

Calendar No. 286

105TH CONGRESS
1ST Session
S. 1414

A BILL

To reform and restructure the processes by which tobacco products are manufactured, marketed, and distributed, to prevent the use of tobacco products by minors, to redress the adverse health effects of tobacco use, and for other purposes.

NOVEMBER 8, 1997

Read the second time and placed on the calendar

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IN THE SENATE OF THE UNITED STATES

NOVEMBER 7, 1997

Mr. MCCAIN (for himself, Mr. HOLLINGS, Mr. BREAUX, and Mr. GORTON)
introduced the following bill; which was read the first time

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Read the second time and placed on the calendar

A BILL

To reform and restructure the processes by which tobacco products are manufactured, marketed, and distributed, to prevent the use of tobacco products by minors, to redress the adverse health effects of tobacco use, and for other purposes.

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

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

2 (a) SHORT TITLE.—This Act may be cited as the
3 “Universal Tobacco Settlement Act”.

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

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

TITLE I—REGULATION OF THE TOBACCO INDUSTRY

Sec. 100. Definitions.

Subtitle A—Restriction on Marketing and Advertising

- Sec. 101. Prohibitions on advertising.
- Sec. 102. General restrictions.
- Sec. 103. Format and content requirements for labeling and advertising.
- Sec. 104. Statement of intended use.
- Sec. 105. Ban on nontobacco items and services, contests and games of chance,
and sponsorship of events.
- Sec. 106. Use of product descriptors.

Subtitle B—Warnings, Labeling and Packaging

- Sec. 111. Cigarette warnings.
- Sec. 112. Smokeless tobacco warnings.
- Sec. 113. Ingredients.
- Sec. 114. Enforcement, regulations, and construction.
- Sec. 115. Preemption.
- Sec. 116. Reports.
- Sec. 117. Exports.
- Sec. 118. Repeals.

Subtitle C—Restriction on Access to Tobacco Products

- Sec. 121. Requirements relating to retailers.
- Sec. 122. Manufacture, sale, and distribution.

Subtitle D—Licensing of Retail Tobacco Sellers

- Sec. 131. Establishment of program.
- Sec. 132. Requirements.
- Sec. 133. Penalties, revocations and suspensions.
- Sec. 134. Federal licensing of military and other entities.

Subtitle E—Regulation of Tobacco Product Development and Manufacturing

- Sec. 141. Reference.
- Sec. 142. Treatment of tobacco products as drugs.
- Sec. 143. Health and safety regulation of tobacco products.

Subtitle F—Compliance Plans and Corporate Culture

- Sec. 151. Compliance plans.
- Sec. 152. Compliance programs.
- Sec. 153. Whistleblower protections.
- Sec. 154. Provisions relating to lobbying.
- Sec. 155. Termination of certain entities.
- Sec. 156. Enforcement.

TITLE II—REDUCTION IN UNDERAGE TOBACCO USE

- Sec. 201. Purpose.
- Sec. 202. Determination of underage use base percentages.
- Sec. 203. Annual daily incidence of underage use of tobacco products.
- Sec. 204. Required reduction in underage tobacco use.
- Sec. 205. Application of surcharges.
- Sec. 206. Abatement procedures.

TITLE III—STANDARDS TO REDUCE INVOLUNTARY EXPOSURE TO TOBACCO SMOKE

- Sec. 301. Definitions.
- Sec. 302. Smoke-free environment policy.
- Sec. 303. Citizen actions.
- Sec. 304. Preemption.
- Sec. 305. Regulations.
- Sec. 306. Effective date.

TITLE IV—NATIONAL TOBACCO SETTLEMENT TRUST FUND

- Sec. 401. Establishment of Trust Fund.
- Sec. 402. Liability of industry sources.
- Sec. 403. Enforcement.

TITLE V—PUBLIC HEALTH AND OTHER PROGRAMS

Subtitle A—Public Health Block Grant Program

- Sec. 501. Public Health Trust Fund.
- Sec. 502. Block grants to States.
- Sec. 503. Allotments.
- Sec. 504. Use of funds.
- Sec. 505. Withholding of funds.

Subtitle B—Other Programs

- Sec. 511. National Smoking Cessation Program.
- Sec. 512. National Reduction in Tobacco Usage Program.
- Sec. 513. National Tobacco-Free Public Education Program.
- Sec. 514. National Event Sponsorship Program.
- Sec. 515. National Community Action Program.
- Sec. 516. National Cessation Research Program.
- Sec. 517. Use of surcharge payments.

TITLE VI—CONSENT DECREES, NON-PARTICIPATING MANUFACTURERS, AND STATE ENFORCEMENT

- Sec. 601. Purposes.

Subtitle A—Consent Decrees and Non-Participating Manufacturers

- Sec. 611. Consent decrees.
- Sec. 612. National tobacco control protocol.
- Sec. 613. Non-participating manufacturers.

Subtitle B—State Enforcement

- Sec. 621. Requirement of no sale to minors law.
- Sec. 622. State reporting.
- Sec. 623. Reduction in State payments.

TITLE VII—PROVISIONS RELATING TO TOBACCO-RELATED CIVIL ACTIONS

- Sec. 701. General immunity.
- Sec. 702. Civil liability for past conduct.
- Sec. 703. Civil liability for future conduct.
- Sec. 704. Non-participating manufacturers.

TITLE VIII—PUBLIC DISCLOSURE OF HEALTH RESEARCH

- Sec. 801. Purpose.
- Sec. 802. National Tobacco Document Depository.

TITLE IX—ASSISTANCE TO TOBACCO GROWERS AND COMMUNITIES

- Sec. 901. Short title.
- Sec. 902. Definitions.

SUBTITLE A—TOBACCO COMMUNITY REVITALIZATION TRUST FUND

- Sec. 911. Establishment of Trust Fund.
- Sec. 912. Contributions by tobacco product manufacturers and importers.

SUBTITLE B—AGRICULTURAL MARKET TRANSITION ASSISTANCE

- Sec. 921. Payments for lost tobacco quota.
- Sec. 922. Industry payments for all Department costs associated with tobacco production.
- Sec. 923. Tobacco community economic development grants.
- Sec. 924. Modifications in Federal tobacco programs.

SUBTITLE C—FARMER AND WORKER TRANSITION ASSISTANCE

- Sec. 931. Tobacco worker transition program.
- Sec. 932. Farmer opportunity grants.

SUBTITLE D—IMMUNITY

- Sec. 941. General immunity for tobacco producers and warehousemen.

TITLE X—EFFECTIVE DATES AND OTHER PROVISIONS

- Sec. 1001. Effective dates.
- Sec. 1002. Native Americans.
- Sec. 1003. Preemption.

1 **SEC. 2. FINDINGS.**

2 (a) GENERAL FINDINGS.—Congress makes the fol-
3 lowing findings:

4 (1) The Food and Drug Administration and
5 other public health authorities view the use of to-
6 bacco products by the nation’s children as a “pedi-
7 atric disease” of epic and worsening proportions that
8 results in new generations of tobacco-dependent chil-
9 dren and adults.

10 (2) There is a consensus within the scientific
11 and medical communities that tobacco products are
12 inherently dangerous and cause cancer, heart dis-
13 ease, and other serious adverse health effects.

14 (3) The Food and Drug Administration and
15 other health authorities have concluded that virtually
16 all new users of tobacco products are under the age
17 of 18. Virtually all Federal, State, and local officials
18 and entities believe that tobacco advertising and
19 marketing contribute significantly to the use of nico-
20 tine-containing tobacco products by adolescents and
21 as such, sweeping new restriction on the sale, pro-
22 motion, and distribution of such products are need-
23 ed.

24 (4) Federal, State, and local governments lack
25 many of the legal means and resources needed to ad-

1 dress the societal problems caused by the use of to-
2 bacco products.

3 (5) Public health authorities believe that the so-
4 cietal benefits of enacting tobacco settlement legisla-
5 tion in human and economic terms would be vast.
6 The Food and Drug Administration found that re-
7 ducing underage tobacco use 50 percent “would pre-
8 vent well over 60,000 early deaths”. The Food and
9 Drug Administration has estimated that the mone-
10 tary value of the regulations promulgated as a result
11 of this Act will be worth up to \$43,000,000,000 per
12 year in reduced medical costs, improved productivity,
13 and the benefit of avoiding the premature death of
14 loved ones.

15 (6) The unique position occupied by tobacco in
16 the history and economy of the United States, the
17 magnitude of the actual and potential tobacco-relat-
18 ed litigation, the need to avoid the cost, expense, un-
19 certainty, and inconsistency associated with such
20 protracted litigation, the need to limit the sale, dis-
21 tribution, marketing, and advertising of tobacco
22 products to persons of legal age, and the need to
23 educate the public (especially young people) of the
24 health effects of using tobacco products all dictate

1 that it would be in the public interest to enact legis-
2 lation to facilitate a resolution of such matters.

3 (b) FINDINGS RELATED TO INTERSTATE COMMERCE
4 AND THE JUDICIAL SYSTEM.—Congress makes the follow-
5 ing findings:

6 (1) The sale, distribution, marketing, advertis-
7 ing, and use of tobacco products are activities sub-
8 stantially affecting interstate commerce. Such prod-
9 ucts are sold, marketed, advertised, and distributed
10 in interstate commerce on a nationwide basis and
11 have a substantial effect on the economy of the
12 United States.

13 (2) The sale, distribution, marketing, advertis-
14 ing, and use of tobacco products are activities that
15 substantially affect interstate commerce by virtue of
16 the health care and other costs that Federal and
17 State governmental authorities have incurred be-
18 cause of the usage of tobacco products.

19 (3) Various civil actions brought by State attor-
20 neys general, cities, counties, the Commonwealth of
21 Puerto Rico, third-party payors, and other private
22 classes and individuals to recover damages relating
23 to tobacco-related diseases, conditions and products
24 are pending throughout the United States, of these
25 actions are slow-moving, expensive, and burdensome

1 not only for the litigants but also for Federal and
2 State judicial systems.

3 **SEC. 3. PURPOSES.**

4 It is the purpose of this Act to—

5 (1) reiterate and enhance the authority of the
6 Food and Drug Administration to regulate tobacco
7 products and provide for tobacco industry funding of
8 the oversight activities of the Administration;

9 (2) ban all outdoor tobacco advertising and ban
10 all cartoon characters and human figures used in
11 connection with tobacco advertising;

12 (3) provide for the funding by the tobacco in-
13 dustry of an aggressive Federal enforcement pro-
14 gram relating to tobacco advertising and distribu-
15 tion, including a State-administered retail licensing
16 system to prevent minors from obtaining tobacco
17 products;

18 (4) subject the tobacco industry to severe finan-
19 cial penalties in the event that underage tobacco
20 usage does not decline radically over the next 10
21 years;

22 (5) provide for the establishment of national
23 standards to control the manufacturing of tobacco
24 products and the ingredients used in such products;

1 (6) provide certain regulatory powers to the
2 Food and Drug Administration to encourage the de-
3 velopment and marketing by the tobacco industry of
4 “less hazardous tobacco products”, including the
5 power to regulate the level of nicotine in such prod-
6 ucts;

7 (7) require the manufacturers of tobacco prod-
8 ucts to disclose all present and future non-public in-
9 ternal laboratory research regarding tobacco prod-
10 ucts;

11 (8) establish a minimum Federal standard to
12 limit smoking in public places;

13 (9) provide for the establishment of a National
14 Tobacco Settlement Trust Fund to be funded by the
15 tobacco industry and used in accordance with this
16 Act;

17 (10) provide for the establishment of a national
18 education-oriented counter advertising and tobacco
19 control campaign to be funded through the National
20 Tobacco Settlement Trust Fund;

21 (11) provide annual payments to States to fund
22 health benefits programs and to create a tobacco
23 products liability judgments and settlements fund to
24 be funded through the National Tobacco Settlement
25 Trust Fund; and

1 (12) provide for the establishment of a national
 2 program of smoking cessation to be funded through
 3 the National Tobacco Settlement Trust Fund.

4 **TITLE I—REGULATION OF THE** 5 **TOBACCO INDUSTRY**

6 **SEC. 100. 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” means
 18 any product which contains nicotine, is intended to
 19 be burned under ordinary conditions of use, and con-
 20 sists of—

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

23 (B) any roll of tobacco wrapped in any
 24 substance containing tobacco which, because of
 25 its appearance, the type of tobacco used in the

1 filler, or its packaging and labeling, is likely to
2 be offered to, or purchased by, consumers as a
3 cigarette described in subparagraph (A).

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

10 (5) CIGARETTE TOBACCO.—The term “cigarette
11 tobacco” means any product that consists of loose
12 tobacco that contains or delivers nicotine and is in-
13 tended for use by persons in a cigarette. Unless oth-
14 erwise stated, the requirements of this Act pertain-
15 ing to cigarettes shall also apply to cigarette to-
16 bacco.

17 (6) COMMERCE.—The term “commerce”
18 means—

19 (A) commerce between any State, the Dis-
20 trict of Columbia, the Commonwealth of Puerto
21 Rico, Guam, the Virgin Islands, American
22 Samoa, the Northern Mariana Islands or any
23 territory or possession of the United States;

24 (B) commerce between points in any State,
25 the District of Columbia, the Commonwealth of

1 Puerto Rico, Guam, the Virgin Islands, Amer-
2 ican Samoa, the Northern Mariana Islands or
3 any territory or possession of the United States;
4 or

5 (C) commerce wholly within the District of
6 Columbia, Guam, the Virgin Islands, American
7 Samoa, the Northern Mariana Islands, or any
8 territory or possession of the United States.

9 (7) COMMISSIONER.—The term “Commis-
10 sioner” means the Commissioner of Food and
11 Drugs.

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

19 (9) LITTLE CIGAR.—The term “little cigar”
20 means any roll of tobacco wrapped in leaf tobacco or
21 any substance containing tobacco (other than any
22 roll of tobacco which is a cigarette within the mean-
23 ing of subsection (1)) and as to which 1,000 units
24 weigh not more than 3 pounds.

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

5 (11) NICOTINE.—The term “nicotine” means
6 the chemical substance named 3-(1-Methyl-2-
7 pyrrolidiny) pyridine or $C_{10}H_{14}N_2$, including any
8 salt or complex of nicotine.

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

13 (13) PERSON.—The term “person” means an
14 individual, partnership, corporation, or any other
15 business or legal entity.

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

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

1 (16) RETAILER.—The term “retailer” means
2 any person who sells tobacco products to individuals
3 for personal consumption, or who operates a facility
4 where vending machines or self-service displays are
5 permitted under this title.

6 (17) SALE.—The term “sale” includes the sell-
7 ing, providing samples of, or otherwise making to-
8 bacco products available for personal consumption in
9 any place within the scope of this Act.

10 (18) SECRETARY.—The term “Secretary”
11 means the Secretary of Health and Human Services.

12 (19) SMOKELESS TOBACCO.—The term “smoke-
13 less tobacco” means any product that consists of
14 cut, ground, powdered, or leaf tobacco that contains
15 nicotine and that is intended to be placed in the oral
16 or nasal cavity.

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

24 (21) TOBACCO.—The term “tobacco” means to-
25 bacco in its unmanufactured form.

1 (22) TOBACCO PRODUCT.—The term “tobacco
2 product” means cigars, cigarettes, cigarillos, ciga-
3 rette tobacco, little cigars, pipe tobacco, and smoke-
4 less tobacco.

5 (23) TRUST FUND.—The term “Trust Fund”
6 means the National Tobacco Settlement Trust Fund
7 established under section 401.

8 **Subtitle A—Restriction on** 9 **Marketing and Advertising**

10 **SEC. 101. PROHIBITIONS ON ADVERTISING.**

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 title, 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
2 INTERNET.—No manufacturer, distributor, or retailer
3 may use the Internet to advertise tobacco products unless
4 such an advertisement is inaccessible in or from the Unit-
5 ed States.

6 (d) PROHIBITION ON POINT-OF-SALE ADVERTIS-
7 ING.—

8 (1) IN GENERAL.—Except as otherwise pro-
9 vided in this subsection, no manufacturer, distribu-
10 tor, or retailer may use point-of-sale advertising of
11 tobacco products.

12 (2) ADULT-ONLY STORES AND TOBACCO OUT-
13 LETS.—Paragraph (1) shall not apply to point of
14 sale advertising at adult-only stores and tobacco out-
15 lets.

16 (3) PERMISSIBLE ADVERTISING.—

17 (A) IN GENERAL.—Each manufacturer of
18 tobacco products may display not more than 2
19 separate point-of-sale advertisements in or at
20 each location at which tobacco products are of-
21 fered for sale.

22 (B) MARKET SHARE MANUFACTURERS.—A
23 manufacturer with at least 25 percent of the
24 market share of the tobacco product involved
25 may display an additional point-of-sale adver-

tisement in or at each location at which tobacco products are offered for sale.

(C) RETAILERS.—A retailer may have not more than 1 point-of-sale advertisement relating to the retailer’s own or its wholesaler’s contracted retailer or private label brand of tobacco product. No manufacturer or distributor may enter into any arrangement with a retailer to limit the ability of the retailer to display any form of permissible point-of-sale advertisement or promotional material originating with another manufacturer or distributor.

(4) LIMITATIONS.—

(A) IN GENERAL.—A point of sale advertisement permitted under this subsection shall be comprised of a display area that is not larger than 576 square inches (either individually or in the aggregate) and shall consist only of black letters on a white background or other recognized typographical marks. Such advertisement shall not be attached to nor located within 2 feet of any fixture on which candy is displayed for sale.

(B) AUDIO AND VIDEO FORMATS.—Audio and video advertisements permitted under sec-

1 tion 103(c) may be distributed to individuals
 2 who are 18 years of age or older at point of sale
 3 but may not be played or viewed at such point
 4 of sale.

5 (C) DISPLAY FIXTURES.—Display fixtures
 6 in the form of signs consisting of brand name
 7 and price and not larger than 2 inches in height
 8 are permitted.

9 (5) DEFINITION.—For purposes of this sub-
 10 section, the term “point-of-sale advertising” means
 11 all printed or graphical materials bearing the brand
 12 name (alone or in conjunction with any other word),
 13 logo, motto, selling message, recognizable color or
 14 pattern of colors, or any other indicia of product
 15 identification similar or identical to those used for
 16 tobacco products which, when used for its intended
 17 purpose, can reasonably be anticipated to be seen by
 18 customers at a location at which tobacco products
 19 are offered for sale.

20 **SEC. 102. GENERAL RESTRICTIONS.**

21 (a) RESTRICTION ON PRODUCT NAMES.—A manu-
 22 facturer shall not use a trade or brand name of a non-
 23 tobacco product as the trade or brand name for a cigarette
 24 or smokeless tobacco product, except for a tobacco product
 25 whose trade or brand name was on both a tobacco product

1 and a nontobacco product that were sold in the United
2 States on or before January 1, 1995.

3 (b) ADVERTISING LIMITED TO FDA SPECIFIED
4 MEDIA.—

5 (1) IN GENERAL.—A manufacturer, distributor,
6 or retailer may, in accordance with this title, dis-
7 seminate or cause to be disseminated advertising or
8 labeling which bears a tobacco product brand name
9 (alone or in conjunction with any other word) or any
10 other indicia of tobacco product identification only in
11 newspapers, in magazines, in periodicals or other
12 publications (whether periodic or limited distribu-
13 tion), on billboards, posters and placards in accord-
14 ance with section 101(a), in nonpoint-of-sale pro-
15 motional material (including direct mail), in point-
16 of-sale promotional material, and in audio or video
17 formats delivered at a point-of-sale.

18 (2) LIMITATION.—A manufacturer, distributor,
19 or retailer that intends to disseminate, or to cause
20 to be disseminated, advertising or labeling for a to-
21 bacco product in a medium that is not described in
22 paragraph (1) shall notify the Commissioner not less
23 than 30 days prior to the date on which such me-
24 dium is to be used. Such notice shall describe the
25 medium and discuss the extent to which the adver-

1 tising or labeling may be seen by individuals who are
2 under 18 years of age.

3 (3) ACTION BY COMMISSIONER.—

4 (c) RESTRICTION ON PLACEMENT IN ENTERTAIN-
5 MENT MEDIA.—

6 (1) IN GENERAL.—No payment shall be made
7 by any manufacturer, distributor, or retailer for the
8 placement of any tobacco product or tobacco product
9 package or advertisement—

10 (A) as a prop in any television program or
11 motion picture produced for viewing by the gen-
12 eral public; or

13 (B) in a video or on a video game machine.

14 (2) VIDEO GAME.—The term “video game”
15 means any electronic amusement device that utilizes
16 a computer, microprocessor, or similar electronic cir-
17 cuitry and its own cathode ray tube, or is designed
18 to be used with a television set or a monitor, that
19 interacts with the user of the device.

20 (d) RESTRICTIONS ON GLAMORIZATION OF TOBACCO
21 PRODUCTS.—No direct or indirect payment shall be made
22 by any manufacturer, distributor, or retailer to any entity
23 for the purpose of promoting the image or use of a tobacco
24 product through print or film media that appeals to indi-
25 viduals under 18 years of age or through a live perform-

1 ance by an entertainment artist that appeals to such indi-
 2 viduals.

3 **SEC. 103. FORMAT AND CONTENT REQUIREMENTS FOR LA-**
 4 **BELING AND ADVERTISING.**

5 (a) IN GENERAL.—Except as provided in subsections
 6 (b) and (c), each manufacturer, distributor, and retailer
 7 advertising or causing to be advertised, disseminating or
 8 causing to be disseminated, any labeling or advertising for
 9 a tobacco product shall use only black text on a white
 10 background.

11 (b) CERTAIN ADVERTISING EXCEPTED.—

12 (1) IN GENERAL.—Subsection (a) shall not
 13 apply to advertising—

14 (A) in any facility where vending machines
 15 and self-service displays are permitted under
 16 this title if the advertising involved—

17 (i) is not visible from outside of the
 18 facility; and

19 (ii) is affixed to a wall or fixture in
 20 the facility;

21 (B) that appears in any publication
 22 (whether periodic, limited, or controlled dis-
 23 tribution) that the manufacturer, distributor, or
 24 retailer demonstrates is an adult publication.

1 (2) ADULT PUBLICATION.—For purposes of
2 paragraph (1)(B), the term “adult publication”
3 means a newspaper, magazine, periodical, or other
4 publication—

5 (A) whose readers under 18 years of age
6 constitute 15 percent or less of the total reader-
7 ship as measured by competent and reliable
8 survey evidence; and

9 (B) that is read by fewer than 2,000,000
10 individuals who are under 18 years of age as
11 measured by competent and reliable survey evi-
12 dence.

13 (c) AUDIO OR VIDEO FORMATS.—Each manufac-
14 turer, distributor, and retailer advertising or causing to
15 be advertised any advertising for a tobacco product in an
16 audio or video format shall comply with the following:

17 (1) With respect to an audio format, the adver-
18 tising shall be limited to words only with no music
19 or sound effects.

20 (2) With respect to a video format, the advertis-
21 ing shall be limited to static black text only on a
22 white background. Any audio with the video adver-
23 tising shall be limited to words only with no music
24 or sound effects.

1 **SEC. 104. STATEMENT OF INTENDED USE.**

2 (a) REQUIREMENT.—Each manufacturer, distribu-
 3 tor, and retailer advertising or causing to be advertised,
 4 disseminating or causing to be disseminated, advertising
 5 concerning cigarettes, cigarette tobacco, or smokeless to-
 6 bacco products otherwise permitted under this title shall
 7 include, as provided in section 502 of the Federal Food,
 8 Drug, and Cosmetic Act (21 U.S.C. 352), the established
 9 name of the product and a statement of the intended use
 10 of the product as provided for in subsection (b).

11 (b) USE STATEMENTS.—

12 (1) CIGARETTES.—A statement of intended use
 13 for cigarettes or cigarette tobacco is as follows
 14 (whichever is appropriate):

15 Cigarettes—A Nicotine-Delivery Device for Per-
 16 sons 18 or Older.

17 Cigarette Tobacco—A Nicotine-Delivery Device
 18 for Persons 18 or Older.

19 (2) SMOKELESS TOBACCO.—A statement of in-
 20 tended use for a smokeless tobacco product is as fol-
 21 lows (whichever is appropriate):

22 Loose Leaf Chewing Tobacco—A Nicotine-De-
 23 livery Device for Persons 18 or Older.

24 Plug Chewing Tobacco—A Nicotine-Delivery
 25 Device for Persons 18 or Older.

1 Twist Chewing Tobacco—A Nicotine-Delivery
2 Device for Persons 18 or Older.

3 Moist Snuff—A Nicotine-Delivery Device for
4 Persons 18 or Older.

5 Dry Snuff—A Nicotine-Delivery Device for Per-
6 sons 18 or Older.

7 (c) TYPE AND LOCATION.—Requirements with re-
8 spect to type size, style, font, and location shall be deter-
9 mined by the Commissioner.

10 **SEC. 105. BAN ON NONTOBACCO ITEMS AND SERVICES,**
11 **CONTESTS AND GAMES OF CHANCE, AND**
12 **SPONSORSHIP OF EVENTS.**

13 (a) BAN ON ALL NONTOBACCO MERCHANDISE.—No
14 manufacturer, importer, distributor, or retailer shall mar-
15 ket, license, distribute, sell, or cause to be marketed, li-
16 censed, distributed or sold any item (other than tobacco
17 products) or service which bears the brand name (alone
18 or in conjunction with any other word), logo, symbol,
19 motto, selling message, recognizable color or pattern of
20 colors, or any other indicia of product identification simi-
21 lar or identifiable to those used for any brand of tobacco
22 products.

23 (b) GIFTS, CONTESTS, AND LOTTERIES.—No manu-
24 facturer, distributor, or retailer shall offer or cause to be
25 offered to any person purchasing tobacco products any gift

1 or item (other than a tobacco product) in consideration
 2 of the purchase of such products, or to any person in con-
 3 sideration of furnishing evidence, such as credits, proofs-
 4 of-purchase, or coupons, of such a purchase.

5 (c) SPONSORSHIP.—

6 (1) IN GENERAL.—No manufacturer, distribu-
 7 tor, or retailer shall sponsor or cause to be spon-
 8 sored any athletic, musical, artistic, or other social
 9 or cultural event, or any entry or team in any event,
 10 in which the brand name (alone or in conjunction
 11 with any other word), logo, motto, selling message,
 12 recognizable color or pattern of colors, or any other
 13 indicia of product identification similar or identical
 14 to those used for tobacco products is used.

15 (2) USE OF CORPORATE NAME.—A manufac-
 16 turer, distributor, or retailer may sponsor or cause
 17 to be sponsored any athletic, musical, artistic, or
 18 other social or cultural event in the name of the cor-
 19 poration which manufactures the tobacco product
 20 if—

21 (A) both the corporate name and the
 22 corporation were registered and in use in the
 23 United States prior to January 1, 1995; and

24 (B) the corporate name does not include
 25 any brand name (alone or in conjunction with

1 any other word), logo, symbol, motto, selling
 2 message, recognizable color or pattern of colors,
 3 or any other indicia or product identification
 4 identical or similar to, or identifiable with,
 5 those used for any brand of tobacco products.

6 **SEC. 106. USE OF PRODUCT DESCRIPTORS.**

7 (a) IN GENERAL.—With respect to a tobacco product,
 8 the label of which bears a product description (such as
 9 “light” or “low tar”), such label shall also contain, and
 10 any advertisement concerning such product shall contain,
 11 a mandatory disclaimer, to be established by the Sec-
 12 retary, that states that such product has not been shown
 13 to be less hazardous than another product of that type.

14 (b) RULE OF CONSTRUCTION.—Nothing in this sec-
 15 tion shall be construed to limit the authority of the Food
 16 and Drug Administration with respect to words used as
 17 product descriptors.

18 **Subtitle B—Warnings, Labeling**
 19 **and Packaging**

20 **SEC. 111. CIGARETTE WARNINGS.**

21 (a) IN GENERAL.—

22 (1) PACKAGING.—It shall be unlawful for any
 23 person to manufacture, package, or import for sale
 24 or distribution within the United States any ciga-
 25 rettes the package of which fails to bear, in accord-

1 ance with the requirements of this section, one of
2 the following labels:

3 WARNING: Cigarettes Are Addictive.

4 WARNING: Tobacco Smoke Can Harm Your
5 Children.

6 WARNING: Cigarettes Cause Fatal Lung Dis-
7 ease.

8 WARNING: Cigarettes Cause Cancer.

9 WARNING: Cigarettes Cause Strokes And
10 Heart Disease.

11 WARNING: Smoking During Pregnancy Can
12 Harm Your Baby.

13 WARNING: Smoking Can Kill You.

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

16 WARNING: Quitting Smoking Now Greatly
17 Reduces Serious Risks To Your Health.

18 (2) ADVERTISING.—It shall be unlawful for any
19 manufacturer or importer of cigarettes to advertise
20 or cause to be advertised within the United States
21 any cigarette unless the advertising bears, in accord-
22 ance with the requirements of this section, one of
23 the following labels:

24 WARNING: Cigarettes Are Addictive.

1 WARNING: Tobacco Smoke Can Harm Your
2 Children.

3 WARNING: Cigarettes Cause Fatal Lung Dis-
4 ease.

5 WARNING: Cigarettes Cause Cancer.

6 WARNING: Cigarettes Cause Strokes And
7 Heart Disease.

8 WARNING: Smoking During Pregnancy Can
9 Harm Your Baby.

10 WARNING: Smoking Can Kill You.

11 WARNING: Tobacco Smoke Causes Fatal
12 Lung Disease In Nonsmokers.

13 WARNING: Quitting Smoking Now Greatly
14 Reduces Serious Risks To Your Health.

15 (b) REQUIREMENTS FOR LABELING.—

16 (1) LOCATION.—Each label statement required
17 by paragraph (1) of subsection (a) shall be located
18 on the upper portion of the front panel of the ciga-
19 rette package (or carton) and occupy not less than
20 25 percent of such front panel.

21 (2) TYPE AND COLOR.—With respect to each
22 label statement required by paragraph (1) of sub-
23 section (a), the phrase “WARNING” shall appear in
24 capital letters and the label statement shall be print-
25 ed in 17 point type with adjustments as determined

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

9 (3) EXCEPTION.—The provisions of paragraph
 10 (1) shall not apply in the case of a flip-top cigarette
 11 package (offered for sale on the date of enactment
 12 of this Act) where the front portion of the flip-top
 13 does not comprise at least 25 percent of the front
 14 panel. In the case of such a package, the label state-
 15 ment required by paragraph (1) of subsection (a)
 16 shall occupy the entire front portion of the flip top.

17 (c) REQUIREMENTS FOR ADVERTISING.—

18 (1) LOCATION.—Each label statement required
 19 by paragraph (2) of subsection (a) shall occupy not
 20 less than 20 percent of the area of the advertisement
 21 involved.

22 (2) TYPE AND COLOR.—

23 (A) TYPE.—With respect to each label
 24 statement required by paragraph (2) of sub-
 25 section (a), the phrase “WARNING” shall ap-

pear in capital letters and the label statement shall be printed in the following types:

(i) With respect to whole page advertisements on broadsheet newspaper—45 point type.

(ii) With respect to half page advertisements on broadsheet newspaper—39 point type.

(iii) With respect to whole page advertisements on tabloid newspaper—39 point type.

(iv) With respect to half page advertisements on tabloid newspaper—27 point type.

(v) With respect to DPS magazine advertisements—31.5 point type.

(vi) With respect to whole page magazine advertisements—31.5 point type.

(vii) With respect to 28cm x 3 column advertisements—22.5 point type.

(viii) With respect to 20cm x 2 column advertisements—15 point type.

The Commissioner may revise the required type sizes as the Commissioner determines appropriate within the 20 percent requirement.

1 (B) COLOR.—All the letters in the label
2 under this paragraph shall appear in conspicu-
3 ous and legible type, in contrast by typography,
4 layout, or color with all other printed material
5 on the package, and be printed in an alternat-
6 ing black-on-white and white-on-black format as
7 determined appropriate by the Commissioner.

