

105TH CONGRESS
2D SESSION

H. R. 3474

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 HOUSE OF REPRESENTATIVES

MARCH 17, 1998

Mr. FAZIO of California (for himself, Mr. GEPHARDT, Mr. BONIOR, Mr. PALLONE, Mr. SAWYER, Mr. MEEHAN, Mr. ACKERMAN, Mr. ALLEN, Mr. BECERRA, Mr. BLUMENAUER, Mr. BOSWELL, Mr. BROWN of California, Ms. DEGETTE, Mr. DELAHUNT, Ms. DELAURO, Mr. FALEOMAVAEGA, Mr. FARR of California, Mr. FORD, Mr. HINCHEY, Mr. KENNEDY of Massachusetts, Mr. LAFALCE, Mr. LAMPSON, Mr. LANTOS, Mr. LEVIN, Mr. LEWIS of Georgia, Mr. LIPINSKI, Mr. MATSUI, Ms. MCCARTHY of Missouri, Mr. MCGOVERN, Mr. MCHALE, Mr. MINGE, Mr. NADLER, Ms. NORTON, Mr. OBERSTAR, Mr. OLVER, Mr. POMEROY, Ms. ROYBAL-ALLARD, Mr. SERRANO, Mr. SHERMAN, Mr. STOKES, Mrs. TAUSCHER, Ms. VELÁZQUEZ, Mr. WEXLER, Ms. WOOLSEY, Mr. UNDERWOOD, AND MR. YATES) introduced the following bill; which was referred to the Committee on Commerce, and in addition to the Committee on Ways and Means, the Judiciary, Education and the Workforce, Agriculture, the Budget, Resources, and International Relations, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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,*

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

4 (a) SHORT TITLE.—This Act may be cited as the
 5 “Healthy Kids Act”.

6 (b) TABLE OF CONTENTS.—The table of contents of
 7 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 FOR PRODUCERS, COMMUNITIES, AND OTHER PERSONS

- Sec. 401. Minimum purchase requirements of domestic Flue-cured and Burley tobacco for manufacturers of cigarettes.
- Sec. 402. Tobacco Transition Trust Fund and use of Trust 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.

TITLE X—TOBACCO ASBESTOS TRUST

- Sec. 1001. Tobacco asbestos trust fund.
- Sec. 1002. Funding of trust; assessment from tobacco companies.
- Sec. 1003. Structure and operation.

Sec. 1004. Rights of parties.

Sec. 1005. Definitions.

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
8 children as a source of replacement smokers. The
9 industry has also targeted minorities.

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

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

16 (5) Seventy percent of adult smokers would like
17 to quit smoking, but the tobacco industry has ma-
18 nipulated the level of nicotine in tobacco products
19 and added ingredients to enhance the addictive ef-
20 fects of nicotine to ensure that users of these prod-
21 ucts remain addicted.

22 (6) Tobacco products cause cancer, heart dis-
23 ease, lung disease, and other fatal illnesses. More

1 than 400,000 Americans die each year of these to-
2 bacco-related illnesses and conditions.

3 (7) Tobacco-related illnesses, medical conditions
4 resulting from tobacco use, and lost wages and pro-
5 ductivity cost the United States in excess of
6 \$100,000,000,000 annually.

7 (8) Federal and State taxpayers have spent and
8 will continue to spend tens of billions of dollars an-
9 nually paying for the medicare, medicaid, and other
10 Federal and State health program costs arising from
11 tobacco-related illnesses and conditions.

12 (9) The tobacco industry has systematically in-
13 voked and abused the attorney-client privilege to
14 hide its attempts to mislead the American public
15 about the health risks associated with tobacco use,
16 its manipulation of nicotine levels, and its efforts to
17 lure underage users and minorities to its products.

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

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

24 (12) Environmental tobacco smoke is respon-
25 sible for 3,000 lung cancer deaths annually in Amer-

1 ican nonsmokers. Environmental tobacco smoke also
2 harms children's health.

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

8 (14) Tobacco product advertising misleadingly
9 portrays the use of tobacco as socially acceptable
10 and healthful.

11 (15) Tobacco product advertising is regularly
12 seen by persons under the age of 18, and persons
13 under the age of 18 are regularly exposed to tobacco
14 product promotional efforts.

15 (16) Through advertisements during and spon-
16 sorship of sporting events, tobacco has become
17 strongly associated with sports and has become por-
18 trayed as an integral part of sports and the healthy
19 lifestyle associated with rigorous sporting activity.

20 (17) Children are exposed to substantial and
21 unavoidable tobacco advertising, that leads to favor-
22 able beliefs about tobacco use, plays a role in leading
23 young people to overestimate the prevalence of to-
24 bacco use, and increases the number of young people
25 who begin to use tobacco.

1 (18) Tobacco advertising increases the size of
2 the tobacco market by increasing consumption of to-
3 bacco products including increasing tobacco sales to
4 young people.

5 (19) Children are more influenced by tobacco
6 advertising than adults, they smoke the most adver-
7 tised brands, and children as young as 3 to 6 can
8 recognize a character associated with smoking at the
9 same rate that they recognize cartoons and fast food
10 characters.

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

14 (21) Comprehensive advertising restrictions will
15 have a positive effect on the smoking rates of young
16 people, as evidenced by the experience in Norway,
17 Finland, and other countries.

18 (22) Restrictions on advertising are necessary
19 to prevent unrestricted tobacco advertising from un-
20 dermining legislation prohibiting access to young
21 people and providing for education about tobacco
22 use.

23 (23) International experience shows that adver-
24 tising regulations that are stringent and comprehen-
25 sive have a greater impact on overall tobacco use

1 and young people's use than weaker or less com-
2 prehensive ones. Text only requirements, while not
3 as stringent as a ban, will accomplish this purpose
4 while preserving the informational function of adver-
5 tising.

6 **SEC. 3. PURPOSES.**

7 The purposes of this Act are—

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

11 (A) increasing the price of cigarettes by at
12 least \$1.50 per pack in order to discourage
13 youth purchases;

14 (B) implementing prevention, education,
15 cessation, and counter-advertising programs;

16 (C) restricting advertisements designed to
17 encourage kids to use tobacco products;

18 (D) imposing penalties on manufacturers
19 for failing to reach youth smoking rate reduc-
20 tion targets;

21 (E) requiring retailers to comply with laws
22 forbidding sales to minors; and

23 (F) giving the Food and Drug Administra-
24 tion and State and local governments the au-

1 thority and resources to keep tobacco products
2 out of the hands of minors;

3 (2) to compensate taxpayers for their costs at-
4 tributable to tobacco-related illnesses by reimbursing
5 the medicaid and medicare programs and resolving
6 the legal claims of Federal, State and local govern-
7 ments for those costs that resulted from past mis-
8 conduct by the tobacco industry;

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

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

15 (5) to affirm the full authority of the Food and
16 Drug Administration to regulate the manufacture,
17 labeling, sale, distribution, and advertising of to-
18 bacco products to the fullest extent authorized by
19 the commerce clause of the United States Constitu-
20 tion;

21 (6) to make available to the public tobacco in-
22 dustry documents regarding the health effects of to-
23 bacco products, addiction, the agricultural produc-
24 tion of tobacco, the manufacture of tobacco prod-

1 ucts, the distribution of tobacco products, and the
2 marketing of tobacco products to youths; and

3 (7) to enhance global anti-tobacco efforts to
4 minimize the adverse health effects of tobacco prod-
5 ucts.

6 **SEC. 4. DEFINITIONS.**

7 In this Act:

8 (1) BRAND.—The term “brand” means a vari-
9 ety of a tobacco product distinguished by the tobacco
10 used, tar content, nicotine content, flavoring used,
11 size, filtration, or packaging.

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

17 (3) CIGARETTE.—The term “cigarette”
18 means—

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

21 (B) any roll of tobacco wrapped in any
22 substance containing tobacco which, because of
23 its appearance, the type of tobacco used in the
24 filler, or its packaging and labeling, is likely to

1 be offered to, or purchased by, consumers as a
2 cigarette described in subparagraph (A).

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

9 (5) CIGARETTE TOBACCO.—The term “cigarette
10 tobacco” means any product that consists of loose
11 tobacco and is intended for use by persons in a ciga-
12 rette. Unless otherwise stated, the requirements of
13 this Act pertaining to cigarettes shall also apply to
14 cigarette tobacco.

15 (6) DISTRIBUTOR.—The term “distributor”
16 means any person who furthers the distribution of
17 tobacco products, whether domestic or imported, at
18 any point from the original place of manufacture to
19 the person who sells or distributes the product to in-
20 dividuals for personal consumption. Such term shall
21 not include common carriers.

22 (7) LITTLE CIGAR.—The term “little cigar”
23 means any roll of tobacco wrapped in leaf tobacco or
24 any substance containing tobacco (other than any
25 roll of tobacco which is a cigarette within the mean-

1 ing of subsection (1)) and as to which 1,000 units
2 weigh not more than 3 pounds.

3 (8) MANUFACTURER.—The term “manufac-
4 turer” means any person, including any repacker or
5 relabeler, who manufactures, fabricates, assembles,
6 processes, or labels a tobacco product.

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

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

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

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

24 (13) RETAILER.—The term “retailer” means
25 any person who sells tobacco products to individuals

1 for personal consumption, or who operates a facility
2 where vending machines or self-service displays are
3 permitted under this Act.

4 (14) ROLL-YOUR-OWN TOBACCO.—The term
5 “roll-your-own tobacco” means any tobacco which,
6 because of its appearance, type, packaging, or label-
7 ing, is suitable for use and likely to be offered to,
8 or purchased by, consumers as tobacco for making
9 cigarettes.

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

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

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

21 (18) STATE.—The term “State” includes the
22 several States, the District of Columbia, the Com-
23 monwealth of Puerto Rico, Guam, the Virgin Is-
24 lands, American Samoa, the Northern Mariana Is-
25 lands, and any other territory or possession of the

1 United States. Such term includes any political divi-
 2 sion of any State.

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

5 (20) TOBACCO PRODUCT.—The term “tobacco
 6 product” means any product made of or derived
 7 from tobacco leaf for human consumption, including,
 8 but not limited to, cigarettes, cigarillos, cigarette to-
 9 bacco, cigars, little cigars, pipe tobacco, and smoke-
 10 less tobacco, and roll-your-own tobacco.

11 (21) TRUST FUND.—Except as provided in sec-
 12 tion 121 and title IV, the term “Trust Fund” means
 13 the Health Enhancement and Lowered Tobacco
 14 Hazards for Young Kids Trust Fund established
 15 under section 101.

16 **TITLE I—HEALTHY KIDS TRUST** 17 **FUND**

18 **Subtitle A—General Provisions**

19 **SEC. 101. ESTABLISHMENT OF TRUST FUND.**

20 (a) CREATION.—

21 (1) IN GENERAL.—There is established in the
 22 Treasury of the United States a trust fund to be
 23 known as the “Health Enhancement and Lowered
 24 Tobacco Hazards for Young Kids Trust Fund” (re-
 25 ferred to as the “HEALTHY Kids Trust Fund”),

1 consisting of such amounts as may be appropriated
2 or credited to the Trust Fund.

3 (2) TRUSTEES.—The trustees of the Trust
4 Fund shall be the Secretary of the Treasury and the
5 Secretary of Health and Human Services.

6 (b) TRANSFERS.—There are hereby appropriated and
7 transferred to the Trust Fund an amount equal to the
8 initial payment under section 102 and 75 percent of the—

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

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

13 (3) amounts repaid or recovered under title III,
14 including interest thereon.

15 (c) REPAYABLE ADVANCES.—

16 (1) AUTHORIZATION.—There are authorized to
17 be appropriated to the Trust Fund, as repayable ad-
18 vances, such sums as may from time to time be nec-
19 essary to make the expenditures described in sub-
20 section (d).

21 (2) REPAYMENT WITH INTEREST.—Repayable
22 advances made to the Trust Fund shall be repaid,
23 and interest on such advances shall be paid, to the
24 general fund of the Treasury when the Secretary of

1 the Treasury determines that moneys are available
2 in the Trust Fund for such purposes.

3 (3) RATE OF INTEREST.—Interest on advances
4 made pursuant to this subsection shall be at a rate
5 determined by the Secretary of the Treasury (as of
6 the close of the calendar month preceding the month
7 in which the advance is made) to be equal to the
8 current average market yield on outstanding market-
9 able obligations of the United States with remaining
10 period to maturity comparable to the anticipated pe-
11 riod during which the advance will be outstanding.

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

15 (1) 14.5 percent of such amounts shall be made
16 available for payments to States as provided for
17 under section 111.

18 (2) 20 percent of such amounts shall be made
19 available for grants to the States for child care and
20 early childhood development as provided for in sec-
21 tion 131 in the first 5 years and then 17 percent of
22 such amounts shall be made so available for grants
23 to the States.

24 (3) 9 percent of such amounts shall be made
25 available for grants to States for education as pro-

1 vided for in section 132 in the first 5 years and then
2 6 percent of such amounts shall be made so avail-
3 able to grants to States.

4 (4) 4 percent of such amounts shall be made
5 available to carry out the outreach and increased en-
6 rollment provisions under the amendments made by
7 section 133 to the medicaid program under title XIX
8 of the Social Security Act (42 U.S.C. 1396 et seq.)
9 and the children's health insurance program under
10 title XXI of such Act (42 U.S.C. 1397aa et seq.).

11 (5) 15.5 percent of such amounts shall be made
12 available for public health programs, of which—

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

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

20 (C) the remainder shall be made available
21 for public health programs as provided for in
22 title VI.

23 (6) 21 percent of such amounts shall be made
24 available to the National Institutes of Health Trust

1 Fund for Health Research for the conduct of health
2 research as provided for in section 121.

3 (7) For agricultural programs as provided for
4 in title IV—

5 (A) 12 percent of such amounts shall be
6 made available to the Tobacco Transition Trust
7 Fund for each of the first 10 fiscal years after
8 the date of enactment of this Act;

9 (B) 4 percent of such amounts shall be
10 made available to the Tobacco Transition Trust
11 Fund for each of the 11th through 15th fiscal
12 years after the date of enactment of this Act;
13 and

14 (C) 2 percent of such amounts shall be
15 made available to the Tobacco Transition Trust
16 Fund for each of the 16th through 25th fiscal
17 years after the date of enactment of this Act.

18 (8) For the Hospital Insurance Trust Fund—

19 (A) 4 percent of such amounts shall be
20 made available to such Trust Fund for each of
21 the first 10 fiscal years after the date of enact-
22 ment of this Act (less amounts made available
23 under paragraph (9) for the first 3 such fiscal
24 years);

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

5 (C) 9 percent of such amounts shall be
6 made available to such Trust Fund for each of
7 the 16th through 25th fiscal years after the
8 date of enactment of this Act; and

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

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

15 (10) For reducing the debt—

16 (A) 6 percent of such amounts shall be
17 made available for such reduction in each of the
18 6th through 10th fiscal years after the date of
19 enactment of this Act;

20 (B) 10 percent of such amounts shall be
21 made available for such reduction in each of the
22 11th through 15th fiscal years after the date of
23 enactment of this Act;

24 (C) 11 percent of such amounts shall be
25 made available for such reduction in each of the

1 16th through 25th fiscal years after the date of
2 enactment of this Act; and

3 (D) 12 percent of such amounts shall be
4 made available for such reduction in each sub-
5 sequent fiscal year.

6 (e) BUDGETARY TREATMENT AND DEFINITION.—

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

10 (A) by the Office of Management and
11 Budget in the estimates and reports required by
12 sections 252(b) and 254 of the Balanced Budg-
13 et and Emergency Deficit Control Act of 1985;
14 and

15 (B) by the Committee on the Budget of
16 the House of Representatives and the Commit-
17 tee on the Budget of the Senate for purposes of
18 congressional enforcement under section 302(f)
19 and 311(2)(B) of the Congressional Budget Act
20 of 1974 and section 202 of House Concurrent
21 Resolution 67 (104th Congress).

22 (2) DEFINITION.—In subsection (d)(10), the
23 term “debt” means any obligation of the Federal
24 Government included in the debt subject to limit.

1 **SEC. 102. LIABILITY OF TOBACCO PRODUCT MANUFACTUR-**
2 **ERS.**

3 (a) PAYMENTS.—

4 (1) INITIAL PAYMENT.—

5 (A) IN GENERAL.—Not later than 90 days
6 after the date of enactment of this Act, each
7 manufacturer shall pay to the Trust Fund an
8 amount that bears the same ratio to
9 \$16,000,000,000 as the average stock market
10 capitalization of the tobacco manufacturer (as
11 defined in subparagraph (B)) bears to the aver-
12 age stock market capitalization of all tobacco
13 manufacturers for 1996.

14 (B) AVERAGE STOCK MARKET CAPITALIZA-
15 TION.—For purposes of paragraph (1), the av-
16 erage stock market capitalization of a manufac-
17 turer for a year shall be determined by the Sec-
18 retary of the Treasury based on data submitted
19 by manufacturers and other appropriate data.
20 Such determinations shall be made regardless
21 of whether the manufacturer issues stock.

22 (2) SUBSEQUENT PAYMENTS.—

23 (A) with respect to the first fiscal year fol-
24 lowing the year in which the amount is paid
25 under paragraph (1), each manufacturer shall
26 pay to the Trust Fund an amount which bears

1 the same ratio to \$24,330,000,000 as the man-
2 ufacturer's gross receipts from the domestic vol-
3 ume of sales of tobacco products it made during
4 the year for which the payment is made bears
5 to \$24,330,000,000;

6 (B) with respect to the 2d such fiscal year
7 following the year in which the amount is paid
8 under paragraph (1) and each of the next 2
9 succeeding fiscal years, each manufacturer shall
10 pay to the Trust Fund an amount which bears
11 the same ratio to \$26,330,000,000 as the man-
12 ufacturer's gross receipts from the domestic vol-
13 ume of sales of tobacco products it made during
14 the year for which the payment is made bears
15 to \$26,330,000,000;

16 (C) with respect to the 5th fiscal year fol-
17 lowing the year in which the amount is paid
18 under paragraph (1) and each of the next 4
19 succeeding fiscal years, each manufacturer shall
20 pay to the Trust Fund an amount which bears
21 the same ratio to \$27,360,000,000 as the man-
22 ufacturer's gross receipts from the domestic vol-
23 ume of sales of tobacco products it made during
24 the year for which the payment is made bears
25 to \$27,360,000,000;

1 (D) with respect to the 10th fiscal year fol-
2 lowing the year in which the amount is paid
3 under paragraph (1) and each of the next 5
4 succeeding fiscal years, each manufacturer shall
5 pay to the Trust Fund an amount which bears
6 the same ratio to \$29,850,000,000 as the man-
7 ufacturer's gross receipts from the domestic vol-
8 ume of sales of tobacco products it made during
9 the year for which the payment is made bears
10 to \$29,850,000,000;

11 (E) with respect to the 16th fiscal year fol-
12 lowing the year in which the amount is paid
13 under paragraph (1) and each of the next 8
14 succeeding fiscal years, each manufacturer shall
15 pay to the Trust Fund an amount which bears
16 the same ratio to \$29,120,000,000 as the man-
17 ufacturer's gross receipts from the domestic vol-
18 ume of sales of tobacco products it made during
19 the year for which the payment is made bears
20 to \$29,120,000,000;

21 (3) SMALL MANUFACTURERS.—In the case of
22 small cigar, large cigar, snuff, chewing tobacco, pipe
23 tobacco, and roll-your-own tobacco manufacturers,
24 the amount to be paid under paragraph (2) shall be
25 based on one-half of the gross receipts from the do-

1 mestic volume of sales of the tobacco product it
2 made during the year for which the payment is to
3 be made.

4 (4) ANNUAL ASSESSMENTS AND COLLECTION.—

5 For each calendar year beginning with the first full
6 fiscal year following the calendar year in which this
7 Act is enacted, the Secretary shall assess each man-
8 ufacturer an amount determined under this sub-
9 section. Such assessments shall be collected in a
10 manner similar to the manner in which excise taxes
11 are collected under chapter 52 of the Internal Reve-
12 nue Code of 1986.

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

19 (1) such dollar amount (or percentage), multi-
20 plied by

21 (2) the greater of—

22 (A) the medical consumer price percentage
23 increase for such calendar year as determined
24 in the same manner as the adjustment is deter-
25 mined under section 1(f)(3) of the Internal

1 Revenue Code of 1986 for such calendar year
2 by substituting “the second preceding calendar
3 year” for “calendar year 1992” in subpara-
4 graph (B) thereof; or
5 (B) 3 percent.

6 (c) ASSESSMENTS APPLICABLE TO FLOOR
7 STOCKS.—

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

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

17 (B) the prior assessment (if any) imposed
18 under such subsection on such product.

19 (2) LIABILITY FOR ASSESSMENT AND METHOD
20 OF PAYMENT.—

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

1 (B) METHOD OF PAYMENT.—The assess-
 2 ment imposed under paragraph (1) shall be
 3 paid in such manner as the Secretary of the
 4 Treasury shall prescribe by regulations.

