Law Offices of
OLSON
HAGEL &
FISHBURN
LLP

09-0065

November 6, 2009

Amdt. #2 NS

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INITIATIVE COORDINATOR
ATTORNEY GENERAL'S OFFICE

Krystal Paris, Initiative Coordinator
Office of the Attorney General
1300 I Street
Sacramento, CA 95814

RE: Corrected version
CALIFORNIA CANCER RESEARCH ACT
Your file 09-0065

Dear Ms. Paris:

We have discovered a typo in the proposed initiative submitted on October 23, 2009.

In the last line of paragraph (2) on page 7, "qualitative" should be **quantitative.**

A corrected copy has been prepared and it is attached hereto. We regard this as a non-substantive amendment to the original proposal.

Please contact me if you have any questions.

Very truly yours,

OLSON HAGEL & FISHBURN LLP

N. EUGENE HILL
NEH:ab

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The people of the State of California do enact as follows:

HOPE 2010: THE CALIFORNIA CANCER RESEARCH ACT

SECTION 1. Findings and Declarations

(a) Despite continuing advancements in medical treatment and prevention, cancer remains a leading cause of death in California, responsible for nearly one in every four deaths each year.

(b) Medical experts expect more than 140,000 Californians to be diagnosed with cancer each year.

(c) Cigarette smoking and other uses of tobacco remain the leading causes of cancer in California, as well as many other serious health problems, including cardiovascular disease, emphysema and other chronic illnesses.

(d) The treatment of tobacco-related diseases continue to impose a significant burden upon California's overstressed health care system. Tobacco use costs Californians billions of dollars a year in medical expenses and lost productivity.

(e) Given the urgent need for new and effective treatments for cancer and other tobacco-related illnesses, tobacco tax revenues are an appropriate source of funds for research into the causes, early detection, and effective treatment, care, prevention, and potential cures of lung cancer and other types of cancer, cardiovascular disease, emphysema and other chronic diseases and to provide facilities for such research.

(f) HOPE 2010: The California Cancer Research Act will provide an ongoing source of funds to allow California's leading researchers to advance human understanding and knowledge about the causes, early detection, effective treatment, care, prevention and potential cures for cancer and other tobacco-related illnesses.

(g) Tobacco tax increases are an appropriate way to fund efforts to prevent and reduce tobacco-caused cancers and other diseases because increasing tobacco product prices directly reduces smoking and other tobacco uses.

(h) In order to control cancer, sustained support for cancer research is paramount and must include all phases of cancer research, from basic

and applied research to that which transfers technology from academic institutions and laboratories to use by medical providers and consumers.

SECTION 2. Statement of Purpose

The purpose of this measure is to increase the tax on tobacco to fund the following:

(1) Grants and loans for biomedical, epidemiological, behavioral, health services, and other research in California to enhance the state of medical knowledge regarding lung cancer and other types of cancer, cardiovascular disease, emphysema and other tobacco-related illnesses.

(2) Creation, staffing and equipping of California research facilities engaged in biomedical, epidemiological, behavioral, health services, and other research whose primary focus is to identify and refine promising prevention, early detection, treatments, complementary treatments and potential cures of lung cancer and other types of cancer, cardiovascular disease, emphysema and other tobacco-related diseases.

(3) Increased efforts to reduce tobacco use in the State and prevent children from becoming addicted users.

SECTION 3. HOPE 2010: California Cancer Research Act

Article 2.5 (commencing with Section 30130.50) is added to Chapter 2 of Part 13 of Division 2 of the Revenue and Taxation Code, to read:

§ 30130.50. HOPE 2010 Cancer Research Cigarette Excise Tax

(a) In addition to any other tax imposed under this part, a separate excise tax is hereby imposed upon every distributor of cigarettes upon the distribution of cigarettes at the rate of fifty mills ($0.050) for each cigarette distributed on and after the first day of the first calendar quarter commencing more than 90 days after the effective date of this section.

(b) (1) In addition to any other tax imposed under this part, every dealer and wholesaler, for the privilege of holding or storing cigarettes for sale, use, or consumption, shall pay a floor stock tax for each cigarette in his or her possession or under his or her control in this state at 12:01 a.m. on the first day of the first calendar quarter commencing more than 90 days after the effective date of this section at the rate of fifty mills ($0.050) for each cigarette.

