONS.

43 § 821. DEFINITIONS. THE FOLLOWING TERMS, WHENEVER USED OR REFERRED TO  
44 IN THIS ARTICLE, UNLESS THE CONTEXT INDICATES OTHERWISE, SHALL HAVE THE  
45 FOLLOWING MEANINGS:

- 46 1. "BOARD" MEANS THE BOARD OF DIRECTORS OF THE FOUNDATION.
- 47 2. "DIRECT MEDICAL SERVICES" MEANS DIAGNOSIS OR TREATMENT PROVIDED BY  
48 A LICENSED OR CERTIFIED HEALTH CARE PRACTITIONER.
- 49 3. " ELIGIBLE ACTIVITIES" MEANS ACTIVITIES APPROVED BY THE BOARD THAT  
50 ARE ELIGIBLE FOR FUNDING PURSUANT TO THIS ARTICLE, INCLUDING BUT NOT  
51 LIMITED TO:  
52 A. COMMUNITY PROGRAMS TO REDUCE AND PREVENT TOBACCO USE THROUGH LOCAL  
53 INVOLVEMENT AND PARTNERSHIPS;  
54 B. SCHOOL-BASED PROGRAMS TO REDUCE AND PREVENT TOBACCO USE AMONG  
55 YOUTH;

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1 C. MARKETING AND ADVERTISING TO DISCOURAGE TOBACCO USE AND SUPPORT  
2 COMMUNITY-BASED INITIATIVES;

3 D. TOBACCO CESSATION PROGRAMS;

4 E. ACTIVITIES TO REDUCE TOBACCO-RELATED DISEASE AMONG HIGH-RISK POPU-  
5 LATIONS;

6 F. ASSISTANCE TO ENFORCEMENT OF LOCAL LAWS TO PROMOTE CLEAN INDOOR AIR  
7 AND RESTRICT YOUTH'S ACCESS TO TOBACCO PRODUCTS;

8 G. SURVEILLANCE, EVALUATION AND RESEARCH CONCERNING THE IMPLEMENTATION  
9 AND EFFECTIVENESS OF THE STATEWIDE, COMPREHENSIVE TOBACCO USE PREVENTION  
10 AND CONTROL PROGRAM; AND

11 H. SUCH OTHER ACTIVITIES AS ARE DETERMINED BY THE BOARD TO BE NECES-  
12 SARY TO CARRY OUT THE PURPOSES OF THIS ARTICLE, EXCEPT THAT NO FUNDS  
13 SHALL BE USED TO PROVIDE DIRECT MEDICAL SERVICES OTHER THAN THOSE ASSO-  
14 CIATED WITH CESSATION SERVICES.

15 4. "ELIGIBLE APPLICANT" MEANS A HEALTH CARE PROVIDER LICENSED PURSUANT  
16 TO ARTICLE TWENTY-EIGHT, THIRTY-SIX OR FORTY-FOUR OF THIS CHAPTER OR  
17 ARTICLE FORTY-THREE OF THE INSURANCE LAW, A NOT-FOR-PROFIT ORGANIZATION  
18 WHICH HAS A DEMONSTRATED ABILITY TO PROVIDE OR COORDINATE TOBACCO  
19 PREVENTION, CONTROL PROGRAMS, SERVICES, OR RESEARCH, A SCHOOL DISTRICT,  
20 A COLLEGE OR UNIVERSITY, A LOCAL PUBLIC HEALTH DEPARTMENT, A PROFES-  
21 SIONAL HEALTH ORGANIZATION, ASSOCIATION OR SOCIETY, OR A PROFESSIONAL  
22 EDUCATION ORGANIZATION OR ASSOCIATION. NO ELIGIBLE APPLICANT SHALL  
23 DIRECTLY RECEIVE OR SEEK ANY REMUNERATION, GIFT OR POLITICAL CONTRIB-  
24 UTION FROM A TOBACCO MANUFACTURER OR THEIR CONTRACTORS, AGENTS OR REPRE-  
25 SENTATIVES.

26 5. "FOUNDATION" MEANS THE NEW YORK TOBACCO USE PREVENTION AND CONTROL  
27 FOUNDATION.

