

105TH CONGRESS
2D SESSION

S. 1638

To help parents keep their children from starting to use tobacco products, to expose the tobacco industry's past misconduct and to stop the tobacco industry from targeting children, to eliminate or greatly reduce the illegal use of tobacco products by children, to improve the public health by reducing the overall use of tobacco products, and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 12, 1998

Mr. CONRAD (for himself, Mr. DASCHLE, Mr. KENNEDY, Mr. LAUTENBERG, Mr. REED, Mr. LEAHY, Mr. DODD, Mr. BINGAMAN, Mr. DURBIN, Mr. BAUCUS, Mr. DORGAN, Mr. ROCKEFELLER, Mr. KERREY, Mr. WYDEN, Mr. WELLSTONE, Mr. TORRICELLI, Mrs. BOXER, Mr. KERRY, Mr. BUMPERS, Mr. MOYNIHAN, Mr. JOHNSON, Mr. BREAUX, Mr. KOHL, Ms. LANDRIEU, Ms. MOSELEY-BRAUN, Mr. BRYAN, Mr. AKAKA, and Mr. LIEBERMAN) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To help parents keep their children from starting to use tobacco products, to expose the tobacco industry's past misconduct and to stop the tobacco industry from targeting children, to eliminate or greatly reduce the illegal use of tobacco products by children, to improve the public health by reducing the overall use of tobacco products, and for other purposes.

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

1 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

2 (a) **SHORT TITLE.**—This Act may be cited as the
3 “Healthy Kids Act”.

4 (b) **TABLE OF CONTENTS.**—The table of contents of
5 this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Findings.
- Sec. 3. Purposes.
- Sec. 4. Definitions.

TITLE I—HEALTHY KIDS TRUST FUND

Subtitle A—General Provisions

- Sec. 101. Establishment of Trust Fund.
- Sec. 102. Liability of tobacco product manufacturers.
- Sec. 103. Licensing of manufacturers.
- Sec. 104. Enforcement.

Subtitle B—Payments

CHAPTER 1—TO STATES

- Sec. 111. Payments to States.

CHAPTER 2—FEDERAL HEALTH PROGRAMS

- Sec. 121. National Institutes of Health Trust Fund for Health Research.

CHAPTER 3—INVESTMENTS FOR CHILDREN

- Sec. 131. Improving child care and early childhood development.
- Sec. 132. Improving elementary education.
- Sec. 133. Increased enrollment of children with the medicaid and State children’s health insurance programs.
- Sec. 134. Medicare cancer patient demonstration project; evaluation and report to Congress.

TITLE II—FDA JURISDICTION OVER TOBACCO PRODUCTS

- Sec. 201. Reference.
- Sec. 202. Statement of general authority.
- Sec. 203. Treatment of tobacco products as drugs and devices.
- Sec. 204. Safety and efficacy standard and recall authority.
- Sec. 205. General health and safety regulation of tobacco products.

“SUBCHAPTER F—TOBACCO PRODUCTS

- “Sec. 571. Promulgation of regulations.
- “Sec. 572. Scientific Advisory Committee.
- “Sec. 573. Performance standards.
- “Sec. 574. Disclosure and reporting of tobacco and nontobacco ingredients and constituents.

- “Sec. 575. Tobacco product warnings, labeling and packaging.
- “Sec. 576. Preservation of State and local authority.
- “Sec. 577. Restrictions on youth access to tobacco products.
- “Sec. 578. Public disclosure of health research.
- “Sec. 579. Citizen suits.
- “Sec. 580. Agricultural producers.
- “Sec. 581. Authority of Secretary.

Sec. 206. Repeals.

Sec. 207. Authority of Federal Trade Commission.

TITLE III—YOUTH SMOKING REDUCTION TARGETS AND INCENTIVES TO REDUCE YOUTH SMOKING RATES

Sec. 301. Purpose.

Sec. 302. Child tobacco use surveys.

Sec. 303. Reduction in underage tobacco product usage.

Sec. 304. Noncompliance.

Sec. 305. Rulemaking procedures.

Sec. 306. Miscellaneous provisions.

TITLE IV—TOBACCO TRANSITION ASSISTANCE FUND

Sec. 401. Tobacco transition assistance fund.

TITLE V—STANDARDS TO REDUCE INVOLUNTARY EXPOSURE TO TOBACCO SMOKE

Sec. 501. Standards to reduce involuntary exposure to tobacco smoke.

TITLE VI—PUBLIC HEALTH AND OTHER PROGRAMS

Subtitle A—Research Programs

Sec. 601. Tobacco-related research.

Sec. 602. Research relating to patterns of smoking.

Sec. 603. Surveillance and evaluation.

Subtitle B—Education and Prevention Programs

Sec. 611. Grants for school- and community-based tobacco danger education programs.

Subtitle C—Miscellaneous Programs

Sec. 621. Counter-advertising programs.

Sec. 622. National Tobacco Cessation Program.

Sec. 623. Assistance for those suffering from tobacco-related illnesses.

Sec. 624. International tobacco control.

Sec. 625. National Event Sponsorship Program.

Sec. 626. Programs to reduce alcohol and illicit drug use by minors.

TITLE VII—LIABILITY PROTECTION; CONSENT DECREES; NATIONAL PROTOCOL

Subtitle A—Liability Protection and Attorney Fees

Sec. 701. Dismissal of and limitations on civil actions.

Sec. 702. Attorney’s fees and expenses.

Subtitle B—Consent Decrees

- Sec. 711. Consent decrees.
 Sec. 712. Non-participating manufacturers.

Subtitle C—National Tobacco Control Protocol

CHAPTER 1—ESTABLISHMENT

- Sec. 721. National Tobacco Control Protocol.

CHAPTER 2—TERMS AND CONDITIONS

- Sec. 725. Application of chapter.
 Sec. 726. Agreement to prohibit certain advertising.
 Sec. 727. Consensual restrictions.
 Sec. 728. Agreement on format and content requirements for labeling and advertising.
 Sec. 729. Agreement to ban on nontobacco items and services, contests and games of chance, and sponsorship of events.

CHAPTER 3—ENFORCEMENT

- Sec. 731. Federal enforcement of the protocol.
 Sec. 732. State enforcement of the protocol.
 Sec. 733. Private enforcement of protocol.

TITLE VIII—MISCELLANEOUS PROVISIONS

- Sec. 801. Prohibition on use of funds to facilitate the exportation or promotion of tobacco.
 Sec. 802. Whistleblower protections.
 Sec. 803. Prohibitions relating to tobacco products and children.
 Sec. 804. Preservation of State and local authority.
 Sec. 805. Severability.

TITLE IX—PROVISIONS RELATING TO NATIVE AMERICANS

- Sec. 901. Provisions relating to Native Americans.

1 **SEC. 2. FINDINGS.**

2 Congress makes the following findings:

- 3 (1) Approximately 3,000 children begin smok-
 4 ing each day. 1,000 of these children will die pre-
 5 maturely from a tobacco-related illness or condition.
 6 (2) The tobacco industry has targeted tobacco
 7 product marketing and promotional efforts toward

1 children as a source of replacement smokers. The
2 industry has also targeted minorities.

3 (3) Approximately 90 percent of smokers start
4 by the time they are 18 years old. Half of all smok-
5 ers start by age 14.

6 (4) Although most children plan to quit smok-
7 ing after experimenting, the vast majority find that
8 they have become addicted and cannot quit.

9 (5) Seventy percent of adult smokers would like
10 to quit smoking, but the tobacco industry has ma-
11 nipulated the level of nicotine in tobacco products
12 and added ingredients to enhance the addictive ef-
13 fects of nicotine to ensure that users of these prod-
14 ucts remain addicted.

15 (6) Tobacco products cause cancer, heart dis-
16 ease, lung disease, and other fatal illnesses. More
17 than 400,000 Americans die each year of these to-
18 bacco-related illnesses and conditions.

19 (7) Tobacco-related illnesses, medical conditions
20 resulting from tobacco use, and lost wages and pro-
21 ductivity cost the United States in excess of
22 \$100,000,000,000 annually.

23 (8) Federal and State taxpayers have spent and
24 will continue to spend tens of billions of dollars an-
25 nually paying for the medicare, medicaid, and other

1 Federal and State health program costs arising from
2 tobacco-related illnesses and conditions.

3 (9) The tobacco industry has systematically in-
4 voked and abused the attorney-client privilege to
5 hide its attempts to mislead the American public
6 about the health risks associated with tobacco use,
7 its manipulation of nicotine levels, and its efforts to
8 lure underage users and minorities to its products.

9 (10) Nicotine is an addictive drug. The market-
10 place for tobacco products is largely based on addic-
11 tion.

12 (11) Worldwide, smoking kills 3,000,000 people
13 each year. If current smoking patterns continue, to-
14 bacco use will kill 10,000,000 people a year by 2025.

15 (12) Environmental tobacco smoke is respon-
16 sible for 3,000 lung cancer deaths annually in Amer-
17 ican nonsmokers. Environmental tobacco smoke also
18 harms children's health.

19 (13) In 1995, the tobacco industry spent close
20 to \$4,900,000,000 to attract new users, retain cur-
21 rent users, increase current consumption, and gen-
22 erate favorable long-term attitudes toward smoking
23 and tobacco use.

1 (14) Tobacco product advertising misleadingly
2 portrays the use of tobacco as socially acceptable
3 and healthful.

4 (15) Tobacco product advertising is regularly
5 seen by persons under the age of 18, and persons
6 under the age of 18 are regularly exposed to tobacco
7 product promotional efforts.

8 (16) Through advertisements during and spon-
9 sorship of sporting events, tobacco has become
10 strongly associated with sports and has become por-
11 trayed as an integral part of sports and the healthy
12 lifestyle associated with rigorous sporting activity.

13 (17) Children are exposed to substantial and
14 unavoidable tobacco advertising, that leads to favor-
15 able beliefs about tobacco use, plays a role in leading
16 young people to overestimate the prevalence of to-
17 bacco use, and increases the number of young people
18 who begin to use tobacco.

19 (18) Tobacco advertising increases the size of
20 the tobacco market by increasing consumption of to-
21 bacco products including increasing tobacco sales to
22 young people.

23 (19) Children are more influenced by tobacco
24 advertising than adults. They smoke the most adver-
25 tised brands, and children as young as 3 to 6 can

1 recognize a character associated with smoking at the
2 same rate that they recognize cartoons and fast food
3 characters.

4 (20) Tobacco company documents indicate that
5 young people are an important and often crucial seg-
6 ment of the tobacco market.

7 (21) Comprehensive advertising restrictions will
8 have a positive effect on the smoking rates of young
9 people, as evidenced by the experience in Norway,
10 Finland, and other countries.

11 (22) Restrictions on advertising are necessary
12 to prevent unrestricted tobacco advertising from un-
13 dermining the ability of the Congress and the States
14 to prohibit access to young people and to provide for
15 education about tobacco use.

16 (23) International experience shows that adver-
17 tising regulations that are stringent and comprehen-
18 sive have a greater impact on overall tobacco use
19 and young people's use than weaker or less com-
20 prehensive ones. Text only requirements, while not
21 as stringent as a ban, will accomplish this purpose
22 while preserving the informational function of adver-
23 tising.

24 **SEC. 3. PURPOSES.**

25 The purposes of this Act are—

1 (1) to help American families dramatically re-
2 duce the number of children illegally using tobacco
3 products by—

4 (A) increasing the price of cigarettes by at
5 least \$1.50 per pack in order to discourage
6 youth purchases;

7 (B) implementing prevention, education,
8 cessation, and counter-advertising programs;

9 (C) restricting advertisements designed to
10 encourage kids to use tobacco products;

11 (D) imposing penalties on manufacturers
12 for failing to reach youth smoking rate reduc-
13 tion targets;

14 (E) requiring retailers to comply with laws
15 forbidding sales to minors; and

16 (F) giving the Food and Drug Administra-
17 tion and State and local governments the au-
18 thority and resources to keep tobacco products
19 out of the hands of minors;

20 (2) to compensate taxpayers for their costs at-
21 tributable to tobacco-related illnesses by reimbursing
22 the medicaid and medicare programs and resolving
23 the legal claims of Federal, State and local govern-
24 ments for those costs that resulted from past mis-
25 conduct by the tobacco industry;

1 (3) to improve the public health by reducing the
2 number of adult users of tobacco products through
3 approved cessation programs and limiting public ex-
4 posure to environmental tobacco smoke;

5 (4) to provide assistance to tobacco farmers, to-
6 bacco factory workers, and rural communities;

7 (5) to affirm the full authority of the Food and
8 Drug Administration to regulate the manufacture,
9 labeling, sale, distribution, and advertising of to-
10 bacco products to the fullest extent authorized by
11 the commerce clause of the United States Constitu-
12 tion;

13 (6) to make available to the public tobacco in-
14 dustry documents regarding the health effects of to-
15 bacco products, addiction, the agricultural produc-
16 tion of tobacco, the manufacture of tobacco prod-
17 ucts, the distribution of tobacco products, and the
18 marketing of tobacco products to youths; and

19 (7) to enhance global anti-tobacco efforts to
20 minimize the adverse health effects of tobacco prod-
21 ucts.

22 **SEC. 4. DEFINITIONS.**

23 In this Act:

24 (1) **BRAND.**—The term “brand” means a vari-
25 ety of a tobacco product distinguished by the tobacco

1 used, tar content, nicotine content, flavoring used,
2 size, filtration, or packaging.

3 (2) CIGAR.—The term “cigar” means any roll
4 of tobacco wrapped in leaf tobacco or in any sub-
5 stance containing tobacco (other than any roll of to-
6 bacco which is a cigarette or cigarillo within the
7 meaning of paragraph (3) or (4)).

8 (3) CIGARETTE.—The term “cigarette”
9 means—

10 (A) any roll of tobacco wrapped in paper
11 or in any substance not containing tobacco; and

12 (B) any roll of tobacco wrapped in any
13 substance containing tobacco which, because of
14 its appearance, the type of tobacco used in the
15 filler, or its packaging and labeling, is likely to
16 be offered to, or purchased by, consumers as a
17 cigarette described in subparagraph (A).

18 (4) CIGARILLOS.—The term “cigarillos” means
19 any roll of tobacco wrapped in leaf tobacco or any
20 substance containing tobacco (other than any roll of
21 tobacco which is a cigarette within the meaning of
22 paragraph (3)) and as to which 1,000 units weigh
23 not more than 3 pounds.

24 (5) CIGARETTE TOBACCO.—The term “cigarette
25 tobacco” means any product that consists of loose

1 tobacco and is intended for use by persons in a ciga-
2 rette. Unless otherwise stated, the requirements of
3 this Act pertaining to cigarettes shall also apply to
4 cigarette tobacco.

5 (6) DISTRIBUTOR.—The term “distributor”
6 means any person who furthers the distribution of
7 tobacco products, whether domestic or imported, at
8 any point from the original place of manufacture to
9 the person who sells or distributes the product to in-
10 dividuals for personal consumption. Such term shall
11 not include common carriers.

12 (7) LITTLE CIGAR.—The term “little cigar”
13 means any roll of tobacco wrapped in leaf tobacco or
14 any substance containing tobacco (other than any
15 roll of tobacco which is a cigarette within the mean-
16 ing of subsection (1)) and as to which 1,000 units
17 weigh not more than 3 pounds.

18 (8) MANUFACTURER.—The term “manufac-
19 turer” means any person, including any repacker or
20 relabeler, who manufactures, fabricates, assembles,
21 processes, or labels a tobacco product.

22 (9) PACKAGE.—The term “package” means a
23 pack, box, carton, or container of any kind in which
24 tobacco products are offered for sale, sold, or other-
25 wise distributed to consumers.

1 (10) PERSON.—The term “person” means an
2 individual, partnership, corporation, parent corpora-
3 tion, or any other business or legal entity or succes-
4 sor in interest of any such person.

5 (11) PIPE TOBACCO.—The term “pipe tobacco”
6 means any loose tobacco that, because of its appear-
7 ance, type, packaging, or labeling, is likely to be of-
8 fered to, or purchased by, consumers as a tobacco
9 product to be smoked in a pipe.

10 (12) POINT OF SALE.—The term “point of
11 sale” means any location at which an individual can
12 purchase or otherwise obtain tobacco products for
13 personal consumption.

14 (13) RETAILER.—The term “retailer” means
15 any person who sells tobacco products to individuals
16 for personal consumption, or who operates a facility
17 where vending machines or self-service displays are
18 permitted under this Act.

19 (14) ROLL-YOUR-OWN TOBACCO.—The term
20 “roll-your-own tobacco” means any tobacco which,
21 because of its appearance, type, packaging, or label-
22 ing, is suitable for use and likely to be offered to,
23 or purchased by, consumers as tobacco for making
24 cigarettes.

1 (15) SALE.—The term “sale” includes the sell-
2 ing, providing samples of, or otherwise making to-
3 bacco products available for personal consumption in
4 any place within the scope of this Act.

5 (16) SECRETARY.—Except as provided in title
6 IV, the term “Secretary” means the Secretary of
7 Health and Human Services.

8 (17) SMOKELESS TOBACCO.—The term “smoke-
9 less tobacco” means any product that consists of
10 cut, ground, powdered, or leaf tobacco that is in-
11 tended to be placed in the oral or nasal cavity.

12 (18) STATE.—The term “State” includes the
13 several States, the District of Columbia, the Com-
14 monwealth of Puerto Rico, Guam, the Virgin Is-
15 lands, American Samoa, the Northern Mariana Is-
16 lands, and any other territory or possession of the
17 United States. Such term includes any political divi-
18 sion of any State.

19 (19) TOBACCO.—The term “tobacco” means to-
20 bacco in its unmanufactured form.

21 (20) TOBACCO PRODUCT.—The term “tobacco
22 product” means any product made of or derived
23 from tobacco leaf for human consumption, including,
24 but not limited to, cigarettes, cigarillos, cigarette to-

1 (1) amounts received under the annual assess-
2 ments made under section 102;

3 (2) amounts paid as fines or penalties, includ-
4 ing interest thereon, under section 103; and

5 (3) amounts repaid or recovered under title III,
6 including interest thereon.

7 (c) REPAYABLE ADVANCES.—

8 (1) AUTHORIZATION.—There are authorized to
9 be appropriated to the Trust Fund, as repayable ad-
10 vances, such sums as may from time to time be nec-
11 essary to make the expenditures described in sub-
12 section (d).

13 (2) REPAYMENT WITH INTEREST.—Repayable
14 advances made to the Trust Fund shall be repaid,
15 and interest on such advances shall be paid, to the
16 general fund of the Treasury when the Secretary of
17 the Treasury determines that moneys are available
18 in the Trust Fund for such purposes.

19 (3) RATE OF INTEREST.—Interest on advances
20 made pursuant to this subsection shall be at a rate
21 determined by the Secretary of the Treasury (as of
22 the close of the calendar month preceding the month
23 in which the advance is made) to be equal to the
24 current average market yield on outstanding market-
25 able obligations of the United States with remaining

1 period to maturity comparable to the anticipated pe-
2 riod during which the advance will be outstanding.

3 (d) EXPENDITURES FROM TRUST FUND.—Amounts
4 in the Trust Fund shall be made available in each fiscal
5 year, without further appropriation as follows:

6 (1) 14.5 percent of such amounts shall be made
7 available for payments to States as provided for
8 under section 111.

9 (2) 17 percent of such amounts shall be made
10 available for grants to the States for child care and
11 early childhood development as provided for in sec-
12 tion 131.

13 (3) 6 percent of such amounts shall be made
14 available for grants to States for education as pro-
15 vided for in section 132.

16 (4) 4 percent of such amounts shall be made
17 available to carry out the outreach and increased en-
18 rollment provisions under the amendments made by
19 section 133 to the medicaid program under title XIX
20 of the Social Security Act (42 U.S.C. 1396 et seq.)
21 and the children's health insurance program under
22 title XXI of such Act (42 U.S.C. 1397aa et seq.).

23 (5) 15.5 percent of such amounts shall be made
24 available for public health programs, of which—

1 (A) \$300,000,000 shall be made available
2 to the Secretary to carry out subchapter F of
3 chapter V of the Food Drug and Cosmetic Act
4 (as added by section 204);

5 (B) \$200,000,000 shall be made available
6 to the Indian Health Service to be used as pro-
7 vided for in title IX; and

8 (C) the remainder shall be made available
9 for public health programs as provided for in
10 title VI.

11 (6) 21 percent of such amounts shall be made
12 available to the National Institutes of Health Trust
13 Fund for Health Research for the conduct of health
14 research as provided for in section 121.

15 (7) For agricultural programs as provided for
16 in title IV—

17 (A) 12 percent of such amounts shall be
18 made available to the Tobacco Community Re-
19 vivalization Trust Fund for each of the first 10
20 fiscal years after the date of enactment of this
21 Act;

22 (B) 4 percent of such amounts shall be
23 made available to the Tobacco Community Re-
24 vivalization Trust Fund for each of the 11th

1 through 15th fiscal years after the date of en-
2 actment of this Act; and

3 (C) 2 percent of such amounts shall be
4 made available to the Tobacco Community Re-
5 vivalization Trust Fund for each of the 16th
6 through 25th fiscal years after the date of en-
7 actment of this Act.

8 (8) For the Hospital Insurance Trust Fund—

9 (A) 4 percent of such amounts shall be
10 made available to such Trust Fund for each of
11 the first 10 fiscal years after the date of enact-
12 ment of this Act (less amounts made available
13 under paragraph (9) for the first 3 such fiscal
14 years);

15 (B) 8 percent of such amounts shall be
16 made available to such Trust Fund for each of
17 the 11th through 15th fiscal years after the
18 date of enactment of this Act;

19 (C) 9 percent of such amounts shall be
20 made available to such Trust Fund for each of
21 the 16th through 25th fiscal years after the
22 date of enactment of this Act; and

23 (D) 10 percent of such amounts shall be
24 made available to such Trust Fund for each
25 subsequent fiscal year.

1 (9) For carrying out section 134, \$250,000,000
2 shall be made available in each of the 3 fiscal years
3 described in such section;

4 (10) For reducing the debt—

5 (A) 6 percent of such amounts shall be
6 made available for such reduction in each of the
7 first 10 fiscal years after the date of enactment
8 of this Act;

9 (B) 10 percent of such amounts shall be
10 made available for such reduction in each of the
11 11th through 15th fiscal years after the date of
12 enactment of this Act;

13 (C) 11 percent of such amounts shall be
14 made available for such reduction in each of the
15 16th through 25th fiscal years after the date of
16 enactment of this Act; and

17 (D) 12 percent of such amounts shall be
18 made available for such reduction in each sub-
19 sequent fiscal year.

20 (e) BUDGETARY TREATMENT AND DEFINITION.—

21 (1) TREATMENT.—Amounts made available
22 under paragraphs (8) and (10) of subsection (d)
23 shall not be included—

24 (A) by the Office of Management and
25 Budget in the estimates and reports required by

1 sections 252(b) and 254 of the Balanced Budg-
2 et and Emergency Deficit Control Act of 1985;
3 and

4 (B) by the Committee on the Budget of
5 the House of Representatives and the Commit-
6 tee on the Budget of the Senate for purposes of
7 congressional enforcement under section 302(f)
8 and 311(2)(B) of the Congressional Budget Act
9 of 1974 and section 202 of House Concurrent
10 Resolution 67 (104th Congress).

11 (2) DEFINITION.—In subsection (d)(109), the
12 term “debt” means any obligation of the Federal
13 Government included in the debt subject to limit.

14 **SEC. 102. LIABILITY OF TOBACCO PRODUCT MANUFACTUR-**
15 **ERS.**

16 (a) PAYMENTS.—

17 (1) INITIAL PAYMENT.—Not later than 90 days
18 after the date of enactment of this Act, each manu-
19 facturer shall pay to the Trust Fund an amount
20 that bears the same ratio to \$15,000,000,000 as the
21 average stock market capitalization of the tobacco
22 manufacturer (as defined in paragraph (3)) bears to
23 the average stock market capitalization of all to-
24 bacco manufacturers for 1996.

1 (2) ANNUAL ASSESSMENTS AND COLLECTION.—

2 For each calendar year beginning with the first full
3 calendar year following the year in which this Act is
4 enacted, the Secretary shall assess each manufac-
5 turer an amount determined under subsection (b).
6 Such assessments shall be collected in a manner
7 similar to the manner in which excise taxes are col-
8 lected under chapter 52 of the Internal Revenue
9 Code of 1986.

10 (3) AVERAGE STOCK MARKET CAPITALIZA-
11 TION.—For purposes of this subsection, the average
12 stock market capitalization of a manufacturer for a
13 year shall be determined by the Secretary of the
14 Treasury based on data submitted by manufacturers
15 and other appropriate data. Such determinations
16 shall be made regardless of whether the manufac-
17 turer issues stock.

18 (b) ANNUAL ASSESSMENTS.—The Secretary shall as-
19 sess each manufacturer (in accordance with regulations,
20 relating to the timing and method of payment of assess-
21 ments, to be promulgated by the Secretary of the Treas-
22 ury) an amount in accordance with the following:

23 (1) SMALL CIGARETTES.—With respect to a
24 manufacturer of cigarettes weighing not more than
25 3 pounds per thousand, the assessment shall equal—

1 (A) for cigarettes removed during calendar
2 year 1999, \$25 per thousand;

3 (B) for cigarettes removed during calendar
4 year 2000, \$50 per thousand; and

5 (C) for cigarettes removed during calendar
6 year 2001, \$75 per thousand.

7 (2) LARGE CIGARETTES.—

8 (A) IN GENERAL.—With respect to a man-
9 ufacturer of cigarettes weighing more than 3
10 pounds per thousand, the assessment shall
11 equal—

12 (i) for cigarettes removed during cal-
13 endar year 1999, \$52.50 per thousand;

14 (ii) for cigarettes removed during cal-
15 endar year 2000, \$105 per thousand; and

16 (iii) for cigarettes removed during cal-
17 endar year 2001, \$157.50 per thousand.

18 (B) EXCEPTION.—On cigarettes more than
19 $6\frac{1}{2}$ inches in length, at the rate prescribed for
20 cigarettes weighing not more than 3 pounds per
21 thousand, counting each $2\frac{3}{4}$ inches, or fraction
22 thereof, of the length of each as one cigarette.

23 (3) SMALL CIGARS.—With respect to a manu-
24 facturer of cigars weighing not more than 3 pounds
25 per thousand, the assessment shall equal—

1 (A) for cigars removed during calendar
2 year 1999, \$25 per thousand;

3 (B) for cigars removed during calendar
4 year 2000, \$50 per thousand; and

5 (C) for cigars removed during calendar
6 year 2001, \$75 per thousand.

7 (4) LARGE CIGARS.—With respect to a manu-
8 facturer of cigars weighing more than 3 pounds per
9 thousand, the assessment shall equal—

10 (A) for cigars removed during calendar
11 year 1999, 25 percent of the price for which
12 such cigars are sold but not more than \$500
13 per thousand;

14 (B) for cigars removed during calendar
15 year 2000, 50 percent of the price for which
16 such cigars are sold but not more than \$1,000
17 per thousand; and

18 (C) for cigars removed during calendar
19 year 2001, 75 percent of the price for which
20 such cigars are sold but not more than \$1,500
21 per thousand.

22 (5) SNUFF.—With respect to a manufacturer of
23 snuff (as such term is defined for purposes of chap-
24 ter 52 of the Internal Revenue Code of 1986) the
25 assessment shall equal—

1 (A) for snuff removed during calendar year
2 1999, \$6.67 per pound (and a proportionate as-
3 sessment at the like rate on all fractional parts
4 of a pound);

5 (B) for snuff removed during calendar year
6 2000, \$13.33 per pound (and a proportionate
7 assessment at the like rate on all fractional
8 parts of a pound); and

9 (C) for snuff removed during calendar year
10 2001, \$20 per pound (and a proportionate as-
11 sessment at the like rate on all fractional parts
12 of a pound).