(2) Every dealer and wholesaler shall file a return with the State Board of

Equalization on or before the first day of the first calendar quarter commencing more than 180 days after the effective date of this section on a form prescribed by the board, showing the number of cigarettes in his or her possession or under his or her control at 12:01 a.m. on the first day of the first calendar quarter commencing more than 90 days after the effective date of this section. The amount of tax shall be computed and shown on the return.

(c) Notwithstanding any other provisions of law, the tax created by the HOPE: 2010 Cancer Research Act and the revenue derived there from, including investment interest, shall be considered trust funds, to be expended solely for the purposes set forth in this Act and shall not be considered to be part of the General Fund, as that term used in Chapter 1, Part 2, Division 4 of the Government Code, commencing with Section 16300, and shall not be considered General Fund revenue for purposes of Section 8 of Article XVI of the California Constitution, and its implementing statues.

§ 30130.51. Definitions

For the purposes of this article:

(a) "Cigarette" has the same meaning as that in Section 30003, as it read on January 1, 2009.

(b) "Tobacco products" includes, but is not limited to, all forms of cigars, smoking tobacco, chewing tobacco, snuff, and any other articles or products made of, or containing at least 50 percent, tobacco, but does not include cigarettes.

§ 30130.52. Effect on Tobacco Consumption and Tax Revenue

(a) The State Board of Equalization shall determine within one year of the operative date of this article, and annually thereafter, the effect that the additional tax imposed on cigarettes by this article, and the resulting increase in the tax on tobacco products required by subdivision (b) of Section 30123, have on the consumption of cigarettes and tobacco products in this state. To the extent that a decrease in consumption is determined by the State Board of Equalization to be a direct result of the additional tax imposed by this article, or the resulting increase in the tax on tobacco products required by subdivision (b) of Section 30123, the State Board of Equalization shall determine the fiscal effect the decrease in consumption has on the Cigarette and Tobacco Products Surtax Fund created by Section 30122 (Proposition 99 as approved by the voters at the November 8, 1988, statewide general election), the Breast Cancer Fund created by Section 30461.6 and the portion of the General Fund created by Section 30101.

(b) The State Controller shall transfer funds from the California Cancer Research Life Sciences Innovation Trust Fund to the Cigarette and Tobacco Products Surtax Fund, the Breast Cancer Fund and the General Fund, to offset the revenue decrease directly resulting from imposition of additional taxes by this article.

§ 30130.53 HOPE 2010 Funds

(a) The California Cancer Research Life Sciences Innovation Trust Fund, and within that Fund, the Hope 2010 Research Fund, the Hope 2010 Facilities Fund, the Hope 2010 Tobacco Prevention and Cessation Fund, the Hope 2010 Law Enforcement Fund, and the HOPE 2010 Committee Account, are hereby established in the Treasury of the State of California.

(b) Notwithstanding any other provision of law, the California Cancer Research Life Sciences Innovation Trust Fund and all funds, sub-funds or sub-accounts of that Fund, are trust funds established solely to carry out the purposes of this Act.

(c) All revenues from the excise and floor stock tax received by the State of California, or State Officials, pursuant to the provisions of this Act, shall be deposited into the California Cancer Research Life Sciences Innovation Trust Fund.

(d) Revenue deposited into the California Cancer Research Life Sciences Innovation Trust Fund shall be deposited and apportioned as follows:

*(1) **Sixty percent (60%)** shall be deposited into the HOPE 2010 Research Fund for the purpose of grants and loans to support research into the prevention, early detection, treatments, complementary treatments and potential cures of lung cancer and other types of cancer, cardiovascular disease, emphysema and other tobacco-related diseases, including but not limited to coronary heart disease, cerebrovascular disease, and chronic obstructive lung disease, which shall be awarded on the basis of scientific merit as determined by an open, competitive peer review process that assures objectivity, consistency, and high quality. All qualified investigators, regardless of institutional affiliation, shall have equal access and opportunity to compete for the funds in this Act. The peer review process for the selection of grants awarded under this program shall be modeled on the process used by the National Institutes of Health in its grant-making process.*