28 6. "STATEWIDE, COMPREHENSIVE TOBACCO USE PREVENTION AND CONTROL PLAN"  
29 OR "PLAN" MEANS THE ANNUAL PLAN DEVELOPED BY THE FOUNDATION AND APPROVED  
30 BY THE BOARD PURSUANT TO THE REQUIREMENTS OF SECTION EIGHT HUNDRED TWEN-  
31 TY-SIX OF THIS ARTICLE WHICH IDENTIFIES THE PROGRAMS AND ACTIVITIES TO  
32 BE FUNDED BY THE FOUNDATION, AND PRIORITIZES THE PROGRAMS AND ACTIVITIES  
33 TO BE FUNDED AND THE POPULATIONS TO BE SERVED. SUCH PROGRAMS AND ACTIV-  
34 ITIES SHALL INCLUDE BUT NOT BE LIMITED TO ELIGIBLE ACTIVITIES.

35 7. "STATEWIDE, COMPREHENSIVE TOBACCO USE PREVENTION AND CONTROL  
36 PROGRAM" MEANS THE COMPONENT PROGRAMS AND ACTIVITIES APPROVED BY THE  
37 FOUNDATION FOR FUNDING PURSUANT TO THIS ARTICLE, INCLUDING BUT NOT  
38 LIMITED TO ELIGIBLE ACTIVITIES.

39 8. "TOBACCO CONTROL ORGANIZATION" MEANS A NOT-FOR-PROFIT ORGANIZATION  
40 ORGANIZED FOR THE PURPOSE OF REDUCING OR PREVENTING TOBACCO CONSUMPTION  
41 OR PROTECTING NONSMOKERS FROM THE EFFECTS OF INVOLUNTARY SMOKING.

42 9. "TOBACCO USE" MEANS THE CONSUMPTION OF TOBACCO PRODUCTS BY BURNING,  
43 CHEWING, INHALING, OR OTHER FORMS OF INGESTING.

44 10. "VOLUNTARY HEALTH ORGANIZATION" MEANS A NOT-FOR-PROFIT ORGANIZA-  
45 TION ORGANIZED FOR PURPOSES RELATED TO HEALTH, INCLUDING BUT NOT LIMITED  
46 TO, AN ORGANIZATION DEVOTED TO THE RESEARCH OF CANCER, HEART DISEASE, OR  
47 DISEASE OF THE LUNG.

48 § 822. NEW YORK TOBACCO USE PREVENTION AND CONTROL FOUNDATION;  
49 CREATION AND PURPOSE. 1. THERE IS HEREBY CREATED A NOT-FOR-PROFIT  
50 CORPORATION WHICH SHALL BE KNOWN AS THE NEW YORK TOBACCO USE PREVENTION  
51 AND CONTROL FOUNDATION. THE FOUNDATION SHALL BE GOVERNED BY THE NOT-FOR-  
52 PROFIT CORPORATION LAW EXCEPT WHERE THAT LAW CONFLICTS WITH THIS ARTI-  
53 CLE, IN WHICH CASE THE PROVISIONS OF THIS ARTICLE SHALL GOVERN.

54 2. THE FOUNDATION IS CREATED TO FULFILL THE PUBLIC PURPOSE OF REDUCING  
55 THE HEALTH AND ECONOMIC CONSEQUENCES OF TOBACCO USE BY UNDERTAKING AND

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1 PROMOTING PROGRAMS AND ACTIVITIES TO PREVENT TOBACCO USE AND REDUCE  
2 TOBACCO USE IN THE STATE AS RAPIDLY AS POSSIBLE.

3 § 823. POWERS AND DUTIES OF THE FOUNDATION. THE FOUNDATION SHALL  
4 HAVE THE FOLLOWING POWERS AND DUTIES:

5 1. TO SOLICIT AND ACCEPT GIFTS, GRANTS, FUNDS, PROPERTY OR SERVICES  
6 FROM PUBLIC OR PRIVATE SOURCES IN FURTHERANCE OF ITS CORPORATE PURPOSES;

7 2. TO RECEIVE FUNDS APPROPRIATED IN THE GENERAL FUND OR REVENUES MADE  
8 AVAILABLE BY THE LEGISLATURE THROUGH DEDICATION TO SPECIAL ACCOUNTS;

9 3. TO PROHIBIT THE USE OF FOUNDATION FUNDS FOR LOBBYING ACTIVITY;