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

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

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

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

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

21 (d) NO TAX BENEFIT.—

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

1 Revenue Code of 1986 and shall not be tax deduct-
2 ible.

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

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

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

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

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

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

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

23 (g) HEALTHY KIDS STAMP.—The Secretary shall
24 promulgate regulations to provide that a Healthy Kids

1 Stamp be affixed to each package of a tobacco product
2 for which an assessment has been paid under this section.

3 (h) NONAPPLICATION TO CERTAIN MANUFACTUR-
4 ERS.—

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

8 (A) the payment of an initial payment
9 under subsection (a)(1); and

10 (B) the payment of that portion of the an-
11 nual assessments under this section that will be
12 provided under paragraphs (1) through (4) of
13 section 101(d) to States.

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

1 such other States with the most favorable annual
2 payment terms of its written settlement offers to the
3 settling States.

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

9 **SEC. 103. LICENSING OF MANUFACTURERS.**

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

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

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

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

22 (c) ELIGIBILITY.—A manufacturer or importer shall
23 not be eligible to receive a license under this section if
24 such manufacturer or importer has failed to pay the pay-
25 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.—

5 (A) IN GENERAL.—Except as provided in
6 subparagraph (B), the amount for which a
7 State is eligible under paragraph (1) shall be
8 based on the ratio of the total Federal pay-
9 ments to the State under title XIX of the Social
10 Security Act (42 U.S.C. 1396 et seq.) for the
11 fiscal year involved to the total Federal pay-
12 ments to all States under such title for such fis-
13 cal year.

14 (B) FEDERAL PAYMENT REVISION.—For
15 purposes of subparagraph (A), the Common-
16 wealth of Puerto Rico, Guam, the Virgin Is-
17 lands, the Northern Mariana Islands, and
18 American Samoa shall be treated as having re-
19 ceived Federal payments under title XIX of the
20 Social Security Act (42 U.S.C. 1396 et seq.)
21 without limitation under section 1108(c) of
22 such Act (42 U.S.C.1308(c)).

23 (3) ADJUSTMENT.—With respect to a fiscal
24 year in which the amount determined under para-
25 graphs (1) and (2) of subsection (a) exceeds the lim-

1 itation under subsection (a)(3), the Secretary shall
2 make pro rata reductions in the amounts provided to
3 States under this subsection.

4 (4) REALLOTMENT.—The amount for which a
5 State is eligible under this subsection that is not
6 made available to the State as a result of the failure
7 of the State to meet the requirements of subsection
8 (c) shall be made available to other States on a pro
9 rata basis.

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

12 (A) to reimburse the State for expenses in-
13 curred by the State under the State program
14 under title XIX of the Social Security Act (42
15 U.S.C. 1396 et seq.) relating to the treatment
16 of tobacco-related illnesses or conditions;

17 (B) to reimburse the State for other ex-
18 penses incurred by the State in providing di-
19 rectly, or reimbursing others for the provision
20 of, treatment for tobacco-related illnesses or
21 conditions; and

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

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

1 (1) agree to resolve in accordance with section
2 701 any civil action that has been commenced by the
3 State against a tobacco manufacturer, distributor, or
4 retailer of a tobacco product seeking recovery for ex-
5 penditures attributable to the treatment of tobacco
6 induced illnesses and conditions or other damages;

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

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

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

20 (1) contributions to the program under title
21 XIX of the Social Security Act (42 U.S.C. 1396 et
22 seq.);

23 (2) the provision of indigent care;

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

1 (4) the implementation of tobacco product en-
2 forcement or tobacco product regulatory require-
3 ments in accordance with this Act.

4 (e) REVIEW OF STATE PLANS BY SECRETARY.—The
5 Secretary shall, in accordance with regulations of the Sec-
6 retary, review each State plan submitted in accordance
7 with subsection (c)(2) and shall provide local governments
8 located within each State with an opportunity to comment
9 on the adequacy of the State plan for such State. The
10 Secretary shall not approve any such State plan unless
11 the Secretary makes an explicit written finding that local
12 governmental entities will receive an equitable portion of
13 the funds provided under subsection (a) or (b) of this sec-
14 tion in light of the factors listed in subsection (d).

15 **CHAPTER 2—FEDERAL HEALTH** 16 **PROGRAMS**

17 **SEC. 121. NATIONAL INSTITUTES OF HEALTH TRUST FUND** 18 **FOR HEALTH RESEARCH.**

19 (a) CREATION OF TRUST FUND.—There is estab-
20 lished in the Treasury of the United States a trust fund
21 to be known as the “National Institutes of Health Trust
22 Fund for Health Research” (hereafter referred to in this
23 section as the “Trust Fund”), consisting of such amounts
24 as may be appropriated or transferred to the Trust Fund
25 as provided in this section.

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

5 (c) OBLIGATIONS FROM TRUST FUND.—

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

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

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

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

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

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

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

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

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

21 (G) the remainder of such amounts to
22 member institutes and centers, including the
23 Office of AIDS Research, of the National Insti-
24 tutes of Health in the same proportion to such
25 remainder, as the amount of annual appropria-

1 tions under appropriations Acts for each mem-
2 ber institute and center for the fiscal year bears
3 to the total amount of appropriations under ap-
4 propriations Acts for all member institutes and
5 centers of the National Institutes of Health for
6 the fiscal year.

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

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

22 (4) TRIGGER AND RELEASE OF MONIES AND
23 PHASE-IN.—

24 (A) TRIGGER AND RELEASE.—No expendi-
25 ture shall be made under paragraph (1) during

1 any fiscal year in which the annual amount ap-
2 propriated for the National Institutes of Health
3 under 1 or more appropriations Acts (not in-
4 cluding amounts provided for purposes of this
5 section) is less than the amount so appropriated
6 for the prior fiscal year.

7 (B) PHASE-IN.—The Secretary shall phase
8 in the distributions required under paragraph
9 (1) so that—

10 (i) 25 percent of the amount in the
11 Trust Fund is distributed in the first fiscal
12 year for which funds are available;

13 (ii) 50 percent of the amount in the
14 Trust Fund is distributed in the second
15 fiscal year for which funds are available;

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

19 (iv) 100 percent of the amount in the
20 Trust Fund is distributed in the fourth
21 and each succeeding fiscal year for which
22 funds are available.

**CHAPTER 3—INVESTMENTS FOR
CHILDREN**

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

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

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

(2) Enhancing the quality of child care and early childhood development through the provision of grants to States under the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858 et seq.).

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

(4) Assisting young children by providing grants to local collaboratives under the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858 et seq.) for the purpose of improving parent education and supportive services, strength-

1 ening the quality of child care, improving health
2 services, and improving services for children with
3 disabilities.

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

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

19 **SEC. 132. IMPROVING ELEMENTARY EDUCATION.**

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

1 average class size for students in grades 1 through 3 to
2 not more than 18 students per teacher.

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

9 (1) the use of funds by the State, including the
10 awarding of grants to local educational agencies;

11 (2) teacher preparation and certification; and

12 (3) accountability for improved student achieve-
13 ment.

14 (c) STATE PLAN.—

15 (1) IN GENERAL.—Each State desiring a grant
16 under this section shall submit to the Secretary of
17 Education a State plan at such time, in such man-
18 ner, and accompanied by such information as the
19 Secretary may require.

20 (2) CONTENTS.—Each State plan shall dem-
21 onstrate to the satisfaction of the Secretary of Edu-
22 cation that—

23 (A) the activities assisted by the State with
24 funds made available under this section will be

1 conducted in compliance with any regulations
2 promulgated under subsection (a);

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

12 (C) of the funds that are made available to
13 the State under this section, the State will
14 make available to each local educational agency
15 that serves children in grades 1 through 3 and
16 in which at least 30 percent of the children are
17 from families below the Federal poverty level, at
18 least as great a percentage of such funds as the
19 percentage of funds provided to that local edu-
20 cational agency as compared to other local edu-
21 cational agencies in the State under part A of
22 title I of the Elementary and Secondary Edu-
23 cation Act of 1965.

24 (3) APPROVAL.—The Secretary shall approve a
25 State plan submitted under paragraph (1) if the

1 State plan meets the requirements of this sub-
2 section.

3 (d) ENSURING A QUALIFIED TEACHER IN EVERY
4 CLASSROOM.—To be eligible to receive funds under this
5 Act, each State shall ensure that—

6 (1) not later than the period that begins on the
7 date of enactment of this Act and ends 5 years after
8 such date, and subject to paragraphs (2) and (3),
9 each teacher in a public elementary or secondary
10 school in the State has demonstrated the subject
11 matter knowledge, teaching knowledge, and teaching
12 skill necessary to teach effectively in the content
13 area or areas in which the teacher provides instruc-
14 tion;

15 (2) each teacher in the State for whom the
16 demonstration described in paragraph (1) has been
17 waived temporarily by State or local education agen-
18 cies to respond to emergency teacher shortages or
19 other circumstances shall, not later than 1 year after
20 such waiver, demonstrate the subject matter knowl-
21 edge, teaching knowledge, and teaching skill nec-
22 essary to teach effectively in the content area or
23 areas in which the teacher provides instruction;

24 (3) no student will be taught for more than 1
25 year by an elementary school teacher, or for more

1 than 2 consecutive years in the same subject by a
2 secondary school teacher, who has not made the
3 demonstration described in paragraph (1); and

4 (4) during the period described in paragraph
5 (1), elementary school and secondary school teachers
6 who do not meet the requirements of paragraph (1),
7 are not disproportionately employed in high poverty
8 elementary schools or secondary schools.

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

17 (f) AUTHORITY OF SECRETARY.—In providing funds
18 to States under this section, the Secretary may consider
19 the amount of funds allocated to States under section 111.
20 The Secretary may allocate funds under this section based
21 on the relative need for funds in the various States and
22 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, TANF and
22 Medicaid agencies (and, in the case of
23 TANF, contractors), public housing agen-
24 cies, and contractors that process applica-
25 tions and perform rent recertification func-

1 tions for the public housing and section 8
 2 programs, owners and managers of hous-
 3 ing with project-based section 8 assistance,
 4 or is authorized to determine the eligibility
 5 of a child for obtaining child health assist-
 6 ance under title XXI that is in the form of
 7 coverage that meets the requirements of
 8 section 2103” before the semicolon; and

9 (B) in subparagraph (C), by striking “lim-
 10 iting the classes of” and inserting “imposing
 11 limitations on”.

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

16 (c) MEDICAID EXPENDITURES COUNTED AGAINST
 17 STATE ALLOTMENTS UNDER TITLE XXI.—

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

21 “(d) CERTAIN MEDICAID EXPENDITURES COUNTED
 22 AGAINST INDIVIDUAL STATE ALLOTMENTS.—The amount
 23 of the allotment otherwise provided to a State under sub-
 24 section (b) or (c) for a fiscal year shall be reduced by the
 25 amount (if any) of the payments made to that State under

1 section 1903(a) for expenditures claimed by the State dur-
 2 ing such fiscal year that is attributable to the provision
 3 of medical assistance to a child for which payment is made
 4 under section 1903(a)(1) on the basis of an enhanced
 5 FMAP under the fourth sentence of section 1905(b).”.

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

10 (d) OPTIONAL MEDICAID AND STATE CHILDREN’S
 11 HEALTH INSURANCE PROGRAM ELIGIBILITY FOR LAW-
 12 FULLY PRESENT ALIEN CHILDREN.—

13 (1) ESTABLISHMENT OF OPTIONAL MEDICAID
 14 ELIGIBILITY CATEGORY.—Section
 15 1902(a)(10)(A)(ii) of the Social Security Act (42
 16 U.S.C. 1396a(a)(10)(A)(ii)) is amended—

17 (A) in subclause (XIII), by striking “or”
 18 at the end;

19 (B) in subclause (XIV), by adding “or” at
 20 the end; and

21 (C) by adding after subclause (XIV) the
 22 following:

23 “(XV) who are children lawfully
 24 present in the United States and eligi-
 25 ble under clause (i) of this subpara-

1 graph or under any subclause of this
 2 clause but for title IV of the Personal
 3 Responsibility and Work Opportuni-
 4 ties Reconciliation Act of 1996 (8
 5 U.S.C. 1601 et seq.);”.

6 (2) APPLICABILITY OF TITLE IV OF THE PER-
 7 SONAL RESPONSIBILITY AND WORK OPPORTUNITIES
 8 RECONCILIATION ACT OF 1996.—Section 1902(l) of
 9 the Social Security Act (42 U.S.C. 1396a(l)) is
 10 amended by adding after paragraph (4) the follow-
 11 ing:

12 “(5) In the case of any State that is providing medi-
 13 cal assistance to children described in section
 14 1902(a)(10)(A)(ii)(XV), title IV of the Personal Respon-
 15 sibility and Work Opportunities Reconciliation Act of
 16 1996 shall not apply to such children.”.

17 (3) ESTABLISHMENT OF OPTIONAL ELIGIBILITY
 18 CATEGORY.—Section 2110(b) of the Social Security
 19 Act, as created by section 4901 of the Balanced
 20 Budget Act of 1997 (P.L. 105–33) is amended by
 21 adding after paragraph (4) the following:

22 “(5) CHILDREN INCLUDED AT STATE OP-
 23 TION.—For States electing to provide medical assist-
 24 ance under title XIX to children described in section
 25 1902(a)(10)(A)(ii)(XV), at State option the term

1 ‘targeted low-income child’ may include children law-
 2 fully present in the United States notwithstanding
 3 title IV of the Personal Responsibility and Work Op-
 4 portunities Reconciliation Act of 1996. For States
 5 electing this option, the provisions of such title IV
 6 shall not apply to such children.”.

7 (3) RETROACTIVITY.—The amendments made
 8 by paragraphs (1), (2), and (3) take effect as if in-
 9 cluded in the enactment of the Balanced Budget Act
 10 of 1997 (Public Law 105–33; 111 Stat. 251).

11 (e) AUTHORIZING INCREASE IN FEDERAL MEDICAL
 12 ASSISTANCE PERCENTAGE TO REWARD STATES FOR EN-
 13 ROLLING ELIGIBLE, BUT OTHERWISE UNENROLLED,
 14 CHILDREN UNDER MEDICAID PLANS.—Section 1903 of
 15 the Social Security Act (42 U.S.C. 1396b) is amended—

16 (1) in subsection (a), by striking “and (j)” and
 17 inserting “, (j), and (x)(2)”; and

18 (2) by adding at the end the following new sub-
 19 section:

20 “(x) AUTHORIZING INCREASE IN FEDERAL MEDICAL
 21 ASSISTANCE PERCENTAGE TO REWARD STATES FOR EN-
 22 ROLLING ELIGIBLE, BUT OTHERWISE UNENROLLED,
 23 CHILDREN UNDER MEDICAID PLANS.—

24 “(1) ESTABLISHMENT OF MECHANISM.—The
 25 Secretary shall establish a mechanism to recognize a

1 State’s above average performance in conducting
2 outreach activities and enrolling children who are eli-
3 gible, but would not otherwise be enrolled, under
4 this title. In determining whether a State has an
5 above average performance for purposes of this sub-
6 section, the Secretary shall take into account—

7 “(A) the State’s enrollment of children in
8 families described in sections 1925 and
9 1931(b);

10 “(B) the State’s implementation of the
11 presumptive eligibility provisions described in
12 section 1920A;

13 “(C) the State’s implementation of a
14 streamlined eligibility and enrollment process
15 for children; and

16 “(D) the State’s implementation of the 12-
17 month continuous eligibility option described in
18 section 1902(e)(12).

19 “(2) AUTHORIZING INCREASED FMAP FOR MED-
20 ICAL ASSISTANCE FOR CHILDREN.—Under such
21 mechanism, if the Secretary determines that a State
22 has an above average performance with respect to
23 such activities and enrollment, subject to paragraph
24 (3), the Secretary may increase the Federal medical
25 assistance percentage otherwise applicable under

1 subsection (a)(1), with respect to some or all ex-
 2 penditures for medical assistance for some or all
 3 children enrolled under the plan, to a percentage not
 4 to exceed the enhanced FMAP described in section
 5 2105(b) for the State and fiscal year involved.

6 “(3) LIMITATION ON AGGREGATE PAYMENTS.—
 7 The aggregate amount to be paid to all States for
 8 a fiscal year under this section as a result of this
 9 subsection shall not exceed the amount provided
 10 under section 101(d)(4) of the Healthy Kids Act for
 11 such fiscal year (less aggregate amounts paid to
 12 States for the fiscal year under the amendments
 13 made by subsections (a) through (d) of section 133
 14 of such Act).

15 “(4) INFORMATION.—As a condition of provid-
 16 ing for an increase in payments to a State under
 17 this subsection, the Secretary may require the State
 18 to provide (or provide access to) such information as
 19 the Secretary may require to carry out the mecha-
 20 nism established under paragraph (1).”.

21 **SEC. 134. MEDICARE CANCER PATIENT DEMONSTRATION**
 22 **PROJECT; EVALUATION AND REPORT TO**
 23 **CONGRESS.**

24 (a) ESTABLISHMENT.—The Secretary shall establish
 25 a 3-year demonstration project which provides for pay-

1 ment under the medicare program under title XVIII of
2 the Social Security Act (42 U.S.C. 1395 et seq.) of routine
3 patient care costs—

4 (1) which are provided to an individual diag-
5 nosed with cancer and enrolled in the medicare pro-
6 gram under such title as part of the individual's par-
7 ticipation in an approved clinical trial program; and

8 (2) which are not otherwise eligible for payment
9 under such title for individuals who are entitled to
10 benefits under such title.

11 (b) APPLICATION.—The beneficiary cost sharing pro-
12 visions under the medicare program, such as deductibles,
13 coinsurance, and copayment amounts, shall apply to any
14 individual participating in a demonstration project con-
15 ducted under this section.

16 (c) APPROVED CLINICAL TRIAL PROGRAM.—

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

20 (A) the National Institutes of Health;

21 (B) a National Institutes of Health cooper-
22 ative group or a National Institutes of Health
23 center; and

24 (C) the National Cancer Institute, with re-
25 spect to programs that oversee and coordinate

1 extramural clinical cancer research, trials spon-
2 sored by such Institute and conducted at des-
3 ignated cancer centers, clinical trials, and Insti-
4 tute grants that support clinical investigators.

5 (2) MODIFICATIONS IN APPROVED TRAILS.—

6 Beginning 1 year after the date of enactment of this
7 Act, the Secretary, in consultation with the Cancer
8 Policy Board of the Institute of Medicine, may mod-
9 ify or add to the requirements of paragraph (1) with
10 respect to an approved clinical trial program.

11 (d) ROUTINE PATIENT CARE COSTS.—

12 (1) IN GENERAL.—For purposes of this section,
13 “routine patient care costs” shall include the costs
14 associated with the provision of items and services
15 that—

16 (A) would otherwise be covered under the
17 medicare program if such items and services
18 were not provided in connection with an ap-
19 proved clinical trial program; and

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

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

1 (A) an investigational drug or device, un-
2 less the Secretary has authorized the manufac-
3 turer of such drug or device to charge for such
4 drug or device; or

5 (B) any item or service supplied without
6 charge by the sponsor of the approved clinical
7 trial program.

8 (e) STUDY.—The Secretary shall study the impact on
9 the medicare program under title XVIII of the Social Se-
10 curity Act of covering routine patient care costs for indi-
11 viduals with a diagnosis of cancer and other diagnoses,
12 who are entitled to benefits under such title and who are
13 enrolled in an approved clinical trial program.

14 (f) REPORT TO CONGRESS.—Not later than 30
15 months after the date of enactment of this Act, the Sec-
16 retary shall submit a report to Congress that contains a
17 detailed description of the results of the study conducted
18 under subsection (e) including recommendations regarding
19 the extension and expansion of the demonstration project
20 conducted under this section.

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

1 **TITLE II—FDA JURISDICTION**
2 **OVER TOBACCO PRODUCTS**

3 **SEC. 201. REFERENCE.**

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

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

10 The regulations promulgated by the Secretary in the
11 rule dated August 28, 1996 (Vol. 61, No. 168 C.F.R.),
12 adding part 897 to title 21, Code of Federal Regulations,
13 shall be deemed to have been promulgated under the Food,
14 Drug and Cosmetic Act as amended by this title.

15 **SEC. 203. TREATMENT OF TOBACCO PRODUCTS AS DRUGS**
16 **AND DEVICES.**

17 (a) DEFINITIONS.—

18 (1) DRUG.—Section 201(g)(1) (21 U.S.C.
19 321(g)(1)) is amended by striking “; and (D)” and
20 inserting “; (D) nicotine in tobacco products; and
21 (E)”.

22 (2) DEVICES.—Section 201(h) (21 U.S.C.
23 321(h)) is amended—

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

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

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

5 “(4) a delivery component of a tobacco product;
6 and”.

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

10 “(kk) The term ‘tobacco product’ means any product
11 made or derived from tobacco leaf made for human con-
12 sumption including, but not limited to, cigarettes,
13 cigarillos, cigarette tobacco, cigars, little cigars, pipe to-
14 bacco, and smokeless tobacco, and roll-your-own tobacco.”.