*(2) **Fifteen percent (15%)** shall be deposited into the HOPE 2010 Facilities Fund for the purposes of grants and loans to provide facilities, including but not limited to those buildings, building leases and capital equipment as may be found necessary and appropriate by*

the Committee, to further biomedical, epidemiological, behavioral, health services, and other research whose primary focus is to identify and refine promising prevention, early detection, treatments, complementary treatments, rehabilitation and potential cures of lung cancer and other types of cancer, cardiovascular disease, emphysema and other tobacco-related diseases, subject to the authority of the Committee to redirect surplus funds, as provided in this Act.

(3) ***Twenty percent (20%)*** *shall be deposited into the HOPE 2010 Tobacco Prevention and Cessation Fund for carrying out comprehensive tobacco prevention and control programs, and apportioned in the following manner:*

(A) Eighty percent (80%) of the HOPE 2010 Tobacco Prevention and Cessation Fund shall be allocated to the California Department of Public Health Tobacco Control Program to support the tobacco control programs described beginning at Section 104375 of the Health and Safety Code.

(B)Twenty percent (20%) of the HOPE 2010 Tobacco Prevention and Cessation Fund shall be allocated to the California Department of Education for programs to prevent and reduce the use of tobacco products as described in Section 104420 of the Health and Safety Code.

(4) ***Three percent (3%)*** *shall be deposited into the HOPE 2010 Law Enforcement Fund to support law enforcement efforts to reduce cigarette smuggling, tobacco tax evasion, and counterfeit tobacco products, to reduce illegal sales of tobacco products to minors, and to enforce legal settlement provisions and conduct law enforcement training and technical assistance activities for tobacco-related statutes, and apportioned in the following manner:*

(A) Forty percent (40%) of the HOPE 2010 Law Enforcement Fund to the State Board of Equalization to be used to enforce laws that regulate the distribution and retail sale of cigarettes and other tobacco products, such as laws that prohibit untaxed cigarette and tobacco product smuggling and counterfeiting and sales of cigarettes and other tobacco products without a proper license.

(B) Forty percent (40%) of the HOPE 2010 Law Enforcement Fund to the State Department of Public Health to be used to support programs, including, but not limited to, providing grants to local law enforcement agencies to provide training and funding for the enforcement of state and local laws related to the illegal sales of tobacco to minors, increasing investigative activities, and compliance checks, and other appropriate activities to reduce illegal

sales of tobacco products to minors , including, but not limited to the Stop Tobacco Access to Kids Enforcement (STAKE) Act, pursuant to Section 22952 of the Business and Professions Code.

(C) Twenty percent (20%) of the HOPE 2010 Law Enforcement Fund to the Attorney General to be used for activities including, but not limited to, enforcing laws that regulate the distribution and sale of cigarettes and other tobacco products, such as laws that prohibit cigarette smuggling, counterfeiting, selling untaxed tobacco, selling tobacco without a proper license and selling tobacco to minors, and enforcing tobacco-related laws, court judgments, and settlements.

(5) ***Two percent (2%)*** *shall be deposited into a HOPE 2010 Committee Account which may be used by the Committee and the State Board of Equalization for the costs and expenses of administering this Act.*

(e) Funds deposited into the California Cancer Research Life Sciences Innovation Trust Fund or any sub-fund or sub-account of that Fund, may be placed into the Pooled Money Investment Account for investment only, and interest earned shall be credited to the Fund and deposited, apportioned and expended only in accordance with the provisions of this Act and its purposes.

(f) Funds deposited into the California Cancer Research Life Sciences Innovation Trust Fund, together with interest earned by the Fund or any sub-fund, are hereby continuously appropriated for the purposes of this Act without regard to fiscal year, and shall be used solely for the purposes of this Act and shall not be subject to appropriation, reversion or transfer by the Legislature, the Governor or the Director of Finance for any other purpose and may not be loaned to the General Fund, or any other fund, for any purpose.

