

105TH CONGRESS  
1ST SESSION

# S. 1492

To amend the Public Health Service Act and the Federal Food, Drug and Cosmetic Act to prevent the use of tobacco products by minors, to reduce the level of tobacco addiction, to compensate Federal and State Governments for a portion of the health costs of tobacco-related illnesses, to enhance the national investment in biomedical and basic scientific research, and to expand programs to address the needs of children, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

NOVEMBER 8, 1997

Mr. KENNEDY (for himself, Mr. LAUTENBERG, Mr. DURBIN, Mr. REED, and Mr. KERRY) introduced the following bill; which was read twice and referred to the Committee on Labor and Human Resources

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## A BILL

To amend the Public Health Service Act and the Federal Food, Drug and Cosmetic Act to prevent the use of tobacco products by minors, to reduce the level of tobacco addiction, to compensate Federal and State Governments for a portion of the health costs of tobacco-related illnesses, to enhance the national investment in biomedical and basic scientific research, and to expand programs to address the needs of children, and for other purposes.

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

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

2 (a) SHORT TITLE.—This Act may be cited as the  
3 “Healthy and Smoke Free Children 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 and purposes.

**TITLE I—AMENDMENTS TO THE PUBLIC HEALTH SERVICE ACT  
RELATING TO TOBACCO**

Sec. 101. Public health and education programs.

**“TITLE XXVIII—PUBLIC HEALTH AND EDUCATION PROGRAMS  
AND TOBACCO CONTROL**

“Sec. 2801. Definitions.

“Subtitle A—Public Health and Education Programs

“Sec. 2811. Payments to States.

“Sec. 2812. Public health programs.

“Sec. 2813. Biomedical research and child development investments.

“Sec. 2814. Tobacco victims compensation fund.

“Sec. 2815. Tobacco community transition assistance.

“Subtitle B—National Health Initiatives

“PART 1—NATIONAL BASIC AND CHILD DEVELOPMENT RESEARCH

“Sec. 2821. National Biomedical, Basic and Child Development Research  
Board.

“Sec. 2822. Grants for biomedical and basic research.

“Sec. 2823. Investments in healthy child development and research  
projects and training.

“PART 2—PUBLIC HEALTH PROGRAMS

“Sec. 2825. Research, counter-advertising, and CDC programs.

“Sec. 2826. National tobacco usage reduction and education block grant  
program.

“Subtitle C—Reduction in Underage Tobacco Use

“Sec. 2831. Purpose.

“Sec. 2832. Child tobacco use surveys.

“Sec. 2833. Reduction in underage tobacco product usage.

“Sec. 2834. Noncompliance.

“Sec. 2835. Use of amounts.

“Sec. 2836. Miscellaneous provisions.

“Subtitle D—Miscellaneous Provisions

- “Sec. 2841. Whistleblower protections.
- “Sec. 2842. National Tobacco Document Depository.
- “Sec. 2843. Tobacco Oversight and Compliance Board.
- “Sec. 2844. Preservation of State and local authority.
- “Sec. 2845. Regulations.

## TITLE II—FDA JURISDICTION OVER TOBACCO PRODUCTS

### Subtitle A—Amendments to the Federal Food, Drug and Cosmetic Act

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

## “CHAPTER IX—TOBACCO PRODUCTS

- “Sec. 901. Definitions.
- “Sec. 902. Purpose.
- “Sec. 903. Promulgation of regulations.
- “Sec. 904. Minimum requirements.
- “Sec. 905. Scientific Advisory Committee.
- “Sec. 906. Requirements relating to nicotine and other constituents.
- “Sec. 907. Reduced risk products.
- “Sec. 908. Good manufacturing practice standards.
- “Sec. 909. Disclosure and reporting of nontobacco ingredients and constituents.
- “Sec. 910. Tobacco product warnings, labeling and packaging.
- “Sec. 911. Statement of intended use.
- “Sec. 912. Miscellaneous provisions.

## TITLE III—STANDARDS TO REDUCE INVOLUNTARY EXPOSURE TO TOBACCO SMOKE

- Sec. 301. Standards to reduce involuntary exposure to tobacco smoke.

## TITLE IV—TOBACCO MARKET TRANSITION ASSISTANCE

- Sec. 401. Definitions.

### Subtitle A—Tobacco Quota Buyout Contracts and Producer Transition Payments

- Sec. 411. Quota owner buyout contracts.
- Sec. 412. Producer transition payments for quota tobacco.
- Sec. 413. Producer transition payments for non-quota tobacco.
- Sec. 414. Elements of contracts.

### Subtitle B—No Net Cost Tobacco Program

- Sec. 421. Budget deficit assessment.

### Subtitle C—Tobacco Community Empowerment Block Grants

- Sec. 431. Tobacco community empowerment block grants.

## TITLE V—MISCELLANEOUS PROVISIONS

- Sec. 501. Sense of the Senate.

1 **SEC. 2. FINDINGS AND PURPOSES.**

2 (a) FINDINGS.—Congress makes the following find-  
3 ings:

4 (1) Tobacco products are the foremost prevent-  
5 able health problem facing America today. More  
6 than 400,000 individuals die each year as a result  
7 of tobacco induced illnesses and conditions.

8 (2) Nicotine that is contained in tobacco prod-  
9 ucts is extremely addictive.

10 (3) The tobacco industry has historically tar-  
11 geted tobacco product marketing and promotional ef-  
12 forts towards minors in order to entrap them into a  
13 lifetime of smoking.

14 (4) Over 90 percent of individuals who smoke  
15 began smoking regularly while they were still mi-  
16 nors.

17 (5) Approximately 3000 minors begin smoking  
18 each day. 1000 of these minors will die prematurely  
19 from a tobacco induced illness or medical condition.

20 (6) Tobacco induced illnesses and medical con-  
21 ditions resulting from tobacco use cost the United  
22 States over \$100,000,000,000 each year.

23 (7) Each year the Federal Government incurs  
24 costs in excess of \$20,000,000,000 for the medical  
25 treatment of individuals suffering from tobacco in-  
26 duced illnesses and conditions.

1 (b) PURPOSES.—It is the purpose of this Act to—

2 (1) substantially reduce youth smoking;

3 (2) assist individuals who are currently addicted  
4 to tobacco products in overcoming that addiction;

5 (3) educate the public concerning the health  
6 dangers inherent in the use of tobacco products;

7 (4) fund medical research; and

8 (5) provide for the healthy development of  
9 young children and to enhance their learning capac-  
10 ity and improve the quality of their care.

11 **TITLE I—AMENDMENTS TO THE**  
12 **PUBLIC HEALTH SERVICE**  
13 **ACT RELATING TO TOBACCO**

14 **SEC. 101. PUBLIC HEALTH AND EDUCATION PROGRAMS.**

15 The Public Health Service Act (42 U.S.C. 201 et  
16 seq.) is amended by adding at the end thereof the follow-  
17 ing new title:

18 **“TITLE XXVIII—PUBLIC HEALTH**  
19 **AND EDUCATION PROGRAMS**  
20 **AND TOBACCO CONTROL**

21 **“SEC. 2801. DEFINITIONS.**

22 “In this title:

23 “(1) BRAND.—The term ‘brand’ means a vari-  
24 ety of a tobacco product distinguished by the tobacco

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

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

8           “(3) CIGARETTE.—The term ‘cigarette’ means  
9       any product which contains nicotine, is intended to  
10      be burned under ordinary conditions of use, and con-  
11      sists of—

12           “(A) any roll of tobacco wrapped in paper  
13      or in any substance not containing tobacco; and

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

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

1           “(5) CIGARETTE TOBACCO.—The term ‘ciga-  
 2       rette tobacco’ means any product that consists of  
 3       loose tobacco that contains or delivers nicotine and  
 4       is intended for use by persons in a cigarette. Unless  
 5       otherwise stated, the requirements of this title per-  
 6       taining to cigarettes shall also apply to cigarette to-  
 7       bacco.

8           “(6) COMMERCE.—The term ‘commerce’  
 9       means—

10           “(A) commerce between any State, the  
 11       District of Columbia, the Commonwealth of  
 12       Puerto Rico, Guam, the Virgin Islands, Amer-  
 13       ican Samoa, the Northern Mariana Islands or  
 14       any territory or possession of the United States;

15           “(B) commerce between points in any  
 16       State, the District of Columbia, the Common-  
 17       wealth of Puerto Rico, Guam, the Virgin Is-  
 18       lands, American Samoa, the Northern Mariana  
 19       Islands or any territory or possession of the  
 20       United States; or

21           “(C) commerce wholly within the District  
 22       of Columbia, Guam, the Virgin Islands, Amer-  
 23       ican Samoa, the Northern Mariana Islands, or  
 24       any territory or possession of the United States.

1           “(7) COMMISSIONER.—The term ‘Commis-  
2           sioner’ means the Commissioner of Food and Drugs.

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

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

16          “(10) MANUFACTURER.—The term ‘manufac-  
17          turer’ means any person, including any repacker or  
18          relabeler, who manufactures, fabricates, assembles,  
19          processes, or labels a finished tobacco product.

20          “(11) NICOTINE.—The term ‘nicotine’ means  
21          the chemical substance named 3-(1-Methyl-2-  
22          pyrrolidiny)pyridine or  $C_{10}H_{14}N_2$ , including any salt  
23          or complex of nicotine.

24          “(12) PACKAGE.—The term ‘package’ means a  
25          pack, box, carton, or container of any kind in which



1 tobacco products are offered for sale, sold, or other-  
2 wise distributed to consumers.

3 “(13) PERSON.—The term ‘person’ means an  
4 individual, partnership, corporation, or any other  
5 business or legal entity.

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

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

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

20 “(17) ROLL-YOUR-OWN TOBACCO.—The term  
21 ‘roll-your-own tobacco’ has the meaning given such  
22 term by section 5702(p) of the Internal Revenue  
23 Code of 1986.

24 “(18) SALE.—The term ‘sale’ includes the sell-  
25 ing, providing samples of, or otherwise making to-

1       bacco products available for personal consumption in  
2       any place within the scope of this title.

3           “(19) SECRETARY.—The term ‘Secretary’  
4       means the Secretary of Health and Human Services.

5           “(20) SMOKELESS TOBACCO.—The term  
6       ‘smokeless tobacco’ means any product that consists  
7       of cut, ground, powdered, or leaf tobacco that con-  
8       tains nicotine and that is intended to be placed in  
9       the oral or nasal cavity.

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

17          “(22) TOBACCO.—The term ‘tobacco’ means to-  
18       bacco in its unmanufactured form.

19          “(23) TOBACCO PRODUCT.—The term ‘tobacco  
20       product’ means cigarettes, cigarillos, cigarette to-  
21       bacco, little cigars, pipe tobacco, and smokeless to-  
22       bacco, and roll-your-own tobacco.

1       **“Subtitle A—Public Health and**  
2               **Education Programs**

3   **“SEC. 2811. PAYMENTS TO STATES.**

4       “(a) FUNDS.—

5               “(1) IN GENERAL.—Subject to subsection (d),  
6       there are hereby made available to carry out this  
7       section for each fiscal year an amount equal to the  
8       amount necessary to reimburse States as provided  
9       for in subsection (b).

10              “(2) FISCAL YEAR LIMITATION.—Amounts  
11       made available for a fiscal year under paragraph (1)  
12       shall be equal to—

13              “(A) 43 percent of the net increase in rev-  
14       enues received in the Treasury for such fiscal  
15       year attributable to any amendments made to  
16       chapter 52 of the Internal Revenue Code of  
17       1986 in the fiscal year in which this title is en-  
18       acted, as estimated by the Secretary; less

19              “(B) amounts made available for such fis-  
20       cal year under sections 2812 and 2814.

21       “(b) REIMBURSEMENT.—

22              “(1) IN GENERAL.—The Secretary shall use  
23       amounts made available under subsection (a) in each  
24       fiscal year to provide funds to each State to reim-  
25       burse such State for amounts expended by the State

1 for the treatment of individuals with tobacco-related  
2 illnesses or conditions, and to permit States to uti-  
3 lize the Federal share of such expended amounts to  
4 provide services for children.

5 “(2) AMOUNT.—The amount for which a State  
6 is eligible for under paragraph (1) shall be based on  
7 the ratio of the expenditures of the State under title  
8 XIX of the Social Security Act (42 U.S.C. 1396 et  
9 seq.) for fiscal year 1996 to the expenditures by all  
10 States under such title for such fiscal year.

11 “(3) ADJUSTMENT.—With respect to a fiscal  
12 year in which the amount determined under sub-  
13 section (a)(1) exceeds the limitation under sub-  
14 section (a)(2), the Secretary shall make pro rata re-  
15 ductions in the amounts provided to States under  
16 this subsection.

17 “(c) USE OF FUNDS.—

18 “(1) DETERMINATION.—With respect to each  
19 State, the Secretary shall determine the proportion  
20 of the reimbursement under subsection (b) for each  
21 fiscal year that is equal to the amount that has been  
22 paid to the State as the Federal medical assistance  
23 percentage (as defined in section 1905(b)) of the So-  
24 cial Security Act (42 U.S.C. 1396d(b)) expenditures  
25 by the State for the preceding fiscal year.

1           “(2) REQUIRED USE.—With respect to the  
2           amount determined under paragraph (1) for a State  
3           for a fiscal year, the Secretary shall not treat such  
4           amount as an overpayment under any joint Federal-  
5           State health program if the State certifies to the  
6           Secretary that such amount will be used by the  
7           State to serve the needs of children in the State  
8           under 1 or more of the following programs:

9                   “(A) An Even Start program under section  
10                   of the Head Start Act (42 U.S.C. 9801 et seq.).

11                   “(B) The Head Start program under the  
12                   Head Start Act (42 U.S.C. 9801 et seq.).

13                   “(C) A child care program under the Child  
14                   Care and Development Block Grant Act of  
15                   1990 (42 U.S.C. 658A et seq.).

16                   “(D) The Individuals with Disabilities  
17                   Education Act.

18                   “(E) The child care food program and  
19                   start-up and expansion funds for school break  
20                   programs and summer food programs under  
21                   section 17 of the National School Lunch Act  
22                   (42 U.S.C. 1766).

23                   “(F) The special supplemental food pro-  
24                   gram under section 17 of the Child Nutrition  
25                   Act of 1966 (42 U.S.C. 1786).

1           “(G) The Maternal and Child Health Serv-  
2           ices Block Grant program under title V of the  
3           Social Security Act (42 U.S.C. 701 et seq.).

4           “(H) The State Children’s Health Insur-  
5           ance Program of the State under title XXI of  
6           the Social Security Act (42 U.S.C. 1397aa et  
7           seq.).

8           “(I) The family preservation and support  
9           services program under section 430B of the So-  
10          cial Security Act.

11          “(J) State initiated programs that are de-  
12          signed to serve the health and developmental  
13          needs of children and are approved by the Sec-  
14          retary.

15          “(3) COORDINATION.—A State may use not to  
16          exceed 20 percent of the amount determined under  
17          paragraph (1) for the State for a fiscal year to—

18               “(A) improve linkages and coordination  
19               among programs serving children and families,  
20               including the provision of funds to outpost out-  
21               reach workers into Federally funded early child-  
22               hood programs to ensure effective enrollment in  
23               child health initiatives referred to in paragraph  
24               (2)(H);

1           “(B) fund local collaboratives which shall  
2           be required to use such funds on needs assess-  
3           ments, planning, and investments to maximize  
4           efforts to improve child development; and

5           “(C) fund innovative demonstrations that  
6           address the outstanding needs of children and  
7           families as assessed by State and local entities.

8           “(4) STATE PLAN.—To be eligible to receive  
9           funds under this subsection a State shall prepare  
10          and submit to the Secretary a State plan, at such  
11          time, in such manner, and containing such informa-  
12          tion as the Secretary may require, including a de-  
13          scription of the manner in which the State will use  
14          amounts provided under this subsection. Such plan  
15          shall demonstrate, based on standards established by  
16          the Secretary, that the State will comply with para-  
17          graph (6).

18          “(5) APPLICATION OF REQUIREMENTS.—The  
19          requirements of the respective provisions of law de-  
20          scribed in paragraph (2) shall apply to any funds  
21          made available under this subsection through State  
22          programs under any such provision of law to the  
23          same extent that such requirements would otherwise  
24          apply to such programs under such provisions of  
25          law.

1           “(6) SUPPLEMENT NOT SUPPLANT.—Amounts  
 2           provided to a State under this subsection shall be  
 3           used to supplement and not supplant other Federal,  
 4           State and local funds provided for programs that  
 5           serve the health and developmental needs of chil-  
 6           dren. Amounts provided to the State under any of  
 7           the provisions of law referred to in paragraph (2)  
 8           shall not be reduced solely as a result of the avail-  
 9           ability of funds under this section.