13 (6) CHEWING TOBACCO.—With respect to a
14 manufacturer of chewing tobacco (as such term is
15 defined for purposes of chapter 52 of the Internal
16 Revenue Code of 1986) the assessment shall equal—

17 (A) for chewing tobacco removed during
18 calendar year 1999, \$2.67 per pound (and a
19 proportionate assessment at the like rate on all
20 fractional parts of a pound);

21 (B) for chewing tobacco removed during
22 calendar year 2000, \$5.33 per pound (and a
23 proportionate assessment at the like rate on all
24 fractional parts of a pound); and

1 (C) for chewing tobacco removed during
2 calendar year 2001, \$8 per pound (and a pro-
3 portionate assessment at the like rate on all
4 fractional parts of a pound).

5 (7) PIPE TOBACCO.—With respect to a manu-
6 facturer of pipe tobacco (as such term is defined for
7 purposes of chapter 52 of the Internal Revenue Code
8 of 1986) the assessment shall equal—

9 (A) for pipe tobacco removed during cal-
10 endar year 1999, \$5.33 per pound (and a pro-
11 portionate assessment at the like rate on all
12 fractional parts of a pound);

13 (B) for pipe tobacco removed during cal-
14 endar year 2000, \$10.67 per pound (and a pro-
15 portionate assessment at the like rate on all
16 fractional parts of a pound); and

17 (C) for pipe tobacco removed during cal-
18 endar year 2001, \$16.00 per pound (and a pro-
19 portionate assessment at the like rate on all
20 fractional parts of a pound).

21 (8) ROLL-YOUR-OWN TOBACCO.—With respect
22 to a manufacturer of roll-your-own tobacco the as-
23 sessment shall equal—

24 (A) for roll-your-own tobacco removed dur-
25 ing calendar year 1999, \$5.71 per pound (and

1 a proportionate assessment at the like rate on
2 all fractional parts of a pound);

3 (B) for roll-your-own tobacco removed dur-
4 ing calendar year 2000, \$11.43 per pound (and
5 a proportionate assessment at the like rate on
6 all fractional parts of a pound); and

7 (C) for roll-your-own tobacco removed dur-
8 ing calendar year 2001, \$17.14 per pound (and
9 a proportionate assessment at the like rate on
10 all fractional parts of a pound).

11 (e) INFLATION ADJUSTMENT.—In the case of a cal-
12 endar year after 2001, the dollar amount described in sub-
13 paragraph (C) of paragraphs (1), (2), (3), (4), (5), (6),
14 (7), and (8), and the percentage in subparagraph (C) of
15 paragraph (4), applicable to the preceding calendar year
16 shall be increased by an amount equal to—

17 (1) such dollar amount (or percentage), multi-
18 plied by

19 (2) the greater of—

20 (A) the medical consumer price percentage
21 increase for such calendar year as determined
22 in the same manner as the adjustment is deter-
23 mined under section 1(f)(3) of the Internal
24 Revenue Code of 1986 for such calendar year
25 by substituting “the second preceding calendar

1 year” for “calendar year 1992” in subpara-
2 graph (B) thereof; or

3 (B) 3 percent.

4 (d) ASSESSMENTS APPLICABLE TO FLOOR
5 STOCKS.—

6 (1) IN GENERAL.—Tobacco products manufac-
7 tured in or imported into the United States which
8 are removed before any assessment date, and held
9 on such date for sale by any person, shall be subject
10 to an assessment in an amount equal to the excess
11 of—

12 (A) the assessment which would be im-
13 posed under subsection (b) on the product if the
14 product had been removed on such date, over

15 (B) the prior assessment (if any) imposed
16 under such subsection on such product.

17 (2) LIABILITY FOR ASSESSMENT AND METHOD
18 OF PAYMENT.—

19 (A) LIABILITY FOR ASSESSMENT.—A per-
20 son holding tobacco products on any assessment
21 date, to which any assessment imposed under
22 paragraph (1) applies shall be liable for such
23 assessment.

24 (B) METHOD OF PAYMENT.—The assess-
25 ment imposed under paragraph (1) shall be

1 paid in such manner as the Secretary of the
2 Treasury shall prescribe by regulations.

3 (C) TIME FOR PAYMENT.—The assessment
4 imposed under paragraph (1) shall be paid on
5 or before April 1 following any assessment date.

6 (3) ARTICLES IN FOREIGN TRADE ZONES.—
7 Notwithstanding the Act of June 18, 1934 (48 Stat.
8 998, 19 U.S.C. 81a) and any other provision of law,
9 any product which is located in a foreign trade zone
10 on any assessment date, shall be subject to the as-
11 sessment imposed by paragraph (1) if—

12 (A) internal revenue taxes have been deter-
13 mined, or customs duties liquidated, with re-
14 spect to such product before such date; or

15 (B) such article is held on such date under
16 the supervision of a customs officer.

17 (4) ASSESSMENT DATE.—The term “assess-
18 ment date” means January 1.

19 (e) NO TAX BENEFIT.—

20 (1) IN GENERAL.—The initial payment de-
21 scribed in subsection (a)(1) shall not be considered
22 to be an ordinary and necessary expense in carrying
23 on a trade or business for purposes of the Internal
24 Revenue Code of 1986 and shall not be tax deduct-
25 ible.

1 (2) LOOK-BACK PENALTIES.—The payment of
2 penalties under title III shall not be considered to be
3 an ordinary and necessary expense in carrying on a
4 trade or business for purposes of the Internal Reve-
5 nue Code of 1986 and shall not be deductible.

6 (f) EFFECT OF BANKRUPTCY.—Section 507(a)(8) of
7 title 11, United States Code, is amended—

8 (1) in subparagraph (F)(iii), by striking “or” at
9 the end;

10 (2) in subparagraph (G), by striking the period
11 and inserting “; or”; and

12 (3) by adding at the end the following:

13 “(H) a payment, an assessment, or a pen-
14 alty to be paid into the Health Enhancement
15 and Lowered Tobacco Hazards for Young Kids
16 Trust Fund under section 102 (or any other
17 section) of the Healthy Kids Act.”.

18 (g) LIMITATION.—A manufacturer may not utilize
19 any proceeds from liability insurance coverage to make
20 payments or pay assessments under this section.

21 (h) HEALTHY KIDS STAMP.—The Secretary shall
22 promulgate regulations to provide that a Healthy Kids
23 Stamp be affixed to each package of a tobacco product
24 for which an assessment has been paid under this section.

1 (i) NONAPPLICATION TO CERTAIN MANUFACTUR-
2 ERS.—

3 (1) EXEMPTION.—A manufacturer described in
4 paragraph (2) shall be exempt from the require-
5 ments of this section relating to—

6 (A) the payment of an initial payment
7 under subsection (a)(1); and

8 (B) the payment of that portion of the
9 annual assessments under this section that
10 will be provided under paragraphs (1)
11 through (4) of section 101(d) to States.

12 (2) MANUFACTURER.—A manufacturer de-
13 scribed in this section is a manufacturer that has re-
14 solved tobacco-related civil actions with more than
15 25 States (in this paragraph referred to as “settling
16 States”) prior to January 1, 1998 through written
17 settlement agreements signed by the attorneys gen-
18 eral of such States, so long as such manufacturer
19 provides to all other States by not later than Decem-
20 ber 31, 1998, the opportunity to enter into written
21 settlement agreements that are substantially similar
22 to the agreements that such manufacturer has en-
23 tered into with the settling States and that provide
24 such other States with the most favorable annual

1 payment terms of its written settlement offers to
2 such other States.

3 (3) LIMITATION.—The provisions of paragraph
4 (1) shall apply only to assessments on cigarettes to
5 the extent that such cigarettes constitute less than
6 3 percent of all cigarettes manufactured and distrib-
7 uted for consumer use in any year.

8 **SEC. 103. LICENSING OF MANUFACTURERS.**

9 (a) IN GENERAL.—The Secretary, acting through the
10 Food and Drug Administration, shall establish a tobacco
11 manufacturer licensing program.

12 (b) REQUIREMENT.—A manufacturer or importer
13 shall have in effect a license issued under the program
14 under subsection (a) in order—

15 (1) to be eligible to manufacture and distribute
16 tobacco products in the United States, or, in the
17 case of an importer, to be eligible to import tobacco
18 products; and

19 (2) to be eligible to receive the protections pro-
20 vided under subtitle A of title VII.

21 (c) ELIGIBILITY.—A manufacturer or importer shall
22 not be eligible to receive a license under this section if
23 such manufacturer or importer has failed to pay the pay-
24 ment of assessment required under section 102 or fails

1 to comply with such other requirements as the Secretary
2 may prescribe in furtherance of the purposes of this Act.

3 (d) REVOCATION AND SUSPENSION.—The Secretary
4 shall promulgate regulations to provide for the enforce-
5 ment of the program established under section (a). Such
6 regulations shall provide for the revocation or suspension
7 of a license for nonpayment of required assessments.

8 **SEC. 104. ENFORCEMENT.**

9 (a) IN GENERAL.—The Secretary of the Treasury, in
10 consultation with the Secretary of Health and Human
11 Services, shall enforce the provisions of section 102 with
12 respect to any manufacturer that fails to pay any amount
13 assessed under section 102.

14 (b) AMOUNT OF PENALTY.—The amount of the pen-
15 alty imposed by subsection (a) on any failure with respect
16 to a manufacturer shall be established by the Secretary
17 of the Treasury for each day during the noncompliance
18 period, except that no such penalty shall be less than
19 \$25,000 plus interest.

20 (c) NONCOMPLIANCE PERIOD.—For purposes of this
21 section, the term “noncompliance period” means, with re-
22 spect to any failure to pay an assessment under section
23 102, the period—

24 (1) beginning on the due date for such pay-
25 ment; and

1 (2) ending on the date on which such payment
2 is paid in full.

3 **Subtitle B—Payments**

4 **CHAPTER 1—TO STATES**

5 **SEC. 111. PAYMENTS TO STATES.**

6 (a) AVAILABILITY OF FUNDS.—

7 (1) IN GENERAL.—The amounts made available
8 for a fiscal year under section 101(d)(1) shall be
9 made available to carry out subsections (b) and (d).

10 (2) NO OVERPAYMENT.—With respect to the
11 amount provided to a State under paragraph (1) for
12 a fiscal year, the Secretary shall not treat such
13 amount as an overpayment under any joint Federal-
14 State health program.

15 (3) FISCAL YEAR LIMITATION.—Amounts made
16 available for a fiscal year under subsection (b) shall
17 not exceed the amount available for such fiscal year
18 under section 101(d)(1).

19 (b) REIMBURSEMENT.—

20 (1) IN GENERAL.—The Secretary shall use
21 amounts made available under subsection (a)(1) in
22 each fiscal year to provide funds to each State that
23 is eligible under subsection (c) to reimburse such
24 State for amounts expended by the State under the
25 State program under title XIX of the Social Security

1 Act (42 U.S.C. 1396 et seq.) or any other State
2 health program for the treatment of individuals with
3 tobacco-related illnesses or conditions.

4 (2) AMOUNT.—The amount for which a State is
5 eligible under paragraph (1) shall be based on the
6 ratio of the total Federal payments to the State
7 under title XIX of the Social Security Act (42
8 U.S.C. 1396 et seq.) for the fiscal year involved to
9 the total Federal payments to all States under such
10 title for such fiscal year.

11 (3) ADJUSTMENT.—With respect to a fiscal
12 year in which the amount determined under para-
13 graphs (1) and (2) of subsection (a) exceeds the lim-
14 itation under subsection (a)(3), the Secretary shall
15 make pro rata reductions in the amounts provided to
16 States under this subsection.

17 (4) REALLOTMENT.—The amount for which a
18 State is eligible under this subsection that is not
19 made available to the State as a result of the failure
20 of the State to meet the requirements of subsection
21 (c) shall be made available to other States on a pro
22 rata basis.

23 (5) USE OF FUNDS.—Amounts provided to a
24 State under this subsection shall be used—

1 (A) to reimburse the State for expenses in-
2 curred by the State under the State program
3 under title XIX of the Social Security Act (42
4 U.S.C. 1396 et seq.) relating to the treatment
5 of tobacco-related illnesses or conditions;

6 (B) to reimburse the State for other ex-
7 penses incurred by the State in providing di-
8 rectly, or reimbursing others for the provision
9 of, treatment for tobacco-related illnesses or
10 conditions; and

11 (C) to provide funds to local governmental
12 entities as provided for in subsection (d).

13 (c) ELIGIBILITY.—To be eligible to receive funds
14 under this section a State shall—

15 (1) agree to resolve in accordance with section
16 701 any civil action that has been commenced by the
17 State against a tobacco manufacturer, distributor, or
18 retailer of a tobacco product seeking recovery for ex-
19 penditures attributable to the treatment of tobacco
20 induced illnesses and conditions or other damages;

21 (2) prepare and submit to the Secretary for ap-
22 proval a plan describing the manner in which the
23 State will comply with the requirements of sub-
24 section (d) and a certification that all actions de-
25 scribed in paragraph (1) have been resolved; and

1 (3) comply with the provisions of subsection (d)
2 with respect to State and local governments.

3 (d) FUNDS FOR LOCAL GOVERNMENTAL ENTI-
4 TIES.—To be eligible to receive funds under subsection
5 (b), a State shall have adopted procedures to provide an
6 equitable portion of such funds to local governmental enti-
7 ties within the State that can demonstrate that such enti-
8 ties incurred tobacco-related health costs through—

9 (1) contributions to the program under title
10 XIX of the Social Security Act (42 U.S.C. 1396 et
11 seq.);

12 (2) the provision of indigent care;

13 (3) the provision of health care coverage to gov-
14 ernmental employees; or

15 (4) the implementation of tobacco product en-
16 forcement or tobacco product regulatory require-
17 ments in accordance with this Act.

18 **CHAPTER 2—FEDERAL HEALTH**

19 **PROGRAMS**

20 **SEC. 121. NATIONAL INSTITUTES OF HEALTH TRUST FUND**

21 **FOR HEALTH RESEARCH.**

22 (a) CREATION OF TRUST FUND.—There is estab-
23 lished in the Treasury of the United States a trust fund
24 to be known as the “National Institutes of Health Trust
25 Fund for Health Research” (hereafter referred to in this

1 section as the “Trust Fund”), consisting of such amounts
2 as may be appropriated or transferred to the Trust Fund
3 as provided in this section.

4 (b) FUNDING.—There shall be transferred to the
5 Trust Fund an amount equal to the amount made avail-
6 able for a fiscal year under section 101(d)(6) to carry out
7 this section in such fiscal year.

8 (c) OBLIGATIONS FROM TRUST FUND.—

9 (1) IN GENERAL.—Subject to the provisions of
10 paragraph (4), with respect to the amounts made
11 available in the Trust Fund in a fiscal year, the Sec-
12 retary shall distribute during any fiscal year—

13 (A) 2 percent of such amounts to the Of-
14 fice of the Director of the National Institutes of
15 Health to be allocated at the Director’s discre-
16 tion—

17 (i) for carrying out the responsibilities
18 of the Office of the Director, including the
19 Office of Research on Women’s Health and
20 the Office of Research on Minority Health,
21 the Office of Alternative Medicine, the Of-
22 fice of Rare Disease Research, the Office
23 of Behavioral and Social Sciences Research
24 (for use for efforts to reduce tobacco use),

1 the Office of Dietary Supplements, and the
2 Office for Disease Prevention; and

3 (ii) for construction and acquisition of
4 equipment for or facilities of or used by
5 the National Institutes of Health;

6 (B) 2 percent of such amounts for transfer
7 to the National Center for Research Resources
8 to carry out section 1502 of the National Insti-
9 tutes of Health Revitalization Act of 1993 con-
10 cerning Biomedical and Behavioral Research
11 Facilities;

12 (C) 7.5 percent of such amounts to be used
13 for research into the prevention and cure of
14 cancer;

15 (D) 7.5 percent of such amounts to be
16 used as provided for in section 601;

17 (E) 1 percent of such amounts to be used
18 for prevention research programs at the Centers
19 for Disease Control and Prevention;

20 (F) 1 percent of such amounts to be used
21 for quality and health outcomes research at the
22 Agency for Health Care Policy and Research;
23 and

24 (G) the remainder of such amounts to
25 member institutes and centers, including the

1 Office of AIDS Research, of the National Insti-
2 tutes of Health in the same proportion to such
3 remainder, as the amount of annual appropria-
4 tions under appropriations Acts for each mem-
5 ber institute and center for the fiscal year bears
6 to the total amount of appropriations under ap-
7 propriations Acts for all member institutes and
8 centers of the National Institutes of Health for
9 the fiscal year.

10 (2) PLANS OF ALLOCATION.—The amounts
11 transferred under paragraph (1)(G) shall be allo-
12 cated by the Director of the National Institutes of
13 Health or the various directors of the institutes and
14 centers, as the case may be, pursuant to allocation
15 plans developed by the various advisory councils to
16 such directors, after consultation with such
17 directors.

18 (3) GRANTS AND CONTRACTS FULLY FUNDED
19 IN FIRST YEAR.—With respect to any grant or con-
20 tract funded by amounts distributed under para-
21 graph (1), the full amount of the total obligation of
22 such grant or contract shall be funded in the first
23 year of such grant or contract, and shall remain
24 available until expended.

1 (4) TRIGGER AND RELEASE OF MONIES AND
2 PHASE-IN.—

3 (A) TRIGGER AND RELEASE.—No expendi-
4 ture shall be made under paragraph (1) during
5 any fiscal year in which the annual amount ap-
6 propriated for the National Institutes of Health
7 under 1 or more appropriations Acts (not in-
8 cluding amounts provided for purposes of this
9 section) is less than the amount so appropriated
10 for the fiscal year.

11 (B) PHASE-IN.—The Secretary shall phase
12 in the distributions required under paragraph
13 (1) so that—

14 (i) 25 percent of the amount in the
15 Trust Fund is distributed in the first fiscal
16 year for which funds are available;

17 (ii) 50 percent of the amount in the
18 Trust Fund is distributed in the second
19 fiscal year for which funds are available;

20 (iii) 75 percent of the amount in the
21 Trust Fund is distributed in the third fis-
22 cal year for which funds are available; and

23 (iv) 100 percent of the amount in the
24 Trust Fund is distributed in the fourth

1 and each succeeding fiscal year for which
2 funds are available.

3 **CHAPTER 3—INVESTMENTS FOR**
4 **CHILDREN**

5 **SEC. 131. IMPROVING CHILD CARE AND EARLY CHILDHOOD**
6 **DEVELOPMENT.**

7 (a) IN GENERAL.—The Secretary shall use amounts
8 made available under section 101(d)(2) for a fiscal year
9 for the following purposes:

10 (1) Improving the affordability of child care
11 through increased appropriations for child care
12 under the Child Care and Development Block Grant
13 Act of 1990 (42 U.S.C. 9858 et seq.).

14 (2) Enhancing the quality of child care and
15 early childhood development through the provision of
16 grants to States under the Child Care and Develop-
17 ment Block Grant Act of 1990 (42 U.S.C. 9858 et
18 seq.).

19 (3) Expanding the availability and quality of
20 school-age care through the provision of grants to
21 States under the Child Care and Development Block
22 Grant Act of 1990 (42 U.S.C. 9858 et seq.).

23 (4) Assisting young children by providing
24 grants to local collaboratives under the Child Care
25 and Development Block Grant Act of 1990 (42

1 U.S.C. 9858 et seq.) for the purpose of improving
2 parent education and supportive services, strength-
3 ening the quality of child care, improving health
4 services, and improving services for children with
5 disabilities.

6 (b) SUPPLEMENT NOT SUPPLANT.—Amounts made
7 available to a State under this section shall be used to
8 supplement and not supplant other Federal, State and
9 local funds provided for programs that serve the health
10 and developmental needs of children. Amounts provided
11 to the State under any of the provisions of law referred
12 to in this section shall not be reduced solely as a result
13 of the availability of funds under this section.

14 (c) AUTHORITY OF SECRETARY.—In providing funds
15 to States under this section, the Secretary may consider
16 the amount of funds allocated to States under section 111.
17 The Secretary may allocate funds under this section based
18 on the relative need for funds in the various States and
19 the strength of the State plans or applications for such
20 funds.

21 **SEC. 132. IMPROVING ELEMENTARY EDUCATION.**

22 (a) GRANTS AUTHORIZED.—The Secretary of Edu-
23 cation shall use amounts made available under section
24 101(d)(3) for a fiscal year to award grants to States and
25 local educational agencies to train, recruit and hire ele-

1 elementary school teachers for the purpose of reducing the
2 average class size for students in grades 1 through 3 to
3 not more than 18 students per teacher.

4 (b) REGULATIONS REQUIRED.—The Secretary of
5 Education, not later than March 1, 1999, shall promulgate
6 regulations as the Secretary determines necessary to assist
7 States and school districts in providing smaller class sizes
8 with qualified teachers in early grades. Such regulations
9 may include provisions relating to—

- 10 (1) the use of funds by the State, including the
11 awarding of grants to local educational agencies;
12 (2) teacher preparation and certification; and
13 (3) accountability for improved student achieve-
14 ment.

15 (c) ENSURING A QUALIFIED TEACHER IN EVERY
16 CLASSROOM.—To be eligible to receive funds under this
17 Act, each State shall ensure that—

- 18 (1) not later than the period that begins on the
19 date of enactment of this Act and ends 5 years after
20 such date, and subject to paragraphs (2) and (3),
21 each teacher in a public elementary or secondary
22 school in the State has demonstrated the subject
23 matter knowledge, teaching knowledge, and teaching
24 skill necessary to teach effectively in the content

1 area or areas in which the teacher provides instruc-
2 tion;

3 (2) each teacher in the State for whom the
4 demonstration described in paragraph (1) has been
5 waived temporarily by State or local education agen-
6 cies to respond to emergency teacher shortages or
7 other circumstances shall, not later than 3 years
8 after such waiver, demonstrate the subject matter
9 knowledge, teaching knowledge, and teaching skill
10 necessary to teach effectively in the content area or
11 areas in which the teacher provides instruction;

12 (3) no student will be taught for more than 1
13 year by an elementary school teacher, or for more
14 than 2 consecutive years in the same subject by a
15 secondary school teacher, who has not made the
16 demonstration described in paragraph (1); and

17 (4) during the period described in paragraph
18 (1), elementary school and secondary school teachers
19 who do not meet the requirements of paragraph (1),
20 are not disproportionately employed in high poverty
21 elementary schools or secondary schools.

22 (d) STATE PLAN.—

23 (1) IN GENERAL.—Each State desiring a grant
24 under this section shall submit to the Secretary of
25 Education a State plan at such time, in such man-

1 ner, and accompanied by such information as the
2 Secretary may require.

3 (2) CONTENTS.—Each State plan shall dem-
4 onstrate to the satisfaction of the Secretary of Edu-
5 cation that—

6 (A) the activities assisted by the State with
7 funds made available under this section will be
8 conducted in compliance with any regulations
9 promulgated under subsection (a);

10 (B) the State will use the funds made
11 available under this section to reduce class size
12 for students in grades 1 through 3 in elemen-
13 tary schools throughout the State, focusing on
14 using the funds to train, recruit, and hire
15 teachers for elementary schools serving commu-
16 nities with the least available resources for such
17 activities and the largest class sizes in those
18 grades; and

19 (C) of the funds that are made available to
20 the State under this section, the State will
21 make available to each local educational agency
22 that serves children in grades 1 through 3 and
23 in which at least 30 percent of the children are
24 from families below the Federal poverty level, at
25 least as great a percentage of such funds as the

1 percentage of funds provided to that local edu-
2 cational agency as compared to other local edu-
3 cational agencies in the State under part A of
4 title I of the Elementary and Secondary Edu-
5 cation Act of 1965.

6 (3) APPROVAL.—The Secretary shall approve a
7 State plan submitted under paragraph (1) if the
8 State plan meets the requirements of this sub-
9 section.

10 (e) SUPPLEMENT NOT SUPPLANT.—Amounts made
11 available to a State under this section shall be used to
12 supplement and not supplant other Federal, State and
13 local funds provided for programs that improve elementary
14 education as provided for in this section. Amounts pro-
15 vided to the State under this section shall not be reduced
16 solely as a result of the availability of funds under this
17 section.

18 (f) AUTHORITY OF SECRETARY.—In providing funds
19 to States under this section, the Secretary may consider
20 the amount of funds allocated to States under section 111.
21 The Secretary may allocate funds under this section based
22 on the relative need for funds in the various States and
23 the strength of the State plans.

1 **SEC. 133. INCREASED ENROLLMENT OF CHILDREN WITH**
2 **THE MEDICAID AND STATE CHILDREN'S**
3 **HEALTH INSURANCE PROGRAMS.**

4 (a) TRANSITIONAL INCREASED FEDERAL MATCHING
5 RATE FOR INCREASED MEDICAID ADMINISTRATIVE
6 COSTS.—Section 1931(h) of the Social Security Act (42
7 U.S.C. 1396u–1(h)) is amended—

8 (1) in paragraph (2), by striking “attributable
9 to” and all that follows and inserting “attributable
10 to—

11 “(A) administrative costs of eligibility de-
12 terminations that (but for the enactment of this
13 section) would not be incurred; and

14 “(B) outreach activities to enroll uninsured
15 children in a State plan approved under this
16 title or title XXI.”; and

17 (2) by striking paragraphs (3) and (4) and in-
18 serting the following:

19 “(3) LIMITATION.—

20 “(A) IN GENERAL.—Beginning with fiscal
21 year 1998, the total amount of additional Fed-
22 eral funds that are expended as a result of the
23 application of this subsection shall not exceed
24 \$525,000,000.

25 “(B) AVAILABILITY OF APPROPRIATION.—

26 Any amount appropriated in accordance with

1 this paragraph shall remain available until ex-
2 pended.

3 “(C) EQUITABLE DISTRIBUTION OF
4 FUNDS.—In applying this paragraph, the Sec-
5 retary shall ensure the equitable distribution of
6 additional funds among the States.”.

7 (b) MEDICAID PRESUMPTIVE ELIGIBILITY FOR LOW-
8 INCOME CHILDREN.—

9 (1) IN GENERAL.—Section 1920A(b)(3) of the
10 Social Security Act (42 U.S.C. 1396r–1a(b)(3)) is
11 amended—

12 (A) in subparagraph (A)(i)—

13 (i) by striking “or (II)” and inserting
14 “, (II)”; and

15 (ii) by inserting “, or (III) is an ele-
16 mentary school or secondary school, as
17 such terms are defined in section 14101 of
18 the Elementary and Secondary Education
19 Act of 1965 (20 U.S.C. 8801), is a child
20 care resource and referral agency, a child
21 support enforcement agency, or is author-
22 ized to determine the eligibility of a child
23 for obtaining child health assistance under
24 title XXI that is in the form of coverage

1 that meets the requirements of section
2 2103” before the semicolon; and

3 (B) in subparagraph (C), by striking “lim-
4 iting the classes of” and inserting “imposing
5 limitations on”.

6 (2) RETROACTIVITY.—The amendments made
7 by paragraph (1) take effect as if included in the en-
8 actment of section 4912 of the Balanced Budget Act
9 of 1997 (Public Law 105–33; 111 Stat. 571).