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

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

22 (c) DEVICES.—Section 520(e)(1) (21 U.S.C.
23 360j(e)(1)) is amended by striking “or use—” and insert-
24 ing “or use, including restrictions on the access to, and
25 the advertising and promotion of, tobacco products—”.

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

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

6 “(v) The regulations promulgated in accordance with
7 subchapter F shall, at a minimum, require that a tobacco
8 product be deemed to be misbranded if the labeling of the
9 package of the product, or any claim of the manufacturer
10 in connection with the product, states or implies (as deter-
11 mined by the Secretary) that the product presents a re-
12 duced health risk unless it is demonstrated to the satisfac-
13 tion of the Secretary that the product will achieve the best
14 public health result, taking into account all relevant fac-
15 tors including, but not limited to, the probability of the
16 increased number of new users of tobacco products and
17 the reduced probability that existing users of tobacco
18 products will quit.”.

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

21 “(aa) The failure to comply with the requirements of
22 section 581.

23 “(bb) The failure or refusal to comply with any of
24 the requirements of subsections (a), (b) or (e) of section
25 578.”.

1 (f) STATE AND LOCAL REQUIREMENTS.—Section
 2 521 (21 U.S.C. 360k) is amended—

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

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

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

8 **SEC. 204. SAFETY AND EFFICACY STANDARD AND RECALL**
 9 **AUTHORITY.**

10 (a) SAFETY AND EFFICACY STANDARD.—Section
 11 513(a) (21 U.S.C. 360c(a)) is amended—

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

18 (2) in paragraph (2)—

19 (A) by redesignating subparagraphs (A),
 20 (B) and (C) as clauses (i), (ii) and (iii), respec-
 21 tively;

22 (B) by striking “(2) For” and inserting
 23 “(2)(A) For”; and

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

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

12 “(i) the increased or decreased likelihood that
13 existing consumers of tobacco products will stop
14 using such products; and

15 “(ii) the increased or decreased likelihood that
16 those who do not use tobacco products will start
17 using such products.”.

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

1 **SEC. 205. GENERAL HEALTH AND SAFETY REGULATION OF**
2 **TOBACCO PRODUCTS.**

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

5 “SUBCHAPTER F—TOBACCO PRODUCTS

6 **“SEC. 571. PROMULGATION OF REGULATIONS.**

7 “Any regulations necessary to implement this sub-
8 chapter shall be promulgated not later than 12 months
9 after the date of enactment of this subchapter using notice
10 and comment rulemaking (in accordance with chapter 5
11 of title 5, United States Code). Such regulations may be
12 revised thereafter as determined necessary by the Sec-
13 retary.

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

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

19 “(b) MEMBERSHIP.—

20 “(1) IN GENERAL.—The Secretary shall appoint
21 as members of the Scientific Advisory Committee
22 any individuals with expertise in the medical, sci-
23 entific, or other technological data involving the
24 manufacture and use of tobacco products, and of ap-
25 propriately diversified professional backgrounds.

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

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

7 “(B) is, or is in the employ of, a manufac-
8 turer, distributor, or retailer of a tobacco prod-
9 uct, or organization substantially funded by
10 manufacturers, distributors, or retailers of to-
11 bacco products;

12 “(C) is, or is in the employ of, an attorney
13 representing an entity described in subpara-
14 graph (B); or

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

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

21 “(c) COMPENSATION AND EXPENSES.—Members of
22 the Scientific Advisory Committee shall be entitled to the
23 same compensation and expenses as the compensation and
24 expenses provided to members of the advisory committees
25 established under section 514(b)(5)(B).

1 “(d) DUTIES.—The Scientific Advisory Committee
2 shall—

3 “(1) provide assistance to the Secretary;

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

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

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

13 **“SEC. 573. PERFORMANCE STANDARDS.**

14 “(a) GENERAL RULE.—The Secretary may adopt a
15 performance standard under section 514(a)(2) for a to-
16 bacco product regardless of whether the product has been
17 classified under section 513. Such standards may in-
18 clude—

19 “(1) the reduction or elimination of nicotine
20 yields of the product;

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

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

1 “(b) TOBACCO CONSTITUENTS.—The Secretary may
 2 require that a manufacturer test, report and disclose to-
 3 bacco and tobacco smoke constituents, including labeling
 4 and advertising disclosures relating to such constituents,
 5 including, but not limited to, tar and nicotine.

6 **“SEC. 574. DISCLOSURE AND REPORTING OF TOBACCO AND**
 7 **NONTOBACCO INGREDIENTS AND CONSTITU-**
 8 **ENTS.**

9 “(a) DISCLOSURE OF ALL INGREDIENTS.—

10 “(1) IMMEDIATE AND ANNUAL DISCLOSURE.—
 11 Not later than 30 days after the date of enactment
 12 of this subchapter, and annually thereafter, each
 13 manufacturer of a tobacco product shall submit to
 14 the Secretary an ingredient list for each brand of to-
 15 bacco product it manufactures that contains the in-
 16 formation described in paragraph (2).

17 “(2) REQUIREMENTS.—The list described in
 18 paragraph (1) shall, with respect to each brand or
 19 variety of tobacco product of a manufacturer, in-
 20 clude—

21 “(A) a list of all ingredients, constituents,
 22 substances, and compounds that are found in or
 23 added to the tobacco or tobacco product (in-
 24 cluding the paper, filter, or packaging of the
 25 product if applicable) in the manufacture of the

1 tobacco product, for each brand or variety of to-
2 bacco product so manufactured, including, if
3 determined necessary by the Secretary, any ma-
4 terial added to the tobacco used in the product
5 prior to harvesting;

6 “(B) the quantity of the ingredients, con-
7 stituents, substances, and compounds that are
8 listed under subparagraph (A) in each brand or
9 variety of tobacco product;

10 “(C) the nicotine content of the product,
11 measured in milligrams of nicotine;

12 “(D) for each brand or variety of ciga-
13 rettes—

14 “(i) the filter ventilation percentage
15 (the level of air dilution in the cigarette as
16 provided by the ventilation holes in the fil-
17 ter, described as a percentage);

18 “(ii) the pH level of the smoke of the
19 cigarette; and

20 “(iii) the tar, nicotine, and carbon
21 monoxide delivery level under Federal
22 Trade Commission parameters and any
23 other smoking conditions established by
24 the Secretary, reported in milligrams of

1 tar, nicotine, and carbon monoxide per cig-
2 arette;

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

5 “(i) the pH level of the tobacco;

6 “(ii) the moisture content of the to-
7 bacco expressed as a percentage of the
8 weight of the tobacco; and

9 “(iii) the nicotine content—

10 “(I) for each gram of the prod-
11 uct, measured in milligrams of nico-
12 tine;

13 “(II) expressed as a percentage
14 of the dry weight of the tobacco; and

15 “(III) with respect to unionized
16 (free) nicotine, expressed as a percent-
17 age per gram of the tobacco and ex-
18 pressed in milligrams per gram of the
19 tobacco; and

20 “(F) any other information determined ap-
21 propriate by the Secretary.

22 “(3) METHODS.—The Secretary shall have the
23 authority to promulgate regulations to establish the
24 methods to be used by manufacturers in making the
25 determinations required under paragraph (2).

1 “(b) SAFETY ASSESSMENTS.—

2 “(1) APPLICATION TO NEW INGREDIENTS.—

3 “(A) IN GENERAL.—Not later than 1 year
4 after the date of enactment of this subchapter,
5 and annually thereafter, each manufacturer
6 shall submit to the Secretary a safety assess-
7 ment for each new ingredient, constituent, sub-
8 stance, or compound that such manufacturer
9 desires to make a part of a tobacco product.
10 Such new ingredient, constituent, substance, or
11 compound shall not be included in a tobacco
12 product prior to approval by the Secretary of
13 such a safety assessment.

14 “(B) METHOD OF FILING.—A safety as-
15 sessment submitted under subparagraph (A)
16 shall be signed by an officer of the manufac-
17 turer who is acting on behalf of the manufac-
18 turer and who has the authority to bind the
19 manufacturer, and contain a statement that en-
20 sures that the information contained in the as-
21 sessment is true, complete and accurate.

22 “(C) DEFINITION OF NEW INGREDIENT.—
23 For purposes of subparagraph (A), the term
24 ‘new ingredient, constituent, substance, or com-
25 pound’ means an ingredient, constituent, sub-

1 stance, or compound listed under subsection
2 (a)(1) that was not used in the brand or variety
3 of tobacco product involved prior to January 1,
4 1998.

5 “(2) APPLICATION TO OTHER INGREDIENTS.—

6 With respect to the application of this section to in-
7 gredients, constituents, substances, or compounds
8 listed under subsection (a) to which paragraph (1)
9 does not apply, all such ingredients, constituents,
10 substances, or compounds shall be reviewed through
11 the safety assessment process within the 5-year pe-
12 riod beginning on the date of enactment of this sub-
13 chapter. The Secretary shall develop a procedure for
14 the submission of safety assessments of such ingre-
15 dients, constituents, substances, or compounds that
16 staggers such safety assessments within the 5-year
17 period.

18 “(3) BASIS OF ASSESSMENT.—The safety as-
19 sessment of an ingredient, constituents, substance,
20 or compound described in paragraphs (1) and (2)
21 shall—

22 “(A) be based on the best scientific evi-
23 dence available at the time of the submission of
24 the assessment; and

1 “(B) demonstrate that there is a reason-
2 able certainty among experts qualified by sci-
3 entific training and experience who are con-
4 sulted, that the ingredient, constituents, sub-
5 stance, or compound will not present any risk
6 to consumers or the public in the quantities
7 used under the intended conditions of use.

8 “(c) PROHIBITION.—

9 “(1) REGULATIONS.—Not later than 12 months
10 after the date of enactment of this subchapter, the
11 Secretary shall promulgate regulations to prohibit
12 the use of any ingredient, constituent, substance, or
13 compound in the tobacco product of a manufac-
14 turer—

15 “(A) if no safety assessment has been sub-
16 mitted by the manufacturer for the ingredient,
17 constituent, substance, or compound as other-
18 wise required under this section; or

19 “(B) if the Secretary finds that the manu-
20 facturer has failed to demonstrate the safety of
21 the ingredient, constituent, substance, or com-
22 pound that was the subject of the assessment
23 under paragraph (2).

24 “(2) REVIEW OF ASSESSMENTS.—

1 “(A) GENERAL REVIEW.—Not later than
2 180 days after the receipt of a safety assess-
3 ment under subsection (b), the Secretary shall
4 review the findings contained in such assess-
5 ment and approve or disapprove of the safety of
6 the ingredient, constituents, substance, or com-
7 pound that was the subject of the assessment.
8 The Secretary may, for good cause, extend the
9 period for such review. The Secretary shall pro-
10 vide notice to the manufacturer of an action
11 under this subparagraph.

12 “(B) INACTION BY SECRETARY.—If the
13 Secretary fails to act with respect to an assess-
14 ment of an existing ingredient, constituent, sub-
15 stance, or additive during the period referred to
16 in subparagraph (A), the manufacturer of the
17 tobacco product involved may continue to use
18 the ingredient, constituents, substance, or com-
19 pound involved until such time as the Secretary
20 makes a determination with respect to the as-
21 sessment.

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

24 “(1) IN GENERAL.—Except as provided in para-
25 graph (3), a package of a tobacco product shall dis-

1 close all ingredients, constituents, substances, or
2 compounds contained in the product in accordance
3 with regulations promulgated under section 701(a)
4 by the Secretary.

5 “(2) DISCLOSURE OF PERCENTAGE OF DOMES-
6 TIC AND FOREIGN TOBACCO.—The regulations re-
7 ferred to in paragraph (1) shall require that the
8 package of a tobacco product disclose, with respect
9 to the tobacco contained in the product—

10 “(A) the percentage that is domestic to-
11 bacco; and

12 “(B) the percentage that is foreign to-
13 bacco.

14 “(3) HEALTH DISCLOSURE.—Notwithstanding
15 section 301(j), the Secretary may require the public
16 disclosure of any ingredient, constituent, substance,
17 or compound contained in a tobacco product that re-
18 lates to a trade secret or other matter referred to in
19 section 1905 of title 18, United States Code, if the
20 Secretary determines that such disclosure will pro-
21 mote the public health.

22 **“SEC. 575. TOBACCO PRODUCT WARNINGS, LABELING AND**
23 **PACKAGING.**

24 “(a) CIGARETTE WARNINGS.—

25 “(1) IN GENERAL.—

1 “(A) PACKAGING.—It shall be unlawful for
2 any person to manufacture, package, or import
3 for sale or distribution any cigarettes the pack-
4 age of which fails to bear, in accordance with
5 the requirements of this subsection, one of the
6 following labels:

7 “WARNING: Cigarettes Are Addictive.

8 “WARNING: Tobacco Smoke Can Harm
9 Your Children.

10 “WARNING: Cigarettes Cause Fatal Lung
11 Disease.

12 “WARNING: Cigarettes Cause Cancer.

13 “WARNING: Cigarettes Cause Strokes
14 And Heart Disease.

15 “WARNING: Smoking During Pregnancy
16 Can Harm Your Baby.

17 “WARNING: Smoking Can Kill You.

18 “WARNING: Tobacco Smoke Causes
19 Fatal Lung Disease In Nonsmokers.

20 “WARNING: Quitting Smoking Now
21 Greatly Reduces Serious Risks To Your
22 Health.

23 “(B) ADVERTISING.—It shall be unlawful
24 for any manufacturer, importer, distributor or
25 retailer of cigarettes to advertise or cause to be

1 advertised any cigarette unless the advertising
2 bears, in accordance with the requirements of
3 this subsection, one of the following labels:

4 “WARNING: Cigarettes Are Addictive.

5 “WARNING: Tobacco Smoke Can Harm
6 Your Children.

7 “WARNING: Cigarettes Cause Fatal Lung
8 Disease.

9 “WARNING: Cigarettes Cause Cancer.

10 “WARNING: Cigarettes Cause Strokes
11 And Heart Disease.

12 “WARNING: Smoking During Pregnancy
13 Can Harm Your Baby.

14 “WARNING: Smoking Can Kill You.

15 “WARNING: Tobacco Smoke Causes
16 Fatal Lung Disease In Nonsmokers.

17 “WARNING: Quitting Smoking Now
18 Greatly Reduces Serious Risks To Your
19 Health.

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

1 that such warnings would be more effective in
2 detering the use of cigarettes.

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 upper portion of the
7 front and rear panels of the cigarette package
8 (or carton) directly on the package underneath
9 the cellophane or other clear wrapping and oc-
10 cupy not less than 25 percent of such panels.

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

1 “(C) EXCEPTION.—With respect to ciga-
2 rettes manufactured and distributed prior to
3 January 1, 2000, the provisions of subpara-
4 graph (A) shall not apply with respect to the
5 front panel in the case of a flip-top cigarette
6 package (offered for sale on June 1, 1997)
7 where the front portion of the flip-top does not
8 comprise at least 25 percent of the front panel.
9 In the case of such a package, the label state-
10 ment required by subparagraph (A) of para-
11 graph (1) shall occupy the entire front portion
12 of the flip-top.

 “(D) SYMBOLS.—The Secretary shall des-
ignate or create symbols to represent the con-
tent of the warnings required under subpara-
graphs (A) and (B) and shall publish them in
the Federal Register. Each warning required by
subparagraphs (A) and (B) shall include the
symbol designated or created by the Secretary
for such warning within 180 days of publication
of the symbol in the Federal Register.

13 “(3) REQUIREMENTS FOR ADVERTISING.—

14 “(A) LOCATION.—Each label statement re-
15 quired by subparagraph (B) of paragraph (1)
16 shall appear in a conspicuous and prominent

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

5 “(B) TYPE, COLOR AND FORMAT.—

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

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

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

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

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

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

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

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

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

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

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

23 “(iii) FORMAT.—The label statements
24 under subparagraph (B) of paragraph (1)
25 shall be black when the background is

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

10 “(C) LANGUAGE REQUIREMENT.—The
11 label statements required under paragraph
12 (1)(B) shall be in English, except that—

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

19 “(ii) in the case of any other adver-
20 tisement that is not in English, such state-
21 ments shall appear in the same language
22 as that principally used in the advertise-
23 ment.

24 “(4) ROTATION OF LABEL STATEMENTS.—

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

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

18 “(C) APPROVAL OF PLANS.—The Sec-
19 retary shall review each plan submitted by a
20 manufacturer, importer, distributor or retailer
21 of cigarettes under this paragraph and approve
22 such plan if the plan will provide for the equal
23 distribution and display on packaging and the
24 rotation required in advertising under this para-
25 graph and if such plan assures that all of the

1 labels required under subparagraphs (A) and
2 (B) will be displayed by the manufacturer, im-
3 porter, distributor or retailer at the same time.

4 “(b) SMOKELESS TOBACCO PRODUCTS.—

5 “(1) IN GENERAL.—

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

12 “WARNING: This Product Can Cause
13 Mouth Cancer.

14 “WARNING: This Product Can Kill You.

15 “WARNING: This Product Can Cause
16 Gum Disease And Tooth Loss.

17 “WARNING: This Product Is Not A Safe
18 Alternative To Cigarettes.

19 “WARNING: This Product Contains Can-
20 cer-Causing Chemicals.

21 “WARNING: Smokeless Tobacco Is Ad-
22 dictive.

23 “(B) ADVERTISING.—It shall be unlawful
24 for any manufacturer, importer, distributor or
25 retailer of smokeless tobacco products to adver-

tise or cause to be advertised any smokeless tobacco product unless the advertising bears, in accordance with the requirements of this subsection, one of the following labels:

“WARNING: This Product Can Cause Mouth Cancer.

“WARNING: This Product Can Kill You.

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

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

“WARNING: This Product Contains Cancer-Causing Chemicals.

“WARNING: Smokeless Tobacco Is Addictive.

“(C) ADDITIONAL WARNINGS.—Beginning on the date that is 18 months after the date of enactment of this subchapter, the Secretary may substitute for, or require warnings in addition to, those otherwise required under subparagraphs (A) and (B) if the Secretary determines that such warnings would be more effective in deterring the use of smokeless tobacco products.

“(2) REQUIREMENTS FOR LABELING.—

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

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

20 “(3) ADVERTISING AND ROTATION.—The provi-
21 sions of paragraphs (3) and (4) of subsection (a)
22 shall apply to advertisements for smokeless tobacco
23 products and the rotation of the label statements re-
24 quired under paragraph (1)(A) on such products.

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

5 “(d) CONSTRUCTION.—

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

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

22 “(e) LIMITED PREEMPTION.—

23 “(1) STATE AND LOCAL ACTION.—No warning
24 label with respect to cigarettes or smokeless tobacco
25 products, or any other tobacco product for which

1 warning labels have been required under this section,
2 other than the warning labels required under this
3 Act, shall be required by any State or local statute
4 or regulation to be included on any package of ciga-
5 rettes or a smokeless tobacco product.

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

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

14 **“SEC. 576. PRESERVATION OF STATE AND LOCAL AUTHOR-**
15 **ITY.**

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

1 **“SEC. 577. RESTRICTIONS ON YOUTH ACCESS TO TOBACCO**
2 **PRODUCTS.**

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

5 “(b) STATE LICENSING.—

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

16 “(2) START-UP PERIOD.—

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

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

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

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

20 “(B) prohibit retailers from selling or oth-
21 erwise distributing tobacco products directly to
22 consumers in a State unless such retailers have
23 in effect tobacco licenses issued or renewed in
24 accordance with State or local laws;

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

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

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

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

20 “(G) provide for the suspension or revoca-
21 tion of a license in the case of a retailer that
22 repeatedly sells or distributes tobacco products
23 to individuals in violation of subsection (a) or
24 State or local law.

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

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

11 “(A) \$25 for the 1st violation;

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

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

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

22 “(3) RETAILERS.—In the case of a retailer who
23 distributes a tobacco product to a minor in violation
24 of subsection (a), the regulations shall provide for
25 the application of a civil money penalty of at least—

1 “(A) \$250 for the 1st violation;
2 “(B) \$500 for the 2nd violation;
3 “(C) \$1,500 for the 3rd violation;
4 “(D) \$5,000 for the 4th violation; and
5 “(E) \$10,000 for the 5th and subsequent
6 violations.

7 “(d) ENFORCEMENT.—

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

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

1 “(3) VIOLATIONS.—If the Secretary determines
2 that the provisions of subsection (a) are being vio-
3 lated within a State, the Secretary shall have the au-
4 thority to enforce such provisions in the State.

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

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

18 “(g) FEDERAL LICENSING OF ENTITIES.—

19 “(1) IN GENERAL.—The Secretary, in consulta-
20 tion with the Secretary of Defense, Secretary of
21 State, and other appropriate Federal officials, shall
22 establish and implement a Federal tobacco licensing
23 program to be applied to entities that sell or distrib-
24 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. Any authority granted to the Secretary for reg-
12 ulation of any tobacco product as a drug, device, or com-
13 bination is not intended to include the authority to pro-
14 mulgate regulations that apply to any person engaged in
15 the growing, cultivation, or curing of raw tobacco. This
16 section shall not be construed to limit the regulatory re-
17 quirements that may be imposed on producers who are
18 also manufacturers under this Act.