10           “(7) OVERPAYMENTS.—Any amount of the re-  
 11           imbursement of a State under paragraph (1) to  
 12           which paragraph (2) applies that is not used in ac-  
 13           cordance with this subsection shall be treated by the  
 14           Secretary as an overpayment under section 1903 of  
 15           the Social Security Act (42 U.S.C. 1396b). Any such  
 16           overpayments may be allotted among other States  
 17           under this subsection in proportion to the amount  
 18           that the State originally received under this section.

19 **“SEC. 2812. PUBLIC HEALTH PROGRAMS.**

20           “(a) FUNDING.—There are hereby made available to  
 21           carry out this section—

22                   “(1) for fiscal year 1998, \$2,100,000,000;

23                   “(2) for fiscal year 1999, \$2,175,000,000 in-  
 24           creased by an amount equal to the increase in the  
 25           Consumer Price Index for the previous fiscal year



1 for all urban consumers (all items; U.S. city aver-  
2 age);

3 “(3) for fiscal year 2000, \$2,200,000,000 in-  
4 creased by an amount equal to the increase in the  
5 Consumer Price Index for the 2 previous fiscal years  
6 for all urban consumers (all items; U.S. city aver-  
7 age);

8 “(4) for fiscal year 2001, \$2,325,000,000 in-  
9 creased by an amount equal to the increase in the  
10 Consumer Price Index for the 3 previous fiscal years  
11 for all urban consumers (all items; U.S. city aver-  
12 age); and

13 “(5) for fiscal year 2002 and subsequent fiscal  
14 years, the amount made available for fiscal year  
15 2001 increased by an amount equal to the increase  
16 in the Consumer Price Index for the period encom-  
17 passing the fiscal years from 1998 to the fiscal year  
18 prior to the fiscal year involved for all urban con-  
19 sumers (all items; U.S. city average).

20 “(b) USE OF FUNDS.—Amounts made available for  
21 a fiscal year under subsection (a) shall be distributed in  
22 the following manner:

23 “(1) USE REDUCTION AND ADDICTION PREVEN-  
24 TION RESEARCH.—

1           “(A) IN GENERAL.—The amount described  
 2           in subparagraph (B) shall be used by Secretary  
 3           to carry out Federal tobacco use reduction and  
 4           addiction prevention research under section  
 5           2825(a).

6           “(B) AMOUNT.—The amount described in  
 7           this subparagraph is—

8                   “(i) for fiscal year 1998,  
 9                   \$100,000,000; and

10                   “(ii) for fiscal year 1999 and each  
 11                   subsequent fiscal year, the amount de-  
 12                   scribed in clause (i), increased for each  
 13                   such fiscal year by an amount equal to the  
 14                   increase in the Consumer Price Index for  
 15                   the period encompassing the fiscal years  
 16                   from 1998 to the fiscal year prior to the  
 17                   fiscal year involved for all urban consumers  
 18                   (all items; U.S. city average).

19           “(2) COUNTER-ADVERTISING.—

20           “(A) IN GENERAL.—The amount described  
 21           in subparagraph (B) shall be used by Secretary  
 22           to carry out the Federal tobacco product  
 23           counter-advertising campaign under section  
 24           2825(b).

1           “(B) AMOUNT.—The amount described in  
2           this subparagraph is—

3                   “(i)     for     fiscal     year     1998,  
4                   \$500,000,000; and

5                   “(ii) for fiscal year 1999 and each  
6                   subsequent fiscal year, the amount de-  
7                   scribed in clause (i), increased for each  
8                   such fiscal year by an amount equal to the  
9                   increase in the Consumer Price Index for  
10                  the period encompassing the fiscal years  
11                  from 1998 to the fiscal year prior to the  
12                  fiscal year involved for all urban consumers  
13                  (all items; U.S. city average).

14           “(3) CENTERS FOR DISEASE CONTROL AND  
15           PREVENTION PROGRAMS.—

16                   “(A) IN GENERAL.—The amount described  
17                   in subparagraph (B) shall be used by Secretary,  
18                   acting through the Centers for Disease Control  
19                   and Prevention, to carry programs to discour-  
20                   age the initiation of tobacco use, reduce the in-  
21                   cidence of tobacco use among current users,  
22                   and for other activities designed to reduce the  
23                   risk of dependence and injury from tobacco  
24                   products under section 2825(c).

1           “(B) AMOUNT.—The amount described in  
2 this subparagraph is—

3           “(i) for fiscal year 1998, \$60,000,000;

4           “(ii) for each of the fiscal years 1998  
5 and 2000, \$60,000,000, increased for each  
6 such fiscal year by an amount equal to the  
7 increase in the Consumer Price Index for  
8 the period encompassing the fiscal years  
9 from 1998 to the fiscal year prior to the  
10 fiscal year involved for all urban consumers  
11 (all items; U.S. city average);

12           “(iii) for fiscal year 2001,  
13 \$100,000,000, increased for such fiscal  
14 year by an amount equal to the increase in  
15 the Consumer Price Index for fiscal years  
16 1998 through 2000 for all urban consum-  
17 ers (all items; U.S. city average); and

18           “(iv) for fiscal year 2002 and subse-  
19 quent fiscal years, the amount described in  
20 clause (iii), increased for each such fiscal  
21 year by an amount equal to the increase in  
22 the Consumer Price Index for the period  
23 encompassing the fiscal years from 1998 to  
24 the fiscal year prior to the fiscal year in-

1                   volved for all urban consumers (all items;  
2                   U.S. city average).

3                   “(4) FOOD AND DRUG ADMINISTRATION.—

4                   “(A) IN GENERAL.—The amount described  
5                   in subparagraph (B) shall be used by Secretary  
6                   to assist in defraying the costs associated with  
7                   the activities of the Food and Drug Administra-  
8                   tion relating to tobacco.

9                   “(B) AMOUNT.—The amount described in  
10                  this subparagraph is—

11                  “(i)     for     fiscal     year     1998,  
12                  \$300,000,000; and

13                  “(ii)  for fiscal year 1999 and each  
14                  subsequent fiscal year, the amount de-  
15                  scribed in clause (i), increased for each  
16                  such fiscal year by an amount equal to the  
17                  increase in the Consumer Price Index for  
18                  the period encompassing the fiscal years  
19                  from 1998 to the fiscal year prior to the  
20                  fiscal year involved for all urban consumers  
21                  (all items; U.S. city average).

22                  “(5) STATE BLOCK GRANTS.—

23                  “(A) IN GENERAL.—The amount described  
24                  in subparagraph (B) shall be used by Secretary  
25                  to make block grants to States under the Na-

1           tional Tobacco Usage Reduction and Education  
2           Block Grant Program under section 2826.

3           “(B) AMOUNT.—The amount described in  
4           this subparagraph is—

5                   “(i)     for     fiscal     year     1998,  
6                   \$1,144,000,000;

7                   “(ii)    for     fiscal     year     1999,  
8                   \$1,215,000,000, increased for such fiscal  
9                   year by an amount equal to the increase in  
10                  the Consumer Price Index for the previous  
11                  fiscal year for all urban consumers (all  
12                  items; U.S. city average);

13                  “(iii)   for     fiscal     year     2000,  
14                  \$1,240,000,000, increased for such fiscal  
15                  year by an amount equal to the increase in  
16                  the Consumer Price Index for fiscal years  
17                  1998 through 2000 for all urban consum-  
18                  ers (all items; U.S. city average);

19                  “(iv)    for     fiscal     year     2001,  
20                  \$1,325,000,000, increased for such fiscal  
21                  year by an amount equal to the increase in  
22                  the Consumer Price Index for fiscal years  
23                  1998 through 2000 for all urban consum-  
24                  ers (all items; U.S. city average);

“(v) for each of the fiscal years 2002 through 2008, \$1,825,000,000, increased for each such fiscal year by an amount equal to the increase in the Consumer Price Index for the period encompassing the fiscal years from 1998 to the fiscal year prior to the fiscal year involved for all urban consumers (all items; U.S. city average); and

“(vi) for fiscal year 2009 and subsequent fiscal years, \$1,750,000,000, increased for each such fiscal year by an amount equal to the increase in the Consumer Price Index for fiscal years 1998 through the fiscal year previous to the fiscal year for which the determination is being made for all urban consumers (all items; U.S. city average).

**“SEC. 2813. BIOMEDICAL RESEARCH AND CHILD DEVELOPMENT INVESTMENTS.**

“(a) FUNDING.—There are hereby made available to carry out this section for each fiscal year an amount equal to 57 percent of the net increase in revenues received in the Treasury for such fiscal year attributable to any amendments made to chapter 52 of the Internal Revenue

1 Code of 1986 in the fiscal year in which this title is en-  
2 acted, as estimated by the Secretary.

3 “(b) USE OF FUNDS.—Amounts made available for  
4 a fiscal year under subsection (a) shall be used to carry  
5 out national biomedical and basic scientific research activi-  
6 ties and child development and research activities under  
7 part 1 of subtitle C.

8 **“SEC. 2814. TOBACCO VICTIMS COMPENSATION FUND.**

9 “(a) FUNDING.—There are hereby made available to  
10 carry out this section for each fiscal year an amount equal  
11 to 14.2 percent of the net increase in revenues received  
12 in the Treasury for such fiscal year attributable to any  
13 amendments made to chapter 52 of the Internal Revenue  
14 Code of 1986 in the fiscal year in which this title is en-  
15 acted, as estimated by the Secretary.

16 “(b) USE OF FUNDS.—Amounts made available for  
17 a fiscal year under subsection (a) shall be used to provide  
18 assistance and compensation to individuals suffering from  
19 tobacco-related illnesses and conditions, under a plan to  
20 be developed by the Secretary, not later than 1 year after  
21 the date of enactment of this Act, and submitted to Con-  
22 gress for approval.



1 **“SEC. 2815. TOBACCO COMMUNITY TRANSITION ASSIST-**  
2 **ANCE.**

3 “(a) FUNDING.—There are hereby made available to  
4 carry out this section—

5 “(1) for buyouts of quotas under section 411—

6 “(A) \$3,100,000,000 for each of the fiscal  
7 years 1998 and 1999; and

8 “(B) \$3,000,000,000 for fiscal 2000; and

9 “(2) for block grants under section 431—

10 “(A) \$500,000,000 for each of the fiscal  
11 years 1998 and 1999;

12 “(B) \$800,000,000 for each of the fiscal  
13 years 2000 through 2002; and

14 “(C) \$400,000,000 for fiscal year 2003.

15 “(b) USE OF FUNDS.—Amounts made available for  
16 a fiscal year under subsection (a) shall remain available  
17 until expended (except that with respect to amounts under  
18 subsection (a)(1), such amounts shall only be available  
19 until September 30, 2001) and shall be used to provide  
20 tobacco transition assistance under title IV of the Healthy  
21 and Smoke Free Children Act.

**“Subtitle B—National Health  
Initiatives**

**“PART 1—NATIONAL BASIC AND CHILD  
DEVELOPMENT RESEARCH**

**“SEC. 2821. NATIONAL BIOMEDICAL, BASIC AND CHILD DE-  
VELOPMENT RESEARCH BOARD.**

“(a) ESTABLISHMENT.—There is established a Federal board to be known as the ‘National Biomedical and Basic Scientific Research Board’ (referred to in this subpart as the ‘Board’).

“(b) MEMBERSHIP.—

“(1) COMPOSITION.—The board shall be composed of—

“(A) 9 voting members to be appointed by the President from among individuals with expertise in biomedical research, basic research, child development, and medicine; and

“(B) 3 ex officio (nonvoting) members of which—

“(i) 1 shall be the Secretary;

“(ii) 1 shall be the Secretary of Education; and

“(iii) 1 shall be the Assistant to the President for Science and Technology.

1           “(2) TERMS.—A member of the Board under  
2 paragraph (1)(A) shall be appointed for a term of 6  
3 years, except that of the members first appointed—

4           “(A) 3 members shall be appointed for  
5 terms of 6 years;

6           “(B) 3 members shall be appointed for  
7 terms of 4 years; and

8           “(C) 3 members shall be appointed for  
9 terms of 2 years.

10          “(3) VACANCIES.—

11           “(A) IN GENERAL.—A vacancy on the  
12 Board shall be filled in the same manner in  
13 which the original appointment was made and  
14 shall be subject to any conditions which applied  
15 with respect to the original appointment.

16           “(B) FILLING UNEXPIRED TERM.—An in-  
17 dividual appointed to fill a vacancy on the  
18 Board shall be appointed for the unexpired  
19 term of the member replaced.

20           “(C) EXPIRATION OF TERMS.—The term  
21 of any member of the Board shall not expire be-  
22 fore the date on which the member’s successor  
23 takes office.

1       “(c) CHAIRPERSON.—The President shall designate  
2 a member of the Board appointed under subsection  
3 (b)(1)(A) as the Chairperson of the Board.

4       “(d) MEETINGS AND QUORUM.—

5           “(1) IN GENERAL.—The Commission shall meet  
6 at the call of the Chairperson.

7           “(2) INITIAL MEETING.—Not later than 30  
8 days after the date on which all members of the  
9 Board have been appointed, the Board shall hold its  
10 first meeting.

11           “(3) QUORUM.—A majority of the members of  
12 the Board appointed under subsection (b)(1)(A)  
13 shall constitute a quorum, but a lesser number of  
14 members may hold hearings.

15       “(e) PERSONNEL MATTERS.—

16           “(1) COMPENSATION.—Each member of the  
17 Board who is not an officer or employee of the Fed-  
18 eral Government shall be compensated at a rate  
19 equal to the daily equivalent of the annual rate of  
20 basic pay prescribed for level IV of the Executive  
21 Schedule under section 5315 of title 5, United  
22 States Code, for each day (including travel time)  
23 during which such member is engaged in the per-  
24 formance of the duties of the Board. All members of  
25 the Board who are officers or employees of the Unit-

1 ed States shall serve without compensation in addi-  
 2 tion to that received for their services as officers or  
 3 employees of the United States.

4 “(2) TRAVEL EXPENSES.—The members of the  
 5 Board shall be allowed travel expenses, including per  
 6 diem in lieu of subsistence, at rates authorized for  
 7 employees of agencies under subchapter I of chapter  
 8 57 of title 5, United States Code, while away from  
 9 their homes or regular places of business in the per-  
 10 formance of services for the Board.

11 “(3) STAFF.—

12 “(A) IN GENERAL.—The Chairperson of  
 13 the Board may, without regard to the civil serv-  
 14 ice laws and regulations, appoint and terminate  
 15 an executive director and such other additional  
 16 personnel as may be necessary to enable the  
 17 Board to perform its duties. The employment of  
 18 an executive director shall be subject to con-  
 19 firmation by the Board.

20 “(B) COMPENSATION.—The Chairperson  
 21 of the Board may fix the compensation of the  
 22 executive director and other personnel without  
 23 regard to the provisions of chapter 51 and sub-  
 24 chapter III of chapter 53 of title 5, United  
 25 States Code, relating to classification of posi-

1           tions and General Schedule pay rates, except  
2           that the rate of pay for the executive director  
3           and other personnel may not exceed the rate  
4           payable for level V of the Executive Schedule  
5           under section 5316 of such title.

6           “(4) DETAIL OF GOVERNMENT EMPLOYEES.—  
7           Any Federal Government employee may be detailed  
8           to the Board without reimbursement, and such de-  
9           tail shall be without interruption or loss of civil serv-  
10          ice status or privilege.

11          “(5) PROCUREMENT OF TEMPORARY AND  
12          INTERMITTENT SERVICES.—The Chairperson of the  
13          Board may procure temporary and intermittent serv-  
14          ices under section 3109(b) of title 5, United States  
15          Code, at rates for individuals which do not exceed  
16          the daily equivalent of the annual rate of basic pay  
17          prescribed for level V of the Executive Schedule  
18          under section 5316 of such title.

19          “(f) POWERS.—The Board shall award grants to, and  
20          enter into contracts with eligible entities under section  
21          2822 for the expansion of basic and biomedical research  
22          and to provide graduate training with respect to such re-  
23          search.

24          “(g) DELEGATION.—The Board may delegate all or  
25          a portion of grant making authority under subsection (f)

1 to the Secretary, the Secretary of Education, the Director  
 2 of the National Science Foundation, or the head of any  
 3 other Federal agency determined appropriate by the  
 4 Board.