8 (d) ROTATION OF LABEL STATEMENTS.—

9 (1) IN GENERAL.—Except as provided in para-
10 graph (2), the label statements specified in para-
11 graphs (1) and (2) of subsection (a) shall be rotated
12 by each manufacturer or importer of cigarettes quar-
13 terly in alternating sequence on packages of each
14 brand of cigarettes manufactured by the manufac-
15 turer or importer and in the advertisements for each
16 such brand of cigarettes in accordance with a plan
17 submitted by the manufacturer or importer and ap-
18 proved by the Federal Trade Commission. The Fed-
19 eral Trade Commission shall approve a plan submit-
20 ted by a manufacturer or importer of cigarettes
21 which will provide the rotation required by this sub-
22 section and which assures that all of the labels re-
23 quired by paragraphs (1) and (2) will be displayed
24 by the manufacturer or importer at the same time.

1 (2) APPLICATION OF OTHER ROTATION RE-
2 QUIREMENTS.—

3 (A) IN GENERAL.—A manufacturer or im-
4 porter of cigarettes may apply to the Federal
5 Trade Commission to have the label rotation
6 described in subparagraph (C) apply with re-
7 spect to a brand style of cigarettes manufac-
8 tured or imported by such manufacturer or im-
9 porter if—

10 (i) the number of cigarettes of such
11 brand style sold in the fiscal year of the
12 manufacturer or importer preceding the
13 submission of the application is less than
14 $\frac{1}{4}$ of 1 percent of all the cigarettes sold in
15 the United States in such year; and

16 (ii) more than $\frac{1}{2}$ of the cigarettes
17 manufactured or imported by such manu-
18 facturer or importer for sale in the United
19 States are packaged into brand styles
20 which meet the requirements of clause (i).

21 If an application is approved by the Commis-
22 sion, the label rotation described in subpara-
23 graph (C) shall apply with respect to the appli-
24 cant during the 1-year period beginning on the
25 date of the application approval.

1 (B) PLAN.—An applicant under subpara-
2 graph (A) shall include in its application a plan
3 under which the label statements specified in
4 paragraph (1) of subsection (a) will be rotated
5 by the applicant manufacturer or importer in
6 accordance with the label rotation described in
7 subparagraph (C).

8 (C) OTHER ROTATION REQUIREMENTS.—
9 Under the label rotation which the manufac-
10 turer or importer with an approved application
11 may put into effect, each of the labels specified
12 in paragraph (1) of subsection (a) shall appear
13 on the packages of each brand style of ciga-
14 rettes with respect to which the application was
15 approved an equal number of times within the
16 12-month period beginning on the date of the
17 approval by the Commission of the application.

18 (e) APPLICATION OF REQUIREMENT.—Subsection (a)
19 does not apply to a distributor, a retailer of cigarettes who
20 does not manufacture, package, or import cigarettes for
21 sale or distribution within the United States.

22 (f) TELEVISION AND RADIO ADVERTISING.—It shall
23 be unlawful to advertise cigarettes and little cigars on any
24 medium of electronic communications subject to the juris-
25 diction of the Federal Communications Commission.

1 **SEC. 112. SMOKELESS TOBACCO WARNINGS.**

2 (a) IN GENERAL.—

3 (1) PACKAGING.—It shall be unlawful for any
4 person to manufacture, package, or import for sale
5 or distribution within the United States any smoke-
6 less tobacco product the package of which fails to
7 bear, in accordance with the requirements of this
8 section, one of the following labels:

9 WARNING: This Product May Cause Mouth
10 Cancer.

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

13 WARNING: This Product Is Not A Safe Alter-
14 native To Cigarettes.

15 WARNING: Smokeless Tobacco Is Addictive.

16 (2) ADVERTISING.—It shall be unlawful for any
17 manufacturer or importer of smokeless tobacco prod-
18 ucts to advertise or cause to be advertised within the
19 United States any smokeless tobacco product unless
20 the advertising bears, in accordance with the re-
21 quirements of this section, one of the following la-
22 bels:

23 WARNING: This Product May Cause Mouth
24 Cancer.

25 WARNING: This Product May Cause Gum
26 Disease And Tooth Loss.

1 WARNING: This Product Is Not A Safe Alter-
2 native To Cigarettes.

3 WARNING: Smokeless Tobacco Is Addictive.

4 (b) REQUIREMENTS FOR LABELING.—

5 (1) LOCATION.—Each label statement required
6 by paragraph (1) of subsection (a) shall be located
7 on the principal display panel of the product and oc-
8 cupy not less than 25 percent of such panel.

9 (2) TYPE AND COLOR.—With respect to each
10 label statement required by paragraph (1) of sub-
11 section (a), the phrase “WARNING” shall appear in
12 capital letters and the label statement shall be print-
13 ed in 17 point type with adjustments as determined
14 appropriate by the Commissioner to reflect the
15 length of the required statement. All the letters in
16 the label shall appear in conspicuous and legible type
17 in contrast by typography, layout, or color with all
18 other printed material on the package and be print-
19 ed in an alternating black on white and white on
20 black format as determined appropriate by the Com-
21 missioner.

22 (c) ADVERTISING AND ROTATION.—The provisions of
23 subsections (c) and (d)(1) of section 111 shall apply to
24 advertisements for smokeless tobacco products and the ro-

1 tation of the label statements required under subsection
2 (a)(1) on such products.

3 (d) APPLICATION OF REQUIREMENT.—Subsection (a)
4 does not apply to a distributor or a retailer of smokeless
5 tobacco products who does not manufacture, package, or
6 import such products for sale or distribution within the
7 United States.

8 (e) TELEVISION AND RADIO ADVERTISING.—It shall
9 be unlawful to advertise smokeless tobacco on any medium
10 of electronic communications subject to the jurisdiction of
11 the Federal Communications Commission.

12 **SEC. 113. INGREDIENTS.**

13 Each person who manufactures, packages, or imports
14 cigarettes or smokeless tobacco products shall annually
15 provide the Secretary with the information required under
16 section 910 of the Federal Food, Drug, and Cosmetic Act
17 (as added by section 143(3) of this Act).

18 **SEC. 114. ENFORCEMENT, REGULATIONS, AND CONSTRUC-**
19 **TION.**

20 (a) ENFORCEMENT.—

21 (1) IN GENERAL.—A violation of section 111 or
22 112 or the regulations promulgated pursuant to this
23 subtitle shall be considered a violation of section 5
24 of the Federal Trade Commission Act.

1 (2) FINES.—Any person who is found to violate
2 any provision of sections 111, 112, or 113(a) shall
3 be guilty of a misdemeanor and shall, on conviction
4 thereof, be subject to a fine of not more than
5 \$10,000.

6 (b) INJUNCTIONS.—The several district courts of the
7 United States are vested with jurisdiction, for cause
8 shown, to prevent and restrain violations of this subtitle
9 upon the application of the Federal Trade Commission in
10 the case of a violation of section 111 or 112 or upon appli-
11 cation of the Attorney General of the United States acting
12 through the several United States attorneys in their sev-
13 eral districts in the case of a violation of section 113.

14 (c) REGULATIONS.—Not later than 180 days after
15 the date of the enactment of this Act, the Federal Trade
16 Commission shall promulgate such regulations as it may
17 require to implement sections 111 and 112.

18 (d) CONSTRUCTION.—Nothing in this subtitle (other
19 than the requirements of sections 111, 112, and 113) shall
20 be construed to limit, restrict, or expand the authority of
21 the Federal Trade Commission with respect to unfair or
22 deceptive acts or practices in the advertising of cigarettes
23 or smokeless tobacco products.

1 **SEC. 115. PREEMPTION.**

2 (a) FEDERAL ACTION.—No statement relating to the
3 use of cigarettes or smokeless tobacco products and
4 health, other than the statements required by sections 111
5 or 112, shall be required by any Federal agency to appear
6 on any package or in any advertisement of cigarettes or
7 a smokeless tobacco product.

8 (b) STATE AND LOCAL ACTION.—No statement relat-
9 ing to the use of cigarettes or smokeless tobacco products
10 and health, other than the statements required by sections
11 111 and 112, shall be required by any State or local stat-
12 ute or regulation to be included on any package or in any
13 advertisement of cigarettes or a smokeless tobacco prod-
14 uct.

15 (c) EFFECT ON LIABILITY LAW.—Except as other-
16 wise provided in this Act, nothing in this subtitle shall re-
17 lieve any person from liability at common law or under
18 State statutory law to any other person.

19 **SEC. 116. REPORTS.**

20 (a) SECRETARY'S REPORT.—Not later than 6 months
21 after the date of enactment of this Act, and biennially
22 thereafter, the Secretary shall prepare and submit to Con-
23 gress a report containing—

24 (1) a description of the effects of health edu-
25 cation efforts on the use of cigarettes and smokeless
26 tobacco products;

1 (2) a description of the use by the public of
2 cigarettes and smokeless tobacco products;

3 (3) an evaluation of the health effects of ciga-
4 rettes and smokeless tobacco products and the iden-
5 tification of areas appropriate for further research;
6 and

7 (4) such recommendations for legislation and
8 administrative action as the Secretary considers ap-
9 propriate.

10 (b) FTC REPORT.—Not later than 6 months after
11 the date of enactment of this Act, and biennially there-
12 after, the Federal Trade Commission shall prepare and
13 submit to Congress a report containing—

14 (1) a description of the current sales, advertis-
15 ing, and marketing practices associated with ciga-
16 rettes and smokeless tobacco products; and

17 (2) such recommendations for legislation and
18 administrative action as the Commission deems ap-
19 propriate.

20 **SEC. 117. EXPORTS.**

21 Packages of cigarettes or smokeless tobacco products
22 manufactured, imported, or packaged—

23 (1) for export from the United States; or

1 (2) for delivery to a vessel or aircraft, as sup-
 2 plies, for consumption beyond the jurisdiction of the
 3 internal revenue laws of the United States;
 4 shall be exempt from the requirements of this subtitle, but
 5 such exemptions shall not apply to cigarettes or smokeless
 6 tobacco products manufactured, imported, or packaged for
 7 sale or distribution to members or units of the Armed
 8 Forces of the United States located outside of the United
 9 States.

10 **SEC. 118. REPEALS.**

11 The following Acts are 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 **Subtitle C—Restriction on Access**
 18 **to Tobacco Products**

19 **SEC. 121. REQUIREMENTS RELATING TO RETAILERS.**

20 (a) SALES TO MINORS PROHIBITED.—No retailer
 21 may distribute a tobacco product to any individual who
 22 is under 18 years of age.

23 (b) PHOTO IDENTIFICATION.—

24 (1) REQUIREMENT.—Except as provided in
 25 paragraph (2), each retailer shall verify, by means of

1 photographic identification containing the date of
2 birth of the bearer, that no individual purchasing a
3 tobacco product is under 18 years of age.

4 (2) EXCEPTION.—No verification under para-
5 graph (1) is required for any individual who is at
6 least 27 years of age.

7 (3) LOCATION OF PRODUCTS.—Except as pro-
8 vided in section 122(d), a retailer shall ensure that
9 all tobacco products are located in areas where cus-
10 tomers do not have access to the products.

11 (c) FACE-TO-FACE TRANSACTIONS.—Except as pro-
12 vided in section 122(c)(1), a retailer may sell tobacco
13 products only in a direct, face-to-face exchange without
14 the assistance of any electronic or mechanical device.

15 (d) OUT-OF-PACKAGE DISTRIBUTION.—No retailer
16 may break or otherwise open a tobacco product to sell or
17 distribute to individuals portions of such product (includ-
18 ing individual cigarettes or a number of cigarettes that
19 is smaller than the quantity in the minimum package size,
20 or any quantity of cigarette tobacco or smokeless tobacco
21 that is smaller than the smallest package distributed by
22 the retailer for individual consumer use).

23 (e) RETAILER COMPLIANCE WITH RESPECT TO
24 SELF-SERVICE.—Each retailer shall ensure that all to-
25 bacco-related self-service displays, advertising, labeling,

1 and other items that are located in the establishment of
 2 the retailer and that do not comply with the requirements
 3 of this title are removed or are brought into compliance
 4 with the requirements of this title.

5 **SEC. 122. MANUFACTURE, SALE, AND DISTRIBUTION.**

6 (a) MINIMUM CIGARETTE PACKAGE SIZE.—Except
 7 as otherwise provided in this section, no manufacturer,
 8 distributor, or retailer may sell or cause to be sold, or dis-
 9 tribute or cause to be distributed, any cigarette package
 10 that contains fewer than 20 cigarettes.

11 (b) PROHIBITION ON SAMPLING.—No manufacturer,
 12 distributor, or retailer may distribute or cause to be dis-
 13 tributed any free samples of any tobacco product.

14 (c) PROHIBITION ON DISTRIBUTION THROUGH SELF-
 15 SERVICE MODES OF SALE.—

16 (1) VENDING MACHINES.—No manufacturer,
 17 distributor, or retailer may distribute or cause to be
 18 distributed any tobacco product through a vending
 19 machine.

20 (2) OTHER DISPLAYS.—Except as provided in
 21 subsection (d)(1)(B), no manufacturer, distributor,
 22 or retailer may distribute or cause to be distributed
 23 any tobacco product through a self-service display.

24 (d) PERMITTED SELF-SERVICE MODES OF SALE.—

1 (1) IN GENERAL.—Notwithstanding this sub-
2 title, the following methods of distributing tobacco
3 products are permitted:

4 (A) Mail-order sales as provided for in
5 paragraph (2), except that mail-order redemp-
6 tion of coupons and the distribution of free
7 samples through the mail shall be prohibited.

8 (B) Self-service displays that are located in
9 facilities where the retailer ensures that no indi-
10 viduals under 18 years of age are present or
11 permitted to enter at any time.

12 (2) MAIL-ORDER SALES.—

13 (A) IN GENERAL.—A manufacturer, dis-
14 tributor, or retailer may distribute or cause to
15 be distributed a tobacco product through mail-
16 order sales only if such sales are subject to a
17 procedure for verifying that no individual pur-
18 chasing such products is under 18 years of age.

19 (B) REVIEW BY COMMISSIONER.—Not
20 later than 2 years after the date of enactment
21 of this Act, the Commissioner shall review the
22 verification procedures implemented under sub-
23 paragraph (A) to determine whether individuals
24 under 18 years of age are obtaining tobacco
25 products through the mail. If the Commissioner

1 determines that a significant number of under-
 2 age individuals are obtaining such products
 3 through the mail, the Commissioner may pro-
 4 mulgate regulations to ban the distribution of
 5 tobacco products through the mail.

6 **Subtitle D—Licensing of Retail** 7 **Tobacco Sellers**

8 **SEC. 131. ESTABLISHMENT OF PROGRAM.**

9 (a) IN GENERAL.—The Commissioner, after con-
 10 sultation with the Secretary, shall establish a program
 11 under which an entity would be required to obtain a State
 12 or local license to sell or otherwise distribute tobacco prod-
 13 ucts directly to consumers.

14 (b) PROHIBITION ON DISTRIBUTION.—No entity
 15 shall sell or otherwise distribute tobacco products directly
 16 to consumers unless such entity has in effect a tobacco
 17 license issued or renewed in accordance with the laws of
 18 the State in which the products are to be sold or otherwise
 19 distributed.

20 (c) ELIGIBILITY OF STATE FOR PAYMENTS.—To be
 21 eligible to receive a block grant under section 502, a State
 22 shall have in effect laws that meet the standards described
 23 in this subtitle that provide for the licensing of entities
 24 engaged in the sale or distribution of tobacco products di-

1 rectly to consumers and shall enforce such laws in accord-
2 ance with section 133.

3 **SEC. 132. REQUIREMENTS.**

4 (a) LICENSURE AND NOTICE.—

5 (1) IN GENERAL.—The State shall require that
6 each person engaged in the sale or distribution of to-
7 bacco products directly to consumers obtain a license
8 that is issued by the State. A separate license shall
9 be required for each place of business where tobacco
10 products are distributed or sold at retail.

11 (2) NOTICE.—The State shall notify every per-
12 son in the State who is engaged in the distribution
13 at retail of tobacco products of the license require-
14 ment of this section and of the date by which such
15 person shall have obtained a license in order to dis-
16 tribute such products.

17 (b) FEE.—The State may assess an annual licensing
18 fee with respect to each entity that desires to obtain a
19 license under subsection (a). Amounts derived from such
20 fees shall be used to offset the administrative costs in-
21 curred by the State in issuing and renewing licenses under
22 this subtitle.

23 (c) APPLICATION.—

24 (1) IN GENERAL.—An entity shall prepare and
25 submit to the State an application for a license (in-

cluding the renewal of a license) under this section, on such form as the State may require, that shall set forth the name under which the applicant transacts or intends to transact business, the location of the place of business for which the license is to be issued, the street address to which all notices relevant to the license are to be sent (in this Act referred to as “notice address”), and any other identifying information that the State may require.

(2) ACTION BY STATE.—

(A) IN GENERAL.—The State shall issue or renew a license or deny an application for a license or the renewal of a license within 30 days of receiving a properly completed application and the licensing fee. The State shall provide notice to an applicant of an action on an application denying the issuance of a license or refusing to renew a license.

(B) FINDING BY STATE.—The State shall deny the issuance or renewal of a license upon an application if the State determines that the applicant has failed to comply with the requirements of this title.

(3) SCOPE AND RENEWAL.—Every license issued by the State shall be valid for a period deter-

1 mined by the State and shall be renewed upon appli-
2 cation except as otherwise provided in this section.

3 **SEC. 133. PENALTIES, REVOCATIONS AND SUSPENSIONS.**

4 (a) PENALTIES.—

5 (1) CRIMINAL PENALTIES APPLICABLE TO UN-
6 LICENSED SELLERS.—Any individual who sells or
7 otherwise distributes tobacco products to a consumer
8 without a tobacco license in effect as provided for in
9 this subtitle shall be subject, under the applicable
10 State law, to a fine of not less than \$1,000, or im-
11 prisonment of not less than 6 months, or both. With
12 respect to any corporate employer of such an indi-
13 vidual, the corporation shall be subject to a fine of
14 not more than \$50,000.

15 (2) CIVIL PENALTIES APPLICABLE TO SELLERS
16 IN VIOLATION OF LICENSE.—

17 (A) IN GENERAL.—In addition to any
18 criminal penalties that may be imposed under
19 paragraph (1), a State may, in accordance with
20 subsection (b), impose civil penalties on any en-
21 tity that has sold or distributed tobacco prod-
22 ucts in the State in violation of the State to-
23 bacco licensing laws.

1 (B) LIMITATIONS.—The civil penalties that
2 may be imposed under subparagraph (A) shall
3 not exceed the following:

4 (i) For the first offense within any 2-
5 year period, \$500, or a 3-day suspension of
6 the tobacco license, or both.

7 (ii) For a second offense within any 2-
8 year period, \$1,000, or a 7-day suspension
9 of the tobacco license, or both.

10 (iii) For a third offense within any 2-
11 year period, \$2,000, or a 30-day suspen-
12 sion of the tobacco license, or both.

13 (iv) For a fourth offense within any 2-
14 year period, \$5,000, or a 6-month suspen-
15 sion of the tobacco license, or both.

16 (v) For a fifth offense within any 2-
17 year period, \$10,000, or a 1-year suspen-
18 sion of the tobacco license, or both.

19 (vi) For a sixth and any subsequent
20 offense within any 2-year period, \$25,000,
21 or a 3-year revocation of the tobacco li-
22 cense.

23 (vii) For a tenth offense within any 2-
24 year period, the permanent revocation of
25 the tobacco license.

1 (b) REVOCATION AND SUSPENSIONS.—

2 (1) NOTICE.—Upon a finding that a tobacco li-
3 censee has been determined by a court of competent
4 jurisdiction to have violated a provision of State law
5 under this subtitle during the license term, the State
6 shall notify the licensee in writing, served personally
7 or by registered mail at the principal place of busi-
8 ness of the licensee, that any subsequent violation of
9 such law at the same place of business may result
10 in an administrative action to suspend the license
11 for a period determined by the State in accordance
12 with subsection (a)(2)(B).

13 (2) SUSPENSION.—Upon finding that a further
14 violation by the tobacco licensee has occurred involv-
15 ing the same place of business for which the license
16 was issued and the licensee has been provided notice
17 under paragraph (1), the State may initiate an ad-
18 ministrative action to suspend the license for a pe-
19 riod to be determined in accordance with subsection
20 (a)(2)(B). If an administrative action to suspend a
21 license is initiated, the State shall immediately notify
22 the licensee, in writing at the principal place of busi-
23 ness of the licensee, of the initiation of the action
24 and the reasons therefore and permit the licensee an
25 opportunity, at least 30 days after written notice is

1 served personally or by registered mail upon the li-
2 censee, to show why suspension of the license would
3 be unwarranted or unjust.

4 (3) REVOCATION.—The State may initiate an
5 administrative action to revoke a tobacco license that
6 previously has been suspended under paragraph (2)
7 if, during the 2-year period described in subsection
8 (a)(2)(B), a further violation of this subtitle is com-
9 mitted after the suspension by the licensee involving
10 the same place of business for which the license was
11 issued. If an administrative action to revoke a li-
12 cense is initiated, the State shall immediately notify
13 the licensee, in writing at the principal place of busi-
14 ness of the licensee, of the initiation of the action
15 and the reasons therefore and permit the licensee an
16 opportunity, at least 30 days after written notice is
17 served personally or by registered mail upon the li-
18 censee, to show why revocation of the license would
19 be unwarranted or unjust.

20 (c) JUDICIAL REVIEW.—A tobacco licensee may seek
21 judicial review of an action of the State suspending, revok-
22 ing, denying, or refusing to renew a license under this sec-
23 tion by filing a complaint in a court of competent jurisdic-
24 tion. A complaint shall be filed within 30 days after the

1 date on which notice of the action involved is received by
 2 the licensee. The court shall review the evidence de novo.

3 **SEC. 134. FEDERAL LICENSING OF MILITARY AND OTHER**
 4 **ENTITIES.**

5 (a) IN GENERAL.—The Commissioner, in consulta-
 6 tion with the Secretary of Defense, Secretary of State, and
 7 other appropriate Federal officials, shall establish and im-
 8 plement a Federal tobacco licensing program to be applied
 9 to entities that sell or distribute tobacco products—

10 (1) on any military installation (as defined in
 11 section 2801(c)(2) of title X, United States Code);

12 (2) in any United States embassy;

13 (3) in any facility owned and operated by the
 14 Federal Government either in the United States or
 15 in a foreign country;

16 (4) in any duty-free shop located within the
 17 United States; or

18 (5) through any other Federal entity or on any
 19 other Federal property as determined appropriate by
 20 the Commissioner.

21 (b) REQUIREMENTS OF PROGRAM.—The program es-
 22 tablished under subsection (a) shall apply requirements
 23 (including those for penalties, suspensions, and revoca-
 24 tions) similar to those required to be implemented by
 25 States under this subtitle.

(c) INDIAN TRIBES AND TRIBAL LANDS.—For purposes of applying and enforcing the provisions of this subtitle to entities that sell or otherwise distribute tobacco products on Indian reservations (as defined in section 403(9) of the Indian Child Protection and Family Violence Prevention Act (25 U.S.C. 3202(9))), an Indian tribe or tribal organization (as such terms are defined in section 4 of the Indian Self Determination and Education Assistance Act (25 U.S.C. 450b)) shall be treated as a State.

Subtitle E—Regulation of Tobacco Product Development and Manufacturing

SEC. 141. REFERENCE.

Whenever in this subtitle an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.).

SEC. 142. TREATMENT OF TOBACCO PRODUCTS AS DRUGS.

(a) DEFINITIONS.—

(1) DRUG.—

(A) IN GENERAL.—Section 201(g)(1) (21 U.S.C. 321(g)(1)) is amended by inserting be-

1 fore the first period “; and (E) tobacco prod-
 2 ucts”.

3 (B) EXCEPTION.—Section 201(p) of such
 4 Act is amended in paragraphs (1) and (2) by
 5 striking “(except a new animal drug” and in-
 6 serting “(except a tobacco product, a new ani-
 7 mal drug,”.

8 (2) DEVICES.—Section 201(h) (21 U.S.C.
 9 321(h)) is amended by adding at the end the follow-
 10 ing: “Such term includes a tobacco product which
 11 shall be classified as a class II device.”.

12 (3) OTHER DEFINITIONS.—Section 201 (21
 13 U.S.C. 321) is amended by adding at the end there-
 14 of the following new paragraphs:

15 “(ii) TOBACCO ADDITIVE.—The term ‘tobacco addi-
 16 tive’ means any substance the intended use of which re-
 17 sults or may reasonably be expected to result, directly or
 18 indirectly, in the substance becoming a component of, or
 19 otherwise affecting the characteristics of, any tobacco
 20 product, including any substance that may have been re-
 21 moved from the tobacco product and then readded in the
 22 substance’s original or modified form.

23 “(jj) TAR.—The term ‘tar’ means mainstream total
 24 articulate matter minus nicotine and water.

1 “(kk) TOBACCO PRODUCT.—The term ‘tobacco prod-
 2 uct’ has the meaning given such term in section 100(22)
 3 of the Universal Tobacco Settlement Act.”.

4 (b) ENFORCEMENT.—Section 301 (21 U.S.C. 331) is
 5 amended by adding at the end thereof the following new
 6 subsection:

7 “(x) The manufacture, labeling, distribution, and sale
 8 of any adulterated or misbranded tobacco product in viola-
 9 tion of—

10 “(1) regulations issued pursuant to section 903;

11 “(2) title I of the Universal Tobacco Settlement
 12 Act.”.

13 (c) ADULTERATED OR MISBRANDED PROVISIONS.—

14 (1) ADULTERATION.—Section 501 (21 U.S.C.
 15 351) is amended by adding at the end the following:

16 “(j) If it is a tobacco product and it does not comply
 17 with the provisions of chapter IX.”.

18 (2) MISBRANDING.—Section 502 (21 U.S.C.
 19 352) is amended by adding at the end the following:

20 “(u) If it is a tobacco product and its labeling does
 21 not comply with the provisions of chapter IX and the pro-
 22 visions of title I of the Universal Tobacco Settlement
 23 Act.”.

24 (d) CLASSIFICATION OF TOBACCO PRODUCTS.—Sec-
 25 tion 512(a)(1)(B) (21 U.S.C. 360e(a)(1)(B)) is amended

1 by adding at the end the following: “For purposes of this
 2 Act, a tobacco product shall be classified as a class II de-
 3 vice with performance standards applicable under chapter
 4 IX.”.

5 **SEC. 143. HEALTH AND SAFETY REGULATION OF TOBACCO**
 6 **PRODUCTS.**

7 The Act (21 U.S.C. 301 et seq.) is amended—

8 (1) by redesignating chapter IX as chapter X;

9 (2) by redesignating sections 901, 902, 903,
 10 904, and 905 as sections 1001, 1002, 1003, 1004,
 11 and 1005, respectively; and

12 (3) by adding after chapter VIII the following
 13 new chapter:

14 “CHAPTER IX—TOBACCO PRODUCTS

15 “**SEC. 901. DEFINITIONS.**

16 “For purposes of this chapter and in addition to the
 17 definitions contained in section 201, the definitions under
 18 section 100 of the Universal Tobacco Settlement Act shall
 19 apply.

20 “**SEC. 902. PURPOSE.**

21 “It is the purpose of this chapter to impose a regu-
 22 latory scheme applicable to the development and manufac-
 23 turing of cigarettes and smokeless tobacco products/to-
 24 bacco products. Such scheme shall include the approval
 25 of the ingredients used in such products and the imposi-

1 tion of standards to reduce the level of certain constituents
 2 contained in such products, including nicotine.

3 **“SEC. 903. PROMULGATION OF REGULATIONS.**

4 “The Commissioner shall promulgate regulations gov-
 5 erning the misbranding, adulteration, and dispensing of
 6 tobacco products that are consistent with this chapter and
 7 with the manner in which other products that are ingested
 8 into the body are regulated under this Act, except that
 9 the Commissioner may not promulgate a regulation that
 10 prohibits the sale and distribution of a tobacco product
 11 solely on the basis of the fact that tobacco causes disease.
 12 Such regulations shall be promulgated not later than 6
 13 months after the date of enactment of the Universal To-
 14 bacco Settlement Act.

15 **“SEC. 904. MINIMUM REQUIREMENTS.**

16 “(a) MISBRANDING.—The regulations promulgated
 17 under section 903 shall at a minimum require that a to-
 18 bacco product be deemed to be misbranded if the labeling
 19 of the package of such product is not in compliance with
 20 the provisions of this chapter, of other applicable provi-
 21 sions of this Act, or of sections 102(a), 103, 111, 112,
 22 and 113 (as applicable to the type of product involved)
 23 of the Universal Tobacco Settlement Act.

24 “(b) ADULTERATION.—The regulations promulgated
 25 under section 903 shall at a minimum require that a to-

1 bacco product be deemed to be adulterated if the Commis-
 2 sioner determines that any tobacco additive in such prod-
 3 uct, regardless of the amount of such tobacco additive, ei-
 4 ther by itself or in conjunction with any other tobacco ad-
 5 ditive or ingredient significantly increases the risk to
 6 human health or the risk of addiction to such product.

7 **“SEC. 905. PERFORMANCE STANDARDS FOR TOBACCO**
 8 **PRODUCTS.**

9 “(a) IN GENERAL.—With respect to tobacco prod-
 10 ucts, the special controls required by section 513(a)(1)(B)
 11 shall include performance standards for such products as
 12 established in accordance with this section.

13 “(b) REQUIREMENTS.—A performance standard es-
 14 tablished under this section for a tobacco product—

15 “(1) shall include provisions to require the
 16 modification of the product to minimize the illness
 17 or injury that may result in consumers as a result
 18 of the use of such products, including the compo-
 19 nents of such products that produce dependence
 20 among such consumers; and

21 “(2) include, where appropriate—

22 “(A) provisions with respect to the con-
 23 struction, components, ingredients, and prop-
 24 erties of the tobacco product;

1 “(B) provisions for the testing (on a sam-
2 ple basis or, if necessary, on an individual
3 basis) of the tobacco product or, if it is deter-
4 mined that no other more practicable means are
5 available to the Secretary to assure the con-
6 formity of the device to the standard, provisions
7 for the testing (on a sample basis or, if nec-
8 essary, on an individual basis) by the Secretary
9 or by another person at the direction of the
10 Secretary;

11 “(C) provisions for the measurement of the
12 performance characteristics of the tobacco prod-
13 uct;

14 “(D) provisions requiring that the results
15 of each or of certain of the tests of the device
16 required to be made under subparagraph (B)
17 demonstrate that the tobacco product is in con-
18 formity with the portions of the standard for
19 which the test or tests were required; and

20 “(E) a provision requiring that the sale
21 and distribution of the device be restricted but
22 only to the extent that the sale and distribution
23 of a device may be otherwise restricted under
24 this Act of title I of the Universal Tobacco Set-
25 tlement Act.

1 “(c) EVALUATION.—The Secretary shall provide for
2 the periodic evaluation of a performance standard estab-
3 lished under this section to determine if such standards
4 should be changed to reflect new medical, scientific, or
5 other technological data.

6 “(d) PROCEDURES.—In carrying out this section, the
7 Secretary shall, to the maximum extent practicable—

8 “(1) use personnel, facilities, and other tech-
9 nical support available in other Federal agencies;

10 “(2) consult with the Scientific Advisory Com-
11 mittee established under section 906 and other Fed-
12 eral agencies concerned with standard-setting and
13 other nationally or internationally recognized stand-
14 ard-setting entities; and

15 “(3) invite appropriate participation, through
16 joint or other conferences, workshops, or other
17 means, by informed persons representative of sci-
18 entific, professional, industry, or consumer organiza-
19 tions who in the judgment of the Secretary can
20 make a significant contribution.

21 “(e) PROCEDURES.—

22 “(1) IN GENERAL.—The Secretary shall publish
23 in the Federal Register a notice of proposed rule-
24 making for the establishment, amendment, or rev-

1 ocation of any performance standard under this sec-
2 tion.