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

20 “To carry out this subchapter, the Secretary may
21 hold hearings, administer oaths, issue subpoenas, require
22 the testimony or deposition of witnesses, the production
23 of documents, or the answering of interrogatories, or,
24 upon presentation of the proper credentials, enter and in-
25 spect facilities. In the case of a refusal of a person to obey

1 a subpoena, any district court of the United States for
2 the district in which such person is found, resides or con-
3 ducts business, upon application by the Commissioner,
4 shall have jurisdiction to issue an order requiring such
5 person to appear and give testimony or to appear and
6 produce evidence or both. The failure to obey such an
7 order of the court may be punished by the court as con-
8 tempt thereof, and by penalties of up to \$25,000 per
9 day.”.

10 **SEC. 206. REPEALS.**

11 The following provisions of law shall be repealed:

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

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

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

18 Nothing in this title, or an amendment made by this
19 title, shall be construed to in any way reduce the jurisdic-
20 tion of the Federal Trade Commission over the advertising
21 of tobacco products.

1 **TITLE III—YOUTH SMOKING RE-**
2 **DUCTION TARGETS AND IN-**
3 **CENTIVES TO REDUCE YOUTH**
4 **SMOKING RATES**

5 **SEC. 301. PURPOSE.**

6 It is the purpose of this title to encourage the achieve-
7 ment of reductions in the proportion of underage consum-
8 ers of tobacco products through the imposition of addi-
9 tional financial deterrents relating to tobacco products if
10 certain underage tobacco-use reduction targets are not
11 met.

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

13 (a) **ANNUAL PERFORMANCE SURVEY.**—Not later
14 than 1 year after the date of the enactment of this Act
15 and annually thereafter the Secretary shall conduct a sur-
16 vey to determine, in accordance with subsection (b), the
17 percentage of all individuals under 18 years of age who
18 identify each manufacturer's tobacco product as the usual
19 tobacco product smoked or used within the past 30 days
20 and the percentage of each ethnic group of such individ-
21 uals who identify each manufacturer's tobacco product as
22 the usual tobacco product smoked or used within the past
23 30 days.

24 (b) **EXCLUSION OF CERTAIN AGES.**—The Secretary
25 shall exclude from the survey conducted under subsection

1 (a), children under the age of 12 years (or such other less-
2 er age as the Secretary may establish to strengthen the
3 validity of the survey).

4 (c) BASELINE LEVEL.—The baseline level of tobacco
5 product use with respect to a manufacturer is the percent-
6 age of each ethnic group of individuals under 18 years
7 of age determined to have used any tobacco product of
8 such manufacturer in the first annual performance survey
9 for 1999.

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

19 (e) ADMINISTRATION.—

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

24 (2) TECHNICAL ADJUSTMENTS.—The Secretary
25 may make technical changes in the manner in which

1 the surveys are conducted so long as adjustments
2 are made to ensure that the results of the surveys
3 are comparable from year to year.

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

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

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

17 (1) with respect to cigarette products, the per-
18 centage prevalence of the use of a manufacturer's
19 tobacco products by each ethnic group of individuals
20 who are under 18 years of age (as determined under
21 section 302(a)) for the year involved as compared to
22 the baseline level for the manufacturer (as deter-
23 mined under section 302(c)); and

24 (2) with respect to smokeless tobacco products,
25 the percentage prevalence of the use of a manufac-

1 turer's smokeless tobacco products by each ethnic
2 group of individuals who are under 18 years of age
3 (as determined under section 302(a)) for the year
4 involved as compared to the baseline level for the
5 manufacturer (as determined under section 302(c)).

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

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

13 (A) the percentage reduction in the per-
14 centage use of a manufacturer's cigarettes shall
15 be at least 20 percent for each of the calendar
16 years 2001 and 2002;

17 (B) the percentage reduction in the per-
18 centage use of a manufacturer's cigarettes shall
19 be at least 40 percent for each of the calendar
20 years 2003 and 2004;

21 (C) the percentage reduction in the per-
22 centage use of a manufacturer's cigarettes shall
23 be at least 55 percent for each of the calendar
24 years 2005 through 2007; and

1 (D) the percentage reduction in the per-
2 centage use of a manufacturer's cigarettes shall
3 be at least 67 percent for calendar year 2008
4 and each subsequent calendar year.

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

7 (A) the percentage reduction in the per-
8 centage use of a manufacturer's smokeless to-
9 bacco products shall be at least 20 percent for
10 each of the calendar years 2001 and 2002;

11 (B) the percentage reduction in the per-
12 centage use of a manufacturer's smokeless to-
13 bacco products shall be at least 40 percent for
14 each of the calendar years 2003 and 2004;

15 (C) the percentage reduction in the per-
16 centage use of a manufacturer's smokeless to-
17 bacco products shall be at least 55 percent for
18 each of the calendar years 2005 and 2007; and

19 (D) the percentage reduction in the per-
20 centage use of a manufacturer's smokeless to-
21 bacco products shall be at least 67 percent for
22 calendar year 2008 and each subsequent cal-
23 endar year.

24 (c) REPORT.—Not later than December 31, 2005, the
25 Secretary shall prepare and submit to the appropriate

1 committees of Congress a report concerning the progress
2 made in achieving percentage reductions in the use of to-
3 bacco products by each ethnic group together with the rec-
4 ommendations, if any, of the Secretary for stronger reduc-
5 tions in calendar years after 2008.

6 **SEC. 304. NONCOMPLIANCE.**

7 (a) MANUFACTURER-SPECIFIC PENALTY.—If the
8 Secretary determines under section 303(a) that the re-
9 quired percentage reduction for either cigarettes or smoke-
10 less tobacco products has not been achieved by a manufac-
11 turer as required under section 303(b), the Secretary shall
12 impose a penalty on the manufacturer in an amount equal
13 to \$.02 cents multiplied by (1) the difference between the
14 percentage reduction required under section 303(b) for the
15 year involved and the actual percentage reduction achieved
16 by the manufacturer, and (2) the number of units of the
17 tobacco product involved that is manufactured and distrib-
18 uted for consumer use by such manufacturer in the year
19 following the year for which the determination is made.

20 (b) DE MINIMIS RULES.—

21 (1) EXEMPTION.—The Secretary shall not im-
22 pose a penalty on a manufacturer under subsection
23 (b) if the Secretary determines that the tobacco
24 products manufactured by such manufacturer are
25 used by less than 0.5 percent of children.

1 (2) PENALTY.—If the Secretary determines
2 that—

3 (A) the manufacturer was not manufactur-
4 ing tobacco products in the year the baseline
5 survey was conducted; and

6 (B) under an annual survey conducted
7 under section 302(a) for the year involved, the
8 tobacco products manufactured by such manu-
9 facturer are used by more than 0.5 percent of
10 children;

11 the Secretary shall impose a penalty on such manu-
12 facturer in an amount equal to \$.02 cents multiplied
13 by the percentage reduction required under section
14 303(b) for the year involved and the total number of
15 units of the tobacco product involved that is manu-
16 factured and distributed for consumer use in the
17 year following the year for which the determination
18 is made.

19 (c) NONCOMPLIANCE FEES FOR CONSECUTIVE VIO-
20 LATIONS.—

21 (1) IN GENERAL.—If a manufacturer of a to-
22 bacco product fails to comply with the reductions re-
23 quired under this title in 3 or 4 consecutive years,
24 the noncompliance fee that is required to be paid by
25 the manufacturer under this section for each unit of

1 tobacco products manufactured by such manufac-
2 turer which is distributed for consumer use in the
3 year following the year in which the noncompliance
4 occurs, shall be the amount determined under sub-
5 section (b) for the year multiplied by 2.

6 (2) ADDITIONAL NONCOMPLIANCE.—If a manu-
7 facturer or industry described in paragraph (1) fails
8 to comply with the reductions required under this
9 title in 5 or 6 consecutive years, the noncompliance
10 fee described in such paragraph shall be the amount
11 determined under subsection (b) for the year multi-
12 plied by 3.

13 (d) PROHIBITION ON SINGLE-PACK SALES IN CASES
14 OF REPEATED NONCOMPLIANCE.—Not later than 2 years
15 after the date of enactment of this Act, the Secretary shall
16 establish regulations to prohibit the sale of single packs
17 of a manufacturer's tobacco products in cases of repeated
18 noncompliance with the reductions required under section
19 303(b). Such regulations shall require that, if a manufac-
20 turer fails to comply with such reductions in 4 or more
21 consecutive years, the manufacturer's tobacco products
22 may be sold in the following year only in packages contain-
23 ing not less than 10 units of the product per package (200
24 cigarettes per package in the case of cigarettes, and a cor-
25 responding package size for other tobacco products).

1 (e) REQUIRED GENERIC PACKAGING IN SEVERE
2 CASES OF REPEATED NONCOMPLIANCE.—Not later than
3 2 years after the date of enactment of this Act, the Sec-
4 retary shall establish regulations to require units and
5 packages of a manufacturer’s tobacco products to have ge-
6 neric packaging in severe cases of repeated noncompliance
7 with the reductions required under section 303(b). Such
8 regulations shall require that, if a manufacturer fails to
9 comply with such reductions in 6 or more consecutive
10 years, the manufacturer’s tobacco products may be sold
11 in the following year only in units and packages whose
12 packaging contains no external images, logos, or text
13 (other than any required labels), except that the brand
14 name and the identifier ‘tobacco’ may appear on the pack-
15 aging in block lettering in black type on a white back-
16 ground.

17 (f) PAYMENT.—The penalty to be paid by a manufac-
18 turer under this section shall be paid on a quarterly basis,
19 with payments due not later than 30 days after the end
20 of each calendar quarter.

21 (g) PROCEDURES.—In assessing penalties under this
22 section, the Secretary shall have in place procedures to
23 take into account the effect that the margin of error of
24 the annual survey may have on the amounts of penalties
25 assessed to manufacturers.

1 (h) OTHER PRODUCTS.—The Secretary may promul-
2 gate regulations requiring reductions in the use of other
3 tobacco products by individuals under 18 years of age.
4 Such regulations shall contain provisions for the applica-
5 tion of monetary penalties for the failure of manufacturers
6 to achieve such reductions.

7 **SEC. 305. RULEMAKING PROCEDURES.**

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

15 (b) PUBLICATION.—In the case of any rule to which
16 this section applies, notice of proposed rulemaking shall
17 be published in the Federal Register, as provided under
18 section 553(b) of title 5, United States Code, shall be ac-
19 companied by a statement of its basis and purpose and
20 shall specify the period available for public comment (here-
21 inafter referred to as the “comment period”). The notice
22 of proposed rulemaking shall also state the docket num-
23 ber, the location or locations of the docket, and the times
24 it will be open to public inspection. The statement of basis
25 and purpose shall include a summary of—

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

3 (2) the methodology used in obtaining the data
4 and in analyzing the data; and

5 (3) the major legal interpretations and policy
6 considerations underlying the proposed rule.

7 (c) PUBLIC COMMENT.—

8 (1) PUBLIC INSPECTION.—The rulemaking
9 docket required under subsection (a) shall be open
10 for inspection by the public at reasonable times spec-
11 ified in the notice of proposed rulemaking. Any per-
12 son may copy documents contained in the docket.
13 The Secretary shall provide copying facilities which
14 may be used at the expense of the person seeking
15 copies, but the Secretary may waive or reduce such
16 expenses in such instances as the public interest re-
17 quires. Any person may request copies by mail if the
18 person pays the expenses, including personnel costs
19 to do the copying.

20 (2) COMMENTS AND OTHER MATERIAL IN
21 DOCKET.—

22 (A) COMMENTS.—Promptly upon receipt
23 by the Secretary, all written comments and doc-
24 umentary information on the proposed rule re-
25 ceived from any person for inclusion in the

1 docket during the comment period shall be
2 placed in the docket. The transcript of public
3 hearings, if any, on the proposed rule shall also
4 be included in the docket promptly upon receipt
5 from the person who transcribed such hearings.
6 All documents which become available after the
7 proposed rule has been published and which the
8 Secretary determines are of central relevance to
9 the rulemaking shall be placed in the docket as
10 soon as possible after their availability.

11 (B) REQUIREMENT TO PLACE IN DOCK-
12 ET.—The drafts of proposed rules submitted by
13 the Secretary to the Office of Management and
14 Budget for any interagency review process prior
15 to the proposal of any such rule, all documents
16 accompanying such drafts, and all written com-
17 ments thereon by other agencies and all written
18 responses to such written comments by the Sec-
19 retary shall be placed in the docket no later
20 than the date of proposal of the rule. The
21 drafts of the final rule submitted for such re-
22 view process prior to promulgation and all such
23 written comments thereon, all documents ac-
24 companying such drafts, and written responses

1 thereto shall be placed in the docket no later
2 than the date of promulgation.

3 (3) LIMITATION.—No objection may be submit-
4 ted with respect to a rule under this section on a
5 date that is more than 90 days after the date on
6 which the rule is published under subsection (b).

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

9 (1) the Secretary shall allow any person to sub-
10 mit written comments, data, or documentary infor-
11 mation;

12 (2) the Secretary shall give interested persons
13 an opportunity for the oral presentation of data,
14 views, or arguments, in addition to an opportunity
15 to make written submissions;

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

18 (4) the Secretary shall keep the record of such
19 proceeding open for 30 days after completion of the
20 proceeding to provide an opportunity for submission
21 of rebuttal and supplementary information.

22 (e) MATERIAL TO ACCOMPANY RULE.—

23 (1) IN GENERAL.—The promulgated rule shall
24 be accompanied by—

1 (A) a statement of basis and purpose like
2 that referred to in subsection (b) with respect
3 to a proposed rule; and

4 (B) an explanation of the reasons for any
5 major changes in the promulgated rule from the
6 proposed rule.

7 (2) RESPONSES.—The promulgated rule shall
8 also be accompanied by a response to each of the
9 significant comments, criticisms, and new data sub-
10 mitted in written or oral presentations during the
11 comment period.

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

16 (f) JUDICIAL REVIEW.—

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

21 (2) LIMITATIONS.—Only an objection to a rule
22 or procedure which was raised with reasonable speci-
23 ficity during the period for public comment (includ-
24 ing any public hearing) may be raised during judi-
25 cial review. If the person raising an objection can

1 demonstrate to the Secretary that it was impractica-
2 ble to raise such objection within such time or if the
3 grounds for such objection arose after the period for
4 public comment (but within the time specified for ju-
5 dicial review) and if such objection is of central rel-
6 evance to the outcome of the rule, the Secretary
7 shall convene a proceeding for reconsideration of the
8 rule and provide the same procedural rights as
9 would have been afforded had the information been
10 available at the time the rule was proposed. If the
11 Secretary refuses to convene such a proceeding, such
12 person may seek review of such refusal in the United
13 States court of appeals for the appropriate circuit.
14 Such reconsideration shall not postpone the effec-
15 tiveness of the rule. The effectiveness of the rule
16 may be stayed during such reconsideration, however,
17 by the Secretary or the court for a period not to ex-
18 ceed 3 months.

19 (g) JURISDICTION.—The sole forum for challenging
20 procedural determinations made by the Secretary under
21 this section shall be in the United States court of appeals
22 for the appropriate circuit at the time of the substantive
23 review of the rule. No interlocutory appeals shall be per-
24 mitted with respect to such procedural determinations. In
25 reviewing alleged procedural errors, the court may invali-

1 date the rule only if the errors were so serious and related
2 to matters of such central relevance to the rule that there
3 is a substantial likelihood that the rule would have been
4 significantly changed if such errors had not been made.

5 (h) REVERSAL OF SECRETARY'S ACTION.—In the
6 case of review of any action of the Secretary to which this
7 section applies, the court may reverse any such action
8 found to be—

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

11 (2) contrary to constitutional right, power,
12 privilege, or immunity;

13 (3) in excess of statutory jurisdiction, authority,
14 or limitations, or short of statutory right; or

15 (4) without observance of procedure required by
16 law, if—

17 (A) such failure to observe such procedure
18 is arbitrary or capricious;

19 (B) the requirement of subsection (f)(2)
20 has been met; and

21 (C) the condition of the last sentence of
22 subsection (g) is met.

23 (i) DEADLINES.—Each statutory deadline for pro-
24 mulgation of rules to which this section applies which re-
25 quires promulgation less than 6 months after date of pro-

1 posal may be extended to not more than 6 months after
2 date of proposal by the Secretary upon a determination
3 that such extension is necessary to afford the public, and
4 the agency, adequate opportunity to carry out the pur-
5 poses of this section.

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

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

14 (l) NO STAY.—In any action respecting the promul-
15 gation of regulations under this title or the administration
16 or enforcement of this title no court shall grant any stay,
17 injunctive, or similar relief before final judgment by such
18 court in such action.

19 (m) PUBLIC PARTICIPATION.—It is the intent of
20 Congress that, consistent with the policy of the Adminis-
21 trative Procedures Act, the Secretary in promulgating any
22 regulation under this title, including a regulation subject
23 to a deadline, shall ensure a reasonable period for public
24 participation of at least 30 days, except as otherwise ex-
25 pressly provided for.

1 **SEC. 306. MISCELLANEOUS PROVISIONS.**

2 (a) JUDICIAL REVIEW.—A manufacturer of tobacco
3 products may seek judicial review of any action under this
4 title only after a penalty has been assessed and paid by
5 the manufacturer to the Department of the Treasury and
6 only in the United States District Court for the District
7 of Columbia. In an action by a manufacturer seeking judi-
8 cial review of an annual performance survey, the manufac-
9 turer may prevail—

10 (1) only if the manufacturer shows that the re-
11 sults of the performance survey were arbitrary and
12 capricious; and

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

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

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

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

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

4 **TITLE IV—TOBACCO TRANSI-**
5 **TION ASSISTANCE FOR PRO-**
6 **DUCERS, COMMUNITIES, AND**
7 **OTHER PERSONS**

8 **SEC. 401. MINIMUM PURCHASE REQUIREMENTS OF DOMES-**
9 **TIC FLUE-CURED AND BURLEY TOBACCO**
10 **FOR MANUFACTURERS OF CIGARETTES.**

11 (a) DEFINITIONS.—For the purposes of this section:

12 (1) DOMESTIC TOBACCO.—The term “domestic
13 tobacco” means Flue-cured tobacco and Burley to-
14 bacco grown in the United States.

15 (2) MANUFACTURER OF CIGARETTES.—The
16 term “manufacturer of cigarettes” means any enter-
17 prise that produces cigarettes sold in the United
18 States with a total value, determined by the Sec-
19 retary of Agriculture for a calendar year, in excess
20 of a de minimus amount. The Secretary of Agri-
21 culture shall establish the de minimus amount to be
22 used for a calendar year, except that such amount
23 shall not be more than \$1,000,000.

24 (b) PURCHASE REQUIREMENT.—

1 (1) IN GENERAL.—Effective beginning with cal-
2 endar year 1999, each manufacturer of cigarettes
3 shall purchase at a minimum a quantity of domestic
4 tobacco that is equal to that manufacturer's share of
5 the target quantity of domestic tobacco determined
6 under subsection (c).

7 (2) REPORTING REQUIREMENT.—Each manu-
8 facturer of cigarettes shall report to the Secretary of
9 Agriculture the manufacturer's purchases of domes-
10 tic tobacco in such manner and at such times as the
11 Secretary may prescribe by regulation.

12 (c) TARGET QUANTITY AND MANUFACTURER'S
13 SHARE.—

14 (1) IN GENERAL.—For each calendar year for
15 the purposes of this section, the target quantity of
16 domestic tobacco shall be not less than the average
17 purchase of domestic, green-weight Burley tobacco
18 and domestic green-weight Flue-cured tobacco by do-
19 mestic manufacturers for the 1995, 1996, and 1997
20 marketing years.

21 (2) CIGARETTE MANUFACTURER'S SHARE.—
22 The Secretary of Agriculture shall determine the
23 share of the target quantity for a calendar year to
24 be allocated to each manufacturer of cigarettes on
25 the basis of the manufacturer's share of the total

1 quantity of cigarettes sold in the United States for
2 the preceding year, as determined by the Secretary.
3 If the Secretary of Agriculture determines that it is
4 impracticable to use a particular preceding calendar
5 year as the base period, the Secretary may utilize
6 some other appropriate period as the base period.

7 (3) ADJUSTMENTS.—The amount of purchases
8 determined by the Secretary of Agriculture for a
9 manufacturer of cigarettes for any calendar year
10 may be increased by any increase in sales by the
11 manufacturer of cigarettes in the United States for
12 that calendar year as compared with the base period.

13 (4) AFFILIATES.—For purposes of the calcula-
14 tions required in this subsection, the Secretary of
15 Agriculture may combine the sales of a manufac-
16 turer of cigarettes with sales of affiliated manufac-
17 turers as determined to be needed or appropriate.

18 (d) PENALTY FOR VIOLATIONS.—

19 (1) IN GENERAL.—If a manufacturer of ciga-
20 rettes fails to make the required purchases for a cal-
21 endar year, the manufacturer of cigarettes shall be
22 subject to a penalty in the amount determined in
23 under paragraph (4). If the Secretary of Agriculture
24 determines that the manufacturer of cigarettes failed
25 to make the required purchases because of the use

1 of imported tobacco to manufacture cigarettes, the
2 Secretary may assess all or a portion of the penalty
3 amount against the importer or other party involved
4 in the marketing of the cigarettes, as the Secretary
5 considers appropriate or necessary to insure full en-
6 forcement of this section.