5 “(h) AVAILABILITY OF FUNDS.—

6 “(1) IN GENERAL.—With respect to a fiscal  
 7 year, no funds shall be made available under this  
 8 part for such fiscal year until the Secretary certifies  
 9 that the amounts appropriated for each of the enti-  
 10 ties or activities described in subparagraphs (A) and  
 11 (B) of section 2822(a)(1) or subparagraphs (A), (B)  
 12 and (F) of section 2823(a)(1) for such fiscal year  
 13 has increased as compared to the amounts appro-  
 14 priated for the previous fiscal year—

15 “(A) by not less than the percentage in-  
 16 crease in the consumer price index, as deter-  
 17 mined by the Secretary of Labor; or

18 “(B) by an amount equal to the percentage  
 19 increase in the level of overall discretionary  
 20 spending for such fiscal year as compared to  
 21 the previous fiscal year;

22 whichever is greater.

23 “(2) APPLICATION TO CHILD DEVELOPMENT  
 24 ACTIVITIES.—With respect to a fiscal year, no funds  
 25 shall be made available under this part for such fis-

1 cal year until the Secretary certifies that the  
 2 amounts appropriated for each of the entities or ac-  
 3 tivities described in section 2823(a)(1)(F) for such  
 4 fiscal has increased as compared to the amounts ap-  
 5 propriated for the previous fiscal year—

6 “(A) by not less than the percentage in-  
 7 crease in the consumer price index, as deter-  
 8 mined by the Secretary of Labor; or

9 “(B) by an amount equal to the percentage  
 10 increase in the level of overall discretionary  
 11 spending for such fiscal year as compared to  
 12 the previous fiscal year;

13 whichever is less.

14 “(3) SUPPLEMENT NOT SUPPLANT.—Funds  
 15 made available for use under this part shall be used  
 16 to supplement and not supplant other funds appro-  
 17 priated to the entities described in section 2822(a)  
 18 and 2823(a). Amounts appropriated to such entities  
 19 under other provisions of law shall not be reduced  
 20 solely as a result of the availability of funds under  
 21 this section.



1 **“SEC. 2822. GRANTS FOR BIOMEDICAL AND BASIC RE-**  
 2 **SEARCH.**

3 “(a) ELIGIBLE ENTITIES.—To be eligible to receive  
 4 a grant or contract under section 2821(f) an entity shall  
 5 be—

6 “(1) the National Institutes of Health (includ-  
 7 ing a subdivision or grantee of such Institutes);

8 “(2) the National Science Foundation (includ-  
 9 ing a subdivision or grantee of such Foundation);

10 “(3) nationally recognized research hospitals;

11 “(4) universities with recognized programs of  
 12 basic and biomedical research;

13 “(5) research institutes with expertise in the  
 14 conduct of basic or biomedical research;

15 “(6) cancer research centers that meet the  
 16 standards of section 414; and

17 “(7) entities conducting quality basic or bio-  
 18 medical research as determined by the Board.

19 “(b) GRADUATE TRAINING.—Support may be pro-  
 20 vided under section 2821(f) for graduate training, includ-  
 21 ing the following:

22 “(1) Grants for portable fellowships as defined  
 23 for purposes of the National Science Foundation Act  
 24 of 1950 (42 U.S.C. 1861 et seq.).

25 “(2) Grants to support an additional year of  
 26 portable fellowship training to enhance the teaching

1 capabilities of fellows seeking careers in academic  
2 teaching settings.

3 “(3) Programs of student loan forgiveness for  
4 students in the sciences and biomedical sciences who  
5 pursue careers as teachers of science or biomedical  
6 science or researchers in such fields in nonprofit in-  
7 stitutions. Loans may be forgiven under this para-  
8 graph at the rate of—

9 “(A) 15 percent per year for the first and  
10 second fiscal years after the date of enactment  
11 of this title;

12 “(B) 20 percent per year for the third and  
13 fourth fiscal years after the date of enactment  
14 of this title; and

15 “(C) 30 percent per year for the fifth fiscal  
16 year after the date of enactment of this title.

17 “(4) Programs of postdoctoral fellowships for  
18 individuals qualifying for such fellowships under the  
19 authority of the National Science Foundation of Na-  
20 tional Institutes of Health.

21 “(5) Programs of grants to universities and  
22 other research facilities to assist in the equipping of  
23 laboratories for new researchers of exceptional prom-  
24 ise during the first 5 years of post-doctoral research.

1           “(6) Such other programs of grants and con-  
 2           tracts as the Board determines will contribute to in-  
 3           creasing the supply of high quality scientific and bio-  
 4           medical researchers.

5           “(c) FUNDING.—The Board shall use 50 percent of  
 6           the amount made available for a fiscal year under section  
 7           2813 to carry out this subpart in such fiscal year.

8           **“SEC. 2823. INVESTMENTS IN HEALTHY CHILD DEVELOP-**  
 9                               **MENT AND RESEARCH PROJECTS AND TRAIN-**  
 10                              **ING.**

11           “(a) CHILDREN’S RESEARCH, TRAINING AND DEM-  
 12           ONSTRATION PROJECTS.—

13           “(1) IN GENERAL.—The Secretary shall use not  
 14           to exceed 10 percent of the funds allocated for use  
 15           under this section to award grants of contracts for  
 16           the conduct and support of research, training and  
 17           demonstration projects relating to child health and  
 18           development.

19           “(2) ENTITIES ELIGIBLE FOR RESEARCH  
 20           PROJECTS.—To be eligible to receive a grant or con-  
 21           tract under paragraph (1) for the conduct or sup-  
 22           port of research an entity shall be—

23                           “(A) the National Institutes of Health (in-  
 24                           cluding a subdivision or grantee of such Insti-  
 25                           tutes);

1           “(B) the National Science Foundation (in-  
2           cluding a subdivision or grantee of the Founda-  
3           tion);

4           “(C) a nationally recognized research hos-  
5           pital;

6           “(D) a university with a recognized pro-  
7           gram of research or training on children’s de-  
8           velopment and health and childhood disabilities;  
9           and

10          “(E) entities conducting child development  
11          research and training; and

12          “(F) a public or private nonprofit organi-  
13          zation, agency, or partnership with the capacity  
14          to implement research findings on brain devel-  
15          opment in the early years of life and for the  
16          support of continual physical, intellectual, and  
17          social development of young children, including  
18          infants and toddlers with disabilities.

19          “(3) TRAINING PROJECTS.—Support may be  
20          provided under subparagraphs (D), (E) and (F) of  
21          paragraph (1) for training, including programs to  
22          support undergraduate and graduate training pro-  
23          grams to expand the early childhood development  
24          workforce by recruiting; training students for ca-  
25          reers in early childhood development and care, which

1 may include grants to institutions, scholarships, and  
 2 programs of loan work forgiveness; and preservice  
 3 and inservice training programs to enhance the qual-  
 4 ity of the existing child care workforce.

5 “(4) DEMONSTRATION PROJECTS.—Support  
 6 may be provided under subparagraphs (D), (E) and  
 7 (F) of paragraph (1) for demonstration projects in-  
 8 cluding public-private partnerships for paid leave to  
 9 enable mothers with infants to choose to stay at  
 10 home.

11 “(5) EVALUATIONS.—Each project under this  
 12 subsection shall include an evaluation component to  
 13 assess the effectiveness of the project in achieving its  
 14 goals.

15 “(b) CHILD DEVELOPMENT PROJECTS.—

16 “(1) IN GENERAL.—The Secretary shall use not  
 17 less than 90 percent of the funds allocated for use  
 18 under this section as follows:

19 “(A) INVESTMENTS FOR EARLY CHILD-  
 20 HOOD DEVELOPMENT.—60 percent of such  
 21 funds will be used for investments in early  
 22 childhood development as follows:

23 “(i) 10 percent to expand the Early  
 24 Head Start program under section 645A of  
 25 the Head Start Act (42 U.S.C. 9841).

“(ii) 20 percent to the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 658A et seq.) to provide certificates and grants to increase the availability and affordability of quality child care for children of working families from birth through school age, including children with disabilities.

“(iii) 25 percent to expand the Head Start program under the Head Start Act (42 U.S.C. 9801) to increase enrollment and responsiveness of such program.

“(iv) 5 percent to early childhood development programs under part C and section 619 of the Individuals with Disabilities Education Act.

Not less than 30 percent of amounts made available under clause (ii) shall be set-aside for innovative programs for babies and toddlers, including the development of family child care networks, start-up for infant care programs, the training of providers, or the provision of parent education and support.

“(B) IMPROVEMENT OF THE QUALITY OF CHILD CARE.—20 percent to establish a health

1 and safety fund through the Child Care and  
2 Development Block Grant Act of 1990 (42  
3 U.S.C. 658A et seq.), 50 percent of which shall  
4 be used to provide incentives to reward States  
5 that improve the quality of child care programs  
6 in the State by adopting the essential compo-  
7 nents of the child care program of the armed  
8 services or the essential components of other  
9 proven child care models. Such components in-  
10 clude the provision of training linked to in-  
11 creased wages, improved standards and enforce-  
12 ment, lower child to staff ratios, higher rates  
13 for accredited programs, and consumer edu-  
14 cation including resources referral services.

15 “(C) PROGRAMS TO PROMOTE HEALTHY  
16 BEHAVIOR.—20 percent to the Child Care and  
17 Development Block Grant Act of 1990 (42  
18 U.S.C. 658A et seq.) to expand the availability  
19 and affordability of quality before- and after-  
20 school care, and summer and weekend activities  
21 for school age (through 15 years of age) chil-  
22 dren, including children with disabilities, to pro-  
23 mote good health and academic achievement  
24 and to help in avoiding high risk behaviors. Eli-  
25 gible entities for grants under this clause shall

1 include elementary and secondary schools, com-  
 2 munity-based organizations, child care centers,  
 3 family child care homes, youth centers, or part-  
 4 nerships and should be targeted to communities  
 5 with high rates of poverty or at-risk children.

6 “(c) SUPPLEMENT NOT SUPPLANT.—Amounts pro-  
 7 vided to a State under this section shall be used to supple-  
 8 ment and not supplant other Federal, State and local  
 9 funds provided for programs that serve the health and de-  
 10 velopmental needs of children. Amounts provided to the  
 11 State under any of the provisions of law referred to in  
 12 this section shall not be reduced solely as a result of the  
 13 availability of funds under this section.

14 “(d) FUNDING.—The Board shall use 50 percent of  
 15 the amount made available for a fiscal year under section  
 16 2813 to carry out this subpart in such fiscal year.

## 17 **“PART 2—PUBLIC HEALTH PROGRAMS**

### 18 **“SEC. 2825. RESEARCH, COUNTER-ADVERTISING, AND CDC** 19 **PROGRAMS.**

20 “(a) REDUCTION AND ADDICTION PREVENTION RE-  
 21 SEARCH.—The Secretary shall provide for the conduct of  
 22 research concerning the development of methods, drugs,  
 23 and devices to discourage individuals from using tobacco  
 24 products and to assist individuals who use such products  
 25 in quitting such use.



1       “(b) COUNTER-ADVERTISING.—The Secretary shall  
2 carry out programs to reduce tobacco usage through  
3 media-based (such as counter-advertising campaigns) and  
4 nonmedia-based education, prevention and cessation cam-  
5 paigns designed to discourage the use of tobacco products  
6 by individuals and to encourage those who use such prod-  
7 ucts to quit.

8       “(c) CENTERS FOR DISEASE CONTROL AND PREVEN-  
9 TION PROGRAMS.—The Secretary, acting through the  
10 Centers for Disease Control and Prevention, shall carry  
11 programs to discourage the initiation of tobacco use, re-  
12 duce the incidence of tobacco use among current users,  
13 and for other activities designed to reduce the risk of de-  
14 pendence and injury from tobacco products.

15       “(d) FUNDING.—

16           “(1) RESEARCH.—The Secretary shall use  
17 amounts available under section 2812(b)(1) to carry  
18 out subsection (a).

19           “(2) COUNTER-ADVERTISING.—The Secretary  
20 shall use amounts available under section 2812(b)(2)  
21 to carry out subsection (b).

22           “(3) CDC PROGRAMS.—The Secretary shall use  
23 amounts available under section 2812(b)(3) to carry  
24 out subsection (c).

1 **“SEC. 2826. NATIONAL TOBACCO USAGE REDUCTION AND**  
2 **EDUCATION BLOCK GRANT PROGRAM.**

3 “(a) BLOCK GRANTS.—The Secretary shall award  
4 block grants to States to enable such States to carry out  
5 activities for the purpose of planning, carrying out, and  
6 evaluating tobacco use reduction and education activities  
7 described in subsection (c).

8 “(b) APPLICATION.—

9 “(1) IN GENERAL.—A State that desires to re-  
10 ceive a grant under subsection (a) shall prepare and  
11 submit to the Secretary an application, at such time,  
12 in such manner, and accompanied by such informa-  
13 tion as the Secretary may require.

14 “(2) CONTENTS.—An application submitted  
15 under paragraph (1) shall—

16 “(A) describe the activities that will be car-  
17 ried out using assistance under this section; and

18 “(B) provide such assurances as the Sec-  
19 retary determines to be necessary to carry out  
20 this section.

21 “(c) USE OF FUNDS.—A State shall use amounts re-  
22 ceived under this section to carry out the following activi-  
23 ties:

24 “(1) TOBACCO USE CESSATION.—

1           “(A) IN GENERAL.—Activities to assist in-  
2           dividuals in quitting the use of cigarettes or  
3           other tobacco products.

4           “(B) MODEL STATE PROGRAM.—The Sec-  
5           retary shall establish a model smoking cessation  
6           program that may be used by States in the de-  
7           sign of State-based smoking cessation pro-  
8           grams. Such model program shall provide for  
9           the provision of grants and other assistance by  
10          such States to eligible entities and individuals  
11          in the State for the establishment or adminis-  
12          tration of tobacco product use cessation pro-  
13          grams that are approved in accordance with  
14          subparagraph (D).

15          “(C) USE OF ASSISTANCE.—Under a State  
16          smoking cessation program under this para-  
17          graph an entity that receives assistance shall  
18          use such amounts to establish or administer to-  
19          bacco product use cessation programs that are  
20          approved in accordance with subparagraph (D).

21          “(D) APPROVAL OF CESSATION PROGRAM  
22          OR DEVICES.—Using the best available sci-  
23          entific information, the Secretary shall promul-  
24          gate regulations to provide for the approval of  
25          tobacco product use cessation programs and de-

1 vices. Such regulations shall be designed to en-  
 2 sure that tobacco product users, if requested,  
 3 are provided with reasonable access to safe and  
 4 effective cessation programs and devices. Such  
 5 regulations shall ensure that such individuals  
 6 have access to a broad range of cessation op-  
 7 tions that are tailored to the needs of the indi-  
 8 vidual tobacco user.

9 “(2) TOBACCO USAGE REDUCTION AND EDU-  
 10 CATION PROGRAM.—Activities—

11 “(A) to reduce tobacco usage through  
 12 media-based (such as counter-advertising cam-  
 13 paigns) and nonmedia-based education, preven-  
 14 tion and cessation campaigns designed to dis-  
 15 courage the use of tobacco products by individ-  
 16 uals who are under 18 years of age and to en-  
 17 courage those who use such products to quit;

18 “(B) to carry out informational campaigns  
 19 that are designed to discourage and de-glamor-  
 20 ize the use of tobacco products;

21 “(C) for tobacco use reduction in elemen-  
 22 tary and secondary schools; or

23 “(D) for community-based tobacco control  
 24 efforts that are designed to encourage commu-

1           nity involvement in reducing tobacco product  
2           use.

3           “(3) EVENT TRANSITIONAL SPONSORSHIP PRO-  
4       GRAM.—

5           “(A) IN GENERAL.—Activities for the tran-  
6           sitional sponsorship of certain activities, includ-  
7           ing grants to—

8                   “(i)(I) pay the costs associated with  
9                   the transitional sponsorship of an event or  
10                  activity;

11                  “(II) provide for the transitional spon-  
12                  sorship of an individual or team;

13                  “(III) pay the required entry fees as-  
14                  sociated with the participation of an indi-  
15                  vidual or team in an event or activity;

16                  “(IV) provide financial or technical  
17                  support to an individual or team in connec-  
18                  tion with the participation of that individ-  
19                  ual or team in an activity described in sub-  
20                  paragraph (C)(iii); or

21                  “(V) for any other purposes deter-  
22                  mined appropriate by the State; and

23                  “(ii) promote images or activities to  
24                  discourage individuals from using tobacco

1 products or encourage individuals who use  
2 such products to quit.