3 “(2) NOTICE REQUIREMENTS.—A notice of pro-
4 posed rulemaking for the establishment or amend-
5 ment of a performance standard under this section
6 shall—

7 “(A) set forth a finding with supporting
8 justification that the performance standard is
9 appropriate under subsection (b)(1) with re-
10 spect to the product; and

11 “(B) invite interested persons to submit an
12 existing performance standard for the product,
13 including a draft or proposed performance
14 standard, for consideration by the Secretary.

15 “(3) COMMENT PERIOD.—The Secretary shall
16 provide for a comment period of not less than 60
17 days.

18 “(4) APPLICABILITY OF SECTION 514.—The
19 provisions of paragraphs (3) and (4) of section
20 514(b) shall apply to the establishment, amendment,
21 or revocation of any performance standard under
22 this section, except that any reference to an advisory
23 committee shall be deemed to be a reference the Sci-
24 entific Advisory Committee established under section
25 906.

1 “(f) NICOTINE.—Except as provided in section 907,
 2 a performance standard established under this section
 3 may not require the elimination of nicotine from tobacco
 4 products.

5 “(g) LIMITATION.—The Commissioner may not es-
 6 tablish a performance standard under this section that has
 7 the effect of prohibiting the sale and distribution, to indi-
 8 viduals who are at least 18 years of age, of traditional
 9 tobacco products in the basic form of the particular prod-
 10 uct as described in the definition of the particular product
 11 under section 100 of the Universal Tobacco Settlement
 12 Act.

13 **“SEC. 906. SCIENTIFIC ADVISORY COMMITTEE.**

14 “(a) ESTABLISHMENT.—Not later than 1 year after
 15 the date of enactment of the Universal Tobacco Settlement
 16 Act, the Secretary shall establish an advisory committee,
 17 to be known as the ‘Scientific Advisory Committee’, to as-
 18 sist the Secretary in establishing, amending, or revoking
 19 a performance standard under section 905.

20 “(b) MEMBERSHIP.—The Secretary shall appoint as
 21 members of the Scientific Advisory Committee any individ-
 22 uals with expertise in the medical, scientific, or other tech-
 23 nological data involving the manufacture and use of to-
 24 bacco products, and of appropriately diversified profes-
 25 sional backgrounds. The Secretary may not appoint to the

1 Committee any individual who is in the regular full-time
2 employ of the Federal Government. The Secretary shall
3 designate one of the members of each advisory committee
4 to serve as chairperson of the Committee. The Committee
5 shall include as nonvoting members a representative of
6 consumer interests and a representative of interests of the
7 device manufacturing industry.

8 “(c) COMPENSATION AND EXPENSES.—

9 “(1) COMPENSATION.—Members of the Sci-
10 entific Advisory Committee who are not officers or
11 employees of the United States, while attending con-
12 ferences or meetings of the Committee or otherwise
13 serving at the request of the Secretary, shall be enti-
14 tled to receive compensation at rates to be fixed by
15 the Secretary, which rates may not exceed the daily
16 equivalent of the rate of pay for level 4 of the Senior
17 Executive Schedule under section 5382 of title 5,
18 United States Code, for each day (including travel-
19 time) they are so engaged.

20 “(2) EXPENSES.—While conducting the busi-
21 ness of the Scientific Advisory Committee away from
22 their homes or regular places of business, each mem-
23 ber may be allowed travel expenses, including per
24 diem in lieu of subsistence, as authorized by section
25 5703 of title 5 of the United States Code for per-

1 sons in the Government service employed intermit-
2 tently.

3 “(d) DUTIES.—The Scientific Advisory Committee
4 shall—

5 “(1) assist the Secretary in establishing,
6 amending, or revoking performance standards under
7 section 905;

8 “(2) examine and determine the effects of the
9 alteration of the nicotine yield levels in tobacco prod-
10 ucts;

11 “(3) examine and determine whether there is a
12 threshold level below which nicotine yields do not
13 produce dependence on the tobacco product involved,
14 and, if so, determine what that level is; and

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

18 **“SEC. 907. REQUIREMENTS RELATING TO NICOTINE AND**
19 **OTHER CONSTITUENTS.**

20 “(a) GENERAL RULE.—Except as provided in sub-
21 section (d), the Secretary, based on a finding under sub-
22 section (b), may adopt a performance standard under sec-
23 tion 905 that requires the modification of a tobacco prod-
24 uct in a manner that involves—

1 “(1) the gradual reduction of nicotine yields of
2 the product; or

3 “(2) the reduction or elimination of other con-
4 stituents or harmful components of the product.

5 “(b) REQUIRED FINDING.—

6 “(1) IN GENERAL.—A modification described in
7 subsection (a) shall not be adopted unless the Sec-
8 retary determines that the modification—

9 “(A) will result in a significant reduction
10 in the health risks associated with the use of
11 the tobacco product involved;

12 “(B) is technologically feasible; and

13 “(C) will not result in the creation of a sig-
14 nificant demand for contraband products or
15 other tobacco products that do not meet the
16 performance standard that requires the modi-
17 fication.

18 “(2) CONTRABAND PRODUCTS.—For purposes
19 of paragraph (1)(C), the Secretary, in determining
20 whether a significant demand for contraband prod-
21 ucts will be created, shall take in account—

22 “(A) the estimated number of dependent
23 tobacco product users residing in the United
24 States on the date on which the proposed modi-
25 fication is being considered;

1 “(B) the availability to such users, or lack
2 thereof, of alternative products; and

3 “(C) any other factors determined appro-
4 priate by the Secretary.

5 “(3) SUBSTANTIAL EVIDENCE.—A determina-
6 tion under paragraph (2) shall be based upon sub-
7 stantial evidence as demonstrated through an admin-
8 istrative record developed through formal rule-
9 making procedures as required under title 5, United
10 States Code. Any such determination, and any deter-
11 mination by the Secretary with respect to a petition
12 filed for an administrative review of the modifica-
13 tion, shall be subject to judicial review in the United
14 States District Court for the District of Columbia.

15 “(c) LIMITATION.—Effective on the date that is 3
16 years after the date of enactment of the Universal Tobacco
17 Settlement Act, and notwithstanding any performance
18 standard established under this chapter, no cigarette or
19 tobacco product shall be sold or otherwise distributed in
20 the United States that exceeds a 12 milligram tar yield,
21 as determined using the testing methodology used by the
22 Federal Trade Commission on such date of enactment.

23 “(d) 12-YEAR PROHIBITION.—During the 12-year
24 period beginning on the date of enactment of the Universal
25 Tobacco Settlement Act, the Secretary shall not adopt any

1 performance standard under section 905 that requires the
 2 complete elimination of nicotine yields in a tobacco prod-
 3 uct.

4 “(e) ACTION AFTER PROHIBITION.—

5 “(1) IN GENERAL.—After the expiration of the
 6 12-year period referred to in subsection (d), the Sec-
 7 retary may establish or amend any performance
 8 standard to completely eliminate nicotine yields in a
 9 tobacco product.

10 “(2) DETERMINATION.—Any performance
 11 standard described in paragraph (1) shall not be
 12 adopted unless the Secretary determines that the
 13 standard—

14 “(A) will result in a significant overall re-
 15 duction in the health risks associated with the
 16 use of the tobacco product involved by consum-
 17 ers, including individuals who continue to use
 18 tobacco products but use such products less
 19 often and individuals who stop using such prod-
 20 ucts;

21 “(B) is technologically feasible; and

22 “(C) will not result in the creation of a sig-
 23 nificant demand for contraband products or
 24 other tobacco products that do not meet the
 25 performance standard.

1 “(3) HEALTH BENEFITS.—In making a deter-
2 mination with respect to health risks under para-
3 graph (2)(A), the Secretary shall consider—

4 “(A) the number of dependent tobacco
5 users residing in the United States on the date
6 on which the proposed performance standard is
7 being considered;

8 “(B) the availability and demonstrated
9 market acceptance of alternative products;

10 “(C) the effectiveness of tobacco product
11 cessation techniques and devices on the market
12 on the date on which the proposed performance
13 standard is being considered; and

14 “(D) any other factors determined appro-
15 priate by the Secretary.

16 “(4) PREPONDERANCE OF THE EVIDENCE.—A
17 determination under paragraph (2) with respect to
18 the elimination of nicotine, or an action that would
19 have an effect comparable to the elimination of nico-
20 tine, shall be based upon a preponderance of the evi-
21 dence as demonstrated, upon the request of a manu-
22 facturer, through a Part 12 hearing or notice and
23 comment rulemaking as required under title 5, Unit-
24 ed States Code. Any such determination, and any
25 determination by the Secretary with respect to a pe-

1 tition filed for an administrative review of the modi-
2 fication, shall be subject to judicial review in the
3 United States District Court for the District of Co-
4 lumbia.

5 “(5) PHASE-IN.—A performance standard de-
6 scribed in paragraph (1) shall be implemented dur-
7 ing a 2-year phase-in period beginning on the date
8 on which all administrative or judicial action pro-
9 vided for under this chapter with respect to the
10 standard is completed.

11 “(f) TOBACCO CONSTITUENTS.—The Secretary shall
12 promulgate regulations for the testing, reporting and dis-
13 closure of tobacco smoke constituents that the Secretary
14 determines the public should be informed of to protect
15 public health, including tar, nicotine, and carbon mon-
16 oxide. Such regulations may require label and advertising
17 disclosures relating to tar and nicotine.

18 **“SEC. 908. REDUCED RISK PRODUCTS.**

19 “(a) MISBRANDING.—Except as provided in sub-
20 section (b), the regulations promulgated in accordance
21 with section 904(a) shall require that a tobacco product
22 be deemed to be misbranded if the labeling of the package
23 of the product, or the claims of the manufacturer in con-
24 nection with the product, can reasonably be interpreted
25 by an objective consumer as stating or implying that the

1 product presents a reduced health risk as compared to
2 other similar products.

3 “(b) EXCEPTION.—

4 “(1) IN GENERAL.—Subsection (a) shall not
5 apply to the labeling of a tobacco product, or the
6 claims of the manufacturer in connection with the
7 product, if—

8 “(A) the manufacturer, based on scientific
9 evidence, demonstrates to the Commissioner
10 that the product significantly reduces the risk
11 to the health of the user as compared to other
12 similar tobacco products; and

13 “(B) the Commissioner approves the spe-
14 cific claim that will be made a part of the label-
15 ing of the product, or the specific claims of the
16 manufacturer in connection with the product.

17 “(2) REDUCTION IN HARM.—The Commissioner
18 shall promulgate regulations to permit the inclusion
19 of scientifically-based specific health claims on the
20 labeling of a tobacco product package, or the making
21 of such claims by the manufacturer in connection
22 with the product, where the Commissioner deter-
23 mines that the inclusion or making of such claims
24 would reduce harm to consumers and otherwise pro-
25 mote public health.

1 “(c) DEVELOPMENT OF REDUCED RISK PRODUCT
2 TECHNOLOGY.—

3 “(1) NOTIFICATION OF COMMISSIONER.—The
4 manufacturer of a tobacco product shall provide
5 written notice to the Commissioner upon the devel-
6 opment or acquisition by the manufacturer of any
7 technology that would reduce the risk of such prod-
8 ucts to the health of the user.

9 “(2) CONFIDENTIALITY.—The Commissioner
10 shall promulgate regulations to provide a manufac-
11 turer with appropriate confidentiality protections
12 with respect to technology that is the subject of a
13 notification under paragraph (1) that contains evi-
14 dence that the technology involved is in the early de-
15 velopmental stages.

16 “(3) LICENSING.—

17 “(A) IN GENERAL.—With respect to any
18 technology developed or acquired under para-
19 graph (1), the manufacturer shall permit the
20 use of such technology by other manufacturers
21 of tobacco products to which this chapter ap-
22 plies.

23 “(B) FEES.—The Commissioner shall pro-
24 mulgate regulations to provide for the payment
25 of a commercially reasonable fee by each manu-

1 facturer that uses the technology described
2 under subparagraph (A) to the manufacturer
3 that submits the notice under paragraph (1) for
4 such technology. Such regulations shall contain
5 procedures for the resolution of fee disputes be-
6 tween manufacturers under this subparagraph.

7 “(d) REQUIREMENT OF MANUFACTURE AND MAR-
8 KETING.—

9 “(1) PURPOSE.—It is the purpose of this sub-
10 section to provide for a mechanism to ensure that
11 tobacco products that are designed to be less hazard-
12 ous to the health of users are developed, tested, and
13 made available to consumers.

14 “(2) DETERMINATION.—Upon a determination
15 by the Commissioner that the manufacture of a to-
16 bacco product that is less hazardous to the health of
17 users is technologically feasible, the Commissioner
18 may, in accordance with this subsection, require that
19 certain manufacturers of such products manufacture
20 and market such less hazardous products.

21 “(3) MANUFACTURER.—

22 “(A) REQUIREMENT.—Except as provided
23 in subparagraph (B), the requirement under
24 paragraph (2) shall apply to any manufacturer
25 that provides a notification to the Commissioner

1 under subsection (c)(1) concerning the tech-
2 nology that is the subject of the determination
3 of the Commissioner.

4 “(B) EXCEPTION.—The requirement under
5 subparagraph (A) shall not apply to a manufac-
6 turer if—

7 “(i) the manufacturer elects not to
8 manufacture such products and provides
9 notice to the Commissioner of such elec-
10 tion; and

11 “(ii) the manufacturer agrees to pro-
12 vide the technology involved, for a commer-
13 cially reasonable fee, to other manufactur-
14 ers that enter into agreements to use such
15 technology to manufacture and market to-
16 bacco products that are less hazardous to
17 the health of users.

18 “(4) ACTION BY PUBLIC HEALTH SERVICE.—If
19 no manufacturer elects or agrees to manufacture
20 and market tobacco products that are less hazardous
21 to the health of users through the use of technology
22 available pursuant to this subsection within a rea-
23 sonable period of time, as determined appropriate by
24 the Commissioner, the Commissioner, in consultation
25 with the Secretary and acting through the Public

1 Health Service, shall, either directly or through
2 grants or contracts, provide for the manufacture and
3 marketing of such products.

4 **“SEC. 909. GOOD MANUFACTURING PRACTICE STANDARDS.**

5 “(a) AUTHORITY.—

6 “(1) IN GENERAL.—The Secretary may, in ac-
7 cordance with paragraph (2), prescribe regulations
8 requiring that the methods used in, and the facilities
9 and controls used for, the manufacture, pre-produc-
10 tion design validation (including a process to assess
11 the performance of a tobacco product), packing, and
12 storage of a tobacco product conform to current
13 good manufacturing practice, as prescribed in such
14 regulations, to ensure that such products will be in
15 compliance with this chapter.

16 “(2) REQUIREMENTS PRIOR TO REGULA-
17 TIONS.—Prior to the Secretary promulgating any
18 regulation under paragraph (1) the Secretary
19 shall—

20 “(A) afford the Scientific Advisory Com-
21 mittee established under section 906 an oppor-
22 tunity (with a reasonable time period) to submit
23 recommendations with respect to the regula-
24 tions proposed to be promulgated; and

1 “(B) afford opportunity for an oral hear-
2 ing.

3 “(b) MINIMUM REQUIREMENTS.—The regulations
4 promulgated under subsection (a) shall at a minimum re-
5 quire—

6 “(1) the implementation of a quality control
7 system by the manufacturer of a tobacco product;

8 “(2) a process for the inspection of tobacco
9 product material prior to the packaging of such
10 product to be determined by the Commissioner;

11 “(3) procedures for the proper handling and
12 storage of the packaged tobacco product;

13 “(4) after consultation with the Administrator
14 of the Environmental Protection Agency, the devel-
15 opment and adherence to applicable tolerances with
16 respect to pesticide chemical residues in or on com-
17 modities used by the manufacturer in the manufac-
18 ture of the finished tobacco product;

19 “(5) the inspection of facilities by officials of
20 the Food and Drug Administration as otherwise pro-
21 vided for in this Act; and

22 “(6) record keeping and the reporting of certain
23 information.

24 “(c) PETITIONS FOR EXEMPTIONS AND
25 VARIANCES.—

1 “(1) IN GENERAL.—Any person subject to any
2 requirement prescribed by regulations under sub-
3 section (a) may petition the Secretary for an exemp-
4 tion or variance from such requirement. Such a peti-
5 tion shall be submitted to the Secretary in such form
6 and manner as the Secretary shall prescribe and
7 shall—

8 “(A) in the case of a petition for an ex-
9 emption from a requirement, set forth the basis
10 for the petitioner’s determination that compli-
11 ance with the requirement is not required to en-
12 sure that the device is in compliance with this
13 chapter;

14 “(B) in the case of a petition for a vari-
15 ance from a requirement, set forth the methods
16 proposed to be used in, and the facilities and
17 controls proposed to be used for, the manufac-
18 ture, packing, and storage of the product in lieu
19 of the methods, facilities, and controls pre-
20 scribed by the requirement; and

21 “(C) contain such other information as the
22 Secretary shall prescribe.

23 “(2) SCIENTIFIC ADVISORY COMMITTEE.—The
24 Secretary may refer to the Scientific Advisory Com-
25 mittee established under section 906 any petition

1 submitted under paragraph (1). The Scientific Advi-
 2 sory Committee shall report its recommendations to
 3 the Secretary with respect to a petition referred to
 4 it within 60 days of the date of the petition’s refer-
 5 ral. Within 60 days after—

6 “(A) the date the petition was submitted
 7 to the Secretary under paragraph (1); or

8 “(B) if the petition was referred to the Sci-
 9 entific Advisory Committee, the expiration of
 10 the 60-day period beginning on the date the pe-
 11 tition was referred to such Committee;

12 whichever occurs later, the Secretary shall by order
 13 either deny the petition or approve it.

14 “(3) APPROVAL OF PETITION.—

15 “(A) IN GENERAL.—The Secretary may
 16 approve—

17 “(i) a petition for an exemption for a
 18 tobacco product from a requirement if the
 19 Secretary determines that compliance with
 20 such requirement is not required to assure
 21 that the product will comply with this
 22 chapter; and

23 “(ii) a petition for a variance for a to-
 24 bacco product from a requirement if the
 25 Secretary determines that the methods to

1 be used in, and the facilities and controls
2 to be used for, the manufacture, packing,
3 and storage of the product in lieu of the
4 methods, controls, and facilities prescribed
5 by the requirement are sufficient to ensure
6 that the product will comply with this
7 chapter.

8 “(B) CONDITIONS.—An order of the Sec-
9 retary approving a petition for a variance shall
10 prescribe such conditions respecting the meth-
11 ods used in, and the facilities and controls used
12 for, the manufacture, packing, and storage of
13 the tobacco product to be granted the variance
14 under the petition as may be necessary to en-
15 sure that the product will comply with this
16 chapter.

17 “(4) INFORMAL HEARING.—After the issuance
18 of an order under paragraph (2) respecting a peti-
19 tion, the petitioner shall have an opportunity for an
20 informal hearing on such order.

21 “(d) AGRICULTURAL PRODUCERS.—The Secretary
22 may not promulgate any regulation under this section that
23 has the effect of placing regulatory burdens on tobacco
24 producers (as such term is used for purposes of the Agri-
25 cultural Adjustment Act of 1938 (7 U.S.C. 1281 et seq.)

1 and the Agricultural Act of 1949 (7 U.S.C. 1441 et seq.))
2 in excess of the regulatory burdens generally placed on
3 other agricultural commodity producers.

4 **“SEC. 910. DISCLOSURE AND REPORTING OF NONTOBACCO**
5 **INGREDIENTS.**

6 “(a) ANNUAL SUBMISSION.—

7 “(1) IN GENERAL.—Each manufacturer of a to-
8 bacco product shall annually provide the Secretary
9 with—

10 “(A) a list of all ingredients, substances,
11 and compounds (other than tobacco, water or
12 reconstituted tobacco sheet made wholly from
13 tobacco) that are added to the tobacco (and the
14 paper or filter of the product if applicable) in
15 the manufacture of the tobacco product, for
16 each brand of tobacco product so manufactured;
17 and

18 “(B) a description of the quantity of the
19 ingredients, substances, and compounds that
20 are listed under subparagraph (A) with respect
21 to each brand of tobacco product.

22 “(2) GENERAL DISCLOSURE OF SAFETY.—With
23 respect to each annual submission under paragraph
24 (1) during the 5-year period beginning on the date
25 of enactment of the Universal Tobacco Settlement

1 Act, the manufacturer shall, for each ingredient,
 2 substance, or compound contained on the list of the
 3 manufacturer for the year involved, disclose whether
 4 the manufacturer has determined that the ingredi-
 5 ent, substance, or compound would be exempt from
 6 public disclosure under this section.

7 “(b) SAFETY ASSESSMENTS.—

8 “(1) REQUIREMENT.—Not later than 5 years
 9 after the date of enactment of the Universal Tobacco
 10 Settlement Act, and annually thereafter, each manu-
 11 facturer shall submit to the Secretary a safety as-
 12 sessment for each ingredient, substance, or
 13 compound that is listed under subsection (a)(1)(A)
 14 with respect to each brand of tobacco product manu-
 15 factured by each such manufacturer.

16 “(2) BASIS OF ASSESSMENT.—The safety as-
 17 sessment of an ingredient, substance, or compound
 18 described in paragraph (1) shall—

19 “(A) be based on the best scientific evi-
 20 dence available at the time of the submission of
 21 the assessment; and

22 “(B) result in a finding that there is a rea-
 23 sonable certainty in the minds of competent sci-
 24 entists that the ingredient, substance, or

1 compound is not harmful in the quantities used
2 under the intended conditions of use.

3 “(c) PROHIBITION.—

4 “(1) REGULATIONS.—Not later than 12 months
5 after the date of enactment of the Universal Tobacco
6 Settlement Act, the Secretary shall promulgate regu-
7 lations to prohibit the use of any ingredient, sub-
8 stance, or compound in the tobacco product of a
9 manufacturer—

10 “(A) if no safety assessment has been sub-
11 mitted by the manufacturer for the ingredient,
12 substance, or compound; or

13 “(B) if the Secretary disapproves of the
14 safety of the ingredient, substance, or
15 compound that was the subject of the assess-
16 ment under paragraph (2).

17 “(2) REVIEW OF ASSESSMENTS.—

18 “(A) GENERAL REVIEW.—Not later than
19 90 days after the receipt of a safety assessment
20 under subsection (b), the Secretary shall review
21 the findings contained in such assessment.

22 “(B) APPROVAL OR DISAPPROVAL.—Not
23 later than 90 days after the completion of a re-
24 view under subparagraph (A), the Secretary
25 shall approve or disapprove of the safety of the

1 ingredient, substance, or compound that was
 2 the subject of the assessment and provide notice
 3 to the manufacturer of such action.

4 “(C) INACTION BY SECRETARY.—If the
 5 Secretary fails to act with respect to an assess-
 6 ment during the 90-day period referred to in
 7 subparagraph (B), the safety of the ingredient,
 8 substance, or compound involved shall be
 9 deemed to be approved.

10 “(d) DISCLOSURE OF INGREDIENTS TO THE PUB-
 11 LIC.—

12 “(1) INITIAL DISCLOSURE.—The regulations
 13 promulgated in accordance with section 904(a) shall,
 14 at a minimum, require that, during the 5-year pe-
 15 riod beginning on the date that is 6 months after
 16 the date of enactment of the Universal Tobacco Set-
 17 tlement Act, a tobacco product be deemed to be mis-
 18 branded if the labeling of the package of such prod-
 19 uct does not disclose the ingredients of the product
 20 in accordance with the labeling provisions applicable
 21 to food ingredients under this Act.

22 “(2) DISCLOSURE OF ALL INGREDIENTS.—The
 23 regulations referred to in paragraph (1) shall, at a
 24 minimum, require that, subsequent to the 5-year pe-
 25 riod referred to in such paragraph, a tobacco prod-

1 uct be deemed to be misbranded if the labeling of
2 the package of such product does not disclose all in-
3 gredients, substances, or compounds contained in
4 the product in accordance with the labeling provi-
5 sions applicable to food ingredients under this Act.

6 “(3) EXCEPTION.—Notwithstanding paragraph
7 (1), the Secretary may require that any ingredient,
8 substance, or compound contained in a tobacco prod-
9 uct that is otherwise exempt from disclosure be dis-
10 closed if the Secretary determines that such ingredi-
11 ent, substance, or compound is not safe as provided
12 for in subsection (c).

13 “(e) CONFIDENTIALITY.—Any information reported
14 to or otherwise obtained by the Secretary under this sec-
15 tion, and that is not required to be disclosed to the public
16 under subsection (d), shall be exempt from disclosure pur-
17 suant to subsection (a) of section 552 of title 5, United
18 States Code, by reason of subsection (b)(4) of such sec-
19 tion, shall be considered confidential and shall not be dis-
20 closed and may not be used by the Secretary as the basis
21 for the establishment or amendment of a performance
22 standard under section 905, except that such information
23 may be disclosed to other officers or employees concerned
24 with carrying out this Act or when relevant in any pro-
25 ceeding under this Act.

1 **“SEC. 911. NONAPPLICATION OF CERTAIN PROVISIONS.**

2 “Sections 502(j), 516, 518, and 520(f) shall not
3 apply to tobacco products to which this chapter applies.”.

4 **Subtitle F—Compliance Plans and**
5 **Corporate Culture**

6 **SEC. 151. COMPLIANCE PLANS.**

7 (a) IN GENERAL.—Not later than 1 year after the
8 date of enactment of this Act, and annually thereafter,
9 each manufacturer of a tobacco product shall prepare and
10 submit to the Secretary a plan to ensure that the manu-
11 facturer complies with all applicable Federal, State, and
12 local laws with respect to the manufacture and distribu-
13 tion of tobacco products.

14 (b) REQUIREMENTS.—A compliance plan submitted
15 under subsection (a) shall—

16 (1) contain the assurances of the manufacturer
17 that tobacco products will only be manufactured and
18 distributed in accordance with this Act and the
19 amendments made by this Act;

20 (2) identify methods to achieve the goals of—

21 (A) reducing the access of individuals
22 under 18 years of age to tobacco products; and

23 (B) reducing the incidence of the underage
24 consumption of tobacco products;

1 (3) provide for the implementation of internal
2 incentives for achieving the reductions described in
3 paragraph (2);

4 (4) provide for the implementation of internal
5 incentives for the development of tobacco products
6 with a reduced health risk;

7 (5) contain a description of the compliance pro-
8 grams implemented under section 152 and the effec-
9 tiveness of such programs; and

10 (6) contain such other information as the Sec-
11 retary may require.

12 **SEC. 152. COMPLIANCE PROGRAMS.**

13 (a) IN GENERAL.—Not later than 1 year after the
14 date of enactment of this Act, each manufacturer of a to-
15 bacco product shall establish and implement one or more
16 compliance programs designed to ensure the compliance
17 of the manufacturer with Federal, State, and local laws
18 that limit the access of individuals under 18 years of age
19 to tobacco products.

20 (b) REQUIREMENTS.—A compliance program estab-
21 lished under subsection (a) shall—

22 (1) implement standards and procedures to be
23 adhered to by employees and agents that are de-
24 signed to reduce the incidence of violations of the
25 laws described in subsection (a);

1 (2) provide for the assignment to 1 or more
2 specific corporate executives of the overall respon-
3 sibility for ensuring that the manufacturer complies
4 with the standards and procedures applicable under
5 this Act;

6 (3) ensure that due care is taken by the cor-
7 porate executives designated under paragraph (2) to
8 avoid delegating substantial discretionary authority
9 to individuals who the executives know (or should
10 have known through the exercise of due diligence)
11 have a propensity to disregard corporate policy;

12 (4) include procedures to inform all employees
13 and agents of the relevant standards and procedures
14 applicable to the manufacturer and the tobacco
15 products manufactured under this Act, including
16 procedures for the implementation of training pro-
17 grams or the dissemination of informational mate-
18 rials;

19 (5) provide for the conduct of internal audits,
20 and the establishment of hotlines and other meas-
21 ures to promote compliance with the laws described
22 in subsection (a);

23 (6) provide for the application of appropriate
24 disciplinary mechanisms and measures to employees
25 who are directly or indirectly violating the laws de-

1 scribed in subsection (a) or otherwise not complying
2 with this Act;

3 (7) include measures to respond appropriately
4 where violations of laws described in subsection (a)
5 are alleged to have occurred or are occurring;

6 (8) include the promulgation of corporate policy
7 statements that express and explain the commitment
8 of the manufacturer to—

9 (A) compliance with applicable Federal,
10 State, and local laws;

11 (B) reducing the use of tobacco products
12 by individuals who are under 18 years of age;
13 and

14 (C) developing tobacco products that pose
15 a reduced risk to the health of the user;

16 (9) provide for the designation of a specific cor-
17 porate executive to serve as the compliance officer to
18 promote efforts to fulfill the commitment of the
19 manufacturer;

20 (10) include provisions for compiling reports on
21 compliance with this Act and the laws described in
22 paragraph (1) and including those reports in mate-
23 rials provided to stockholders; and

24 (11) include any other measures determined ap-
25 propriate by the Secretary.

1 (c) REPORTING OF NONCOMPLIANCE.—Under the
 2 compliance program of a manufacturer, the manufactur-
 3 er’s employees shall be encouraged to report to the compli-
 4 ance officer any known or alleged violations of this Act
 5 (or an amendment made by this Act), including violations
 6 by distributors or retailers. The compliance officer shall
 7 furnish a copy of all such reports to the Secretary for ref-
 8 erence to the appropriate Federal or State enforcement
 9 authority.

10 (d) RETAIL ESTABLISHMENTS.—As part of the com-
 11 pliance program established under this section, a manu-
 12 facturer shall carry out efforts to encourage and assist (in-
 13 cluding retail compliance checks and financial incentives)
 14 retailers of the tobacco products manufactured by the
 15 manufacturer in compliance with the Federal, State, and
 16 local laws described in subsection (a).

17 **SEC. 153. WHISTLEBLOWER PROTECTIONS.**

18 (a) PROHIBITION OF REPRISALS.—An employee of
 19 any manufacturer, distributor, or retailer of a tobacco
 20 product may not be discharged, demoted, or otherwise dis-
 21 criminated against (with respect to compensation, terms,
 22 conditions, or privileges of employment) as a reprisal for
 23 disclosing to an employee of the Food and Drug Adminis-
 24 tration, the Department of Justice, or any State or local
 25 regulatory or enforcement authority, information relating

1 to a substantial violation of law related to this Act (or
 2 an amendment made by this Act) or a State or local law
 3 enacted to further the purposes of this Act.

4 (b) ENFORCEMENT.—Any employee or former em-
 5 ployee who believes that such employee has been dis-
 6 charged, demoted, or otherwise discriminated against in
 7 violation of subsection (a) may file a civil action in the
 8 appropriate United States district court before the end of
 9 the 2-year period beginning on the date of such discharge,
 10 demotion, or discrimination.

11 (c) REMEDIES.—If the district court determines that
 12 a violation has occurred, the court may order the manufac-
 13 turer, distributor, or retailer involved to—

- 14 (1) reinstate the employee to the employee's
- 15 former position;
- 16 (2) pay compensatory damages; or
- 17 (3) take other appropriate actions to remedy
- 18 any past discrimination.

19 (d) LIMITATION.—The protections of this section
 20 shall not apply to any employee who—

- 21 (1) deliberately causes or participates in the al-
- 22 leged violation of law or regulation; or
- 23 (2) knowingly or recklessly provides substan-
- 24 tially false information to the Food and Drug Ad-

1 ministration, the Department of Justice, or any
2 State or local regulatory or enforcement authority.

3 **SEC. 154. PROVISIONS RELATING TO LOBBYING.**

4 (a) DEFINITIONS.—For purposes of this section, the
5 terms “lobbying activities”, “lobbying firm”, and “lobby-
6 ist” have the meanings given such terms by section 3 of
7 the Lobbying Disclosure Act of 1995 (2 U.S.C. 1602).

8 (b) GENERAL REQUIREMENT.—A manufacturer, dis-
9 tributor, or retailer of a tobacco product shall require that
10 any lobbyist or lobbying firm employed or retained by the
11 manufacturer, distributor, or retailer, or any other individ-
12 ual who performs lobbying activities on behalf of the man-
13 ufacturer, distributor, or retailer, as part of the employ-
14 ment or retainer agreement refrain from supporting or op-
15 posing any Federal or State legislation, or otherwise sup-
16 porting or opposing any governmental action on any mat-
17 ter without the express consent of the manufacturer, dis-
18 tributor, or retailer.