7 (2) LIABILITY.—The manufacturer of cigarettes
8 or other party potentially liable for a penalty under
9 this subsection will bear the burden of presenting
10 satisfactory proof of the required purchases.

11 (3) NOTICE AND HEARING.—The Secretary of
12 Agriculture shall assess a penalty under this sub-
13 section only after notice and opportunity for a hear-
14 ing.

15 (4) AMOUNT OF PENALTY.—The amount of a
16 penalty under this subsection shall be equal, for each
17 pound of the shortage, to an amount not to exceed
18 75 percent of the average per pound market price,
19 as determined by the Secretary of Agriculture, for
20 domestic tobacco of the like kind for the calendar
21 year preceding the calendar year in which the short-
22 age has occurred.

23 (5) RELATION TO OTHER SUMS DUE.—Penalty
24 amounts assessed under this subsection shall be in

1 addition to other amounts as may be due, including
2 late fees and interest.

3 (e) BARRING OF SALES OF CIGARETTES.—

4 (1) ORDER.—Until the amount of a penalty as-
5 sessed under subsection (d) is paid, the Secretary of
6 Agriculture may issue an order barring the manufac-
7 turer of cigarettes or other party subject to the pen-
8 alty, and its affiliates, from further sales of ciga-
9 rettes in the United States.

10 (2) ADDITIONAL REPORTS AND SANCTIONS.—

11 As part of an order under paragraph (1), the Sec-
12 retary of Agriculture may require such interim re-
13 ports of domestic tobacco purchases as the Secretary
14 considers warranted and demand reasonable interim
15 assurances of compliance with this section.

16 (3) ENFORCEMENT.—The Secretary of Agri-
17 culture may seek enforcement of an order under this
18 subsection in the district courts of the United
19 States.

20 (f) DISPOSITION OF FUNDS.—Notwithstanding any
21 other provision of law, sums collected as penalties, late
22 fees, or interest under this section shall be deposited in
23 the No Net Cost Tobacco Fund of, or the No Net Cost
24 Tobacco Account for, the relevant tobacco producer-owned
25 cooperative marketing associations handling the domestic

1 tobacco that is the subject of the shortage producing the
2 collection, as determined by the Secretary of Agriculture.

3 **SEC. 402. TOBACCO TRANSITION TRUST FUND AND USE OF**
4 **TRUST FUND.**

5 (a) ESTABLISHMENT.—There is established in the
6 Treasury of the United States a trust fund to be known
7 as the “Tobacco Transition Trust Fund” (in this section
8 referred to as the “Trust Fund”), consisting of such
9 amounts as may be appropriated or credited to the Trust
10 Fund.

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

15 (c) REPAYABLE ADVANCES.—

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

20 (2) REPAYMENT WITH INTEREST.—Repayable
21 advances made to the Trust Fund shall be repaid,
22 and interest on the advances shall be paid, to the
23 general fund of the Treasury when the Secretary of
24 the Treasury determines that moneys are available
25 in the Trust Fund to make the payments.

1 (3) RATE OF INTEREST.—Interest on an ad-
2 vance made under this subsection shall be at a rate
3 determined by the Secretary of Treasury (as of the
4 close of the calendar month preceding the month in
5 which the advance is made) that is equal to the cur-
6 rent average market yield on outstanding marketable
7 obligations of the United States with remaining pe-
8 riod to maturity comparable to the anticipated pe-
9 riod during which the advance will be outstanding.

10 (d) EXPENDITURES FROM TRUST FUND.—

11 (1) IN GENERAL.—Subject to paragraph (2),
12 amounts in the Trust Fund shall be available for ex-
13 penditure to provide—

14 (A) transition payments to tobacco quota
15 holders and quota lessees to compensate quota
16 holders and quota lessees for lost value of to-
17 bacco crops as a result of reduced demand for
18 tobacco;

19 (B) economic development assistance to to-
20 bacco producing communities;

21 (C) retraining for tobacco producers, to-
22 bacco factory workers; and tobacco warehouse-
23 men;

24 (D) educational scholarships for tobacco
25 producers and their immediate dependents;

1 (E) funds to cover the cost of providing
2 crop insurance for tobacco producers; and

3 (F) funds to cover the administrative costs
4 incurred by the Secretary of Agriculture to
5 carry out a price support program for tobacco.

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

11 (e) EFFECT ON PRICE SUPPORT PROGRAM.—Noth-
12 ing in this section shall prohibit the Secretary of Agri-
13 culture from administering a price support program for
14 tobacco so long as all administrative costs are paid out
15 of the Trust Fund.

16 (f) BUDGETARY TREATMENT.—This section con-
17 stitutes budget authority in advance of appropriations
18 Acts.

19 (g) TERMINATION OF EFFECTIVENESS.—The author-
20 ity provided by this section terminates effective January
21 1, 2000, unless a law is enacted not later than that date
22 that specifically prescribes authorized uses of the Trust
23 Fund.

1 **TITLE V—STANDARDS TO RE-**
2 **DUCE INVOLUNTARY EXPO-**
3 **SURE TO TOBACCO SMOKE**

4 **SEC. 501. STANDARDS TO REDUCE INVOLUNTARY EXPO-**
5 **SURE TO TOBACCO SMOKE.**

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

9 **“SEC. 35. STANDARDS TO REDUCE INVOLUNTARY EXPO-**
10 **SURE TO TOBACCO SMOKE.**

11 “(a) DEFINITIONS.—In this section—

12 “(1) PUBLIC FACILITY.—

13 “(A) IN GENERAL.—The term ‘public facil-
14 ity’ means any workplace covered by this Act
15 and any enclosed structure regularly entered by
16 10 or more individuals at least 1 day per week,
17 including any such building owned by or leased
18 to a Federal, State, or local government entity
19 (including Congress). Such term shall not in-
20 clude any building or portion thereof while used
21 as a private residence.

22 “(B) EXCLUSIONS.—The term ‘public fa-
23 cility’ does not include a portion of a building
24 which is used as a bar, a facility in which a re-
25 tailer engages primarily in the business of sell-

1 ing tobacco products, a hotel guest room that is
2 designated as a smoking room, a private club
3 while in use for social or fraternal activities
4 that are not open to the public, a casino, a
5 bingo parlor, or a prison.

6 “(C) BAR.—The term “bar” means any in-
7 door area that is open to the general public and
8 that is devoted to the sale and service of alco-
9 holic beverages for on-premises consumption
10 where the service of food is only incidental to
11 the consumption of such beverages. Service of
12 food shall be considered incidental if the food
13 service generates less than 50 percent of the
14 total annual gross food and liquor sales of the
15 establishment.

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

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

22 “(1) POLICY REQUIRED.—In order to protect
23 children and adults from cancer, respiratory disease,
24 heart disease, and other adverse health effects asso-
25 ciated with breathing environmental tobacco smoke,

1 the responsible entity for each public facility shall
2 adopt and implement at such facility a smoke-free
3 environment policy which meets the requirements of
4 paragraph (2) or (4).

5 “(2) ELEMENTS OF POLICY.—

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

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

15 “(ii) post a clear and prominent no-
16 tice of the smoking prohibition in appro-
17 priate and visible locations at the public fa-
18 cility.

19 “(B) EXCEPTION.—The smoke-free envi-
20 ronment policy for a public facility may provide
21 an exception to the prohibition specified in sub-
22 paragraph (A) for 1 or more specially des-
23 ignated smoking areas within a public facility if
24 such area or areas meet the requirements of
25 paragraph (3).

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

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

12 “(B) the area is maintained at negative
13 pressure, as compared to adjacent nonsmoking
14 areas, as determined under regulations promul-
15 gated by the Secretary of Labor, in consultation
16 with the Administrator of the Environmental
17 Protection Agency; and

18 “(C) nonsmoking individuals are fully ad-
19 vised that the area is a smoking area and such
20 individuals do not have to enter the area for
21 any purpose while smoking is occurring in such
22 area, and for an additional period that allows
23 for at least 3 air exchanges to occur in the
24 room.

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

5 “(4) SPECIAL RULES.—

6 “(A) SCHOOLS AND OTHER FACILITIES
7 SERVING CHILDREN.—

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

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

17 “(II) adopt and implement at
18 such facility a smoke-free environment
19 policy that prohibits the use of smoke-
20 less tobacco products within the facil-
21 ity and on facility property; and

22 “(III) post a clear and prominent
23 notice of the smoking and smokeless
24 tobacco prohibition in appropriate and
25 visible locations at the public facility.

1 “(ii) FACILITY.—A facility described
2 in this clause is—

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

8 “(II) any facility at which a
9 Head Start program or project is
10 being carried out under the Head
11 Start Act (42 U.S.C. 9831 et seq.);

12 “(III) any facility at which a li-
13 censed or certified child care provider
14 provides child care services; and

15 “(IV) any recreation or other fa-
16 cility maintained primarily to provide
17 services to children as determined by
18 the Secretary of Labor.

19 “(B) PUBLIC TRANSPORTATION.—

20 “(i) IN GENERAL.—With respect to
21 any responsible entity which operates con-
22 veyances of public transportation (includ-
23 ing bus, rail, aircraft, boat, or any other
24 conveyance determined appropriate by the

Secretary of Labor), the responsible entity shall—

“(I) adopt and implement on such conveyances a smoke-free environment policy that prohibits the smoking of cigarettes, cigars, and pipes, and any other combustion of tobacco within the conveyance and on property affiliated with the conveyance; and

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

“(ii) RAIL TRANSPORTATION.—The smoke-free environment policy for a responsible entity that operates a rail carrier providing rail commuter service may provide an exception to the prohibition specified in clause (i) with respect to such service for 1 or more specially designated smoking cars if such cars meet the requirements of paragraph (3).

“(c) ENFORCEMENT.—To be eligible to receive funds under the Healthy Kids Act, a State shall make a dem-

1 onstration to the Secretary that the State is enforcing this
 2 section within the State. Such laws or procedures shall
 3 permit aggrieved individuals to enforce this section
 4 through administrative and judicial means.

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

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

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

18 **TITLE VI—PUBLIC HEALTH AND** 19 **OTHER PROGRAMS**

20 **Subtitle A—Research Programs**

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

22 (a) IN GENERAL.—The Secretary shall establish a
 23 program to encourage and promote (through grants, con-
 24 tracts, or otherwise) expanded research, investigations, ex-
 25 periments and studies, concerning—

1 (1) the relationship between the use of tobacco
2 products and cancer, cardiovascular diseases, lung
3 diseases and other diseases;

4 (2) the effects of tobacco products, ingredients
5 of tobacco products, and tobacco smoke on the
6 human body and methods of reducing any negative
7 effects, including the development of non-addictive,
8 reduced risk tobacco products;

9 (3) the addictive effects of nicotine and how
10 such effects differ with respect to different individ-
11 uals;

12 (4) the prevention and cure of diseases and ill-
13 nesses most associated with the use of tobacco prod-
14 ucts;

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

17 (6) the effectiveness of drugs and devices in as-
18 sisting individuals to stop using tobacco products;
19 and

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

22 (b) ELIGIBILITY.—To be eligible to receive a grant,
23 contract, or other assistance under this section an entity
24 or individual shall prepare and submit to the Secretary

1 an application at such time, in such manner, and contain-
2 ing such information as the Secretary may require.

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

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

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

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

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

20 (e) EFFECT ON MINORITIES AND WOMEN.—The pro-
21 gram established under subsection (a) shall be conducted
22 in a manner that ensures that research will be conducted
23 at minority education institutions, where available, or by
24 minority researchers and minority public health organiza-
25 tions to investigate the different effects of tobacco use on

1 minorities and women in proportion to their prevalence in
2 the smoking population.

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

6 (g) FUNDING.—There shall be made available to
7 carry out this section an amount equal to the amount
8 made available under section 121(c)(1)(D) for a fiscal
9 year.

10 **SEC. 602. RESEARCH RELATING TO PATTERNS OF SMOK-**
11 **ING.**

12 (a) IN GENERAL.—The Secretary shall establish a
13 program to provide for the conduct of research (through
14 the provision of grants, contracts, or otherwise) concern-
15 ing the cultural, social, behavioral, neurological and psy-
16 chological reasons that individuals refrain from using to-
17 bacco products, begin to use tobacco products, continue
18 using tobacco products, or quit using tobacco products.

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

24 (c) USE OF FUNDS.—Amounts received by an indi-
25 vidual or entity under this section shall be used to carry

1 out activities under the program established under sub-
2 section (a).

3 (d) ADDITIONAL REQUIREMENTS.—To be eligible to
4 receive a grant, contract, or other assistance under this
5 section an entity or individual shall provide assurances to
6 the Secretary that—

7 (1) any research to be conducted under the
8 grant or contract will be generally consistent with
9 the requirements applicable to research conducted
10 under the authority of the National Institutes of
11 Health;

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

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

16 (e) EFFECT ON MINORITIES AND WOMEN.—The pro-
17 gram established under subsection (a) shall be conducted
18 at minority education institutions, where available, or by
19 minority researchers and minority public health organiza-
20 tions to investigate the different factors affecting tobacco
21 use among minorities and women in proportion to their
22 prevalence in the smoking population.

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

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

5 **SEC. 603. SURVEILLANCE AND EVALUATION.**

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

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

19 **Subtitle B—Education and**
20 **Prevention Programs**

21 **SEC. 611. GRANTS FOR SCHOOL- AND COMMUNITY-BASED**
22 **TOBACCO DANGER EDUCATION PROGRAMS.**

23 (a) IN GENERAL.—The Secretary shall establish a
24 program to award grants to States to enable such States

1 to assist schools, colleges, universities, communities, or
2 community organizations—

3 (1) to carry out school-based and college- or
4 university-based education programs concerning the
5 dangers of using tobacco products using methods
6 that are proven and effective; and

7 (2) to carry out community-based prevention
8 programs, including utilizing education institutions
9 or minority public health clinics or organizations in
10 predominantly minority communities in proportion
11 to their prevalence in the smoking population, using
12 methods that are proven to be culturally and linguis-
13 tically appropriate.

14 Programs under paragraphs (1) and (2) which are de-
15 signed to deal with the use of tobacco products by blacks
16 shall be carried out by part B institutions as defined in
17 section 322(2) of the Higher Education Act (20 U.S.C.
18 1061(2)). Programs under such paragraphs which are de-
19 signed to deal with the use of tobacco products by His-
20 panics shall be carried out by Hispanic Serving Institu-
21 tions as defined in section 316(b)(1) of the Higher Edu-
22 cation Act (20 U.S.C. 1059c(b)(1)). Programs under such
23 paragraphs which are designed to deal with the use of to-
24 bacco products by Asian Americans and Pacific Islanders
25 shall be carried out by national or regional community

1 based programs or research institutions with proven expe-
2 rience in Asian American and Pacific Islander health re-
3 search.

4 (b) ELIGIBILITY.—To be eligible to receive a grant
5 under this section a State shall prepare and submit to the
6 Secretary an application at such time, in such manner,
7 and containing such information as the Secretary may re-
8 quire, including a State plan (that is subject to approval
9 by the Secretary) that describes—

10 (1) the types of programs that the State will
11 fund under the grant;

12 (2) the manner in which the State will ensure
13 that the programs will be age-appropriate, culturally
14 appropriate, and linguistically appropriate for the
15 target population; and

16 (3) the manner in which the State will monitor
17 the effectiveness of such programs.

18 (c) USE OF FUNDS.—Amounts received by a State
19 under this section shall be used to—

20 (1) carry out State-wide school-based education
21 programs that are focused on those regions of the
22 State with high smoking rates and targeted at popu-
23 lations who are most at risk to start smoking;

24 (2) carry out State-wide college- and university-
25 based education programs to discourage individuals

1 between the ages of 18 and 24 from beginning to
2 use tobacco products, such programs to be focused
3 on colleges or universities with high smoking rates;

4 (3) carry out community-based prevention pro-
5 grams that are focused on those populations, within
6 the community, including minority populations in
7 proportion to their prevalence in the smoking popu-
8 lation, that are most at-risk to use tobacco products
9 or that have been targeted by tobacco advertising or
10 marketing;

11 (4) develop curriculums for such programs;

12 (5) acquire materials for such programs;

13 (6) expand the IMPACT or ASSIST program;

14 and

15 (7) carry out other activities determined appro-
16 priate by the Secretary.

17 (d) ADDITIONAL REQUIREMENTS.—To be eligible to
18 receive a grant under this section a State shall provide
19 assurances to the Secretary that—

20 (1) the State will annually report to the Sec-
21 retary on the effectiveness of the educational ap-
22 proaches implemented by the State;

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

1 (3) amounts provided to individuals or entities
2 will be subject to independent audit; and

3 (4) the State will involve local public health of-
4 ficials in the planning and implementation of the
5 program.

6 (e) FUNDING.—There shall be made available to
7 carry out this section an amount equal to 15 percent of
8 the amounts made available under section 101(d)(5)(C)
9 for a fiscal year.

10 **Subtitle C—Miscellaneous** 11 **Programs**

12 **SEC. 621. COUNTER-ADVERTISING PROGRAMS.**

13 (a) IN GENERAL.—The Secretary shall carry out pro-
14 grams to reduce tobacco usage through media-based (such
15 as counter-advertising campaigns) and nonmedia-based
16 education, prevention and cessation campaigns designed to
17 discourage the use of tobacco products by individuals and
18 to encourage those who use such products to quit. Such
19 programs shall include national and local campaigns and
20 shall target, in a culturally and linguistically appropriate
21 manner and utilizing appropriate media outlets (including
22 newspapers and other media owned by and targeted to mi-
23 norities), adults, children, women and minorities in pro-
24 portion to their prevalence in the smoking population who
25 have been targeted by tobacco industry advertising.

1 (b) ELIGIBILITY.—To be eligible to receive assistance
2 under this section an entity or individual shall prepare and
3 submit to the Secretary an application at such time, in
4 such manner, and containing such information as the Sec-
5 retary 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 programs established under sub-
9 section (a). Such amounts may be used to design and im-
10 plement such activities and to conduct research concerning
11 the effectiveness of such programs.

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

16 **SEC. 622. NATIONAL TOBACCO CESSATION PROGRAM.**

17 (a) ESTABLISHMENT.—There is established a pro-
18 gram to be known as the “National Tobacco Cessation
19 Program”. The Secretary may award grants to, and enter
20 into contracts and cooperative agreements with, public and
21 private entities for the purpose of expanding the availabil-
22 ity and utilization of tobacco use cessation services. The
23 program established under this section shall ensure that
24 cessation programs will be conducted in a manner that

1 targets minorities and women in proportion to their preva-
2 lence in the smoking population.

3 (b) USE OF FUNDS.—Amounts made available under
4 a grant, contract or cooperative agreement under sub-
5 section (a) shall be used for the planning, establishment,
6 or administration of tobacco use cessation programs ap-
7 proved in accordance with subsection (c).

8 (c) CESSATION PROGRAMS.—Programs receiving as-
9 sistance under this section shall provide a range and qual-
10 ity of services consistent with the most recent cessation
11 service guidelines issued by the Agency for Health Care
12 Policy and Research. Using the best available scientific in-
13 formation, the Secretary shall promulgate such additional
14 guidelines as are necessary to assure the quality, acces-
15 sibility and cost effectiveness of services receiving funds
16 under this section.

17 (d) CESSATION PROGRAMS IN MINORITY COMMU-
18 NITIES.—The Secretary shall ensure programs established
19 under subsection (a) are directed to targeted populations
20 and minorities in proportion to their prevalence in the
21 smoking population. Programs operating in the minority
22 community should be culturally and linguistically appro-
23 priate, and operated by minority education institutions,
24 public health or community-based organizations.

1 (e) FUNDING.—There shall be made available to
2 carry out this section an amount equal to 33 percent of
3 the amounts made available under section 101(d)(5)(C)
4 for a fiscal year.

5 **SEC. 623. ASSISTANCE FOR THOSE SUFFERING FROM TO-**
6 **BACCO-RELATED ILLNESSES.**

7 (a) IN GENERAL.—The Secretary shall establish a
8 program to provide assistance and compensation to indi-
9 viduals (and entities providing services to such individuals)
10 suffering from tobacco-related illnesses and conditions.
11 Under such program assistance shall be targeted at indi-
12 viduals who are determined to be uninsured or under-
13 insured and who can demonstrate financial hardship.

14 (b) DEVELOPMENT OF PLAN.—The Secretary shall
15 carry out the program established under subsection (a)
16 under a plan to be developed by the Secretary, not later
17 than 1 year after the date of enactment of this Act.

18 (c) ELIGIBILITY.—

19 (1) OF ENTITIES.—To be eligible to receive as-
20 sistance under this section an entity shall—

21 (A) be a public or nonprofit private entity;

22 (B) prepare and submit to the Secretary
23 an application at such time, in such manner,
24 and containing such information as the Sec-
25 retary may require;

1 (C) provide assurances that amounts re-
2 ceived under the grant will be used in accord-
3 ance with subsection (d)(1); and

4 (D) meet any other requirements deter-
5 mined appropriate by the Secretary.