3 “(B) ELIGIBILITY.—A State program  
4 funded under this paragraph shall ensure that  
5 to be eligible to receive assistance under this  
6 paragraph an entity or individual shall prepare  
7 and submit to the State an application at such  
8 time, in such manner, and containing such in-  
9 formation as the State may require, including—

10 “(i) a description of the event, activ-  
11 ity, team, or entry for which the grant is  
12 to be provided;

13 “(ii) documentation that the event,  
14 activity, team, or entry involved was spon-  
15 sored or otherwise funded by a tobacco  
16 manufacturer or distributor prior to the  
17 date of the application; and

18 “(iii) a certification that the applicant  
19 is unable to secure funding for the event,  
20 activity, team, or entry involved from  
21 sources other than those described in  
22 clause (ii).

23 “(C) PERMISSIBLE SPONSORSHIP ACTIVI-  
24 TIES.—Events, activities, teams, or entries for

1           which a grant may be provided under this para-  
2           graph include—

3                   “(i) an athletic, musical, artistic, or  
4                   other social or cultural event or activity  
5                   that was sponsored in whole or in part by  
6                   a tobacco manufacturer or distributor prior  
7                   to the date of enactment of this title;

8                   “(ii) the participation of a team that  
9                   was sponsored in whole or in part by a to-  
10                  bacco manufacturer or distributor prior to  
11                  the date of enactment of this title, in an  
12                  athletic event or activity; and

13                  “(iii) the payment of a portion or all  
14                  of the entry fees of, or other financial or  
15                  technical support provided to, an individual  
16                  or team by a tobacco manufacturer or dis-  
17                  tributor prior to the date of enactment of  
18                  this title, for participation of the individual  
19                  in an athletic, musical, artistic, or other  
20                  social or cultural event.

21           “(d) ALLOCATION OF FUNDS.—A State shall ensure  
22           that amounts received under a block grant under sub-  
23           section (a) are used to carry out each of the activities de-  
24           scribed in subsection (c).

1 “(e) FUNDING.—The Secretary shall use amounts  
 2 available under section 2812(b)(4) to carry out this sec-  
 3 tion.

## 4 **“Subtitle C—Reduction in** 5 **Underage Tobacco Use**

### 6 **“SEC. 2831. PURPOSE.**

7 “It is the purpose of this subtitle to encourage the  
 8 achievement of reductions in the number of underage con-  
 9 sumers of tobacco products through the imposition of ad-  
 10 ditional financial deterrents relating to tobacco products  
 11 if certain underage tobacco-use reduction targets are not  
 12 met.

### 13 **“SEC. 2832. CHILD TOBACCO USE SURVEYS.**

14 “(a) ANNUAL PERFORMANCE SURVEY.—Not later  
 15 than 1 year after the date of the enactment of this Act  
 16 and annually thereafter the Secretary shall conduct a sur-  
 17 vey to determine the number of children who used each  
 18 manufacturer’s tobacco products within the past 30 days.

19 “(b) EXCLUSION OF CERTAIN AGES.—The Secretary  
 20 may exclude from the survey conducted under subsection  
 21 (a), children under the age of 12 years (or such other less-  
 22 er age as the Secretary may establish) to strengthen the  
 23 validity of the survey.

24 “(c) BASELINE LEVEL.—The baseline level of the  
 25 child tobacco product use of a manufacturer (referred to



1 in this subtitle as the ‘baseline level’) is the number of  
 2 children determined to have used the tobacco products of  
 3 such manufacturer in the first annual performance survey  
 4 for 1998.

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

14 “(e) DEFINITION.—As used in this subtitle, the term  
 15 ‘tobacco product’ means cigarettes, smokeless tobacco  
 16 products, and roll-your-own tobacco products.

17 **“SEC. 2833. REDUCTION IN UNDERAGE TOBACCO PRODUCT**  
 18 **USAGE.**

19 “(a) STANDARDS FOR EXISTING MANUFACTUR-  
 20 ERS.—Each manufacturer which manufactured a tobacco  
 21 product on or before the date of the enactment of this  
 22 title shall reduce the number of children who use its to-  
 23 bacco products so that the number of children determined  
 24 to have used its tobacco products on the basis of—

1           “(1) the fourth annual performance survey is  
2           equal to or less than—

3                   “(A) 60 percent of the manufacturer’s  
4                   baseline level; or

5                   “(B) the de minimis level;  
6           whichever is greater;

7           “(2) the fifth annual performance survey is  
8           equal to or less than—

9                   “(A) 50 percent of the manufacturer’s  
10                  baseline level; or

11                  “(B) the de minimis level;  
12           whichever is greater;

13           “(3) the sixth annual performance survey is  
14           equal to or less than—

15                  “(A) 40 percent of the manufacturer’s  
16                  baseline level; or

17                  “(B) the de minimis level;  
18           whichever is greater;

19           “(4) the seventh annual performance survey is  
20           equal to or less than—

21                  “(A) 35 percent of the manufacturer’s  
22                  baseline level; or

23                  “(B) the de minimis level;  
24           whichever is greater;

1           “(5) the eighth annual performance survey is  
2           equal to or less than—

3                   “(A) 30 percent of the manufacturer’s  
4           baseline level; or

5                   “(B) the de minimis level;  
6           whichever is greater;

7           “(6) the ninth annual performance survey is  
8           equal to or less than—

9                   “(A) 25 percent of the manufacturer’s  
10          baseline level; or

11                  “(B) the de minimis level;  
12          whichever is greater; and

13           “(7) the 10th annual performance survey and  
14          each annual performance survey conducted there-  
15          after is equal to or less than—

16                  “(A) 20 percent of the manufacturer’s  
17          baseline level; or

18                  “(B) the de minimis level;  
19          whichever is greater.

20          “(b) STANDARDS FOR NEW MANUFACTURERS.—Any  
21          manufacturer of a tobacco product which begins to manu-  
22          facture a tobacco product after the date of the enactment  
23          of this title shall ensure that the number of children deter-  
24          mined to have used the manufacturer’s tobacco products  
25          in each annual performance survey conducted after the

1 manufacturer begins to manufacture tobacco products is  
 2 equal to or less than the de minimis level.

3 “(c) DE MINIMIS LEVEL.—The de minimis level shall  
 4 be 0.5 percent of the total number of children determined  
 5 to have used tobacco products in the first annual perform-  
 6 ance survey.

7 **“SEC. 2834. NONCOMPLIANCE.**

8 “(a) VIOLATION OF STANDARD.—If, with respect to  
 9 a year, a manufacturer of a tobacco product fails to com-  
 10 ply with the required reduction under section 2833(a), the  
 11 manufacturer shall pay to the Secretary a noncompliance  
 12 fee for each unit of tobacco products manufactured by the  
 13 manufacturer which is distributed for consumer use in the  
 14 year following the year in which the noncompliance occurs,  
 15 in the amount specified in subsection (b).

16 “(b) NONCOMPLIANCE FEE PER UNIT.—

17 “(1) IN GENERAL.—With respect to a year, a  
 18 manufacturer of a tobacco product shall be required  
 19 to pay a noncompliance fee for each unit of tobacco  
 20 products manufactured by the manufacturer if the  
 21 noncompliance factor of the manufacturer (as deter-  
 22 mined under paragraph (3)) for the year is greater  
 23 than zero.

24 “(2) AMOUNT OF FEE.—The amount of the  
 25 noncompliance fee that is required to be paid by a

1 manufacturer under this section for each unit of to-  
2 bacco products manufactured by the manufacturer  
3 for the year involved shall be equal to—

4 “(A) 2 cents multiplied by so much of the  
5 noncompliance factor as does not exceed 5;

6 “(B) 3 cents multiplied by so much of the  
7 noncompliance factor as exceeds 5 but does not  
8 exceed 10;

9 “(C) 4 cents multiplied by so much of the  
10 noncompliance factor as exceeds 10 but does  
11 not exceed 15;

12 “(D) 5 cents multiplied by so much of the  
13 noncompliance factor as exceeds 15 but does  
14 not exceed 20; and

15 “(E) 6 cents multiplied by so much of the  
16 noncompliance factor as exceeds 20 but does  
17 not exceed 25.

18 “(3) NONCOMPLIANCE FACTOR.—The non-  
19 compliance factor of a manufacturer shall be equal  
20 to 100 multiplied by the noncompliance percentage  
21 of the manufacturer (as determined under para-  
22 graph (4)).

23 “(4) NONCOMPLIANCE PERCENTAGE.—The  
24 noncompliance percentage (if any) of a manufacturer  
25 shall be equal to 1 less the ratio of—

1           “(A) the actual reduction that is achieved  
2           by the manufacturer in the number of children  
3           who use the manufacturer’s tobacco products in  
4           the year involved; and

5           “(B) the reduction required under section  
6           2833(a) in the number of children who use the  
7           manufacturer’s tobacco products for the year.

8           “(c) NONCOMPLIANCE FEES FOR CONSECUTIVE VIO-  
9           LATIONS.—If a manufacturer of a tobacco product fails  
10          to comply with the required reduction under section  
11          2833(a) in 2 or more consecutive years, the noncompliance  
12          fee that is required to be paid by the manufacturer under  
13          this section for each unit of tobacco products manufac-  
14          tured by such manufacturer which is distributed for  
15          consumer use in the year following the year in which the  
16          noncompliance occurs, shall be the amount determined  
17          under subsection (b) for the year multiplied by the number  
18          of consecutive years in which the manufacturer has failed  
19          to comply with such required reductions.

20          “(d) PROHIBITION ON SINGLE-PACK SALES IN  
21          CASES OF REPEATED NONCOMPLIANCE.—Not later than  
22          1 year after the date of enactment of this title, the Sec-  
23          retary shall establish regulations to prohibit the sale of  
24          single packs of a manufacturer’s tobacco products in cases  
25          of repeated noncompliance with the reductions required

1 under section 2833(a). Such regulations shall require that,  
2 if a manufacturer fails to comply with such reductions in  
3 3 or more consecutive years, the manufacturer's tobacco  
4 products may be sold in the following year only in pack-  
5 ages containing not less than 10 units of the product per  
6 package (200 cigarettes per package in the case of ciga-  
7 rettes, and a corresponding package size for other tobacco  
8 products).

9 “(e) REQUIRED GENERIC PACKAGING IN SEVERE  
10 CASES OF REPEATED NONCOMPLIANCE.—Not later than  
11 1 year after the date of enactment of this title, the Sec-  
12 retary shall establish regulations to require units and  
13 packages of a manufacturer's tobacco products to have ge-  
14 neric packaging in severe cases of repeated noncompliance  
15 with the reductions required under section 2833(a). Such  
16 regulations shall require that, if a manufacturer fails to  
17 comply with such reductions in 4 or more consecutive  
18 years, the manufacturer's tobacco products may be sold  
19 in the following year only in units and packages whose  
20 packaging contains no external images, logos, or text  
21 (other than any required labels), except that the brand  
22 name and the identifier ‘tobacco’ may appear on the pack-  
23 aging in block lettering in black type on a white back-  
24 ground.

1       “(f) PAYMENT.—The noncompliance fee to be paid  
 2 by a manufacturer under this section shall be paid on a  
 3 quarterly basis, with payments due not later than 30 days  
 4 after the end of each calendar quarter.

5       **“SEC. 2835. USE OF AMOUNTS.**

6       “Of the amounts received under section 2834—

7               “(1) 37.5 percent of such amounts shall be  
 8 made available to the National Biomedical and Basic  
 9 Scientific Research Board for research, training and  
 10 demonstration project grants under section 2822;

11              “(2) 37.5 percent of such amounts shall be  
 12 made available to the Secretary for healthy child de-  
 13 velopment grants under section 2823; and

14              “(3) 25 percent of such amounts shall be made  
 15 available to the Secretary for reduction and addic-  
 16 tion prevention research grants and for grants under  
 17 the national tobacco usage reduction and education  
 18 program under part 2 of subtitle C.

19       **“SEC. 2836. MISCELLANEOUS PROVISIONS.**

20       “(a) JUDICIAL REVIEW.—A manufacturer of tobacco  
 21 products may seek judicial review of any action under this  
 22 subtitle only after a noncompliance fee has been assessed  
 23 and paid by the manufacturer and only in the United  
 24 States District Court for the District of Columbia. In an



1 action by a manufacturer seeking judicial review of an an-  
2 nual performance survey, the manufacturer may prevail—

3 “(1) only if the manufacturer shows that the  
4 results of the performance survey were arbitrary and  
5 capricious; and

6 “(2) only to the extent that the manufacturer  
7 shows that it would have been required to pay a less-  
8 er noncompliance fee if the results of the perform-  
9 ance survey were not arbitrary and capricious.

10 “(b) PASS-THROUGH.—Nothing in this subtitle shall  
11 be construed as prohibiting a manufacturer from passing  
12 the costs of the amount of any noncompliance fee assessed  
13 under this subtitle on to consumers of tobacco products  
14 as a further economic deterrent to the use of such prod-  
15 ucts.

16 “(c) PROHIBITION.—No stay or other injunctive re-  
17 lief may be granted by the Secretary or any court that  
18 has the effect of enjoining the imposition and collection  
19 of noncompliance fees to be applied under this section.

20 “(d) CHILD.—As used in this subtitle, the term  
21 ‘child’ means, except as provided in section 2832(b), an  
22 individual who is under the age of 18.

1           **“Subtitle D—Miscellaneous**  
2                           **Provisions**

3   **“SEC. 2841. WHISTLEBLOWER PROTECTIONS.**

4           “(a) PROHIBITION OF REPRISALS.—An employee of  
5 any manufacturer, distributor, or retailer of a tobacco  
6 product may not be discharged, demoted, or otherwise dis-  
7 criminated against (with respect to compensation, terms,  
8 conditions, or privileges of employment) as a reprisal for  
9 disclosing to an employee of the Food and Drug Adminis-  
10 tration, the Department of Health and Human Services,  
11 the Department of Justice, or any State or local regu-  
12 latory or enforcement authority, information relating to a  
13 substantial violation of law related to this title or a State  
14 or local law enacted to further the purposes of this title.

15          “(b) ENFORCEMENT.—Any employee or former em-  
16 ployee who believes that such employee has been dis-  
17 charged, demoted, or otherwise discriminated against in  
18 violation of subsection (a) may file a civil action in the  
19 appropriate United States district court before the end of  
20 the 2-year period beginning on the date of such discharge,  
21 demotion, or discrimination.

22          “(c) REMEDIES.—If the district court determines  
23 that a violation has occurred, the court may order the  
24 manufacturer, distributor, or retailer involved to—

1           “(1) reinstate the employee to the employee’s  
2       former position;

3           “(2) pay compensatory damages; or

4           “(3) take other appropriate actions to remedy  
5       any past discrimination.

6       “(d) LIMITATION.—The protections of this section  
7       shall not apply to any employee who—

8           “(1) deliberately causes or participates in the  
9       alleged violation of law or regulation; or

10          “(2) knowingly or recklessly provides substan-  
11       tially false information to the Food and Drug Ad-  
12       ministration, the Department of Health and Human  
13       Services, the Department of Justice, or any State or  
14       local regulatory or enforcement authority.

15   **“SEC. 2842. NATIONAL TOBACCO DOCUMENT DEPOSITORY.**

16       “(a) PURPOSE.—It is the purpose of this section to  
17       provide for the disclosure of previously nonpublic or con-  
18       fidential documents by manufacturers of tobacco products,  
19       including the results of internal health research, and to  
20       provide for a procedure to settle claims of attorney-client  
21       privilege, work product, or trade secrets with respect to  
22       such documents.

23       “(b) ESTABLISHMENT.—

24           “(1) IN GENERAL.—The Secretary shall provide  
25       for the establishment, either within the Department

1 of Health and Human Services or through a private  
2 nonprofit entity, of a National Tobacco Document  
3 Depository (in this section referred to as the ‘Depos-  
4 itory’). Such Depository shall be located in the  
5 Washington, D.C. area and be open to the public.

6 “(2) DOCUMENTS.—Manufacturers of tobacco  
7 products, acting in conjunction with the Tobacco In-  
8 stitute and the Council for Tobacco Research,  
9 U.S.A., shall, not later than 30 days after the date  
10 of enactment of this title, provide documents to the  
11 Depository in accordance with this section.

12 “(3) FUNDING.—The entities described in para-  
13 graph (2) shall bear the sole responsibility for fund-  
14 ing the Depository.

15 “(c) USE OF DEPOSITORY.—The Depository shall be  
16 maintained in a manner that permits the Depository to  
17 be used as a resource for litigants, public health groups,  
18 and any other individuals who have an interest in the cor-  
19 porate records and research of the manufacturers concern-  
20 ing smoking and health, addiction or nicotine dependency,  
21 safer or less hazardous cigarettes, and underage tobacco  
22 use and marketing.