§30130.54 HOPE 2010 Cancer Research Citizens Oversight Committee

(a) There is hereby created within the Government of the State of California, the HOPE 2010 Cancer Research Citizens Oversight Committee. All references in this Act to the "Committee" are to the HOPE 2010 Cancer Research Citizens Oversight Committee. The Committee shall consist of nine members, appointed as follows:

(1) Four members appointed by the Governor, as follows:

(A) One member affiliated with a California Academic Medical Center who is a practicing physician with expertise in the prevention, treatment or research of cardiovascular disease.

(B) Three members selected from among the Cancer Center

Directors of National Cancer Institute designated cancer centers located within the State of California. Each Director may designate a person to attend meetings of the Committee in their place, so long as that person is employed at their respective center and that employment provides background and experience in cancer treatment.

(2) The Chancellor from each of the campuses of the University of California which is a member of the California Institute for Quantitative Biological Research. Each Chancellor may designate a person to attend meetings of the Committee in their place, so long as that person is employed at their respective campus and that employment provides background and experience in quantitative bioscience.

(3) Two appointed by the Director of the California Department of Public Health, the appointments to be selected from among California representatives of California or national disease advocacy groups whose focus is tobacco-related illness, at least one of whom shall be a person who has been treated for a tobacco-related illness.

(4) No person who is required to register as a lobbyist under the provisions of any law of the United States, the State of California or any local government, is eligible for appointment to the Committee. A member of the Committee who registers with any governmental entity as a lobbyist is deemed to have resigned from the Committee and his or her office is deemed vacant as of the date of registration as a lobbyist.

(5) Notwithstanding any other provision of law, no member of the Committee, or those persons appointed by Committee members to attend meetings on their behalf, shall be an officer, employee, director, independent contractor, or grant recipient of any company or other business engaged in the manufacture, marketing, distribution, or sale of tobacco products, or have received any grants or payments for services of any kind from any such company or business during the past two years.

(6) The terms of office for appointed members shall commence on the effective date of this Act and continue for four years, except that the initial appointment of two members by the Governor and one member by the Public Health Director shall be for two year terms which shall expire two years after the effective date of this Act.

(7) Except for vacancies that occur as set forth in subdivision (a)(4) of this section, members appointed for a term shall continue to serve until their replacement is selected. If a vacancy occurs within a term, the appointing authority shall appoint a replacement member to serve the

remainder of the term within 30 days of the date of the vacancy.

(b) The members, by majority vote, shall annually select one of their number to serve as chair of the Committee and preside over its meetings and perform such other duties as may be delegated by the Committee.

(c) Except for those members who are also public officers or employees, the members of the Committee shall receive $100 per day for each day occupied with attendance at public meetings of the Committee and reimbursement for their usual and ordinary expenses, as provided by the general law. Members of the Committee who are public officers or employees shall not be otherwise compensated for their service on the Committee.

(d) The Committee is vested with the power and authority to do all of the following:

(1) Oversee the operations of the California Cancer Research Life Sciences Innovation Trust Fund and its sub-funds and sub-accounts and to act as trustee of the trust funds created by this Act.

(2) Appoint a Chief Executive Officer who shall be exempt from the civil service pursuant to Article VII, Section 4 of the California Constitution. The Chief Executive Officer shall have the power to appoint such employees as are necessary for the administration of the Fund and the performance of those duties imposed upon the Committee by law, except that, notwithstanding any other provisions of law, no officer or employee of the Committee shall be an officer, employee, director, independent contractor, or grant recipient of any company or other business engaged in the manufacture, marketing, distribution, or sale of tobacco products, or have received any grants or payments for services of any kind from any such company or business during the past two years.

(3) Establish such sub-funds and sub-accounts within the California Cancer Research and Life Sciences Innovation Fund, and apportion money in the Fund into such sub-funds and sub-accounts, as is found necessary and appropriate for administration of this Act.

(4) Establish a process for soliciting, reviewing, and awarding grants and loans for research, facilities and patient treatment.

(5) Establish and appoint such committees and advisory bodies as it deems necessary and appropriate to carry out its duties.

(6) Develop annual and long-term strategic research and financial plans for the Fund, including an annual budget for administration of this Act.

(7) Make final decisions on the award of loans and grants, and to revoke or rescind loans and grants which do not conform to approved research standards. Employ auditors to prepare an annual financial audit of the Fund's operations.