10 (c) MEDICAID EXPENDITURES COUNTED AGAINST
11 STATE ALLOTMENTS UNDER TITLE XXI.—

12 (1) IN GENERAL.—Section 2104(d) of the So-
13 cial Security Act (42 U.S.C. 1397dd(d)) is amended
14 to read as follows:

15 “(d) CERTAIN MEDICAID EXPENDITURES COUNTED
16 AGAINST INDIVIDUAL STATE ALLOTMENTS.—The amount
17 of the allotment otherwise provided to a State under sub-
18 section (b) or (c) for a fiscal year shall be reduced by the
19 amount (if any) of the payments made to that State under
20 section 1903(a) for expenditures claimed by the State dur-
21 ing such fiscal year that is attributable to the provision
22 of medical assistance to a child for which payment is made
23 under section 1903(a)(1) on the basis of an enhanced
24 FMAP under the fourth sentence of section 1905(b).”.

1 (2) RETROACTIVITY.—The amendment made by
2 paragraph (1) takes effect as if included in the en-
3 actment of section 4901 of the Balanced Budget Act
4 of 1997 (Public Law 105–33; 111 Stat. 552).

5 (d) MEDICAID AND STATE CHILDREN’S HEALTH IN-
6 SURANCE PROGRAM ELIGIBILITY FOR LEGAL IMMIGRANT
7 CHILDREN WHO ENTERED THE UNITED STATES AFTER
8 AUGUST 1996.—

9 (1) EXEMPTION FROM 5-YEAR BAN.—Section
10 403 of the Personal Responsibility and Work Oppor-
11 tunity Reconciliation Act of 1996 (8 U.S.C. 1613),
12 as amended by sections 5302(c)(1)(B) and 5303(c)
13 of the Balanced Budget Act of 1997 (Public Law
14 105–33; 111 Stat. 599, 600), is amended by adding
15 at the end the following:

16 “(e) MEDICAID AND SCHIP BENEFITS FOR CERTAIN
17 CHILDREN.—Notwithstanding any other provision of law,
18 the limitations under section 401(a) and subsection (a)
19 shall not apply to an individual who is under 19 years of
20 age and who lawfully entered the United States after Au-
21 gust 22, 1996, but only with respect to the eligibility of
22 that individual for—

23 “(1) child health assistance under title XXI of
24 the Social Security Act (42 U.S.C. 1397aa et seq.);
25 and

1 “(2) medical assistance under title XIX of such
2 Act (42 U.S.C. 1396 et seq.), if the individual is an
3 optional targeted low-income child described in sec-
4 tion 1905(u)(2)(B) of such Act (42 U.S.C.
5 1396d(u)(2)(B)).”.

6 (2) NONAPPLICATION OF STATE AUTHORITY TO
7 DETERMINE ELIGIBILITY FOR MEDICAID.—Section
8 402(b)(2) of the Personal Responsibility and Work
9 Opportunity Reconciliation Act of 1996 (8 U.S.C.
10 1612(b)(2)), as amended by sections 5303(b) and
11 5305(b) of the Balanced Budget Act of 1997 (Public
12 Law 105–33; 111 Stat. 600, 601), is amended—

13 (A) in the matter preceding subparagraph
14 (A), by striking “Qualified” and inserting “Ex-
15 cept as provided in subparagraphs (A), (E),
16 (F), and (G), qualified”; and

17 (B) by adding at the end the following:

18 “(G) MEDICAID EXCEPTION FOR CERTAIN
19 CHILDREN.—With respect to eligibility for bene-
20 fits for the program described in section
21 403(e)(2), paragraph (1) shall not apply to any
22 individual described in that section.”.

23 (3) RETROACTIVITY.—The amendments made
24 by paragraphs (1) and (2) take effect as if included

1 in the enactment of the Balanced Budget Act of
 2 1997 (Public Law 105–33; 111 Stat. 251).

3 (e) ANNUAL PERFORMANCE BONUS FOR REDUCTION
 4 IN MEDICAID ELIGIBLE BUT UNENROLLED CHILDREN.—
 5 Section 1903 of the Social Security Act (42 U.S.C. 1396b)
 6 is amended by adding at the end the following:

7 “(x) PERFORMANCE BONUS FOR REDUCTION IN ELI-
 8 GIBLE BUT UNENROLLED CHILDREN.—

9 “(1) PERFORMANCE BONUS.—Beginning with
 10 fiscal year 1999, in addition to the amounts paid to
 11 a State under subsection (a), the Secretary shall pay
 12 to each State that has an approved plan under this
 13 title an amount equal to the performance bonus de-
 14 termined under paragraph (2).

15 “(2) PERFORMANCE BONUS.—

16 “(A) FORMULA.—The performance bonus
 17 for a State for a fiscal year is equal to the
 18 product of—

19 “(i) the excess baseline enrollment for
 20 the State for the fiscal year;

21 “(ii) the average per child expendi-
 22 tures by the State under this title for the
 23 fiscal year; and

24 “(iii) the difference between the en-
 25 hanced FMAP and the Federal medical as-

1 sistance percentage (as defined in the first
2 sentence of section 1905(b)) of the State
3 for the fiscal year described in section
4 2105(b).

5 “(B) DETERMINATION OF THE EXCESS
6 BASELINE ENROLLMENT.—

7 “(i) IN GENERAL.—For purposes of
8 subparagraph (A)(i), the excess baseline
9 enrollment for a State for a fiscal year is
10 the difference between (I) the actual num-
11 ber of full year equivalent children enrolled
12 under the State plan and (II) the baseline
13 number of full year equivalent children
14 that would be enrolled under the State
15 plan in the absence of the performance
16 bonus outreach efforts of the State.

17 “(ii) DETERMINATION OF THE BASE-
18 LINE NUMBER OF FULL YEAR EQUIVALENT
19 CHILDREN.—For purposes of clause (i)(II),
20 the baseline number of full year equivalent
21 children that would be enrolled under the
22 State plan in the absence of the perform-
23 ance bonus outreach efforts of the State
24 is—

1 “(I) in the case of fiscal year
2 1999, the actual number of full year
3 equivalent children enrolled under the
4 State plan in fiscal year 1998, in-
5 creased by the national percentage in-
6 crease for fiscal year 1999 in the
7 number of full year equivalent chil-
8 dren enrolled in all State plans under
9 this title, as projected by the Congres-
10 sional Budget Office in January 1998;
11 and

12 “(II) in the case of any succeed-
13 ing fiscal year, the baseline number of
14 full year equivalent children that
15 would be enrolled under the State
16 plan in the absence of the perform-
17 ance bonus outreach efforts of the
18 State determined for the preceding
19 fiscal year, increased by the national
20 percentage increase for that succeed-
21 ing fiscal year in the number of full
22 year equivalent children enrolled in all
23 State plans under this title, as pro-
24 jected by the Congressional Budget
25 Office in January 1998.

1 “(C) DETERMINATION OF AVERAGE PER
2 CHILD EXPENDITURES.—For purposes of sub-
3 paragraph (A)(ii), the average per child expend-
4 itures by a State under this title for a fiscal
5 year is—

6 “(i) the total amount paid to the
7 State under subsection (a)(1) that is at-
8 tributable to medical assistance provided to
9 children under the State plan; divided by

10 “(ii) the actual number of full year
11 equivalent children enrolled under the
12 State plan in that fiscal year.

13 “(3) DATA REQUIREMENTS.—Each State shall
14 submit to the Secretary such data, at such time and
15 in such manner, as the Secretary determines is nec-
16 essary to make the payments required under this
17 subsection. The Secretary shall ensure that data is
18 provided under this subsection in a manner that is
19 consistent with other data reporting requirements
20 for information required to be submitted by a State
21 under this title and title XXI, and that avoids dupli-
22 cation of reporting requirements.

23 “(4) STATES WITH SIGNIFICANTLY HIGHER IN-
24 CREASED ACTUAL ENROLLMENT THAN THE EX-
25 PECTED NATIONAL INCREASE.—For any fiscal year,

1 if a State's actual full year equivalent children en-
2 rollment percentage increase over the preceding fis-
3 cal year is at least twice the estimated national per-
4 centage increase in such enrollment for that fiscal
5 year, as projected by the Congressional Budget Of-
6 fice in January 1998, the State shall submit such
7 additional information as the Secretary determines
8 is necessary to verify that the increase is the result
9 of the State reducing the number of unenrolled chil-
10 dren who are eligible for medical assistance under
11 this title in the State.

12 “(5) TIMING OF PERFORMANCE BONUS PAY-
13 MENTS; RECONCILIATION.—The Secretary shall pay
14 the performance bonuses required under this sub-
15 section for a fiscal year not later than September 30
16 of the succeeding fiscal year based on reporting data
17 that reflects each State's actual number of full year
18 equivalent children enrolled under the State plan
19 and average per child expenditures. A State shall
20 provide the Secretary with access to any records or
21 information relevant to the payment of a perform-
22 ance bonus under this subsection for the purposes of
23 review or audit.

24 “(6) WAIVERS.—The provisions of this sub-
25 section apply to a State providing medical assistance

1 under this title under waiver authority in the same
2 manner as they apply to a State with an approved
3 plan under this title.

4 “(7) LIMITATION.—Amounts paid to States for
5 a fiscal year under this subsection shall not exceed
6 the amount made available under section 101(d)(4)
7 of the Healthy Kids Act for such fiscal year (less
8 amounts paid to States under the amendments made
9 by subsections (a) through (d) of section 133 of such
10 Act).”.

11 **SEC. 134. MEDICARE CANCER PATIENT DEMONSTRATION**
12 **PROJECT; EVALUATION AND REPORT TO**
13 **CONGRESS.**

14 (a) ESTABLISHMENT.—The Secretary shall establish
15 a 3-year demonstration project which provides for pay-
16 ment under the medicare program under title XVIII of
17 the Social Security Act (42 U.S.C. 1395 et seq.) of routine
18 patient care costs—

19 (1) which are provided to an individual diag-
20 nosed with cancer and enrolled in the medicare pro-
21 gram under such title as part of the individual’s par-
22 ticipation in an approved clinical trial program; and

23 (2) which are not otherwise eligible for payment
24 under such title for individuals who are entitled to
25 benefits under such title.

1 (b) APPLICATION.—The beneficiary cost sharing pro-
2 visions under the medicare program, such as deductibles,
3 coinsurance, and copayment amounts, shall apply to any
4 individual participating in a demonstration project con-
5 ducted under this section.

6 (c) APPROVED CLINICAL TRIAL PROGRAM.—

7 (1) IN GENERAL.—For purposes of this section,
8 the term “approved clinical trial program” means a
9 clinical trial program which is approved by—

10 (A) the National Institutes of Health;

11 (B) a National Institutes of Health cooper-
12 ative group or a National Institutes of Health
13 center; and

14 (C) the National Cancer Institute, with re-
15 spect to programs that oversee and coordinate
16 extramural clinical cancer research, trials spon-
17 sored by such Institute and conducted at des-
18 ignated cancer centers, clinical trials, and Insti-
19 tute grants that support clinical investigators.

20 (2) MODIFICATIONS IN APPROVED TRAILS.—

21 Beginning 1 year after the date of enactment of this
22 Act, the Secretary, in consultation with the Cancer
23 Policy Board of the Institute of Medicine, may mod-
24 ify or add to the requirements of paragraph (1) with
25 respect to an approved clinical trial program.

1 (d) ROUTINE PATIENT CARE COSTS.—

2 (1) IN GENERAL.—For purposes of this section,
3 “routine patient care costs” shall include the costs
4 associated with the provision of items and services
5 that—

6 (A) would otherwise be covered under the
7 medicare program if such items and services
8 were not provided in connection with an ap-
9 proved clinical trial program; and

10 (B) are furnished according to the design
11 of an approved clinical trial program.

12 (2) EXCLUSION.—For purposes of this section,
13 “routine patient care costs” shall not include the
14 costs associated with the provision of—

15 (A) an investigational drug or device, un-
16 less the Secretary has authorized the manufac-
17 turer of such drug or device to charge for such
18 drug or device; or

19 (B) any item or service supplied without
20 charge by the sponsor of the approved clinical
21 trial program.

22 (e) STUDY.—The Secretary shall study the impact on
23 the medicare program under title XVIII of the Social Se-
24 curity Act of covering routine patient care costs for indi-
25 viduals with a diagnosis of cancer and other diagnoses,

1 who are entitled to benefits under such title and who are
2 enrolled in an approved clinical trial program.

3 (f) REPORT TO CONGRESS.—Not later than 30
4 months after the date of enactment of this Act, the Sec-
5 retary shall submit a report to Congress that contains a
6 detailed description of the results of the study conducted
7 under subsection (e) including recommendations regarding
8 the extension and expansion of the demonstration project
9 conducted under this section.

10 (g) FUNDING.—The Secretary shall use amounts
11 made available under section 101(d)(9)(A) for a fiscal
12 year to carry out this section.

13 **TITLE II—FDA JURISDICTION** 14 **OVER TOBACCO PRODUCTS**

15 **SEC. 201. REFERENCE.**

16 Whenever in this title an amendment or repeal is ex-
17 pressed in terms of an amendment to, or repeal of, a sec-
18 tion or other provision, the reference shall be considered
19 to be made to a section or other provision of the Federal
20 Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.).

21 **SEC. 202. STATEMENT OF GENERAL AUTHORITY.**

22 The regulations promulgated by the Secretary in the
23 rule dated August 28, 1996 (Vol. 61, No. 168 C.F.R.),
24 adding part 897 to title 21, Code of Federal Regulations,

1 shall be deemed to have been promulgated under the Food,
2 Drug and Cosmetic Act as amended by this title.

3 **SEC. 203. TREATMENT OF TOBACCO PRODUCTS AS DRUGS**
4 **AND DEVICES.**

5 (a) DEFINITIONS.—

6 (1) DRUG.—Section 201(g)(1) (21 U.S.C.
7 321(g)(1)) is amended by striking “; and (D)” and
8 inserting “; (D) nicotine in tobacco products; and
9 (E)”.

10 (2) DEVICES.—Section 201(h) (21 U.S.C.
11 321(h)) is amended—

12 (A) in paragraph (2), by striking “or” at
13 the end;

14 (B) in paragraph (3), by striking “and” at
15 the end and inserting “or”; and

16 (C) by inserting after paragraph (3), the
17 following:

18 “(4) a delivery component of a tobacco product;
19 and”.

20 (3) OTHER DEFINITIONS.—Section 201 (21
21 U.S.C. 321) is amended by adding at the end the
22 following:

23 “(kk) The term ‘tobacco product’ means any product
24 made or derived from tobacco leaf made for human con-
25 sumption including, but not limited to, cigarettes,

1 cigarillos, cigarette tobacco, cigars, little cigars, pipe to-
2 bacco, and smokeless tobacco, and roll-your-own tobacco.”.

3 (b) REGULATORY AUTHORITY.—Section 503(g) (21
4 U.S.C. 353(g)) is amended by adding at the end the fol-
5 lowing:

6 “(5) The Secretary may regulate any tobacco product
7 as a drug, device, or both, and may designate the office
8 of the Administration that shall be responsible for regulat-
9 ing such products.”.

10 (c) DEVICES.—Section 520(e)(1) (21 U.S.C.
11 360j(e)(1)) is amended by striking “or use—” and insert-
12 ing “or use, including restrictions on the access to, and
13 the advertising and promotion of, tobacco products—”.

14 (d) MISBRANDING.—Section 502 (21 U.S.C. 360) is
15 amended by adding at the end the following:

16 “(u) In the case of a tobacco product, it is sold, dis-
17 tributed, advertised, or labeled in violation of this Act or
18 the regulations promulgated under this Act.

19 “(v) The regulations promulgated in accordance with
20 subchapter E shall, at a minimum, require that a tobacco
21 product be deemed to be misbranded if the labeling of the
22 package of the product, or any claim of the manufacturer
23 in connection with the product, states or implies (as deter-
24 mined by the Secretary) that the product presents a re-
25 duced health risk unless it is demonstrated to the satisfac-

1 tion of the Secretary that the product will achieve the best
2 public health result, taking into account all relevant fac-
3 tors including, but not limited to, the probability of the
4 increased number of new users of tobacco products and
5 the reduced probability that existing users of tobacco
6 products will quit.”.

7 (e) ENFORCEMENT.—Section 301 (42 U.S.C. 331) is
8 amended by adding at the end the following:

9 “(aa) The failure to comply with the requirements of
10 section 581.

11 “(bb) The failure or refusal to comply with any of
12 the requirements of subsections (a), (b) or (e) of section
13 578.”.

14 (f) STATE AND LOCAL REQUIREMENTS.—Section
15 521 (21 U.S.C. 360k) is amended—

16 (1) in subsection (a), by striking “subsection
17 (b)” and inserting “subsections (b) and (c)”; and

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

19 “(c) This section shall not apply to devices that are
20 tobacco products.”.

21 **SEC. 204. SAFETY AND EFFICACY STANDARD AND RECALL**
22 **AUTHORITY.**

23 (a) SAFETY AND EFFICACY STANDARD.—Section
24 513(a) (21 U.S.C. 360e(a)) is amended—

1 (1) in paragraph (1)(B), by inserting after the
2 first sentence the following: “For a device which is
3 a tobacco product, the assurance in the previous sen-
4 tence need not be found if the Secretary finds that
5 special controls achieve the best public health re-
6 sult.”; and

7 (2) in paragraph (2)—

8 (A) by redesignating subparagraphs (A),
9 (B) and (C) as clauses (i), (ii) and (iii), respec-
10 tively;

11 (B) by striking “(2) For” and inserting
12 “(2)(A) For”; and

13 (C) by adding at the end the following:

14 “(B) For purposes of paragraph (1)(B), subsections
15 (c)(2)(C), (d)(2)(B), (e)(2)(A), (f)(3)(B)(i), and
16 (f)(3)(C)(i), and sections 514, 519(a), 520(e), and 520(f),
17 the safety and effectiveness of a device that is a tobacco
18 product need not be found if the Secretary finds that the
19 action to be taken under any such provision would achieve
20 the best public health result. The finding as to whether
21 the best public health result has been achieved shall be
22 determined with respect to the risks and benefits to the
23 population as a whole, including users and non-users of
24 the tobacco product, and taking into account—

1 “(i) the increased or decreased likelihood that
2 existing consumers of tobacco products will stop
3 using such products; and

4 “(ii) the increased or decreased likelihood that
5 those who do not use tobacco products will start
6 using such products.”.

7 (b) **RECALL AUTHORITY.**—Section 518(e)(1) (21
8 U.S.C. 360h(e)(1)) is amended by inserting after “adverse
9 health consequences or death,” the following: “and for to-
10 bacco products that the best public health result would
11 be achieved,”.

12 **SEC. 205. GENERAL HEALTH AND SAFETY REGULATION OF**
13 **TOBACCO PRODUCTS.**

14 Chapter V (21 U.S.C. 351 et seq.) is amended by
15 adding at the end the following:

16 “SUBCHAPTER F—TOBACCO PRODUCTS
17 **“SEC. 571. PROMULGATION OF REGULATIONS.**

18 “Any regulations necessary to implement this sub-
19 chapter shall be promulgated not later than 12 months
20 after the date of enactment of this subchapter using notice
21 and comment rulemaking (in accordance with chapter 5
22 of title 5, United States Code). Such regulations may be
23 revised thereafter as determined necessary by the Sec-
24 retary.

1 **“SEC. 572. SCIENTIFIC ADVISORY COMMITTEE.**

2 “(a) ESTABLISHMENT.—Not later than 1 year after
3 the date of enactment of this subchapter, the Secretary
4 shall establish an advisory committee, to be known as the
5 ‘Scientific Advisory Committee’, to assist the Secretary.

6 “(b) MEMBERSHIP.—

7 “(1) IN GENERAL.—The Secretary shall appoint
8 as members of the Scientific Advisory Committee
9 any individuals with expertise in the medical, sci-
10 entific, or other technological data involving the
11 manufacture and use of tobacco products, and of ap-
12 propriately diversified professional backgrounds.

13 “(2) LIMITATIONS.—Notwithstanding section
14 5(b) of the Federal Advisory Committee Act (5
15 U.S.C. App. 3), the Secretary may not appoint to
16 the Committee any individual who—

17 “(A) is in the regular full-time employ of
18 the Federal Government;

19 “(B) is, or is in the employ of, a manufac-
20 turer, distributor, or retailer of a tobacco prod-
21 uct, or organization substantially funded by
22 manufacturers, distributors, or retailers of to-
23 bacco products;

24 “(C) is, or is in the employ of, an attorney
25 representing an entity described in subpara-
26 graph (B); or

1 “(D) is, or is in the employ of, a consult-
2 ant employed by or under retainer to an entity
3 described in subparagraph (B).

4 “(3) CHAIRPERSON.—The Secretary shall des-
5 ignate 1 of the members of the advisory committee
6 to serve as chairperson of the Committee.

7 “(c) COMPENSATION AND EXPENSES.—Members of
8 the Scientific Advisory Committee shall be entitled to the
9 same compensation and expenses as the compensation and
10 expenses provided to members of the advisory committees
11 established under section 514(b)(5)(B).

12 “(d) DUTIES.—The Scientific Advisory Committee
13 shall—

14 “(1) provide assistance to the Secretary;

15 “(2) examine the effects of the alteration of the
16 nicotine yield levels in tobacco products;

17 “(3) examine whether there is a threshold level
18 below which nicotine yields do not produce depend-
19 ence on the tobacco product involved, and, if so,
20 what that level is; and

21 “(4) review other safety, dependence or health
22 issues relating to tobacco products as determined ap-
23 propriate by the Secretary.

1 **“SEC. 573. PERFORMANCE STANDARDS.**

2 “(a) GENERAL RULE.—The Secretary may adopt a
3 performance standard under section 514(a)(2) for a to-
4 bacco product regardless of whether the product has been
5 classified under section 513. Such standards may in-
6 clude—

7 “(1) the reduction or elimination of nicotine
8 yields of the product;

9 “(2) the reduction or elimination of other con-
10 stituents or harmful components of the product; or

11 “(3) standards relating to any other require-
12 ment pursuant to section 512(a)(2).

13 “(b) TOBACCO CONSTITUENTS.—The Secretary may
14 require that a manufacturer test, report and disclose to-
15 bacco and tobacco smoke constituents, including labeling
16 and advertising disclosures relating to such constituents,
17 including, but not limited to, tar and nicotine.

18 **“SEC. 574. DISCLOSURE AND REPORTING OF TOBACCO AND**
19 **NONTOBACCO INGREDIENTS AND CONSTITU-**
20 **ENTS.**

21 “(a) DISCLOSURE OF ALL INGREDIENTS.—

22 “(1) IMMEDIATE AND ANNUAL DISCLOSURE.—
23 Not later than 30 days after the date of enactment
24 of this subchapter, and annually thereafter, each
25 manufacturer of a tobacco product shall submit to
26 the Secretary an ingredient list for each brand of to-

1 tobacco product it manufactures that contains the in-
2 formation described in paragraph (2).

3 “(2) REQUIREMENTS.—The list described in
4 paragraph (1) shall, with respect to each brand or
5 variety of tobacco product of a manufacturer, in-
6 clude—

7 “(A) a list of all ingredients, constituents,
8 substances, and compounds that are found in or
9 added to the tobacco or tobacco product (in-
10 cluding the paper, filter, or packaging of the
11 product if applicable) in the manufacture of the
12 tobacco product, for each brand or variety of to-
13 bacco product so manufactured, including, if
14 determined necessary by the Secretary, any ma-
15 terial added to the tobacco used in the product
16 prior to harvesting;

17 “(B) the quantity of the ingredients, con-
18 stituents, substances, and compounds that are
19 listed under subparagraph (A) in each brand or
20 variety of tobacco product;

21 “(C) the nicotine content of the product,
22 measured in milligrams of nicotine;

23 “(D) for each brand or variety of ciga-
24 rettes—

1 “(i) the filter ventilation percentage
2 (the level of air dilution in the cigarette as
3 provided by the ventilation holes in the fil-
4 ter, described as a percentage);

5 “(ii) the pH level of the smoke of the
6 cigarette; and

7 “(iii) the tar, nicotine, and carbon
8 monoxide delivery level under Federal
9 Trade Commission parameters and any
10 other smoking conditions established by
11 the Secretary, reported in milligrams of
12 tar, nicotine, and carbon monoxide per cig-
13 arette;

14 “(E) for each brand or variety of smoke-
15 less tobacco products—

16 “(i) the pH level of the tobacco;

17 “(ii) the moisture content of the to-
18 bacco expressed as a percentage of the
19 weight of the tobacco; and

20 “(iii) the nicotine content—

21 “(I) for each gram of the prod-
22 uct, measured in milligrams of nico-
23 tine;

24 “(II) expressed as a percentage
25 of the dry weight of the tobacco; and

1 “(III) with respect to unionized
2 (free) nicotine, expressed as a percent-
3 age per gram of the tobacco and ex-
4 pressed in milligrams per gram of the
5 tobacco; and

6 “(F) any other information determined ap-
7 propriate by the Secretary.

8 “(3) METHODS.—The Secretary shall have the
9 authority to promulgate regulations to establish the
10 methods to be used by manufacturers in making the
11 determinations required under paragraph (2).

12 “(b) SAFETY ASSESSMENTS.—

13 “(1) APPLICATION TO NEW INGREDIENTS.—

14 “(A) IN GENERAL.—Not later than 1 year
15 after the date of enactment of this subchapter,
16 and annually thereafter, each manufacturer
17 shall submit to the Secretary a safety assess-
18 ment for each new ingredient, constituent, sub-
19 stance, or compound that such manufacturer
20 desires to make a part of a tobacco product.
21 Such new ingredient, constituent, substance, or
22 compound shall not be included in a tobacco
23 product prior to approval by the Secretary of
24 such a safety assessment.

1 “(B) METHOD OF FILING.—A safety as-
2 sessment submitted under subparagraph (A)
3 shall be signed by an officer of the manufac-
4 turer who is acting on behalf of the manufac-
5 turer and who has the authority to bind the
6 manufacturer, and contain a statement that en-
7 sures that the information contained in the as-
8 sessment is true, complete and accurate.

9 “(C) DEFINITION OF NEW INGREDIENT.—
10 For purposes of subparagraph (A), the term
11 ‘new ingredient, constituent, substance, or com-
12 pound’ means an ingredient, constituent sub-
13 stance, or compound listed under subsection
14 (a)(1) that was not used in the brand or variety
15 of tobacco product involved prior to January 1,
16 1998.

17 “(2) APPLICATION TO OTHER INGREDIENTS.—
18 With respect to the application of this section to in-
19 gredients, constituents substances, or compounds
20 listed under subsection (a) to which paragraph (1)
21 does not apply, all such ingredients, constituents,
22 substances, or compounds shall be reviewed through
23 the safety assessment process within the 5-year pe-
24 riod beginning on the date of enactment of this sub-
25 chapter. The Secretary shall develop a procedure for

1 the submission of safety assessments of such ingre-
2 dients, constituents, substances, or compounds that
3 staggers such safety assessments within the 5-year
4 period.

5 “(3) BASIS OF ASSESSMENT.—The safety as-
6 sessment of an ingredient, constituents, substance,
7 or compound described in paragraphs (1) and (2)
8 shall—

9 “(A) be based on the best scientific evi-
10 dence available at the time of the submission of
11 the assessment; and

12 “(B) demonstrate that there is a reason-
13 able certainty among experts qualified by sci-
14 entific training and experience who are con-
15 sulted, that the ingredient, constituents, sub-
16 stance, or compound will not present any risk
17 to consumers or the public in the quantities
18 used under the intended conditions of use.

19 “(c) PROHIBITION.—

20 “(1) REGULATIONS.—Not later than 12 months
21 after the date of enactment of this subchapter, the
22 Secretary shall promulgate regulations to prohibit
23 the use of any ingredient, constituent, substance, or
24 compound in the tobacco product of a manufac-
25 turer—

1 “(A) if no safety assessment has been sub-
2 mitted by the manufacturer for the ingredient,
3 constituent, substance, or compound as other-
4 wise required under this section; or

5 “(B) if the Secretary finds that the manu-
6 facturer has failed to demonstrate the safety of
7 the ingredient, constituent, substance, or com-
8 pound that was the subject of the assessment
9 under paragraph (2).