23 “(d) CONTENTS.—The Depository shall include (and  
24 manufacturers and the Tobacco Institute and the Council  
25 for Tobacco Research, U.S.A. shall provide)—

1           “(1) within 90 days of the date of the establish-  
2           ment of the Depository, all documents provided by  
3           such entities to plaintiffs in—

4                   “(A) civil or criminal actions brought by  
5           State attorneys general (including all docu-  
6           ments selected by plaintiffs from the Guilford  
7           Repository of the United Kingdom);

8                   “(B) Philip Morris Companies Inc.’s defa-  
9           mation action against Capital Cities/American  
10          Broadcasting Company News;

11                  “(C) the Federal Trade Commission’s in-  
12          vestigation concerning Joe Camel and underage  
13          marketing;

14                  “(D) *Haines v. Liggett Group, Inc.* (814  
15          F. Supp. 414 (D.N.J., Jan. 26, 1993)) and  
16          *Cippollone v. Liggett Group, Inc.* (822 F. 2d  
17          335, 56 USLW 2028, 7 Fed. R. Serv. 3d 1438  
18          (3rd Cir. (N.J.), Jun. 8, 1987)); and

19                  “(E) *Estate of Burl Butler v. Philip Mor-*  
20          *ris, Inc.* (case No. 94–4–53);

21           “(2) within 90 days after the date of the estab-  
22          lishment of the Depository, any existing documents  
23          discussing or referring to health research, addiction  
24          or dependency, safer or less hazardous cigarettes,  
25          studies of the smoking habits of minors, and the re-

1        lationship between advertising or promotion and  
2        youth smoking, that the entities described in sub-  
3        section (b) have not completed producing as required  
4        in the actions described in paragraph (1);

5            “(3) within 30 days of the date of the establish-  
6        ment of the Depository, all documents relating to in-  
7        dices (as defined by the court in *State of Minnesota*  
8        and *Blue Cross and Blue Shield of Minnesota v.*  
9        *Philip Morris, Inc., et al.*) of documents relating to  
10       smoking and health, including all indices identified  
11       by the manufacturers in the *State of Texas v. Amer-*  
12       *ican Tobacco Company, et al.*;

13           “(4) upon the settlement of any action referred  
14       to in this subsection, and after a good-faith, de novo,  
15       document-by-document review of all documents pre-  
16       viously withheld from production in any actions on  
17       the grounds of attorney-client privilege, all docu-  
18       ments determined to be outside of the scope of the  
19       privilege;

20           “(5) all existing or future documents relating to  
21       original laboratory research concerning the health or  
22       safety of tobacco products, including all laboratory  
23       research results relating to methods used to make  
24       tobacco products less hazardous to consumers;

1           “(6) a comprehensive new attorney-client privi-  
2       lege log of all documents, itemized in sufficient de-  
3       tail so as to enable any interested individual to de-  
4       termine whether the individual will challenge the  
5       claim of privilege, that the entities described in sub-  
6       section (b) (based on the de novo review of such doc-  
7       uments by such entities) claim are protected from  
8       disclosure under the attorney-client privilege;

9           “(7) all existing or future documents relating to  
10      studies of the smoking habits of minors or docu-  
11      ments referring to any relationship between advertis-  
12      ing and promotion and underage smoking; and

13          “(8) all other documents determined appro-  
14      priate under regulations promulgated by the Sec-  
15      retary.

16      “(e) DISPUTE RESOLUTION PANEL.—

17          “(1) ESTABLISHMENT.—The Judicial Con-  
18      ference of the United States shall establish a To-  
19      bacco Documents Dispute Resolution Panel, to be  
20      composed of 3 Federal judges to be appointed by the  
21      Conference, to resolve all disputes involving claims  
22      of attorney-client, work product, or trade secrets  
23      privilege with respect to documents required to be  
24      deposited into the Depository under subsection (d)  
25      that may be brought by Federal, State, or local gov-

1       ernmental officials or the public or asserted in any  
2       action by a manufacturer.

3               “(2) BASIS FOR DETERMINATIONS.—The deter-  
4       minations of the Panel established under paragraph  
5       (1) shall be based on—

6               “(A) the American Bar Association/Amer-  
7       ican Law Institute Model Rules or the prin-  
8       cipals of Federal law with respect to attorney-  
9       client or work product privilege; and

10              “(B) the Uniform Trade Secrets Act with  
11       respect to trade secrecy.

12              “(3) DECISION.—Any decision of the Panel es-  
13       tablished under paragraph (1) shall be final and  
14       binding upon all Federal and State courts.

15              “(4) ASSESSING OF FEES.—As part of a deter-  
16       mination under this subsection, the Panel estab-  
17       lished under paragraph (1) shall determine whether  
18       a claimant of the privilege acted in good faith and  
19       had a factual and legal basis for asserting the claim.  
20       If the Panel determines that the claimant did not  
21       act in good faith, the Panel may assess costs against  
22       the claimant, including a reasonable attorneys’ fee,  
23       and may apply such other sanctions as the Panel de-  
24       termines appropriate.



1           “(5) ACCELERATED REVIEW.—The Panel estab-  
2       lished under paragraph (1) shall establish proce-  
3       dures for the accelerated review of challenges to a  
4       claim of privilege. Such procedures shall include as-  
5       surances that an individual filing a challenge to such  
6       a claim need not make a prima facie showing of any  
7       kind as a prerequisite to an in-camera review of the  
8       documents at issue.

9           “(6) SPECIAL MASTERS.—The Panel estab-  
10      lished under paragraph (1) may appoint Special  
11      Masters in accordance with Rule 53 of the Federal  
12      Rules of Civil Procedure. The cost relating to any  
13      Special Master shall be assessed to the manufactur-  
14      ers as part of a fee process to be established under  
15      regulations promulgated by the Secretary.

16      “(f) OTHER PROVISIONS.—

17           “(1) NO WAIVER OF PRIVILEGE.—Compliance  
18      with this section by the entities described in sub-  
19      section (b) shall not be deemed to be a waiver on be-  
20      half of such entities of any applicable privilege or  
21      protection.

22           “(2) AVOIDANCE OF DESTRUCTION.—In estab-  
23      lishing the Depository, procedures shall be imple-  
24      mented to protect against the destruction of docu-  
25      ments.

1           “(3) DEEMED PRODUCED.—Any documents  
2           contained in the Depository shall be deemed to have  
3           been produced for purposes of any tobacco-related  
4           litigation in the United States.

5           “(g) DOCUMENTS.—For purposes of this section, the  
6           term ‘documents’ shall include any paper documents that  
7           may be printed using data that is contained in computer  
8           files.

9           “(h) RULE OF CONSTRUCTION.—Nothing in this sec-  
10          tion shall be construed to interfere in any way with the  
11          discovery rights of courts or parties in civil or criminal  
12          actions involving tobacco products, or the right of access  
13          to such documents under any other provision of law.

14       **“SEC. 2843. TOBACCO OVERSIGHT AND COMPLIANCE**  
15                       **BOARD.**

16           “(a) ESTABLISHMENT.—

17                       “(1) IN GENERAL.—There is established an  
18           independent board to be known as the Tobacco  
19           Oversight and Compliance Board (referred to in this  
20           section as the ‘Board’).

21                       “(2) MEMBERSHIP.—The Board shall consist of  
22           5 members with expertise relating to tobacco and  
23           public health. The members, including the chair-  
24           person, shall be appointed by the Secretary. The ini-  
25           tial members of the Board shall be appointed by the

1 Secretary within 30 days of the date of the enact-  
 2 ment of this title. A member of the Board may be  
 3 removed by the Secretary only for neglect of duty or  
 4 malfeasance in office.

5 “(3) TERMS.—The term of office of a member  
 6 of the Board shall be 6 years, except that the mem-  
 7 bers first appointed shall have terms of 2, 3, 4, and  
 8 5 years, respectively, as determined by the Sec-  
 9 retary.

10 “(b) GENERAL DUTY.—The Board shall oversee and  
 11 monitor the operations of the tobacco industry to deter-  
 12 mine whether tobacco product manufacturers are in com-  
 13 pliance with this Act.

14 “(c) DISCLOSURE OF TOBACCO INDUSTRY DOCU-  
 15 MENTS.—

16 “(1) SUBMISSION BY MANUFACTURERS.—Not  
 17 later than 3 months after the date of the enactment  
 18 of this title, and as otherwise required by the Board,  
 19 each tobacco manufacturer shall submit to the  
 20 Board a copy of all documents in the manufacturer’s  
 21 possession—

22 “(A) relating to—

23 “(i) any health effects, including ad-  
 24 diction, caused by the use of tobacco prod-  
 25 ucts;

1                   “(ii) the manipulation or control of  
2                   nicotine in tobacco products; or

3                   “(iii) the sale or marketing of tobacco  
4                   products to children; or

5                   “(B) produced, or ordered to be produced,  
6                   by the tobacco manufacturer in the case enti-  
7                   tled State of Minnesota v. Philip Morris, Inc.,  
8                   Civ. Action No. C1-94-8565 (Ramsey County,  
9                   Minn.) including attorney-client and other docu-  
10                  ments produced or ordered to be produced for  
11                  in camera inspection.

12                  “(2) DISCLOSURE BY THE BOARD.—Not later  
13                  than 6 months after the date of the enactment of  
14                  this title, and otherwise as required by the Board,  
15                  the Board shall, subject to paragraph (3), make  
16                  available to the public the documents submitted  
17                  under paragraph (1).

18                  “(3) PROTECTION OF TRADE SECRETS.—The  
19                  Board, members of the Board, and staff of the  
20                  Board shall not disclose information that is entitled  
21                  to protection as a trade secret unless the Board de-  
22                  termines that disclosure of such information is nec-  
23                  essary to protect the public health. This paragraph  
24                  shall not be construed to prevent the disclosure of

1 relevant information to other Federal agencies or to  
2 committees of the Congress.

3 “(d) INVESTIGATION AND ANNUAL REPORTS.—The  
4 Board shall investigate all matters relating to the tobacco  
5 industry and public health and report annually on the re-  
6 sults of the investigation to Congress. Each annual report  
7 to Congress shall, at a minimum, disclose—

8 “(1) whether tobacco manufacturers are in  
9 compliance with the provisions of this Act;

10 “(2) any efforts by tobacco manufacturers to  
11 conceal research relating to the adverse health ef-  
12 fects or addiction caused by the use of tobacco prod-  
13 ucts;

14 “(3) any efforts by tobacco manufacturers to  
15 mislead the public or any Federal, State, or local  
16 elected body, agency, or court about the adverse  
17 health effects or addiction caused by the use of to-  
18 bacco products;

19 “(4) any efforts by tobacco manufacturers to  
20 sell or market tobacco products to children; and

21 “(5) any efforts by tobacco manufacturers to  
22 circumvent, repeal, modify, impede the implementa-  
23 tion of, or prevent the adoption of any Federal,  
24 State, or local law or regulation intended to reduce

1       the adverse health effects or addiction caused by the  
2       use of tobacco products.

3       “(e) AUTHORITY.—The Board, any member of the  
4 Board, or staff designated by the Board may hold hear-  
5 ings, administer oaths, issue subpoena, require the testi-  
6 mony or deposition of witnesses, the production of docu-  
7 ments, or the answering of interrogatories, or, upon pres-  
8 entation of the proper credentials, enter and inspect facili-  
9 ties.

10       “(f) ENFORCEMENT.—Notwithstanding any other  
11 provision of law, tobacco manufacturers shall provide any  
12 testimony, deposition, documents, or other information,  
13 answer any interrogatories, and allow any entry or inspec-  
14 tion required pursuant to this section, except to the extent  
15 that a constitutional privilege protects the tobacco manu-  
16 facturer from complying with such requirement.

17       “(g) ADMINISTRATION.—

18               “(1) STAFF.—The Chairperson of the Board  
19 shall exercise the executive and administrative func-  
20 tions of the Board and shall have the authority to  
21 hire such staff as may be necessary for the operation  
22 of the Board.

23               “(2) SALARIES.—The members of the Board  
24 shall receive such salary and benefits as the Sec-  
25 retary deems necessary, except that the salary of the

1       Chairperson shall not be less than that provided for  
2       under level III of the Executive Schedule in section  
3       5314 of title 5, United States Code.

4   **“SEC. 2844. PRESERVATION OF STATE AND LOCAL AUTHOR-**  
5                   **ITY.**

6       “Except as otherwise provided for in this title or the  
7   Healthy and Smoke Free Children Act (or an amendment  
8   made by such Act), nothing in this title or such Act shall  
9   be construed as prohibiting a State from imposing require-  
10   ments, prohibitions, penalties or other measures to further  
11   the purposes of this title or Act that are in addition to  
12   the requirements, prohibitions, or penalties required under  
13   this title or Act. To the extent not inconsistent with the  
14   purposes of this title or Act, State and local governments  
15   may impose additional tobacco product control measures  
16   to further restrict or limit the use of such products by  
17   minors.

18   **“SEC. 2845. REGULATIONS.**

19       “The Secretary may promulgate regulations to en-  
20   force the provisions of this title, or to modify, alter, or  
21   expand the requirements and protections provided for in  
22   this title if the Secretary determines that such modifica-  
23   tions, alternations, or expansion is necessary.”.

1     **TITLE II—FDA JURISDICTION**  
2     **OVER TOBACCO PRODUCTS**  
3     **Subtitle A—Amendments to the**  
4     **Federal Food, Drug and Cos-**  
5     **metic Act**

6     **SEC. 201. REFERENCE.**

7         Whenever in this subtitle an amendment or repeal is  
8     expressed in terms of an amendment to, or repeal of, a  
9     section or other provision, the reference shall be consid-  
10    ered to be made to a section or other provision of the Fed-  
11    eral Food, Drug, and Cosmetic Act (21 U.S.C. 301 et  
12    seq.).

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

14         The Secretary of Health and Human Services, acting  
15    through the Food and Drug Administration, shall have the  
16    authority under the Federal Food, Drug, and Cosmetic  
17    Act (21 U.S.C. 321 et seq.) (above and beyond the existing  
18    authority of the Secretary to regulate tobacco products as  
19    of the date of enactment of this Act) to regulate the manu-  
20    facture, labeling, sale, distribution, and advertising of to-  
21    bacco products.

22    **SEC. 203. TREATMENT OF TOBACCO PRODUCTS AS DRUGS**  
23                   **AND DEVICES.**

24         (a) DEFINITIONS.—



1           (1) DRUG.—Section 201(g)(1) (21 U.S.C.  
2           321(g)(1)) is amended by striking “; and (D)” and  
3           inserting “(including nicotine in tobacco products);  
4           and (D)”.

5           (2) DEVICES.—Section 201(h) (21 U.S.C.  
6           321(h)) is amended—

7                   (A) in paragraph (3), by inserting before  
8           the comma the following: “(including tobacco  
9           products containing nicotine); and

10                   (B) by adding at the end the following:  
11           “For purposes of this Act a tobacco product  
12           shall be classified as a class II device.”.

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

16           “(ii)(1) The term ‘tobacco product’ means cigarettes,  
17           cigarillos, cigarette tobacco, little cigars, pipe tobacco, and  
18           smokeless tobacco, and roll-your-own tobacco.

19           “(2) The term ‘cigarette’ means any product which  
20           contains nicotine, is intended to be burned under ordinary  
21           conditions of use, and consists of—

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

24                   “(B) any roll of tobacco wrapped in any sub-  
25           stance containing tobacco which, because of its ap-

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

5       “(3) The term ‘cigarette tobacco’ means any product  
6       that consists of loose tobacco that contains or delivers nic-  
7       otine and is intended for use by persons in a cigarette.  
8       Unless otherwise stated, the requirements of this title per-  
9       taining to cigarettes shall also apply to cigarette tobacco.

10       “(4) The term ‘smokeless tobacco’ means any product  
11       that consists of cut, ground, powdered, or leaf tobacco that  
12       contains nicotine and that is intended to be placed in the  
13       oral or nasal cavity.

14       “(5) The term ‘roll-your-own tobacco’ has the mean-  
15       ing given such term by section 5702(p) of the Internal  
16       Revenue Code of 1986.

17       “(6) The term ‘little cigars’ means any roll of tobacco  
18       wrapped in leaf tobacco or any substance containing to-  
19       bacco (other than any roll of tobacco which is a cigarette  
20       within the meaning of this Act) and as to which 1,000  
21       units weigh not more than 3 pounds.

22       “(7) The term ‘cigar’ means any roll of tobacco  
23       wrapped in leaf tobacco or in any substance containing  
24       tobacco (other than any roll of tobacco which is a cigarette  
25       or cigarillo within the meaning of paragraph (3) or (4)).