(8) Issue, at least annually, public reports on the activities of the Committee and the Fund.

(9) Establish policies regarding intellectual property rights arising from research funded by the Committee, which shall be consistent with those implemented by the University of California.

(10) Establish rules and guidelines for the operation of the Fund and its employees.

(11) Periodically review the income and expenditures of the HOPE 2010 Facilities Fund. If the Committee determines that there is a surplus in the Fund it may redirect money in that Fund to the HOPE 2010 Research Fund, the HOPE 2010 Tobacco Prevention and Cessation Fund, or the HOPE 2010 Law Enforcement Fund in the amounts and for the period determined by the Committee

(12) Reimburse the State Board of Equalization for the cost of services required by this Act.

(13) The following activities are inconsistent, incompatible or in conflict with the duties of members of the Committee or its officers or employees:

(A) Using the prestige or influence of the State or the Committee for the officer's or employee's private gain or advantage or the private gain of another.

(B) Using state time, facilities, equipment, or supplies for private gain or advantage.

(C) Using, or having access to, confidential information available by virtue of state employment for private gain or advantage or providing confidential information to persons to whom issuance of this information has not been authorized.

(D) Receiving or accepting money or any other consideration from anyone other than the State for the performance of his or her duties as a state officer or employee.

(E) Performance of an act in other than his or her capacity as a state officer or employee knowing that the act may later be subject, directly or indirectly to the control, inspection, review, audit, or enforcement by the officer or employee.

(F) Receiving or accepting, directly or indirectly, any gift, including money, or any service, gratuity, favor, entertainment, hospitality, loan, or any other thing of value from anyone who is doing or is seeking to do business of any kind with the officer's or employee's appointing authority or whose activities are regulated or controlled by the appointing authority under circumstances from which it reasonably could be substantiated that the gift was intended to influence the officer or employee in his or her official duties or was intended as a reward for any official actions performed by the officer or employee.

(G) Subject to any other laws, rules, or regulations as pertain thereto, not devoting his or her full time, attention, and efforts to his or her state office or employment during his or her hours of duty as a state officer or employee.

Pursuant to Section 19990 of the Government Code, The Committee shall adopt rules governing the application of this subdivision, including a provision to provide notice of its requirements to all officers and employees.

(14) Adopt, amend, and rescind rules and regulations to carry out the purposes and provisions of this chapter, and to govern the procedures of the Committee, in accordance with the provisions of the Administrative Procedures Act (Article 6 (Commencing with Section 11340), Chapter 3.5, Part 1, Division 3, Title 2, of the Government Code).

(15) Perform all other acts necessary or appropriate in the exercise of its power, authority, and jurisdiction.

(f) Meetings

The Committee, and all subcommittees and advisory bodies created by it, are a "state body" as that term is used in Government Code Section 11121 and all meetings of the Committee, its subcommittees and advisory bodies, shall conform to the provisions of the Bagley-Keene Open Meeting Act (Article 9, commencing with Section 11120, Chapter 1, Part 1, Division 3, Title 2 of the Government Code).

(g) Records

All records of the Committee shall be public records as those terms are defined in the California Public Records Act (Article1 (commencing with Section 6250), Chapter 3.5, Division 7, Title I of the Government Code) and may only be withheld from public disclosure in accordance with the provisions of that Act.

(h) Conflicts of Interest

(1) Notwithstanding any other provision of law, no member of the Committee, or those persons appointed by Committee members to attend meetings on their behalf, or those officers or employees employed by the Committee, shall participate in an evaluation, review, recommendation, or decision upon an application or proposal for grant or loan, or other distribution of funds by the Committee, if that person has a direct or indirect financial interest in the applicant or the subject of an application or proposal for a grant or loan or other distribution of funds. If such persons have a financial interest in the application or proposal, it shall be publicly announced at the first meeting of the Committee following disclosure of the interest and recorded in the minutes of the Committee meeting. Notwithstanding any other provision of law to the contrary, where such a financial interest is found to exist, upon such disclosure and disqualification, the Committee may otherwise consider and take action upon any application for grant, loan, or other distribution of funds.