19 (c) ADDITIONAL AGREEMENTS.—An individual shall
20 not be employed or retained to perform lobbying activities
21 on behalf of a manufacturer, distributor, or retailer of a
22 tobacco product unless such individual enters into a signed
23 agreement with the manufacturer, distributor, or retailer
24 that acknowledges that the individual—

1 (1) is fully aware of, and will fully comply with,
2 all applicable laws and regulations relating to the
3 manufacture and distribution of tobacco products;

4 (2) has reviewed and will fully comply with the
5 requirements of this Act (and the amendments made
6 by this Act);

7 (3) has reviewed and will fully comply with any
8 consent decree entered into under title VI as that
9 decree applies to the manufacturer, distributor, or
10 retailer involved; and

11 (4) has reviewed and will fully comply with the
12 business conduct policies and other applicable poli-
13 cies and commitments (including those relating to
14 the prevention of underage tobacco use) of the man-
15 ufacturer, distributor, or retailer involved.

16 **SEC. 155. TERMINATION OF CERTAIN ENTITIES.**

17 (a) REQUIREMENT.—Not later than 90 days after the
18 date of enactment of this Act, manufacturers, distributors,
19 or retailers of tobacco products shall provide for the termi-
20 nation of the activities of the Tobacco Institute and the
21 Council for Tobacco Research, U.S.A. and the Institute
22 and Council shall be dissolved.

23 (b) ESTABLISHMENT OF OTHER ENTITIES.—

24 (1) AUTHORITY.—Manufacturers, distributors,
25 or retailers of tobacco products may form or partici-

1 pate in any trade organization or other industry as-
2 sociation only in accordance with this subsection.

3 (2) BOARD OF DIRECTORS.—A trade organiza-
4 tion or other industry association formed or partici-
5 pated in under this subsection shall—

6 (A) shall be administered by an independ-
7 ent board of directors, of which—

8 (i) during the 10-year period begin-
9 ning on the date on which the organization
10 or association is formed or first partici-
11 pated in under this subsection, not less
12 than 20 percent (at least 1 member) shall
13 be individuals who are not current or
14 former directors, officers, or employees of
15 an entity terminated under subsection (a)
16 or of the members of the association or or-
17 ganization; and

18 (ii) during the life of the association
19 or organization, no member shall be a di-
20 rector of any of the members of the asso-
21 ciation or organization;

22 (B) be administered by officers who are
23 appointed by the board of directors and who are
24 not otherwise employed by any of the members
25 of the association or organization; and

1 (C) be provided with legal advice by a legal
 2 adviser who is appointed by the board of direc-
 3 tors and who is not otherwise employed by any
 4 of the members of the association or organiza-
 5 tion.

6 (3) BY-LAWS.—A trade organization or other
 7 industry association formed or participated in under
 8 this subsection shall adopt by-laws that—

9 (A) prohibit meetings by members of the
 10 association or organization who are competitors
 11 in the tobacco industry except under the spon-
 12 sorship of the association or organization;

13 (B) require that every meeting of the
 14 board of directors, or a subcommittee of the
 15 board or other general committee, proceed
 16 under and strictly adhere to an agenda that is
 17 approved by the legal counsel and circulated in
 18 advance; and

19 (C) require the taking of minutes that de-
 20 scribe the substance of any meeting of the
 21 members of the association or organization and
 22 the maintenance of such minutes in the records
 23 of the association or organization for a period
 24 of 5 years following the meeting.

25 (c) DEPARTMENT OF JUSTICE.—

1 (1) OVERSIGHT.—The Attorney General and, as
 2 appropriate, State antitrust authorities shall exercise
 3 oversight authority over any association or organiza-
 4 tion to which subsection (b) applies.

5 (2) ACCESS AND INSPECTION.—During the 10-
 6 year period beginning on the date on which an asso-
 7 ciation or organization to which subsection (b) ap-
 8 plies is formed, the Attorney General and, as appro-
 9 priate State antitrust authorities shall, upon the
 10 provision of reasonable notice to the legal counsel of
 11 the association or organization, have access to—

12 (A) all books, records, meeting agenda and
 13 minutes, and other documents maintained by
 14 the association or organization; and

15 (B) the directors, officers, and employees
 16 of the association or organization for interview
 17 purposes.

18 (3) MULTI-STATE COMMITTEE.—Two or more
 19 States, acting through the attorney general of each
 20 such State, may establish a multi-State oversight
 21 committee to assist the Attorney General in exercis-
 22 ing the oversight responsibilities under this section.

23 (4) CONFIDENTIALITY.—The Attorney General
 24 shall promulgate regulations to provide that mate-

1 rials provided under paragraph (2) are protected
2 with appropriate confidentiality protections.

3 (d) ANTITRUST EXEMPTIONS.—The provisions of the
4 Sherman Act (15 U.S.C. 1 et seq.), the Clayton Act (29
5 U.S.C. 52 et seq.), and any other Federal or State anti-
6 trust laws shall not apply to an association or organization
7 to which subsection (b) applies.

8 **SEC. 156. ENFORCEMENT.**

9 (a) ASSESSMENT.—

10 (1) IN GENERAL.—The Secretary may assess a
11 civil penalty against any manufacturer of a tobacco
12 product of up to \$25,000 per day of violation when-
13 ever, on the basis of any available information, the
14 Secretary finds that such manufacturer has violated
15 or is violating any requirement of this subtitle.

16 (2) LIMITATION.—The authority of the Sec-
17 retary under this subsection shall be limited to mat-
18 ters where the total penalty sought does not exceed
19 \$200,000 and the first alleged date of violation oc-
20 curred not more than 12 months prior to the initi-
21 ation of the administrative action, except where the
22 Secretary and the Attorney General jointly deter-
23 mine that a matter involving a larger penalty
24 amount or longer period of violation is appropriate
25 for action.

1 (3) JUDICIAL REVIEW.—Any determination by
2 the Administrator and the Attorney General under
3 paragraph (2) shall not be subject to judicial review.

4 (b) PROCEDURE.—

5 (1) IN GENERAL.—A civil penalty under sub-
6 section (a) shall be assessed by the Secretary by an
7 order made after an opportunity for a hearing on
8 the record in accordance with sections 554 and 556
9 of title 5 of the United States Code. The Secretary
10 shall issue reasonable rules for discovery and other
11 procedures for hearings under this paragraph. Be-
12 fore issuing such an order, the Secretary shall give
13 written notice to the manufacturer against whom the
14 assessment is being made of the Secretary's proposal
15 to issue such an order and provide such manufac-
16 turer with an opportunity to request such a hearing
17 on the order, within 30 days of the date the notice
18 is received by such manufacturer.

19 (2) MODIFICATIONS.—The Secretary may com-
20 promise, modify, or remit, with or without condi-
21 tions, any penalty which may be imposed under this
22 section.

23 (c) FIELD CITATION PROGRAM.—

24 (1) IMPLEMENTATION.—The Secretary may
25 provide for the implementation, after consultation

1 with the Attorney General and the States, of a field
2 citation program through regulations establishing
3 appropriate minor violations of this subtitle for
4 which field citations, assessing civil penalties not to
5 exceed \$5,000 per day of violation, may be issued by
6 officers or employees designated by the Secretary.

7 (2) HEARING.—Any manufacturer to which a
8 field citation is assessed may, within a reasonable
9 time as prescribed by the Secretary through regula-
10 tion, elect to pay the penalty assessment or to re-
11 quest a hearing on the field citation. If a request for
12 a hearing is not made within the time specified in
13 the regulation, the penalty assessment in the field ci-
14 tation shall be final. Such hearing shall not be sub-
15 ject to section 554 or 556 of title 5 of the United
16 States Code, but shall provide a reasonable oppor-
17 tunity to be heard and to present evidence.

18 (3) NO DEFENSE.—Payment of a civil penalty
19 required by a field citation under this paragraph
20 shall not be a defense to further enforcement by the
21 United States or a State to correct a violation, or to
22 assess the statutory maximum penalty pursuant to
23 other authorities in the subtitle, if the violation con-
24 tinues.

25 (d) JUDICIAL REVIEW.—

1 (1) RIGHT.—Any manufacturer against whom a
2 civil penalty is assessed under subsection (c) or to
3 which a penalty order is issued under subsection (a)
4 may seek review of such assessment in the United
5 States District Court for the District of Columbia or
6 for the district in which the violation is alleged to
7 have occurred or in which the principal place of
8 business of the manufacturer is located, by filing in
9 such court within 30 days following the date the
10 penalty order becomes final under subsection para-
11 graph (b), the assessment becomes final under sub-
12 section (c), or a final decision following a hearing
13 under subsection (c) is rendered, and by simulta-
14 neously sending a copy of the filing by certified mail
15 to the Secretary and the Attorney General.

16 (2) FILING.—Within 30 days after a filing
17 under paragraph (1), the Secretary shall file in the
18 court involved a certified copy, or certified index, as
19 appropriate, of the record on which the penalty
20 order or assessment was issued.

21 (3) ACTION BY COURT.—A court shall not set
22 aside or remand a penalty order or assessment
23 under this section unless there is not substantial evi-
24 dence in the record, taken as a whole, to support the

1 finding of a violation or unless the order or penalty
 2 assessment constitutes an abuse of discretion.

3 (4) LIMITATION.—A penalty order or assess-
 4 ment under this section shall not be subject to re-
 5 view by any court except as provided in this sub-
 6 section. In any such proceedings, the United States
 7 may seek to recover civil penalties ordered or as-
 8 sessed under this section.

9 (e) FAILURE TO PAY.—

10 (1) IN GENERAL.—If any manufacturer fails to
 11 pay an assessment of a civil penalty or fails to com-
 12 ply with an penalty order under this section—

13 (A) after the order or assessment has be-
 14 come final; or

15 (B) after a court, in an action brought
 16 under subsection (d), has entered a final judg-
 17 ment in favor of the Secretary;

18 the Secretary shall request the Attorney General to
 19 bring a civil action in an appropriate district court
 20 to enforce the order or to recover the amount or-
 21 dered or assessed (plus interest at rates established
 22 pursuant to section 6621(a)(2) of the Internal Reve-
 23 nue Code of 1986 from the date of the final order
 24 or decision or the date of the final judgment, as the
 25 case may be). In such an action, the validity,

1 amount, and appropriateness of such order or as-
 2 sessment shall not be subject to review.

3 (2) ENFORCEMENT EXPENSES.—Any manufac-
 4 turer who fails to pay on a timely basis a civil pen-
 5 alty ordered or assessed under this section shall be
 6 required to pay, in addition to such penalty and in-
 7 terest, the United States enforcement expenses, in-
 8 cluding attorneys fees and costs incurred by the
 9 United States for collection proceedings and a quar-
 10 terly nonpayment penalty for each quarter during
 11 which such failure to pay persists. Such nonpayment
 12 penalty shall be 10 percent of the aggregate amount
 13 of such manufacturer’s outstanding penalties and
 14 nonpayment penalties accrued as of the beginning of
 15 such quarter.

16 (f) SCARLET LETTER ADVERTISING.—

17 **TITLE II—REDUCTION IN** 18 **UNDERAGE TOBACCO USE**

19 **SEC. 201. PURPOSE.**

20 It is the purpose of this title to encourage the achieve-
 21 ment of dramatic and immediate reductions in the number
 22 of underage consumers of tobacco products through the
 23 imposition of substantial financial surcharges on manufac-
 24 turers if certain underage tobacco-use reduction targets
 25 are not met.

1 **SEC. 202. DETERMINATION OF UNDERAGE USE BASE PER-**
2 **CENTAGES.**

3 (a) CIGARETTES.—For purposes of this section, the
4 underage use base percentage for cigarettes shall be a per-
5 centage determined by the Secretary, weighted by the rel-
6 ative population of the age groups involved as determined
7 using data compiled in 1995 by the Bureau of the Census,
8 based on—

9 (1) the average of the percentages of 12th grad-
10 ers (individuals who are 16 or 17 years of age) who
11 used cigarette products on a daily basis for each of
12 the calendar years 1986 through 1996;

13 (2) the average of the percentages of 10th grad-
14 ers (individuals who are 14 or 15 years of age) who
15 used cigarette products on a daily basis for each of
16 the calendar years 1991 through 1996; and

17 (3) the average of the percentages of 8th grad-
18 ers (individuals who are 13 years of age) who used
19 cigarette products on a daily basis for each of the
20 calendar years 1991 through 1996.

21 (b) SMOKELESS TOBACCO.—For purposes of this sec-
22 tion, the underage use base percentage for smokeless to-
23 bacco products shall be a percentage determined by the
24 Secretary, weighted by the relative population of the age
25 groups involved as determined using data compiled in
26 1995 by the Bureau of the Census, based on—

1 (1) the average of the percentages of 12th grad-
2 ers (individuals who are 16 or 17 years of age) who
3 used smokeless tobacco products on a daily basis in
4 1996;

5 (2) the average of the percentages of 10th grad-
6 ers (individuals who are 14 or 15 years of age) who
7 used smokeless tobacco products on a daily basis in
8 1996; and

9 (3) the average of the percentages of 8th grad-
10 ers (individuals who are 13 years of age) who used
11 smokeless tobacco products on a daily basis in 1996.

12 (c) USE OF CERTAIN DATA OR METHODOLOGY.—For
13 purposes of determining the percentages under para-
14 graphs (1) through (3) of subsections (a) and (b), the Sec-
15 retary shall use the data contained in the National High
16 School Drug Use Survey entitled Monitoring the Future
17 by the University of Michigan or such other comparable
18 index, as determined appropriate by the Secretary after
19 notice and an opportunity for a hearing, that utilizes
20 methodology identical to that used by the University of
21 Michigan in such survey.

22 **SEC. 203. ANNUAL DAILY INCIDENCE OF UNDERAGE USE OF**
23 **TOBACCO PRODUCTS.**

24 (a) ANNUAL DETERMINATION.—Not later than the
25 expiration of the 5-year period beginning on the date of

1 enactment of this Act, and annually thereafter, the Sec-
 2 retary shall determine the average annual incidence of the
 3 daily use of tobacco products by individuals who are under
 4 18 years of age.

5 (b) CIGARETTES.—With respect to cigarette prod-
 6 ucts, a determination under subsection (a) for a year shall
 7 be based on the percentage, as weighted by the relative
 8 population of the age groups involved as determined using
 9 data compiled in 1995 by the Bureau of the Census, of—

10 (1) 12th graders (individuals who are 16 or 17
 11 years of age) who used cigarette products on a daily
 12 basis during the year involved;

13 (2) 10th graders (individuals who are 14 or 15
 14 years of age) who used cigarette products on a daily
 15 basis during the year involved; and

16 (3) 8th graders (individuals who are 13 years
 17 of age) who used cigarette products on a daily basis
 18 during the year involved.

19 (c) SMOKELESS TOBACCO.—With respect to smoke-
 20 less tobacco products, a determination under subsection
 21 (a) for a year shall be based on the percentage, as weight-
 22 ed by the relative population of the age groups involved
 23 as determined using data compiled in 1995 by the Bureau
 24 of the Census, of—

1 (1) 12th graders (individuals who are 16 or 17
2 years of age) who used smokeless tobacco products
3 on a daily basis during the year involved;

4 (2) 10th graders (individuals who are 14 or 15
5 years of age) who used smokeless tobacco products
6 on a daily basis during the year involved; and

7 (3) 8th graders (individuals who are 13 years
8 of age) who used cigarette smokeless tobacco on a
9 daily basis during the year involved.

10 (d) USE OF CERTAIN DATA OR METHODOLOGY.—

11 (1) IN GENERAL.—For purposes of determining
12 the percentages under paragraphs (1) through (3) of
13 subsections (b) and (c), the Secretary shall use the
14 data contained in the National High School Drug
15 Use Survey entitled Monitoring the Future by the
16 University of Michigan (if such survey is still being
17 undertaken) or such other comparable index, as de-
18 termined appropriate by the Secretary after notice
19 and an opportunity for a hearing, that utilizes meth-
20 odology identical to that used by the University of
21 Michigan in such survey.

22 (2) ALTERATION OF METHODOLOGY.—If the
23 Secretary determines that the methodology used by
24 the University of Michigan in the survey referred to
25 in paragraph (1) has been altered in a material

1 manner from the methodology used during the period
 2 from 1986 to 1996 (including by altering States or
 3 regions on which the survey is based), the Secretary,
 4 after notice and an opportunity for a hearing, shall
 5 use percentages based on an index developed by the
 6 Secretary that utilizes methodology identical to that
 7 used by the University of Michigan in such survey.

8 **SEC. 204. REQUIRED REDUCTION IN UNDERAGE TOBACCO**
 9 **USE.**

10 (a) IN GENERAL.—For purposes of assessing sur-
 11 charges under section 205, the Secretary shall determine
 12 whether the required percentage reduction in the underage
 13 use of tobacco products for a year (based on the tables
 14 contained in subsection (b)) has been achieved for the year
 15 involved. Such determination shall be based on—

16 (1) with respect to cigarette products, the aver-
 17 age annual incidence of the daily use of tobacco
 18 products by individuals who are under 18 years of
 19 age for the year involved (as determined under sec-
 20 tion 203(b)) as compared to the underage use base
 21 percentage for cigarette products (as determined
 22 under section 202(a)); and

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

1 under 18 years of age for the year involved (as de-
 2 termined under section 203(c)) as compared to the
 3 underage use base percentage for smokeless tobacco
 4 products (as determined under section 202(b)).

5 (b) PERCENTAGE REDUCTION IN UNDERAGE USE OF
 6 TOBACCO PRODUCTS.—For purposes of subsection (a),
 7 the required percentage reduction in the underage use of
 8 tobacco products with respect to each tobacco product
 9 shall be determined according to the following tables:

10 (1) CIGARETTES.—

“Calender year after enact- ment—	The percentage decrease in the use of cigarette products—
Fifth	30
Sixth	30
Seventh	50
Eighth	50
Ninth	50
Tenth and thereafter	60 .

11 (2) SMOKELESS TOBACCO PRODUCTS.—

“Calender year after enact- ment—	The percentage decrease in the use of smokeless tobacco products—
Fifth	25
Sixth	25
Seventh	35
Eighth	35
Ninth	35
Tenth and thereafter	45 .

12 **SEC. 205. APPLICATION OF SURCHARGES.**

13 (a) IN GENERAL.—If the Secretary determines that
 14 the percentage reduction in the underage use of tobacco
 15 products for a year has not been achieved as required
 16 under section 204, the Secretary shall impose a surcharge
 17 on the manufacturers of the tobacco products involved.

1 (b) AMOUNT OF SURCHARGE.—

2 (1) IN GENERAL.—The amount of any sur-
3 charge to be imposed under this section for a cal-
4 endar year shall be equal to the product of—

5 (A) \$80,000,000; and

6 (B) the number of applicable surcharge
7 percentage points as determined under sub-
8 section (c).

9 (2) ADJUSTMENTS.—The amount applicable
10 under paragraph (1) shall be annually adjusted by
11 the Secretary based on—

12 (A) with respect to subparagraph (A) of
13 such paragraph—

14 (i) the proportional percentage in-
15 crease or decrease, as compared to cal-
16 endar year 1995, in the population of indi-
17 viduals residing in the United States who
18 are at least 13 years of age but less than
19 18 years of age;

20 (ii) the proportional percentage in-
21 crease or decrease, as compared to cal-
22 endar year 1996, in the average profit per
23 unit (measured in cents and weighted by
24 annual sales) earned by tobacco manufac-
25 turers for the tobacco product involved (as

determined by the Secretary through a contract with a nationally recognized accounting firm having no connection to tobacco manufacturers); and

(B) any methodology utilized to avoid the double counting of underage individuals whose tobacco use has previously resulted in the imposition of a surcharge, limited to the extent that there were not other underage users of tobacco in such previous years for whom a surcharge was not paid because of the limitation contained in section 206.

(3) PROFIT PER UNIT.—For purposes of paragraph (2)(A)(ii), the average profit per unit for calendar 1996 shall be determined using the operating profit reported by manufacturers to the Securities and Exchange Commission.

(c) DETERMINATION OF APPLICABLE SURCHARGE PERCENTAGE POINTS.—

(1) IN GENERAL.—Except as provided in paragraph (2), with respect to a calendar year, the applicable surcharge percentage points shall be equal to the percentage point difference between—

(A) the required percentage reduction in the underage use of the tobacco product in-

1 involved for the year (based on the tables in sec-
2 tion 204(b)); and

3 (B) the number of percentage points by
4 which the average annual incidence of the daily
5 use of the tobacco products involved by individ-
6 uals who are under 18 years of age for the year
7 (as determined under section 203) is less than
8 the underage use base percentage for such
9 products (as determined under section 202).

10 (2) ADJUSTMENT.—If for any calendar year the
11 Secretary determines that the average annual inci-
12 dence of the daily use of the tobacco products in-
13 volved by individuals who are under 18 years of age
14 (as determined under section 203) is greater than
15 the underage use base percentage for such products
16 (as determined under section 202), the applicable
17 surcharge percentage point shall be equal to—

18 (A) the percentage point amount deter-
19 mined under paragraph (1)(A); and

20 (B) the number of percentage points by
21 which the average annual incidence of the daily
22 use of the tobacco products involved by individ-
23 uals who are under 18 years of age (as deter-
24 mined under section 203) is greater than the

1 underage use base percentage for such products
2 (as determined under section 202).

3 (3) TYPE OF PRODUCT.—Separate determina-
4 tions shall be made under this section for cigarette
5 products and smokeless tobacco products.

6 (d) LIMITATION.—The total amount of surcharges
7 imposed with respect to each type of tobacco product (cig-
8 arette products or smokeless tobacco products) under this
9 section shall not exceed \$2,000,000,000 (adjusted each
10 year by the Secretary to account for inflation) for any cal-
11 endar year.

12 (e) JOINT AND SEVERAL OBLIGATION.—Any sur-
13 charge imposed under this section with respect to a to-
14 bacco product (cigarette products or smokeless tobacco
15 products) shall be the joint and several obligation of all
16 manufacturers of such product as allocated by the market
17 share of each such manufacturer with respect to such
18 product. The market share of each manufacturer for each
19 such product shall be based on the actual Federal excise
20 tax payments made by such manufacturers for each such
21 product under the Internal Revenue Code of 1986.

22 (f) ASSESSMENT.—Not later than May 1 of each year
23 in which a surcharge will be imposed under this section,
24 the Secretary shall assess to each manufacturer the
25 amount for which such manufacturer is obligated. Not

1 later than July 1 of any year in which a manufacturer
2 receives an assessment under this section, the manufac-
3 turer shall pay such assessment in full or be subject to
4 such interest on such amount as the Secretary may by
5 regulation prescribe.

6 (g) USE OF AMOUNTS.—Amounts received under this
7 section shall be used as provided for in section 517.

8 (h) PROHIBITION.—No stay or other injunctive relief
9 may be granted by the Secretary or any court that has
10 the effect of enjoining the imposition and collection of the
11 surcharges to be applied under this section.

12 **SEC. 206. ABATEMENT PROCEDURES.**

13 (a) PETITIONS.—Upon payment by a manufacturer
14 of the amount assessed to the manufacturer under section
15 205(f), the manufacturer may submit a petition to the
16 Secretary for an abatement of the assessment. A notice
17 of such abatement petition shall be submitted to the attor-
18 ney general of each State.

19 (b) HEARING.—The Secretary shall provide for the
20 conduct of a hearing on an abatement petition received
21 under subsection (a) pursuant to the procedures described
22 in sections 554, 556, and 557 of title 5, United States
23 Code. The attorney general of any State shall be permitted
24 to be heard at any hearing conducted under this sub-
25 section.

1 (c) BURDEN.—The burden at any hearing under sub-
2 section (b) shall be on the manufacturer to prove, by a
3 preponderance of the evidence, that the manufacturer
4 should be granted the abatement.

5 (d) BASIS OF DECISION.—Any decision regarding a
6 petition for an abatement under this section shall be based
7 on a determination as to whether—

8 (1) the manufacturer has acted in good faith
9 and in full compliance with this Act (and any
10 amendment made by this Act) and any regulations
11 or State or local laws promulgated in furtherance of
12 this Act;

13 (2) the manufacturer has pursued all reason-
14 ably available measures to attain the reductions;

15 (3) there is any evidence of any direct or indi-
16 rect action by the manufacturer to undermine the
17 achievement of the reductions required under section
18 204 or to undermine any other provision of this Act
19 (or amendment); and

20 (4) the manufacturer has taken (or failed to
21 take) any other action as determined appropriate by
22 the Secretary.

23 (e) AMOUNT.—Upon a determination granting an
24 abatement under this section, the Secretary shall order the
25 abatement of not to exceed 75 percent of the amount paid

1 by the manufacturer, together with interest that may have
 2 accrued on such amount during the period between the
 3 date on which payment by the manufacturer was made
 4 and the date on which the abatement order was granted.
 5 Such interest shall be equal to that provided for the aver-
 6 age 52-week Treasury Bill during the period involved.

7 (f) AGGRIEVED PARTIES.—Any manufacturer or at-
 8 torney general of any State that is aggrieved by an abate-
 9 ment that is granted under this section may seek judicial
 10 review of the abatement decision within 30 days of the
 11 date of such decision in the Court of Appeals for the Dis-
 12 trict of Columbia Circuit. Review in such cases shall be
 13 subject to the procedures described in sections 701
 14 through 706 of title 5, United States Code.

15 (g) PROHIBITION.—A manufacturer may not file a
 16 petition under subsection (a) until such time as the manu-
 17 facturer has fully paid the Secretary the amount assessed
 18 to the manufacturer under section 205(f).

19 **TITLE III—STANDARDS TO RE-** 20 **DUCE INVOLUNTARY EXPO-** 21 **SURE TO TOBACCO SMOKE**

22 **SEC. 301. DEFINITIONS.**

23 In this title—

1 (1) ADMINISTRATOR.—The term “Adminis-
2 trator” means the Administrator of the Occupational
3 Safety and Health Administration.

4 (2) PUBLIC FACILITY.—

5 (A) IN GENERAL.—The term “public facil-
6 ity” means any building regularly entered by 10
7 or more individuals at least 1 day per week, in-
8 cluding any such building owned by or leased to
9 a Federal, State, or local government entity.
10 Such term shall not include any building or
11 portion thereof regularly used for residential
12 purposes.

13 (B) EXCLUSIONS.—Such term does not in-
14 clude a building which is used as a restaurant
15 (other than a fast food restaurant), bar, private
16 club, hotel guest room, casino, bingo parlor, to-
17 bacco merchant, or prison.

18 (C) FAST FOOD RESTAURANT.—The term
19 “fast food restaurant” means any restaurant or
20 chain of restaurants that primarily distributes
21 food through a customer pick-up (either at a
22 counter or drive-through window). The Admin-
23 istrator of the Occupational Safety and Health
24 Administration may promulgate regulations to
25 clarify this subparagraph to ensure that the in-

1 tended inclusion of establishments catering
 2 largely to individuals under 18 years of age is
 3 achieved.

4 (3) RESPONSIBLE ENTITY.—The term “respon-
 5 sible entity” means, with respect to any public facil-
 6 ity, the owner of such facility except that, in the
 7 case of any such facility or portion thereof which is
 8 leased, such term means the lessee.

9 **SEC. 302. SMOKE-FREE ENVIRONMENT POLICY.**

10 (a) POLICY REQUIRED.—In order to protect children
 11 and adults from cancer, respiratory disease, heart disease,
 12 and other adverse health effects from breathing environ-
 13 mental tobacco smoke, the responsible entity for each pub-
 14 lic facility shall adopt and implement at such facility a
 15 smoke-free environment policy which meets the require-
 16 ments of subsection (b).

17 (b) ELEMENTS OF POLICY.—

18 (1) IN GENERAL.—Each smoke-free environ-
 19 ment policy for a public facility shall—

20 (A) prohibit the smoking of cigarettes, ci-
 21 gars, and pipes, and any other combustion of
 22 tobacco within the facility and on facility prop-
 23 erty within the immediate vicinity of the en-
 24 trance to the facility; and

1 (B) post a clear and prominent notice of
2 the smoking prohibition in appropriate and visi-
3 ble locations at the public facility.

4 (2) EXCEPTION.—The smoke-free environment
5 policy for a public facility may provide an exception
6 to the prohibition specified in paragraph (1) for 1 or
7 more specially designated smoking areas within a
8 public facility if such area or areas meet the require-
9 ments of subsection (c).

10 (c) SPECIALLY DESIGNATED SMOKING AREAS.—A
11 specially designated smoking area meets the requirements
12 of this subsection if—

13 (1) the area is ventilated in accordance with
14 specifications promulgated by the Administrator that
15 ensure that air from the area is directly exhausted
16 to the outside and does not recirculate or drift to
17 other areas within the public facility;

18 (2) the area is maintained at negative pressure,
19 as compared to adjoining nonsmoking areas, as deter-
20 mined under regulations promulgated by the Admin-
21 istrator; and

22 (3) nonsmoking individuals do not have to enter
23 the area for any purpose while smoking is occurring
24 in such area.

1 Cleaning and maintenance work shall be conducted in such
2 area only while no smoking is occurring in the area.

3 **SEC. 303. CITIZEN ACTIONS.**

4 (a) IN GENERAL.—An action may be brought to en-
5 force the requirements of this title by any aggrieved per-
6 son, any State or local government agency, or the Admin-
7 istrator.

8 (b) VENUE.—Any action to enforce this title may be
9 brought in any United States district court for the district
10 in which the defendant resides or is doing business to en-
11 join any violation of this title or to impose a civil penalty
12 for any such violation in the amount of not more than
13 \$5,000 per day of violation. The district courts shall have
14 jurisdiction, without regard to the amount in controversy
15 or the citizenship of the parties, to enforce this title and
16 to impose civil penalties under this title.

17 (c) NOTICE.—An aggrieved person shall give any al-
18 leged violator notice of at least 60 days prior to commenc-
19 ing an action under this section. No action may be com-
20 menced by an aggrieved person under this section if such
21 alleged violator complies with the requirements of this title
22 within such 60-day period and thereafter.

23 (d) COSTS.—The court, in issuing any final order in
24 any action brought pursuant to this section, may award
25 costs of litigation (including reasonable attorney and ex-

1 pert witness fees) to any prevailing plaintiff, whenever the
 2 court determines such award is appropriate.

3 (e) PENALTIES.—The court, in any action under this
 4 section to apply civil penalties, shall have discretion to
 5 order that such civil penalties be used for projects which
 6 further the policies of this title. The court shall obtain the
 7 view of the Administrator in exercising such discretion and
 8 selecting any such projects.

9 **SEC. 304. PREEMPTION.**

10 Nothing in this title shall preempt or otherwise affect
 11 any other Federal, State or local law which provides pro-
 12 tection from health hazards from environmental tobacco
 13 smoke.

14 **SEC. 305. REGULATIONS.**

15 The Administrator is authorized to promulgate such
 16 regulations as the Administrator deems necessary to carry
 17 out this title.

18 **SEC. 306. EFFECTIVE DATE.**

19 The provisions of this title shall take effect on the
 20 date that is 1 year after the date of enactment of this
 21 Act.

22 **TITLE IV—NATIONAL TOBACCO**
 23 **SETTLEMENT TRUST FUND**

24 **SEC. 401. ESTABLISHMENT OF TRUST FUND.**

25 (a) CREATION.—

1 (1) IN GENERAL.—There is established in the
 2 Treasury of the United States a trust fund to be
 3 known as the “National Tobacco Settlement Trust
 4 Fund”, consisting of such amounts as may be appro-
 5 priated or credited to the Trust Fund.

6 (2) TRUSTEES.—The trustees of the Trust
 7 Fund shall be the Commissioner and the Secretary.

8 (b) TRANSFERS.—There are hereby appropriated and
 9 transferred to the Trust Fund—

10 (1) amounts repaid or recovered under section
 11 205, including interest thereon;

12 (2) amounts equivalent to amounts received
 13 under section 402; and

14 (3) amounts paid as fines or penalties, includ-
 15 ing interest thereon, under section 403.