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

6       “(9) The term ‘pipe tobacco’ means any loose tobacco  
7 that, because of its appearance, type, packaging, or label-  
8 ing, is likely to be offered to, or purchased by, consumers  
9 as a tobacco product to be smoked in a pipe.

10       “(10) The term ‘nicotine’ means the chemical sub-  
11 stance named 3-(1-Methyl-2-pyrrolidiny)pyridine or  
12  $C_{10}H_{14}N_2$ , including any salt or complex of nicotine.”.

13       “(11) The term ‘tobacco additive’ means any sub-  
14 stance the intended use of which results or may reasonably  
15 be expected to result, directly or indirectly, in the sub-  
16 stance becoming a component of, or otherwise affecting  
17 the characteristics of, any tobacco product, including any  
18 substance that may have been removed from the tobacco  
19 product and then readded in the substance’s original or  
20 modified form.

21       “(12) The term ‘tar’ means mainstream total articu-  
22 late matter minus nicotine and water.”.

23       (b) MISBRANDING.—Section 502(q) (21 U.S.C.  
24 352(q)) is amended—

1           (1) by striking “or (2)” and inserting “(2”;  
2       and

3           (2) by inserting before the period the following:  
4       “or (3) in the case of a tobacco product, it is sold,  
5       distributed, advertised, labeled, or used in violation  
6       of this Act or the regulations prescribed under this  
7       Act.”.

8       (c) REGULATORY AUTHORITY.—Section 503(g)(1)  
9       (21 U.S.C. 353(g)(1)) is amended by inserting “(including  
10      any tobacco product)” after “products” the first place  
11      such term appears.

12      (d) CLASS II DEVICES.—Section 513(a)(1)(B) (21  
13      U.S.C. 360c(a)(1)(B)) is amended—

14           (1) by striking “A device” and inserting “(i) A  
15      device”; and

16           (2) by adding at the end the following: “To-  
17      bacco products shall be categorized as Class II de-  
18      vices.

19                   “(ii) The sale of tobacco products to adults  
20      that comply with Performance Standards estab-  
21      lished for these products pursuant to section  
22      514, title XXVIII of the Public Health Service  
23      Act, and this Act, and any regulations pre-  
24      scribed under this Act, shall not be prohibited

1 by the Secretary, notwithstanding sections  
2 502(j), 516, and 518.”.

3 (e) PERFORMANCE STANDARDS.—Section 514(a) (21  
4 U.S.C. 360d(a)) is amended—

5 (1) in paragraph (2), by striking “device—”  
6 and inserting “non-tobacco product device—”;

7 (2) by redesignating paragraphs (3) and (4) as  
8 paragraphs (4) and (5), respectively; and

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

10 “(3)(A) A performance standard established under  
11 this section for a tobacco product device—

12 “(i) shall include provisions to reduce the over-  
13 all health risks to the public, including the reduction  
14 in risk to consumers thereof and the reduction in  
15 harm which will result from those who continue to  
16 use the product, but less often and from those who  
17 stop or do not start using the product, taking into  
18 account all factors that the Secretary determines to  
19 be relevant;

20 “(ii) shall, where necessary to provide a reduc-  
21 tion in the overall health risks to the public, in-  
22 clude—

23 “(I) provisions regarding the construction,  
24 components, constituents, ingredients, and  
25 properties of the tobacco product device, includ-

1 ing the reduction or elimination of nicotine and  
2 the other components, ingredients, and con-  
3 stituents of the tobacco product and its compo-  
4 nents, based upon the best available technology;

5 “(II) provisions for the testing of the to-  
6 bacco product device (on a sample basis or, if  
7 necessary, on an individual basis) or, if it deter-  
8 mined that no other more practicable means are  
9 available to the Secretary to assure the con-  
10 formity of the tobacco product device to the  
11 standard, provision for the testing (on a sample  
12 basis or, if necessary, on an individual basis) by  
13 the Secretary or by another person at the direc-  
14 tion of the Secretary;

15 “(III) provisions for the measurement of  
16 the performance characteristics of the tobacco  
17 product device;

18 “(IV) provisions requiring that the results  
19 of each or of certain of the tests of the tobacco  
20 product device required to be made under sub-  
21 clause (II) show that the tobacco product device  
22 is in conformity with the portions of the stand-  
23 ard for which the test or tests were required;  
24 and

1           “(V) a provision that the sale, advertising,  
2           and distribution of the tobacco product device  
3           be restricted but only to the extent the sale, ad-  
4           vertising, and distribution of a tobacco product  
5           device may be restricted under this Act or title  
6           XXVIII of the Public Health Service Act; and

7           “(iii) shall, where appropriate, require the use  
8           and prescribe the form and content of labeling for  
9           use of the tobacco product device.

10          “(B) The Secretary shall provide for the periodic  
11          evaluation of a performance standard established under  
12          this paragraph to determine if such standards should be  
13          changed to reflect new medical, scientific, or other techno-  
14          logical data.

15          “(C) In carrying out this paragraph, the Secretary  
16          shall, to the maximum extent practicable—

17               “(i) use personnel, facilities, and other technical  
18               support available in other Federal agencies;

19               “(ii) consult with the Scientific Advisory Com-  
20               mittee established under section 905 and other Fed-  
21               eral agencies concerned with standard-setting and  
22               other nationally or internationally recognized stand-  
23               ard-setting entities; and

24               “(iii) invite appropriate participation, through  
25               joint or other conferences, workshops, or other

1 means, by informed persons representative of sci-  
 2 entific, professional, industry, or consumer organiza-  
 3 tions who in the judgment of the Secretary can  
 4 make a significant contribution.”.

5 (f) RESTRICTED DEVICES.—Section 520(e) (21  
 6 U.S.C. 360j(e)) is amended by adding at the end the fol-  
 7 lowing:

8 “(3) A tobacco product is a restricted device.”.

9 (g) REGULATIONS.—Section 701(a) (21 U.S.C.  
 10 371(a)) is amended by inserting before the period the fol-  
 11 lowing: “, including the authority to regulate the manufac-  
 12 ture, sale, distribution, advertising and marketing of to-  
 13 bacco products”.

14 **SEC. 204. GENERAL HEALTH AND SAFETY REGULATION OF**  
 15 **TOBACCO PRODUCTS.**

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

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

18 (2) by redesignating sections 901, 902, 903,  
 19 904, and 905 as sections 1001, 1002, 1003, 1004,  
 20 and 1005, respectively; and

21 (3) by adding after chapter VIII the following  
 22 new chapter:



1           “CHAPTER IX—TOBACCO PRODUCTS

2   **“SEC. 901. DEFINITIONS.**

3           “For purposes of this chapter and in addition to the  
4 definitions contained in section 201, the definitions under  
5 section 2801 of the Public Health Service Act shall apply.

6   **“SEC. 902. PURPOSE.**

7           “It is the purpose of this chapter to impose a regu-  
8 latory scheme applicable to the development and manufac-  
9 turing of tobacco products. Such scheme shall include—

10           “(1) with respect to ingredients contained in  
11 such products—

12                   “(A) the immediate and annual reporting,  
13 in accordance with section 909(a), of all ingre-  
14 dients contained in such products;

15                   “(B) the performance, in accordance with  
16 section 909(b), of safety assessments with re-  
17 spect to ingredients contained in such products;  
18 and

19                   “(C) the approval, in accordance with sec-  
20 tion 909(b), of ingredients contained in such  
21 products; and

22           “(2) the imposition of standards to reduce the  
23 level of certain constituents contained in such prod-  
24 ucts, including nicotine.

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

2           “The Commissioner shall promulgate regulations gov-  
3   erning the misbranding, adulteration, and dispensing of  
4   tobacco products that are consistent with this chapter and  
5   with the manner in which other products that are ingested  
6   into the body are regulated under this Act. Such regula-  
7   tions shall be promulgated not later than 12 months after  
8   the date of enactment of this chapter.

9   **“SEC. 904. MINIMUM REQUIREMENTS.**

10          “(a) MISBRANDING.—The regulations promulgated  
11   under section 903 shall at a minimum require that a to-  
12   bacco product be deemed to be misbranded if the labeling  
13   of the package of such product is not in compliance with  
14   the provisions of this chapter, of other applicable provi-  
15   sions of this Act, or of section 910 (as applicable to the  
16   type of product involved) of the Public Health Service Act.

17          “(b) ADULTERATION.—The regulations promulgated  
18   under section 903 shall at a minimum require that a to-  
19   bacco product be deemed to be adulterated if the Commis-  
20   sioner determines that any tobacco additive in such prod-  
21   uct, regardless of the amount of such tobacco additive, ei-  
22   ther by itself or in conjunction with any other tobacco ad-  
23   ditive or ingredient is harmful under the intended condi-  
24   tions of use when used in a specified amount.

1 **“SEC. 905. SCIENTIFIC ADVISORY COMMITTEE.**

2 “(a) ESTABLISHMENT.—Not later than 1 year after  
3 the date of enactment of this chapter, the Secretary shall  
4 establish an advisory committee, to be known as the ‘Sci-  
5 entific Advisory Committee’, to assist the Secretary in es-  
6 tablishing, amending, or revoking a performance standard  
7 under section 512(a)(3).

8 “(b) MEMBERSHIP.—The Secretary shall appoint as  
9 members of the Scientific Advisory Committee any individ-  
10 uals with expertise in the medical, scientific, or other tech-  
11 nological data involving the manufacture and use of to-  
12 bacco products, and of appropriately diversified profes-  
13 sional backgrounds. The Secretary may not appoint to the  
14 Committee any individual who is in the regular full-time  
15 employ of the Federal Government. The Secretary shall  
16 designate 1 of the members of each advisory committee  
17 to serve as chairperson of the Committee.

18 “(c) COMPENSATION AND EXPENSES.—

19 “(1) COMPENSATION.—Members of the Sci-  
20 entific Advisory Committee who are not officers or  
21 employees of the United States, while attending con-  
22 ferences or meetings of the Committee or otherwise  
23 serving at the request of the Secretary, shall be enti-  
24 tled to receive compensation at rates to be fixed by  
25 the Secretary, which rates may not exceed the daily  
26 equivalent of the rate of pay for level 4 of the Senior

1 Executive Schedule under section 5382 of title 5,  
2 United States Code, for each day (including travel-  
3 time) they are so engaged.

4 “(2) EXPENSES.—While conducting the busi-  
5 ness of the Scientific Advisory Committee away from  
6 their homes or regular places of business, each mem-  
7 ber may be allowed travel expenses, including per  
8 diem in lieu of subsistence, as authorized by section  
9 5703 of title 5 of the United States Code for per-  
10 sons in the Government service employed intermit-  
11 tently.

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

14 “(1) assist the Secretary in establishing,  
15 amending, or revoking performance standards under  
16 section 514(a)(3);

17 “(2) examine and determine the effects of the  
18 alteration of the nicotine yield levels in tobacco prod-  
19 ucts;

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

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

4   **“SEC. 906. REQUIREMENTS RELATING TO NICOTINE AND**  
5           **OTHER CONSTITUENTS.**

6           “(a) GENERAL RULE.—The Secretary may adopt a  
7           performance standard under section 514(a)(3) that re-  
8           quires the modification of a tobacco product in a manner  
9           that involves—

10           “(1) the reduction or elimination of nicotine  
11           yields of the product; or

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

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

21           “(c) LIMITATION ON TAR.—Not later than 3 years  
22           after the date of enactment of this chapter, the Secretary  
23           shall promulgate regulations that limit the amount of tar  
24           in a cigarette to no more than 12 milligrams. Nothing in  
25           the preceding sentence shall be construed as limiting the

1 authority of the Secretary to promulgate regulations fur-  
2 ther limiting the amount of tar that may be contained in  
3 a cigarette.

4 **“SEC. 907. REDUCED RISK PRODUCTS.**

5       “(a) MISBRANDING.—Except as provided in sub-  
6 section (b), the regulations promulgated in accordance  
7 with section 904(a) shall require that a tobacco product  
8 be deemed to be misbranded if the labeling of the package  
9 of the product, or the claims of the manufacturer in con-  
10 nection with the product, can reasonably be interpreted  
11 by an objective consumer as stating or implying that the  
12 product presents a reduced health risk as compared to  
13 other similar products.

14       “(b) EXCEPTION.—

15               “(1) IN GENERAL.—Subsection (a) shall not  
16 apply to the labeling of a tobacco product, or the  
17 claims of the manufacturer in connection with the  
18 product, if—

19                       “(A) the manufacturer, based on the best  
20 available scientific evidence, demonstrates to  
21 the Commissioner that the product significantly  
22 reduces the risk to the health of the user as  
23 compared to other similar tobacco products;  
24 and

1           “(B) the Commissioner approves the spe-  
2           cific claim that will be made a part of the label-  
3           ing of the product, or the specific claims of the  
4           manufacturer in connection with the product.

5           “(2) REDUCTION IN HARM.—The Commissioner  
6           shall promulgate regulations to permit the inclusion  
7           of scientifically-based specific health claims on the  
8           labeling of a tobacco product package, or the making  
9           of such claims by the manufacturer in connection  
10          with the product, where the Commissioner deter-  
11          mines that the inclusion or making of such claims  
12          would reduce harm to the public and otherwise pro-  
13          mote public health.

14          “(c) DEVELOPMENT OF REDUCED RISK PRODUCT  
15          TECHNOLOGY.—

16               “(1) NOTIFICATION OF COMMISSIONER.—The  
17               manufacturer of a tobacco product shall provide  
18               written notice to the Commissioner upon the devel-  
19               opment or acquisition by the manufacturer of any  
20               technology that would reduce the risk of such prod-  
21               ucts to the health of the user.

22               “(2) CONFIDENTIALITY.—The Commissioner  
23               shall promulgate regulations to provide a manufac-  
24               turer with appropriate confidentiality protections  
25               with respect to technology that is the subject of a

1 notification under paragraph (1) that contains evi-  
 2 dence that the technology involved is in the early de-  
 3 velopmental stages.

4 “(3) LICENSING.—

5 “(A) IN GENERAL.—With respect to any  
 6 technology developed or acquired under para-  
 7 graph (1), the manufacturer shall—

8 “(i) use such technology in the manu-  
 9 facture of its tobacco products; or

10 “(ii) permit the use of such tech-  
 11 nology (for a reasonable fee) by other man-  
 12 ufacturers of tobacco products to which  
 13 this chapter applies.

14 “(B) FEES.—The Commissioner shall pro-  
 15 mulgate regulations to provide for the payment  
 16 of a commercially reasonable fee by each manu-  
 17 facturer that uses the technology described  
 18 under subparagraph (A) to the manufacturer  
 19 that submits the notice under paragraph (1) for  
 20 such technology. Such regulations shall contain  
 21 procedures for the resolution of fee disputes be-  
 22 tween manufacturers under this subparagraph.

23 “(d) REQUIREMENT OF MANUFACTURE AND MAR-  
 24 KETING.—



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

6           “(2) DETERMINATION.—Upon a determination  
 7           by the Commissioner that the manufacture of a to-  
 8           bacco product that is less hazardous to the health of  
 9           users is technologically feasible, the Commissioner  
 10          may, in accordance with this subsection, require that  
 11          certain manufacturers of such products manufacture  
 12          and market such less hazardous products.

13          “(3) MANUFACTURER.—

14               “(A) REQUIREMENT.—Except as provided  
 15               in subparagraph (B), the requirement under  
 16               paragraph (2) shall apply to any manufacturer  
 17               that provides a notification to the Commissioner  
 18               under subsection (c)(1) concerning the tech-  
 19               nology that is the subject of the determination  
 20               of the Commissioner.

21               “(B) EXCEPTION.—The requirement under  
 22               subparagraph (A) shall not apply to a manufac-  
 23               turer if—

24                       “(i) the manufacturer elects not to  
 25                       manufacture such products and provides

1 notice to the Commissioner of such elec-  
 2 tion; and

3 “(ii) the manufacturer agrees to pro-  
 4 vide the technology involved, for a commer-  
 5 cially reasonable fee, to other manufactur-  
 6 ers that enter into agreements to use such  
 7 technology to manufacture and market to-  
 8 bacco products that are less hazardous to  
 9 the health of users.

10 **“SEC. 908. GOOD MANUFACTURING PRACTICE STANDARDS.**

11 “(a) AUTHORITY.—

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

22 “(2) REQUIREMENTS PRIOR TO REGULA-  
 23 TIONS.—Prior to the Secretary promulgating any  
 24 regulation under paragraph (1) the Secretary  
 25 shall—

1           “(A) afford the Scientific Advisory Com-  
2           mittee established under section 905 an oppor-  
3           tunity (with a reasonable time period) to submit  
4           recommendations with respect to the regula-  
5           tions proposed to be promulgated; and

6           “(B) afford an opportunity for an oral  
7           hearing.