10 4. TO ENTER INTO CONTRACTS WITH THE UNITED STATES, STATE, POLITICAL  
11 SUBDIVISIONS OR ANY AGENCY OR INSTRUMENTALITY THEREOF, OR ANY PERSON,  
12 FIRM OR CORPORATION;

13 5. TO DEVELOP, OVERSEE, ADMINISTER AND IMPLEMENT THE STATEWIDE,  
14 COMPREHENSIVE TOBACCO USE PREVENTION AND CONTROL PROGRAM;

15 6. TO STUDY THE RESEARCH AND PRACTICES REPORTED IN THE LITERATURE OR  
16 DEVELOPED IN OTHER PROGRAMS IN DEVELOPING THE STATEWIDE, COMPREHENSIVE  
17 TOBACCO USE PREVENTION AND CONTROL PROGRAM;

18 7. TO DEVELOP CRITERIA FOR PRIORITIZING FUNDING OF STATE TOBACCO USE  
19 PREVENTION AND CONTROL PROGRAMS AND ELIGIBLE ACTIVITIES;

20 8. TO NEGOTIATE IN ACCORDANCE WITH THE CRITERIA SET FORTH IN SECTION  
21 EIGHT HUNDRED TWENTY-SEVEN OF THIS ARTICLE THE AWARDING OF GRANTS FROM  
22 ITS FUNDS FOR THE PURPOSES OF THIS ARTICLE;

23 9. TO DEVELOP OR CONTRACT FOR THE DEVELOPMENT OF AN EVALUATION OF THE  
24 EFFECTIVENESS OF THE STATEWIDE, COMPREHENSIVE TOBACCO USE PREVENTION AND  
25 CONTROL PROGRAM BASED ON A REDUCTION IN THE CONSUMPTION OF TOBACCO;

26 10. TO ENSURE THAT PEER REVIEWED PUBLIC HEALTH LITERATURE AND MARKET-  
27 ING RESEARCH REGARDING TOBACCO USE PREVENTION AND CONTROL ARE CONSIDERED  
28 IN DEVELOPING AND EVALUATING THE STATEWIDE, COMPREHENSIVE TOBACCO USE  
29 PREVENTION AND CONTROL PROGRAM;

30 11. TO PROVIDE TRAINING, CONSULTATION AND TECHNICAL ASSISTANCE TO  
31 ELIGIBLE APPLICANTS AWARDED CONTRACTS PURSUANT TO THIS ARTICLE;

32 12. TO CARRY OUT ITS CORPORATE PURPOSES WITHOUT OBTAINING THE CONSENT  
33 OF ANY DEPARTMENT, BOARD (OTHER THAN THE BOARD OF THE FOUNDATION), OR  
34 AGENCY;

35 13. TO MAINTAIN A REASONABLE RESERVE OF UNALLOCATED FUNDS OF THE ANNU-  
36 AL AMOUNT HELD BY THE FOUNDATION; AND

37 14. TO DO ANY AND ALL THINGS REASONABLY NECESSARY OR CONVENIENT TO  
38 CARRY OUT ITS PURPOSES AND EFFECTIVELY IMPLEMENT THE PROVISIONS OF THIS  
39 ARTICLE.

40 § 824. BOARD OF DIRECTORS OF THE FOUNDATION. 1. THE BOARD OF DIREC-  
41 TORS OF THE FOUNDATION SHALL CONSIST OF THIRTY-SIX MEMBERS OF WHOM EIGHT  
42 SHALL BE APPOINTED BY THE GOVERNOR, EIGHT BY THE ATTORNEY GENERAL, EIGHT

43 BY THE TEMPORARY PRESIDENT OF THE SENATE, EIGHT BY THE SPEAKER OF THE  
44 ASSEMBLY, TWO BY THE MINORITY LEADER OF THE SENATE AND TWO BY THE MINOR-  
45 ITY LEADER OF THE ASSEMBLY. EACH APPOINTEE SHALL BE FROM ONE OF THE  
46 FOLLOWING CATEGORIES:

- 47 A. TOBACCO CONTROL ORGANIZATIONS;
- 48 B. PROFESSIONAL HEALTH ASSOCIATIONS, ORGANIZATIONS OR SOCIETIES;
- 49 C. AREAS OF RESEARCH AND OTHER ACADEMIC EXPERTISE IN TOBACCO CESSATION  
50 AND PREVENTION;
- 51 D. EXPERTS IN MEDIA AND MASS MARKETING;
- 52 E. REPRESENTATIVES FOR THE INTEREST OF THE GENERAL PUBLIC;
- 53 F. VOLUNTARY HEALTH ORGANIZATIONS;
- 54 G. EDUCATION ASSOCIATIONS; AND
- 55 H. LOCAL PUBLIC HEALTH DEPARTMENTS.