16 (c) REPAYABLE ADVANCES.—

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

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

1 the Treasury determined 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 proceeding the
7 month in which the advance is made) to be equal to
8 the current average market yield on outstanding
9 marketable obligations of the United States with re-
10 maining period to maturity comparable to the antici-
11 pated period during which the advance will be out-
12 standing.

13 (d) EXPENDITURES FROM TRUST FUND.—Amounts
14 in the Trust Fund shall be available in each calendar year,
15 as provided by appropriations Act, as follows:

16 (1) With respect to—

17 (A) the first and second years following the
18 establishment of the Trust Fund, not less than
19 \$2,500,000,000 each year;

20 (B) the third year following the establish-
21 ment of the Trust Fund, not less than
22 \$3,500,000,000;

23 (C) the fourth year following the establish-
24 ment of the Trust Fund, not less than
25 \$4,000,000,000;

1 (D) the fifth year following the establish-
2 ment of the Trust Fund, not less than
3 \$5,000,000,000; and

4 (E) the sixth year following the establish-
5 ment of the Trust Fund, and each year there-
6 after, not less than \$2,500,000,000;

7 of the amounts available in the Trust Fund shall be
8 made available to the Secretary to make grants to
9 States to carry out subtitle A of title V.

10 (2) With respect to each of the first 4 years fol-
11 lowing the establishment of the Trust Fund, not less
12 than \$1,000,000,000, and with respect to each year
13 thereafter, not less than \$1,500,000,000, of the
14 amounts available in the Trust Fund shall be made
15 available to the Secretary to carry out the National
16 Smoking Cessation Program under section 511.

17 (3) With respect to each of the first 3 years fol-
18 lowing the establishment of the Trust Fund, not less
19 than \$125,000,000, and with respect to each year
20 thereafter, not less than \$225,000,000, of the
21 amounts available in the Trust Fund shall be made
22 available to the Secretary to carry out the National
23 Reduction in Tobacco Usage Program under section
24 512.

1 (4) Not less than \$500,000,000 of the amounts
2 available in the Trust Fund each year shall be made
3 available to the Tobacco-Free Education Board to
4 carry out activities under section 513.

5 (5) With respect to each of the first 10 years
6 following the establishment of the Trust Fund, not
7 less than \$75,000,000 of the amounts available in
8 the Trust Fund shall be made available to the Sec-
9 retary to carry out the National Event Sponsorship
10 Program under section 514.

11 (6) With respect to each of the first 2 years fol-
12 lowing the establishment of the Trust Fund, not less
13 than \$75,000,000, with respect to the third such
14 year, not less than \$100,000,000, and with respect
15 to each year thereafter, not less than \$125,000,000,
16 of the amounts available in the Trust Fund shall be
17 made available to the Secretary to carry out the Na-
18 tional Community Action Program under section
19 515.

20 (7) Not less than \$100,000,000 of the amounts
21 available in the Trust Fund each year shall be made
22 available to the Secretary to carry out the National
23 Cessation Research Program under section 516.

24 (8) Not less than \$300,000,000 of the amounts
25 available in the Trust Fund each year shall be made

1 available to the Commissioner as reimbursement for
2 the costs incurred by the Food and Drug Adminis-
3 tration in implementing and enforcing requirements
4 relating to tobacco products.

5 (9) Not less than the amount collected under
6 section 205 and available each year shall be made
7 available to the Secretary for use as provided for in
8 section 517.

9 **SEC. 402. LIABILITY OF INDUSTRY SOURCES.**

10 (a) DEFINITION.—As used in this subtitle, the term
11 “industry sources” means all entities which are signatories
12 to the National Tobacco Control Protocol under section
13 612.

14 (b) PAYMENTS.—

15 (1) INITIAL PAYMENT.—Each industry source
16 shall pay to the Trust Fund on the date of enact-
17 ment of this Act, an amount that bears the same
18 ratio to \$10,000,000,000 as the relevant domestic
19 tobacco product unit sales volume of the industry
20 source (as defined in paragraph (3)) bears to the
21 relevant domestic tobacco product unit volume of all
22 industry sources for 1996.

23 (2) ANNUAL PAYMENTS.—Each industry source
24 shall pay to the Trust Fund for each calendar year,
25 beginning on December 31 of the year following the

1 year in which this Act is enacted, and each Decem-
2 ber 31 thereafter, an annual payment equal to—

3 (A) with respect to the first year for which
4 payments are to be made, an amount that bears
5 the same ratio to \$8,500,000,000 as the rel-
6 evant domestic tobacco product unit sales vol-
7 ume of the industry source (as defined in para-
8 graph (3)) for the year involved bears to the
9 relevant domestic tobacco product unit sales
10 volume of all industry sources for such year;

11 (B) with respect to the second year for
12 which payments are to be made, an amount
13 that bears the same ratio to \$9,500,000,000 as
14 the relevant domestic tobacco product unit sales
15 volume of the industry source (as defined in
16 paragraph (3)) for the year involved bears to
17 the relevant domestic tobacco product unit sales
18 volume of all industry sources for such year;

19 (C) with respect to the third year for
20 which payments are to be made, an amount
21 that bears the same ratio to \$11,500,000,000
22 as the relevant domestic tobacco product unit
23 sales volume of the industry source (as defined
24 in paragraph (3)) for the year involved bears to

1 the relevant domestic tobacco product unit sales
 2 volume of all industry sources for such year;

3 (D) with respect to the fourth year for
 4 which payments are to be made, an amount
 5 that bears the same ratio to \$14,000,000,000
 6 as the relevant domestic tobacco product unit
 7 sales volume of the industry source (as defined
 8 in paragraph (3)) for the year involved bears to
 9 the relevant domestic tobacco product unit sales
 10 volume of all industry sources for such year;
 11 and

12 (E) with respect to each of the fifth
 13 through 25th years for which payments are to
 14 be made, an amount that bears the same ratio
 15 to \$15,000,000,000 as the relevant domestic to-
 16 bacco product unit sales volume of the industry
 17 source (as defined in paragraph (3)) for the
 18 year involved bears to the relevant domestic to-
 19 bacco product unit sales volume of all industry
 20 sources for such year.

21 (3) RELEVANT DOMESTIC TOBACCO PRODUCT
 22 UNIT SALES VOLUME.—

23 (A) IN GENERAL.—For purposes of this
 24 subsection, the relevant domestic tobacco prod-
 25 uct unit sales volume of an industry source for

1 a year shall be determined by the Commissioner
2 based on data submitted by industry sources
3 and other appropriate data.

4 (4) ADJUSTMENTS.—

5 (A) VOLUME DECREASE.—If the Commis-
6 sioner makes a determination under paragraph
7 (3)(B) that the total relevant domestic tobacco
8 product unit sales volume has decreased, the
9 Commissioner shall in subsequent years, make
10 determinations as to sales volume based solely
11 on adult use.

12 (B) INCREASE IN PROFITS.—

13 (i) IN GENERAL.—With respect to an
14 industry source that experiences a decrease
15 in the amount owed under paragraph (2)
16 for a year as compared to the previous
17 year, the industry source shall be subject
18 to an increase in such amount (as provided
19 for under clause (ii)) if the Commissioner
20 determines that the net operating profits
21 of the source derived from domestic sales
22 of tobacco products has increased over that
23 of the previous year.

24 (ii) AMOUNT OF INCREASE.—The
25 amount by which the amount owed by an

1 industry source is increased under clause
2 (i) shall be equal to 25 percent of the
3 amount of the decrease involved.

4 (C) INFLATION.—Each of the amounts de-
5 scribed in subparagraphs (B) through (E) of
6 paragraph (2) shall be increased by 3 percent
7 each year, or adjusted each year to reflect the
8 increase in the Consumer Price Index for all
9 urban consumers (as published by the Bureau
10 of Labor Statistics) from the year previous to
11 the year for which the adjustment is being ap-
12 plied, whichever is greater.

13 (c) AFFECT OF BANKRUPTCY.—Section 507(a) of
14 title 11, United States Code, is amended by inserting after
15 paragraph (9) the following:

16 “Tenth, payments required to be paid into the
17 National Tobacco Settlement Trust Fund under sec-
18 tion 402 of the Universal Tobacco Settlement Act.”.

19 (d) PASS-THROUGH.—An industry source that is re-
20 quired to make payments under this section shall annually
21 adjust the prices of the tobacco products sold by such
22 source to reflect the amounts of such payments.

23 (e) TAX TREATMENT OF PAYMENTS.—For purposes
24 of section 162 of the Internal Revenue Code of 1986, any
25 payment to the Tobacco Settlement Trust Fund under

1 section 401 shall be considered to be an ordinary and nec-
 2 essary expense in carrying on a trade or business and shall
 3 be deductible in the taxable year in which paid.

4 **SEC. 403. ENFORCEMENT.**

5 (a) GENERAL RULE.—There is hereby imposed a
 6 penalty on the failure of any industry source to make any
 7 payment required under section 402.

8 (b) AMOUNT OF PENALTY.—The amount of the pen-
 9 alty imposed by subsection (a) on any failure with respect
 10 to an industry source shall be established by the Commis-
 11 sioner for each day during the noncompliance period.

12 (c) NONCOMPLIANCE PERIOD.—For purposes of this
 13 section, the term “noncompliance period” means, with re-
 14 spect to any failure to makes the payment required under
 15 section 402, the period—

16 (1) beginning on the due date for such pay-
 17 ment; and

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

20 (d) LIMITATIONS.—

21 (1) IN GENERAL.—No penalty shall be imposed
 22 by subsection (a) on any failure to make payment
 23 under section 402 during any period for which it is
 24 established to the satisfaction of the Commissioner
 25 that none of the persons responsible for such failure

1 knew or, exercising reasonable diligence, would have
2 known, that such failure existed.

3 (2) CORRECTIONS.—No penalty shall be im-
4 posed under subsection (a) on any failure to make
5 payment under section 402 if—

6 (A) such failure was due to reasonable
7 cause and not to willful neglect; and

8 (B) such failure is corrected during the 30-
9 day period beginning on the 1st date that any
10 of the persons responsible for such failure knew
11 or, exercising reasonable diligence, would have
12 known, that such failure existed.

13 (3) WAIVER.—In the case of any failure to
14 make payment under section 402 that is due to rea-
15 sonable cause and not to willful neglect, the Com-
16 missioner may waive all or part of the penalty im-
17 posed under subsection (a) to the extent that the
18 Commissioner determines that the payment of such
19 penalty would be excessive relative to the failure in-
20 volved.

**TITLE V—PUBLIC HEALTH AND
OTHER PROGRAMS**
**Subtitle A—Public Health Block
Grant Program**

SEC. 501. PUBLIC HEALTH TRUST FUND.

(a) ESTABLISHMENT.—

(1) IN GENERAL.—The Secretary shall establish, as a separate fund within the Trust Fund established under section 401, a trust fund to be known as the “Public Health Trust Fund”, consisting of such amounts as may be appropriated or credited to the Trust Fund.

(2) TRUSTEES.—The trustees of the Trust Fund shall be the Commissioner and the Secretary.

(b) TRANSFERS.—There are hereby appropriated and transferred to the Trust Fund the amounts described in section 401(d)(1) with respect to the year involved.

(c) EXPENDITURES FROM TRUST FUND.—Amounts in the Public Health Trust Fund shall be available in each calendar year, as provided by appropriations Act, for block grants under section 502.

SEC. 502. BLOCK GRANTS TO STATES.

(a) IN GENERAL.—For the purpose described in subsection (b), the Secretary shall award a block grant to each State in each fiscal year in an amount based on the

1 allotment of the State as determined in accordance with
2 section 503.

3 (b) AUTHORIZED ACTIVITIES.—A State shall use
4 amounts received under a block grant only for the purpose
5 of planning, carrying out, and evaluating activities as pro-
6 vided for in section 504.

7 (c) APPLICATION.—To be eligible to receive a grant
8 under this subtitle a State shall prepare and submit to
9 the Secretary an application at such time, in such manner,
10 and containing such information as the Secretary may re-
11 quire, including such assurances as the Secretary may re-
12 quire regarding the compliance of the State with the re-
13 quirements of this Act.

14 **SEC. 503. ALLOTMENTS.**

15 (a) IN GENERAL.—Of the amounts appropriated and
16 available for block grants for a fiscal year under section
17 502, the Secretary shall allot to each State an amount
18 determined under the allotment formula under subsection
19 (b).

20 (b) ALLOTMENT FORMULA.—

21 (c) REALLOTMENTS.—To the extent that all the
22 funds appropriated under section 501(c) for a fiscal year
23 and available for allotment in such fiscal year are not oth-
24 erwise allotted to States because—

1 (1) one or more States have not submitted an
2 application in accordance with section 502(c) for the
3 fiscal year; or

4 (2) one or more States have notified the Sec-
5 retary that they do not intend to use the full amount
6 of their allotment;

7 such excess shall be reallocated among each of the remain-
8 ing States in proportion to the amount otherwise allotted
9 to such States for the fiscal year without regard to this
10 subsection.

11 (d) INDIAN TRIBES AND TRIBAL ORGANIZATIONS.—

12 (1) IN GENERAL.—If the Secretary—

13 (A) receives a request from the governing
14 body of an Indian tribe or tribal organization
15 within any State that funds under this subtitle
16 be provided directly by the Secretary to such
17 tribe or organization; and

18 (B) determines that the members of such
19 tribe or tribal organization would be better
20 served by means of grants made directly by the
21 Secretary under this subtitle;

22 the Secretary shall reserve from amounts which
23 would otherwise be allotted to such State under sub-
24 section (a) for the fiscal year the amount determined
25 under paragraph (2).

1 (2) AMOUNT.—The Secretary shall reserve for
 2 the purpose of paragraph (1) from amounts that
 3 would otherwise be allotted to such State under sub-
 4 section (a) an amount to be determined by a formula
 5 developed by the Secretary after consultation with
 6 the Secretary of the Interior.

7 (3) GRANT.—The amount reserved by the Sec-
 8 retary on the basis of a determination under this
 9 subsection shall be granted to the Indian tribe or
 10 tribal organization serving the individuals for whom
 11 such a determination has been made.

12 (4) PLAN.—In order for an Indian tribe or trib-
 13 al organization to be eligible for a grant for a fiscal
 14 year under this subsection, it shall submit to the
 15 Secretary a plan for such fiscal year which meets
 16 such criteria as the Secretary may prescribe.

17 (5) DEFINITIONS.—The terms “Indian tribe”
 18 and “tribal organization” shall have the same mean-
 19 ing given such terms in section 4(b) and section 4(c)
 20 of the Indian Self-Determination and Education As-
 21 sistance Act (25 U.S.C. 450b(b) and (c)).

22 **SEC. 504. USE OF FUNDS.**

23 (a) IN GENERAL.—Amounts provided to a State
 24 under a grant under this subtitle shall be used—

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

6 (2) to reimburse the State for other expenses
 7 incurred by the State in providing directly, or reim-
 8 bursing others for the provision of, treatment for to-
 9 bacco-related illnesses or conditions;

10 (3) to provide health care coverage, either di-
 11 rectly or through arrangements with other entities,
 12 for uninsured individuals under 18 years of age who
 13 reside in the State;

14 (4) to establish a State tobacco products liabil-
 15 ity judgments and settlement fund, as provided for
 16 in subsection (c);

17 (5) to reimburse the State for expenses in-
 18 curred in carrying out the tobacco licensure require-
 19 ments of subtitle D of title I; and

20 (6) to carry out any other activities determined
 21 appropriate by the State.

22 (b) LIMITATIONS ON USES.—A State may not use
 23 amounts provided under a grant under this subtitle for
 24 programs or projects not approved of by the Secretary.

25 (c) JUDGMENT AND SETTLEMENT FUND.—

1 (1) IN GENERAL.—Each State that receives a
 2 grant under this subtitle shall establish a fund for
 3 the purpose of making payments under paragraph
 4 (2).

5 (2) PAYMENTS.—The fund established under
 6 paragraph (1) shall be used to make payments to in-
 7 dividuals who have obtained a judgment in a to-
 8 bacco-related action brought in a State court, or who
 9 have entered into a settlement of such an action, of
 10 the amount of any award under such judgment or
 11 settlement that represents punitive damages.

12 **SEC. 505. WITHHOLDING OF FUNDS.**

13 (a) AUTHORITY.—

14 (1) IN GENERAL.—The Secretary shall, after
 15 adequate notice and an opportunity for a hearing
 16 conducted within the affected State, withhold funds
 17 from any State which does not use its allotment in
 18 accordance with the requirements of this subtitle.
 19 The Secretary shall withhold such funds until the
 20 Secretary finds that the reason for the withholding
 21 has been removed and there is reasonable assurance
 22 that it will not recur.

23 (2) INVESTIGATION.—The Secretary may not
 24 institute proceedings to withhold funds under para-
 25 graph (1) unless the Secretary has conducted an in-

1 vestigation concerning whether the State has used
2 its allotment in accordance with the requirements of
3 this subtitle. Investigations required by this para-
4 graph shall be conducted within the affected State
5 by qualified investigators.

6 (3) RESPONSE TO COMPLAINTS.—The Secretary
7 shall respond in an expeditious manner to com-
8 plaints of a substantial or serious nature that a
9 State has failed to use funds in accordance with the
10 requirements of this subtitle.

11 (4) MINOR FAILURE.—The Secretary may not
12 withhold funds under paragraph (1) from a State
13 for a minor failure to comply with the requirements
14 of this subtitle.

15 (b) INVESTIGATIONS.—The Secretary shall conduct
16 in several States in each fiscal year investigations of the
17 use of funds received by the States under this subtitle in
18 order to evaluate compliance with the requirements of this
19 subtitle.

20 (c) AVAILABILITY OF INFORMATION.—Each State,
21 and each entity which has received funds from an allot-
22 ment made to a State under this subtitle, shall make avail-
23 able to the Secretary, for examination, copying, or me-
24 chanical reproduction on or off the premises, appropriate

1 books, documents, papers, and records of the entity upon
 2 a reasonable request therefore.

3 **Subtitle B—Other Programs**

4 **SEC. 511. NATIONAL SMOKING CESSATION PROGRAM.**

5 (a) ESTABLISHMENT.—The Secretary shall establish
 6 a program to be known as the “National Smoking Ces-
 7 sation Program” under which the Secretary may award
 8 grants to eligible public and nonprofit entities and individ-
 9 uals for smoking cessation purposes.

10 (b) ELIGIBILITY.—

11 (1) OF ENTITIES.—To be eligible to receive a
 12 grant under this section an entity shall—

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

14 (B) prepare and submit to the Secretary
 15 an application at such time, in such manner,
 16 and containing such information as the Sec-
 17 retary may require;

18 (C) provide assurances that amounts re-
 19 ceived under the grant will be used in accord-
 20 ance with subsection (c)(1); and

21 (D) meet any other requirements deter-
 22 mined appropriate by the Secretary.

23 (2) OF INDIVIDUALS.—To be eligible to receive
 24 a grant under this section an individual shall—

1 (A) prepare and submit to the Secretary
2 an application at such time, in such manner,
3 and containing such information as the Sec-
4 retary may require;

5 (B) provide assurances that amounts re-
6 ceived under the grant will be used only in ac-
7 cordance with subsection (c)(2); and

8 (C) meet any other requirements deter-
9 mined appropriate by the Secretary.

10 (c) USE OF FUNDS.—

11 (1) BY ENTITIES.—An entity that receives a
12 grant under this section shall use amounts provided
13 under the grant to establish or administer tobacco
14 product use cessation programs that are approved in
15 accordance with subsection (d).

16 (2) BY INDIVIDUALS.—An individual that re-
17 ceive a grant under this section shall use amounts
18 provided under the grant to enroll in a tobacco prod-
19 uct use cessation program or to purchase a tobacco
20 product cessation device that has been approved in
21 accordance with subsection (d). Grants to individuals
22 under this section may be in the form of vouchers
23 that may be used to pay the costs of enrollment in
24 an approved program or to purchase an approved
25 device.

1 (d) APPROVAL OF CESSATION PROGRAM OR DE-
 2 VICES.—Using the best available scientific information,
 3 the Secretary shall promulgate regulations to provide for
 4 the approval of tobacco product use cessation programs
 5 and devices. Such regulations shall be designed to ensure
 6 that tobacco product users, if requested, are provided with
 7 reasonable access to safe and effective cessation programs
 8 and devices. Such regulations shall ensure that such indi-
 9 viduals have access to a broad range of cessation options
 10 that are tailored to the needs of the individual tobacco
 11 user.

12 (e) FUNDING.—The Secretary shall use amounts
 13 available under section 401(d)(2) to carry out this section.

14 **SEC. 512. NATIONAL REDUCTION IN TOBACCO USAGE PRO-**
 15 **GRAM.**

16 (a) ESTABLISHMENT.—The Secretary shall establish
 17 a program to be known as the “National Reduction in To-
 18 bacco Usage Program” under which the Secretary may
 19 award grants to eligible public and nonprofit entities to
 20 carry out activities designed to reduce the use of tobacco
 21 products.

22 (b) ELIGIBILITY.—To be eligible to receive a grant
 23 under this section an entity shall—

24 (1) be a State health department, other public
 25 entity, or a nonprofit private entity;

1 (2) prepare and submit to the Secretary an ap-
2 plication at such time, in such manner, and contain-
3 ing such information as the Secretary may require;

4 (3) provide assurances that amounts received
5 under the grant will be used in accordance with sub-
6 section (c); and

7 (4) meet any other requirements determined ap-
8 propriate by the Secretary.

9 (c) USE OF FUNDS.—An entity that receives a grant
10 under this section shall use amounts provided under the
11 grant to—

12 (1) carry out media-based and nonmedia-based
13 education, prevention and cessation campaigns de-
14 signed to discourage the use of tobacco products by
15 individuals who are under 18 years of age and to en-
16 courage those who use such products to quit;

17 (2) carry out research concerning, and provide
18 for the development and public dissemination of,
19 technologies and methods to reduce the risk of de-
20 pendence and injury from tobacco product usage and
21 exposure;

22 (3) provide for the identification, testing, and
23 evaluation of the health effects of both tobacco and
24 non-tobacco constituents of tobacco products; or

1 (4) carry out any other activities determined by
 2 the Secretary to be consistent with the purposes of
 3 this Act.

4 (d) FUNDING.—The Secretary shall use amounts
 5 available under section 401(d)(3) to carry out this section.

6 **SEC. 513. NATIONAL TOBACCO-FREE PUBLIC EDUCATION**
 7 **PROGRAM.**

8 (a) ESTABLISHMENT OF BOARD.—

9 (1) IN GENERAL.—The Secretary shall establish
 10 an independent board to be known as the “Tobacco-
 11 Free Education Board” (referred to in this section
 12 as the “Board”) to enter into contracts with or
 13 award grants to eligible public and nonprofit private
 14 entities to carry out public informational and edu-
 15 cational activities designed to reduce the use of to-
 16 bacco products.

17 (2) APPOINTMENT.—The Board shall be com-
 18 posed of 9 members to be appointed by the Sec-
 19 retary, of which—

20 (A) at least 3 such members shall be an in-
 21 dividual who is widely recognized by the general
 22 public for achievement in the athletic, cultural,
 23 entertainment, educational, business, or politi-
 24 cal field; and

1 (B) at least 3 of whom shall be individuals
2 who are heads of a major public health organi-
3 zations.

4 (3) TERMS AND VACANCIES.—The members of
5 the Board shall serve staggered terms as determined
6 appropriate at the time of appointment by the Sec-
7 retary. Any vacancy in the Board shall not affect its
8 powers, but shall be filled in the same manner as the
9 original appointment.

10 (4) POWERS.—

11 (A) HEARINGS.—The Board may hold
12 such hearings, sit and act at such times and
13 places, take such testimony, and receive such
14 evidence as the Board considers advisable to
15 carry out the purposes of this section.

16 (B) INFORMATION FROM FEDERAL AGEN-
17 CIES.—The Board may secure directly from any
18 Federal department or agency such information
19 as the Board considers necessary to carry out
20 the provisions of this section.

21 (5) PERSONNEL MATTERS.—

22 (A) COMPENSATION.—Each member of the
23 Board who is not an officer or employee of the
24 Federal Government shall be compensated at a
25 rate equal to the daily equivalent of the annual

1 rate of basic pay prescribed for level IV of the
2 Executive Schedule under section 5315 of title
3 5, United States Code, for each day (including
4 travel time) during which such member is en-
5 gaged in the performance of the duties of the
6 Board. All members of the Board who are offi-
7 cers or employees of the United States shall
8 serve without compensation in addition to that
9 received for their services as officers or employ-
10 ees of the United States.

11 (B) TRAVEL EXPENSES.—The members of
12 the Board shall be allowed travel expenses, in-
13 cluding per diem in lieu of subsistence, at rates
14 authorized for employees of agencies under sub-
15 chapter I of chapter 57 of title 5, United States
16 Code, while away from their homes or regular
17 places of business in the performance of serv-
18 ices for the Board.

19 (b) ESTABLISHMENT OF PROGRAM.—The Secretary
20 shall establish a program to be known as the “National
21 Tobacco-Free Public Education Program” under which
22 the Board may enter into contracts with or award grants
23 to eligible public and nonprofit private entities to carry
24 out public informational and educational activities de-
25 signed to reduce the use of tobacco products.

1 (c) ELIGIBILITY.—To be eligible to receive a grant
2 under this section an entity shall—

3 (1) be a—

4 (A) public entity or a State health depart-
5 ment; or

6 (B) nonprofit private entity that—

7 (i) is not affiliated with a tobacco
8 product manufacturer or importer;

9 (ii) has a demonstrated record of
10 working effectively to reduce tobacco prod-
11 uct use; and

12 (iii) has expertise in conducting a
13 multi-media communications campaign;

14 (2) prepare and submit to the Secretary an ap-
15 plication at such time, in such manner, and contain-
16 ing such information as the Secretary may require,
17 including a description of the activities to be con-
18 ducted using amounts received under the grant or
19 contract;

20 (3) provide assurances that amounts received
21 under the grant will be used in accordance with sub-
22 section (d); and

23 (4) meet any other requirements determined ap-
24 propriate by the Secretary.

1 (d) USE OF FUNDS.—An entity that receives a grant
2 or contract under this section shall use amounts provided
3 under the grant or contract to conduct multi-media public
4 educational or informational campaigns that are designed
5 to discourage and de-glamorize the use of tobacco prod-
6 ucts. Such campaigns shall be designed to discourage the
7 initiation of tobacco use by minors and encourage those
8 using such products to quit.

9 (e) NEEDS OF CERTAIN POPULATIONS.—In awarding
10 grants and contracts under this section, the Board shall
11 take into consideration the needs of particular popu-
12 lations.

13 (f) FUNDING.—The Secretary shall use amounts
14 available under section 401(d)(4) to carry out this section.

15 **SEC. 514. NATIONAL EVENT SPONSORSHIP PROGRAM.**

16 (a) ESTABLISHMENT.—The Secretary shall establish
17 a program to be known as the “National Event Sponsor-
18 ship Program” under which the Secretary may award
19 grants to eligible entities or individuals for the sponsorship
20 of activities described in subsection (c).

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

23 (1) prepare and submit to the Secretary an ap-
24 plication at such time, in such manner, and contain-

1 ing such information as the Secretary may require,
2 including—

3 (A) a description of the event, activity,
4 team, or entry for which the grant is to be pro-
5 vided;

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

10 (C) a certification that the applicant is un-
11 able to secure funding for the event, activity,
12 team, or entry involved from sources other than
13 those described in paragraph (2);

14 (2) provide assurances that amounts received
15 under the grant will be used in accordance with sub-
16 section (d); and

17 (3) meet any other requirements determined ap-
18 propriate by the Secretary.

19 (c) PERMISSIBLE SPONSORSHIP ACTIVITIES.—
20 Events, activities, teams, or entries for which a grant may
21 be provided under this section include—

22 (1) an athletic, musical, artistic, or other social
23 or cultural event or activity that was sponsored in
24 whole or in part by a tobacco manufacturer or dis-
25 tributor prior to the date of enactment of this Act;

1 (2) the participation of a team that was spon-
2 sored in whole or in part by a tobacco manufacturer
3 or distributor prior to the date of enactment of this
4 Act, in an athletic event or activity; and

5 (3) the payment of a portion or all of the entry
6 fees of, or other financial or technical support pro-
7 vided to, an individual or team by a tobacco manu-
8 facturer or distributor prior to the date of enactment
9 of this Act, for participation of the individual in an
10 athletic, musical, artistic, or other social or cultural
11 event.

12 (d) USE OF FUNDS.—Amounts received under a
13 grant under this section shall be used to—

14 (1)(A) pay the costs associated with the spon-
15 sorship of an event or activity described in sub-
16 section (c)(1);

17 (B) provide for the sponsorship of an individual
18 or team;

19 (C) pay the required entry fees associated with
20 the participation of an individual or team in an
21 event or activity described in subsection (c)(3);

22 (D) provide financial or technical support to an
23 individual or team in connection with the participa-
24 tion of that individual or team in an activity de-
25 scribed in subsection (c)(3); or

1 (E) for any other purposes determined appro-
 2 priate by the Secretary; and

3 (2) promote images or activities to discourage
 4 individuals from using tobacco products or encour-
 5 age individuals who use such products to quit.

6 (e) ALLOCATION OF UNEXPENDED FUNDS.—
 7 Amounts available for purposes of carrying out this sec-
 8 tion and remaining available at the end of the 10-year pe-
 9 riod described in section 401(d)(5), shall be used as fol-
 10 lows:

11 (1) 50 percent of such amounts shall be used
 12 to supplement amounts available for multi-media
 13 campaigns under section 512;

14 (2) 25 percent of such amounts shall be used
 15 to supplement amounts available for enforcement
 16 purposes under section 401(d)(8); and

17 (3) 25 percent of such amounts shall be used
 18 to supplement amounts available for community ac-
 19 tion programs under section 515.

20 (f) FUNDING.—The Secretary shall use amounts
 21 available under section 401(d)(5) to carry out this section.

22 **SEC. 515. NATIONAL COMMUNITY ACTION PROGRAM.**

23 (a) ESTABLISHMENT.—The Secretary shall establish
 24 a program to be known as the “National Community Ac-
 25 tion Program” under which the Secretary may award

1 grants to eligible State and local governmental entities to
 2 carry out community-based tobacco control efforts that
 3 are designed to encourage community involvement in re-
 4 ducing tobacco product use.

5 (b) ELIGIBILITY.—To be eligible to receive a grant
 6 under this section an entity shall—

7 (1) be a State or local public entity;

8 (2) prepare and submit to the Secretary an ap-
 9 plication at such time, in such manner, and contain-
 10 ing such information as the Secretary may require;

11 (3) provide assurances that amounts received
 12 under the grant will be used in accordance with the
 13 purposes of this section; and

14 (4) meet any other requirements determined ap-
 15 propriate by the Secretary.

16 (c) FUNDING.—The Secretary shall use amounts
 17 available under section 401(d)(6) to carry out this section.

18 **SEC. 516. NATIONAL CESSATION RESEARCH PROGRAM.**

19 (a) ESTABLISHMENT.—The Secretary shall establish
 20 a program to be known as the “National Cessation Re-
 21 search Program” under which the Secretary may award
 22 grants to eligible entities for research concerning, and the
 23 development of methods, drugs, and devices to discourage
 24 individuals from using tobacco products and to assist indi-
 25 viduals who use such products in quitting such use.

1 (b) ELIGIBILITY.—

2 (c) USE OF FUNDS.—

3 (d) ADDITIONAL REQUIREMENTS.—

4 (e) FUNDING.—The Secretary shall use amounts
5 available under section 401(d)(7) to carry out this section.

6 **SEC. 517. USE OF SURCHARGE PAYMENTS.**

7 (a) IN GENERAL.—Of the amount made available to
8 the Secretary each year under section 401(d)(9), the Sec-
9 retary shall—

10 (1) use not less than 90 percent of such amount
11 to award grants to State and local governmental and
12 public health agencies to carry out activities to fur-
13 ther reduce the use of tobacco products by individ-
14 uals who are under 18 years of age; and

15 (2) use not more than 10 percent of such
16 amount for the administrative costs associated with
17 the administration of title II and of chapter IX of
18 the Federal Food, Drug and Cosmetic Act (as added
19 by section 143(3)).