8           “(b) MINIMUM REQUIREMENTS.—The regulations  
9           promulgated under subsection (a) shall at a minimum re-  
10          quire—

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

13           “(2) a process for the inspection, in accordance  
14           with this Act, of tobacco product material prior to  
15           the packaging of such product;

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

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

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

4           “(6) record keeping and the reporting of certain  
5           information.

6           “(c)     PETITIONS     FOR     EXEMPTIONS     AND  
7     VARIANCES.—

8           “(1) IN GENERAL.—Any person subject to any  
9           requirement prescribed by regulations under sub-  
10          section (a) may petition the Secretary for an exemp-  
11          tion or variance from such requirement. Such a peti-  
12          tion shall be submitted to the Secretary in such form  
13          and manner as the Secretary shall prescribe and  
14          shall—

15                 “(A) in the case of a petition for an ex-  
16                 emption from a requirement, set forth the basis  
17                 for the petitioner’s determination that compli-  
18                 ance with the requirement is not required to en-  
19                 sure that the device is in compliance with this  
20                 chapter;

21                 “(B) in the case of a petition for a vari-  
22                 ance from a requirement, set forth the methods  
23                 proposed to be used in, and the facilities and  
24                 controls proposed to be used for, the manufac-  
25                 ture, packing, and storage of the product in lieu

1 of the methods, facilities, and controls pre-  
 2 scribed by the requirement; and

3 “(C) contain such other information as the  
 4 Secretary shall prescribe.

5 “(2) SCIENTIFIC ADVISORY COMMITTEE.—The  
 6 Secretary may refer to the Scientific Advisory Com-  
 7 mittee established under section 905 any petition  
 8 submitted under paragraph (1). The Scientific Advi-  
 9 sory Committee shall report its recommendations to  
 10 the Secretary with respect to a petition referred to  
 11 it within 60 days of the date of the petition’s refer-  
 12 ral. Within 60 days after—

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

15 “(B) if the petition was referred to the Sci-  
 16 entific Advisory Committee, the expiration of  
 17 the 60-day period beginning on the date the pe-  
 18 tition was referred to such Committee;

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

21 “(3) APPROVAL OF PETITION.—

22 “(A) IN GENERAL.—The Secretary may  
 23 approve—

24 “(i) a petition for an exemption for a  
 25 tobacco product from a requirement if the

1 Secretary determines that compliance with  
2 such requirement is not required to assure  
3 that the product will comply with this  
4 chapter; and

5 “(ii) a petition for a variance for a to-  
6 bacco product from a requirement if the  
7 Secretary determines that the methods to  
8 be used in, and the facilities and controls  
9 to be used for, the manufacture, packing,  
10 and storage of the product in lieu of the  
11 methods, controls, and facilities prescribed  
12 by the requirement are sufficient to ensure  
13 that the product will comply with this  
14 chapter.

15 “(B) CONDITIONS.—An order of the Sec-  
16 retary approving a petition for a variance shall  
17 prescribe such conditions respecting the meth-  
18 ods used in, and the facilities and controls used  
19 for, the manufacture, packing, and storage of  
20 the tobacco product to be granted the variance  
21 under the petition as may be necessary to en-  
22 sure that the product will comply with this  
23 chapter.

24 “(4) INFORMAL HEARING.—After the issuance  
25 of an order under paragraph (2) respecting a peti-

1       tion, the petitioner shall have an opportunity for an  
2       informal hearing on such order.

3       “(d) AGRICULTURAL PRODUCERS.—The Secretary  
4       may not promulgate any regulation under this section that  
5       has the effect of placing regulatory burdens on tobacco  
6       producers (as such term is used for purposes of the Agri-  
7       cultural Adjustment Act of 1938 (7 U.S.C. 1281 et seq.)  
8       and the Agricultural Act of 1949 (7 U.S.C. 1441 et seq.))  
9       in excess of the regulatory burdens generally placed on  
10      other agricultural commodity producers.

11   **“SEC. 909. DISCLOSURE AND REPORTING OF NONTOBACCO**  
12                   **INGREDIENTS AND CONSTITUENTS.**

13       “(a) DISCLOSURE OF ALL INGREDIENTS.—

14           “(1) IMMEDIATE AND ANNUAL DISCLOSURE.—  
15       Not later than 30 days after the date of enactment  
16       of this chapter, and annually thereafter, each manu-  
17       facturer of a tobacco product shall submit to the  
18       Secretary an ingredient list for all brands of tobacco  
19       products that contains the information described in  
20       paragraph (2).

21           “(2) REQUIREMENTS.—The list described in  
22       paragraph (1) shall, with respect to each brand of  
23       tobacco product of a manufacturer, include

24           “(A) a list of all ingredients, constituents,  
25       substances, and compounds that are added to

1 the tobacco (and the paper or filter of the prod-  
2 uct if applicable) in the manufacture of the to-  
3 bacco product, for each brand of tobacco prod-  
4 uct so manufactured;

5 “(B) a description of the quantity of the  
6 ingredients, constituents, substances, and com-  
7 pounds that are listed under subparagraph (A)  
8 with respect to each brand of tobacco product;

9 “(C) a description of the nicotine content  
10 of the product, measured in milligrams of nico-  
11 tine;

12 “(D) with respect to cigarettes a descrip-  
13 tion of—

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

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

20 “(iii) the nicotine delivery level under  
21 average smoking conditions reported in  
22 milligrams of nicotine per cigarette;

23 “(E) with respect to smokeless tobacco  
24 products a description of—

25 “(i) the pH level of the tobacco;



“(ii) the moisture content of the tobacco expressed as a percentage of the weight of the tobacco; and

“(iii) the nicotine content—

“(I) for each gram of the product, measured in milligrams of nicotine;

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

“(III) with respect to unionized (free) nicotine, expressed as a percentage per gram of the tobacco and expressed in milligrams per gram of the tobacco; and

“(F) any other information determined appropriate by the Secretary.

“(b) SAFETY ASSESSMENTS.—

“(1) APPLICATION TO NEW INGREDIENTS.—

“(A) IN GENERAL.—Not later than 1 year after the date of enactment of this chapter, and annually thereafter, each manufacturer shall submit to the Secretary a safety assessment for each new ingredient, constituent, substance, or compound that such manufacturer desires to make a part of a tobacco product. Such new in-

1           gredient, constituent, substance, or compound  
2           shall not be included in a tobacco product prior  
3           to approval of such a safety assessment.

4           “(B) DEFINITION OF NEW INGREDIENT.—

5           For purposes of subparagraph (A), the term  
6           ‘new ingredient, constituent, substance, or  
7           compound’ means an ingredient, constituent  
8           substance, or compound listed under subsection  
9           (a)(1) that was not used in the brand of to-  
10          bacco product involved prior to the date of en-  
11          actment of this chapter.

12          “(2) APPLICATION TO OTHER INGREDIENTS.—

13         With respect to the application of this section to in-  
14         gredients, constituents substances, or compounds  
15         listed under subsection (a) to which paragraph (1)  
16         does not apply, all such ingredients, constituents,  
17         substances, or compounds shall be approved through  
18         the safety assessment process within the 5-year pe-  
19         riod beginning on the date of enactment of this  
20         chapter. The Secretary shall develop a procedure  
21         that staggers the percentage of such ingredients,  
22         constituents, substances, or compounds for which  
23         safety assessments must be submitted for approval  
24         by manufacturers in each year.

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

5                   “(A) be based on the best scientific evi-  
6                   dence available at the time of the submission of  
7                   the assessment; and

8                   “(B) result in a finding that there is a rea-  
9                   sonable certainty in the minds of competent sci-  
10                  entists that the ingredient, constituents, sub-  
11                  stance, or compound is not harmful in the  
12                  quantities used under the intended conditions of  
13                  use.

14          “(c) PROHIBITION.—

15               “(1) REGULATIONS.—Not later than 12 months  
16               after the date of enactment of this chapter, the Sec-  
17               retary shall promulgate regulations to prohibit the  
18               use of any ingredient, constituent, substance, or  
19               compound in the tobacco product of a manufac-  
20               turer—

21                   “(A) if no safety assessment has been sub-  
22                   mitted by the manufacturer for the ingredient,  
23                   constituent, substance, or compound as other-  
24                   wise required under this section;

“(B) if the Secretary disapproves of the safety of the ingredient, constituent, substance, or compound that was the subject of the assessment under paragraph (2); or

“(C) if such ingredient, constituent, substance, or compound is a new ingredient that has not been approved for use by the Secretary.

“(2) REVIEW OF ASSESSMENTS.—

“(A) GENERAL REVIEW.—Not later than 180 days after the receipt of a safety assessment under subsection (b), the Secretary shall review the findings contained in such assessment and approve or disapprove of the safety of the ingredient, constituents, substance, or compound that was the subject of the assessment. The Secretary may, for good cause, extend the period for such approval. The Secretary shall provide notice to the manufacturer of an action under this subparagraph.

“(B) INACTION BY SECRETARY.—If the Secretary fails to act with respect to an assessment of an existing ingredient, constituent, substance, or additive during the period referred to in subparagraph (A), the manufacturer of the tobacco product involved may continue to use

1           the ingredient, constituents, substance, or  
2           compound involved until such time as the Sec-  
3           retary makes a determination with respect to  
4           the assessment.

5           “(d) DISCLOSURE OF INGREDIENTS TO THE PUB-  
6 LIC.—

7           “(1) INITIAL DISCLOSURE.—The regulations  
8           promulgated in accordance with section 904(a) shall,  
9           at a minimum, require that a tobacco product be  
10          deemed to be misbranded if the labeling of the pack-  
11          age of such product does not disclose all ingredients,  
12          constituents, substances, or compounds contained in  
13          the product in accordance with regulations promul-  
14          gated by the Secretary.

15          “(2) DISCLOSURE OF PERCENTAGE OF DOMES-  
16 TIC AND FOREIGN TOBACCO.—The regulations re-  
17 ferred to in paragraph (1) shall, at a minimum, re-  
18 quire that a tobacco product be deemed to be mis-  
19 branded if the labeling of the package of such prod-  
20 uct does not disclose, with respect to the tobacco  
21 contained in the product—

22                  “(A) the percentage that is domestic to-  
23                  bacco; and

24                  “(B) the percentage that is foreign to-  
25                  bacco.

1 “(e) CONFIDENTIALITY.—

2 “(1) PETITION BY MANUFACTURER.—Upon the  
3 submission of a list under subsection (a), a manufac-  
4 turer may petition the Secretary to exempt certain  
5 ingredients, constituents, substances, or compounds  
6 on such list from public disclosure under subsection  
7 (e) on the basis that such information should be con-  
8 sidered confidential as a trade secret. Such petition  
9 may be accompanied by such data as the manufac-  
10 turer elects to submit.

11 “(2) DETERMINATION.—Not later than 60 days  
12 after receiving a petition under paragraph (1), the  
13 Secretary, in consultation with the Attorney General,  
14 shall make a determination with respect to whether  
15 the information described in the petition should be  
16 exempt from disclosure under paragraph (1) as a  
17 trade secret. The Secretary shall provide the manu-  
18 facturer involved with notice of such determination.  
19 but the decision of the Secretary shall be final.

20 “(3) PROCEDURES FOR CONFIDENTIAL INFOR-  
21 MATION.—The Secretary shall develop procedures to  
22 maintain the confidentiality of information that is  
23 treated as a trade secret under a determination  
24 under paragraph (2). Such procedures shall in-  
25 clude—

1           “(A) a requirement that such information  
2           be maintained in a secure facility; and

3           “(B) a requirement that only the Sec-  
4           retary, or the authorized agents of the Sec-  
5           retary, will have access to the information and  
6           shall be instructed to maintain the confidential-  
7           ity of such information.

8           “(4) HEALTH DISCLOSURE.—Notwithstanding  
9           a determination under paragraph (2), the Secretary  
10          may require that any ingredient, constituents, sub-  
11          stance, or compound contained in a tobacco product  
12          that is determined to be exempt from disclosure as  
13          a trade secret be disclosed if the Secretary deter-  
14          mines that such ingredient, constituents, substance,  
15          or compound is not safe as provided for in sub-  
16          section (d).

17          “(5) OTHER DISCLOSURE.—Any information  
18          that the Secretary determines is not subject to dis-  
19          closure to the public under this subsection, shall be  
20          exempt from disclosure pursuant to subsection (a) of  
21          section 552 of title 5, United States Code, by reason  
22          of subsection (b)(4) of such section, and shall be  
23          considered confidential and shall not be disclosed,  
24          except that such information may be disclosed to  
25          other officers or employees as provided for in para-

1 graph (3)(B) or when relevant in any proceeding  
2 under this Act.

3 **“SEC. 910. TOBACCO PRODUCT WARNINGS, LABELING AND**  
4 **PACKAGING.**

5 “(a) CIGARETTE WARNINGS.—

6 “(1) IN GENERAL.—

7 “(A) PACKAGING.—It shall be unlawful for  
8 any person to manufacture, package, or import  
9 for sale or distribution within the United States  
10 any cigarettes the package of which fails to  
11 bear, in accordance with the requirements of  
12 this subsection, one of the following labels:

13 “WARNING: Cigarettes Are Addictive.

14 “WARNING: Tobacco Smoke Can Harm  
15 Your Children.

16 “WARNING: Cigarettes Cause Fatal Lung  
17 Disease.

18 “WARNING: Cigarettes Cause Cancer.

19 “WARNING: Cigarettes Cause Strokes  
20 And Heart Disease.

21 “WARNING: Smoking During Pregnancy  
22 Can Harm Your Baby.

23 “WARNING: Smoking Can Kill You.

24 “WARNING: Tobacco Smoke Causes  
25 Fatal Lung Disease In Nonsmokers.



1           “WARNING: Quitting Smoking Now  
2           Greatly Reduces Serious Risks To Your  
3           Health.

4           “(B) ADVERTISING.—It shall be unlawful  
5           for any manufacturer or importer of cigarettes  
6           to advertise or cause to be advertised within the  
7           United States any cigarette unless the advertis-  
8           ing bears, in accordance with the requirements  
9           of this subsection, one of the following labels:

10           “WARNING: Cigarettes Are Addictive.

11           “WARNING: Tobacco Smoke Can Harm  
12           Your Children.

13           “WARNING: Cigarettes Cause Fatal Lung  
14           Disease.

15           “WARNING: Cigarettes Cause Cancer.

16           “WARNING: Cigarettes Cause Strokes  
17           And Heart Disease.

18           “WARNING: Smoking During Pregnancy  
19           Can Harm Your Baby.

20           “WARNING: Smoking Can Kill You.

21           “WARNING: Tobacco Smoke Causes  
22           Fatal Lung Disease In Nonsmokers.

23           “WARNING: Quitting Smoking Now  
24           Greatly Reduces Serious Risks To Your  
25           Health.

1 “(2) REQUIREMENTS FOR LABELING.—

2 “(A) LOCATION.—Each label statement re-  
3 quired by subparagraph (A) of paragraph (1)  
4 shall be located on the upper portion of the  
5 front panel of the cigarette package (or carton)  
6 and occupy not less than 25 percent of such  
7 front panel.

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

22 “(C) EXCEPTION.—The provisions of sub-  
23 paragraph (A) shall not apply in the case of a  
24 flip-top cigarette package (offered for sale on  
25 June 1, 1997) where the front portion of the

1 flip-top does not comprise at least 25 percent of  
2 the front panel. In the case of such a package,  
3 the label statement required by subparagraph  
4 (A) of paragraph (1) shall occupy the entire  
5 front portion of the flip-top.

6 “(3) REQUIREMENTS FOR ADVERTISING.—

7 “(A) LOCATION.—Each label statement re-  
8 quired by subparagraph (B) of paragraph (1)  
9 shall occupy not less than 20 percent of the  
10 area of the advertisement involved.

11 “(B) TYPE AND COLOR.—

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

18 “(I) With respect to whole page  
19 advertisements on broadsheet news-  
20 paper—45 point type.

21 “(II) With respect to half page  
22 advertisements on broadsheet news-  
23 paper—39 point type.

1 “(III) With respect to whole page  
2 advertisements on tabloid news-  
3 paper—39 point type.

4 “(IV) With respect to half page  
5 advertisements on tabloid news-  
6 paper—27 point type.

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

9 “(VI) With respect to whole page  
10 magazine advertisements—31.5 point  
11 type.

12 “(VII) With respect to 28cm x 3  
13 column advertisements—22.5 point  
14 type.

15 “(VIII) With respect to 20cm x 2  
16 column advertisements—15 point  
17 type.