10 “(2) REVIEW OF ASSESSMENTS.—

11 “(A) GENERAL REVIEW.—Not later than
12 180 days after the receipt of a safety assess-
13 ment under subsection (b), the Secretary shall
14 review the findings contained in such assess-
15 ment and approve or disapprove of the safety of
16 the ingredient, constituents, substance, or com-
17 pound that was the subject of the assessment.
18 The Secretary may, for good cause, extend the
19 period for such review. The Secretary shall pro-
20 vide notice to the manufacturer of an action
21 under this subparagraph.

22 “(B) INACTION BY SECRETARY.—If the
23 Secretary fails to act with respect to an assess-
24 ment of an existing ingredient, constituent, sub-
25 stance, or additive during the period referred to

1 in subparagraph (A), the manufacturer of the
2 tobacco product involved may continue to use
3 the ingredient, constituents, substance, or com-
4 pound involved until such time as the Secretary
5 makes a determination with respect to the as-
6 sessment.

7 “(d) RIGHT TO KNOW; FULL DISCLOSURE OF INGRE-
8 DIENTS TO THE PUBLIC.—

9 “(1) IN GENERAL.—Except as provided in para-
10 graph (3), a package of a tobacco product shall dis-
11 close all ingredients, constituents, substances, or
12 compounds contained in the product in accordance
13 with regulations promulgated under section 701(a)
14 by the Secretary.

15 “(2) DISCLOSURE OF PERCENTAGE OF DOMES-
16 TIC AND FOREIGN TOBACCO.—The regulations re-
17 ferred to in paragraph (1) shall require that the
18 package of a tobacco product disclose, with respect
19 to the tobacco contained in the product—

20 “(A) the percentage that is domestic to-
21 bacco; and

22 “(B) the percentage that is foreign to-
23 bacco.

24 “(3) HEALTH DISCLOSURE.—Notwithstanding
25 section 301(j), the Secretary may require the public

1 disclosure of any ingredient, constituent, substance,
2 or compound contained in a tobacco product that re-
3 lates to a trade secret or other matter referred to in
4 section 1905 of title 18, United States Code, if the
5 Secretary determines that such disclosure will pro-
6 mote the public health.

7 **“SEC. 575. TOBACCO PRODUCT WARNINGS, LABELING AND**
8 **PACKAGING.**

9 “(a) CIGARETTE WARNINGS.—

10 “(1) IN GENERAL.—

11 “(A) PACKAGING.—It shall be unlawful for
12 any person to manufacture, package, or import
13 for sale or distribution any cigarettes the pack-
14 age of which fails to bear, in accordance with
15 the requirements of this subsection, one of the
16 following labels:

17 “WARNING: Cigarettes Are Addictive.

18 “WARNING: Tobacco Smoke Can Harm
19 Your Children.

20 “WARNING: Cigarettes Cause Fatal Lung
21 Disease.

22 “WARNING: Cigarettes Cause Cancer.

23 “WARNING: Cigarettes Cause Strokes
24 And Heart Disease.

1 “WARNING: Smoking During Pregnancy
2 Can Harm Your Baby.

3 “WARNING: Smoking Can Kill You.

4 “WARNING: Tobacco Smoke Causes
5 Fatal Lung Disease In Nonsmokers.

6 “WARNING: Quitting Smoking Now
7 Greatly Reduces Serious Risks To Your
8 Health.

9 “(B) ADVERTISING.—It shall be unlawful
10 for any manufacturer, importer, distributor or
11 retailer of cigarettes to advertise or cause to be
12 advertised any cigarette unless the advertising
13 bears, in accordance with the requirements of
14 this subsection, one of the following labels:

15 “WARNING: Cigarettes Are Addictive.

16 “WARNING: Tobacco Smoke Can Harm
17 Your Children.

18 “WARNING: Cigarettes Cause Fatal Lung
19 Disease.

20 “WARNING: Cigarettes Cause Cancer.

21 “WARNING: Cigarettes Cause Strokes
22 And Heart Disease.

23 “WARNING: Smoking During Pregnancy
24 Can Harm Your Baby.

25 “WARNING: Smoking Can Kill You.

1 “WARNING: Tobacco Smoke Causes
2 Fatal Lung Disease In Nonsmokers.

3 “WARNING: Quitting Smoking Now
4 Greatly Reduces Serious Risks To Your
5 Health.

6 “(C) ADDITIONAL WARNINGS.—Beginning
7 on the date that is 18 months after the date of
8 enactment of this subchapter, the Secretary
9 may substitute for, or require warnings in addi-
10 tion to, those otherwise required under subpara-
11 graphs (A) and (B) if the Secretary determines
12 that such warnings would be more effective in
13 detering the use of cigarettes.

14 “(2) REQUIREMENTS FOR LABELING.—

15 “(A) LOCATION.—Each label statement re-
16 quired by subparagraph (A) of paragraph (1)
17 shall be located on the upper portion of the
18 front and rear panels of the cigarette package
19 (or carton) directly on the package underneath
20 the cellophane or other clear wrapping and oc-
21 cupy not less than 25 percent of such panels.

22 “(B) TYPE AND COLOR.—With respect to
23 each label statement required by subparagraph
24 (A) of paragraph (1), the phrase ‘WARNING’
25 shall appear in capital letters and the label

1 statement shall be printed in 17 point type with
2 adjustments as determined appropriate by the
3 Secretary to reflect the length of the required
4 statement. All the letters in the label shall ap-
5 pear in conspicuous and legible type, in contrast
6 by typography, layout, or color with all other
7 printed material on the package, and be printed
8 in an alternating black-on-white and white-on-
9 black format as determined appropriate by the
10 Secretary.

11 “(C) EXCEPTION.—With respect to ciga-
12 rettes manufactured and distributed prior to
13 January 1, 2000, the provisions of subpara-
14 graph (A) shall not apply with respect to the
15 front panel in the case of a flip-top cigarette
16 package (offered for sale on June 1, 1997)
17 where the front portion of the flip-top does not
18 comprise at least 25 percent of the front panel.
19 In the case of such a package, the label state-
20 ment required by subparagraph (A) of para-
21 graph (1) shall occupy the entire front portion
22 of the flip-top.

23 “(3) REQUIREMENTS FOR ADVERTISING.—

24 “(A) LOCATION.—Each label statement re-
25 quired by subparagraph (B) of paragraph (1)

1 shall appear in a conspicuous and prominent
2 format and location at the top of each adver-
3 tisement within the trim area and shall occupy
4 not less than 20 percent of the area of the ad-
5 vertisement involved.

6 “(B) TYPE, COLOR AND FORMAT.—

7 “(i) TYPE.—With respect to each
8 label statement required by subparagraph
9 (B) of paragraph (1), the phrase ‘WARN-
10 ING’ shall appear in capital letters and the
11 label statement shall be printed in the fol-
12 lowing types:

13 “(I) With respect to whole page
14 advertisements on broadsheet news-
15 paper—45 point type.

16 “(II) With respect to half page
17 advertisements on broadsheet news-
18 paper—39 point type.

19 “(III) With respect to whole page
20 advertisements on tabloid news-
21 paper—39 point type.

22 “(IV) With respect to half page
23 advertisements on tabloid news-
24 paper—27 point type.

1 “(V) With respect to DPS maga-
2 zine advertisements—31.5 point type.

3 “(VI) With respect to whole page
4 magazine advertisements—31.5 point
5 type.

6 “(VII) With respect to 28cm x 3
7 column advertisements—22.5 point
8 type.

9 “(VIII) With respect to 20cm x 2
10 column advertisements—15 point
11 type.

12 Within the 20 percent requirement de-
13 scribed in subparagraph (A), the Secretary
14 may revise the required type sizes if the
15 Secretary determines that such revisions
16 will enhance public health protections.

17 “(ii) COLOR.—All the letters in the
18 label under this subparagraph shall appear
19 in conspicuous and legible type, in contrast
20 by typography, layout, or color with all
21 other printed material on the package, and
22 be printed in an alternating black-on-white
23 and white-on-black format as determined
24 appropriate by the Secretary.

1 “(iii) FORMAT.—The label statements
2 under subparagraph (B) of paragraph (1)
3 shall be black when the background is
4 white and white when the background is
5 black, and shall be in the point size re-
6 quired under this subparagraph. The label
7 statements shall be enclosed by a rectangu-
8 lar border that is the same color as the let-
9 ters of the statements and that is the
10 width of the first down stroke of the cap-
11 ital ‘W’ of the word ‘WARNING’ in the
12 label statements.

13 “(C) LANGUAGE REQUIREMENT.—The
14 label statements required under paragraph
15 (1)(B) shall be in English, except that—

16 “(i) in the case of an advertisement
17 that appears in a newspaper, magazine, pe-
18 riodical or other publication that is not in
19 English, such statements shall appear in
20 the predominant language of the publica-
21 tion; or

22 “(ii) in the case of any other adver-
23 tisement that is not in English, such state-
24 ments shall appear in the same language

1 as that principally used in the advertise-
2 ment.

3 “(4) ROTATION OF LABEL STATEMENTS.—

4 “(A) LABELING.—The label statements
5 specified in subparagraph (A) of paragraph (1)
6 shall be randomly displayed in each 12 month
7 period, in as equal a number of times as is pos-
8 sible on each brand of the product and be ran-
9 domly distributed in all areas of the United
10 States in which such product is marketed in ac-
11 cordance with a plan submitted by the manu-
12 facturer, importer, distributor or retailer and
13 approved by the Secretary.

14 “(B) ADVERTISING.—The label statements
15 specified in subparagraph (B) of paragraph (1)
16 shall be rotated quarterly in alternating se-
17 quence in advertisements for each such brand
18 of cigarettes in accordance with a plan submit-
19 ted by the manufacturer, importer, distributor
20 or retailer and approved by the Secretary.

21 “(C) APPROVAL OF PLANS.—The Sec-
22 retary shall review each plan submitted by a
23 manufacturer, importer, distributor or retailer
24 of cigarettes under this paragraph and approve
25 such plan if the plan will provide for the equal

1 distribution and display on packaging and the
2 rotation required in advertising under this para-
3 graph and if such plan assures that all of the
4 labels required under subparagraphs (A) and
5 (B) will be displayed by the manufacturer, im-
6 porter, distributor or retailer at the same time.

7 “(b) SMOKELESS TOBACCO PRODUCTS.—

8 “(1) IN GENERAL.—

9 “(A) PACKAGING.—It shall be unlawful for
10 any person to manufacture, package, or import
11 for sale or distribution any smokeless tobacco
12 product the package of which fails to bear, in
13 accordance with the requirements of this sub-
14 section, one of the following labels:

15 “WARNING: This Product Can Cause
16 Mouth Cancer.

17 “WARNING: This Product Can Kill You.

18 “WARNING: This Product Can Cause
19 Gum Disease And Tooth Loss.

20 “WARNING: This Product Is Not A Safe
21 Alternative To Cigarettes.

22 “WARNING: This Product Contains Can-
23 cer-Causing Chemicals.

24 “WARNING: Smokeless Tobacco Is Ad-
25 dictive.

1 “(B) ADVERTISING.—It shall be unlawful
2 for any manufacturer, importer, distributor or
3 retailer of smokeless tobacco products to adver-
4 tise or cause to be advertised any smokeless to-
5 bacco product unless the advertising bears, in
6 accordance with the requirements of this sub-
7 section, one of the following labels:

8 “WARNING: This Product Can Cause
9 Mouth Cancer.

10 “WARNING: This Product Can Kill You.

11 “WARNING: This Product Can Cause
12 Gum Disease And Tooth Loss.

13 “WARNING: This Product Is Not A Safe
14 Alternative To Cigarettes.

15 “WARNING: This Product Contains Can-
16 cer-Causing Chemicals.

17 “WARNING: Smokeless Tobacco Is Ad-
18 dictive.

19 “(C) ADDITIONAL WARNINGS.—Beginning
20 on the date that is 18 months after the date of
21 enactment of this subchapter, the Secretary
22 may substitute for, or require warnings in addi-
23 tion to, those otherwise required under subpara-
24 graphs (A) and (B) if the Secretary determines

1 that such warnings would be more effective in
2 deterring the use of smokeless tobacco products.

3 “(2) REQUIREMENTS FOR LABELING.—

4 “(A) LOCATION.—Each label statement re-
5 quired by subparagraph (A) of paragraph (1)
6 shall be located on the 2 most prominent dis-
7 play panels of the product and occupy not less
8 than 25 percent of such panels.

9 “(B) TYPE AND COLOR.—With respect to
10 each label statement required by subparagraph
11 (A) of paragraph (1), the phrase ‘WARNING’
12 shall appear in capital letters and the label
13 statement shall be printed in 17 point type with
14 adjustments as determined appropriate by the
15 Secretary to reflect the length of the required
16 statement and the size of the package. All the
17 letters in the label shall appear in conspicuous
18 and legible type in contrast by typography, lay-
19 out, or color with all other printed material on
20 the package and be printed in an alternating
21 black-on-white and white-on-black format as de-
22 termined appropriate by the Secretary.

23 “(3) ADVERTISING AND ROTATION.—The provi-
24 sions of paragraph (3) and (4) of subsection (a)
25 shall apply to advertisements for smokeless tobacco

1 products and the rotation of the label statements re-
2 quired under paragraph (1)(A) on such products.

3 “(c) OTHER TOBACCO PRODUCTS.—The Secretary
4 may prescribe such regulations as may be necessary to es-
5 tablish warning labels for other tobacco product packag-
6 ing, labeling and advertising.

7 “(d) CONSTRUCTION.—

8 “(1) IN GENERAL.—Nothing in this section
9 shall be construed to limit the ability of the Sec-
10 retary to change the text or layout of any of the
11 warning statements, or any of the labeling provi-
12 sions, under subsections (a) and (b) and other provi-
13 sions of this Act, if determined necessary by the Sec-
14 retary in order to make such statements or labels
15 larger, more prominent, more conspicuous, or more
16 effective.

17 “(2) UNFAIR ACTS.—Nothing in this section
18 (other than the requirements of subsections (a), (b)
19 and (c)) shall be construed to limit or restrict the
20 authority of the Federal Trade Commission with re-
21 spect to unfair or deceptive acts or practices in the
22 advertising of cigarettes or smokeless tobacco prod-
23 ucts.

24 “(e) LIMITED PREEMPTION.—

1 “(1) STATE AND LOCAL ACTION.—No warning
2 label with respect to cigarettes or smokeless tobacco
3 products, or any other tobacco product for which
4 warning labels have been required under this section,
5 other than the warning labels required under this
6 Act, shall be required by any State or local statute
7 or regulation to be included on any package of ciga-
8 rettes or a smokeless tobacco product.

9 “(2) EFFECT ON LIABILITY LAW.—Nothing in
10 this section shall relieve any person from liability at
11 common law or under State statutory law to any
12 other person.

13 “(f) ELECTRONIC MEDIUM ADVERTISING.—It shall
14 be unlawful to advertise tobacco products on any medium
15 of electronic communications subject to the jurisdiction of
16 the Federal Communications Commission.

17 **“SEC. 576. PRESERVATION OF STATE AND LOCAL AUTHOR-**
18 **ITY.**

19 “Except as otherwise provided for in section 575(e),
20 nothing in this subchapter shall be construed as prohibit-
21 ing a State or locality from imposing requirements, prohi-
22 bitions, penalties or other measures to further the pur-
23 poses of this subchapter that are in addition to the re-
24 quirements, prohibitions, or penalties required under this
25 subchapter. State and local governments may impose addi-

1 tional tobacco product control measures to further restrict
2 or limit the use of such products.

3 **“SEC. 577. RESTRICTIONS ON YOUTH ACCESS TO TOBACCO**
4 **PRODUCTS.**

5 “(a) IN GENERAL.—The Secretary shall restrict the
6 access of minors to tobacco products.

7 “(b) STATE LICENSING.—

8 “(1) IN GENERAL.—Except as provided in para-
9 graph (2), in order to receive any amounts under
10 section 111 of the Healthy Kids Act, a State shall
11 have in place a program that meets or exceeds (as
12 determined by the Secretary) the requirements of
13 the model State program described in paragraph (3)
14 under which a retailer would be required to obtain
15 a State or local license to sell or otherwise distribute
16 tobacco products directly to consumers in such
17 State.

18 “(2) START-UP PERIOD.—

19 “(A) IN GENERAL.—The Secretary may
20 waive the requirement of paragraph (1) for
21 such time as the Secretary determines is nec-
22 essary, after promulgation of the model pro-
23 gram described in paragraph (3), to permit the
24 legislature of a State to meet and enact laws to
25 comply with paragraph (1) and to permit the

1 State to implement the program described in
2 paragraph (1).

3 “(B) ELIGIBILITY.—To be eligible for a
4 waiver under subparagraph (A), the Governor
5 of the State involved shall certify to the Sec-
6 retary in writing that the State intends to im-
7 plement a program that meets the requirements
8 of this section at the earliest possible oppor-
9 tunity. If, subsequent to such notification, the
10 Secretary determines that the State has failed
11 to implement such a program, the Secretary
12 may recover any funds distributed to the State
13 under section 111 of the Healthy Kids Act.

14 “(3) MODEL PROGRAM.—Not later than 12
15 months after the date of enactment of this sub-
16 chapter, the Secretary shall promulgate a model
17 State program. Such model State program shall at
18 a minimum—

19 “(A) provide for the collection of licensing
20 fees by the State or locality to defray the costs
21 of administering the program;

22 “(B) prohibit retailers from selling or oth-
23 erwise distributing tobacco products directly to
24 consumers in a State unless such retailers have

1 in effect tobacco licenses issued or renewed in
2 accordance with State or local laws;

3 “(C) provide for the notification of every
4 person in the State who is engaged in the dis-
5 tribution at retail of tobacco products of the li-
6 cense requirement and of the date by which
7 such person shall have obtained a license in
8 order to continue to distribute such products;

9 “(D) prohibit licensed retailers from selling
10 or otherwise distributing tobacco products to
11 minors;

12 “(E) provide for penalties of up to \$50,000
13 for each violation of the requirements under
14 such program relating to the sale or distribu-
15 tion of tobacco products without a license and
16 for appropriate penalties for other violations of
17 laws relating to youth access to tobacco prod-
18 ucts;

19 “(F) require retailers to comply with the
20 applicable requirements of this section and any
21 regulations relating to this section; and

22 “(G) provide for the suspension or revoca-
23 tion of a license in the case of a retailer that
24 repeatedly sells or distributes tobacco products

1 to individuals in violation of subsection (a) or
2 State or local law.

3 “(c) PENALTIES.—The Secretary shall promulgate
4 regulations providing for the application of penalties for
5 the sale or distribution of tobacco products to minors in
6 violation of the requirements of subsection (a) that are
7 consistent with the following:

8 “(1) EMPLOYEES OF RETAILERS.—In the case
9 of an employee of a retailer who distributes a to-
10 bacco product to a minor in violation of subsection
11 (a), the regulations shall provide for the application
12 of a civil money penalty of—

13 “(A) \$25 for the 1st violation;

14 “(B) \$50 for the 2nd violation; and

15 “(C) \$150 for the 3rd and subsequent vio-
16 lations.

17 “(2) MINORS.—In the case of a minor who pur-
18 chases or attempts to purchase a tobacco product in
19 violation of subsection (a) (other than a minor en-
20 gaged in an authorized sting or a law enforcement
21 operation), the regulations may provide for civil
22 money penalties, loss of driving privileges, or other
23 penalties.

24 “(3) RETAILERS.—In the case of a retailer who
25 distributes a tobacco product to a minor in violation

1 of subsection (a), the regulations shall provide for
2 the application of a civil money penalty of at least—

3 “(A) \$250 for the 1st violation;

4 “(B) \$500 for the 2nd violation;

5 “(C) \$1,500 for the 3rd violation;

6 “(D) \$5,000 for the 4th violation; and

7 “(E) \$10,000 for the 5th and subsequent
8 violations.

9 “(d) ENFORCEMENT.—

10 “(1) IN GENERAL.—The Secretary may enter
11 into agreements with, and provide grants to, States
12 to enforce this section. Any State that elects to en-
13 force the provisions of this section within the State
14 shall conduct sting operations and other compliance
15 checks and enforce State laws under this section
16 through the use of penalties described in subsection
17 (c) so as to ensure that minors are successful in pur-
18 chasing tobacco products less than 5 percent of the
19 time.

20 “(2) REQUIREMENTS.—The Secretary may by
21 regulation implement such requirements as the Sec-
22 retary determines necessary to ensure that any com-
23 pliance checks performed by the State under para-
24 graph (1) are accurate.

1 “(3) VIOLATIONS.—If the Secretary determines
2 that the provisions of subsection (a) are being or
3 have been violated within a State, the Secretary
4 shall have the authority to enforce such provisions in
5 the State.

6 “(e) STATE COMPLIANCE.—Beginning with the 3rd
7 full calendar year following the date of enactment of this
8 subchapter, if, with respect to a State, the Secretary deter-
9 mines that minors are successful in purchasing tobacco
10 products more than 5 percent of the time, the Secretary
11 shall notify the State and reduce payments to the State
12 under section 111 of the Healthy Kids Act by 1 percent
13 for each percentage point by which the State is not in com-
14 pliance with this subsection.

15 “(f) PREEMPTION.—The provisions of this section
16 shall not preempt any provision of State or local law that
17 provides greater restrictions than those required in this
18 section.

19 “(g) FEDERAL LICENSING OF ENTITIES.—

20 “(1) IN GENERAL.—The Secretary, in consulta-
21 tion with the Secretary of Defense, Secretary of
22 State, and other appropriate Federal officials, shall
23 establish and implement a Federal tobacco licensing
24 program to be applied to entities that sell or distrib-
25 ute tobacco products—

1 “(A) on any military installation (as de-
2 fined in section 2801(c)(2) of title X, United
3 States Code);

4 “(B) in any United States embassy;

5 “(C) in any facility owned and operated by
6 the Federal Government either in the United
7 States or in a foreign country;

8 “(D) in any duty-free shop located within
9 the United States; or

10 “(E) through any other Federal entity or
11 on any other Federal property as determined
12 appropriate by the Secretary.

13 “(2) REQUIREMENTS.—The program estab-
14 lished under paragraph (1) shall apply requirements
15 (including those for penalties, suspensions, and rev-
16 ocations) similar to those required to be imple-
17 mented by States under this section.

18 “(3) INDIAN TRIBES AND TRIBAL LANDS.—For
19 purposes of applying and enforcing the provisions of
20 this section to entities that sell or otherwise distrib-
21 ute tobacco products on Indian reservations (as de-
22 fined in section 403(9) of the Indian Child Protec-
23 tion and Family Violence Prevention Act (25 U.S.C.
24 3202(9))), an Indian tribe or tribal organization (as
25 such terms are defined in section 4 of the Indian

1 Self Determination and Education Assistance Act
2 (25 U.S.C. 450b)) shall be treated as a State.

3 **“SEC. 578. PUBLIC DISCLOSURE OF HEALTH RESEARCH.**

4 “(a) SUBMISSION BY MANUFACTURERS.—Not later
5 than 3 months after the date of the enactment of this sub-
6 chapter and thereafter as required by the Secretary, each
7 manufacturer of a tobacco product shall submit to the Sec-
8 retary a copy of each document in the manufacturer’s pos-
9 session or control, directly or indirectly—

10 “(1) relating, referring, or pertaining to—

11 “(A) any health effects in humans or ani-
12 mals, including addiction, caused by the use of
13 tobacco products or components of tobacco
14 products;

15 “(B) the engineering, manipulation or con-
16 trol of nicotine in tobacco products;

17 “(C) the sale or marketing of tobacco
18 products;

19 “(D) any research involving safer tobacco
20 products; or

21 “(E) such other matters as the Secretary
22 may prescribe; or

23 “(2) produced, or ordered to be produced, by
24 the tobacco product manufacturer in any health-re-
25 lated civil or criminal proceeding, judicial or admin-

1 istrative, that has been commenced by the United
2 States, an agency of the United States, a State or
3 local governmental entity, or any person, or on be-
4 half of such an entity or person, including attorney-
5 client and other documents produced or ordered to
6 be produced for in camera inspection.

7 “(b) ADDITIONAL INFORMATION.—For the purpose
8 of obtaining additional information relating to the matters
9 in subsection (a), the Secretary may hold hearings, require
10 testimony, the deposition of witnesses, the answering of
11 interrogatories, or enter into and inspect facilities.

12 “(c) DISCLOSURE BY THE SECRETARY.—Starting not
13 later than 6 months after the date of the enactment of
14 this subchapter, the Secretary shall begin to make avail-
15 able to the public, using the Internet and other means,
16 the documents submitted under subsection (a).

17 “(d) PROTECTION OF CERTAIN INFORMATION.—The
18 Secretary shall not disclose information obtained under
19 this section if such information is entitled to protection
20 as a trade secret or under the attorney-client privilege un-
21 less the Secretary determines that the disclosure of such
22 information is necessary to promote the public health.

23 “(e) ENFORCEMENT.—Notwithstanding any other
24 provision of law, manufacturers of tobacco products shall
25 provide any deposition, documents, or other information,

1 answer any interrogatories, and allow any entry or inspec-
2 tion required pursuant to this section.

3 “(f) RULE OF CONSTRUCTION.—Nothing in this sec-
4 tion shall be construed to interfere in any way with the
5 discovery rights of courts or parties in civil or criminal
6 proceedings, administrative or judicial, involving tobacco
7 products, or the right of access to such documents under
8 any other provision of law.

9 “(g) DEFINITION.—In this section:

10 “(1) DOCUMENTS.—The term ‘documents’ in-
11 cludes originals and drafts of any kind of written or
12 graphic matter, regardless of the manner of produc-
13 tion or reproduction, of any kind of description,
14 whether sent or received or neither, and all copies
15 thereof that are different in any way from the origi-
16 nal (whether by interlineation, receipt stamp, nota-
17 tion, indication of copies sent or received or other-
18 wise) regardless of whether ‘confidential’, ‘privi-
19 leged’, or otherwise, including any paper, book, ac-
20 count, photograph, blueprint, drawing, agreement,
21 contract, memorandum, advertising material, letter,
22 telegram, object, report, record, transcript, study,
23 note, notation, working paper, intra-office commu-
24 nication, intra-department communication, inter-
25 department communication, chart, minute, index

1 sheet, routing sheet, computer software, computer
2 data, delivery ticket, flow sheet, price list, quotation,
3 bulletin, circular, manual, summary, recording of
4 telephone or other conversation or of interviews, or
5 of conferences, or any other written, recorded, tran-
6 scribed, punched, taped, filmed, or graphic matter,
7 regardless of the manner produced or reproduced.
8 Such term shall also include any tape, recording,
9 videotape, computerization, or other electronic re-
10 cording, whether digital or analog or a combination
11 of the two.

12 “(2) MANUFACTURER OF A TOBACCO PROD-
13 UCT.—The term ‘manufacturer of a tobacco product’
14 also includes the Tobacco Institute, the Council for
15 Tobacco Research, the Smokeless Tobacco Council,
16 the Center for Indoor Air Research, or any other
17 trade association or entity that is primarily funded
18 by persons who manufacture a tobacco product.

19 **“SEC. 579. CITIZEN SUITS.**

20 “(a) AUTHORITY.—Any individual on his or her own
21 behalf may commence a civil action—

22 “(1) against any person who is alleged to be in
23 violation of this subchapter, in the district court for
24 the district in which the alleged violation occurred or
25 in which the defendant resides or is found; or

1 “(2) against the Secretary or the Commissioner
2 where there is alleged a failure of the Secretary or
3 Commissioner to perform any act or duty required
4 under this subchapter, in a district court for the dis-
5 trict in which an alleged failure to perform occurred
6 or in the district court of the District of Columbia.