20 (b) TRANSFER OF CERTAIN AMOUNTS.—If the Sec-
21 retary determines that the administrative costs described
22 in subsection (a)(2) are less than the amount available
23 under section subsection, the Secretary may—

24 (1) transfer any such excess amount to other
25 Federal, State, or local agencies to meet the needs

1 associated with the reduction of underage tobacco
 2 usage; or

3 (2) expend such amounts directly for activities
 4 to expedite the reduction of underage tobacco use.

5 (c) ELIGIBILITY.—To be eligible to receive a grant
 6 under this section an entity shall—

7 (1) be a State or local governmental or public
 8 health agency;

9 (2) prepare and submit to the Secretary an ap-
 10 plication at such time, in such manner, and contain-
 11 ing such information as the Secretary may require;

12 (3) provide assurances that amounts received
 13 under the grant will be used in accordance with this
 14 section; and

15 (4) meet any other requirements determined ap-
 16 propriate by the Secretary.

17 (d) FUNDING.—The Secretary shall use amounts
 18 available under section 401(d)(9) to carry out this section.

19 **TITLE VI—CONSENT DECREES,**
 20 **NON-PARTICIPATING MANU-**
 21 **FACTURERS, AND STATE EN-**
 22 **FORCEMENT**

23 **SEC. 601. PURPOSES.**

24 It is the purpose of this title to provide for the estab-
 25 lishment of consent decrees and the imposition of certain

1 payment provisions, in addition to those otherwise pro-
 2 vided for under Federal or State laws, to encourage manu-
 3 facturers, distributors, and retailers to comply with this
 4 Act, and to otherwise provide for the enforcement of this
 5 Act with respect to non-participating manufacturers.

6 **Subtitle A—Consent Decrees and** 7 **Non-Participating Manufacturers**

8 **SEC. 611. CONSENT DECREES.**

9 (a) REQUIREMENT.—To be eligible to receive pay-
 10 ments under title V, a State, and to be eligible to receive
 11 liability protections under title VII, a tobacco manufac-
 12 turer or distributor, shall enter into consent decrees under
 13 this section to be effective on the date of enactment of
 14 this Act.

15 (b) TERMS AND CONDITIONS.—

16 (1) IN GENERAL.—The terms and conditions
 17 contained in the consent decrees described in sub-
 18 section (a) shall contain provisions to clarify the ap-
 19 plication and requirements of this Act (and the
 20 amendments made by this Act), including provisions
 21 relating to—

22 (A) restrictions on tobacco product adver-
 23 tising and marketing and youth access to such
 24 products;

1 (B) the termination, establishment, and
2 operation of trade associations;

3 (C) restrictions on tobacco lobbying;

4 (D) the disclosure of tobacco smoke con-
5 stituents;

6 (E) the disclosure of nontobacco ingredi-
7 ents found in tobacco products;

8 (F) the disclosure of existing and future
9 documents relating to health, toxicity, and ad-
10 diction related to tobacco product usage;

11 (G) compliance and corporate culture;

12 (H) the obligation of manufacturers to
13 make payments for the benefit of States;

14 (I) the obligation of manufacturers to
15 interact only with distributors and retailers that
16 operate in compliance with the applicable provi-
17 sions of Federal, State, or local law regarding
18 the marketing and sale of tobacco products;

19 (J) requirements for warnings, labeling,
20 and packaging of tobacco products;

21 (K) the dismissal of pending litigation as
22 required under title VII and as agreed to by the
23 parties to the decree; and

24 (L) any other matter determined appro-
25 priate by the Secretary or the parties involved.

1 (2) LIMITATIONS.—The terms and conditions
2 contained in the consent decrees described in sub-
3 section (a) shall not contain provisions relating to—

4 (A) tobacco product design, performance,
5 or modification;

6 (B) manufacturing standards and good
7 manufacturing practices;

8 (C) testing and regulation with respect to
9 toxicity and ingredients approval; and

10 (D) the required percentage reductions in
11 the underage use of tobacco products for a year
12 under section 204.

13 (3) WAIVER OF CONSTITUTIONAL CLAIMS.—The
14 terms and conditions contained in the consent de-
15 crees described in subsection (a) shall include a pro-
16 vision waiving the Federal or State constitutional
17 claims of the parties and providing for the severabil-
18 ity of the provisions of the decree.

19 (4) CONSTRUCTION.—The terms and conditions
20 contained in the consent decrees described in sub-
21 section (a) shall provide that the terms of the decree
22 will be construed in a manner that is consistent with
23 the provision of this Act.

1 (c) APPROVAL.—To be valid under this section, the
2 provisions of a consent decree must be approved by the
3 Secretary prior to approval or entry by a court.

4 (d) ENFORCEMENT.—

5 (1) CHANGES IN LAW.—The provisions of a
6 consent decree entered under this section shall re-
7 main in effect and enforceable regardless of whether
8 the provisions of this Act are amended, except that
9 any amendments to this Act that—

10 (A) establish Federal requirements that
11 are in conflict with obligations contained in the
12 consent decrees shall render such obligations
13 unenforceable;

14 (B) require allocations of funds that are in
15 conflict with the allocation contained in the con-
16 sent decrees shall render such consent decree
17 allocation unenforceable; and

18 (C) require warnings, labeling, or packag-
19 ing that conflicts with the warning, labeling, or
20 packaging requirements of the consent decree,
21 shall require that modifications be made in the
22 consent decree to conform with such amend-
23 ments.

24 (2) BY STATE.—

1 (A) IN GENERAL.—A State may bring an
2 action to enforce the provisions of any consent
3 decree under this section in any appropriate
4 State court. Such proceedings may seek injunc-
5 tive relief only and may not seek criminal or
6 monetary sanctions. Enforcement of any injunc-
7 tive relief provided under a State action under
8 this section shall be permitted under any appli-
9 cable State law.

10 (B) CONSISTENCY.—The Secretary, in con-
11 sultation with the Attorney General, shall pro-
12 mulgate regulations to ensure the consistency of
13 State court ruling with respect to conduct
14 under a consent decree that is not exclusively
15 local in nature.

16 **SEC. 612. NATIONAL TOBACCO CONTROL PROTOCOL.**

17 (a) REQUIREMENT.—Not later than 6 months after
18 the date of enactment of this Act, each tobacco manufac-
19 turer to which this Act applies shall enter into a National
20 Tobacco Control Protocol.

21 (b) TERMS AND CONDITIONS.—The Protocol referred
22 to in subsection (a) shall be—

23 (1) developed by the Secretary as a binding and
24 enforceable contract that embodies the terms of this
25 Act; and

1 (2) designed to be enforceable in Federal or
2 State courts.

3 **SEC. 613. NON-PARTICIPATING MANUFACTURERS.**

4 (a) IN GENERAL.—With respect to a manufacturer
5 that elects not to enter into a consent decree under section
6 602, such manufacturer shall not be eligible to receive the
7 liability protections under title VII.

8 (b) IMPOSITION OF USER FEE.—

9 (1) IN GENERAL.—Each manufacturer that
10 elects not to enter into a consent decree under sec-
11 tion 602 and not to become a signatory to the Na-
12 tional Tobacco Control Protocol under section 603
13 shall be subject to an annual fee established under
14 this subsection.

15 (2) AMOUNT OF FEE.—

16 (A) TOTAL.—The total amount of all fees
17 established under this subsection for a year
18 shall be equal to the amounts provided under
19 paragraphs (1) and (8) of section 401(d) for
20 the year.

21 (B) PER MANUFACTURER.—The Secretary
22 shall promulgate regulations for the purpose of
23 assessing fees under this subsection and deter-
24 mining the amount of the fee to be assessed to
25 each manufacturer.

1 (c) SETTLEMENT RESERVE FUND.—

2 (1) IN GENERAL.—Each manufacturer to which
 3 subsection (b)(1) applies shall annually deposit into
 4 an escrowed reserve fund an amount equal to 150
 5 percent of the amount that such manufacturer would
 6 have paid under section 402 (except for that portion
 7 of the payments that would have been made avail-
 8 able under paragraphs (1) and (8) of section 401(d))
 9 for the year in which the manufacturer is making
 10 such deposit if the manufacturer had been a signa-
 11 tory to the National Tobacco Control Protocol under
 12 section 603.

13 (2) USE.—Amounts contained in the reserve
 14 fund of a manufacturer under paragraph (1) shall
 15 be used solely for tobacco-related liability payments.
 16 The manufacturer may reclaim any amounts remain-
 17 ing in the fund (with interest) at the end of the 35-
 18 year period beginning on the date on which such
 19 fund is established.

20 **Subtitle B—State Enforcement**

21 **SEC. 621. REQUIREMENT OF NO SALE TO MINORS LAW.**

22 (a) RELEVANT LAW.—

23 (1) IN GENERAL.—Subject to paragraph (2),
 24 for each calendar year, the Secretary may not make
 25 any payments to a State under section 403 unless

1 the State involved has in effect a law providing that
 2 it is unlawful for any manufacturer, retailer, or dis-
 3 tributor of tobacco products to sell or distribute any
 4 such product to any individual under the age of 18
 5 that meets the requirements of this section.

6 (2) DELAYED APPLICABILITY FOR CERTAIN
 7 STATES.—In the case of a State whose legislature
 8 does not convene a regular session in fiscal year
 9 1997, and in the case of a State whose legislature
 10 does not convene a regular session in fiscal year
 11 1998, the requirement described in paragraph (1) as
 12 a condition of a receipt of payments under section
 13 403 shall apply only for fiscal year 1999 and subse-
 14 quent fiscal years.

15 (b) REQUIREMENTS.—A State law described in sub-
 16 section (a) shall comply with the following:

17 (1) PROHIBITION ON SALE.—Such law shall
 18 provide that it is unlawful for any manufacturer, re-
 19 tailer, or distributor of tobacco products to sell or
 20 distribute any such product within the State to any
 21 individual under the age of 18 years.

22 (2) PURCHASE, RECEIPT OR POSSESSION.—

23 (A) IN GENERAL.—Such law shall provide
 24 that an individual under 18 years of age shall
 25 not purchase or attempt to purchase, receive or

1 attempt to receive, possess or attempt to pos-
2 sess, smoke or attempt to smoke, or otherwise
3 use or consume or attempt to use or consume
4 a tobacco product in a public place.

5 (B) EMPLOYMENT.—Such law may permit
6 an individual under the age of 18 to possess a
7 tobacco product during regular working hours
8 and in the course of such individual’s employ-
9 ment if the tobacco product is not possessed for
10 such individual’s consumption.

11 (3) INSPECTIONS.—

12 (A) IN GENERAL.—Such law shall provide
13 that the State Police of a State, or such local
14 law enforcement authority duly designated by
15 the State Police, shall enforce this law in a
16 manner that can reasonably be expected to re-
17 duce the extent to which tobacco products are
18 distributed to individuals under 18 years of age
19 and shall, at least monthly, conduct random,
20 unannounced inspections in accordance with
21 regulations promulgated by the Secretary under
22 this section to ensure compliance with this law.

23 (B) CONDUCT.—Inspections under this
24 paragraph shall be conducted in communities
25 geographically and statistically representative of

1 the entire State and the youth population of the
2 State. Not less than 250 such inspections shall
3 be conducted with respect to each 1,000,000
4 residents of the State.

5 **SEC. 622. STATE REPORTING.**

6 (a) IN GENERAL.—Not later than 2 years after the
7 date of enactment of this Act, and annually thereafter,
8 the State shall prepare and submit to the Secretary a re-
9 duction in tobacco product usage report. Such report shall,
10 except as provided in subsection (b)(3), be made available
11 to the general public of the State.

12 (b) CONTENTS.—A report submitted under sub-
13 section (a) shall include—

14 (1) a detailed description of the enforcement ac-
15 tivities undertaken by the State and the political
16 subdivisions of the State concerning tobacco product
17 usage laws for the year for which the report is being
18 prepared;

19 (2) a detailed description of the progress of the
20 State in reducing the availability of tobacco products
21 to individuals under 18 years of age, including the
22 detailed statistical results of the compliance inspec-
23 tion required under section 621;

24 (3) a detailed description of the methods used
25 in such compliance inspection and in identifying out-

1 lets which were tested (the Secretary shall provide
 2 protections for the confidentiality of information
 3 provided under this paragraph);

4 (4) a detailed description of the strategies that
 5 the State intends to utilize in the current and suc-
 6 ceeding years to make further progress on reducing
 7 the availability of tobacco products to individuals
 8 under 18 years of age; and

9 (5) the identity of a single State agency that is
 10 responsible for administering the requirements of
 11 title III in the State.

12 **SEC. 623. REDUCTION IN STATE PAYMENTS.**

13 (a) ANNUAL DETERMINATION.—Beginning with re-
 14 spect to the fifth full fiscal year after the date of enact-
 15 ment of this Act, and each fiscal year thereafter the Sec-
 16 retary shall make a determination as to whether each
 17 State has pursued all reasonably available measures to en-
 18 force the law described in section 621.

19 (b) PRESUMPTIVE FINDING.—The Secretary shall
 20 find presumptively that a State has not pursued all rea-
 21 sonably available measures to enforce the law described
 22 in section 621 if the Secretary determines that the State
 23 has not achieved the following compliance rate results
 24 based on the findings of the retail compliance inspections
 25 conducted under the State law:

1 (1) With respect to each of the fifth and sixth
2 fiscal years following the date of enactment, 75 per-
3 cent compliance with State law.

4 (2) With respect to each of the seventh through
5 ninth fiscal years following the date of enactment,
6 85 percent compliance with State law.

7 (3) With respect to the tenth and each subse-
8 quent fiscal year following the date of enactment, 90
9 percent compliance with State law.

10 (c) AMOUNT OF REDUCTION.—

11 (1) IN GENERAL.—With respect to a State that
12 the Secretary determines does not meet the compli-
13 ance rates described in subsection (b), the Secretary
14 may reduce the amount that the State may be eligi-
15 ble for under section 501. The amount of any such
16 reduction shall not exceed an amount equal to 1 per-
17 cent of the amount for which the State is eligible for
18 under section 501 for the fiscal year involved for
19 each 1 percentage point by which the State's compli-
20 ance performance is below the applicable compliance
21 rate.

22 (2) LIMITATION.—In no event shall the amount
23 of any reduction under this section exceed an
24 amount equal to 20 percent of the amount for which

1 the State is eligible for under section 501 for the fis-
2 cal year involved.

3 (3) REALLOTMENT.—The Secretary shall
4 reallocate any amounts withheld under this subsection
5 to States with compliance rates that exceed the rates
6 applicable under subsection (b) in amounts to be de-
7 termined by the Secretary as appropriate to reward
8 States with the highest compliance rates.

9 (d) REVIEW.—

10 (1) PETITION FOR RELEASE.—Not later than
11 90 days after the date on which a notice from the
12 Secretary that the Secretary intends to make a re-
13 duction under subsection (c) is received, a State may
14 petition the Secretary for a release and disburse-
15 ment of such amount (referred to in this subsection
16 as the “withhold amount”). The State shall give
17 prompt written notice of such petition to the State
18 attorney general.

19 (2) ACTION BY SECRETARY.—

20 (A) HOLDING AND INVESTING OF
21 FUNDS.—Upon receipt of a petition under para-
22 graph (1), the Secretary shall designate the
23 withhold amount as subject to a petition and in-
24 vest such amount in interest-bearing securities

1 of the United States subject to a final disposi-
2 tion of the petition.

3 (B) BASIS FOR DETERMINATION.—In con-
4 sidering a petition received under paragraph
5 (1), the Secretary shall consider—

6 (i) whether the State has acted in
7 good faith and in full compliance with the
8 provisions of this Act (and the amend-
9 ments made by this Act) and any regula-
10 tions promulgated in furtherance of this
11 Act;

12 (ii) whether the State has pursued all
13 reasonably available measures to achieve
14 the compliance rates applicable under sub-
15 section (b) and the goals of this Act for re-
16 ducing the underage use of tobacco prod-
17 ucts;

18 (iii) whether there is any evidence of
19 any direct or indirect action taken by the
20 State to undermine the achievement of the
21 compliance rates and goals described in
22 clause (ii); and

23 (iv) any other evidence determined ap-
24 propriate by the Secretary.

1 (C) BURDEN.—With respect to any action
2 by the Secretary on a petition under paragraph
3 (1), the burden shall be on the State to prove,
4 by a preponderance of the evidence, that the
5 State should be granted a release and disburse-
6 ment under the petition.

7 (D) HEARING.—The Secretary shall hold a
8 hearing, with notice and an opportunity to be
9 heard provided to the attorney general of the
10 State and to manufacturers, prior to making
11 any determination as to a petition under para-
12 graph (1).

13 (E) RELEASE OF FUNDS.—Upon a deter-
14 mination by the Secretary that the State has
15 met the burden imposed under subparagraph
16 (C) with respect to a petition, the Secretary
17 shall disburse not to exceed 75 percent of the
18 withhold amount (and any interest accrued on
19 such amount) to the State. The Secretary may
20 consider all relevant evidence in determining the
21 amount to disburse to the State under this sub-
22 paragraph.

23 (3) APPEALS.—

24 (A) IN GENERAL.—Any manufacturer or
25 State attorney general aggrieved by a decision

of the Secretary under paragraph (2) may, within 30 days of the date of such decision, seek judicial review of the decision in the United States Court of Appeals for the District of Columbia Circuit. The provisions of sections 701 through 706 of title 5, United States Code, shall apply to appeals filed under this paragraph.

(B) LIMITATION.—No stay or other injunctive relief that has the effect of enjoining the withholding of amounts under this section shall be permitted during the pendency of an appeal filed under this paragraph.

(C) FINALITY.—The decision of the Court of Appeals in an action under this paragraph shall be final.

TITLE VII—PROVISIONS RELATING TO TOBACCO-RELATED CIVIL ACTIONS

SEC. 701. GENERAL IMMUNITY.

(a) STATE ATTORNEY GENERAL ACTIONS.—

(1) PENDING ACTIONS.—Civil actions that have been commenced by a State or local governmental entity, or on behalf of such an entity, against a manufacturer, distributor, or retailer that is a signa-

1 tory to the National Tobacco Control Protocol under
2 section 612, and that are pending on the date of en-
3 actment of this Act are terminated.

4 (2) FUTURE ACTIONS.—A manufacturer, dis-
5 tributor or retailer that is a signatory to the Na-
6 tional Tobacco Control Protocol under section 612
7 shall be immune from any civil action commenced
8 after the date of enactment of this Act by a Federal,
9 State, or local governmental entity, or on behalf of
10 such an entity, for all claims arising from the use
11 of a tobacco product.

12 (b) OTHER ACTIONS.—

13 (1) CLASS ACTIONS.—

14 (A) PENDING ACTIONS.—Class actions for
15 claims arising from the use of a tobacco prod-
16 uct that are pending against a manufacturer,
17 distributor, or retailer that is a signatory to the
18 National Tobacco Control Protocol under sec-
19 tion 612, are terminated.

20 (B) FUTURE ACTIONS.—A manufacturer,
21 distributor, or retailer that is a signatory to the
22 National Tobacco Control Protocol under sec-
23 tion 612 shall be immune from any class action
24 commenced after the date of enactment of this

1 Act for all claims arising from the use of a to-
 2 bacco product.

3 (2) ADDICTION AND DEPENDENCE CLAIMS.—

4 (A) PENDING ACTIONS.—Any civil action
 5 for claims based on addition to or dependence
 6 on a tobacco product that are pending against
 7 a manufacturer, distributor, or retailer that is
 8 a signatory to the National Tobacco Control
 9 Protocol under section 612, are terminated.

10 (B) FUTURE ACTIONS.—A manufacturer,
 11 distributor, or retailer that is a signatory to the
 12 National Tobacco Control Protocol under sec-
 13 tion 612 shall be immune from any civil action
 14 commenced after the date of enactment of this
 15 Act for all claims based on addition to or de-
 16 pendence on a tobacco product.

17 (c) PRESERVATION.—All personal injury claims aris-
 18 ing from the use of a tobacco product by an individual
 19 shall be preserved.

20 **SEC. 702. CIVIL LIABILITY FOR PAST CONDUCT.**

21 (a) APPLICATION.—The provisions of this section
 22 shall apply to all civil actions permitted under section 701
 23 for relief arising from the conduct of a manufacturer, dis-
 24 tributor, or retailer that is a signatory to the National To-

1 bacco Control Protocol under section 612 that occurred
2 prior to the date of enactment of this Act.

3 (b) PUNITIVE DAMAGES PROHIBITED.—No punitive
4 damages shall be awarded in any claim described in sub-
5 section (a).

6 (c) INDIVIDUAL TRIALS.—No class action suits, join-
7 der of parties, aggregation of claims, consolidation of ac-
8 tions, extrapolations, or other devices to resolve cases
9 other than on the basis of individual actions shall be per-
10 mitted without the consent of the defendant. Any defend-
11 ant, in an action that involves a violation of this sub-
12 section, may remove such action to an appropriate Federal
13 court.

14 (d) JOINT SHARING AGREEMENT.—As part of the
15 National Tobacco Control Protocol under section 612, all
16 signatories shall agree to the joint sharing of any civil li-
17 ability for actions for damages arising from the use of to-
18 bacco products. Such signatories shall not be jointly and
19 severally liable for damages involving nonsignatories. Ac-
20 tions involving both signatories and nonsignatories shall
21 be severed.

22 (e) PERMISSIBLE PARTIES.—

23 (1) PLAINTIFFS.—The following individuals
24 may be plaintiffs in a civil action to which this sec-
25 tion applies:

1 (A) Individuals bringing claims, or claims
2 derivative of such claims, on their own behalf
3 for a tobacco-related injury, or the heirs of such
4 individuals.

5 (B) Third-party payors for claims not
6 based on subrogation that were pending on
7 June 9, 1997.

8 (C) Third-party payors for claims based on
9 subrogation of individual claims permitted
10 under subparagraph (A).

11 (2) DEFENDANTS.—This section shall apply
12 only to actions brought against a signatory of the
13 National Tobacco Control Protocol under section
14 612, a successor or assign of such a signatory, any
15 future fraudulent transferees, or any entity for suit
16 designated to survive a defunct signatory. Such sig-
17 natories shall be vicariously liable for the actions of
18 their agents.

19 (f) REMOVAL.—Except as provided in subsection (c),
20 there shall be no removal of a action to which this section
21 applies.

22 (g) DISCOVERY.—The development, after the date of
23 enactment of this Act, of any tobacco product that reduces
24 the risk of injury or illness to a user shall not be admissi-
25 ble or discoverable.

1 (h) CAPS ON SETTLEMENTS.—

2 (1) AGGREGATE ANNUAL CAP.—With respect to
3 a calendar year, the aggregate amount of all tobacco
4 claims judgments or settlements to which this sec-
5 tion applies, that the signatories of the National To-
6 bacco Control Protocol under section 612 shall be
7 required to pay, shall not exceed an amount equal to
8 33 percent of the annual payment required under
9 section 402 for the year involved.

10 (2) PAYMENT OF EXCESS.—If the amount of
11 the judgments and settlements described in para-
12 graph (1) exceed an amount equal to 33 percent of
13 the annual payment required under section 402 for
14 the year involved, such excess amount shall be paid
15 in the following year.

16 (3) AFFECT OF SETTLEMENT.—The signatories
17 described in paragraph (1) shall receive a credit, to
18 be applied against the amount owed by such signato-
19 ries to the National Tobacco Settlement Trust Fund
20 for the year involved, in an amount equal to 80 per-
21 cent of the aggregate amounts paid under judgments
22 or settlements of tobacco-related claims to which this
23 section applies for such year.

24 (4) INDIVIDUAL CAP.—With respect to an ac-
25 tion to which this section applies, any amount

1 awarded in excess of \$1,000,000 may be paid in the
 2 year following the year in which the judgment or
 3 settlement was entered, except that this paragraph
 4 shall not apply if all other awards under judgments
 5 or settlements entered in the first year can be paid
 6 without exceeding the aggregate annual cap under
 7 paragraph (1). Such excess amount shall carry over
 8 from year to year with no payments in any single
 9 year exceeding \$1,000,000 and no interest accruing
 10 on such amounts until such time as the annual ag-
 11 gregate cap is not exceeded.

12 (5) UNUSED PORTION OF CREDIT.—

13 (i) DEFENSE COSTS.—The signatories of the Na-
 14 tional Tobacco Control Protocol under section 612 shall
 15 be responsible for the payment of all attorneys' fees and
 16 other costs associated with being a defendant in an action
 17 to which this section applies.

18 **SEC. 703. CIVIL LIABILITY FOR FUTURE CONDUCT.**

19 (a) APPLICATION.—The provisions of this section
 20 shall apply to all civil actions permitted under section 701
 21 for relief arising from the conduct of a manufacturer, dis-
 22 tributor, or retailer that is a signatory to the National To-
 23 bacco Control Protocol under section 612 that occurs after
 24 the date of enactment of this Act.

1 (b) GENERAL PROVISIONS.—The provisions of sub-
 2 sections (c) and (e) through (i) of section 702 shall apply
 3 to actions under this section.

4 (c) THIRD-PARTY PAYOR CLAIMS.—Third-party
 5 payor claims that are not based on subrogation shall not
 6 be commenced under this section.

7 **SEC. 704. NON-PARTICIPATING MANUFACTURERS.**

8 The provisions of this title shall not apply to any
 9 manufacturer, distributor, or retailer that is not a signa-
 10 tory to the National Tobacco Control Protocol under sec-
 11 tion 612.

12 **TITLE VIII—PUBLIC DISCLO-**
 13 **SURE OF HEALTH RESEARCH**

14 **SEC. 801. PURPOSE.**

15 It is the purpose of this title to provide for the dislo-
 16 sure of previously nonpublic or confidential documents by
 17 manufacturers of tobacco products, including the results
 18 of internal health research, and to provide for a procedure
 19 to settle claims of attorney-client privilege, work product,
 20 or trade secrets with respect to such documents.

21 **SEC. 802. NATIONAL TOBACCO DOCUMENT DEPOSITORY.**

22 (a) ESTABLISHMENT.—To be eligible to receive the
 23 protections provided under title VII, manufacturers of to-
 24 bacco products, acting in conjunction with the Tobacco In-
 25 stitute and the Council for Tobacco Research, U.S.A.

1 (prior to the termination of such entities under section
 2 155), shall, not later than 180 days after the date of en-
 3 actment of this Act, establish and maintain a National To-
 4 bacco Document Depository (in this title referred to as
 5 the “Depository”). Such Depository shall be located in the
 6 Washington, D.C. area and be open to the public.

7 (b) USE OF DEPOSITORY.—The Depository shall be
 8 maintained in a manner that permits the Depository to
 9 be used as a resource for litigants, public health groups,
 10 and any other individuals who have an interest in the cor-
 11 porate records and research of the manufacturers concern-
 12 ing smoking and health, addiction or nicotine dependency,
 13 safer or less hazardous cigarettes, and underage tobacco
 14 use and marketing.

15 (c) CONTENTS.—The Depository shall include (and
 16 manufacturers and the Tobacco Institute and the Council
 17 for Tobacco Research, U.S.A. shall provide)—

18 (1) within 180 days of the date of enactment of
 19 this Act, all documents provided by such entities to
 20 plaintiffs in—

21 (A) civil or criminal actions brought by
 22 State attorneys general (including all docu-
 23 ments selected by plaintiffs from the Guilford
 24 Repository of the United Kingdom);

1 (B) Philip Morris Companies Inc.'s defa-
2 mation action against Capital Cities/American
3 Broadcasting Company News;

4 (C) the Federal Trade Commission's inves-
5 tigation concerning Joe Camel and underage
6 marketing;

7 (D) the Haines and Cippollone actions;
8 and

9 (E) the Butler action in Mississippi;

10 (2) within 90 days after the date of enactment
11 of this Act, any exiting documents discussing or re-
12 ferring to health research, addiction or dependency,
13 safer or less hazardous cigarettes, studies of the
14 smoking habits of minors, and the relationship be-
15 tween advertising or promotion and youth smoking,
16 that the entities described in subsection (a) have not
17 completed producing as required in the actions de-
18 scribed in paragraph (1);

19 (3) within 180 days of the date of enactment of
20 this Act, all documents relating to indices (as de-
21 fined by the court in the Minnesota Attorney Gen-
22 eral action) of documents relating to smoking and
23 health, including all indices identified by the manu-
24 facturers in the Washington, Texas, and Minnesota
25 Attorney General actions;

1 (4) upon the settlement of any action referred
2 to in this subsection, and after a good-faith, de novo,
3 document-by-document review of all documents pre-
4 viously withheld from production in any actions on
5 the grounds of attorney-client privilege, all docu-
6 ments determined to be outside of the scope of the
7 privilege;

8 (5) all existing or future documents relating to
9 original laboratory research concerning the health or
10 safety of tobacco products, including all laboratory
11 research results relating to methods used to make
12 tobacco products less hazardous to consumers;

13 (6) a comprehensive new attorney-client privi-
14 lege log of all documents, itemized in sufficient de-
15 tail so as to enable any interested individual to de-
16 termine whether the individual will challenge the
17 claim of privilege, that the entities described in sub-
18 section (a) (based on the de novo review of such doc-
19 uments by such entities) claim are protected from
20 disclosure under the attorney-client privilege;

21 (7) all existing or future documents relating to
22 studies of the smoking habits of minors or docu-
23 ments referring to any relationship between advertis-
24 ing and promotion and underage smoking; and

1 (8) all other documents determined appropriate
2 under regulations promulgated by the Secretary.

3 (d) DISPUTE RESOLUTION PANEL.—

4 (1) ESTABLISHMENT.—The Judicial Conference
5 of the United States shall establish a Tobacco Docu-
6 ments Dispute Resolution Panel, to be composed of
7 three Federal judges to be appointed by the Con-
8 ference, to resolve all disputes involving claims of at-
9 torney-client, work product, or trade secrets privilege
10 with respect to documents required to be deposited
11 into the Depository under subsection (c) that may be
12 brought by Federal, State, or local governmental of-
13 ficials or the public or asserted in any action by a
14 manufacturer.

15 (2) BASIS FOR DETERMINATIONS.—The deter-
16 minations of the Panel established under paragraph
17 (1) shall be based on—

18 (A) the American Bar Association/Amer-
19 ican Law Institute Model Rules or the prin-
20 ciples of Federal law with respect to attorney-
21 client or work product privilege; and

22 (B) the Uniform Trade Secrets Act with
23 respect to trade secrecy.

1 (3) DECISION.—Any decision of the Panel es-
2 tablished under paragraph (1) shall be final and
3 binding upon all Federal and State courts.

4 (4) ASSESSING OF FEES.—As part of a deter-
5 mination under this subsection, the Panel estab-
6 lished under paragraph (1) shall determined whether
7 a claimant of the privilege acted in good faith and
8 had a factual and legal basis for asserting the claim.
9 If the Panel determines that the claimant did not
10 act in good faith, the Panel may assess costs against
11 the claimant, including a reasonable attorneys' fee,
12 and may apply such other sanctions as the Panel de-
13 termines appropriate.

14 (5) ACCELERATED REVIEW.—The Panel estab-
15 lished under paragraph (1) shall establish proce-
16 dures for the accelerated review of challenges to a
17 claim of privilege. Such procedures shall include as-
18 surances that an individual filing a challenge to such
19 a claim need not make a prima facie showing of any
20 kind as a prerequisite to an in camera review of the
21 documents at issue.

22 (6) SPECIAL MASTERS.—The Panel established
23 under paragraph (1) may appoint Special Masters in
24 accordance with Rule 53 of the Federal Rules of
25 Civil Procedure. The cost relating to any Special

1 Master shall be assessed to the manufacturers as
2 part of a fee process to be established under regula-
3 tions promulgated by the Secretary.

4 (e) OTHER PROVISIONS.—

5 (1) NO WAIVER OF PRIVILEGE.—Compliance
6 with this section by the entities described in sub-
7 section (a) shall not be deemed to be a waiver on be-
8 half of such entities of any applicable privilege or
9 protection.