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1 NO APPOINTING AUTHORITY SHALL APPOINT MORE THAN ONE PERSON FROM A  
2 PARTICULAR CATEGORY.

3 2. THE DIRECTORS SO APPOINTED SHALL SERVE FOR A TERM OF THREE YEARS,  
4 EXCEPT THAT, OF THE EIGHT DIRECTORS SO APPOINTED BY THE GOVERNOR, THREE  
5 SHALL SERVE FOR A TERM OF TWO YEARS AND THREE SHALL SERVE FOR A TERM OF  
6 ONE YEAR; OF THE EIGHT DIRECTORS SO APPOINTED BY THE ATTORNEY GENERAL,  
7 THREE SHALL SERVE FOR A TERM OF TWO YEARS AND THREE SHALL SERVE FOR A  
8 TERM OF ONE YEAR; OF THE EIGHT DIRECTORS SO APPOINTED BY THE TEMPORARY  
9 PRESIDENT OF THE SENATE, THREE SHALL SERVE FOR A TERM OF TWO YEARS AND  
10 THREE SHALL SERVE FOR A TERM OF ONE YEAR, AND OF THE EIGHT DIRECTORS SO  
11 APPOINTED BY THE SPEAKER OF THE ASSEMBLY, THREE SHALL SERVE FOR A TERM  
12 OF TWO YEARS AND THREE SHALL SERVE FOR A TERM OF ONE YEAR.

13 3. IF ANY VACANCY OTHER THAN BY EXPIRATION OF TERM OCCURS ON THE BOARD  
14 AMONGST THOSE FIRST APPOINTED SUCH VACANCY SHALL BE FILLED BY APPOINT-  
15 MENT FOR THE UNEXPIRED TERM BY THE APPOINTING AUTHORITY INITIALLY  
16 APPOINTING SUCH MEMBER. UPON EXPIRATION OF THE INITIAL TERMS, SUCCESSORS  
17 SHALL BE ELECTED BY THE REMAINING MEMBERS OF THE BOARD FOR A THREE YEAR  
18 TERM. MEMBERS SHALL CONTINUE AS SUCH UNTIL THEIR SUCCESSORS HAVE BEEN  
19 DULY ELECTED.

20 4. THE BOARD SHALL ELECT ONE OF ITS MEMBERS AS CHAIRPERSON AND ONE OF  
21 ITS MEMBERS AS VICE CHAIRPERSON OF SUCH BOARD.

22 5. MEMBERS OF THE BOARD SHALL SERVE WITHOUT COMPENSATION, BUT SHALL BE  
23 REIMBURSED FOR ACTUAL EXPENSES REASONABLY INCURRED IN THE PERFORMANCE OF  
24 THEIR DUTIES.

25 6. EACH NOMINEE SHALL HAVE DEMONSTRATED COMPETENCE OR EXPERIENCE RELE-  
26 VANT TO THE HUMAN OR ECONOMIC COSTS OF TOBACCO USE. NO NOMINEE SHALL  
27 HAVE ANY PAST OR CURRENT AFFILIATION WITH THE TOBACCO INDUSTRY OR ANY  
28 INDUSTRY CONTRACTOR, AGENT, OR ORGANIZATION THAT SHARES INTERESTS WITH  
29 THE TOBACCO INDUSTRY. NO NOMINEE SHALL HAVE RECEIVED OR SOUGHT ANY  
30 REMUNERATION, GIFT OR POLITICAL CONTRIBUTION FROM A TOBACCO MANUFACTURER  
31 OR THEIR CONTRACTORS, AGENTS OR REPRESENTATIVES.

32 7. THE BOARD SHALL MEET AT LEAST FOUR TIMES ANNUALLY AT THE CALL OF  
33 THE CHAIRPERSON OR IN HIS OR HER ABSENCE THE VICE CHAIRPERSON OR ON  
34 PETITION OF ANY THREE MEMBERS. A MAJORITY OF THE MEMBERS OF THE BOARD  
35 THEN IN OFFICE SHALL CONSTITUTE A QUORUM FOR THE TRANSACTION OF ANY  
36 BUSINESS.