7 “(b) JURISDICTION.—The district courts of the
8 United States shall have jurisdiction, without regard to
9 the amount in controversy or the citizenship of the parties,
10 to enforce the provisions of this subchapter, or to order
11 the Secretary to perform such act or duty, as the case
12 may be, and to apply any appropriate civil penalties. The
13 district courts of the United States shall have jurisdiction
14 to compel action by an agency where such action is found
15 to be unreasonably delayed, except that such an action
16 may not be maintained unless the plaintiff has provided
17 the Secretary with a notice of the intent of the plaintiff
18 to file such action at least 90 days prior to the filing of
19 such action.

20 “(c) COSTS AND DAMAGES.—A court under sub-
21 section (b) may award costs of litigation, including reason-
22 able attorney’s fees, to any party where the court deter-
23 mines that such an award is appropriate. No damages of
24 any kind, whether compensatory or punitive, may be
25 awarded to the individual in actions described in sub-

1 section (a)(2). Any damages awarded to the Federal Gov-
2 ernment shall be paid to the Treasury.

3 **“SEC. 580. AGRICULTURAL PRODUCERS.**

4 “The Secretary may not promulgate any regulation
5 under this subchapter that has the effect of placing regu-
6 latory burdens on tobacco producers (as such term is used
7 for purposes of the Agricultural Adjustment Act of 1938
8 (7 U.S.C. 1281 et seq.) and the Agricultural Act of 1949
9 (7 U.S.C. 1441 et seq.)) in excess of the regulatory bur-
10 dens generally placed on other agricultural commodity
11 producers. This section shall not be construed to limit the
12 regulatory requirements that may be imposed on produc-
13 ers who are also manufacturers under this Act.

14 **“SEC. 581. AUTHORITY OF SECRETARY.**

15 “To carry out this subchapter, the Secretary may
16 hold hearings, administer oaths, issue subpoenas, require
17 the testimony or deposition of witnesses, the production
18 of documents, or the answering of interrogatories, or,
19 upon presentation of the proper credentials, enter and in-
20 spect facilities. In the case of a refusal of a person to obey
21 a subpoena, any district court of the United States for
22 the district in which such person is found, resides or con-
23 ducts business, upon application by the Commissioner,
24 shall have jurisdiction to issue an order requiring such
25 person to appear and give testimony or to appear and

1 produce evidence or both. The failure to obey such an
2 order of the court may be punished by the court as con-
3 tempt thereof, and by penalties of up to \$25,000 per
4 day.”.

5 **SEC. 206. REPEALS.**

6 The following provisions of law shall be repealed:

7 (1) The Federal Cigarette Labeling and Adver-
8 tising Act (15 U.S.C. 1331 et seq.).

9 (2) The Comprehensive Smokeless Tobacco
10 Health Education Act of 1986 (15 U.S.C. 4401 et
11 seq.).

12 **SEC. 207. AUTHORITY OF FEDERAL TRADE COMMISSION.**

13 Nothing in this title, or an amendment made by this
14 title, shall be construed to in any way reduce the jurisdic-
15 tion of the Federal Trade Commission over the advertising
16 of tobacco products.

17 **TITLE III—YOUTH SMOKING RE-**
18 **DUCTION TARGETS AND IN-**
19 **CENTIVES TO REDUCE YOUTH**
20 **SMOKING RATES**

21 **SEC. 301. PURPOSE.**

22 It is the purpose of this title to encourage the achieve-
23 ment of reductions in the proportion of underage consum-
24 ers of tobacco products through the imposition of addi-
25 tional financial deterrents relating to tobacco products if

1 certain underage tobacco-use reduction targets are not
2 met.

3 **SEC. 302. CHILD TOBACCO USE SURVEYS.**

4 (a) ANNUAL PERFORMANCE SURVEY.—Not later
5 than 1 year after the date of the enactment of this Act
6 and annually thereafter the Secretary shall conduct a sur-
7 vey to determine, in accordance with subsection (b)—

8 (1) the percentage of all individuals under 18
9 years of age who used a tobacco product within the
10 past 30 days; and

11 (2) the percentage of all individuals under 18
12 years of age who identify each brand of tobacco
13 product as the usual brand smoked or used within
14 the past 30 days.

15 (b) EXCLUSION OF CERTAIN AGES.—The Secretary
16 shall exclude from the survey conducted under subsection
17 (a), children under the age of 12 years (or such other less-
18 er age as the Secretary may establish to strengthen the
19 validity of the survey).

20 (c) BASELINE LEVEL.—

21 (1) IN GENERAL.—The baseline level of the
22 child tobacco product use (referred to in this title as
23 the “baseline level”) is the percentage of individuals
24 under 18 years of age determined to have used the

1 tobacco product in the first annual performance sur-
2 vey for 1999.

3 (2) MANUFACTURERS.—The baseline level of
4 tobacco product use with respect to a manufacturer
5 is the percentage of individuals under 18 years of
6 age determined to have used any tobacco product of
7 such manufacturer in the first annual performance
8 survey for 1999.

9 (d) ADDITIONAL MEASURES.—In order to increase
10 the understanding of youth tobacco product use, the Sec-
11 retary may, for informational purposes only, add addi-
12 tional measures to the survey under subsection (a), con-
13 duct periodic or occasional surveys at other times, and
14 conduct surveys of other populations such as young adults.
15 The results of such surveys shall be made available to
16 manufacturers and the public to assist in efforts to reduce
17 youth tobacco use.

18 (e) ADMINISTRATION.—

19 (1) RESULTS.—The Secretary shall establish a
20 scientific advisory board to ensure that surveys con-
21 ducted under this section produce results that are
22 reasonably precise and valid.

23 (2) TECHNICAL ADJUSTMENTS.—The Secretary
24 may make technical changes in the manner in which
25 the surveys are conducted so long as adjustments

1 are made to ensure that the results of the surveys
2 are comparable from year to year.

3 (3) PARTICIPATION IN SURVEY.—Notwithstand-
4 ing any other provision of law, the Secretary may
5 conduct a survey involving minors if the results of
6 such survey with respect to such minors are kept
7 confidential and not disclosed.

8 **SEC. 303. REDUCTION IN UNDERAGE TOBACCO PRODUCT**
9 **USAGE.**

10 (a) ANNUAL DETERMINATION.—The Secretary shall
11 annually determine, based on the annual performance sur-
12 veys under section 302, whether the required percentage
13 reduction (as described in subsection (b)) in the underage
14 use of tobacco products for a year has been achieved for
15 the year involved. Such determination shall be based on—

16 (1) with respect to cigarette products, the aver-
17 age annual percentage prevalence of the use of to-
18 bacco products by individuals who are under 18
19 years of age (as determined under section 302(a))
20 for the year involved as compared to the baseline
21 level for cigarette products (as determined under
22 section 302(c)); and

23 (2) with respect to smokeless tobacco products,
24 the average annual percentage prevalence of the use
25 of smokeless tobacco products by individuals who are

1 under 18 years of age (as determined under section
2 302(a)) for the year involved as compared to the
3 baseline level for smokeless tobacco products (as de-
4 termined under section 302(c)).

5 (b) PERCENTAGE REDUCTION IN UNDERAGE USE OF
6 TOBACCO PRODUCTS.—For purposes of this section, the
7 required percentage reduction from the baseline level in
8 the percentage underage use of tobacco products with re-
9 spect to each tobacco product shall be as follows:

10 (1) CIGARETTES.—With respect to cigarettes—

11 (A) the percentage reduction in the per-
12 centage use of cigarettes shall be at least 20
13 percent for each of the calendar years 2001 and
14 2002;

15 (B) the percentage reduction in the per-
16 centage use of cigarettes shall be at least 40
17 percent for each of the calendar years 2003 and
18 2004;

19 (C) the percentage reduction in the per-
20 centage use of cigarettes shall be at least 55
21 percent for each of the calendar years 2005
22 through 2007; and

23 (D) the percentage reduction in the per-
24 centage use of cigarettes shall be at least 67

1 percent for calendar year 2008 and each subse-
2 quent calendar year.

3 (2) SMOKELESS TOBACCO PRODUCTS.—With re-
4 spect to smokeless tobacco products—

5 (A) the percentage reduction in the per-
6 centage use of smokeless tobacco products shall
7 be at least 15 percent for each of the calendar
8 years 2001 and 2002;

9 (B) the percentage reduction in the per-
10 centage use of smokeless tobacco products shall
11 be at least 25 percent for each of the calendar
12 years 2003 and 2004;

13 (C) the percentage reduction in the per-
14 centage use of smokeless tobacco products shall
15 be at least 35 percent for each of the calendar
16 years 2005 and 2007; and

17 (D) the percentage reduction in the per-
18 centage use of smokeless tobacco products shall
19 be at least 45 percent for calendar year 2008
20 and each subsequent calendar year.

21 (c) APPLICATION TO MANUFACTURER.—With respect
22 to the average annual percentage prevalence of the use
23 of each manufacturer's brands of tobacco product by indi-
24 viduals who are under 18 years of age, as determined on
25 the basis of the annual performance survey conducted

1 under section 302(a), each manufacturer which manufac-
2 tured a brand or brands of tobacco product on or before
3 the date of the enactment of this Act shall reduce the per-
4 centage of children who use such manufacturer's brand
5 or brands in accordance with the percentage reductions
6 required under subsection (b).

7 (d) REPORT.—Not later than December 31, 2005,
8 the Secretary shall prepare and submit to the appropriate
9 committees of Congress a report concerning the progress
10 made in achieving percentage reductions in the use of to-
11 bacco products together with the recommendations, if any,
12 of the Secretary for stronger reductions in calendar years
13 after 2008.

14 **SEC. 304. NONCOMPLIANCE.**

15 (a) INDUSTRY-WIDE PENALTY.—If, with respect to
16 a year, the Secretary determines under section 303(a) that
17 the required percentage reduction for either cigarettes or
18 smokeless tobacco products has not been achieved as re-
19 quired under section 303(b), the Secretary shall impose
20 an industry-wide penalty on the manufacturers of such
21 product in an amount that is equal to \$.10 cents for each
22 unit of the tobacco product involved that is manufactured
23 and distributed for consumer use in the year following the
24 year in which the noncompliance occurs.

25 (b) MANUFACTURER-SPECIFIC PENALTY.—

1 (1) IN GENERAL.—With respect to each manu-
2 facturer for a year, if the Secretary determines
3 under section 303(a) that the required percentage
4 reduction for either cigarettes or smokeless tobacco
5 products have not been achieved by such manufac-
6 turer as required under section 303(b), the Sec-
7 retary shall impose a penalty on such manufacturer
8 in an amount equal to

9 (A) \$.10 cents if the noncompliance factor
10 exceeds 0 but does not exceed 10;

11 (B) \$.20 cents if the noncompliance factor
12 exceeds 10 but does not exceed 15;

13 (C) \$.30 cents if the noncompliance factor
14 exceeds 15 but does not exceed 20; and

15 (D) \$.40 cents if the noncompliance factor
16 exceeds 20;

17 for each unit of a tobacco product that is manufac-
18 tured and distributed for consumer use by such
19 manufacturer in the year following the year for
20 which the determination is made.

21 (2) NONCOMPLIANCE FACTOR.—The noncompli-
22 ance factor of a manufacturer for a year shall be
23 equal to the percentage reduction required under
24 section 303(b) for the year less the actual percent-

1 age reduction for the year (as determined under
2 paragraph (3)).

3 (3) ACTUAL PERCENTAGE REDUCTION.—The
4 actual percentage reduction of a manufacturer shall
5 be equal to 1 less the ratio of—

6 (A) the percentage of individuals under 18
7 years of age who have been determined to use
8 the manufacturer's products (as determined
9 under section 302(a)) for the year involved; and

10 (B) the baseline level for the manufacturer
11 (as determined under section 302(c));
12 multiplied by 100.

13 (c) DE MINIMIS RULES.—

14 (1) EXEMPTION.—The Secretary shall not im-
15 pose a penalty on a manufacturer under subsection
16 (b) if the Secretary determines that the tobacco
17 products manufactured by such manufacturer are
18 used by less than 0.5 percent of the total number
19 of children determined to have used such tobacco
20 products for the year involved.

21 (2) PENALTY.—If the Secretary determines
22 that—

23 (A) either—

24 (i) the tobacco products manufactured
25 by a manufacturer under the baseline sur-

1 vey conducted under section 302(c), are
2 used by less than 0.5 percent of the total
3 number of children determined to have
4 used such tobacco products for the year in-
5 volved; or

6 (ii) the manufacturer was not manu-
7 facturing tobacco products in the year the
8 baseline survey was conducted; and

9 (B) under an annual survey conducted
10 under section 302(a) for the year involved, the
11 tobacco products manufactured by such manu-
12 facturer are used by more than 0.5 percent of
13 the total number of children determined to have
14 used such tobacco products for the year in-
15 volved;

16 the Secretary shall impose a penalty on such manu-
17 facturer in an amount equal to \$.40 cents for each
18 unit of the tobacco product involved that is manufac-
19 tured and distributed for consumer use in the year
20 following the year for which the determination is
21 made.

22 (d) NONCOMPLIANCE FEES FOR CONSECUTIVE VIO-
23 LATIONS.—

24 (1) IN GENERAL.—If a manufacturer of a to-
25 bacco product, the cigarette industry, or the smoke-

1 less tobacco industry fails to comply with the reduc-
2 tions required under this title in 3 or 4 consecutive
3 years, the noncompliance fee that is required to be
4 paid by the manufacturer, cigarette industry, or
5 smokeless tobacco industry, whichever is applicable,
6 under this section for each unit of tobacco products
7 manufactured by such manufacturer or industry
8 which is distributed for consumer use in the year fol-
9 lowing the year in which the noncompliance occurs,
10 shall be the amount determined under subsection (b)
11 for the year multiplied by 2.

12 (2) ADDITIONAL NONCOMPLIANCE.—If a manu-
13 facturer or industry described in paragraph (1) fails
14 to comply with the reductions required under this
15 title—

16 (A) in 5 or 6 consecutive years, the non-
17 compliance fee described in such paragraph
18 shall be the amount determined under sub-
19 section (b) for the year multiplied by 3; and

20 (B) in 7 or more consecutive years, the
21 noncompliance fee described in such paragraph
22 shall be the amount determined under sub-
23 section (b) for the year multiplied by 4.

24 (e) PROHIBITION ON SINGLE-PACK SALES IN CASES
25 OF REPEATED NONCOMPLIANCE.—Not later than 2 years

1 after the date of enactment of this Act, the Secretary shall
2 establish regulations to prohibit the sale of single packs
3 of a manufacturer's tobacco products in cases of repeated
4 noncompliance with the reductions required under section
5 303(b). Such regulations shall require that, if a manufac-
6 turer fails to comply with such reductions in 4 or more
7 consecutive years, the manufacturer's tobacco products
8 may be sold in the following year only in packages contain-
9 ing not less than 10 units of the product per package (200
10 cigarettes per package in the case of cigarettes, and a cor-
11 responding package size for other tobacco products).

12 (f) REQUIRED GENERIC PACKAGING IN SEVERE
13 CASES OF REPEATED NONCOMPLIANCE.—Not later than
14 2 years after the date of enactment of this Act, the Sec-
15 retary shall establish regulations to require units and
16 packages of a manufacturer's tobacco products to have ge-
17 neric packaging in severe cases of repeated noncompliance
18 with the reductions required under section 303(b). Such
19 regulations shall require that, if a manufacturer fails to
20 comply with such reductions in 6 or more consecutive
21 years, the manufacturer's tobacco products may be sold
22 in the following year only in units and packages whose
23 packaging contains no external images, logos, or text
24 (other than any required labels), except that the brand
25 name and the identifier 'tobacco' may appear on the pack-

1 aging in block lettering in black type on a white back-
2 ground.

3 (g) PAYMENT.—The penalty to be paid by a manufac-
4 turer under this section shall be paid on a quarterly basis,
5 with payments due not later than 30 days after the end
6 of each calendar quarter.

7 (h) PROCEDURES.—In assessing penalties under this
8 section, the Secretary shall have in place procedures to
9 take into account the effect that the margin of error of
10 the annual survey may have on the amounts of penalties
11 assessed to manufacturers.

12 (i) OTHER PRODUCTS.—The Secretary may promul-
13 gate regulations requiring reductions in the use of other
14 tobacco products by individuals under 18 years of age.
15 Such regulations shall contain provisions for the applica-
16 tion of monetary penalties for the failure of manufacturers
17 to achieve such reductions.

18 **SEC. 305. RULEMAKING PROCEDURES.**

19 (a) DOCKET.—Not later than the date of the proposal
20 of any regulation under this title, the Secretary shall es-
21 tablish a rulemaking docket for action on such regulation
22 (referred to in this section as a “rule”). Whenever a rule
23 applies only within a particular State, a second (identical)
24 docket shall be established in the appropriate regional of-
25 fice of the Department of Health and Human Services.

1 (b) PUBLICATION.—In the case of any rule to which
2 this section applies, notice of proposed rulemaking shall
3 be published in the Federal Register, as provided under
4 section 553(b) of title 5, United States Code, shall be ac-
5 companied by a statement of its basis and purpose and
6 shall specify the period available for public comment (here-
7 inafter referred to as the “comment period”). The notice
8 of proposed rulemaking shall also state the docket num-
9 ber, the location or locations of the docket, and the times
10 it will be open to public inspection. The statement of basis
11 and purpose shall include a summary of—

12 (1) the factual data on which the proposed rule
13 is based;

14 (2) the methodology used in obtaining the data
15 and in analyzing the data; and

16 (3) the major legal interpretations and policy
17 considerations underlying the proposed rule.

18 (c) PUBLIC COMMENT.—

19 (1) PUBLIC INSPECTION.—The rulemaking
20 docket required under subsection (a) shall be open
21 for inspection by the public at reasonable times spec-
22 ified in the notice of proposed rulemaking. Any per-
23 son may copy documents contained in the docket.
24 The Secretary shall provide copying facilities which
25 may be used at the expense of the person seeking

1 copies, but the Secretary may waive or reduce such
2 expenses in such instances as the public interest re-
3 quires. Any person may request copies by mail if the
4 person pays the expenses, including personnel costs
5 to do the copying.

6 (2) COMMENTS AND OTHER MATERIAL IN
7 DOCKET.—

8 (A) COMMENTS.—Promptly upon receipt
9 by the Secretary, all written comments and doc-
10 umentary information on the proposed rule re-
11 ceived from any person for inclusion in the
12 docket during the comment period shall be
13 placed in the docket. The transcript of public
14 hearings, if any, on the proposed rule shall also
15 be included in the docket promptly upon receipt
16 from the person who transcribed such hearings.
17 All documents which become available after the
18 proposed rule has been published and which the
19 Secretary determines are of central relevance to
20 the rulemaking shall be placed in the docket as
21 soon as possible after their availability.

22 (B) REQUIREMENT TO PLACE IN DOCK-
23 ET.—The drafts of proposed rules submitted by
24 the Secretary to the Office of Management and
25 Budget for any interagency review process prior

1 to the proposal of any such rule, all documents
2 accompanying such drafts, and all written com-
3 ments thereon by other agencies and all written
4 responses to such written comments by the Sec-
5 retary shall be placed in the docket no later
6 than the date of proposal of the rule. The
7 drafts of the final rule submitted for such re-
8 view process prior to promulgation and all such
9 written comments thereon, all documents ac-
10 companying such drafts, and written responses
11 thereto shall be placed in the docket no later
12 than the date of promulgation.

13 (3) LIMITATION.—No objection may be submitted
14 with respect to a rule under this section on a date that
15 is more than 90 days after the date on which the rule
16 is published under subsection (b).

17 (d) OPPORTUNITY FOR ORAL PRESENTATION.—In
18 promulgating a rule to which this section applies—

19 (1) the Secretary shall allow any person to sub-
20 mit written comments, data, or documentary infor-
21 mation;

22 (2) the Secretary shall give interested persons
23 an opportunity for the oral presentation of data,
24 views, or arguments, in addition to an opportunity
25 to make written submissions;

1 (3) a transcript shall be kept of any oral pres-
2 entation; and

3 (4) the Secretary shall keep the record of such
4 proceeding open for 30 days after completion of the
5 proceeding to provide an opportunity for submission
6 of rebuttal and supplementary information.

7 (e) MATERIAL TO ACCOMPANY RULE.—

8 (1) IN GENERAL.—The promulgated rule shall
9 be accompanied by—

10 (A) a statement of basis and purpose like
11 that referred to in subsection (b) with respect
12 to a proposed rule; and

13 (B) an explanation of the reasons for any
14 major changes in the promulgated rule from the
15 proposed rule.

16 (2) RESPONSES.—The promulgated rule shall
17 also be accompanied by a response to each of the
18 significant comments, criticisms, and new data sub-
19 mitted in written or oral presentations during the
20 comment period.

21 (3) LIMITATION.—The promulgated rule may
22 not be based (in part or whole) on any information
23 or data which has not been placed in the docket as
24 of the date of such promulgation.

25 (f) JUDICIAL REVIEW.—

1 (1) IN GENERAL.—The record for judicial re-
2 view shall consist exclusively of the material referred
3 to in subsection (b), subparagraph (A) of subsection
4 (c)(2), and paragraphs (1) and (2) of subsection (e).

5 (2) LIMITATIONS.—Only an objection to a rule
6 or procedure which was raised with reasonable speci-
7 ficity during the period for public comment (includ-
8 ing any public hearing) may be raised during judi-
9 cial review. If the person raising an objection can
10 demonstrate to the Secretary that it was impractica-
11 ble to raise such objection within such time or if the
12 grounds for such objection arose after the period for
13 public comment (but within the time specified for ju-
14 dicial review) and if such objection is of central rel-
15 evance to the outcome of the rule, the Secretary
16 shall convene a proceeding for reconsideration of the
17 rule and provide the same procedural rights as
18 would have been afforded had the information been
19 available at the time the rule was proposed. If the
20 Secretary refuses to convene such a proceeding, such
21 person may seek review of such refusal in the United
22 States court of appeals for the appropriate circuit.
23 Such reconsideration shall not postpone the effec-
24 tiveness of the rule. The effectiveness of the rule
25 may be stayed during such reconsideration, however,

1 by the Secretary or the court for a period not to ex-
2 ceed 3 months.

3 (g) JURISDICTION.—The sole forum for challenging
4 procedural determinations made by the Secretary under
5 this section shall be in the United States court of appeals
6 for the appropriate circuit at the time of the substantive
7 review of the rule. No interlocutory appeals shall be per-
8 mitted with respect to such procedural determinations. In
9 reviewing alleged procedural errors, the court may invali-
10 date the rule only if the errors were so serious and related
11 to matters of such central relevance to the rule that there
12 is a substantial likelihood that the rule would have been
13 significantly changed if such errors had not been made.

14 (h) REVERSAL OF SECRETARY'S ACTION.—In the
15 case of review of any action of the Secretary to which this
16 section applies, the court may reverse any such action
17 found to be—

18 (1) arbitrary, capricious, an abuse of discretion,
19 or otherwise not in accordance with law;

20 (2) contrary to constitutional right, power,
21 privilege, or immunity;

22 (3) in excess of statutory jurisdiction, authority,
23 or limitations, or short of statutory right; or

24 (4) without observance of procedure required by
25 law, if—

1 (A) such failure to observe such procedure
2 is arbitrary or capricious;

3 (B) the requirement of subsection (f)(2)
4 has been met; and

5 (C) the condition of the last sentence of
6 subsection (g) is met.

7 (i) DEADLINES.—Each statutory deadline for pro-
8 mulgation of rules to which this section applies which re-
9 quires promulgation less than 6 months after date of pro-
10 posal may be extended to not more than 6 months after
11 date of proposal by the Secretary upon a determination
12 that such extension is necessary to afford the public, and
13 the agency, adequate opportunity to carry out the pur-
14 poses of this section.

15 (j) EFFECTIVE DATE.—The requirements of this sec-
16 tion shall take effect with respect to any rule the proposal
17 of which occurs after 90 days after the date of enactment
18 of this Act.

19 (k) RULE OF CONSTRUCTION.—Nothing in this Act
20 shall be construed to authorize judicial review of regula-
21 tions or orders of the Secretary under this Act, except as
22 otherwise provided for in this title.

23 (l) NO STAY.—In any action respecting the promul-
24 gation of regulations under this title or the administration
25 or enforcement of this title no court shall grant any stay,

1 injunctive, or similar relief before final judgment by such
2 court in such action.

3 (m) PUBLIC PARTICIPATION.—It is the intent of
4 Congress that, consistent with the policy of the Adminis-
5 trative Procedures Act, the Secretary in promulgating any
6 regulation under this title, including a regulation subject
7 to a deadline, shall ensure a reasonable period for public
8 participation of at least 30 days, except as otherwise ex-
9 pressly provided for.

10 **SEC. 306. MISCELLANEOUS PROVISIONS.**

11 (a) JUDICIAL REVIEW.—A manufacturer of tobacco
12 products may seek judicial review of any action under this
13 title only after a penalty has been assessed and paid by
14 the manufacturer to the Department of the Treasury and
15 only in the United States District Court for the District
16 of Columbia. In an action by a manufacturer seeking judi-
17 cial review of an annual performance survey, the manufac-
18 turer may prevail—

19 (1) only if the manufacturer shows that the re-
20 sults of the performance survey were arbitrary and
21 capricious; and

22 (2) only to the extent that the manufacturer
23 shows that it would have been required to pay a sub-
24 stantially lesser penalty if the results of the perform-
25 ance survey were not arbitrary and capricious.

1 (b) PROHIBITION.—No stay or other injunctive relief
2 may be granted by the Secretary or any court that has
3 the effect of enjoining the imposition and collection of pen-
4 alties to be applied under this section.

5 (c) DEFINITIONS.—As used in this title:

6 (1) CHILD.—The term “child” means, except as
7 provided in section 302(b), an individual who is
8 under the age of 18.

9 (2) MANUFACTURER.—The term “manufac-
10 turer” includes any person who imports a finished
11 tobacco product.

12 **TITLE IV—TOBACCO TRANSI-**
13 **TION ASSISTANCE TRUST**
14 **FUND**

15 **SEC. 401. TOBACCO TRANSITION ASSISTANCE TRUST FUND.**

16 (a) ESTABLISHMENT.—There is established in the
17 Treasury of the United States a trust fund to be known
18 as the “Tobacco Transition Trust Fund”, consisting of
19 such amounts as may be appropriated or credited to the
20 Trust Fund.

21 (b) TRANSFERS TO TRUST FUND.—There are appro-
22 priated and transferred to the Trust Fund for each fiscal
23 year amounts made available to the Trust Fund as pro-
24 vided for in section 101(d)(7).

25 (c) REPAYABLE ADVANCES.—

1 (1) AUTHORIZATION.—There are authorized to
2 be appropriated to the Trust Fund, as repayable ad-
3 vances, such sums as may from time to time be nec-
4 essary to make expenditures under subsection (d).

5 (2) REPAYMENT WITH INTEREST.—Repayable
6 advances made to the Trust Fund shall be repaid,
7 and interest on the advances shall be paid, to the
8 general fund of the Treasury when the Secretary of
9 the Treasury determines that moneys are available
10 in the Trust Fund to make the payments.

11 (3) RATE OF INTEREST.—Interest on an ad-
12 vance made under this subsection shall be at a rate
13 determined by the Secretary of Treasury (as of the
14 close of the calendar month preceding the month in
15 which the advance is made) that is equal to the cur-
16 rent average market yield on outstanding marketable
17 obligations of the United States with remaining pe-
18 riod to maturity comparable to the anticipated pe-
19 riod during which the advance will be outstanding.