10 (2) AVOIDANCE OF DESTRUCTION.—In estab-
11 lishing the Depository, procedures shall be imple-
12 mented to protect against the destruction of docu-
13 ments.

14 (3) DEEMED PRODUCED.—Any documents con-
15 tained in the Depository shall be deemed to have
16 been produced for purposes of any tobacco-related
17 litigation in the United States.

18 (f) DOCUMENTS.—For purposes of this section, the
19 term “documents” shall include any paper documents that
20 may be printed using data that is contained in computer
21 files.

1 **TITLE IX—ASSISTANCE TO TO-**
 2 **BACCO GROWERS AND COM-**
 3 **MUNITIES**

4 **SEC. 901. SHORT TITLE.**

5 This title may be cited as the “Long-Term Economic
 6 Assistance for Farmers Act” or the “LEAF Act”.

7 **SEC. 902. DEFINITIONS.**

8 In this title:

9 (1) **ACTIVE TOBACCO PRODUCER.**—The term
 10 “active tobacco producer” means a quota holder,
 11 quota lessee, or quota tenant.

12 (2) **QUOTA HOLDER.**—The term “quota holder”
 13 means a producer that owns a farm for which a to-
 14 bacco farm marketing quota or farm acreage allot-
 15 ment was established under the Agricultural Adjust-
 16 ment Act of 1938 (7 U.S.C. 1281 et seq.) for any
 17 of the 1994, 1995, or 1996 crop years.

18 (3) **QUOTA LESSEE.**—The term “quota lessee”
 19 means—

20 (A) a producer that owns a farm that pro-
 21 duced tobacco pursuant to a lease and transfer
 22 to that farm of all or part of a tobacco farm
 23 marketing quota or farm acreage allotment es-
 24 tablished under the Agricultural Adjustment

1 Act of 1938 (7 U.S.C. 1281 et seq.) for any
2 of the 1994, 1995, or 1996 crop years; or

3 (B) a producer that rented land from a
4 farm operator to produce tobacco under a to-
5 bacco farm marketing quota or farm acreage al-
6 lotment established under the Agricultural Ad-
7 justment Act of 1938 (7 U.S.C. 1281 et seq.)
8 for any of the 1994, 1995, or 1996 crop years.

9 (4) QUOTA TENANT.—The term “quota tenant”
10 means a producer who—

11 (A) is the principal producer, as deter-
12 mined by the Secretary, of tobacco on a farm
13 where tobacco is produced pursuant to a to-
14 bacco farm marketing quota or farm acreage al-
15 lotment established under the Agricultural Ad-
16 justment Act of 1938 (7 U.S.C. 1281 et seq.)
17 for any of the 1994, 1995, or 1996 crop years;
18 and

19 (B) is not a quota holder or quota lessee.

20 (5) SECRETARY.—The term “Secretary”
21 means—

22 (A) in titles I and II, the Secretary of Ag-
23 riculture; and

24 (B) in section 301, the Secretary of Labor.

1 (6) TOBACCO PRODUCT IMPORTER.—The term
 2 “tobacco product importer” has the meaning given
 3 the term “importer” in section 5702 of the Internal
 4 Revenue Code of 1986.

5 (7) TOBACCO PRODUCT MANUFACTURER.—

6 (A) IN GENERAL.—The term “tobacco
 7 product manufacturer” has the meaning given
 8 the term “manufacturer of tobacco products” in
 9 section 5702 of the Internal Revenue Code of
 10 1986.

11 (B) EXCLUSION.—The term “tobacco
 12 product manufacturer” does not include a per-
 13 son that manufactures cigars or pipe tobacco.

14 (8) TRUST FUND.—The term “Trust Fund”
 15 means the Tobacco Community Revitalization Trust
 16 Fund established under section 101.

17 **Subtitle A—Tobacco Community** 18 **Revitalization Trust Fund**

19 **SEC. 911. ESTABLISHMENT OF TRUST FUND.**

20 (a) IN GENERAL.—There is established in the Treas-
 21 ury of the United States a trust fund to be known as the
 22 “Tobacco Community Revitalization Trust Fund”, con-
 23 sisting of such amounts as may be appropriated or cred-
 24 ited to the Trust Fund. The Trust Fund shall be adminis-
 25 tered by the Secretary.

1 (b) TRANSFERS TO TRUST FUND.—There are appro-
2 priated and transferred to the Trust Fund for each fiscal
3 year—

4 (1) amounts contributed by tobacco product
5 manufacturers and tobacco product importers under
6 section 102; and

7 (2) amounts made available to the Trust Fund
8 out of funds allocated through national tobacco set-
9 tlement legislation.

10 (c) REPAYABLE ADVANCES.—

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

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

21 (3) RATE OF INTEREST.—Interest on an ad-
22 vance made under this subsection shall be at a rate
23 determined by the Secretary of Treasury (as of the
24 close of the calendar month preceding the month in
25 which the advance is made) that is equal to the cur-

1 rent average market yield on outstanding marketable
 2 obligations of the United States with remaining pe-
 3 riod to maturity comparable to the anticipated pe-
 4 riod during which the advance will be outstanding.

5 (d) EXPENDITURES FROM TRUST FUND.—Amounts
 6 in the Trust Fund shall be available for making expendi-
 7 tures after October 1, 1998, to meet those necessary obli-
 8 gations of the Federal Government that are authorized to
 9 be paid under—

10 (1) section 201 for payments for lost tobacco
 11 quota for each of fiscal years 1999 through 2023,
 12 but not to exceed \$1,600,000,000 for any fiscal year
 13 except to the extent the payments are made in ac-
 14 cordance with section 201(j);

15 (2) section 202 for industry payments for all
 16 costs of the Department of Agriculture associated
 17 with the production of tobacco;

18 (3) section 203 for tobacco community eco-
 19 nomic development grants, but not to exceed—

20 (A) \$400,000,000 for each of fiscal years
 21 1999 through 2008, less any amount required
 22 to be paid under section 202 for the fiscal year;
 23 and

24 (B) \$450,000,000 for each of fiscal year
 25 2009 through 2023, less any amount required

1 to be paid under section 202 during the fiscal
2 year;

3 (4) section 301 for assistance provided under
4 the tobacco worker transition program, but not to
5 exceed \$50,000,000 for any fiscal year; and

6 (5) subpart 9 of part A of title IV of the High-
7 er Education Act of 1965 for farmer opportunity
8 grants, but not to exceed—

9 (A) \$42,500,000 for each of the academic
10 years 1999–2000 through 2003–2004;

11 (B) \$50,000,000 for each of the academic
12 years 2004–2005 through 2008–2009;

13 (C) \$57,500,000 for each of the academic
14 years 2009–2010 through 2013–2014;

15 (D) \$65,000,000 for each of the academic
16 years 2014–2015 through 2018–2019; and

17 (E) \$72,500,000 for each of the academic
18 years 2019–2020 through 2023–2024.

19 (e) BUDGETARY TREATMENT.—This section con-
20 stitutes budget authority in advance of appropriations
21 Acts and represents the obligation of the Federal Govern-
22 ment to provide payments to States and eligible persons
23 in accordance with this title.

1 **SEC. 912. CONTRIBUTIONS BY TOBACCO PRODUCT MANU-**
2 **FACTURERS AND IMPORTERS.**

3 (a) DEFINITION OF MARKET SHARE.—In this sec-
4 tion, the term “market share” means the ratio of—

5 (1) the tax liability of a tobacco product manu-
6 facturer or tobacco product importer (as defined in
7 section 2) for a calendar year under section 5703 of
8 the Internal Revenue Code of 1986; to

9 (2) the tax liability of all tobacco product man-
10 ufacturers or tobacco product importers (as defined
11 in section 2) for the calendar year under section
12 5703 of the Internal Revenue Code of 1986.

13 (b) DETERMINATIONS.—Not later than September
14 30 of each fiscal year, the Secretary of the Treasury
15 shall—

16 (1) determine—

17 (A) the market share of each tobacco prod-
18 uct manufacturer or tobacco product importer
19 during the most recent calendar year;

20 (B) the total amount of assessments pay-
21 able for the subsequent fiscal year under sub-
22 section (c); and

23 (C) the amount of an assessment payable
24 by the tobacco product manufacturer or tobacco
25 product importer for the fiscal year under sub-
26 section (d); and

1 (2) notify each tobacco product manufacturer
 2 and tobacco product importer of the determinations
 3 made under paragraph (1) with respect to the manu-
 4 facturer or importer.

5 (c) TOTAL AMOUNT OF ASSESSMENTS.—

6 (1) IN GENERAL.—The total amount of assess-
 7 ments payable by all tobacco product manufacturers
 8 and tobacco product importers into the Trust Fund
 9 for a fiscal year shall be equal to—

10 (A) the amount of the contribution to the
 11 Trust Fund for the fiscal year required under
 12 paragraph (2); less

13 (B) any amount made available during the
 14 preceding fiscal year to the Trust Fund out of
 15 funds allocated through national tobacco settle-
 16 ment legislation.

17 (2) TRUST FUND CONTRIBUTIONS.—The
 18 amount of the contribution to the Trust Fund shall
 19 be—

20 (A) \$2,100,000,000 for each of fiscal years
 21 1999 through 2008;

22 (B) \$500,000,000 for each of fiscal years
 23 2009 through 2023; and

1 (C) for fiscal year 2024 and each subse-
 2 quent fiscal year, the amount payable under
 3 section 202.

4 (d) INDIVIDUAL AMOUNT OF ASSESSMENTS.—The
 5 amount of an assessment payable by each tobacco product
 6 manufacturer and tobacco product importer into the Trust
 7 Fund for a fiscal year shall be equal to the product ob-
 8 tained by multiplying—

9 (1) the total amount of assessments payable by
 10 all tobacco product manufacturers and tobacco prod-
 11 uct importers for the fiscal year under subsection
 12 (c); by

13 (2) the market share of the tobacco product
 14 manufacturer or tobacco product importer during
 15 the most recent calendar year determined under sub-
 16 section (b)(1)(A).

17 **Subtitle B—Agricultural Market** 18 **Transition Assistance**

19 **SEC. 921. PAYMENTS FOR LOST TOBACCO QUOTA.**

20 (a) IN GENERAL.—Beginning with the 1999 market-
 21 ing year, the Secretary shall make payments for lost to-
 22 bacco quota to eligible quota holders, quota lessees, and
 23 quota tenants as reimbursement for lost tobacco quota as
 24 a result of a decrease in demand for domestically produced
 25 tobacco.

1 (b) ELIGIBILITY.—To be eligible to receive payments
 2 under this section, a quota holder, quota lessee, or quota
 3 tenant shall—

4 (1) prepare and submit to the Secretary an ap-
 5 plication at such time, in such manner, and contain-
 6 ing such information as the Secretary may require,
 7 including information sufficient to make the dem-
 8 onstration required under paragraph (2); and

9 (2) demonstrate to the satisfaction of the Sec-
 10 retary that, with respect to the 1996 marketing
 11 year—

12 (A) the producer was a quota holder and
 13 realized income from the production of tobacco
 14 through—

15 (i) the active production of tobacco;

16 (ii) the lease and transfer of tobacco
 17 quota to another farm;

18 (iii) the rental of all or part of the
 19 farm of the quota holder, including the
 20 right to produce tobacco, to another to-
 21 bacco producer; or

22 (iv) the hiring of a quota tenant to
 23 produce tobacco;

24 (B) the producer was a quota lessee; or

25 (C) the producer was a quota tenant.

1 (c) BASE QUOTA LEVEL.—

2 (1) IN GENERAL.—The Secretary shall deter-
 3 mine, for each quota holder, quota lessee, and quota
 4 tenant, the base quota level for the 1994 through
 5 1996 marketing years.

6 (2) QUOTA HOLDERS.—The base quota level for
 7 a quota holder shall be equal to the average tobacco
 8 farm marketing quota established for the farm
 9 owned by the quota holder for the 1994 through
 10 1996 marketing years.

11 (3) QUOTA LESSEES.—The base quota level for
 12 a quota lessee shall be equal to—

13 (A) 50 percent of the average number of
 14 pounds of tobacco quota established for a farm
 15 for the 1994 through 1996 marketing years—

16 (i) that was leased and transferred to
 17 a farm owned by the quota lessee; or

18 (ii) for which the rights to produce
 19 the tobacco were rented to the quota les-
 20 see; less

21 (B) 25 percent of the average number of
 22 pounds of tobacco quota described in paragraph
 23 (A) for which a quota tenant was the principal
 24 producer of the tobacco quota.

1 (4) QUOTA TENANTS.—The base quota level for
2 a quota tenant shall be equal to the sum of—

3 (A) 50 percent of the average number of
4 pounds of tobacco quota established for a farm
5 for the 1994 through 1996 marketing years—

6 (i) that was owned by a quota holder;

7 and

8 (ii) for which the quota tenant was
9 the principal producer of the tobacco on
10 the farm; and

11 (B) 25 percent of the average number of
12 pounds of tobacco quota for the 1994 through
13 1996 marketing years—

14 (i)(I) that was leased and transferred
15 to a farm owned by the quota lessee; or

16 (II) for which the rights to produce
17 the tobacco were rented to the quota les-
18 see; and

19 (ii) for which the quota tenant was
20 the principal producer of the tobacco on
21 the farm.

22 (5) MARKETING QUOTAS OTHER THAN POUND-
23 AGE QUOTAS.—For each kind of tobacco for which
24 there is a marketing quota or allotment (on an acre-
25 age basis), the base quota level for each quota hold-

1 er, quota lessee, or quota tenant shall be determined
2 in accordance with this subsection (based on a
3 poundage conversion) in an amount equal to the
4 product obtained by multiplying—

5 (A) the average tobacco farm marketing
6 quota or allotment for the 1994 through 1996
7 marketing years; by

8 (B) the average county yield per acre for
9 the county in which the farm is located for the
10 kind of tobacco for the marketing years.

11 (d) PAYMENTS.—Except as otherwise provided in this
12 section, during any marketing year in which the national
13 marketing quota for a kind of tobacco is less than the av-
14 erage national marketing quota level for the kind of to-
15 bacco for the 1994 through 1996 marketing years, the
16 Secretary shall make payments for lost tobacco quota to
17 each quota holder, quota lessee, and quota tenant that is
18 eligible under subsection (b) in an amount that is equal
19 to the product obtained by multiplying—

20 (1) the percentage by which the national mar-
21 keting quota for the kind of tobacco is less than the
22 average national marketing quota level for the kind
23 of tobacco for the 1994 through 1996 marketing
24 years; by

1 (2) the base quota level for the quota holder,
2 quota lessee, or quota tenant; by

3 (3) \$4 per pound.

4 (e) LIFETIME LIMITATION ON PAYMENTS.—Except
5 as otherwise provided in this section, the total amount of
6 payments made under this section to a quota holder, quota
7 lessee, or quota tenant during the lifetime of the holder,
8 lessee, or tenant shall not exceed the product obtained by
9 multiplying—

10 (1) the base quota level for the quota holder,
11 quota lessee, or quota tenant; by

12 (2) \$8 per pound.

13 (f) LIMITATIONS ON AGGREGATE ANNUAL PAY-
14 MENTS.—

15 (1) IN GENERAL.—Except as otherwise pro-
16 vided in this subsection, the total amount payable
17 under this section for any marketing year shall not
18 exceed \$1,600,000,000.

19 (2) ACCELERATED PAYMENTS.—Paragraph (1)
20 shall not apply if accelerated payments for lost to-
21 bacco quota are made in accordance with subsection
22 (j).

23 (3) REDUCTIONS.—If the amount determined
24 under subsection (d) for a marketing year exceeds
25 the amount described in paragraph (1), the Sec-

1 retary shall make a pro rata reduction in the
 2 amounts payable to quota holders, quota lessees, and
 3 quota tenants under this section to ensure that the
 4 total amount of the payments for lost tobacco quota
 5 does not exceed the limitation established under
 6 paragraph (1).

7 (4) ROLLOVER OF PAYMENTS FOR LOST TO-
 8 BACCO QUOTA.—Subject to paragraph (1), if the
 9 Secretary makes a reduction in accordance with
 10 paragraph (3), the amount of the reduction shall be
 11 applied to the next marketing year and added to the
 12 payments for lost tobacco for the marketing year.

13 (g) SUBSEQUENT SALE AND TRANSFER OF
 14 QUOTA.—Effective beginning January 1, 1999, on the
 15 sale and transfer of a farm marketing quota under section
 16 316(g) or 319(g) of the Agricultural Adjustment Act of
 17 1938 (7 U.S.C. 1314b(g), 1314e(g))—

18 (1) the person who sold and transferred the
 19 quota shall have—

20 (A) the base quota level attributable to the
 21 person reduced by the base quota level attrib-
 22 utable to the quota that is sold and transferred;
 23 and

24 (B) the lifetime limitation on payments es-
 25 tablished under subsection (e) attributable to

1 the person reduced by the product obtained by
 2 multiplying—

3 (i) the base quota level attributable to
 4 the quota; by

5 (ii) \$8 per pound; and

6 (2) the person who acquired the quota shall
 7 have—

8 (A) the base quota level attributable to the
 9 person increased by the base quota level attrib-
 10 utable to the quota that was sold and trans-
 11 ferred; and

12 (B) the lifetime limitation on payments es-
 13 tablished under subsection (e) attributable to
 14 the person—

15 (i) increased by the product obtained
 16 by multiplying—

17 (I) the base quota level attrib-
 18 utable to the quota; by

19 (II) \$8 per pound; but

20 (ii) decreased by any payments for
 21 lost tobacco quota previously made that
 22 are attributable to the quota that was sold
 23 and transferred.

24 (h) SALE OR TRANSFER OF FARM.—On the sale or
 25 transfer of ownership of a farm that is owned by a quota

1 holder, the base quota level established under subsection
 2 (c), the right to payments under subsection (d), and the
 3 lifetime limitation on payments established under sub-
 4 section (e) shall transfer to the new owner of the farm
 5 to the same extent and in the same manner as those sub-
 6 sections applied to the previous quota holder.

7 (i) DEATH OF QUOTA LESSEE OR QUOTA TENANT.—

8 If a quota lessee or quota tenant who is entitled to pay-
 9 ments under this section dies and is survived by a spouse
 10 or 1 or more dependents, the right to receive the payments
 11 shall transfer to the surviving spouse or, if there is no
 12 surviving spouse, to the surviving dependents in equal
 13 shares.

14 (j) ACCELERATION OF PAYMENTS.—

15 (1) IN GENERAL.—On the occurrence of any of
 16 the events described in paragraph (2), the Secretary
 17 shall make an accelerated lump sum payment for
 18 lost tobacco quota to each quota holder, quota les-
 19 see, and quota tenant for any affected kind of to-
 20 bacco in accordance with paragraph (3).

21 (2) TRIGGERING EVENTS.—The Secretary shall
 22 make accelerated payments under paragraph (1) if
 23 after the date of enactment of this title—

24 (A) for 3 consecutive marketing years, the
 25 national marketing quota for a kind of tobacco

1 is less than 50 percent of the national market-
 2 ing quota for the kind of tobacco for the 1996
 3 marketing year; or

4 (B) Congress repeals or makes ineffective,
 5 directly or indirectly, any provision of—

6 (i) section 316(g) of the Agricultural
 7 Adjustment Act of 1938 (7 U.S.C.
 8 1314b(g));

9 (ii) section 319(g) of the Agricultural
 10 Adjustment Act of 1938 (7 U.S.C.
 11 1314e(g));

12 (iii) section 106 of the Agricultural
 13 Act of 1949 (7 U.S.C. 1445);

14 (iv) section 106A of the Agricultural
 15 Act of 1949 (7 U.S.C. 1445–1); or

16 (v) section 106B of the Agricultural
 17 Act of 1949 (7 U.S.C. 1445–2).

18 (3) AMOUNT.—The amount of the accelerated
 19 payments made to each quota holder, quota lessee,
 20 and quota tenant under this subsection shall be
 21 equal to—

22 (A) the amount of the lifetime limitation
 23 established for the quota holder, quota lessee,
 24 or quota tenant under subsection (e); less

1 (B) any payments for lost tobacco quota
 2 received by the quota holder, quota lessee, or
 3 quota tenant before the occurrence of any of
 4 the events described in paragraph (2).

5 **SEC. 922. INDUSTRY PAYMENTS FOR ALL DEPARTMENT**
 6 **COSTS ASSOCIATED WITH TOBACCO PRODUC-**
 7 **TION.**

8 (a) IN GENERAL.—The Secretary shall use such
 9 amounts as are necessary from the Trust Fund at the end
 10 of each fiscal year to reimburse the Secretary for—

11 (1) costs associated with the administration of
 12 programs established under this title and amend-
 13 ments made by this title;

14 (2) costs associated with the administration of
 15 the tobacco quota and price support programs ad-
 16 ministered by the Secretary;

17 (3) costs to the Federal Government of carrying
 18 out crop insurance programs for tobacco;

19 (4) costs associated with all agricultural re-
 20 search, extension, or education activities associated
 21 with tobacco;

22 (5) costs associated with the administration of
 23 loan association and cooperative programs for to-
 24 bacco producers, as approved by the Secretary; and

1 (6) any other costs incurred by the Department
2 of Agriculture associated with the production of to-
3 bacco.

4 (b) LIMITATIONS.—Amounts made available under
5 subsection (a) may not be used—

6 (1) to provide direct benefits to quota holders,
7 quota lessees, or quota tenants; or

8 (2) in a manner that results in a decrease, or
9 an increase relative to other crops, in the amount of
10 the crop insurance premiums assessed to active to-
11 bacco producers under the Federal Crop Insurance
12 Act (7 U.S.C. 1501 et seq.).

13 (c) DETERMINATIONS.—Not later than September
14 30, 1998, and each fiscal year thereafter, the Secretary
15 shall determine—

16 (1) the amount of costs described in subsection
17 (a); and

18 (2) the amount that will be provided under this
19 section as reimbursement for the costs.

20 **SEC. 923. TOBACCO COMMUNITY ECONOMIC DEVELOP-**
21 **MENT GRANTS.**

22 (a) AUTHORITY.—The Secretary shall make grants to
23 tobacco-growing States in accordance with this section to
24 enable the States to carry out economic development ini-
25 tiatives in tobacco-growing communities.

1 (b) APPLICATION.—To be eligible to receive payments
2 under this section, a State shall prepare and submit to
3 the Secretary an application at such time, in such manner,
4 and containing such information as the Secretary may re-
5 quire, including—

6 (1) a description of the activities that the State
7 will carry out using amounts received under the
8 grant;

9 (2) a designation of an appropriate State agen-
10 cy to administer amounts received under the grant;
11 and

12 (3) a description of the steps to be taken to en-
13 sure that the funds are distributed in accordance
14 with subsection (e).

15 (c) AMOUNT OF GRANT.—

16 (1) IN GENERAL.—From the amounts available
17 to carry out this section for a fiscal year, the Sec-
18 retary shall allot to each State an amount that bears
19 the same ratio to the amounts available as the total
20 income of the State derived from the production of
21 tobacco during the 1994 through 1996 marketing
22 years (as determined under paragraph (2)) bears to
23 the total income of all States derived from the pro-
24 duction of tobacco during the 1994 through 1996
25 marketing years.

1 (2) TOBACCO INCOME.—For the 1994 through
2 1996 marketing years, the Secretary shall determine
3 the amount of income derived from the production
4 of tobacco in each State and in all States.

5 (d) PAYMENTS.—

6 (1) IN GENERAL.—A State that has an applica-
7 tion approved by the Secretary under subsection (b)
8 shall be entitled to a payment under this section in
9 an amount that is equal to its allotment under sub-
10 section (c).

11 (2) FORM OF PAYMENTS.—The Secretary may
12 make payments under this section to a State in in-
13 stallments, and in advance or by way of reimburse-
14 ment, with necessary adjustments on account of
15 overpayments or underpayments, as the Secretary
16 may determine.

17 (3) REALLOTMENTS.—Any portion of the allot-
18 ment of a State under subsection (c) that the Sec-
19 retary determines will not be used to carry out this
20 section in accordance with an approved State appli-
21 cation required under subsection (b), shall be reallot-
22 ted by the Secretary to other States in proportion to
23 the original allotments to the other States.

24 (e) USE AND DISTRIBUTION OF FUNDS.—

1 (1) IN GENERAL.—Amounts received by a State
2 under this section shall be used to carry out eco-
3 nomic development activities, including—

4 (A) rural business enterprise activities de-
5 scribed in subsections (c) and (e) of section
6 310B of the Consolidated Farm and Rural De-
7 velopment Act (7 U.S.C. 1932);

8 (B) down payment loan assistance pro-
9 grams that are similar to the program described
10 in section 310E of the Consolidated Farm and
11 Rural Development Act (7 U.S.C. 1935);

12 (C) activities designed to help create pro-
13 ductive farm or off-farm employment in rural
14 areas to provide a more viable economic base
15 and enhance opportunities for improved in-
16 comes, living standards, and contributions by
17 rural individuals to the economic and social de-
18 velopment of tobacco communities;

19 (D) activities that expand existing infra-
20 structure, facilities, and services to capitalize on
21 opportunities to diversify economies in tobacco
22 communities and that support the development
23 of new industries or commercial ventures;

24 (E) activities by agricultural organizations
25 that provide assistance directly to active tobacco

1 producers to assist in developing other agricul-
2 tural activities that supplement tobacco-produc-
3 ing activities;

4 (F) initiatives designed to create or expand
5 locally owned value-added processing and mar-
6 keting operations in tobacco communities; and

7 (G) technical assistance activities by per-
8 sons to support farmer-owned enterprises, or
9 agriculture-based rural development enterprises,
10 of the type described in section 252 or 253 of
11 the Trade Act of 1974 (19 U.S.C. 2342, 2343).

12 (2) TOBACCO-GROWING COUNTIES.—Assistance
13 may be provided by a State under this section only
14 to assist a county in the State that has been deter-
15 mined by the Secretary to have in excess of
16 \$100,000 in income derived from the production of
17 tobacco during 1 or more of the 1994 through 1996
18 marketing years.

19 (3) DISTRIBUTION.—

20 (A) ECONOMIC DEVELOPMENT ACTIVI-
21 TIES.—Not less than 20 percent of the amounts
22 received by a State under this section shall be
23 used to carry out—

1 (i) economic development activities de-
2 scribed in subparagraph (E) or (F) of
3 paragraph (1); or

4 (ii) agriculture-based rural develop-
5 ment activities described in paragraph
6 (1)(G).

7 (B) TECHNICAL ASSISTANCE ACTIVI-
8 TIES.—Not less than 4 percent of the amounts
9 received by a State under this section shall be
10 used to carry out technical assistance activities
11 described in paragraph (1)(G).

12 (C) TOBACCO-GROWING COUNTIES.—To be
13 eligible to receive payments under this section,
14 a State shall demonstrate to the Secretary that
15 funding will be provided, during each 5-year pe-
16 riod for which funding is provided under this
17 section, for activities in each county in the
18 State that has been determined under para-
19 graph (2) to have in excess of \$100,000 in in-
20 come derived from the production of tobacco, in
21 amounts that are at least equal to the product
22 obtained by multiplying—

23 (i) the ratio that the tobacco produc-
24 tion income in the county determined
25 under paragraph (2) bears to the total to-

1 bacco production income for the State de-
2 termined under subsection (c); by

3 (ii) 50 percent of the total amounts
4 received by a State under this section dur-
5 ing the 5-year period.

6 (f) PREFERENCES IN HIRING.—A State may require
7 recipients of funds under this section to provide a pref-
8 erence in employment to—

9 (1) an individual who—

10 (A) during the 1996 calendar year, was
11 employed in the manufacture, processing, or
12 warehousing of tobacco or tobacco products, or
13 resided, in a county described in subsection
14 (e)(2); and

15 (B) is eligible for assistance under the to-
16 bacco worker transition program established
17 under section 301; or

18 (2) an individual who—

19 (A) during the 1996 marketing year, car-
20 ried out tobacco quota or relevant tobacco pro-
21 duction activities in a county described in sub-
22 section (e)(2);

23 (B) is eligible for a farmer opportunity
24 grant under subpart 9 of part A of title IV of
25 the Higher Education Act of 1965; and

1 (C) has successfully completed a course of
2 study at an institution of higher education.

3 **SEC. 924. MODIFICATIONS IN FEDERAL TOBACCO PRO-**
4 **GRAMS.**

5 (a) PROGRAM REFERENDA.—Section 312(c) of the
6 Agricultural Adjustment Act of 1938 (7 U.S.C. 1312(c))
7 is amended—

8 (1) by striking “(c) Within thirty” and insert-
9 ing the following:

10 “(c) REFERENDA ON QUOTAS.—

11 “(1) IN GENERAL.—Not later than 30”; and

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

13 “(2) REFERENDA ON PROGRAM CHANGES.—

14 “(A) IN GENERAL.—In the case of any
15 kind of tobacco for which marketing quotas are
16 in effect, on the receipt of a petition from more
17 than 5 percent of the producers of that kind of
18 tobacco in a State, the Secretary shall conduct
19 a statewide referendum on any proposal related
20 to the lease and transfer of tobacco quota with-
21 in a State requested by the petition that is au-
22 thorized under this part.

23 “(B) APPROVAL OF PROPOSALS.—If a ma-
24 jority of producers of the kind of tobacco in the
25 State approve a proposal in a referendum con-

1 ducted under subparagraph (A), the Secretary
2 shall implement the proposal in a manner that
3 applies to all producers and quota holders of
4 that kind of tobacco in the State.”.

5 (b) PURCHASE REQUIREMENTS.—Section 320B of
6 the Agricultural Adjustment Act of 1938 (7 U.S.C.
7 1314h) is amended—

8 (1) in subsection (c), by striking paragraph (1)
9 and inserting the following:

10 “(1) 105 percent of the average market price
11 for the kind of tobacco involved during the preceding
12 marketing year; by”; and

13 (2) by striking subsection (d) and inserting the
14 following:

15 “(d) USE OF PENALTY PAYMENTS.—An amount
16 equivalent to each penalty collected by the Secretary under
17 this section shall be transmitted by the Secretary to the
18 Secretary of the Treasury for deposit in the Tobacco Com-
19 munity Revitalization Trust Fund established under sec-
20 tion 101 of the LEAF Act.”.

21 (c) ELIMINATION OF TOBACCO MARKETING ASSESS-
22 MENT.—

23 (1) IN GENERAL.—Section 106 of the Agricul-
24 tural Act of 1949 (7 U.S.C. 1445(g)) is amended by
25 striking subsection (g).

1 (2) CONFORMING AMENDMENT.—Section
 2 422(c) of the Uruguay Round Agreements Act (Pub-
 3 lic Law 103–465; 7 U.S.C. 1445 note) is amended
 4 by striking “section 106(g), 106A, or 106B of the
 5 Agricultural Act of 1949 (7 U.S.C. 1445(g), 1445–
 6 1, or 1445–2)” and inserting “section 106A or
 7 106B of the Agricultural Act of 1949 (7 U.S.C.
 8 1445–1, 1445–2)”.

9 **Subtitle C—Farmer and Worker**
 10 **Transition Assistance**

11 **SEC. 931. TOBACCO WORKER TRANSITION PROGRAM.**

12 (a) GROUP ELIGIBILITY REQUIREMENTS.—

13 (1) CRITERIA.—A group of workers (including
 14 workers in any firm or subdivision of a firm involved
 15 in the manufacture, processing, or warehousing of
 16 tobacco or tobacco products) shall be certified as eli-
 17 gible to apply for adjustment assistance under this
 18 section pursuant to a petition filed under subsection

19 (b) if the Secretary of Labor determines that a sig-
 20 nificant number or proportion of the workers in such
 21 workers’ firm or an appropriate subdivision of the
 22 firm have become totally or partially separated, or
 23 are threatened to become totally or partially sepa-
 24 rated, and—

1 (A) the sales or production, or both, of
 2 such firm or subdivision have decreased abso-
 3 lutely; and

4 (B) the implementation of the national to-
 5 bacco settlement contributed importantly to
 6 such workers' separation or threat of separation
 7 and to the decline in the sales or production of
 8 such firm or subdivision.