37 8. NO MEMBER OF THE BOARD SHALL PARTICIPATE IN A DECISION ON THE  
38 AWARDING OF ANY GRANT OR CONTRACT TO AN ORGANIZATION WITH WHICH SUCH  
39 MEMBER IS AFFILIATED.

40 9. ALL MEETINGS OF THE BOARD SHALL BE OPEN TO THE PUBLIC AND APPROPRI-  
41 ATELY NOTICED.

42 10. THE FOUNDATION AND ITS CORPORATE EXISTENCE SHALL CONTINUE UNTIL  
43 TERMINATED BY LAW.

44 § 825. COOPERATION AND COORDINATION. 1. THE FOUNDATION SHALL ESTABLISH  
45 AND MAINTAIN WORKING RELATIONSHIPS WITH ORGANIZATIONS AND INSTITUTIONS  
46 DIRECTLY INVOLVED IN EFFORTS TO REDUCE THE ADDICTION, DISEASE, DISABILI-  
47 TY AND DEATH CAUSED BY THE USE OF TOBACCO PRODUCTS IN NEW YORK. SUCH  
48 CONTACT SHOULD ALSO INCLUDE GOVERNMENTAL AGENCIES WHICH MAY HAVE PUBLIC  
49 HEALTH RESPONSIBILITIES OR HAVE JURISDICTION OVER FACILITIES AT WHICH  
50 TOBACCO PRODUCTS MAY BE USED OR SOLD.

51 2. THE FOUNDATION SHALL ANNUALLY MAKE AVAILABLE TO ALL INTERESTED  
52 PARTIES A DESCRIPTION OF ITS PROGRAMS AND PLANS AND THE WAYS IN WHICH  
53 THE ACTIVITIES OF OTHERS WILL BE SUPPLEMENTED.

54 § 826. STATEWIDE, COMPREHENSIVE TOBACCO USE PREVENTION AND CONTROL  
55 PLAN. 1. ON OR BEFORE JANUARY FIRST, TWO THOUSAND THE FOUNDATION SHALL  
56 PREPARE AND SUBMIT TO THE GOVERNOR, THE ATTORNEY GENERAL, THE TEMPORARY

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1 PRESIDENT OF THE SENATE, AND THE SPEAKER OF THE ASSEMBLY, A STATEWIDE,  
2 COMPREHENSIVE TOBACCO USE PREVENTION AND CONTROL PLAN FOR IMPLEMENTATION  
3 IN THE STATE FISCAL YEAR BEGINNING APRIL FIRST, TWO THOUSAND. THE PLAN  
4 SHALL BE UPDATED AND SUBMITTED TO THE GOVERNOR, THE ATTORNEY GENERAL,  
5 THE TEMPORARY PRESIDENT OF THE SENATE, AND THE SPEAKER OF THE ASSEMBLY  
6 ON JANUARY FIRST OF EACH YEAR THEREAFTER. SUCH PLAN SHALL NOT BE IMPL-  
7 MENTED UNLESS AND UNTIL IT IS APPROVED BY THE BOARD.

8 2. IN DEVELOPING THE PLAN, THE FOUNDATION SHALL ENSURE THAT THE MOST  
9 EFFICACIOUS RESEARCH FINDINGS REGARDING TOBACCO USE PREVENTION AND  
10 CONTROL ARE CONSIDERED, AND THAT EXPERTS WITHIN THE STATE, IN OTHER  
11 STATES, AND IN THE CENTERS FOR DISEASE CONTROL ARE CONSULTED. THE PLAN  
12 SHALL INCLUDE, AT A MINIMUM, ELIGIBLE ACTIVITIES. THE PLAN SHALL  
13 INCLUDE RECOMMENDATIONS ON TOBACCO USE PREVENTION AND CONTROL PROGRAMS,  
14 FUNDING PRIORITIES, AND POPULATIONS TO BE SERVED. THE PLAN SHALL BE USED  
15 AS A BASIS TO PRIORITIZE AND FUND GRANT PROGRAMS AUTHORIZED PURSUANT TO  
16 THIS ARTICLE.