20 (d) EXPENDITURES FROM TRUST FUND.—

21 (1) IN GENERAL.—Subject to paragraph (2),
22 amounts in the Trust Fund shall be available for
23 making expenditures to provide transition assistance
24 to tobacco producers and tobacco-growing commu-
25 nities to adjust to reduced demand for tobacco, in-

1 including economic development assistance, assistance
 2 through retraining of tobacco producers and tobacco
 3 factory workers, or scholarships for tobacco produc-
 4 ers.

5 (2) IMPLEMENTATION.—Amounts in the Trust
 6 Fund shall be available for making expenditures de-
 7 scribed in paragraph (1) only if a law is enacted not
 8 later than January 1, 2000, that specifically pre-
 9 scribes authorized uses of the Trust Fund.

10 (e) BUDGETARY TREATMENT.—This section con-
 11 stitutes budget authority in advance of appropriations
 12 Acts.

13 (f) TERMINATION OF EFFECTIVENESS.—The author-
 14 ity provided by this section terminates effective January
 15 1, 2000, unless a law is enacted not later than January
 16 1, 2000, that specifically prescribes authorized uses of the
 17 Trust Fund.

18 **TITLE V—STANDARDS TO RE-**
 19 **DUCE INVOLUNTARY EXPO-**
 20 **SURE TO TOBACCO SMOKE**

21 **SEC. 501. STANDARDS TO REDUCE INVOLUNTARY EXPO-**
 22 **SURE TO TOBACCO SMOKE.**

23 The Occupational Safety and Health Act of 1970 (29
 24 U.S.C. 651 et seq.) is amended by adding at the end the
 25 following:

1 **“SEC. 35. STANDARDS TO REDUCE INVOLUNTARY EXPO-**
2 **SURE TO TOBACCO SMOKE.**

3 “(a) DEFINITIONS.—In this section—

4 “(1) PUBLIC FACILITY.—

5 “(A) IN GENERAL.—The term ‘public facil-
6 ity’ means any workplace covered by this Act
7 and any enclosed structure regularly entered by
8 10 or more individuals at least 1 day per week,
9 including any such building owned by or leased
10 to a Federal, State, or local government entity
11 (including Congress). Such term shall not in-
12 clude any building or portion thereof while used
13 as a private residence.

14 “(B) EXCLUSIONS.—The term ‘public fa-
15 cility’ does not include a portion of a building
16 which is used as a bar, a facility in which a re-
17 tailer engages primarily in the business of sell-
18 ing tobacco products, a hotel guest room that is
19 designated as a smoking room, a private club
20 while in use for social or fraternal activities
21 that are not open to the public, a casino, a
22 bingo parlor, a restaurant with an indoor seat-
23 ing capacity of fewer than 50 individuals that
24 is not a fast food restaurant, or a prison.

25 “(C) BAR.—The term “bar” means any in-
26 door area that is open to the general public and

1 that is devoted to the sale and service of alco-
2 holic beverages for on-premises consumption
3 where the service of food is only incidental to
4 the consumption of such beverages. Service of
5 food shall be considered incidental if the food
6 service generates less than 50 percent of the
7 total annual gross food and liquor sales of the
8 establishment.

9 “(D) FAST FOOD RESTAURANT.—As used
10 in subparagraph (B), the term ‘fast food res-
11 taurant’ means any restaurant or chain of res-
12 taurants in which employees primarily distrib-
13 ute food through a customer pick-up (either at
14 a counter or drive-through window). The Ad-
15 ministrator of the Occupational Safety and
16 Health Administration may promulgate regula-
17 tions to clarify this subparagraph to ensure
18 that the intended inclusion of workers in estab-
19 lishments catering largely to individuals under
20 18 years of age is achieved.

21 “(2) RESPONSIBLE ENTITY.—The term ‘respon-
22 sible entity’ means, with respect to any public facil-
23 ity, the owner or operator of such facility except
24 that, in the case of any such facility or portion
25 thereof which is leased, such term means the lessee.

1 “(b) SMOKE-FREE ENVIRONMENT POLICY.—

2 “(1) POLICY REQUIRED.—In order to protect
3 children and adults from cancer, respiratory disease,
4 heart disease, and other adverse health effects asso-
5 ciated with breathing environmental tobacco smoke,
6 the responsible entity for each public facility shall
7 adopt and implement at such facility a smoke-free
8 environment policy which meets the requirements of
9 paragraph (2) or (4).

10 “(2) ELEMENTS OF POLICY.—

11 “(A) IN GENERAL.—Each smoke-free envi-
12 ronment policy for a public facility shall—

13 “(i) prohibit the smoking of ciga-
14 rettes, cigars, and pipes, and any other
15 combustion of tobacco within the facility
16 and on facility property within the imme-
17 diate vicinity of the entrance to the facility
18 or any air intake vent (including open win-
19 dows and doors); and

20 “(ii) post a clear and prominent no-
21 tice of the smoking prohibition in appro-
22 priate and visible locations at the public fa-
23 cility.

24 “(B) EXCEPTION.—The smoke-free envi-
25 ronment policy for a public facility may provide

1 an exception to the prohibition specified in sub-
2 paragraph (A) for 1 or more specially des-
3 igned smoking areas within a public facility if
4 such area or areas meet the requirements of
5 paragraph (3).

6 “(3) SPECIALLY DESIGNATED SMOKING
7 AREAS.—A specially designated smoking area meets
8 the requirements of this subsection if—

9 “(A) the area is ventilated in accordance
10 with specifications promulgated by the Sec-
11 retary of Labor, in consultation with the Ad-
12 ministrator of the Environmental Protection
13 Agency, that ensure that air from the area is
14 directly exhausted to the outside of the building
15 and does not recirculate or drift to other areas
16 within the public facility;

17 “(B) the area is maintained at negative
18 pressure, as compared to adjacent nonsmoking
19 areas, as determined under regulations promul-
20 gated by the Secretary of Labor, in consultation
21 with the Administrator of the Environmental
22 Protection Agency; and

23 “(C) nonsmoking individuals are fully ad-
24 vised that the area is a smoking area and such
25 individuals do not have to enter the area for

1 any purpose while smoking is occurring in such
2 area, and for an additional period that allows
3 for at least 3 air exchanges to occur in the
4 room.

5 Cleaning and maintenance work shall be conducted
6 in such area only while no smoking is occurring in
7 the area, following an additional period that allows
8 for at least 3 air exchanges to occur in the room.

9 “(4) SPECIAL RULES.—

10 “(A) SCHOOLS AND OTHER FACILITIES
11 SERVING CHILDREN.—

12 “(i) IN GENERAL.—With respect to a
13 facility described in clause (ii), the respon-
14 sible entity for the facility shall—

15 “(I) adopt and implement at
16 such facility a smoke-free environment
17 policy that prohibits the smoking of
18 cigarettes, cigars, and pipes, and any
19 other combustion of tobacco within
20 the facility and on facility property;

21 “(II) adopt and implement at
22 such facility a smoke-free environment
23 policy that prohibits the use of smoke-
24 less tobacco products within the facil-
25 ity and on facility property; and

1 “(III) post a clear and prominent
2 notice of the smoking and smokeless
3 tobacco prohibition in appropriate and
4 visible locations at the public facility.

5 “(ii) FACILITY.—A facility described
6 in this clause is—

7 “(I) an elementary or secondary
8 school (as such term is defined in sec-
9 tion 14101 of the Elementary and
10 Secondary Education Act of 1965 (20
11 U.S.C. 8801);

12 “(II) any facility at which a
13 Head Start program or project is
14 being carried out under the Head
15 Start Act (42 U.S.C. 9831 et seq.);

16 “(III) any facility at which a li-
17 censed or certified child care provider
18 provides child care services; and

19 “(IV) any recreation or other fa-
20 cility maintained primarily to provide
21 services to children as determined by
22 the Secretary of Labor.

23 “(B) PUBLIC TRANSPORTATION.—

24 “(i) IN GENERAL.—With respect to
25 any responsible entity which operates con-

1 veyances of public transportation (includ-
2 ing bus, rail, aircraft, boat, or any other
3 conveyance determined appropriate by the
4 Secretary of Labor), the responsible entity
5 shall—

6 “(I) adopt and implement on
7 such conveyances a smoke-free envi-
8 ronment policy that prohibits the
9 smoking of cigarettes, cigars, and
10 pipes, and any other combustion of to-
11 bacco within the conveyance and on
12 property affiliated with the convey-
13 ance; and

14 “(II) post a clear and prominent
15 notice of the smoking prohibition in
16 appropriate and visible locations on
17 the conveyance.

18 “(ii) RAIL TRANSPORTATION.—The
19 smoke-free environment policy for a re-
20 sponsible entity that operates a rail carrier
21 providing rail commuter service may pro-
22 vide an exception to the prohibition speci-
23 fied in clause (i) with respect to such serv-
24 ice for 1 or more specially designated

1 smoking cars if such cars meet the require-
2 ments of paragraph (3).

3 “(c) ENFORCEMENT.—To be eligible to receive funds
4 under the Healthy Kids Act, a State shall make a dem-
5 onstration to the Secretary that the State is enforcing this
6 section within the State. Such laws or procedures shall
7 permit aggrieved individuals to enforce this section
8 through administrative and judicial means.

9 “(d) PREEMPTION.—Notwithstanding section 18,
10 nothing in this section shall preempt or otherwise affect
11 any other existing or future Federal, State or local law
12 which provides protection from health hazards from envi-
13 ronmental tobacco smoke that are as least as stringent
14 as those provided for in this section.

15 “(e) REGULATIONS.—Not later than 12 months after
16 the date of enactment of this section, the Secretary of
17 Labor shall promulgate such regulations as the Secretary
18 deems necessary to carry out this section.

19 “(f) EFFECTIVE DATE.—The provisions of this sec-
20 tion shall take effect on the date that is 1 year after the
21 date of enactment of this section.”.

1 **TITLE VI—PUBLIC HEALTH AND**
2 **OTHER PROGRAMS**
3 **Subtitle A—Research Programs**

4 **SEC. 601. TOBACCO-RELATED RESEARCH.**

5 (a) IN GENERAL.—The Secretary shall establish a
6 program to encourage and promote (through grants, con-
7 tracts, or otherwise) expanded research, investigations, ex-
8 periments and studies, concerning—

9 (1) the relationship between the use of tobacco
10 products and cancer, cardiovascular diseases, lung
11 diseases and other diseases;

12 (2) the effects of tobacco products, ingredients
13 of tobacco products, and tobacco smoke on the
14 human body and methods of reducing any negative
15 effects, including the development of non-addictive,
16 reduced risk tobacco products;

17 (3) the addictive effects of nicotine and how
18 such effects differ with respect to different individ-
19 uals;

20 (4) the prevention and cure of diseases and ill-
21 nesses most associated with the use of tobacco prod-
22 ucts;

23 (5) differentials between brands of tobacco
24 products with respect to health effects or addiction;

1 (6) the effectiveness of drugs and devices in as-
2 sisting individuals to stop using tobacco products;
3 and

4 (7) the relationship between the use of tobacco
5 products and cancer, particularly among minorities.

6 (b) ELIGIBILITY.—To be eligible to receive a grant,
7 contract, or other assistance under this section an entity
8 or individual shall prepare and submit to the Secretary
9 an application at such time, in such manner, and contain-
10 ing such information as the Secretary may require.

11 (c) USE OF FUNDS.—Amounts received by an indi-
12 vidual or entity under this section shall be used to carry
13 out activities under the program established under sub-
14 section (a).

15 (d) ADDITIONAL REQUIREMENTS.—To be eligible to
16 receive a grant, contract, or other assistance under this
17 section an entity or individual shall provide assurances to
18 the Secretary that—

19 (1) any research to be conducted under the
20 grant or contract will be generally consistent with
21 the requirements applicable to research conducted
22 under the authority of the National Institutes of
23 Health;

24 (2) adequate records will be maintained with re-
25 spect to such assistance; and

1 (b) ELIGIBILITY.—To be eligible to receive a grant,
2 contract, or other assistance under this section an entity
3 or individual shall prepare and submit to the Secretary
4 an application at such time, in such manner, and contain-
5 ing such information as the Secretary may require.

6 (c) USE OF FUNDS.—Amounts received by an indi-
7 vidual or entity under this section shall be used to carry
8 out activities under the program established under sub-
9 section (a).

10 (d) ADDITIONAL REQUIREMENTS.—To be eligible to
11 receive a grant, contract, or other assistance under this
12 section an entity or individual shall provide assurances to
13 the Secretary that—

14 (1) any research to be conducted under the
15 grant or contract will be generally consistent with
16 the requirements applicable to research conducted
17 under the authority of the National Institutes of
18 Health;

19 (2) adequate records will be maintained with re-
20 spect to such assistance; and

21 (3) amounts provided to the individual or entity
22 will be subject to independent audit.

23 (e) EFFECT ON MINORITIES AND WOMEN.—The pro-
24 gram established under subsection (a) shall be conducted
25 by minority institutions or minority researchers where pos-

1 sible and in a manner that ensures that research will be
2 conducted to investigate the different factors affecting to-
3 bacco use among minorities and women in proportion to
4 their prevalence in the smoking population.

5 (f) DISSEMINATION OF RESULTS.—The Secretary
6 shall establish procedures for the dissemination of the re-
7 sults of the research conducted under this section.

8 (g) FUNDING.—There shall be made available to
9 carry out this section an amount equal to 10 percent of
10 the amounts made available under section 101(d)(5)(C)
11 for a fiscal year.

12 **SEC. 603. SURVEILLANCE AND EVALUATION.**

13 (a) IN GENERAL.—The Secretary, acting through the
14 Director of the Centers for Disease Control and Preven-
15 tion, shall conduct surveillance and evaluation activities,
16 including the surveys authorized under title III, to monitor
17 patterns of tobacco use and determine the effectiveness of
18 various anti-tobacco programs funded under this Act.
19 Such activities shall include studies of the responsiveness
20 of smokers and potential smokers, particularly youth
21 smokers, to price increases and non-price incentives.

22 (b) FUNDING.—There shall be made available to
23 carry out this section an amount equal to 5 percent of
24 the amounts made available under section 101(d)(5)(C)
25 for a fiscal year.

1 **Subtitle B—Education and**
2 **Prevention Programs**

3 **SEC. 611. GRANTS FOR SCHOOL- AND COMMUNITY-BASED**
4 **TOBACCO DANGER EDUCATION PROGRAMS.**

5 (a) **IN GENERAL.**—The Secretary shall establish a
6 program to award grants to States to enable such States
7 to assist schools, colleges, universities, communities, or
8 community organizations—

9 (1) to carry out school-based and college- or
10 university-based education programs concerning the
11 dangers of using tobacco products using methods
12 that are proven and effective; and

13 (2) to carry out community-based prevention
14 programs, including in predominantly minority com-
15 munities, using methods that are proven and effec-
16 tive.

17 (b) **ELIGIBILITY.**—To be eligible to receive a grant
18 under this section a State shall prepare and submit to the
19 Secretary an application at such time, in such manner,
20 and containing such information as the Secretary may re-
21 quire, including a State plan (that is subject to approval
22 by the Secretary) that describes—

23 (1) the types of programs that the State will
24 fund under the grant;

1 (2) the manner in which the State will ensure
2 that the programs will be age-appropriate, culturally
3 appropriate, and linguistically appropriate for the
4 target population; and

5 (3) the manner in which the State will monitor
6 the effectiveness of such programs.

7 (c) USE OF FUNDS.—Amounts received by a State
8 under this section shall be used to—

9 (1) carry out State-wide school-based education
10 programs that are focused on those regions of the
11 State with high smoking rates and targeted at popu-
12 lations who are most at risk to start smoking;

13 (2) carry out State-wide college- and university-
14 based education programs to discourage individuals
15 between the ages of 18 and 24 from beginning to
16 use tobacco products, such programs to be focused
17 on colleges or universities with high smoking rates;

18 (3) carry out community-based prevention pro-
19 grams that are focused on those populations, includ-
20 ing predominantly minority communities, within the
21 community that are most at-risk to use tobacco
22 products or that have been targeted by tobacco ad-
23 vertising or marketing;

24 (4) develop curriculums for such programs;

25 (5) acquire materials for such programs;

1 (6) expand the IMPACT or ASSIST program;

2 and

3 (7) carry out other activities determined appro-
4 priate by the Secretary.

5 (d) ADDITIONAL REQUIREMENTS.—To be eligible to
6 receive a grant under this section a State shall provide
7 assurances to the Secretary that—

8 (1) the State will annually report to the Sec-
9 retary on the effectiveness of the educational ap-
10 proaches implemented by the State;

11 (2) adequate records will be maintained with re-
12 spect to such assistance;

13 (3) amounts provided to individuals or entities
14 will be subject to independent audit; and

15 (4) the State will involve local public health of-
16 ficials in the planning and implementation of the
17 program.

18 (e) FUNDING.—There shall be made available to
19 carry out this section an amount equal to 15 percent of
20 the amounts made available under section 101(d)(5)(C)
21 for a fiscal year.

1 **Subtitle C—Miscellaneous**
2 **Programs**

3 **SEC. 621. COUNTER-ADVERTISING PROGRAMS.**

4 (a) IN GENERAL.—The Secretary shall carry out pro-
5 grams to reduce tobacco usage through media-based (such
6 as counter-advertising campaigns) and nonmedia-based
7 education, prevention and cessation campaigns designed to
8 discourage the use of tobacco products by individuals and
9 to encourage those who use such products to quit. Such
10 programs shall include national and local campaigns and
11 shall target, in a culturally and linguistically appropriate
12 manner and utilizing appropriate media outlets (including
13 newspapers and other media owned by or targeted to mi-
14 norities), adults, children, women and minorities who have
15 been targeted by tobacco industry advertising.

16 (b) ELIGIBILITY.—To be eligible to receive assistance
17 under this section an entity or individual shall prepare and
18 submit to the Secretary an application at such time, in
19 such manner, and containing such information as the Sec-
20 retary may require.

21 (c) USE OF FUNDS.—Amounts received by an indi-
22 vidual or entity under this section shall be used to carry
23 out activities under the programs established under sub-
24 section (a). Such amounts may be used to design and im-

1 plement such activities and to conduct research concerning
2 the effectiveness of such programs.

3 (d) FUNDING.—There shall be made available to
4 carry out this section an amount equal to 25 percent of
5 the amounts made available under section 101(d)(5)(C)
6 for a fiscal year.

7 **SEC. 622. NATIONAL TOBACCO CESSATION PROGRAM.**

8 (a) ESTABLISHMENT.—There is established a pro-
9 gram to be known as the “National Tobacco Cessation
10 Program”. The Secretary may award grants to, and enter
11 into contracts and cooperative agreements with, public and
12 private entities for the purpose of expanding the availabil-
13 ity and utilization of tobacco use cessation services. The
14 program established under this section shall ensure that
15 cessation programs will be conducted in a manner that
16 targets minorities and woman in proportion to their preva-
17 lence in the smoking population.

18 (b) USE OF FUNDS.—Amounts made available under
19 a grant, contract or cooperative agreement under sub-
20 section (a) shall be used for the planning, establishment,
21 or administration of tobacco use cessation programs ap-
22 proved in accordance with subsection (c).

23 (c) CESSATION PROGRAMS.—Programs receiving as-
24 sistance under this section shall provide a range and qual-
25 ity of services consistent with the most recent cessation

1 service guidelines issued by the Agency for Health Care
2 Policy and Research. Using the best available scientific in-
3 formation, the Secretary shall promulgate such additional
4 guidelines as are necessary to assure the quality, acces-
5 sibility and cost effectiveness of services receiving funds
6 under this section.

7 (d) FUNDING.—There shall be made available to
8 carry out this section an amount equal to 33 percent of
9 the amounts made available under section 101(d)(5)(C)
10 for a fiscal year.

11 **SEC. 623. ASSISTANCE FOR THOSE SUFFERING FROM TO-**
12 **BACCO-RELATED ILLNESSES.**

13 (a) IN GENERAL.—The Secretary shall establish a
14 program to provide assistance and compensation to indi-
15 viduals (and entities providing services to such individuals)
16 suffering from tobacco-related illnesses and conditions.
17 Under such program assistance shall be targeted at indi-
18 viduals who are determined to be uninsured or under-
19 insured and who can demonstrate financial hardship.

20 (b) DEVELOPMENT OF PLAN.—The Secretary shall
21 carry out the program established under subsection (a)
22 under a plan to be developed by the Secretary, not later
23 than 1 year after the date of enactment of this Act.

24 (c) ELIGIBILITY.—

1 (1) OF ENTITIES.—To be eligible to receive as-
2 sistance under this section an entity shall—

3 (A) be a public or nonprofit private entity;

4 (B) prepare and submit to the Secretary
5 an application at such time, in such manner,
6 and containing such information as the Sec-
7 retary may require;

8 (C) provide assurances that amounts re-
9 ceived under the grant will be used in accord-
10 ance with subsection (d)(1); and

11 (D) meet any other requirements deter-
12 mined appropriate by the Secretary.

13 (2) OF INDIVIDUALS.—To be eligible to receive
14 assistance under this section an individual shall—

15 (A) prepare and submit to the Secretary
16 an application at such time, in such manner,
17 and containing such information as the Sec-
18 retary may require;

19 (B) provide assurances that amounts re-
20 ceived under the grant will be used only in ac-
21 cordance with subsection (d)(2); and

22 (C) meet any other requirements deter-
23 mined appropriate by the Secretary.

24 (d) USE OF FUNDS.—Assistance provided under this
25 section shall be used—

1 (1) in the case of an entity eligible under sub-
2 section (c)(1), to provide treatment for tobacco-relat-
3 ed illnesses; or

4 (2) in the case of an individual eligible under
5 subsection (c)(2), to pay for the receipt of treat-
6 ments for tobacco-related illnesses.

7 (e) **ADDITIONAL REQUIREMENTS.**—In providing as-
8 sistance under this section, the Secretary shall ensure that
9 such assistance is not used to duplicate any payments
10 made under any health insurance plans but rather to cover
11 uncompensated care provided to individuals with tobacco-
12 related illnesses.

13 (f) **FUNDING.**—There shall be made available to
14 carry out this section an amount equal to 3 percent of
15 the amounts made available under section 101(d)(5)(C)
16 for a fiscal year.

17 **SEC. 624. INTERNATIONAL TOBACCO CONTROL.**

18 (a) **GOVERNMENTAL ACTIVITIES.**—

19 (1) **IN GENERAL.**—The Secretary (in consulta-
20 tion with the Secretary of State) may provide bilat-
21 eral assistance, including technical assistance
22 through the Centers for Disease Control and Preven-
23 tion, to foreign countries and multilateral assistance
24 to reduce and prevent the use of tobacco in foreign

1 countries. Such assistance shall be focused on pre-
2 venting the use of tobacco products by minors.

3 (2) FUNDING.—There shall be made available
4 to carry out this subsection an amount equal to 2
5 percent of the amounts made available under section
6 101(d)(5)(C) for a fiscal year. Such amount shall be
7 split equally between bilateral and multilateral as-
8 sistance.

9 (b) NONGOVERNMENTAL ACTIVITIES.—

10 (1) PURPOSE.—The purpose of this subsection
11 is to establish the American Center on Global
12 Health and Tobacco (referred to in this subsection
13 as “ACT”). ACT shall assist organizations in other
14 countries to reduce and prevent the use of tobacco.
15 Activities ACT supports shall include—

16 (A) public education programs that inform
17 the public about the hazards of tobacco use and
18 of environmental tobacco smoke;

19 (B) mass media campaigns, including paid
20 counter-tobacco advertisements, to reverse the
21 image appeal of pro-tobacco messages, espe-
22 cially those that glamorize and “Westernize” to-
23 bacco use to young people; and

24 (C) education about the economic and soci-
25 etal costs of tobacco use, and effective tobacco

1 use prevention and cessation strategies that are
2 appropriate for the country involved.

3 (2) ESTABLISHMENT.—

4 (A) IN GENERAL.—There is hereby estab-
5 lished in the District of Columbia a private,
6 nonprofit corporation to be known as the Amer-
7 ican Center on Global Health and Tobacco.
8 ACT shall—

9 (i) not be an agency or establishment
10 of the United States; and

11 (ii) except as otherwise provided in
12 this section, be subject to, and have all the
13 powers conferred upon a nonprofit corpora-
14 tion by the District of Columbia Nonprofit
15 Corporation Act (D.C. Code section 29-501
16 et seq.).

17 (B) RELATION TO UNITED STATES.—

18 Nothing in this subsection shall be construed as
19 making ACT an agency or establishment of the
20 United States, or as making the members of
21 the Board of ACT, or its employees, officers or
22 employees of the United States.

23 (C) RELATION TO NONGOVERNMENTAL OR-
24 GANIZATIONS.—ACT shall have a limited staff,
25 and, to the maximum extent practicable, utilize

1 the available experience and talents of non-
2 governmental organizations with specialized ex-
3 perience in health, education, media, and to-
4 bacco.

5 (D) GOVERNING BOARD.—The Secretary
6 shall appoint a governing board of up to 25
7 members including—

8 (i) on a bipartisan basis, Members of
9 the Senate and of the House of Represent-
10 atives;

11 (ii) the heads of United States public
12 health organizations;

13 (iii) the heads of United States media,
14 marketing, and other nongovernment insti-
15 tutions and corporations; and

16 (iv) individuals active in education,
17 public health, and other relevant activities.

18 (E) INTERNATIONAL ADVISORY COUN-
19 CIL.—An International Advisory Council con-
20 sisting of representatives from key global, re-
21 gional, and national public health organizations,
22 and leading individual educators and health
23 professionals shall provide advisory assistance
24 to ACT.

1 (3) FUNDING.—The Secretary of the Treasury
2 shall on October 1 of each fiscal year beginning after
3 the date of enactment of this Act, transfer an
4 amount equal to 1 percent of the amounts made
5 available under section 101(d)(5)(C) for the fiscal
6 year to ACT to carry out this subsection.

7 (4) REQUIREMENTS FOR ELIGIBILITY FOR AN-
8 NUAL TRANSFERS FROM THE TRUST FUND.—

9 (A) OVERSIGHT.—ACT and its grantees
10 shall be subject to the oversight and supervision
11 of Congress.

12 (B) COMPLIANCE.—

13 (i) FUNDING CONTINGENT ON COM-
14 PLIANCE.—Annual payments from the
15 Trust Fund may be made to ACT under
16 this subsection only if ACT complies with
17 the requirements specified in this sub-
18 section.

19 (ii) USE OF FUNDS.—ACT may only
20 fund programs for private sector groups,
21 and may not carry out programs directly.
22 ACT may provide funding only for pro-
23 grams which are consistent with the pur-
24 poses of this subsection.

25 (C) SALARIES AND COMPENSATION.—

1 (i) NO OTHER SOURCE OF COMPENSA-
2 TION.—Officers and employees of ACT
3 may not receive any salary or other com-
4 pensation from any source other than ACT
5 for services performed for ACT.

6 (ii) UNITED STATES OFFICERS AND
7 EMPLOYEES.—An individual who is an offi-
8 cer or employee of the United States who
9 also serves on the Board of Directors or as
10 an officer or employee of ACT, may not re-
11 ceive any compensation or travel expenses
12 in connection with services performed for
13 ACT.

14 (D) STOCKS AND DIVIDENDS.—ACT shall
15 not issue any shares of stock or declare or pay
16 any dividends.

17 (E) AUDITS.—

18 (i) PUBLIC ACCOUNTS.—The accounts
19 of ACT shall be audited annually in ac-
20 cordance with generally accepted auditing
21 standards.