(2) No member of the Committee or those persons appointed to attend meetings on their behalf, its staff, contractors, or grant recipients shall receive funding or be employed by persons or business entities engaged in any aspect of tobacco growing, manufacturing, processing, distributing, marketing, or other activities within the tobacco industry.

(3) Nothing herein is intended to limit application of the Political Reform Act (Title 9, commencing with Section 81000, of the Government Code) to the Committee or its officers and employees.

(i) Annual Public Report

The Committee shall issue an annual report to the public which sets forth its activities, grants awarded and in progress, research accomplishments, and future program directions. Each annual report shall include, but not be limited to, the following: the number and dollar amounts of research, facilities and treatment grants; the administrative expenses of the Committee, the Fund, and the State Board of Equalization; and a summary of research findings.

(j) Independent Financial Audit

The Committee shall annually commission an independent financial audit of its activities from a certified public accounting firm. Any firm that provides consulting services to the Committee shall be disqualified from providing audit services. The resulting audit shall be provided to the State Controller, who shall review the audit and annually issue a public report of that review.

(k) Limitation on Administrative Costs

Not more than two percent (2%) of the annual revenues derived from this Act shall be used for the costs of general administration of this Act. The State Controller shall provide the Committee and its Auditor with reports that set forth the allowable costs for general administration. The annual audit shall include a review of the costs of general administration of the Committee, the Fund, and the State Board of Equalization.

§30130.56 Penalties

(a) Each officer or employee of the Committee, and every other person charged with the receipt, safekeeping, transfer, or disbursement of trust funds as defined in this Act, who either:

(1) Without authority of law, appropriates the same, or any portion thereof, to his or her own use, or to the use of another; or,

(2) Loans the same or any portion thereof; makes any profit out of, or uses the same for any purpose not authorized by law; or,

(3) Knowingly keeps any false account, or makes any false entry or erasure in any account of or relating to the same; or,

(4) Fraudulently alters, falsifies, conceals, destroys, or obliterates any account; or,

(5) Willfully refuses or omits to pay over, on demand, any public moneys in his or her hands, upon the presentation of a draft, order, or warrant drawn upon these moneys by competent authority; or,

(6) Willfully omits to transfer the same, when transfer is required by law; or

(7) Willfully omits or refuses to pay over to any officer or person authorized by law to receive the same, any money received by him or her under any duty imposed by law so to pay over the same;

(8) Is punishable by imprisonment in the state prison for two, three, or four years, and is disqualified from holding any office in this state.

(b) As used in this section, "public moneys" includes the proceeds derived from trust funds, as defined in this Act and from loans or grants authorized by the Committee from such trust funds.

§ 30130.55 Statutory References

Unless otherwise stated, all references in this Act refer to statutes as they existed on December 31, 2009.

SECTION 4. Severability

If the provisions of this Act, or part thereof, is for any reason held to be invalid or unconstitutional, the remaining provisions shall not be affected, but shall remain in full force and effect and to this end the provisions of this Act are severable.

SECTION 5. Conflicting Measures

(a) It is the intent of the People that in the event that this measure and another measure relating to the taxation of tobacco shall appear on the same statewide election ballot, the provisions of the other measure or measures shall not be deemed to be in conflict with this measure, and if approved by the voters, this measure shall take effect notwithstanding approval by the voters of another measure relating to the taxation of tobacco by a greater number of affirmative votes.

(b) If this measure is approved by the voters but superseded by law by any other conflicting ballot measure approved by the voters at the same election, and the conflicting measure is later held invalid, this measure shall be self-executing and given the full force of law.

SECTION 6. Amendments

(a) Except as hereafter provided, this Act may only be amended by the electors as provided in Article II, Section 10, subdivision (c) of the California Constitution.

(b) Notwithstanding the provisions of subdivision (a) of this section, not earlier than fifteen (15) years from the effective date of this Act, the Committee, by majority vote of its members, may recommend changes in the structure and operation of the Committee to the Legislature. The Legislature may amend the provisions of Revenue and Taxation Code Section 30130.54 to further the purposes of the Act by a statute passed in each house by roll-call vote entered in the journal, two-thirds of the membership concurring, that is consistent with the recommendations of the Committee.