17 § 827. GRANTS; CRITERIA. 1. THE FOUNDATION SHALL NEGOTIATE THE  
18 AWARDING OF GRANTS TO ELIGIBLE APPLICANTS FOR ELIGIBLE ACTIVITIES BASED  
19 ON THE STATEWIDE, COMPREHENSIVE TOBACCO USE PREVENTION AND CONTROL PLAN  
20 APPROVED BY THE FOUNDATION.

21 2. THE FOUNDATION SHALL DEVELOP CRITERIA FOR AWARDING GRANTS TO ELIGI-  
22 BLE APPLICANTS WHICH SHALL INCLUDE, BUT NOT BE LIMITED TO:

23 A. A DEMONSTRATION BY THE APPLICANT THAT SCIENTIFICALLY SOUND  
24 APPROACHES WILL BE USED TO DIMINISH TOBACCO USE AMONG TARGET GROUPS;

25 B. FOR MARKETING PROGRAMS AND ADVERTISING, A DEMONSTRATION BY THE  
26 APPLICANT THAT THE MEDIUM AND CONTENT OF THE ADVERTISING SHALL BE THAT  
27 DETERMINED TO BE THE MOST EFFECTIVE METHODS FOR PREVENTING AND REDUCING  
28 THE CONSUMPTION OF TOBACCO; AND

29 C. TO THE EXTENT FEASIBLE, A DEMONSTRATION THAT GEOGRAPHICAL BALANCE  
30 IS ACHIEVED IN AWARDING GRANTS.

31 3. THE FOUNDATION SHALL ESTABLISH CRITERIA FOR MONITORING AND EVALUAT-  
32 ING THE EFFECTIVENESS OF PROGRAMS OPERATING PURSUANT TO THIS ARTICLE.

33 § 828. EVALUATION. THE FOUNDATION SHALL CONDUCT OR CONTRACT FOR AN  
34 EVALUATION OF THE EFFECTIVENESS OF PROGRAMS OPERATED PURSUANT TO THIS  
35 ARTICLE. THE FIRST SUCH EVALUATION SHALL BE COMPLETED AND SUBMITTED TO  
36 THE GOVERNOR, THE ATTORNEY GENERAL, THE TEMPORARY PRESIDENT OF THE  
37 SENATE, AND THE SPEAKER OF THE ASSEMBLY ON OR BEFORE JANUARY FIRST, TWO  
38 THOUSAND TWO. SUBSEQUENT EVALUATIONS SHALL BE COMPLETED AND SUBMITTED  
39 TO THE GOVERNOR, THE ATTORNEY GENERAL, THE TEMPORARY PRESIDENT OF THE  
40 SENATE AND THE SPEAKER OF THE ASSEMBLY ON OR BEFORE JANUARY FIRST OF  
41 EACH YEAR THEREAFTER. A PRINCIPAL MEASUREMENT OF EFFECTIVENESS SHALL BE  
42 REDUCTION OF TOBACCO USE, SMOKING RATES AMONG THE POPULATION AS A WHOLE  
43 AS WELL AS SPECIFIC SUBPOPULATIONS, AND REDUCTION OF EXPOSURE TO SECOND-  
44 HAND SMOKE. SURVEYS AND OTHER METHODS OF DETERMINING PUBLIC KNOWLEDGE,  
45 ATTITUDES AND BEHAVIORS WITH REGARD TO TOBACCO USE SHALL BE INCLUDED AS  
46 NECESSARY.

47 § 829. REPORT. WITHIN NINETY DAYS AFTER THE END OF THE FISCAL YEAR  
48 BEGINNING APRIL FIRST, TWO THOUSAND ONE, AND NINETY DAYS AFTER THE END  
49 OF EACH FISCAL YEAR THEREAFTER, THE FOUNDATION SHALL SUBMIT TO THE  
50 GOVERNOR, ATTORNEY GENERAL, TEMPORARY PRESIDENT OF THE SENATE, AND  
51 SPEAKER OF THE ASSEMBLY AN ANNUAL REPORT SETTING FORTH ITS OPERATIONS,  
52 ASSETS AND LIABILITIES, RECEIPTS AND EXPENDITURES DURING SUCH FISCAL  
53 YEARS AS SET FORTH ACCORDING TO GENERALLY ACCEPTED ACCOUNTING PRINCI-  
54 PLES, AND A LIST OF ITS CONSULTANTS AND OUTSIDE CONTRACTS WITH THE  
55 PURPOSES AND AMOUNTS THEREOF SET FORTH.