9 (2) DEFINITION OF CONTRIBUTED IMPOR-
 10 TANTLY.—In paragraph (1)(B), the term “contrib-
 11 uted importantly” means a cause that is important
 12 but not necessarily more important than any other
 13 cause.

14 (3) REGULATIONS.—The Secretary shall issue
 15 regulations relating to the application of the criteria
 16 described in paragraph (1) in making preliminary
 17 findings under subsection (b) and determinations
 18 under subsection (c).

19 (b) PRELIMINARY FINDINGS AND BASIC ASSIST-
 20 ANCE.—

21 (1) FILING OF PETITIONS.—A petition for cer-
 22 tification of eligibility to apply for adjustment assist-
 23 ance under this section may be filed by a group of
 24 workers (including workers in any firm or subdivi-
 25 sion of a firm involved in the manufacture, process-

1 ing, or warehousing of tobacco or tobacco products)
2 or by their certified or recognized union or other
3 duly authorized representative with the Governor of
4 the State in which such workers' firm or subdivision
5 thereof is located.

6 (2) FINDINGS AND ASSISTANCE.—Upon receipt
7 of a petition under paragraph (1), the Governor
8 shall—

9 (A) notify the Secretary that the Governor
10 has received the petition;

11 (B) within 10 days after receiving the peti-
12 tion—

13 (i) make a preliminary finding as to
14 whether the petition meets the criteria de-
15 scribed in subsection (a)(1); and

16 (ii) transmit the petition, together
17 with a statement of the finding under
18 clause (i) and reasons for the finding, to
19 the Secretary for action under subsection
20 (c); and

21 (C) if the preliminary finding under sub-
22 paragraph (B)(i) is affirmative, ensure that
23 rapid response and basic readjustment services
24 authorized under other Federal laws are made
25 available to the workers.

1 (c) REVIEW OF PETITIONS BY SECRETARY; CERTIFI-
2 CATIONS.—

3 (1) IN GENERAL.—The Secretary, within 30
4 days after receiving a petition under subsection
5 (b)(2)(B)(ii), shall determine whether the petition
6 meets the criteria described in subsection (a)(1).
7 Upon a determination that the petition meets such
8 criteria, the Secretary shall issue to workers covered
9 by the petition a certification of eligibility to apply
10 for the assistance described in subsection (d).

11 (2) DENIAL OF CERTIFICATION.—Upon the de-
12 nial of a certification with respect to a petition
13 under paragraph (1), the Secretary shall review the
14 petition in accordance with the requirements of
15 other applicable assistance programs to determine if
16 the workers may be certified under such other provi-
17 sions.

18 (d) COMPREHENSIVE ASSISTANCE.—

19 (1) IN GENERAL.—Workers covered by a certifi-
20 cation issued by the Secretary under subsection
21 (c)(1) shall be provided with benefits and services
22 described in paragraph (2) in the same manner and
23 to the same extent as workers covered under a cer-
24 tification under subchapter A of title II of the Trade
25 Act of 1974 (19 U.S.C. 2271 et seq.), except that

1 the total amount of payments under this section for
2 any fiscal year shall not exceed \$50,000,000.

3 (2) BENEFITS AND SERVICES.—The benefits
4 and services described in this paragraph are the fol-
5 lowing:

6 (A) Employment services of the type de-
7 scribed in section 235 of the Trade Act of 1974
8 (19 U.S.C. 2295).

9 (B) Training described in section 236 of
10 the Trade Act of 1974 (19 U.S.C. 2296), ex-
11 cept that notwithstanding the provisions of sec-
12 tion 236(a)(2)(A) of such Act, the total amount
13 of payments for training under this section for
14 any fiscal year shall not exceed \$25,000,000.

15 (C) Tobacco worker readjustment allow-
16 ances, which shall be provided in the same man-
17 ner as trade readjustment allowances are pro-
18 vided under part I of subchapter B of chapter
19 2 of title II of the Trade Act of 1974 (19
20 U.S.C. 2291 et seq.), except that—

21 (i) the provisions of sections
22 231(a)(5)(C) and 231(c) of such Act (19
23 U.S.C. 2291(a)(5)(C), 2291(c)), authoriz-
24 ing the payment of trade readjustment al-
25 lowances upon a finding that it is not fea-

1 sible or appropriate to approve a training
2 program for a worker, shall not be applica-
3 ble to payment of allowances under this
4 section; and

5 (ii) notwithstanding the provisions of
6 section 233(b) of such Act (19 U.S.C.
7 2293(b)), in order for a worker to qualify
8 for tobacco readjustment allowances under
9 this section, the worker shall be enrolled in
10 a training program approved by the Sec-
11 retary of the type described in section
12 236(a) of such Act (19 U.S.C. 2296(a)) by
13 the later of—

14 (I) the last day of the 16th week
15 of such worker's initial unemployment
16 compensation benefit period; or

17 (II) the last day of the 6th week
18 after the week in which the Secretary
19 issues a certification covering such
20 worker.

21 In cases of extenuating circumstances re-
22 lating to enrollment of a worker in a train-
23 ing program under this section, the Sec-
24 retary may extend the time for enrollment
25 for a period of not to exceed 30 days.

1 (D) Job search allowances of the type de-
2 scribed in section 237 of the Trade Act of 1974
3 (19 U.S.C. 2297).

4 (E) Relocation allowances of the type de-
5 scribed in section 238 of the Trade Act of 1974
6 (19 U.S.C. 2298).

7 (e) INELIGIBILITY OF INDIVIDUALS RECEIVING PAY-
8 MENTS FOR LOST TOBACCO QUOTA.—No benefits or serv-
9 ices may be provided under this section to any individual
10 who has received payments for lost tobacco quota under
11 section 201.

12 (f) FUNDING.—Of the amounts in the Trust Fund,
13 the Secretary may use not to exceed \$50,000,000 for each
14 of fiscal years 1999 through 2008 to provide assistance
15 under this section.

16 (g) EFFECTIVE DATE.—This section shall take effect
17 on the date that is the later of—

18 (1) October 1, 1998; or

19 (2) the date on which legislation implementing
20 the national tobacco settlement is enacted.

21 (h) TERMINATION DATE.—No assistance, vouchers,
22 allowances, or other payments may be provided under this
23 section after the date that is the earlier of—

24 (1) the date that is 10 years after the effective
25 date of this section under subsection (g); or

1 (2) the date on which legislation establishing a
 2 program providing dislocated workers with com-
 3 prehensive assistance substantially similar to the as-
 4 sistance provided by this section becomes effective.

5 **SEC. 932. FARMER OPPORTUNITY GRANTS.**

6 Part A of title IV of the Higher Education Act of
 7 1965 (20 U.S.C. 1070 et seq.) is amended by adding at
 8 the end the following:

9 **“Subpart 9—Farmer Opportunity Grants**

10 **“SEC. 420D. STATEMENT OF PURPOSE.**

11 “‘It is the purpose of this subpart to assist in making
 12 available the benefits of postsecondary education to eligi-
 13 ble students (determined in accordance with section 420F)
 14 in institutions of higher education by providing farmer op-
 15 portunity grants to all eligible students.

16 **“SEC. 420E. PROGRAM AUTHORITY; AMOUNT AND DETER-**
 17 **MINATIONS; APPLICATIONS.**

18 “(a) PROGRAM AUTHORITY AND METHOD OF
 19 DISTRIBUTION.—

20 “(1) PROGRAM AUTHORITY.—From amounts
 21 made available under section 101(d)(5) of the LEAF
 22 Act, the Secretary, during the period beginning July
 23 1, 1999, and ending September 30, 2024, shall pay
 24 to each eligible institution such sums as may be nec-
 25 essary to pay to each eligible student (determined in

1 accordance with section 420F) for each academic
2 year during which that student is in attendance at
3 an institution of higher education, as an under-
4 graduate, a farmer opportunity grant in the amount
5 for which that student is eligible, as determined pur-
6 suant to subsection (b). Not less than 85 percent of
7 such sums shall be advanced to eligible institutions
8 prior to the start of each payment period and shall
9 be based upon an amount requested by the institu-
10 tion as needed to pay eligible students, except that
11 this sentence shall not be construed to limit the au-
12 thority of the Secretary to place an institution on a
13 reimbursement system of payment.

14 “(2) CONSTRUCTION.—Nothing in this section
15 shall be construed to prohibit the Secretary from
16 paying directly to students, in advance of the begin-
17 ning of the academic term, an amount for which the
18 students are eligible, in cases where the eligible in-
19 stitution elects not to participate in the disburse-
20 ment system required by paragraph (1).

21 “(3) DESIGNATION.—Grants made under this
22 subpart shall be known as ‘farmer opportunity
23 grants’.

24 “(b) AMOUNT OF GRANTS.—

25 “(1) AMOUNTS.—

1 “(A) IN GENERAL.—The amount of the
2 grant for a student eligible under this subpart
3 shall be—

4 “(i) \$1,700 for each of the academic
5 years 1999–2000 through 2003–2004;

6 “(ii) \$2,000 for each of the academic
7 years 2004–2005 through 2008–2009;

8 “(iii) \$2,300 for each of the academic
9 years 2009–2010 through 2013–2014;

10 “(iv) \$2,600 for each of the academic
11 years 2014–2015 through 2018–2019; and

12 “(v) \$2,900 for each of the academic
13 years 2019–2020 through 2023–2024.

14 “(B) PART-TIME RULE.—In any case
15 where a student attends an institution of higher
16 education on less than a full-time basis (includ-
17 ing a student who attends an institution of
18 higher education on less than a half-time basis)
19 during any academic year, the amount of the
20 grant for which that student is eligible shall be
21 reduced in proportion to the degree to which
22 that student is not so attending on a full-time
23 basis, in accordance with a schedule of reduc-
24 tions established by the Secretary for the pur-
25 poses of this subparagraph, computed in ac-

1 cordance with this subpart. Such schedule of re-
2 ductions shall be established by regulation and
3 published in the Federal Register.

4 “(2) MAXIMUM.—No grant under this subpart
5 shall exceed the cost of attendance (as described in
6 section 472) at the institution at which that student
7 is in attendance. If, with respect to any student, it
8 is determined that the amount of a grant exceeds
9 the cost of attendance for that year, the amount of
10 the grant shall be reduced to an amount equal to the
11 cost of attendance at such institution.

12 “(3) PROHIBITION.—No grant shall be awarded
13 under this subpart to any individual who is incarcer-
14 ated in any Federal, State, or local penal institution.

15 “(c) PERIOD OF ELIGIBILITY FOR GRANTS.—

16 “(1) IN GENERAL.—The period during which a
17 student may receive grants shall be the period re-
18 quired for the completion of the first undergraduate
19 baccalaureate course of study being pursued by that
20 student at the institution at which the student is in
21 attendance, except that any period during which the
22 student is enrolled in a noncredit or remedial course
23 of study as described in paragraph (2) shall not be
24 counted for the purpose of this paragraph.

1 “(2) CONSTRUCTION.—Nothing in this section
2 shall be construed to—

3 “(A) exclude from eligibility courses of
4 study that are noncredit or remedial in nature
5 and that are determined by the institution to be
6 necessary to help the student be prepared for
7 the pursuit of a first undergraduate baccalaureate degree or certificate or, in the case of
8 courses in English language instruction, to be
9 necessary to enable the student to utilize already existing knowledge, training, or skills;
10 and
11

12 “(B) exclude from eligibility programs of
13 study abroad that are approved for credit by
14 the home institution at which the student is
15 enrolled.
16

17 “(3) PROHIBITION.—No student is entitled to
18 receive farmer opportunity grant payments concurrently from more than 1 institution or from the Secretary and an institution.
19

20 “(d) APPLICATIONS FOR GRANTS.—

21 “(1) IN GENERAL.—The Secretary shall from
22 time to time set dates by which students shall file
23 applications for grants under this subpart. The filing
24 of applications under this subpart shall be coordi-
25

1 nated with the filing of applications under section
2 401(c).

3 “(2) INFORMATION AND ASSURANCES.—Each
4 student desiring a grant for any year shall file with
5 the Secretary an application for the grant containing
6 such information and assurances as the Secretary
7 may deem necessary to enable the Secretary to carry
8 out the Secretary’s functions and responsibilities
9 under this subpart.

10 “(e) DISTRIBUTION OF GRANTS TO STUDENTS.—
11 Payments under this section shall be made in accordance
12 with regulations promulgated by the Secretary for such
13 purpose, in such manner as will best accomplish the pur-
14 pose of this section. Any disbursement allowed to be made
15 by crediting the student’s account shall be limited to tui-
16 tion and fees and, in the case of institutionally owned
17 housing, room and board. The student may elect to have
18 the institution provide other such goods and services by
19 crediting the student’s account.

20 “(f) INSUFFICIENT FUNDING.—If, for any fiscal
21 year, the funds made available to carry out this subpart
22 from the Tobacco Community Revitalization Trust Fund
23 are insufficient to satisfy fully all grants for students de-
24 termined to be eligible under section 420F, the amount

1 of the grant provided under subsection (b) shall be re-
 2 duced on a pro rata basis among all eligible students.

3 “(g) TREATMENT OF INSTITUTIONS AND STUDENTS
 4 UNDER OTHER LAWS.—Any institution of higher edu-
 5 cation that enters into an agreement with the Secretary
 6 to disburse to students attending that institution the
 7 amounts those students are eligible to receive under this
 8 subpart shall not be deemed, by virtue of such agreement,
 9 to be a contractor maintaining a system of records to ac-
 10 complish a function of the Secretary. Recipients of farmer
 11 opportunity grants shall not be considered to be individual
 12 grantees for purposes of the Drug-Free Workplace Act of
 13 1988 (41 U.S.C. 701 et seq.).

14 **“SEC. 420F. STUDENT ELIGIBILITY.**

15 “(a) IN GENERAL.—In order to receive any grant
 16 under this subpart, a student shall—

17 “(1) be a member of a tobacco farm family in
 18 accordance with subsection (b);

19 “(2) be enrolled or accepted for enrollment in
 20 a degree, certificate, or other program (including a
 21 program of study abroad approved for credit by the
 22 eligible institution at which such student is enrolled)
 23 leading to a recognized educational credential at an
 24 institution of higher education that is an eligible in-

1 stitution in accordance with section 487, and not be
2 enrolled in an elementary or secondary school;

3 “(3) if the student is presently enrolled at an
4 institution of higher education, be maintaining satis-
5 factory progress in the course of study the student
6 is pursuing in accordance with subsection (c);

7 “(4) not owe a refund on grants previously re-
8 ceived at any institution of higher education under
9 this title, or be in default on any loan from a stu-
10 dent loan fund at any institution provided for in
11 part D, or a loan made, insured, or guaranteed by
12 the Secretary under this title for attendance at any
13 institution;

14 “(5) file with the institution of higher education
15 that the student intends to attend, or is attending,
16 a document, that need not be notarized, but that
17 shall include—

18 “(A) a statement of educational purpose
19 stating that the money attributable to such
20 grant will be used solely for expenses related to
21 attendance or continued attendance at such in-
22 stitution; and

23 “(B) such student’s social security num-
24 ber; and

25 “(6) be a citizen of the United States.

1 “(b) TOBACCO FARM FAMILIES.—

2 “(1) IN GENERAL.—For the purpose of sub-
3 section (a)(1), a student is a member of a tobacco
4 farm family if during calendar year 1996 the stu-
5 dent was—

6 “(A) an individual who—

7 “(i) is an active tobacco producer (as
8 defined in section 2 of the LEAF Act); or

9 “(ii) is otherwise actively engaged in
10 the production of tobacco;

11 “(B) a spouse, son, daughter, stepson, or
12 stepdaughter of an individual described in sub-
13 paragraph (A);

14 “(C) an individual—

15 “(i) who was a brother, sister, step-
16 brother, stepsister, son-in-law, or daughter-
17 in-law of an individual described in sub-
18 paragraph (A); and

19 “(ii) whose principal place of resi-
20 dence was the home of the individual de-
21 scribed in subparagraph (A); or

22 “(D) an individual who was a dependent
23 (within the meaning of section 152 of the Inter-
24 nal Revenue Code of 1986) of an individual de-
25 scribed in subparagraph (A).

1 “(2) ADMINISTRATION.—On request, the Sec-
 2 retary of Agriculture shall provide to the Secretary
 3 such information as is necessary to carry out this
 4 subsection.

5 “(c) SATISFACTORY PROGRESS.—

6 “(1) IN GENERAL.—For the purpose of sub-
 7 section (a)(3), a student is maintaining satisfactory
 8 progress if—

9 “(A) the institution at which the student is
 10 in attendance reviews the progress of the stu-
 11 dent at the end of each academic year, or its
 12 equivalent, as determined by the institution;
 13 and

14 “(B) the student has at least a cumulative
 15 C average or its equivalent, or academic stand-
 16 ing consistent with the requirements for grad-
 17 uation, as determined by the institution, at the
 18 end of the second such academic year.

19 “(2) SPECIAL RULE.—Whenever a student fails
 20 to meet the eligibility requirements of subsection
 21 (a)(3) as a result of the application of this sub-
 22 section and subsequent to that failure the student
 23 has academic standing consistent with the require-
 24 ments for graduation, as determined by the institu-
 25 tion, for any grading period, the student may, sub-

1 ject to this subsection, again be eligible under sub-
2 section (a)(3) for a grant under this subpart.

3 “(3) WAIVER.—Any institution of higher edu-
4 cation at which the student is in attendance may
5 waive paragraph (1) or (2) for undue hardship based
6 on—

7 “(A) the death of a relative of the student;

8 “(B) the personal injury or illness of the
9 student; or

10 “(C) special circumstances as determined
11 by the institution.

12 “(d) STUDENTS WHO ARE NOT SECONDARY SCHOOL
13 GRADUATES.—In order for a student who does not have
14 a certificate of graduation from a school providing second-
15 ary education, or the recognized equivalent of such certifi-
16 cate, to be eligible for any assistance under this subpart,
17 the student shall meet either 1 of the following standards:

18 “(1) EXAMINATION.—The student shall take an
19 independently administered examination and shall
20 achieve a score, specified by the Secretary, dem-
21 onstrating that such student can benefit from the
22 education or training being offered. Such examina-
23 tion shall be approved by the Secretary on the basis
24 of compliance with such standards for development,

1 administration, and scoring as the Secretary may
2 prescribe in regulations.

3 “(2) DETERMINATION.—The student shall be
4 determined as having the ability to benefit from the
5 education or training in accordance with such proc-
6 ess as the State shall prescribe. Any such process
7 described or approved by a State for the purposes of
8 this section shall be effective 6 months after the date
9 of submission to the Secretary unless the Secretary
10 disapproves such process. In determining whether to
11 approve or disapprove such process, the Secretary
12 shall take into account the effectiveness of such
13 process in enabling students without secondary
14 school diplomas or the recognized equivalent to bene-
15 fit from the instruction offered by institutions utiliz-
16 ing such process, and shall also take into account
17 the cultural diversity, economic circumstances, and
18 educational preparation of the populations served by
19 the institutions.

20 “(e) SPECIAL RULE FOR CORRESPONDENCE
21 COURSES.—A student shall not be eligible to receive a
22 grant under this subpart for a correspondence course un-
23 less such course is part of a program leading to an associ-
24 ate, bachelor, or graduate degree.

1 “(f) COURSES OFFERED THROUGH TELECOMMUNI-
2 CATIONS.—

3 “(1) RELATION TO CORRESPONDENCE
4 COURSES.—A student enrolled in a course of in-
5 struction at an eligible institution of higher edu-
6 cation (other than an institute or school that meets
7 the definition in section 521(4)(C) of the Carl D.
8 Perkins Vocational and Applied Technology Edu-
9 cation Act (20 U.S.C. 2471(4)(C))) that is offered
10 in whole or in part through telecommunications and
11 leads to a recognized associate, bachelor, or graduate
12 degree conferred by such institution shall not be
13 considered to be enrolled in correspondence courses
14 unless the total amount of telecommunications and
15 correspondence courses at such institution equals or
16 exceeds 50 percent of such courses.

17 “(2) RESTRICTION OR REDUCTIONS OF FINAN-
18 CIAL AID.—A student’s eligibility to receive a grant
19 under this subpart may be reduced if a financial aid
20 officer determines under the discretionary authority
21 provided in section 479A that telecommunications
22 instruction results in a substantially reduced cost of
23 attendance to such student.

24 “(3) DEFINITION.—For the purposes of this
25 subsection, the term ‘telecommunications’ means the

1 use of television, audio, or computer transmission,
2 including open broadcast, closed circuit, cable,
3 microwave, or satellite, audio conferencing, computer
4 conferencing, or video cassettes or discs, except that
5 such term does not include a course that is delivered
6 using video cassette or disc recordings at such insti-
7 tution and that is not delivered in person to other
8 students of that institution.

9 “(g) STUDY ABROAD.—Nothing in this subpart shall
10 be construed to limit or otherwise prohibit access to study
11 abroad programs approved by the home institution at
12 which a student is enrolled. An otherwise eligible student
13 who is engaged in a program of study abroad approved
14 for academic credit by the home institution at which the
15 student is enrolled shall be eligible to receive a grant under
16 this subpart, without regard to whether such study abroad
17 program is required as part of the student’s degree
18 program.

19 “(h) VERIFICATION OF SOCIAL SECURITY NUM-
20 BER.—The Secretary, in cooperation with the Commis-
21 sioner of Social Security, shall verify any social security
22 number provided by a student to an eligible institution
23 under subsection (a)(5)(B) and shall enforce the following
24 conditions:

1 “(1) PENDING VERIFICATION.—Except as pro-
2 vided in paragraphs (2) and (3), an institution shall
3 not deny, reduce, delay, or terminate a student’s eli-
4 gibility for assistance under this subpart because so-
5 cial security number verification is pending.

6 “(2) DENIAL OR TERMINATION.—If there is a
7 determination by the Secretary that the social secu-
8 rity number provided to an eligible institution by a
9 student is incorrect, the institution shall deny or ter-
10 minate the student’s eligibility for any grant under
11 this subpart until such time as the student provides
12 documented evidence of a social security number
13 that is determined by the institution to be correct.

14 “(3) CONSTRUCTION.—Nothing in this sub-
15 section shall be construed to permit the Secretary to
16 take any compliance, disallowance, penalty, or other
17 regulatory action against—

18 “(A) any institution of higher education
19 with respect to any error in a social security
20 number, unless such error was a result of fraud
21 on the part of the institution; or

22 “(B) any student with respect to any error
23 in a social security number, unless such error
24 was a result of fraud on the part of the
25 student.”.

Subtitle D—Immunity

SEC. 941. GENERAL IMMUNITY FOR TOBACCO PRODUCERS AND WAREHOUSERS.

Notwithstanding any other provision of this title, an active tobacco producer, tobacco-related growers association, or tobacco warehouse owner or employee may not be subject to liability in any Federal or State court for any cause of action resulting from the failure of any tobacco product manufacturer, distributor, or retailer to comply with national tobacco settlement legislation.

TITLE X—EFFECTIVE DATES AND OTHER PROVISIONS

SEC. 1001. EFFECTIVE DATES.

(a) IN GENERAL.—Except as provided in subsection (b), and as otherwise provided in this Act, the provisions of this Act shall take effect on the date of enactment of this Act.

(b) EXCEPTIONS.—The following provisions shall become effective as follows:

(1) The retail tobacco product display provisions under subtitle A of title I shall be applicable to retailers on the date that is 9 months after the date of enactment of this Act.

(2) The provisions relating to the display of tobacco product signs and displays by retailers under

1 subtitle A of title I shall be applicable to retailers on
2 the date that is 5 months after the date of enact-
3 ment of this Act.

4 (3) The provisions of subtitle A of title I relat-
5 ing to advertising shall be applicable on the date
6 that is 9 months after the date of enactment of this
7 Act.

8 (4) The labeling requirements of subtitle A of
9 title I and of chapter 9 of the Federal Food, Drug
10 and Cosmetic Act (as added by section 143(3) of
11 this Act) shall be applicable (as determined under
12 regulations promulgated by the Secretary) with re-
13 spect to—

14 (A) $\frac{1}{3}$ of all tobacco product packages, on
15 the date that is 90 days after the date of enact-
16 ment of this Act;

17 (B) $\frac{1}{3}$ of all tobacco product packages, on
18 the date that is 120 days after the date of en-
19 actment of this Act; and

20 (C) $\frac{1}{3}$ of all tobacco product packages, on
21 the date that is 180 days after the date of en-
22 actment of this Act.

23 (5) The provisions of section 105 relating to the
24 sponsorship of events shall be applicable on Decem-
25 ber 31, 1998.

1 (6) The provisions of section 121 shall be appli-
2 cable on the date that is 3 months after the date of
3 enactment of this Act.

4 (7) The provisions of section 122 relating to
5 vending machines shall be applicable on the date
6 that is 12 months after the date of enactment of
7 this Act.

8 (8) The provisions of section 122 relating to
9 minimum package size shall be applicable on the
10 date that is 3 months after the date of enactment
11 of this Act.

12 (9) The provisions of section 122 relating to
13 vending machines shall be applicable on the date
14 that is 12 months after the date of enactment of
15 this Act.

16 (10) The provisions of section 122 relating to
17 sampling shall be applicable on the date that is 3
18 months after the date of enactment of this Act.

19 (11) The provisions of section 909 of the Fed-
20 eral Food, Drug and Cosmetic Act (as added by sec-
21 tion 143(3) of this Act) relating to good manufac-
22 turing practices shall be applicable on the date that
23 is 24 months after the date of enactment of this Act
24 or on a date determined appropriate by the Sec-
25 retary.

1 (12) The provisions of subtitle F of title I relat-
2 ing to corporate compliance shall be applicable on
3 the date that is 12 months after the date of enact-
4 ment of this Act.

5 **SEC. 1002. NATIVE AMERICANS.**

6 (a) INDIAN COUNTRY.—The provisions of this Act (or
7 an amendment made by this Act) shall apply to the manu-
8 facture, distribution, and sale of tobacco products within
9 Indian country.

10 (b) INDIAN TRIBES.—To the extent that an Indian
11 tribe or tribal organization engages in the manufacture,
12 distribution, or sale of tobacco products, the provisions of
13 this Act (or an amendment made by this Act) shall apply
14 to such tribe or organization.

15 (c) PAYMENTS TO TRUST FUND.—Any Indian tribe
16 or tribal organization that engages in the manufacturer
17 of tobacco products shall be subject to liability under sec-
18 tion 402, or shall be considered a non-participating manu-
19 facturer for purposes of section 613, and shall be subject
20 to surcharges under section 205.

21 (d) APPLICATION OF FDA REQUIREMENTS.—

22 (1) IN GENERAL.—The Secretary shall promul-
23 gate regulations to provide for the application of the
24 requirements of the Food, Drug and Cosmetic Act

1 to tobacco products manufactured, distributed, or
2 sold within Indian country.

3 (2) ELIGIBILITY FOR ASSISTANCE.—Under the
4 regulations promulgated under paragraph (1), the
5 Secretary may provide assistance to an Indian tribe
6 or tribal organization in meeting and enforcing the
7 requirements under such regulations if—

8 (A) the tribe or organization has a govern-
9 ing body that has powers and carries out duties
10 that are similar to the powers and duties of
11 State or local governments;

12 (B) the functions to be exercised through
13 the use of such assistance relate to activities on
14 lands within the jurisdiction of the tribe or or-
15 ganization; and

16 (C) the tribe or organization is reasonably
17 expected to be capable of carrying out the func-
18 tions required by the Secretary.

19 (e) RETAIL LICENSING REQUIREMENTS.—

20 (1) IN GENERAL.—The requirements of subtitle
21 D of title I shall apply to retailers that sell tobacco
22 products within Indian country.

23 (2) SELF-REGULATION.—The Secretary shall
24 promulgate regulations to permit the Indian tribe or
25 tribal organization with jurisdiction over the lands

1 involved to implement a tribal licensing program
2 that is at least as strict as the program in operation
3 in the State in which the land involved is located.

4 (3) IMPLEMENTATION BY SECRETARY.—If the
5 Secretary determines that the Indian tribe or tribal
6 organization is not qualified to administer the re-
7 quirements of subtitle D of title I, the Secretary
8 shall implement such requirements on behalf of the
9 tribe or organization or delegate such authority to
10 the State involved.

11 (f) ELIGIBILITY FOR PUBLIC HEALTH PAYMENTS.—

12 (1) IN GENERAL.—Except as provided in para-
13 graph (2), an Indian tribe or tribal organization
14 shall be considered a State for purposes of eligibility
15 under title V.

16 (2) PUBLIC HEALTH PROGRAM.—

17 (A) IN GENERAL.—Each State that re-
18 ceives a payment under section 502 shall set-
19 aside an appropriate portion, as determined
20 under regulations prescribed by the Secretary,
21 of such payment for use by Indian tribes or
22 tribal organizations within the State.

23 (B) AMOUNT.—The amount of any funds
24 under subparagraph for which an Indian tribe
25 or tribal organization is eligible shall be deter-

1 mined by the State based on the proportion of
2 the registered members of the tribe involved as
3 compared to the total population of all such
4 registered members in the State.

5 (C) USE.—Amounts provided to a tribe or
6 organization under this paragraph shall be used
7 as provided for in section 504 and in accord-
8 ance with a plan submitted by the tribe or orga-
9 nization and approved by the Secretary as being
10 in compliance with this Act.

11 (D) REALLOTMENT.—Any amounts set-
12 aside and not expended under this paragraph
13 shall be reallocated among other eligible tribes
14 and organizations.

15 (g) OBLIGATION OF MANUFACTURERS.—

16 (1) PROHIBITION.—A manufacturer shall not
17 engage in any activity within Indian country that is
18 otherwise prohibited under this Act (or an amend-
19 ment made by this Act).

20 (2) LIMITATION ON SALE.—A manufacturer
21 shall not sell or otherwise distribute a tobacco prod-
22 uct for subsequent manufacture, distribution, or sale
23 to an Indian tribe or tribal organization, or provide
24 such products to a manufacturer, distributor, or re-
25 tailer that is subject to the jurisdiction of a tribe or

1 organization, except under the same terms and con-
2 ditions as the manufacturer imposes on other manu-
3 facturers, distributors, or retailers.

4 (h) DEFINITIONS.—In this section:

5 (1) INDIAN COUNTRY.—The term “Indian coun-
6 try” has the meaning given such term by section
7 1151 of title 18, United States Code.

8 (2) INDIAN TRIBE.—The term “Indian tribe”
9 has the meaning given to such term by section 4(e)
10 of the Indian Self-Determination and Education As-
11 sistance Act (25 U.S.C. 450b(e)).

12 (3) TRIBAL ORGANIZATION.—The term “tribal
13 organization” has the meaning given such term in
14 section 4 of the Indian Self Determination and Edu-
15 cation Assistance Act (25 U.S.C. 450b).

16 **SEC. 1003. PREEMPTION.**

17 (a) GENERAL PREEMPTION.—Except as otherwise
18 provided for in this section, nothing in this Act shall be
19 construed as prohibiting a State from imposing require-
20 ments, prohibitions, penalties or other measures to further
21 the purposes of this Act that are in addition to the re-
22 quirements, prohibitions, or penalties required under this
23 Act. To the extent not inconsistent with the purposes of
24 this Act, State and local governments may impose addi-

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

3 (b) ENFORCEMENT.—A State may not impose obliga-
4 tions or requirements relating to the enforcement of this
5 Act in a manner that conflicts with the provisions of title
6 VI.

7 (c) PUBLIC EXPOSURE TO SMOKE.—Nothing in title
8 III shall be construed to preempt or otherwise affect any
9 other Federal, State or local law which provides greater
10 protection from the health hazards of environmental to-
11 bacco smoke.

12 (d) TAXES.—Nothing in this Act shall be construed
13 to prohibit a State from imposing taxes on tobacco prod-
14 ucts or tobacco product manufacturers, distributors, or re-
15 tailers.

16 (e) NATIVE AMERICANS.—Except as provided in sec-
17 tion 902, a State may not impose obligations or require-
18 ments relating to the application of this Act to Indian
19 tribes and tribal organizations.