22 (ii) COMPTROLLER GENERAL.—The
23 financial transactions of ACT for each fis-
24 cal year may be audited by the Comptroller
25 General. A report of each audit shall be

1 made by the Comptroller General to Con-
2 gress. A copy of each report shall be fur-
3 nished to the President and to ACT at the
4 time the report is submitted to Congress.

5 (F) RECORDKEEPING.—ACT shall ensure
6 that each recipient of assistance from ACT
7 under this subsection keeps such records as
8 may be reasonably necessary to fully disclose
9 the amount and the disposition by such recipi-
10 ent of the proceeds of such assistance, the total
11 cost of the project or undertaking in connection
12 with which such assistance is given or used, and
13 the amount and nature of that portion of the
14 cost of the project or undertaking supplied by
15 other sources, and such other records as will fa-
16 cilitate an effective audit. ACT shall ensure
17 that it, or any of its duly authorized representa-
18 tives, shall have access for the purpose of audit
19 and examination to any books, documents, pa-
20 pers, and records of each recipient of assistance
21 from ACT that are pertinent to assistance pro-
22 vided through ACT under this subsection.

23 **SEC. 625. NATIONAL EVENT SPONSORSHIP PROGRAM.**

24 (a) ESTABLISHMENT.—The Secretary shall establish
25 a program to be known as the “National Event Sponsor-

1 ship Program” under which the Secretary may award
2 grants to eligible entities or individuals for the sponsorship
3 of activities described in subsection (c).

4 (b) ELIGIBILITY.—To be eligible to receive a grant
5 under this section an entity or individual shall—

6 (1) prepare and submit to the Secretary an ap-
7 plication at such time, in such manner, and contain-
8 ing such information as the Secretary may require,
9 including—

10 (A) a description of the event, activity,
11 team, or entry for which the grant is to be pro-
12 vided;

13 (B) documentation that the event, activity,
14 team, or entry involved was sponsored or other-
15 wise funded by a tobacco manufacturer or dis-
16 tributor prior to the date of the application; and

17 (C) a certification that the applicant is un-
18 able to secure funding for the event, activity,
19 team, or entry involved from sources other than
20 those described in paragraph (2);

21 (2) provide assurances that amounts received
22 under the grant will be used in accordance with sub-
23 section (d); and

24 (3) meet any other requirements determined ap-
25 propriate by the Secretary.

1 (c) PERMISSIBLE SPONSORSHIP ACTIVITIES.—

2 Events, activities, teams, or entries for which a grant may
3 be provided under this section include—

4 (1) an athletic, musical, artistic, educational, or
5 other social or cultural event or activity that was
6 sponsored in whole or in part by a tobacco manufac-
7 turer or distributor prior to the date of enactment
8 of this Act with particular emphasis on smaller com-
9 munity-based events and activities;

10 (2) the participation of a team that was spon-
11 sored in whole or in part by a tobacco manufacturer
12 or distributor prior to the date of enactment of this
13 Act, in an athletic event or activity; and

14 (3) the payment of a portion or all of the entry
15 fees of, or other financial or technical support pro-
16 vided to, an individual or team by a tobacco manu-
17 facturer or distributor prior to the date of enactment
18 of this Act, for participation of the individual in an
19 athletic, musical, artistic, or other social or cultural
20 event.

21 (d) USE OF FUNDS.—Amounts received under a
22 grant under this section shall be used to—

23 (1)(A) pay the costs associated with the spon-
24 sorsorship of an event or activity described in sub-
25 section (c)(1);

1 (B) provide for the sponsorship of an individual
2 or team;

3 (C) pay the required entry fees associated with
4 the participation of an individual or team in an
5 event or activity described in subsection (c)(3);

6 (D) provide financial or technical support to an
7 individual or team in connection with the participa-
8 tion of that individual or team in an activity de-
9 scribed in subsection (c)(3); or

10 (E) for any other purposes determined appro-
11 priate by the Secretary; and

12 (2) promote images or activities to discourage
13 individuals from using tobacco products or encour-
14 age individuals who use such products to quit.

15 (e) ALLOCATION OF UNEXPENDED FUNDS.—

16 Amounts available for purposes of carrying out this sec-
17 tion and remaining available at the end of the 10-year pe-
18 riod following the date of the establishment of the program
19 under this section, shall be used as follows:

20 (1) 50 percent of such amounts shall be used
21 to supplement amounts available for multi-media
22 campaigns under section 621;

23 (2) 25 percent of such amounts shall be used
24 to supplement amounts available for Federal or
25 State tobacco product enforcement purposes; and

1 (3) 25 percent of such amounts shall be used
2 to supplement amounts available for community-
3 based programs under this subtitle or subtitle B.

4 (f) FUNDING.—There shall be made available to
5 carry out this section an amount equal to 1 percent of
6 the amounts made available under section 101(d)(5)(C)
7 for a fiscal year.

8 (g) SUNSET.—The program established under this
9 section shall terminate on the date that is 10-years after
10 the date of enactment of this Act.

11 **SEC. 626. PROGRAMS TO REDUCE ALCOHOL AND ILLICIT**
12 **DRUG USE BY MINORS.**

13 (a) IN GENERAL.—The Secretary shall establish a
14 program under which grants are awarded to States to aug-
15 ment funding for existing programs that are designed to
16 reduce alcohol and illicit drug use by individuals under 18
17 years of age and that have been proven effective.

18 (b) ELIGIBILITY.—To be eligible to receive a grant
19 under this section a State shall prepare and submit to the
20 Secretary an application at such time, in such manner,
21 and containing such information as the Secretary may re-
22 quire, including a State plan (that is subject to approval
23 by the Secretary) that describes—

24 (1) the types of programs that the State will
25 fund under the grant;

1 (2) the manner in which the State will ensure
2 that the programs will be age-appropriate;

3 (3) the manner in which the State will monitor
4 the effectiveness of such programs; and

5 (4) the manner in which the State program will
6 be targeted at populations that are most at risk to
7 use alcohol or illicit drugs.

8 (c) USE OF FUNDS.—Amounts received by a State
9 under this section shall be used to expand and enhance
10 existing programs to discourage the use of alcohol and il-
11 licit drugs and to encourage those who use such products
12 to quit such use.

13 (d) ADDITIONAL REQUIREMENTS.—To be eligible to
14 receive a grant under this section a State shall provide
15 assurances to the Secretary that—

16 (1) the State will annually report to the Sec-
17 retary on the effectiveness of the programs imple-
18 mented by the State;

19 (2) adequate records will be maintained with re-
20 spect to such assistance; and

21 (3) amounts provided to the individual or entity
22 will be subject to independent audit.

23 (e) FUNDING.—There shall be made available to
24 carry out this section an amount equal to 5 percent of

1 the amounts made available under section 101(d)(5)(C)
2 for a fiscal year.

3 **TITLE VII—LIABILITY PROTEC-**
4 **TION; CONSENT DECREES; NA-**
5 **TIONAL PROTOCOL**

6 **Subtitle A—Liability Protection**
7 **and Attorney Fees**

8 **SEC. 701. RESOLUTION OF AND LIMITATIONS ON CIVIL AC-**
9 **TIONS.**

10 (a) STATE ATTORNEY GENERAL ACTIONS.—

11 (1) PENDING CLAIMS.—With respect to a State,
12 to be eligible to receive funds under section 111 sec-
13 tion 131 or section 132, the attorney general for
14 such State shall resolve any civil action seeking re-
15 covery for expenditures attributable to the treatment
16 of tobacco-related illnesses and conditions that has
17 been commenced by the State against a manufac-
18 turer, distributor, or retailer of a tobacco product
19 and is pending on the date of enactment of this Act.

20 (2) FUTURE ACTIONS BASED ON PRIOR CON-
21 DUCT.—With respect to a State, to be eligible to re-
22 ceive funds under section 111, section 131 or section
23 132, the attorney general for such State shall agree
24 that the State will not commence any new civil ac-
25 tion after the date of enactment of this Act (other

1 than to enforce the terms of a previous judgment)
2 that is based on the conduct of a participating man-
3 ufacturer, distributor or retailer of a tobacco product
4 that occurred prior to the date of enactment of this
5 Act seeking recovery for expenditures attributable to
6 the treatment of tobacco induced illnesses and condi-
7 tions against such a manufacturer, distributor or re-
8 tailer.

9 (3) APPLICATION TO LOCAL GOVERNMENTAL
10 ENTITIES.—The requirements described in para-
11 graphs (1) and (2) shall apply to civil actions com-
12 menced by or on behalf of local governmental enti-
13 ties for the recovery of costs attributable to tobacco-
14 related illnesses if such localities are within a State
15 whose attorney general has elected to resolve claims
16 under paragraph (1) and enter into the agreement
17 described in paragraph (2). Such provisions shall not
18 apply to those local governmental entities that are
19 within a State whose attorney general has not re-
20 solved such claims or entered into such agreements.

21 (b) STATE AND LOCAL OPTION FOR ONE-TIME OPT
22 OUT.—

23 (1) IN GENERAL.—The Secretary shall establish
24 procedures under which the attorney general of a
25 State may, not later than 1 year after the date of

1 enactment of this Act, elect not to resolve an action
2 described in subsection (a)(1) or not enter into an
3 agreement under subsection (a)(2). A State whose
4 attorney general makes such an election shall not be
5 eligible to receive payments from the Trust Fund
6 under section 111 section 131 or section 132. Proce-
7 dures under this paragraph shall permit such a
8 State to make such an election on a one-time basis.

9 (2) EXTENSION.—In the case of a State that
10 has secured a judgment against a manufacturer, dis-
11 tributor or retailer of a tobacco product in an action
12 described in subsection (a)(1) prior to or during the
13 period described in paragraph (1), and such judg-
14 ment has been appealed by such manufacturer, dis-
15 tributor, or retailer, such period shall be extended
16 during the pendency of the appeal and for an addi-
17 tional period as determined appropriate by the Sec-
18 retary.

19 (3) APPLICATION TO CERTAIN STATES.—A
20 State that has resolved a claim described in sub-
21 section (a)(1) with a manufacturer, distributor or re-
22 tailer of a tobacco product prior to the date of en-
23 actment of this Act may not make an election de-
24 scribed in paragraph (1) if, as part of the resolution
25 of such claim, the State agreed that the enactment

1 of any national tobacco settlement legislation would
2 supersede the provisions of the resolution.

3 (4) LOCAL GOVERNMENTAL ENTITY OPTION
4 FOR ONE-TIME OPT OUT.—

5 (A) IN GENERAL.—The Secretary shall es-
6 tablish procedures under which the attorney for
7 a local governmental entity which commenced a
8 civil action prior to June 20, 1997, against a
9 manufacturer, distributor, or retailer of a to-
10 bacco product seeking recovery for expenditures
11 attributable to the treatment of tobacco related
12 illnesses and conditions, not later than 1 year
13 after the date of enactment of this Act, may
14 elect not to resolve any action described in sub-
15 section (a)(3). A local governmental entity
16 whose attorney makes such an election shall not
17 be eligible to receive payments from the Trust
18 Fund under section 111. Procedures under this
19 paragraph shall permit such a local govern-
20 mental entity to make such an election on a
21 one-time basis.

22 (B) EXTENSION.—In the case of a local
23 governmental entity that has secured a judg-
24 ment against a manufacturer, distributor, or re-
25 tailer of a tobacco product in a claim described

1 in subsection (a)(3) prior to or during the pe-
2 riod described in subparagraph (A), and such
3 judgment has been appealed by such manufac-
4 turer, distributor, or retailer, such period shall
5 be extended during the pendency of the appeal
6 and for an additional period as determined ap-
7 propriate by the Secretary.

8 (C) APPLICATION TO CERTAIN LOCAL GOV-
9 ERNMENTAL ENTITIES.—A local governmental
10 entity that has resolved a claim described in
11 subsection (a)(3) with a manufacturer, distribu-
12 tor, or retailer of a tobacco product prior to the
13 date of enactment of this Act may not make an
14 election described in subparagraph (A) if, as
15 part of the resolution of such claim, the local
16 governmental entity agreed that the enactment
17 of any national tobacco settlement legislation
18 would supersede the provisions of the resolu-
19 tion.

20 (e) FEDERAL CLAIMS.—The Federal Government is
21 barred from commencing a civil action against a partici-
22 pating manufacturer, distributor, or retailer of a tobacco
23 product seeking recovery for expenditures attributable to
24 the treatment of tobacco-related illnesses associated with

1 the conduct of a manufacturer that occurred prior to the
2 date of enactment of this Act.

3 (d) RULES OF CONSTRUCTION.—

4 (1) POST ENACTMENT CLAIMS.—Nothing in
5 this title shall be construed to limit the ability of a
6 government, entity, or person to commence an action
7 against a participating manufacturer, distributor or
8 retailer of a tobacco product with respect to a claim
9 that is based on the conduct of such manufacturer,
10 distributor or retailer that occurred after the date of
11 enactment of this Act.

12 (2) NO LIMITATION ON PERSONS.—Nothing in
13 this title shall be construed to limit the right of a
14 person (other than a State, Federal or local govern-
15 ment as provided in subsections (a)–(c)) to com-
16 mence any civil claim for past, present, or future
17 conduct by manufacturers, distributors or retailers
18 of tobacco products.

19 (3) CRIMINAL LIABILITY.—Nothing in this title
20 shall be construed to limit the criminal liability of a
21 tobacco manufacturer, retailer, or distributor or its
22 officers, directors, employees, successors, or assigns.

23 (e) DEFINITION.—As used in this section, the term
24 “participating manufacturer” means a manufacturer of
25 tobacco products that has entered into a consent decree

1 under section 711 and that is a signatory to the Protocol
2 under section 721.

3 **SEC. 702. ATTORNEY'S FEES AND EXPENSES.**

4 (a) SOURCE AND PAYMENT OF AWARDS.—In no
5 event shall any award of the Arbitration Panel established
6 under subsection (b) be paid from, credited against, or
7 otherwise affect in any way any fee payments that are re-
8 quired to be made by any participating manufacturer
9 under section 102 or under any other provision of this Act.
10 Any such award shall be paid by those participating manu-
11 facturers that are signators to the June 20, 1997, pro-
12 posed resolution with certain State attorneys general pur-
13 suant to an allocation agreement among such manufactur-
14 ers.

15 (b) ARBITRATION PANEL.—

16 (1) ESTABLISHMENT.—For the purpose of
17 awarding of attorneys' fees and expenses relating to
18 litigation affected by, or legal services that, in whole
19 or in part, resulted in or created a model for pro-
20 grams in, this Act, and where attorneys involved are
21 unable to agree with the plaintiffs who hired them
22 with respect to any dispute that may arise between
23 them regarding their fee agreement, then the matter
24 at issue shall be submitted to arbitration. In any
25 such arbitration, the arbitration panel shall consist

1 of 3 persons, one of whom shall be chosen by the
2 plaintiffs, one of whom shall be chosen by the plain-
3 tiffs' attorneys, and one of whom shall be chosen
4 jointly by the first 2 arbitrators chosen as specified
5 herein.

6 (2) OPERATION.—Not later than 30 days after
7 the date on which all members of an Arbitration
8 Panel are appointed under paragraph (1), the Panel
9 shall establish the procedures under which the Panel
10 will operate which shall include—

11 (A) A requirement that any finding by the
12 Arbitration Panel must be in writing and sup-
13 ported by written reasons;

14 (B) procedures for the exchanging of ex-
15 hibits and witness lists by the various claimants
16 for awards;

17 (C) to the maximum extent practicable, re-
18 quirements that proceedings before the Panel
19 be based on affidavits rather than live testi-
20 mony; and

21 (D) a requirement that all claims be sub-
22 mitted to an Arbitration Panel not later than 3
23 months after the effective date of this Act and
24 a determination made by the Panel with respect

1 to such claims not later than 7 months after
2 such date of enactment.

3 (3) RIGHT TO PETITION.—Any individual attor-
4 ney or group of attorneys involved in litigation af-
5 fected by this Act shall have the right to petition an
6 Arbitration Panel for attorneys' fees and expenses.

7 (4) CRITERIA.—In making any award pursuant
8 to this section, an Arbitration Panel shall consider
9 the following criteria:

10 (A) The time and labor required by the
11 claimant.

12 (B) The novelty and difficulty of the ques-
13 tions involved in the action for which the claim-
14 ant is making a claim.

15 (C) The skill requisite to perform the legal
16 service involved properly.

17 (D) The preclusion of other employment by
18 the attorney due to acceptance of the action in-
19 volved.

20 (E) Whether the fee is fixed or a percent-
21 age.

22 (F) Time limitations imposed by the client
23 or the circumstances.

24 (G) The amount involved and the results
25 obtained.

1 (H) The experience, reputation, and ability
2 of the attorneys involved.

3 (I) The undesirability of the action.

4 (J) Such other factors as justice may re-
5 quire.

6 (5) APPEAL AND ENFORCEMENT.—The findings
7 of an Arbitration Panel shall be final, binding, non-
8 appealable, and payable within 30 days after the
9 date on which the finding is made public, except that
10 if an award is to be paid in installments, the first
11 installment shall be payable within such 30 day pe-
12 riod and succeeding installments shall be paid annu-
13 ally thereafter.

14 (6) SENSE OF THE SENATE.—It is the sense of
15 the Senate that the legal services rendered by attor-
16 neys in the various class actions filed by the Castano
17 Plaintiffs Legal Committee against certain tobacco
18 manufacturers provided public benefits, including
19 many of the specific public health programs in the
20 proposed resolution dated June 20, 1997, upon
21 which programs in Title VI of this Act are in part
22 modeled. It is further the sense of the Senate that
23 such programs do not constitute an exclusive remedy
24 for claims based on addiction to or dependence on
25 tobacco products, that such programs do not operate

1 to preclude or otherwise limit any litigation premised
2 or otherwise depending on addiction to or depend-
3 ence on tobacco products, and that the preceding
4 sentence does not in any way affect the interpreta-
5 tion of section 701(d) of this Act.

6 (c) VALIDITY AND ENFORCEABILITY OF PRIVATE
7 AGREEMENTS.—Notwithstanding any other provision of
8 this Act, nothing in this section shall be construed to abro-
9 gate or restrict in any way the rights of any parties to
10 mediate, negotiate, or settle any fee or expense disputes
11 or issues to which this section applies, or to enter into
12 private agreements with respect to the allocation or divi-
13 sion of fees among the attorneys party to any such agree-
14 ment.

15 **Subtitle B—Consent Decrees**

16 **SEC. 711. CONSENT DECREES.**

17 (a) REQUIREMENT.—

18 (1) IN GENERAL.—Except as provided in para-
19 graph (2), to be eligible to receive payments under
20 section 111 section 131 or section 132, a State, and
21 to be eligible to receive liability protections under
22 subtitle A, a tobacco manufacturer, shall enter into
23 consent decrees under this section to be effective on
24 the date of enactment of this Act.

1 (2) GOOD FAITH EFFORTS.—The limitation de-
2 scribed in paragraph (1) with respect to payments
3 under section 111, section 131 or section 132 shall
4 not apply to a State if the attorney general of the
5 State certifies to the Secretary that—

6 (A) the State has made good faith efforts
7 to enter into a consent decree in accordance
8 with this subtitle; and

9 (B) such State is willing to be bound by
10 such decree but such decree does not exist be-
11 cause—

12 (i) of the refusal on the part of a to-
13 bacco manufacturer to enter into such de-
14 cree; or

15 (ii) the appropriate court has not en-
16 tered the decree even though the parties
17 have lodged such a decree with the court.

18 (b) TERMS AND CONDITIONS.—

19 (1) IN GENERAL.—The consent decrees de-
20 scribed in subsection (a) shall resolve the State ac-
21 tion (or potential action in the case of a manufac-
22 turer that was not a defendant in a State action but
23 that desires to become a participating manufacturer
24 or in the case of a State that does not have a suit
25 pending against a manufacturer) for claims associ-

1 ated with the conduct of the manufacturer that oc-
2 curred prior to the date of enactment of this Act.

3 (2) GENERAL TERMS AND CONDITIONS.—The
4 terms and conditions contained in the consent de-
5 crees described in subsection (a) shall contain the
6 following provisions relating to—

7 (A) restrictions on tobacco product adver-
8 tising and marketing and youth access to such
9 products;

10 (B) the termination, establishment, and
11 operation of trade associations;

12 (C) the disclosure of tobacco smoke con-
13 stituents;

14 (D) the disclosure of nontobacco constitu-
15 ents and ingredients found in tobacco products;

16 (E) the disclosure of existing and future
17 documents relating to health, toxicity, and ad-
18 diction related to tobacco product usage;

19 (F) the obligation of manufacturers to
20 make payments for the benefit of States, pri-
21 vate litigants and the general public;

22 (G) the obligation of manufacturers to
23 enter into the Protocol under subtitle C;

24 (I) the obligation of manufacturers to
25 interact only with distributors and retailers that

1 operate in compliance with the applicable provi-
2 sions of Federal, State, or local law regarding
3 the marketing and sale of tobacco products;

4 (J) requirements for warnings, labeling,
5 and packaging of tobacco products;

6 (K) the resolution of pending litigation (or
7 potential future litigation for misconduct that
8 occurred prior to the date of enactment of this
9 Act) as required under subtitle A and as agreed
10 to by the parties to the decree; and

11 (L) any other matter determined appro-
12 priate by the Secretary or the parties involved.

13 (3) LIMITATIONS.—The terms and conditions
14 contained in the consent decrees described in sub-
15 section (a) shall not contain provisions relating to—

16 (A) tobacco product design, performance,
17 or modification;

18 (B) manufacturing standards and good
19 manufacturing practices;

20 (C) testing and regulation with respect to
21 toxicity and ingredients approval; and

22 (D) the tobacco usage reduction require-
23 ment described in section 303.

24 (4) ENFORCEABILITY.—The terms and condi-
25 tions contained in the consent decrees described in

1 subsection (a) shall be enforceable by the signato-
2 ries, as well as the Attorney General, and shall in-
3 clude a provision that prohibits signatories from
4 challenging the enforceability of the consent decrees.

5 (5) CONSTRUCTION.—The terms and conditions
6 contained in the consent decrees described in sub-
7 section (a) shall provide that the terms of the decree
8 will be construed in a manner that is consistent with
9 the provision of this Act.

10 (c) APPROVAL.—

11 (1) IN GENERAL.—Prior to the entry of a con-
12 sent decree by a court under this section the court
13 must find that the provisions of the consent de-
14 cree—

15 (A) have been approved by the Secretary
16 and the Attorney General;

17 (B) are fair and reasonable; and

18 (C) are in the public interest.

19 (2) DETERMINATION BY SECRETARY.—To ap-
20 prove a consent decree under paragraph (1)(A), the
21 Secretary and the Attorney General shall have deter-
22 mined whether the provisions of the decree are con-
23 sistent with this Act and the Food, Drug and Cos-
24 metic Act or the rules and regulations promulgated
25 under such Acts.

1 of each State that does not elect to opt out under section
2 701(b)(1).

3 (b) TERMS AND CONDITIONS.—The Protocol referred
4 to in subsection (a) shall be—

5 (1) developed by the Attorney General, in con-
6 sultation with the Secretary, the State attorneys'
7 general, the Federal Trade Commission and other
8 individuals determined appropriate by the Attorney
9 General, as a binding and enforceable contract that
10 embodies the terms of this subtitle; and

11 (2) designed to be enforceable in Federal or
12 State courts as provided for in this subtitle.

13 (c) CONTRACTS.—As part of the Protocol under this
14 section, a manufacturer shall agree, with respect to any
15 contract entered into by the manufacturer with an entity
16 that is a distributor or retailer of tobacco products, to in-
17 clude in such contract as a term and condition a require-
18 ment that such distributor or retailer comply with the pro-
19 visions of the Protocol.

20 **CHAPTER 2—TERMS AND CONDITIONS**

21 **SEC. 725. APPLICATION OF CHAPTER.**

22 The provisions of this chapter shall be considered as
23 part of the Protocol.

1 **SEC. 726. AGREEMENT TO PROHIBIT CERTAIN ADVERTIS-**
2 **ING.**

3 (a) PROHIBITION ON OUTDOOR ADVERTISING.—

4 (1) IN GENERAL.—No manufacturer, distribu-
5 tor, or retailer may use any form of outdoor tobacco
6 product advertising, including billboards, posters, or
7 placards.

8 (2) STADIA AND ARENAS.—Except as otherwise
9 provided in this Act, a manufacturer, distributor, or
10 retailer shall not advertise tobacco products in any
11 arena or stadium where athletic, musical, artistic or
12 other social or cultural events or activities occur.

13 (b) PROHIBITION ON USE OF HUMAN IMAGES AND
14 CARTOONS.—No manufacturer, distributor, or retailer
15 may use a human image or a cartoon character or cartoon-
16 type character in its advertising, labeling or promotional
17 material with respect to a tobacco product.

18 (c) PROHIBITION ON ADVERTISING ON THE INTER-
19 NET.—No manufacturer, distributor, or retailer may use
20 the Internet to advertise tobacco products unless such an
21 advertisement is inaccessible in or from the United States.

22 (d) PROHIBITION ON POINT OF SALE ADVERTIS-
23 ING.—

24 (1) IN GENERAL.—Except as otherwise pro-
25 vided in this subsection, no manufacturer, distribu-

1 tor, or retailer may use point of sale advertising of
2 tobacco products.

3 (2) ADULT ONLY STORES AND TOBACCO OUT-
4 LETS.—Paragraph (1) shall not apply to point of
5 sale advertising at adult only stores and tobacco out-
6 lets.

7 (3) PERMISSIBLE ADVERTISING.—

8 (A) IN GENERAL.—Each manufacturer of
9 tobacco products may display not more than 2
10 separate point of sale advertisements in or at
11 each location at which tobacco products are of-
12 fered for sale.

13 (B) RETAILERS.—No manufacturer, dis-
14 tributor, or retailer may enter into any arrange-
15 ment with a retailer to limit the ability of the
16 retailer to display any form of permissible point
17 of sale advertisement or promotional material
18 originating with another manufacturer, dis-
19 tributor, or retailer.

20 (4) LIMITATIONS.—

21 (A) IN GENERAL.—A point of sale adver-
22 tisement permitted under this subsection shall
23 be comprised of a display area that is not larger
24 than 576 square inches (either individually or
25 in the aggregate) and shall consist only of black

1 letters on a white background or other recog-
2 nized typographical marks. Such advertisement
3 shall not be attached to nor located within 2
4 feet of any fixture on which candy is displayed
5 for sale.

6 (B) AUDIO AND VIDEO FORMATS.—Audio
7 and video advertisements otherwise permitted
8 under this Act may be distributed to individuals
9 who are 18 years of age or older at point of sale
10 but may not be played or viewed at such point
11 of sale.

12 (C) DISPLAY FIXTURES.—Display fixtures
13 in the form of signs consisting of brand name
14 and price and not larger than 2 inches in height
15 are permitted.

16 (5) DEFINITION.—For purposes of this sub-
17 section, the term “point of sale advertising” means
18 all printed or graphical materials bearing the brand
19 name (alone or in conjunction with any other word),
20 logo, motto, selling message, recognizable color or
21 pattern of colors, or any other indicia of product
22 identification similar or identical to those used for
23 tobacco products, which, when used for its intended
24 purpose, can reasonably be anticipated to be seen by

1 customers at a location at which tobacco products
2 are offered for sale.

3 **SEC. 727. CONSENSUAL RESTRICTIONS.**

4 (a) RESTRICTION ON PRODUCT NAMES.—A manu-
5 facturer shall not use a trade or brand name of a non-
6 tobacco product as the trade or brand name for a cigarette
7 or smokeless tobacco product, except for a tobacco product
8 whose trade or brand name was on both a tobacco product
9 and a nontobacco product that were sold in the United
10 States on January 1, 1998.