6 (2) OF INDIVIDUALS.—To be eligible to receive
7 assistance under this section an individual shall—

8 (A) prepare and submit to the Secretary
9 an application at such time, in such manner,
10 and containing such information as the Sec-
11 retary may require;

12 (B) provide assurances that amounts re-
13 ceived under the grant will be used only in ac-
14 cordance with subsection (d)(2); and

15 (C) meet any other requirements deter-
16 mined appropriate by the Secretary.

17 (d) USE OF FUNDS.—Assistance provided under this
18 section shall be used—

19 (1) in the case of an entity eligible under sub-
20 section (c)(1), to provide treatment for tobacco-relat-
21 ed illnesses; or

22 (2) in the case of an individual eligible under
23 subsection (c)(2), to pay for the receipt of treat-
24 ments for tobacco-related illnesses.

1 (e) **ADDITIONAL REQUIREMENTS.**—In providing as-
2 sistance under this section, the Secretary shall ensure that
3 such assistance is not used to duplicate any payments
4 made under any health insurance plans but rather to cover
5 uncompensated care provided to individuals with tobacco-
6 related illnesses.

7 (f) **FUNDING.**—There shall be made available to
8 carry out this section an amount equal to 3 percent of
9 the amounts made available under section 101(d)(5)(C)
10 for a fiscal year.

11 **SEC. 624. INTERNATIONAL TOBACCO CONTROL.**

12 (a) **GOVERNMENTAL ACTIVITIES.**—

13 (1) **IN GENERAL.**—The Secretary (in consulta-
14 tion with the Secretary of State) may provide bilat-
15 eral assistance, including technical assistance
16 through the Centers for Disease Control and Preven-
17 tion, to foreign countries and multilateral assistance
18 to reduce and prevent the use of tobacco in foreign
19 countries. Such assistance shall be focused on pre-
20 venting the use of tobacco products by minors.

21 (2) **FUNDING.**—There shall be made available
22 to carry out this subsection an amount equal to 2
23 percent of the amounts made available under section
24 101(d)(5)(C) for a fiscal year. Such amount shall be

1 split equally between bilateral and multilateral as-
2 sistance.

3 (b) NONGOVERNMENTAL ACTIVITIES.—

4 (1) PURPOSE.—The purpose of this subsection
5 is to establish the American Center on Global
6 Health and Tobacco (referred to in this subsection
7 as “ACT”). ACT shall assist organizations in other
8 countries to reduce and prevent the use of tobacco.
9 Activities ACT supports shall include—

10 (A) public education programs that inform
11 the public about the hazards of tobacco use and
12 of environmental tobacco smoke;

13 (B) mass media campaigns, including paid
14 counter-tobacco advertisements, to reverse the
15 image appeal of pro-tobacco messages, espe-
16 cially those that glamorize and “Westernize” to-
17 bacco use to young people; and

18 (C) education about the economic and soci-
19 etal costs of tobacco use, and effective tobacco
20 use prevention and cessation strategies that are
21 appropriate for the country involved.

22 (2) ESTABLISHMENT.—

23 (A) IN GENERAL.—There is hereby estab-
24 lished in the District of Columbia a private,
25 nonprofit corporation to be known as the Amer-

ican Center on Global Health and Tobacco.

ACT shall—

(i) not be an agency or establishment of the United States; and

(ii) except as otherwise provided in this section, be subject to, and have all the powers conferred upon a nonprofit corporation by the District of Columbia Nonprofit Corporation Act (D.C. Code section 29-501 et seq.).

(B) RELATION TO UNITED STATES.—

Nothing in this subsection shall be construed as making ACT an agency or establishment of the United States, or as making the members of the Board of ACT, or its employees, officers or employees of the United States.

(C) RELATION TO NONGOVERNMENTAL OR-

GANIZATIONS.—ACT shall have a limited staff, and, to the maximum extent practicable, utilize the available experience and talents of nongovernmental organizations with specialized experience in health, education, media, and tobacco.

1 (D) GOVERNING BOARD.—The Secretary
2 shall appoint a governing board of up to 25
3 members including—

4 (i) on a bipartisan basis, Members of
5 the Senate and of the House of Represent-
6 atives;

7 (ii) the heads of United States public
8 health organizations;

9 (iii) the heads of United States media,
10 marketing, and other nongovernment insti-
11 tutions and corporations; and

12 (iv) individuals active in education,
13 public health, and other relevant activities.

14 (E) INTERNATIONAL ADVISORY COUN-
15 CIL.—An International Advisory Council con-
16 sisting of representatives from key global, re-
17 gional, and national public health organizations,
18 and leading individual educators and health
19 professionals shall provide advisory assistance
20 to ACT.

21 (3) FUNDING.—The Secretary of the Treasury
22 shall on October 1 of each fiscal year beginning after
23 the date of enactment of this Act, transfer an
24 amount equal to 1 percent of the amounts made

1 available under section 101(d)(5)(C) for the fiscal
2 year to ACT to carry out this subsection.

3 (4) REQUIREMENTS FOR ELIGIBILITY FOR AN-
4 NUAL TRANSFERS FROM THE TRUST FUND.—

5 (A) OVERSIGHT.—ACT and its grantees
6 shall be subject to the oversight and supervision
7 of Congress.

8 (B) COMPLIANCE.—

9 (i) FUNDING CONTINGENT ON COM-
10 PLIANCE.—Annual payments from the
11 Trust Fund may be made to ACT under
12 this subsection only if ACT complies with
13 the requirements specified in this sub-
14 section.

15 (ii) USE OF FUNDS.—ACT may only
16 fund programs for private sector groups,
17 and may not carry out programs directly.
18 ACT may provide funding only for pro-
19 grams which are consistent with the pur-
20 poses of this subsection.

21 (C) SALARIES AND COMPENSATION.—

22 (i) NO OTHER SOURCE OF COMPENSA-
23 TION.—Officers and employees of ACT
24 may not receive any salary or other com-

1 pensation from any source other than ACT
2 for services performed for ACT.

3 (ii) UNITED STATES OFFICERS AND
4 EMPLOYEES.—An individual who is an offi-
5 cer or employee of the United States who
6 also serves on the Board of Directors or as
7 an officer or employee of ACT, may not re-
8 ceive any compensation or travel expenses
9 in connection with services performed for
10 ACT.

11 (D) STOCKS AND DIVIDENDS.—ACT shall
12 not issue any shares of stock or declare or pay
13 any dividends.

14 (E) AUDITS.—

15 (i) PUBLIC ACCOUNTS.—The accounts
16 of ACT shall be audited annually in ac-
17 cordance with generally accepted auditing
18 standards.

19 (ii) COMPTROLLER GENERAL.—The
20 financial transactions of ACT for each fis-
21 cal year may be audited by the Comptroller
22 General. A report of each audit shall be
23 made by the Comptroller General to Con-
24 gress. A copy of each report shall be fur-

1 nished to the President and to ACT at the
2 time the report is submitted to Congress.

3 (F) RECORDKEEPING.—ACT shall ensure
4 that each recipient of assistance from ACT
5 under this subsection keeps such records as
6 may be reasonably necessary to fully disclose
7 the amount and the disposition by such recipi-
8 ent of the proceeds of such assistance, the total
9 cost of the project or undertaking in connection
10 with which such assistance is given or used, and
11 the amount and nature of that portion of the
12 cost of the project or undertaking supplied by
13 other sources, and such other records as will fa-
14 cilitate an effective audit. ACT shall ensure
15 that it, or any of its duly authorized representa-
16 tives, shall have access for the purpose of audit
17 and examination to any books, documents, pa-
18 pers, and records of each recipient of assistance
19 from ACT that are pertinent to assistance pro-
20 vided through ACT under this subsection.

21 **SEC. 625. NATIONAL EVENT SPONSORSHIP PROGRAM.**

22 (a) ESTABLISHMENT.—The Secretary shall establish
23 a program to be known as the “National Event Sponsor-
24 ship Program” under which the Secretary may award

1 grants to eligible entities or individuals for the sponsorship
2 of activities described in subsection (c).

3 (b) ELIGIBILITY.—To be eligible to receive a grant
4 under this section an entity or individual shall—

5 (1) prepare and submit to the Secretary an ap-
6 plication at such time, in such manner, and contain-
7 ing such information as the Secretary may require,
8 including—

9 (A) a description of the event, activity,
10 team, or entry for which the grant is to be pro-
11 vided;

12 (B) documentation that the event, activity,
13 team, or entry involved was sponsored or other-
14 wise funded by a tobacco manufacturer or dis-
15 tributor prior to the date of the application; and

16 (C) a certification that the applicant is un-
17 able to secure funding for the event, activity,
18 team, or entry involved from sources other than
19 those described in paragraph (2);

20 (2) provide assurances that amounts received
21 under the grant will be used in accordance with sub-
22 section (d); and

23 (3) meet any other requirements determined ap-
24 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 sorship 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. DISMISSAL OF AND LIMITATIONS ON CIVIL**
9 **CLAIMS.**

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, the
13 attorney general for such State shall resolve any civil
14 claim that has not already been reduced to judgment
15 seeking recovery for expenditures attributable to the
16 treatment of tobacco-related illnesses and conditions
17 that has been commenced by the State against a
18 manufacturer, distributor, or retailer of a tobacco
19 product and is pending on the date of enactment of
20 this Act.

21 (2) FUTURE CLAIMS BASED ON PRIOR CON-
22 DUCT.—With respect to a State, to be eligible to re-
23 ceive funds under section 111, the attorney general
24 for such State shall agree that the State will not
25 commence any new civil claim after the date of en-

1 actment of this Act other than to enforce the terms
2 of a previous judgment that is based on the conduct
3 of a participating manufacturer, distributor or re-
4 tailer of a tobacco product that occurred prior to the
5 date of enactment of this Act seeking recovery for
6 expenditures attributable to the treatment of tobacco
7 induced illnesses and conditions against such a man-
8 ufacturer, distributor or retailer.

9 (3) APPLICATION TO LOCAL GOVERNMENTAL
10 ENTITIES.—The requirements described in para-
11 graphs (1) and (2) shall apply to civil claims 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 a claim
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 paragraphs (1), (2), and (3) of section 101(d)
7 and section 111. Procedures under this paragraph
8 shall permit such a State to make such an election
9 on a one-time basis.

10 (2) EXTENSION.—In the case of a State that
11 has secured a judgment against a manufacturer, dis-
12 tributor or retailer of a tobacco product in a claim
13 described in subsection (a)(1) prior to or during the
14 period described in paragraph (1), and such judg-
15 ment has been appealed by such manufacturer, dis-
16 tributor, or retailer, such period shall be extended
17 during the pendency of the appeal and for an addi-
18 tional period as determined appropriate by the Sec-
19 retary.

20 (3) APPLICATION TO CERTAIN STATES.—A
21 State that has resolved a claim described in sub-
22 section (a)(1) with a manufacturer, distributor or re-
23 tailer of a tobacco product prior to the date of en-
24 actment of this Act may not make an election de-
25 scribed in paragraph (1) if, as part of the resolution

1 of such claim, the State agreed that the enactment
2 of any national tobacco settlement legislation would
3 supersede the provisions of the resolution.

4 (4) LOCAL GOVERNMENTAL ENTITY OPTION
5 FOR ONE-TIME OPT OUT.—

6 (A) IN GENERAL.—The Secretary shall es-
7 tablish procedures under which the attorney for
8 a local governmental entity which commenced a
9 civil claim prior to June 20, 1997 against a
10 manufacturer, distributor, or retailer of a to-
11 bacco product seeking recovery for expenditures
12 attributable to the treatment of tobacco related
13 illnesses and conditions, not later than 1 year
14 after the date of enactment of this Act, may
15 elect not to resolve any claim described in sub-
16 section (a)(3). A local governmental entity
17 whose attorney makes such an election shall not
18 be eligible to receive payments from the Trust
19 Fund under paragraphs (1), (2), and (3) of sec-
20 tion 101(d) and section 111. Procedures under
21 this paragraph shall permit such a local govern-
22 mental entity to make such an election on a
23 one-time basis.

24 (B) EXTENSION.—In the case of a local
25 governmental entity that has secured a judg-

1 ment against a manufacturer, distributor, or re-
2 tailer of a tobacco product in a claim described
3 in subsection (a)(3) prior to or during the pe-
4 riod described in subparagraph (A), and such
5 judgment has been appealed by such manufac-
6 turer, distributor, or retailer, such period shall
7 be extended during the pendency of the appeal
8 and for an additional period as determined ap-
9 propriate by the Secretary.

10 (C) APPLICATION TO CERTAIN LOCAL GOV-
11 ERNMENTAL ENTITIES.—A local governmental
12 entity that has resolved a claim described in
13 subsection (a)(3) with a manufacturer, distribu-
14 tor, or retailer of a tobacco product prior to the
15 date of enactment of this Act may not make an
16 election described in subparagraph (A) if, as
17 part of the resolution of such claim, the local
18 governmental entity agreed that the enactment
19 of any national tobacco settlement legislation
20 would supersede the provisions of the resolu-
21 tion.

22 (c) FEDERAL CLAIMS.—The Federal Government is
23 barred from commencing a civil claim against a participat-
24 ing manufacturer, distributor, or retailer of a tobacco
25 product seeking recovery for expenditures attributable to

1 the treatment of tobacco-related illnesses associated with
2 the conduct of a manufacturer that occurred prior to the
3 date of enactment of this Act.

4 (d) RULES OF CONSTRUCTION.—

5 (1) POST ENACTMENT CLAIMS.—Nothing in
6 this title shall be construed to limit the ability of a
7 government, entity, or person to commence an action
8 against a participating manufacturer, distributor or
9 retailer of a tobacco product with respect to a claim
10 that is based on the conduct of such manufacturer,
11 distributor or retailer that occurred after the date of
12 enactment of this Act.

13 (2) NO LIMITATION ON PERSONS.—Nothing in
14 this title shall be construed to limit the right of a
15 person to commence any civil claim for past, present,
16 or future conduct by manufacturers, distributors or
17 retailers of tobacco products.

18 (3) CRIMINAL PROSECUTION.—Nothing in this
19 title shall be construed to limit the criminal prosecu-
20 tion of tobacco manufacturers, retailers, or distribu-
21 tors or their officers, directors, employees, succes-
22 sors, 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 fee payments that are required
8 to be made by any participating manufacturer under sec-
9 tion 102 or under any other provision of this Act. Any
10 such award shall be paid by the participating manufactur-
11 ers that are signators to the June 1997 proposed resolu-
12 tion with certain State attorneys general pursuant to an
13 allocation agreement among such manufacturers.

14 (b) ARBITRATION PANEL.—

15 (1) ESTABLISHMENT.—For the purpose of
16 awarding of attorneys' fees and expenses relating to
17 litigation affected by, or legal services that resulted
18 in whole or in part in, or created a model for pro-
19 grams in, this Act, there is established an Arbitra-
20 tion Panel which shall consist of—

21 (A) 4 members to be appointed by the At-
22 torney General in consultation with the Trust-
23 ees;

24 (B) 1 member to be appointed by the man-
25 ufacturers;

1 (C) 1 member to be appointed by the At-
2 torneys General of the States; and

3 (D) 1 member to be appointed by the pri-
4 vate attorneys.

5 (2) OPERATION.—

6 (A) ESTABLISHMENT.—The members of
7 the Arbitration Panel shall be appointed not
8 later than 30 days after the effective date of
9 this Act.

10 (B) PROCEDURES.—Not later than 30
11 days after the date on which all members of the
12 Arbitration Panel are appointed under para-
13 graph (1), the Panel shall establish the proce-
14 dures under which the Panel will operate which
15 shall include—

16 (i) a requirement that any finding by
17 the Arbitration Panel must be in writing
18 and supported by written reasons;

19 (ii) procedures for the exchanging of
20 exhibits and witness lists by the various
21 claimants for awards;

22 (iii) to the maximum extent prac-
23 ticable, requirements that proceedings be-
24 fore the Panel be based on affidavits rath-
25 er than live testimony; and

1 (iv) a requirement that all claims be
2 submitted to the Arbitration Panel not
3 later than 3 months after the effective date
4 of this Act and a determination made by
5 the Panel with respect to such claims not
6 later than 7 months after such date of en-
7 actment.

8 (3) RIGHT TO PETITION.—Any individual attor-
9 ney or group of attorneys involved in litigation af-
10 fected by this Act shall have the right to petition the
11 Arbitration Panel for attorneys' fees and expenses.

12 (4) CRITERIA.—In making any award pursuant
13 to this section, the Arbitration Panel shall consider
14 the following criteria:

15 (A) The time and labor required by the
16 claimant.

17 (B) The novelty and difficulty of the ques-
18 tions involved in the action for which the claim-
19 ant is making a claim.

20 (C) The skill requisite to perform the legal
21 service involved properly.

22 (D) The preclusion of other employment by
23 the attorney due to acceptance of the action in-
24 volved.

1 (E) Whether the fee is fixed or a percent-
2 age.

3 (F) Time limitations imposed by the client
4 or the circumstances.

5 (G) The amount involved and the results
6 obtained.

7 (H) The experience, reputation, and ability
8 of the attorneys involved.

9 (I) The undesirability of the action.

10 (J) Such other factors as justice may re-
11 quire.

12 (5) APPEAL AND ENFORCEMENT.—The findings
13 of the Arbitration Panel shall be final, binding, non-
14 appealable, and payable within 30 days after the
15 date on which the finding is made public, except that
16 if an award is to be paid in installments, the first
17 installment shall be payable within such 30 day pe-
18 riod and succeeding installments shall be paid annu-
19 ally thereafter.

20 (6) SENSE OF THE HOUSE.—It is the sense of
21 the House of Representatives that the legal services
22 rendered by attorneys in the various class actions
23 filed by the Castano Plaintiffs Legal Committee
24 against certain tobacco manufacturers provided pub-
25 lic benefits, including many of the specific public

1 health programs in the proposed resolution date
 2 June 20, 1997, upon which the programs in title IV
 3 of this Act are in part modeled. It is further the
 4 sense of the House of Representatives that such pro-
 5 grams do not constitute an exclusive remedy for
 6 claims based on addiction or dependence on tobacco
 7 products and that such programs do not operate to
 8 preclude or otherwise limit any litigation premised
 9 on, or otherwise depending on, addiction to or de-
 10 pendence on tobacco products and do not in any way
 11 affect the interpretation of section 701(d) of this Act

12 (c) VALIDITY AND ENFORCEABILITY OF PRIVATE
 13 AGREEMENTS.—Notwithstanding any other provision of
 14 this Act, nothing in this section shall be construed to abro-
 15 gate or restrict in any way the rights of any parties to
 16 mediate, negotiate, or settle any fee or expense disputes
 17 or issues to which this section applies, or to enter into
 18 private agreements with respect to the allocation or divi-
 19 sion of fees among the attorneys party to any such agree-
 20 ment.

21 **Subtitle B—Consent Decrees**

22 **SEC. 711. CONSENT DECREES.**

23 (a) REQUIREMENT.—

24 (1) IN GENERAL.—Except as provided in para-
 25 graph (2), to be eligible to receive payments under

1 section 111, a State, and to be eligible to receive li-
2 ability protections under subtitle A, a tobacco manu-
3 facturer shall enter into consent decrees under this
4 section to be effective on the date of enactment of
5 this Act.

6 (2) GOOD FAITH EFFORTS.—The limitation de-
7 scribed in paragraph (1) with respect to payments
8 under section 111 shall not apply to a State if the
9 attorney general of the State certifies to the Sec-
10 retary that—

11 (A) the State has made good faith efforts
12 to enter into a consent decree in accordance
13 with this subtitle; and

14 (B) such State is willing to be bound by
15 such decree but such decree does not exist be-
16 cause—

17 (i) of the refusal on the part of a to-
18 bacco manufacturer to enter into such de-
19 cree; or

20 (ii) the appropriate court has not en-
21 tered the decree even though the parties
22 have lodged such a decree with the court.

23 (b) TERMS AND CONDITIONS.—

24 (1) IN GENERAL.—The consent decrees de-
25 scribed in subsection (a) shall resolve the State ac-

1 tion (or potential action in the case of a manufac-
2 turer that was not a defendant in a State action but
3 that desires to become a participating manufacturer
4 or in the case of a State that does not have a suit
5 pending against a manufacturer) for claims associ-
6 ated with the conduct of the manufacturer that oc-
7 curred prior to the date of enactment of this Act.