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1 § 830. LIMITATION ON LIABILITY. EXCEPT AS PROVIDED IN SECTIONS SEVEN

2 HUNDRED NINETEEN AND SEVEN HUNDRED TWENTY OF THE NOT-FOR-PROFIT CORPO-  
3 RATION LAW, AND EXCEPT ANY ACTION OR PROCEEDING BROUGHT BY THE ATTORNEY  
4 GENERAL, NEITHER THE DIRECTORS NOR ANY MEMBER, OFFICER, OR EMPLOYEE OF  
5 THE CORPORATION, SHALL BE LIABLE TO ANY PERSON OTHER THAN THE CORPO-  
6 RATION BASED SOLELY ON HIS OR HER CONDUCT WHILE ACTING WITHIN THE SCOPE  
7 OF HIS OR HER AUTHORITY, UNLESS THE CONDUCT OF SUCH DIRECTOR, MEMBER,  
8 OFFICER OR EMPLOYEE WITH RESPECT TO THE PERSON ASSERTING LIABILITY  
9 CONSTITUTED NEGLIGENCE, GROSS NEGLIGENCE OR INTENTIONAL MISCONDUCT.  
10 PROVIDED, HOWEVER, THAT NEITHER THE DIRECTORS, NOR ANY MEMBER, OFFICER  
11 OR EMPLOYEE OF THE CORPORATION SHALL BE LIABLE TO ANY PERSON OTHER THAN  
12 THE CORPORATION FOR HIS OR HER CONDUCT, WHILE ACTING WITHIN THE SCOPE OF  
13 HIS OR HER AUTHORITY, IN DEVELOPING, PREPARING, APPROVING AND SUBMITTING  
14 A STATEWIDE, COMPREHENSIVE TOBACCO USE PREVENTION AND CONTROL PROGRAM  
15 FOR IMPLEMENTATION, OR FOR UPDATING THE PLAN, OR FOR ANY RECOMMENDATIONS  
16 ON TOBACCO USE PREVENTION AND CONTROL CONTAINED THEREIN, OR FOR ANY  
17 LAWFUL DETERMINATION TO DISTRIBUTE, OR DISTRIBUTION OF, FUNDS PURSUANT  
18 TO SUCH PLAN.

19 § 831. INCONSISTENT PROVISIONS OF OTHER LAWS SUPERSEDED. INsofar AS  
20 THE PROVISIONS OF THIS ARTICLE ARE INCONSISTENT WITH THE PROVISIONS OF  
21 ANY OTHER LAW, GENERAL, SPECIAL OR LOCAL, THE PROVISIONS OF THIS ARTICLE  
22 SHALL BE CONTROLLING.

23 § 832. SEPARABILITY. IF ANY CLAUSE, SENTENCE, PARAGRAPH, SECTION,  
24 PART OR APPLICATION OF THIS ARTICLE SHALL BE ADJUDGED BY ANY COURT OF  
25 COMPETENT JURISDICTION TO BE INVALID, THAT JUDGMENT SHALL NOT AFFECT,  
26 IMPAIR OR INVALIDATE THE REMAINDER THEREOF, BUT SHALL BE CONFINED IN ITS  
27 OPERATION TO THE CLAUSE, SENTENCE, PARAGRAPH, SECTION, PART OR APPLICA-  
28 TION THEREOF DIRECTLY INVOLVED IN THE CONTROVERSY IN WHICH SUCH JUDGMENT  
29 SHALL HAVE BEEN RENDERED.

30 § 2. Subdivision 1 of section 17 of the public officers law is amended  
31 by adding a new paragraph (n) to read as follows:

32 (N) FOR PURPOSES OF THIS SECTION, THE TERM "EMPLOYEE" SHALL INCLUDE  
33 DIRECTORS, MEMBERS, OFFICERS AND EMPLOYEES OF THE NEW YORK TOBACCO USE  
34 PREVENTION AND CONTROL FOUNDATION.

35 § 3. This act shall take effect immediately, provided however, that  
36 the appointments to the board of directors as required by section 824 of  
37 the public health law as added by section one of this act shall be  
38 completed on or before September 1, 1999.