11 (b) ADVERTISING LIMIT ACTIONS.—

12 (1) IN GENERAL.—A manufacturer, distributor,
13 or retailer may in accordance with this Act, dissemi-
14 nate or cause to be disseminated advertising or la-
15 beling which bears a tobacco product brand name
16 (alone or on conjunction with any other word) or
17 any other indicia of tobacco product identification
18 only in newspapers, in magazines, in periodicals or
19 other publications (whether periodic or limited dis-
20 tribution), on billboards, posters and placards in ac-
21 cordance with section 726(a), in nonpoint of sale
22 promotional material (including direct mail), in
23 point-of-sale promotional material, and in audio or
24 video formats delivered at a point-of-sale.

1 (2) LIMITATION.—A manufacturer, distributor,
2 or retailer that intends to disseminate, or to cause
3 to be disseminated, advertising or labeling for a to-
4 bacco product in a medium that is not described in
5 paragraph (1) shall notify the Secretary not less
6 than 30 days prior to the date on which such me-
7 dium is to be used. Such notice shall describe the
8 medium and discuss the extent to which the adver-
9 tising or labeling may be seen by individuals who are
10 under 18 years of age.

11 (3) ACTION BY SECRETARY.—Not later than 30
12 days after the date on which the Secretary receives
13 a notice under paragraph (2), the Secretary shall
14 make a determination with respect to the action to
15 be taken concerning such notice.

16 (c) RESTRICTION ON PLACEMENT IN ENTERTAIN-
17 MENT MEDIA.—

18 (1) IN GENERAL.—No payment shall be made
19 by any manufacturer, distributor, or retailer for the
20 placement of any tobacco product or tobacco product
21 package or advertisement—

22 (A) as a prop in any television program or
23 motion picture produced for viewing by the gen-
24 eral public; or

25 (B) in a video or on a video game machine.

1 (2) VIDEO GAME.—The term “video game”
2 means any electronic amusement device that utilizes
3 a computer, microprocessor, or similar electronic cir-
4 cuitry and its own cathode ray tube, or is designed
5 to be used with a television set or a monitor, that
6 interacts with the user of the device.

7 (3) VIDEO.—The term “video” means an audio-
8 visual work produced for viewing by the general pub-
9 lic, such as a television program, a motion picture,
10 a music video, and the audiovisual display of a video
11 game.

12 (d) RESTRICTIONS ON GLAMORIZATION OF TOBACCO
13 PRODUCTS.—No direct or indirect payment shall be made,
14 or consideration given, by any manufacturer, distributor,
15 or retailer to any entity for the purpose of promoting the
16 image or use of a tobacco product through print, film or
17 broadcast media that appeals to individuals under 18
18 years of age or through a live performance by an enter-
19 tainment artist that appeals to such individuals.

20 **SEC. 728. AGREEMENT ON FORMAT AND CONTENT RE-**
21 **QUIREMENTS FOR LABELING AND ADVERTIS-**
22 **ING.**

23 (a) IN GENERAL.—Except as provided in subsections
24 (b) and (c), each manufacturer, distributor, or retailer ad-
25 vertising or causing to be advertised, disseminating or

1 causing to be disseminated, any labeling or advertising for
2 a tobacco product shall use only black text on a white
3 background.

4 (b) CERTAIN ADVERTISING EXCEPTED.—

5 (1) IN GENERAL.—Subsection (a) shall not
6 apply to advertising—

7 (A) in any facility where vending machines
8 and self-service displays are permitted under
9 this title if the advertising involved—

10 (i) is not visible from outside of the
11 facility; and

12 (ii) is affixed to a wall or fixture in
13 the facility;

14 (B) that appears in any publication
15 (whether periodic or limited distribution) that is
16 an adult publication.

17 (2) ADULT PUBLICATION.—For purposes of
18 paragraph (1)(B), the term “adult publication”
19 means a newspaper, magazine, periodical, or other
20 publication—

21 (A) whose readers under 18 years of age
22 constitute 15 percent or less of the total reader-
23 ship as measured by competent and reliable
24 survey evidence; and

1 (B) that is read by fewer than 2,000,000
2 individuals who are under 18 years of age as
3 measured by competent and reliable survey evi-
4 dence.

5 (c) AUDIO OR VIDEO FORMATS.—Each manufac-
6 turer, distributor or retailer advertising or causing to be
7 advertised any advertising for a tobacco product in an
8 audio or video format shall comply with the following:

9 (1) With respect to an audio format, the adver-
10 tising shall be limited to words only with no music
11 or sound effects.

12 (2) With respect to a video format, the advertis-
13 ing shall be limited to static black text only on a
14 white background. Any audio with the video adver-
15 tising shall be limited to words only with no music
16 or sound effects.

17 **SEC. 729. AGREEMENT TO BAN ON NONTOBACCO ITEMS**
18 **AND SERVICES, CONTESTS AND GAMES OF**
19 **CHANCE, AND SPONSORSHIP OF EVENTS.**

20 (a) BAN ON ALL NON-TOBACCO MERCHANDISE.—No
21 manufacturer, importer, distributor, or retailer shall mar-
22 ket, license, distribute, sell or cause to be marketed, li-
23 censed, distributed or sold any item (other than tobacco
24 products) or service, which bears the brand name (alone
25 or in conjunction with any other word), logo, symbol,

1 motto, selling message, recognizable color or pattern of
2 colors, or any other indicia of product identification simi-
3 lar or identifiable to those used for any brand of tobacco
4 products.

5 (b) GIFTS, CONTESTS, AND LOTTERIES.—No manu-
6 facturer, distributor, or retailer shall offer or cause to be
7 offered to any person purchasing tobacco products any gift
8 or item (other than a tobacco product) in consideration
9 of the purchase of such products, or to any person in con-
10 sideration of furnishing evidence, such as credits, proofs-
11 of-purchase, or coupons, of such a purchase.

12 (c) SPONSORSHIP.—

13 (1) IN GENERAL.—No manufacturer, distribu-
14 tor, or retailer shall sponsor or cause to be spon-
15 sored any athletic, musical, artistic or other social or
16 cultural event, or any entry or team in any event, in
17 which the brand name (alone or in conjunction with
18 any other word), logo, motto, selling message, rec-
19 ognizable color or pattern of colors, or any other in-
20 dicia of product identification similar or identical to
21 those used for tobacco products is used.

22 (2) USE OF CORPORATE NAME.—A manufac-
23 turer, distributor, or retailer may sponsor or cause
24 to be sponsored any athletic, musical, artistic or
25 other social or cultural event in the name of the cor-

1 poration which manufactures the tobacco product
2 if—

3 (A) both the corporate name and the cor-
4 poration were registered and in use in the
5 United States prior to January 1, 1995; and

6 (B) the corporate name does not include
7 any brand name (alone or in conjunction with
8 any other word), logo, symbol, motto, selling
9 message, recognizable color or pattern of colors,
10 or any other indicia or product identification
11 identical or similar to, or identifiable with,
12 those used for any brand of tobacco products.

13 **CHAPTER 3—ENFORCEMENT**

14 **SEC. 731. FEDERAL ENFORCEMENT OF THE PROTOCOL.**

15 (a) **ACTIONS.**—The Attorney General may bring an
16 action for the enforcement, or to restrain any breach, of
17 the Protocol in the United States District Court for the
18 District of Columbia or in the district court of the United
19 States for the district in which the breach occurred.

20 (b) **REMEDY.**—In any action under subsection (a),
21 the district court involved—

22 (1) shall restrain the conduct that is the subject
23 of the breach of the Protocol;

24 (2) shall order specific performance of the obli-
25 gations set forth in the Protocol;

1 (3) may order civil penalties against any manu-
2 facturer who violates a requirement of the Protocol
3 in an amount not more than \$250,000 per violation
4 per day; and

5 (4) with respect to officers of manufacturers
6 who knowingly violate the protocol, may impose ap-
7 propriate criminal penalties, including incarceration.

8 (c) **CONTRACTS WITH STATE AGENCIES.**—The Sec-
9 retary may award grants to or enter into contracts with
10 an agency of any State to assist in the enforcement of
11 the provisions of the Protocol.

12 (d) **ACTION BY ATTORNEY GENERAL.**—With respect
13 to the funding of any activities under subsection (a), the
14 Attorney General shall use amounts available in the Trust
15 Fund under section 102. If the Attorney General deter-
16 mines that amounts available in the Trust Fund are insuf-
17 ficient, the Attorney General may use amounts available
18 for the activities of the Department of Justice.

19 **SEC. 732. STATE ENFORCEMENT OF THE PROTOCOL.**

20 (a) **CIVIL ACTION.**—The attorney general of a State
21 may bring an action for the enforcement, or to restrain
22 a breach, of the Protocol if the alleged violation that is
23 the subject of the proceedings occurred in that State.

24 (b) **CONCURRENT JURISDICTION.**—Both Federal and
25 State courts shall have jurisdiction over a proceeding de-

1 scribed in subsection (a). If such a proceeding is com-
2 menced in a district court of the United States, the court
3 shall take into consideration the size and scope of any
4 State penalties that have been applied for the identical vio-
5 lations.

6 (c) REMEDIES.—In any proceeding described in sub-
7 section (b) the remedies available shall be those described
8 in section 731(b).

9 **SEC. 733. PRIVATE ENFORCEMENT OF PROTOCOL.**

10 (a) IN GENERAL.—A manufacturer may seek a dec-
11 laration of the rights and obligations of the manufacturer
12 under the Protocol by filing an action pursuant to section
13 2201 of title 28, United States Code.

14 (b) CIVIL ACTION.—Any person may bring a civil ac-
15 tion against a manufacturer to enforce, or restrain
16 breaches of, the Protocol by such manufacturer, except
17 that—

18 (1) no such action may be commenced or main-
19 tained if the Secretary has settled a proceeding per-
20 taining to such alleged breach; and

21 (2) the court, in any such action, shall restrain
22 conduct in breach of the Protocol and order specific
23 performance of the obligations set forth in the Pro-
24 tocol, and may award damages which at a minimum
25 will recover any economic benefit derived as a result

1 of the noncompliance involved together with an
2 amount awarded as a suitable penalty associated
3 with such breach.

4 Any damages awarded under this subsection shall be re-
5 mitted to the Treasury.

6 (c) RIGHT OF INTERVENTION.—In any proceeding
7 described in section 731(a) or 732(a), any manufacturer
8 may intervene as a matter of right.

9 **TITLE VIII—MISCELLANEOUS**
10 **PROVISIONS**

11 **SEC. 801. PROHIBITION ON USE OF FUNDS TO FACILITATE**
12 **THE EXPORTATION OR PROMOTION OF TO-**
13 **BACCO.**

14 (a) IN GENERAL.—Notwithstanding any other provi-
15 sion of law, no funds made available by appropriations or
16 otherwise made available may be used by any officer, em-
17 ployee, department, or agency of the United States—

18 (1) to promote or encourage the export, reex-
19 port, sale, manufacture, advertising, promotion, dis-
20 tribution, or use of tobacco or tobacco products to
21 or in a foreign country; or

22 (2) to seek, through negotiation or otherwise,
23 the removal or reduction by any foreign country of
24 any restriction or proposed restriction in that coun-
25 try on the importation, export, reexport, sale, manu-

1 facture, advertising, promotion, distribution, packag-
2 ing, labeling, use, content, imposition of tariffs, or
3 taxation, of tobacco or tobacco products.

4 (b) EXCEPTION.—Subsection (a)(2) shall not apply
5 to any restriction or proposed restriction by a foreign
6 country if—

7 (1) the restriction is applied in a manner which
8 constitutes a means of arbitrary or unjustifiable dis-
9 crimination between countries;

10 (2) the Secretary of Commerce certifies in writ-
11 ing to Congress that the restriction is being applied
12 in a manner that constitutes a means of arbitrary or
13 unjustifiable discrimination between countries; and

14 (3) the Secretary of Health and Human Serv-
15 ices certifies to Congress in writing that the restric-
16 tion is not a reasonable means of protecting the pub-
17 lic health.

18 (c) DEFINITION.—In this section, the term “arbi-
19 trary or unjustifiable discrimination” means a restriction
20 or proposed restriction by a foreign country that—

21 (1) is arbitrary or unjustifiable; and

22 (2) does not adhere to the principle of national
23 treatment and applies less favorable treatment to
24 goods that are imported into that country than the

1 country applies to like goods that are the product,
2 growth, or manufacture of that country.

3 **SEC. 802. WHISTLEBLOWER PROTECTIONS.**

4 (a) PROHIBITION OF REPRISALS.—An employee of
5 any manufacturer, distributor, or retailer of a tobacco
6 product may not be discharged, demoted, or otherwise dis-
7 criminated against (with respect to compensation, terms,
8 conditions, or privileges of employment) as a reprisal for
9 disclosing to an employee of the Food and Drug Adminis-
10 tration, the Department of Health and Human Services,
11 the Department of Justice, the Congress, or any State or
12 local regulatory or enforcement authority, information re-
13 lating to a violation of law related to this Act or a State
14 or local law that furthers the purposes of this Act.

15 (b) ENFORCEMENT.—Any employee or former em-
16 ployee who believes that such employee has been dis-
17 charged, demoted, or otherwise discriminated against in
18 violation of subsection (a) may file a civil action in the
19 appropriate United States district court before the end of
20 the 2-year period beginning on the date of such discharge,
21 demotion, or discrimination.

22 (c) REMEDIES.—If the district court determines that
23 a violation has occurred, the court may order the manufac-
24 turer, distributor, or retailer involved to—

1 (1) reinstate the employee to the employee's
2 former position;

3 (2) pay compensatory damages; or

4 (3) take other appropriate actions to remedy
5 any past discrimination.

6 (d) LIMITATION.—The protections of this section
7 shall not apply to any employee who—

8 (1) deliberately causes or participates in the al-
9 leged violation of law or regulation; or

10 (2) knowingly or recklessly provides substan-
11 tially false information to the Food and Drug Ad-
12 ministration, the Department of Health and Human
13 Services, the Department of Justice, or any State or
14 local regulatory or enforcement authority.

15 (e) APPLICATION OF FALSE CLAIMS ACT.—Section
16 3730(d) of title 31, United States Code, shall apply with
17 respect to any employee to which this section applies if
18 the disclosure of such employee results in a payment of
19 any fee or fine to the Federal Government by the manu-
20 facturer, distributor or retailer involved, regardless of
21 whether such employee ever commenced an action con-
22 cerning the disclosure.

1 **SEC. 803. PROHIBITIONS RELATING TO TOBACCO PROD-**
2 **UCTS AND CHILDREN.**

3 (a) IN GENERAL.—Chapter VIII of the Federal
4 Food, Drug, and Cosmetic Act (21 U.S.C. 381 et seq.)
5 is amended by adding at the end the following:

6 **“SEC. 804. PROHIBITION ON SALE OR DISTRIBUTION OF TO-**
7 **BACCO PRODUCTS TO CHILDREN.**

8 “(a) GENERAL RULE.—It shall be unlawful for any
9 domestic concern or any officer, director, employee, or
10 agent of such concern to make use of the mails or any
11 means or instrumentality of interstate commerce to cause
12 or contribute, either directly or through a foreign subsidi-
13 ary, joint venture, affiliate, or licensee, to—

14 “(1) the sale or distribution of tobacco products
15 in a foreign country to children; or

16 “(2) the advertising or promotion of tobacco
17 products in a foreign country in a manner that ap-
18 peals to children.

19 “(b) INTERPRETATION.—For purposes of subsection
20 (a), the advertising or promotion of tobacco products shall
21 be considered to be in a manner that appeals to children
22 if the advertising or promotion is carried out in a manner
23 that would not be permissible under the regulations re-
24 ferred to in section 202 of the Healthy Kids Act if it oc-
25 curred in the United States.

1 **“SEC. 805. LABELING.**

2 “It shall be unlawful for any domestic concern or any
3 officer, director, employee, or agent of such concern, either
4 directly or through a foreign subsidiary, joint venture, af-
5 filiate, or licensee, to make use of the mails or any means
6 or instrumentality of interstate commerce to cause or con-
7 tribute to the export from the United States or the sale
8 or distribution in, or export from, any other country any
9 tobacco product the package of which does not contain a
10 warning label that—

11 “(1) is in the primary language or languages of
12 the country in which the tobacco product is sold or
13 distributed to consumers; and

14 “(2) except for the requirement of paragraph
15 (1)—

16 “(A) complies with Federal requirements
17 for labeling of similar tobacco products manu-
18 factured, imported, or packaged for sale or dis-
19 tribution in the United States; or

20 “(B) complies with the labeling require-
21 ments of the foreign country in which the prod-
22 uct is sold or distributed to consumers and
23 which labeling requirements the Secretary de-
24 termines are substantially similar to Federal re-
25 quirements and are adequately enforced by such
26 country.”.

1 (b) ENFORCEMENT.—Section 301 of the Federal
2 Food, Drug, and Cosmetic Act (21 U.S.C. 331) as amend-
3 ed by section 203(e), is further amended by adding at the
4 end the following:

5 “(cc) To carry out an act made unlawful by section
6 804 or 805.

7 (c) REWARD.—Section 303(b)(5) of the Federal
8 Food, Drug, and Cosmetic Act (21 U.S.C. 333)(b)(5)) is
9 amended by adding at the end the following: “If a person
10 provides information leading to the institution of a crimi-
11 nal proceeding against, and conviction of, a person for a
12 violation of section 301(cc), such person shall be entitled
13 to one-half of the criminal fine imposed and collected for
14 such violation but not more than \$125,000.”.

15 (d) DEFINITIONS.—Section 201 of the Federal Food,
16 Drug, and Cosmetic Act (21 U.S.C. 321) as amended by
17 section 203(a)(3), is further amended by adding at the
18 end the following:

19 “(ll) The term ‘domestic concern’ means—

20 “(1) any individual who is a citizen, national, or
21 resident of the United States; and

22 “(2) any corporation, partnership, association,
23 joint-stock company, business trust, unincorporated
24 organization, or sole proprietorship which has its
25 principal place of business in the United States or

1 which is organized under the laws of a State of the
2 United States or a territory, possession, or common-
3 wealth of the United States.

4 “(mm) The term ‘children’ means an individual under
5 the age of 18.”.

6 **SEC. 804. PRESERVATION OF STATE AND LOCAL AUTHOR-**
7 **ITY.**

8 Except as otherwise provided for in this Act (or an
9 amendment made by this Act), nothing in this Act shall
10 be construed as prohibiting a State or political subdivision
11 of a State from imposing requirements, prohibitions, pen-
12 alties or other measures, whether by statute, rule, regula-
13 tion, ordinance, judicial decree, consent decree, or settle-
14 ment agreement, to further the purposes of this Act that
15 are in addition to the requirements, prohibitions, or pen-
16 alties required under this Act. Nothing in this Act (or an
17 amendment made by this Act) shall preclude or deny the
18 right of any State or political subdivision of a State to
19 adopt or enforce any requirements, prohibitions, or pen-
20 alties relating to tobacco products to the extent that such
21 requirements, prohibitions or penalties are not less strin-
22 gent than those required under this Act (or amendments).

23 **SEC. 805. SEVERABILITY.**

24 If any provision of this Act, an amendment made by
25 this Act, or the application of such provision or amend-

1 ment to any person or circumstance is held to be unconsti-
2 tutional, the remainder of this Act, the amendments made
3 by this Act, and the application of the provisions of such
4 to any person or circumstance shall not be affected there-
5 by.

6 **TITLE IX—PROVISIONS RELAT-**
7 **ING TO NATIVE AMERICANS**

8 **SEC. 901. PROVISIONS RELATING TO NATIVE AMERICANS.**

9 (a) **IN GENERAL.**—The provisions of this Act (or an
10 amendment made by this Act) shall apply to the manufac-
11 ture, distribution, and sale of tobacco products in any area
12 within the jurisdiction of an Indian tribe or tribal organi-
13 zation.

14 (b) **RELIGIOUS PRACTICE EXCEPTION.**—In recogni-
15 tion of the religious, traditional and ceremonial uses of
16 tobacco and tobacco products by many Indian tribes and
17 the members of such tribes, nothing in this Act (or an
18 amendment made by this Act) shall be construed to in-
19 fringe upon the rights of such tribes or members to trans-
20 fer, acquire, possess, or use any tobacco or tobacco prod-
21 ucts for such purposes. The preceding sentence shall only
22 be construed to apply to those quantities of tobacco prod-
23 ucts necessary to fulfill recognized religious, traditional or
24 ceremonial purposes and not to permit the general market-
25 ing of tobacco products not in compliance with subchapter

1 F of chapter V of the Federal Food, Drug and Cosmetic
2 Act.

3 (c) PAYMENTS TO TRUST FUND.—Any Indian tribe
4 or tribal organization that engages in the manufacturer
5 of tobacco products shall be subject to liability for an as-
6 sessment under section 102.

7 (d) APPLICATION OF FEDERAL FOOD, DRUG AND
8 COSMETIC ACT REQUIREMENTS.—

9 (1) IN GENERAL.—The Secretary, in consulta-
10 tion with the Secretary of the Interior, shall promul-
11 gate regulations to provide for the application of any
12 requirements of the Food, Drug and Cosmetic Act
13 with respect to tobacco products manufactured, dis-
14 tributed, or sold in any area within the jurisdiction
15 of an Indian tribe or tribal organization as appro-
16 priate to comply with subsections (a) and (b).

17 (2) ELIGIBILITY FOR ASSISTANCE.—Under the
18 regulations promulgated under paragraph (1), the
19 Secretary, after consultation with the Secretary of
20 the Interior, may provide assistance to an Indian
21 tribe or tribal organization in meeting and enforcing
22 the requirements under such regulations if—

23 (A) the tribe or organization has a govern-
24 ing body that has powers and carries out duties
25 that are similar to the powers and duties of

1 State or local governments and requests such
2 assistance by application to the Secretary;

3 (B) the functions to be exercised through
4 the use of such assistance relate to activities
5 within the exterior boundaries of the reservation
6 or other areas within the jurisdiction of the
7 tribe involved; and

8 (C) the tribe or organization is reasonably
9 expected to be capable of carrying out the func-
10 tions required by the Secretary.

11 (3) DETERMINATIONS.—The Secretary, in con-
12 sultation with the Secretary of the Interior, shall
13 make determinations concerning the eligibility of an
14 Indian tribe or tribal organization for assistance
15 under regulations under paragraph (1) not later
16 than 90 days after the date on which such tribe or
17 organization submits an application for such assist-
18 ance.

19 (4) IMPLEMENTATION BY SECRETARY.—If the
20 Secretary determines that the Indian tribe or tribal
21 organization is not willing or qualified to administer
22 the requirements of the regulations promulgated
23 under this subsection, the Secretary, in consultation
24 with the Secretary of the Interior, shall implement

1 and enforce such regulations on behalf of the tribe
2 or organization.

3 (e) RETAIL LICENSING REQUIREMENTS.—

4 (1) IN GENERAL.—The requirements of section
5 577 of the Federal Food, Drug and Cosmetic Act
6 (as added by section 204 of this Act) shall apply to
7 retailers that sell tobacco products in any area with-
8 in the jurisdiction of an Indian tribe or tribal orga-
9 nization.

10 (2) SELF-REGULATION.—In order to be eligible
11 for funds under subsection (f), an Indian tribe or
12 tribal organization shall implement a tribal licensing
13 program within the exterior boundaries of the res-
14 ervation and other areas within the jurisdiction of
15 the tribe consistent with the regulations promulgated
16 under section 577 of the Federal Food, Drug and
17 Cosmetic Act.

18 (3) IMPLEMENTATION BY SECRETARY.—If the
19 Secretary, in consultation with the Secretary of the
20 Interior, determines that the Indian tribe or tribal
21 organization is not qualified to administer the re-
22 quirements of section 577 of the Federal Food,
23 Drug and Cosmetic Act, the Secretary, in consulta-
24 tion with the Secretary of the Interior, shall imple-

1 ment such requirements on behalf of the tribe or or-
2 ganization.

3 (f) ELIGIBILITY FOR PUBLIC HEALTH PAYMENTS.—

4 (1) IN GENERAL.—For each fiscal year the Sec-
5 retary shall pay to each Indian tribe that has an ap-
6 proved tribal anti-smoking plan a tribal grant for
7 the fiscal year in an amount equal to the amount de-
8 termined under paragraph (3), and shall reduce the
9 amounts payable under section 111 to any State in
10 which the service area or areas of the Indian tribe
11 are located by the amount so determined.

12 (2) PLAN.—To be eligible to receive a payment
13 under paragraph (1), an Indian tribe shall prepare
14 and submit to the Secretary for approval an anti-
15 smoking plan and shall otherwise meet the require-
16 ments of subsection (e).

17 (3) AMOUNT DETERMINED.—The amount of
18 any funds for which an Indian tribe is eligible under
19 paragraph (1) shall be determined by the Secretary
20 based on the ratio of the total number of Indians re-
21 siding on such tribe's reservation or in areas within
22 the jurisdiction of the tribe in the State to the total
23 population of the State multiplied by the amount al-
24 located to State under section 111.

1 (4) USE.—Amounts provided to a tribe or orga-
2 nization under this paragraph shall be used to reim-
3 burse the tribe for smoking-related health expendi-
4 tures, to further the purposes of this Act, and in ac-
5 cordance with a plan submitted by the tribe or orga-
6 nization and approved by the Secretary as being in
7 compliance with this Act. Tribes and tribal organiza-
8 tions shall have the flexibility to utilize such
9 amounts to meet the unique health needs of such
10 tribes within the context of tribal health programs
11 if such programs meet the fundamental Federal re-
12 quirements under this Act as determined by the Sec-
13 retary.

14 (5) REALLOTMENT.—Any amounts set-aside
15 and not expended under this paragraph shall be re-
16 allotted among other eligible tribes and organiza-
17 tions.

18 (g) OBLIGATION OF MANUFACTURERS.—A partici-
19 pating manufacturer shall not engage in any activity in
20 an area within the jurisdiction of an Indian tribe or tribal
21 organization that is prohibited under the Protocol.

22 (h) INDIAN HEALTH SERVICE.—Amounts made
23 available under section 101(d)(5)(B) shall be provided to
24 the Indian Health Service to be used for anti-tobacco-re-
25 lated consumption and cessation activities including—

1 (1) clinic and facility design, construction, re-
2 pair, renovation, maintenance and improvement;

3 (2) provider services and equipment;

4 (3) domestic and community sanitation associ-
5 ated with clinic and facility construction and im-
6 provement;

7 (4) inpatient and outpatient services; and

8 (5) other programs and services provided
9 through the Indian Health Service or through tribal
10 contracts, compacts, grants or cooperative agree-
11 ments with the Indian Health Service and which are
12 deemed appropriate to raising the health status of
13 Indians.

14 (i) PREEMPTION.—

15 (1) GENERAL PREEMPTION.—Except as other-
16 wise provided for in this section, nothing in this Act
17 shall be construed as prohibiting an Indian tribe or
18 tribal organization from imposing requirements, pro-
19 hibitions, penalties or other measures to further the
20 purposes of this Act that are in addition to the re-
21 quirements, prohibitions, or penalties required under
22 this Act.

23 (2) PUBLIC EXPOSURE TO SMOKE.—Nothing in
24 the amendment made by title V shall be construed
25 to preempt or otherwise affect any Indian tribe or

1 tribal organization rule or practice that provides
2 greater protection from the health hazards of envi-
3 ronmental tobacco smoke.

4 (3) NATIVE AMERICANS.—A State may not im-
5 pose obligations or requirements relating to the ap-
6 plication of this Act to Indian tribes and tribal orga-
7 nizations.

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