8 (2) GENERAL TERMS AND CONDITIONS.—The
9 terms and conditions contained in the consent de-
10 crees described in subsection (a) shall contain the
11 following provisions relating to—

12 (A) restrictions on tobacco product adver-
13 tising and marketing and youth access to such
14 products;

15 (B) the termination, establishment, and
16 operation of trade associations;

17 (C) the disclosure of tobacco smoke con-
18 stituents;

19 (D) the disclosure of nontobacco constitu-
20 ents and ingredients found in tobacco products;

21 (E) the disclosure of existing and future
22 documents relating to health, toxicity, and ad-
23 diction related to tobacco product usage;

1 (F) the obligation of manufacturers to
2 make payments for the benefit of States, pri-
3 vate litigants and the general public;

4 (G) the obligation of manufacturers to
5 enter into the Protocol under subtitle C;

6 (I) the obligation of manufacturers to
7 interact only with distributors and retailers that
8 operate in compliance with the applicable provi-
9 sions of Federal, State, or local law regarding
10 the marketing and sale of tobacco products;

11 (J) requirements for warnings, labeling,
12 and packaging of tobacco products;

13 (K) the resolution of pending litigation (or
14 potential future litigation for misconduct that
15 occurred prior to the date of enactment of this
16 Act) as required under subtitle A and as agreed
17 to by the parties to the decree; and

18 (L) any other matter determined appro-
19 priate by the Secretary or the parties involved.

20 (3) LIMITATIONS.—The terms and conditions
21 contained in the consent decrees described in sub-
22 section (a) shall not contain provisions relating to—

23 (A) tobacco product design, performance,
24 or modification;

1 (B) manufacturing standards and good
2 manufacturing practices;

3 (C) testing and regulation with respect to
4 toxicity and ingredients approval; and

5 (D) the tobacco usage reduction require-
6 ment described in section 303.

7 (4) ENFORCEABILITY.—The terms and condi-
8 tions contained in the consent decrees described in
9 subsection (a) shall be enforceable by the signato-
10 ries, as well as the Attorney General, and shall in-
11 clude a provision that prohibits signatories from
12 challenging the enforceability of the consent decrees.

13 (5) CONSTRUCTION.—The terms and conditions
14 contained in the consent decrees described in sub-
15 section (a) shall provide that the terms of the decree
16 will be construed in a manner that is consistent with
17 the provision of this Act.

18 (c) APPROVAL.—

19 (1) IN GENERAL.—Prior to the entry of a con-
20 sent decree by a court under this section the court
21 must find that the provisions of the consent de-
22 cree—

23 (A) have been approved by the Secretary
24 and the Attorney General;

25 (B) are fair and reasonable; and

1 (C) are in the public interest.

2 (2) DETERMINATION BY SECRETARY.—To ap-
3 prove a consent decree under paragraph (1)(A), the
4 Secretary and the Attorney General shall have deter-
5 mined whether the provisions of the decree are con-
6 sistent with this Act and the Food, Drug and Cos-
7 metic Act or the rules and regulations promulgated
8 under such Acts.

9 (3) NOTICE TO PUBLIC.—With respect to the
10 approval of a consent decree under this section, the
11 court shall ensure that the public has been given not
12 less than 60 days notice of the filing of the decree
13 by the parties and any objections thereto must be
14 addressed to the satisfaction of the court.

15 (d) ENFORCEMENT.—The provisions of a consent de-
16 cree entered under this section shall remain in effect and
17 enforceable in the court in which the decree is entered,
18 even if the underlying action is dismissed.

19 **SEC. 712. NON-PARTICIPATING MANUFACTURERS.**

20 With respect to a manufacturer that elects not to
21 enter into a consent decree under section 711, such manu-
22 facturer shall not be eligible to receive the liability protec-
23 tions under section 701.

**Subtitle C—National Tobacco
Control Protocol**

CHAPTER 1—ESTABLISHMENT

SEC. 721. NATIONAL TOBACCO CONTROL PROTOCOL.

(a) REQUIREMENT.—To be eligible to receive the liability protections provided for in subtitle A, each tobacco manufacturer to which this Act applies shall, not later than 90 days after the date of enactment of this Act, enter into a National Tobacco Control Protocol with the Attorney General of the United States and the attorney general of each State that does not elect to opt out under section 701(b)(1).

(b) TERMS AND CONDITIONS.—The Protocol referred to in subsection (a) shall be—

(1) developed by the Attorney General, in consultation with the Secretary, the State attorneys' general, the Federal Trade Commission and other individuals determined appropriate by the Attorney General, as a binding and enforceable contract that embodies the terms of this subtitle; and

(2) designed to be enforceable in Federal or State courts as provided for in this subtitle.

(c) CONTRACTS.—As part of the Protocol under this section, a manufacturer shall agree, with respect to any contract entered into by the manufacturer with an entity

1 that is a distributor or retailer of tobacco products, to in-
2 clude in such contract as a term and condition a require-
3 ment that such distributor or retailer comply with the pro-
4 visions of the Protocol.

5 **CHAPTER 2—TERMS AND CONDITIONS**

6 **SEC. 725. APPLICATION OF CHAPTER.**

7 The provisions of this chapter shall be considered as
8 part of the Protocol.

9 **SEC. 726. AGREEMENT TO PROHIBIT CERTAIN ADVERTIS-** 10 **ING.**

11 (a) PROHIBITION ON OUTDOOR ADVERTISING.—

12 (1) IN GENERAL.—No manufacturer, distribu-
13 tor, or retailer may use any form of outdoor tobacco
14 product advertising, including billboards, posters, or
15 placards.

16 (2) STADIA AND ARENAS.—Except as otherwise
17 provided in this Act, a manufacturer, distributor, or
18 retailer shall not advertise tobacco products in any
19 arena or stadium where athletic, musical, artistic or
20 other social or cultural events or activities occur.

21 (b) PROHIBITION ON USE OF HUMAN IMAGES AND
22 CARTOONS.—No manufacturer, distributor, or retailer
23 may use a human image or a cartoon character or cartoon-
24 type character in its advertising, labeling or promotional
25 material with respect to a tobacco product.

1 (c) PROHIBITION ON ADVERTISING ON THE INTER-
2 NET.—No manufacturer, distributor, or retailer may use
3 the Internet to advertise tobacco products unless such an
4 advertisement is inaccessible in or from the United States.

5 (d) PROHIBITION ON POINT OF SALE ADVERTIS-
6 ING.—

7 (1) IN GENERAL.—Except as otherwise pro-
8 vided in this subsection, no manufacturer, distribu-
9 tor, or retailer may use point of sale advertising of
10 tobacco products.

11 (2) ADULT ONLY STORES AND TOBACCO OUT-
12 LETS.—Paragraph (1) shall not apply to point of
13 sale advertising at adult only stores and tobacco out-
14 lets.

15 (3) PERMISSIBLE ADVERTISING.—

16 (A) IN GENERAL.—Each manufacturer of
17 tobacco products may display not more than 2
18 separate point of sale advertisements in or at
19 each location at which tobacco products are of-
20 fered for sale.

21 (B) RETAILERS.—No manufacturer, dis-
22 tributor, or retailer may enter into any arrange-
23 ment with a retailer to limit the ability of the
24 retailer to display any form of permissible point
25 of sale advertisement or promotional material

1 originating with another manufacturer, dis-
2 tributor, or retailer.

3 (4) LIMITATIONS.—

4 (A) IN GENERAL.—A point of sale adver-
5 tisement permitted under this subsection shall
6 be comprised of a display area that is not larger
7 than 576 square inches (either individually or
8 in the aggregate) and shall consist only of black
9 letters on a white background or other recog-
10 nized typographical marks. Such advertisement
11 shall not be attached to nor located within 2
12 feet of any fixture on which candy is displayed
13 for sale.

14 (B) AUDIO AND VIDEO FORMATS.—Audio
15 and video advertisements otherwise permitted
16 under this Act may be distributed to individuals
17 who are 18 years of age or older at point of sale
18 but may not be played or viewed at such point
19 of sale.

20 (C) DISPLAY FIXTURES.—Display fixtures
21 in the form of signs consisting of brand name
22 and price and not larger than 2 inches in height
23 are permitted.

24 (5) DEFINITION.—For purposes of this sub-
25 section, the term “point of sale advertising” means

1 all printed or graphical materials bearing the brand
2 name (alone or in conjunction with any other word),
3 logo, motto, selling message, recognizable color or
4 pattern of colors, or any other indicia of product
5 identification similar or identical to those used for
6 tobacco products, which, when used for its intended
7 purpose, can reasonably be anticipated to be seen by
8 customers at a location at which tobacco products
9 are offered for sale.

10 **SEC. 727. CONSENSUAL RESTRICTIONS.**

11 (a) RESTRICTION ON PRODUCT NAMES.—A manu-
12 facturer shall not use a trade or brand name of a non-
13 tobacco product as the trade or brand name for a cigarette
14 or smokeless tobacco product, except for a tobacco product
15 whose trade or brand name was on both a tobacco product
16 and a nontobacco product that were sold in the United
17 States on January 1, 1998.

18 (b) ADVERTISING LIMIT ACTIONS.—

19 (1) IN GENERAL.—A manufacturer, distributor,
20 or retailer may in accordance with this Act, dissemi-
21 nate or cause to be disseminated advertising or la-
22 beling which bears a tobacco product brand name
23 (alone or in conjunction with any other word) or any
24 other indicia of tobacco product identification only in
25 newspapers, in magazines, in periodicals or other

1 publications (whether periodic or limited distribu-
2 tion), on billboards, posters and placards in accord-
3 ance with section 726(a), in nonpoint of sale pro-
4 motional material (including direct mail), in point-
5 of-sale promotional material, and in audio or video
6 formats delivered at a point-of-sale.

7 (2) LIMITATION.—A manufacturer, distributor,
8 or retailer that intends to disseminate, or to cause
9 to be disseminated, advertising or labeling for a to-
10 bacco product in a medium that is not described in
11 paragraph (1) shall notify the Secretary not less
12 than 30 days prior to the date on which such me-
13 dium is to be used. Such notice shall describe the
14 medium and discuss the extent to which the adver-
15 tising or labeling may be seen by individuals who are
16 under 18 years of age.

17 (3) ACTION BY SECRETARY.—Not later than 30
18 days after the date on which the Secretary receives
19 a notice under paragraph (2), the Secretary shall
20 make a determination with respect to the action to
21 be taken concerning such notice.

22 (c) RESTRICTION ON PLACEMENT IN ENTERTAIN-
23 MENT MEDIA.—

24 (1) IN GENERAL.—No payment shall be made
25 by any manufacturer, distributor, or retailer for the

1 placement of any tobacco product or tobacco product
2 package or advertisement—

3 (A) as a prop in any television program or
4 motion picture produced for viewing by the gen-
5 eral public; or

6 (B) in a video or on a video game machine.

7 (2) VIDEO GAME.—The term “video game”
8 means any electronic amusement device that utilizes
9 a computer, microprocessor, or similar electronic cir-
10 cuitry and its own cathode ray tube, or is designed
11 to be used with a television set or a monitor, that
12 interacts with the user of the device.

13 (3) VIDEO.—The term “video” means an audio-
14 visual work produced for viewing by the general pub-
15 lic, such as a television program, a motion picture,
16 a music video, and the audiovisual display of a video
17 game.

18 (d) RESTRICTIONS ON GLAMORIZATION OF TOBACCO
19 PRODUCTS.—No direct or indirect payment shall be made,
20 or consideration given, by any manufacturer, distributor,
21 or retailer to any entity for the purpose of promoting the
22 image or use of a tobacco product through print, film or
23 broadcast media that appeals to individuals under 18
24 years of age or through a live performance by an enter-
25 tainment artist that appeals to such individuals.

1 **SEC. 728. AGREEMENT ON FORMAT AND CONTENT RE-**
2 **QUIREMENTS FOR LABELING AND ADVERTIS-**
3 **ING.**

4 (a) IN GENERAL.—Except as provided in subsections
5 (b) and (c), each manufacturer, distributor, or retailer ad-
6 vertising or causing to be advertised, disseminating or
7 causing to be disseminated, any labeling or advertising for
8 a tobacco product shall use only black text on a white
9 background.

10 (b) CERTAIN ADVERTISING EXCEPTED.—

11 (1) IN GENERAL.—Subsection (a) shall not
12 apply to advertising—

13 (A) in any facility where vending machines
14 and self-service displays are permitted under
15 this title if the advertising involved—

16 (i) is not visible from outside of the
17 facility; and

18 (ii) is affixed to a wall or fixture in
19 the facility;

20 (B) that appears in any publication
21 (whether periodic or limited distribution) that is
22 an adult publication.

23 (2) ADULT PUBLICATION.—For purposes of
24 paragraph (1)(B), the term “adult publication”
25 means a newspaper, magazine, periodical, or other
26 publication—

1 (A) whose readers under 18 years of age
 2 constitute 15 percent or less of the total reader-
 3 ship as measured by competent and reliable
 4 survey evidence; and

5 (B) that is read by fewer than 2,000,000
 6 individuals who are under 18 years of age as
 7 measured by competent and reliable survey evi-
 8 dence.

9 (c) AUDIO OR VIDEO FORMATS.—Each manufac-
 10 turer, distributor or retailer advertising or causing to be
 11 advertised any advertising for a tobacco product in an
 12 audio or video format shall comply with the following:

13 (1) With respect to an audio format, the adver-
 14 tising shall be limited to words only with no music
 15 or sound effects.

16 (2) With respect to a video format, the advertis-
 17 ing shall be limited to static black text only on a
 18 white background. Any audio with the video adver-
 19 tising shall be limited to words only with no music
 20 or sound effects.

21 **SEC. 729. AGREEMENT TO BAN ON NONTOBACCO ITEMS**
 22 **AND SERVICES, CONTESTS AND GAMES OF**
 23 **CHANCE, AND SPONSORSHIP OF EVENTS.**

24 (a) BAN ON ALL NON-TOBACCO MERCHANDISE.—No
 25 manufacturer, importer, distributor, or retailer shall mar-

1 ket, license, distribute, sell or cause to be marketed, li-
2 censed, distributed or sold any item (other than tobacco
3 products) or service, which bears the brand name (alone
4 or in conjunction with any other word), logo, symbol,
5 motto, selling message, recognizable color or pattern of
6 colors, or any other indicia of product identification simi-
7 lar or identifiable to those used for any brand of tobacco
8 products.

9 (b) GIFTS, CONTESTS, AND LOTTERIES.—No manu-
10 facturer, distributor, or retailer shall offer or cause to be
11 offered to any person purchasing tobacco products any gift
12 or item (other than a tobacco product) in consideration
13 of the purchase of such products, or to any person in con-
14 sideration of furnishing evidence, such as credits, proofs-
15 of-purchase, or coupons, of such a purchase.

16 (c) SPONSORSHIP.—

17 (1) IN GENERAL.—No manufacturer, distribu-
18 tor, or retailer shall sponsor or cause to be spon-
19 sored any athletic, musical, artistic or other social or
20 cultural event, or any entry or team in any event, in
21 which the brand name (alone or in conjunction with
22 any other word), logo, motto, selling message, rec-
23 ognizable color or pattern of colors, or any other in-
24 dicia of product identification similar or identical to
25 those used for tobacco products is used.

1 (2) USE OF CORPORATE NAME.—A manufac-
 2 turer, distributor, or retailer may sponsor or cause
 3 to be sponsored any athletic, musical, artistic or
 4 other social or cultural event in the name of the cor-
 5 poration which manufactures the tobacco product
 6 if—

7 (A) both the corporate name and the cor-
 8 poration were registered and in use in the
 9 United States prior to January 1, 1995; and

10 (B) the corporate name does not include
 11 any brand name (alone or in conjunction with
 12 any other word), logo, symbol, motto, selling
 13 message, recognizable color or pattern of colors,
 14 or any other indicia or product identification
 15 identical or similar to, or identifiable with,
 16 those used for any brand of tobacco products.

17 **CHAPTER 3—ENFORCEMENT**

18 **SEC. 731. FEDERAL ENFORCEMENT OF THE PROTOCOL.**

19 (a) ACTIONS.—The Attorney General may bring an
 20 action for the enforcement, or to restrain any breach, of
 21 the Protocol in the United States District Court for the
 22 District of Columbia or in the district court of the United
 23 States for the district in which the breach occurred.

24 (b) REMEDY.—In any action under subsection (a),
 25 the district court involved—

1 (1) shall restrain the conduct that is the subject
2 of the breach of the Protocol;

3 (2) shall order specific performance of the obli-
4 gations set forth in the Protocol;

5 (3) may order civil penalties against any manu-
6 facturer who violates a requirement of the Protocol
7 in an amount not more than \$250,000 per violation
8 per day; and

9 (4) with respect to officers of manufacturers
10 who knowingly violate the protocol, may impose ap-
11 propriate criminal penalties, including incarceration.

12 (c) **CONTRACTS WITH STATE AGENCIES.**—The Sec-
13 retary may award grants to or enter into contracts with
14 an agency of any State to assist in the enforcement of
15 the provisions of the Protocol.

16 (d) **ACTION BY ATTORNEY GENERAL.**—With respect
17 to the funding of any activities under subsection (a), the
18 Attorney General shall use amounts available in the Trust
19 Fund under section 102. If the Attorney General deter-
20 mines that amounts available in the Trust Fund are insuf-
21 ficient, the Attorney General may use amounts available
22 for the activities of the Department of Justice.

23 **SEC. 732. STATE ENFORCEMENT OF THE PROTOCOL.**

24 (a) **CIVIL ACTION.**—The attorney general of a State
25 may bring an action for the enforcement, or to restrain

1 a breach, of the Protocol if the alleged violation that is
2 the subject of the proceedings occurred in that State.

3 (b) CONCURRENT JURISDICTION.—Both Federal and
4 State courts shall have jurisdiction over a proceeding de-
5 scribed in subsection (a). If such a proceeding is com-
6 menced in a district court of the United States, the court
7 shall take into consideration the size and scope of any
8 State penalties that have been applied for the identical vio-
9 lations.

10 (c) REMEDIES.—In any proceeding described in sub-
11 section (b) the remedies available shall be those described
12 in section 731(b).

13 **SEC. 733. PRIVATE ENFORCEMENT OF PROTOCOL.**

14 (a) IN GENERAL.—A manufacturer may seek a dec-
15 laration of the rights and obligations of the manufacturer
16 under the Protocol by filing an action pursuant to section
17 2201 of title 28, United States Code.

18 (b) CIVIL ACTION.—Any person may bring a civil ac-
19 tion against a manufacturer to enforce, or restrain
20 breaches of, the Protocol by such manufacturer, except
21 that—

22 (1) no such action may be commenced or main-
23 tained if the Secretary has settled a proceeding per-
24 taining to such alleged breach; and

1 (2) the court, in any such action, shall restrain
2 conduct in breach of the Protocol and order specific
3 performance of the obligations set forth in the Pro-
4 tocol, and may award damages which at a minimum
5 will recover any economic benefit derived as a result
6 of the noncompliance involved together with an
7 amount awarded as a suitable penalty associated
8 with such breach.

9 Any damages awarded under this subsection shall be re-
10 mitted to the Treasury.

11 (c) RIGHT OF INTERVENTION.—In any proceeding
12 described in section 731(a) or 732(a), any manufacturer
13 may intervene as a matter of right.

14 **TITLE VIII—MISCELLANEOUS**
15 **PROVISIONS**

16 **SEC. 801. PROHIBITION ON USE OF FUNDS TO FACILITATE**
17 **THE EXPORTATION OR PROMOTION OF TO-**
18 **BACCO.**

19 (a) IN GENERAL.—Notwithstanding any other provi-
20 sion of law, no funds made available by appropriations or
21 otherwise made available may be used by any officer, em-
22 ployee, department, or agency of the United States—

23 (1) to promote or encourage the export, reex-
24 port, sale, manufacture, advertising, promotion, dis-

1 tribution, or use of tobacco or tobacco products to
2 or in a foreign country; or

3 (2) to seek, through negotiation or otherwise,
4 the removal or reduction by any foreign country of
5 any restriction or proposed restriction in that coun-
6 try on the importation, export, reexport, sale, manu-
7 facture, advertising, promotion, distribution, packag-
8 ing, labeling, use, content, imposition of tariffs, or
9 taxation, of tobacco or tobacco products.

10 (b) EXCEPTION.—Subsection (a)(2) shall not apply
11 to any restriction or proposed restriction by a foreign
12 country if—

13 (1) the restriction is applied in a manner which
14 constitutes a means of arbitrary or unjustifiable dis-
15 crimination between countries;

16 (2) the Secretary of Commerce certifies in writ-
17 ing to Congress that the restriction is being applied
18 in a manner that constitutes a means of arbitrary or
19 unjustifiable discrimination between countries; and

20 (3) the Secretary of Health and Human Serv-
21 ices certifies to Congress in writing that the restric-
22 tion is not a reasonable means of protecting the pub-
23 lic health.

1 (c) DEFINITION.—In this section, the term “arbi-
2 trary or unjustifiable discrimination” means a restriction
3 or proposed restriction by a foreign country that—

4 (1) is arbitrary or unjustifiable; and

5 (2) does not adhere to the principle of national
6 treatment and applies less favorable treatment to
7 goods that are imported into that country than the
8 country applies to like goods that are the product,
9 growth, or manufacture of that country.

