

106TH CONGRESS  
1ST SESSION

# S. 346

To amend title XIX of the Social Security Act to prohibit the recoupment of funds recovered by States from one or more tobacco manufacturers.

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## IN THE SENATE OF THE UNITED STATES

FEBRUARY 3, 1999

Mrs. HUTCHISON (for herself, Mr. GRAHAM, Mr. VOINOVICH, Mr. ABRAHAM, Mr. McCONNELL, Mr. McCain, Mr. LOTT, Mr. LEAHY, Mr. SMITH of Oregon, Mr. GORTON, Mrs. MURRAY, Mr. ALLARD, Mr. BURNS, Mr. FRIST, Mr. COCHRAN, Mr. CRAIG, Mr. BUNNING, Mr. KYL, Mr. LUGAR, Mr. INHOFE, Mr. HUTCHINSON, Mr. MACK, Mrs. LINCOLN, Mr. TORRICELLI, Mr. BAYH, Mr. MURKOWSKI, Mr. GRAMM, and Mr. THOMPSON) introduced the following bill; which was read twice and referred to the Committee on Finance

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## A BILL

To amend title XIX of the Social Security Act to prohibit the recoupment of funds recovered by States from one or more tobacco manufacturers.

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. FINDINGS.**

4       Congress makes the following findings:

5               (1) Over the last decade, State governments ini-  
6       tiated lawsuits against the tobacco industry, assert-  
7       ing a variety of claims, including the violation of

1 consumer fraud and other State consumer protection  
2 laws, antitrust violations, unjust enrichment, con-  
3 spiracy, racketeering, and others. Several State law-  
4 suits did not include any claims for reimbursement  
5 of tobacco-related health care costs paid under the  
6 medicaid program.

7 (2) The lawsuits against the tobacco industry  
8 were initiated by the States without any financial,  
9 technical, or other assistance from any branch or  
10 agency of the Federal Government, at any stage of  
11 the litigation or settlement process.

12 (3) Culminating in a comprehensive, 46-State  
13 agreement reached in November, 1998, all of the  
14 States, the District of Columbia, and the United  
15 States territories, have entered into settlement  
16 agreements with the major tobacco manufacturers in  
17 the United States. The States' Attorneys General  
18 carefully crafted these agreements to reflect only  
19 State costs, direct damages, civil penalties,  
20 disgorgement of profits, injunctive relief, and other  
21 appropriate remedies.

22 (4) States that entered into the comprehensive,  
23 46-State settlement agreement, as well as the other  
24 States that entered into individual settlement agree-  
25 ments, have planned for or have begun to plan for

1 the allocation and expenditure of the funds received  
2 under those agreements. Several States have already  
3 received and expended funds under those agree-  
4 ments.

5 (5) The medicaid third party recovery provi-  
6 sions of the Social Security Act do not encompass,  
7 nor did Congress intend them to apply to, situations  
8 in which States initiate lawsuits on behalf of all  
9 their residents against manufacturers of products,  
10 asserting a variety of consumer protection and other  
11 causes of action.

12 (6) If the Secretary of Health and Human  
13 Services were to claim that each of the States' set-  
14 tlement agreements include the existence of specific  
15 medicaid claims, arbitrarily assume that some por-  
16 tion of the settlement funds received by the States  
17 are related to such medicaid recovery claims, and  
18 then seek to recoup what is determined to be the  
19 Federal share of those funds, it would likely result  
20 in protracted and costly litigation that would cause  
21 unnecessary conflict between the States and the  
22 Federal Government and would delay or preclude  
23 States from using their settlement funds for the  
24 health and welfare of their residents, as determined  
25 by the needs and priorities of those residents.

1 **SEC. 2. PROHIBITION ON TREATING ANY FUNDS RECOV-**  
 2 **ERED FROM TOBACCO COMPANIES AS AN**  
 3 **OVERPAYMENT FOR PURPOSES OF MEDIC-**  
 4 **AID.**

5 (a) AMENDMENT TO SOCIAL SECURITY ACT.—Sec-  
 6 tion 1903(d)(3) of the Social Security Act (42 U.S.C.  
 7 1396b(d)(3)) is amended—

8 (1) by inserting “(A)” after “(3)”; and

9 (2) by adding at the end the following:

10 “(B)(i) Subparagraph (A) and paragraph  
 11 (2)(B) shall not apply to any amount recovered or  
 12 paid to a State as part of the comprehensive settle-  
 13 ment of November 1998 between manufacturers of  
 14 tobacco products, as defined in section 5702(d) of  
 15 the Internal Revenue Code of 1986, and State Attor-  
 16 neys General, or as part of any individual State set-  
 17 tlement or judgment reached in litigation initiated or  
 18 pursued by a State against one or more such manu-  
 19 facturers.

20 “(ii) Except as provided in subsection (i)(19), a  
 21 State may use amounts recovered or paid to the  
 22 State as part of a comprehensive or individual settle-  
 23 ment, or a judgment, described in clause (i) for any  
 24 expenditures determined appropriate by the State.”.

25 (b) PROHIBITION ON PAYMENT FOR ADMINISTRA-  
 26 TIVE EXPENSES INCURRED IN PURSUING TOBACCO LITI-

1 GATION.—Section 1903(i) of the Social Security Act (42  
2 U.S.C. 1396b(i)) is amended—

3 (1) in paragraph (18), by striking the period  
4 and inserting “; or”; and

5 (2) by inserting after paragraph (18) the fol-  
6 lowing new paragraph:

7 “(19) with respect to any amount expended on  
8 administrative costs to initiate or pursue litigation  
9 described in subsection (d)(3)(B).”.

10 (c) EFFECTIVE DATE.—This section and the amend-  
11 ments made by this section shall apply to amounts paid  
12 to a State prior to, on, or after the date of enactment  
13 of this Act.

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