10 **SEC. 802. WHISTLEBLOWER PROTECTIONS.**

11 (a) PROHIBITION OF REPRISALS.—An employee of
12 any manufacturer, distributor, or retailer of a tobacco
13 product may not be discharged, demoted, or otherwise dis-
14 criminated against (with respect to compensation, terms,
15 conditions, or privileges of employment) as a reprisal for
16 disclosing to an employee of the Food and Drug Adminis-
17 tration, the Department of Health and Human Services,
18 the Department of Justice, the Congress, or any State or
19 local regulatory or enforcement authority, information re-
20 lating to a violation of law related to this Act or a State
21 or local law that furthers the purposes of this Act.

22 (b) ENFORCEMENT.—Any employee or former em-
23 ployee who believes that such employee has been dis-
24 charged, demoted, or otherwise discriminated against in
25 violation of subsection (a) may file a civil action in the

1 appropriate United States district court before the end of
2 the 2-year period beginning on the date of such discharge,
3 demotion, or discrimination.

4 (c) REMEDIES.—If the district court determines that
5 a violation has occurred, the court may order the manufac-
6 turer, distributor, or retailer involved to—

7 (1) reinstate the employee to the employee’s
8 former position;

9 (2) pay compensatory damages; or

10 (3) take other appropriate actions to remedy
11 any past discrimination.

12 (d) LIMITATION.—The protections of this section
13 shall not apply to any employee who—

14 (1) deliberately causes or participates in the al-
15 leged violation of law or regulation; or

16 (2) knowingly or recklessly provides substan-
17 tially false information to the Food and Drug Ad-
18 ministration, the Department of Health and Human
19 Services, the Department of Justice, or any State or
20 local regulatory or enforcement authority.

21 (e) APPLICATION OF FALSE CLAIMS ACT.—Section
22 3730(d) of title 31, United States Code, shall apply with
23 respect to any employee to which this section applies if
24 the disclosure of such employee results in a payment of
25 any fee or fine to the Federal Government by the manu-

1 facturer, distributor or retailer involved, regardless of
2 whether such employee ever commenced an action con-
3 cerning the disclosure.

4 **SEC. 803. PROHIBITIONS RELATING TO TOBACCO PROD-**
5 **UCTS AND CHILDREN.**

6 (a) IN GENERAL.—Chapter VIII of the Federal
7 Food, Drug, and Cosmetic Act (21 U.S.C. 381 et seq.)
8 is amended by adding at the end the following:

9 **“SEC. 804. PROHIBITION ON SALE OR DISTRIBUTION OF TO-**
10 **BACCO PRODUCTS TO CHILDREN.**

11 “(a) GENERAL RULE.—It shall be unlawful for any
12 domestic concern or any officer, director, employee, or
13 agent of such concern to make use of the mails or any
14 means or instrumentality of interstate commerce to cause
15 or contribute, either directly or through a foreign subsidi-
16 ary, joint venture, affiliate, or licensee, to—

17 “(1) the sale or distribution of tobacco products
18 in a foreign country to children; or

19 “(2) the advertising or promotion of tobacco
20 products in a foreign country in a manner that ap-
21 peals to children.

22 “(b) INTERPRETATION.—For purposes of subsection
23 (a), the advertising or promotion of tobacco products shall
24 be considered to be in a manner that appeals to children
25 if the advertising or promotion is carried out in a manner

1 that would not be permissible under the regulations re-
2 ferred to in section 202 of the Healthy Kids Act if it oc-
3 curred in the United States.

4 **“SEC. 805. LABELING.**

5 “It shall be unlawful for any domestic concern or any
6 officer, director, employee, or agent of such concern, either
7 directly or through a foreign subsidiary, joint venture, af-
8 filiate, or licensee, to make use of the mails or any means
9 or instrumentality of interstate commerce to cause or con-
10 tribute to the export from the United States or the sale
11 or distribution in, or export from, any other country any
12 tobacco product the package of which does not contain a
13 warning label that—

14 “(1) is in the primary language or languages of
15 the country in which the tobacco product is sold or
16 distributed to consumers; and

17 “(2) except for the requirement of paragraph
18 (1)—

19 “(A) complies with Federal requirements
20 for labeling of similar tobacco products manu-
21 factured, imported, or packaged for sale or dis-
22 tribution in the United States; or

23 “(B) complies with the labeling require-
24 ments of the foreign country in which the prod-
25 uct is sold or distributed to consumers and

1 which labeling requirements the Secretary de-
2 termines are substantially similar to Federal re-
3 quirements and are adequately enforced by such
4 country.”.

5 (b) ENFORCEMENT.—Section 301 of the Federal
6 Food, Drug, and Cosmetic Act (21 U.S.C. 331) as amend-
7 ed by section 203(e), is further amended by adding at the
8 end the following:

9 “(cc) To carry out an act made unlawful by section
10 804 or 805.

11 (c) REWARD.—Section 303(b)(5) of the Federal
12 Food, Drug, and Cosmetic Act (21 U.S.C. 333)(b)(5)) is
13 amended by adding at the end the following: “If a person
14 provides information leading to the institution of a crimi-
15 nal proceeding against, and conviction of, a person for a
16 violation of section 301(cc), such person shall be entitled
17 to one-half of the criminal fine imposed and collected for
18 such violation but not more than \$125,000.”.

19 (d) DEFINITIONS.—Section 201 of the Federal Food,
20 Drug, and Cosmetic Act (21 U.S.C. 321) as amended by
21 section 203(a)(3), is further amended by adding at the
22 end the following:

23 “(1) The term ‘domestic concern’ means—

24 “(1) any individual who is a citizen, national, or
25 resident of the United States; and

1 “(2) any corporation, partnership, association,
2 joint-stock company, business trust, unincorporated
3 organization, or sole proprietorship which has its
4 principal place of business in the United States or
5 which is organized under the laws of a State of the
6 United States or a territory, possession, or common-
7 wealth of the United States.

8 “(mm) The term ‘children’ means an individual under
9 the age of 18.”.

10 **SEC. 804. PRESERVATION OF STATE AND LOCAL AUTHOR-**
11 **ITY.**

12 Except as otherwise provided for in this Act (or an
13 amendment made by this Act), nothing in this Act shall
14 be construed as prohibiting a State or political subdivision
15 of a State from imposing requirements, prohibitions, pen-
16 alties or other measures, whether by statute, rule, regula-
17 tion, ordinance, judicial decree, consent decree, or settle-
18 ment agreement, to further the purposes of this Act that
19 are in addition to the requirements, prohibitions, or pen-
20 alties required under this Act. Nothing in this Act (or an
21 amendment made by this Act) shall preclude or deny the
22 right of any State or political subdivision of a State to
23 adopt or enforce any requirements, prohibitions, or pen-
24 alties relating to tobacco products to the extent that such

1 requirements, prohibitions or penalties are not less strin-
2 gent than those required under this Act (or amendments).

3 **SEC. 805. SEVERABILITY.**

4 If any provision of this Act, an amendment made by
5 this Act, or the application of such provision or amend-
6 ment to any person or circumstance is held to be unconsti-
7 tutional, the remainder of this Act, the amendments made
8 by this Act, and the application of the provisions of such
9 to any person or circumstance shall not be affected there-
10 by.

11 **TITLE IX—PROVISIONS RELAT-**
12 **ING TO NATIVE AMERICANS**

13 **SEC. 901. PROVISIONS RELATING TO NATIVE AMERICANS.**

14 (a) IN GENERAL.—The provisions of this Act (or an
15 amendment made by this Act) shall apply to the manufac-
16 ture, distribution, and sale of tobacco products in any area
17 within the jurisdiction of an Indian tribe or tribal organi-
18 zation.

19 (b) RELIGIOUS PRACTICE EXCEPTION.—In recogni-
20 tion of the religious, traditional and ceremonial uses of
21 tobacco and tobacco products by many Indian tribes and
22 the members of such tribes, nothing in this Act (or an
23 amendment made by this Act) shall be construed to in-
24 fringe upon the rights of such tribes or members to trans-
25 fer, acquire, possess, or use any tobacco or tobacco prod-

1 ucts for such purposes. The preceding sentence shall only
2 be construed to apply to those quantities of tobacco prod-
3 ucts necessary to fulfill recognized religious, traditional or
4 ceremonial purposes and not to permit the general market-
5 ing of tobacco products not in compliance with subchapter
6 F of chapter V of the Federal Food, Drug and Cosmetic
7 Act.

8 (c) PAYMENTS TO TRUST FUND.—Any Indian tribe
9 or tribal organization that engages in the manufacturer
10 of tobacco products shall be subject to liability for an as-
11 sessment under section 102.

12 (d) APPLICATION OF FEDERAL FOOD, DRUG AND
13 COSMETIC ACT REQUIREMENTS.—

14 (1) IN GENERAL.—The Secretary, in consulta-
15 tion with the Secretary of the Interior, shall promul-
16 gate regulations to provide for the application of any
17 requirements of the Food, Drug and Cosmetic Act
18 with respect to tobacco products manufactured, dis-
19 tributed, or sold in any area within the jurisdiction
20 of an Indian tribe or tribal organization as appro-
21 priate to comply with subsections (a) and (b).

22 (2) ELIGIBILITY FOR ASSISTANCE.—Under the
23 regulations promulgated under paragraph (1), the
24 Secretary, after consultation with the Secretary of
25 the Interior, may provide assistance to an Indian

1 tribe or tribal organization in meeting and enforcing
2 the requirements under such regulations if—

3 (A) the tribe or organization has a govern-
4 ing body that has powers and carries out duties
5 that are similar to the powers and duties of
6 State or local governments and requests such
7 assistance by application to the Secretary;

8 (B) the functions to be exercised through
9 the use of such assistance relate to activities
10 within the exterior boundaries of the reservation
11 or other areas within the jurisdiction of the
12 tribe involved; and

13 (C) the tribe or organization is reasonably
14 expected to be capable of carrying out the func-
15 tions required by the Secretary.

16 (3) DETERMINATIONS.—The Secretary, in con-
17 sultation with the Secretary of the Interior, shall
18 make determinations concerning the eligibility of an
19 Indian tribe or tribal organization for assistance
20 under regulations under paragraph (1) not later
21 than 90 days after the date on which such tribe or
22 organization submits an application for such assist-
23 ance.

24 (4) IMPLEMENTATION BY SECRETARY.—If the
25 Secretary determines that the Indian tribe or tribal

1 organization is not willing or qualified to administer
2 the requirements of the regulations promulgated
3 under this subsection, the Secretary, in consultation
4 with the Secretary of the Interior, shall implement
5 and enforce such regulations on behalf of the tribe
6 or organization.

7 (e) RETAIL LICENSING REQUIREMENTS.—

8 (1) IN GENERAL.—The requirements of section
9 577 of the Federal Food, Drug and Cosmetic Act
10 (as added by section 204 of this Act) shall apply to
11 retailers that sell tobacco products in any area with-
12 in the jurisdiction of an Indian tribe or tribal orga-
13 nization.

14 (2) SELF-REGULATION.—In order to be eligible
15 for funds under subsection (f), an Indian tribe or
16 tribal organization shall implement a tribal licensing
17 program within the exterior boundaries of the res-
18 ervation and other areas within the jurisdiction of
19 the tribe consistent with the regulations promulgated
20 under section 577 of the Federal Food, Drug and
21 Cosmetic Act.

22 (3) IMPLEMENTATION BY SECRETARY.—If the
23 Secretary, in consultation with the Secretary of the
24 Interior, determines that the Indian tribe or tribal
25 organization is not qualified to administer the re-

1 requirements of section 577 of the Federal Food,
2 Drug and Cosmetic Act, the Secretary, in consulta-
3 tion with the Secretary of the Interior, shall imple-
4 ment such requirements on behalf of the tribe or or-
5 ganization.

6 (f) ELIGIBILITY FOR PUBLIC HEALTH PAYMENTS.—

7 (1) IN GENERAL.—For each fiscal year the Sec-
8 retary shall pay to each Indian tribe that has an ap-
9 proved tribal anti-smoking plan a tribal grant for
10 the fiscal year in an amount equal to the amount de-
11 termined under paragraph (3), and shall reduce the
12 amounts payable under section 111 to any State in
13 which the service area or areas of the Indian tribe
14 are located by the amount so determined.

15 (2) PLAN.—To be eligible to receive a payment
16 under paragraph (1), an Indian tribe shall prepare
17 and submit to the Secretary for approval an anti-
18 smoking plan and shall otherwise meet the require-
19 ments of subsection (e).

20 (3) AMOUNT DETERMINED.—The amount of
21 any funds for which an Indian tribe is eligible under
22 paragraph (1) shall be determined by the Secretary
23 based on the ratio of the total number of Indians re-
24 siding on such tribe's reservation or in areas within
25 the jurisdiction of the tribe in the State to the total

1 population of the State multiplied by the amount al-
2 located to State under section 111.

3 (4) USE.—Amounts provided to a tribe or orga-
4 nization under this paragraph shall be used to reim-
5 burse the tribe for smoking-related health expendi-
6 tures, to further the purposes of this Act, and in ac-
7 cordance with a plan submitted by the tribe or orga-
8 nization and approved by the Secretary as being in
9 compliance with this Act. Tribes and tribal organiza-
10 tions shall have the flexibility to utilize such
11 amounts to meet the unique health needs of such
12 tribes within the context of tribal health programs if
13 such programs meet the fundamental Federal re-
14 quirements under this Act as determined by the Sec-
15 retary.

16 (5) REALLOTMENT.—Any amounts set-aside
17 and not expended under this paragraph shall be re-
18 allotted among other eligible tribes and organiza-
19 tions.

20 (g) OBLIGATION OF MANUFACTURERS.—A partici-
21 pating manufacturer shall not engage in any activity in
22 an area within the jurisdiction of an Indian tribe or tribal
23 organization that is prohibited under the Protocol.

24 (h) INDIAN HEALTH SERVICE.—Amounts made
25 available under section 101(d)(5)(B) shall be provided to

1 the Indian Health Service to be used for anti-tobacco-re-
2 lated consumption and cessation activities including—

3 (1) clinic and facility design, construction, re-
4 pair, renovation, maintenance and improvement;

5 (2) provider services and equipment;

6 (3) domestic and community sanitation associ-
7 ated with clinic and facility construction and im-
8 provement;

9 (4) inpatient and outpatient services; and

10 (5) other programs and services provided
11 through the Indian Health Service or through tribal
12 contracts, compacts, grants or cooperative agree-
13 ments with the Indian Health Service and which are
14 deemed appropriate to raising the health status of
15 Indians.

16 (i) PREEMPTION.—

17 (1) GENERAL PREEMPTION.—Except as other-
18 wise provided for in this section, nothing in this Act
19 shall be construed as prohibiting an Indian tribe or
20 tribal organization from imposing requirements, pro-
21 hibitions, penalties or other measures to further the
22 purposes of this Act that are in addition to the re-
23 quirements, prohibitions, or penalties required under
24 this Act.

1 (2) PUBLIC EXPOSURE TO SMOKE.—Nothing in
 2 the amendment made by title V shall be construed
 3 to preempt or otherwise affect any Indian tribe or
 4 tribal organization rule or practice that provides
 5 greater protection from the health hazards of envi-
 6 ronmental tobacco smoke.

7 (3) NATIVE AMERICANS.—A State may not im-
 8 pose obligations or requirements relating to the ap-
 9 plication of this Act to Indian tribes and tribal orga-
 10 nizations.

11 **TITLE X—TOBACCO ASBESTOS** 12 **TRUST**

13 **SEC. 1001. TOBACCO ASBESTOS TRUST FUND.**

14 (a) ESTABLISHMENT.—There is established in the
 15 Treasury of the United States a trust fund to be known
 16 as the “Tobacco Asbestos Trust Fund”, consisting of the
 17 amounts appropriated or credited to it pursuant to section
 18 102.

19 (b) TRUSTEES.—Within 60 days of the date of the
 20 enactment of this Act, the Secretary of Labor shall ap-
 21 point as trustees of the fund one representative of asbestos
 22 claimants, one representative of labor organizations with
 23 asbestos claimants as members, one representative of as-
 24 bestos trusts, and one representative of asbestos defend-
 25 ants. These trustees shall appoint a fifth trustee who shall

1 be a member of the health care profession with experience
2 in asbestos disease or disability.

3 **SEC. 1002. FUNDING OF TRUST; ASSESSMENT FROM TO-**
4 **BACCO COMPANIES.**

5 (a) TRANSFERS; AUTHORIZATION.—There is trans-
6 ferred to the Tobacco Asbestos Trust Fund, without fur-
7 ther appropriation, an amount equal to the amounts re-
8 ceived under subsection (b). Amounts from the fund shall
9 be made available each year, without further appropria-
10 tion, as necessary to make the expenditures and alloca-
11 tions provided for in this title. There are authorized to
12 be appropriated to the Tobacco Asbestos Trust Fund, in
13 fiscal year 1999 and in any fiscal year thereafter through
14 fiscal year 2014, as repayable advances, such sums as may
15 be necessary to make the expenditures and allocations de-
16 scribed in section 1003.

17 (b) SPECIAL TOBACCO-ASBESTOS VICTIM ASSESS-
18 MENT.—In order to fund the appropriations and transfers
19 provided for in subsection (a), for each calendar year be-
20 ginning with fiscal year 1999, the Secretary of the Treas-
21 ury shall assess each tobacco manufacturer, in a fashion
22 consistent with this Act, an amount sufficient to provide
23 the Tobacco Asbestos Trust Fund with the following
24 amounts:

25 (1) In fiscal year 1999, \$1,000,000,000.

1 (2) In fiscal year 2000, \$1,500,000,000.

2 (3) In fiscal year 2001, \$3,000,000,000.

3 (4) In fiscal year 2002, \$3,000,000,000.

4 (5) In fiscal year 2003, \$3,000,000,000.

5 (6) In fiscal year 2004, \$3,000,000,000.

6 (7) For each of the fiscal years 2005 through
7 2014, \$550,000,000 in each such year.

8 **SEC. 1003. STRUCTURE AND OPERATION.**

9 (a) DIVISION INTO TWO FUNDS.—The Tobacco As-
10 bestos Trust Fund shall be divided into two equal funds,
11 denominated as “Fund I” and “Fund II”, and each such
12 fund shall conform to the rules of this title. Funds may
13 be paid out of each fund only to, or for the direct benefit
14 of, asbestos claimants, as follows:

15 (1) Fund I shall be established as a Qualified
16 Settlement Fund as permitted by the Internal Reve-
17 nue Code of 1986. Fund I represents some portion
18 of the amount of smoking-caused harm paid by as-
19 bestos trusts and defendants in the past. Fund I
20 shall be used to provide credits to asbestos trusts
21 and asbestos defendants, who settled and paid asbes-
22 tos claims of persons who had exposure to tobacco,
23 for the sole purpose of making payment to asbestos
24 claimants by the trustees of Fund I.

1 (2) Fund II shall be established as a Qualified
2 Settlement Fund as permitted by the Internal Reve-
3 nue Code of 1986. The purpose of this fund shall be
4 to pay asbestos/tobacco claims brought after the
5 date of enactment of this Act for the tobacco-caused
6 portion of the claimant's harm, according to rules
7 established by the trustees.

8 (b) TIMING ADJUSTMENT.—The trustees may pro-
9 vide an advance in the form of a loan from funds available
10 in Fund II to Fund I as may be necessary to serve the
11 primary role of Fund I in paying existing or past claims
12 as compared to Fund II's primary role in paying claims
13 submitted after the date of enactment.

14 **SEC. 1004. RIGHTS OF PARTIES.**

15 No tobacco company shall be liable in any civil suit
16 for harm caused by exposure to tobacco or exposure to
17 asbestos to any person who elects to receive and receives
18 compensation from Fund II, and such person shall execute
19 a release of all tobacco companies for any personal injury
20 claims attributable to tobacco or asbestos. No tobacco
21 company shall be liable to any asbestos trust or defendant
22 who elects to receive and receives credits from Fund I in
23 any contribution, indemnity, or any similar action on any
24 claim arising from payments or obligations for payments

1 to asbestos claimants made or incurred prior to the date
2 of enactment of this Act.

3 **SEC. 1005. DEFINITIONS.**

4 For purposes of this title:

5 (1) ASBESTOS CLAIM.—The term “asbestos
6 claim” means a claim brought or capable of being
7 brought in a court of competent jurisdiction by a
8 person for personal injury, wrongful death, loss of
9 consortium, or other damages arising from the occu-
10 pational exposure to asbestos or asbestos-containing
11 products, including claims by spouses or household
12 members who were exposed to asbestos through the
13 occupational exposure of another person.

14 (2) ASBESTOS CLAIMANT.—The term “asbestos
15 claimant” means a person who brings an asbestos
16 claim.

17 (3) ASBESTOS/TOBACCO CLAIM.—The term “as-
18 bestos/tobacco claim” means a legally justiciable as-
19 bestos claim of a person who also claims injury, dis-
20 ease, or death arising from exposure to tobacco.

21 (4) ASBESTOS DEFENDANT.—The term “asbes-
22 tos defendant” means a person (including a partner-
23 ship or corporation) who has been sued in court on
24 an asbestos claim.

1 (5) ASBESTOS TRUST.—The term “asbestos
2 trust” means a court-supervised trust created to re-
3 solve asbestos claims arising directly or indirectly
4 from exposure to asbestos or asbestos-containing
5 products of an asbestos defendant.