18 The Secretary may revise the required type  
19 sizes as the Secretary determines appro-  
20 priate within the 20 percent requirement.

21 “(ii) COLOR.—All the letters in the  
22 label under this subparagraph shall appear  
23 in conspicuous and legible type, in contrast  
24 by typography, layout, or color with all  
25 other printed material on the package, and

1 be printed in an alternating black-on-white  
2 and white-on-black format as determined  
3 appropriate by the Secretary.

4 “(4) ROTATION OF LABEL STATEMENTS.—

5 “(A) IN GENERAL.—Except as provided in  
6 subparagraph (B), the label statements speci-  
7 fied in subparagraphs (A) and (B) of paragraph  
8 (1) shall be rotated by each manufacturer or  
9 importer of cigarettes quarterly in alternating  
10 sequence on packages of each brand of ciga-  
11 rettes manufactured by the manufacturer or  
12 importer and in the advertisements for each  
13 such brand of cigarettes in accordance with a  
14 plan submitted by the manufacturer or im-  
15 porter and approved by the Secretary. The Sec-  
16 retary shall approve a plan submitted by a  
17 manufacturer or importer of cigarettes which  
18 will provide the rotation required by this para-  
19 graph and which assures that all of the labels  
20 required by subparagraphs (A) and (B) will be  
21 displayed by the manufacturer or importer at  
22 the same time.

23 “(B) APPLICATION OF OTHER ROTATION  
24 REQUIREMENTS.—

1           “(i) IN GENERAL.—A manufacturer  
 2           or importer of cigarettes may apply to the  
 3           Secretary to have the label rotation de-  
 4           scribed in clause (iii) apply with respect to  
 5           a brand style of cigarettes manufactured  
 6           or imported by such manufacturer or im-  
 7           porter if—

8                   “(I) the number of cigarettes of  
 9                   such brand style sold in the fiscal year  
 10                  of the manufacturer or importer pre-  
 11                  ceding the submission of the applica-  
 12                  tion is less than  $\frac{1}{4}$  of 1 percent of all  
 13                  the cigarettes sold in the United  
 14                  States in such year; and

15                  “(II) more than  $\frac{1}{2}$  of the ciga-  
 16                  rettes manufactured or imported by  
 17                  such manufacturer or importer for  
 18                  sale in the United States are  
 19                  packaged into brand styles which meet  
 20                  the requirements of subclause (I).

21           If an application is approved by the Sec-  
 22           retary, the label rotation described in  
 23           clause (iii) shall apply with respect to the  
 24           applicant during the 1-year period begin-

1           ning on the date of the application ap-  
2           proval.

3           “(ii) PLAN.—An applicant under  
4           clause (i) shall include in its application a  
5           plan under which the label statements  
6           specified in subparagraph (A) of paragraph  
7           (1) will be rotated by the applicant manu-  
8           facturer or importer in accordance with the  
9           label rotation described in clause (iii).

10          “(iii) OTHER ROTATION REQUIRE-  
11          MENTS.—Under the label rotation which  
12          the manufacturer or importer with an ap-  
13          proved application may put into effect,  
14          each of the labels specified in subpara-  
15          graph (A) of paragraph (1) shall appear on  
16          the packages of each brand style of ciga-  
17          rettes with respect to which the application  
18          was approved an equal number of times  
19          within the 12-month period beginning on  
20          the date of the approval by the Secretary  
21          of the application.

22          “(5) APPLICATION OF REQUIREMENT.—Para-  
23          graph (1) does not apply to a distributor, a retailer  
24          of cigarettes who does not manufacture, package, or

1 import cigarettes for sale or distribution within the  
2 United States.

3 “(6) TELEVISION AND RADIO ADVERTISING.—It  
4 shall be unlawful to advertise cigarettes and little ci-  
5 gars on any medium of electronic communications  
6 subject to the jurisdiction of the Federal Commu-  
7 nications Commission.

8 “(b) SMOKELESS TOBACCO PRODUCTS.—

9 “(1) IN GENERAL.—

10 “(A) PACKAGING.—It shall be unlawful for  
11 any person to manufacture, package, or import  
12 for sale or distribution within the United States  
13 any smokeless tobacco product the package of  
14 which fails to bear, in accordance with the re-  
15 quirements of this subsection, one of the follow-  
16 ing labels:

17 “WARNING: This Product Can Cause  
18 Mouth Cancer.

19 “WARNING: This Product Can Kill You.

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

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

24 “WARNING: This Product Contains Can-  
25 cer-Causing Chemicals.



1           “WARNING: Smokeless Tobacco Is Ad-  
2           dictive.

3           “(B) ADVERTISING.—It shall be unlawful  
4           for any manufacturer or importer of smokeless  
5           tobacco products to advertise or cause to be ad-  
6           vertised within the United States any smokeless  
7           tobacco product unless the advertising bears, in  
8           accordance with the requirements of this sub-  
9           section, one of the following labels:

10           “WARNING: This Product Can Cause  
11           Mouth Cancer.

12           “WARNING: This Product Can Kill You.

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

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

17           “WARNING: This Product Contains Can-  
18           cer-Causing Chemicals.

19           “WARNING: Smokeless Tobacco Is Ad-  
20           dictive.

21           “(2) REQUIREMENTS FOR LABELING.—

22           “(A) LOCATION.—Each label statement re-  
23           quired by subparagraph (A) of paragraph (1)  
24           shall be located on the principal display panel

1 of the product and occupy not less than 25 per-  
2 cent of such panel.

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

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

22 “(4) APPLICATION OF REQUIREMENT.—Para-  
23 graph (1) does not apply to a distributor or a re-  
24 tailer of smokeless tobacco products who does not

1 manufacture, package, or import such products for  
2 sale or distribution within the United States.

3 “(5) TELEVISION AND RADIO ADVERTISING.—It  
4 shall be unlawful to advertise smokeless tobacco on  
5 any medium of electronic communications subject to  
6 the jurisdiction of the Federal Communications  
7 Commission.

8 “(c) ENFORCEMENT.—Not later than 180 days after  
9 the date of the enactment of this title, the Secretary shall  
10 promulgate such regulations as may be necessary to en-  
11 force subsections (a) and (b).

12 “(d) INJUNCTIONS.—The several district courts of  
13 the United States are vested with jurisdiction, for cause  
14 shown, to prevent and restrain violations of this section  
15 upon the application of the Secretary in the case of a viola-  
16 tion of subsection (a) or (b).

17 “(e) CONSTRUCTION.—

18 “(1) IN GENERAL.—Noting in this section shall  
19 be construed to limit the ability of the Secretary the  
20 change the text or layout of any of the warning  
21 statements, or any of the labeling provisions, under  
22 subsections (a) and (b), if determined necessary by  
23 the Secretary.

24 “(2) UNFAIR ACTS.—Nothing in this section  
25 (other than the requirements of subsections (a) and

1 (b)) shall be construed to limit or restrict the au-  
2 thority of the Secretary with respect to unfair or de-  
3 ceptive acts or practices in the advertising of ciga-  
4 rettes or smokeless tobacco products.

5 “(f) LIMITED PREEMPTION.—

6 “(1) STATE AND LOCAL ACTION.—

7 “(A) LIMITATION.—No warning label with  
8 respect to cigarettes or smokeless tobacco prod-  
9 ucts, other than the warning labels required by  
10 subsections (a) and (b), shall be required by  
11 any State or local statute or regulation to be in-  
12 cluded on any package or in any advertisement  
13 of cigarettes or a smokeless tobacco product.

14 “(B) RULE OF CONSTRUCTION.—Nothing  
15 in this section shall be construed as prohibiting  
16 a State or political subdivision of a State from  
17 enacting statutes or regulations concerning  
18 cigarettes or smokeless tobacco products so long  
19 as such statutes or regulations do not conflict  
20 with the labeling and advertising requirements  
21 of this section or require additional statements  
22 on cigarette or smokeless tobacco packages.

23 “(2) EFFECT ON LIABILITY LAW.—Except as  
24 otherwise provided in this section, nothing in this  
25 section shall relieve any person from liability at com-

1 mon law or under State statutory law to any other  
2 person.

3 “(g) REPORTS.—Not later than 1 year after the date  
4 of enactment of this chapter, and biennially thereafter, the  
5 Secretary shall prepare and submit to Congress a report  
6 containing—

7 “(1) a description of the effects of health edu-  
8 cation efforts on the use of cigarettes and smokeless  
9 tobacco products;

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

12 “(3) an evaluation of the health effects of ciga-  
13 rettes and smokeless tobacco products and the iden-  
14 tification of areas appropriate for further research;  
15 and

16 “(4) such recommendations for legislation and  
17 administrative action as the Secretary considers ap-  
18 propriate.

19 “(h) EXPORTS.—Packages of cigarettes or smokeless  
20 tobacco products manufactured, imported, or packaged—

21 “(1) for export from the United States; or

22 “(2) for delivery to a vessel or aircraft, as sup-  
23 plies, for consumption beyond the jurisdiction of the  
24 internal revenue laws of the United States;

1 shall be exempt from the requirements of this chapter, but  
2 such exemptions shall not apply to cigarettes or smokeless  
3 tobacco products manufactured, imported, or packaged for  
4 sale or distribution to members or units of the Armed  
5 Forces of the United States located outside of the United  
6 States.

7 “(i) APPLICATION.—The Secretary shall exercise the  
8 authority provided for in this section notwithstanding the  
9 provisions of the Federal Cigarette Labeling and Advertis-  
10 ing Act (15 U.S.C. 1331 et seq.) and the Comprehensive  
11 Smokeless Tobacco Health Education Act of 1986 (15  
12 U.S.C. 4401 et seq.).

13 **“SEC. 911. STATEMENT OF INTENDED USE.**

14 “(a) REQUIREMENT.—Each manufacturer, distribu-  
15 tor, and retailer advertising or causing to be advertised,  
16 disseminating or causing to be disseminated, advertising  
17 concerning cigarettes, cigarette tobacco, or smokeless to-  
18 bacco products otherwise permitted under this chapter  
19 shall include, as provided in section 502, the established  
20 name of the product and a statement of the intended use  
21 of the product as provided for in subsection (b).

22 “(b) USE STATEMENTS.—

23 “(1) CIGARETTES.—A statement of intended  
24 use for cigarettes or cigarette tobacco is as follows  
25 (whichever is appropriate):

1 “Cigarettes—A Nicotine-Delivery Device for  
2 Persons 18 or Older.

3 “Cigarette Tobacco—A Nicotine-Delivery De-  
4 vice for Persons 18 or Older.

5 “(2) SMOKELESS TOBACCO.—A statement of in-  
6 tended use for a smokeless tobacco product is as fol-  
7 lows (whichever is appropriate):

8 “Loose Leaf Chewing Tobacco—A Nicotine-De-  
9 livery Device for Persons 18 or Older.

10 “Plug Chewing Tobacco—A Nicotine-Delivery  
11 Device for Persons 18 or Older.

12 “Twist Chewing Tobacco—A Nicotine-Delivery  
13 Device for Persons 18 or Older.

14 “Moist Snuff—A Nicotine-Delivery Device for  
15 Persons 18 or Older.

16 “Dry Snuff—A Nicotine-Delivery Device for  
17 Persons 18 or Older.

18 “(c) TYPE AND LOCATION.—The Secretary shall pro-  
19 mulgate regulations with respect to the type, color, size,  
20 and placement of statements required under this section  
21 on labels and in advertisements.

22 **“SEC. 912. MISCELLANEOUS PROVISIONS.**

23 “(a) PRESERVATION OF STATE AND LOCAL AUTHOR-  
24 ITY.—Except as otherwise provided for in this chapter,  
25 nothing in this chapter shall be construed as prohibiting

1 a State from imposing requirements, prohibitions, pen-  
 2 alties or other measures to further the purposes of this  
 3 chapter that are in addition to the requirements, prohibi-  
 4 tions, or penalties required under this chapter. To the ex-  
 5 tent not inconsistent with the purposes of this chapter,  
 6 State and local governments may impose additional to-  
 7 bacco product control measures to further restrict or limit  
 8 the use of such products by minors.

9 “(b) REGULATIONS.—The Secretary may promulgate  
 10 regulations to enforce the provisions of this chapter, or  
 11 to modify, alter, or expand the requirements and protec-  
 12 tions provided for in this chapter if the Secretary deter-  
 13 mines that such modifications, alternations, or expansion  
 14 is necessary.”.

### 15 **TITLE III—STANDARDS TO RE-** 16 **DUCE INVOLUNTARY EXPO-** 17 **SURE TO TOBACCO SMOKE**

#### 18 **SEC. 301. STANDARDS TO REDUCE INVOLUNTARY EXPO-** 19 **SURE TO TOBACCO SMOKE.**

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

#### 23 **“SEC. 35. STANDARDS TO REDUCE INVOLUNTARY EXPO-** 24 **SURE TO TOBACCO SMOKE.**

25 “(a) DEFINITIONS.—In this section—



1 “(1) PUBLIC FACILITY.—

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

10 “(B) EXCLUSIONS.—The term ‘public fa-  
 11 cility’ does not include a portion of a building  
 12 which is used as a bar, tobacco merchant, a  
 13 hotel guest room that is designated as a smok-  
 14 ing room, or prison.

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

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

21 “(1) POLICY REQUIRED.—In order to protect  
 22 children and adults from cancer, respiratory disease,  
 23 heart disease, and other adverse health effects from  
 24 breathing environmental tobacco smoke, the respon-  
 25 sible entity for each public facility shall adopt and

1 implement at such facility a smoke-free environment  
2 policy which meets the requirements of paragraph  
3 (2) or (4).

4 “(2) ELEMENTS OF POLICY.—

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

7 “(i) prohibit the smoking of ciga-  
8 rettes, cigars, and pipes, and any other  
9 combustion of tobacco within the facility  
10 and on facility property within the imme-  
11 diate vicinity of the entrance to the facility;  
12 and

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

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

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

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

10          “(B) the area is maintained at negative  
11   pressure, as compared to adjoined nonsmoking  
12   areas, as determined under regulations promul-  
13   gated by the Secretary of Labor; and

14          “(C) nonsmoking individuals do not have  
15   to enter the area for any purpose while smoking  
16   is occurring in such area.

17   Cleaning and maintenance work shall be conducted  
18   in such area only while no smoking is occurring in  
19   the area.

20          “(4) SPECIAL RULES.—

21          “(A) SCHOOLS AND OTHER FACILITIES  
22   SERVING CHILDREN.—

23               “(i) IN GENERAL.—With respect to a  
24   facility described in clause (ii), the respon-  
25   sible entity for the facility shall adopt and

1 implement at such facility a smoke-free en-  
2 vironment policy that—

3 “(I) prohibits the smoking of  
4 cigarettes, cigars, and pipes, and any  
5 other combustion of tobacco within  
6 the facility and on facility property;

7 “(II) prohibits the use of smoke-  
8 less tobacco products within the facil-  
9 ity and on facility property; and

10 “(III) post a clear and prominent  
11 notice of the smoking and smokeless  
12 tobacco prohibition in appropriate and  
13 visible locations at the public facility.

14 “(ii) FACILITY.—A facility described  
15 in this clause is—

16 “(I) an elementary or secondary  
17 school (as such term is defined in sec-  
18 tion 14101 of the Elementary and  
19 Secondary Education Act of 1965 (20  
20 U.S.C. 8801);

21 “(II) any facility at which a  
22 Head Start program or project is  
23 being carried out under the Head  
24 Start Act (42 U.S.C. 9831 et seq.);

1                   “(III) any facility at which a li-  
2                   censed or certified child care provider  
3                   provides child care services; and

4                   “(IV) any recreation or other fa-  
5                   cility maintained primarily to provide  
6                   services to children as determined by  
7                   the Secretary of Labor.

8                   “(B) PUBLIC TRANSPORTATION.—With re-  
9                   spect to any responsible entity which operates  
10                  conveyances of public transportation (including  
11                  bus, rail, aircraft, boat, or any other conveyance  
12                  determined appropriate by the Secretary of  
13                  Labor), the responsible entity shall adopt and  
14                  implement on such conveyances a smoke-free  
15                  environment policy that—

16                  “(i) prohibits the smoking of ciga-  
17                  rettes, cigars, and pipes, and any other  
18                  combustion of tobacco within the convey-  
19                  ance and on property affiliated with the  
20                  conveyance; and

21                  “(ii) post a clear and prominent no-  
22                  tice of the smoking prohibition in appro-  
23                  priate and visible locations on the convey-  
24                  ance.

1       “(c) ENFORCEMENT.—To be eligible to receive funds  
 2 under title XXVIII of the Public Health Service Act, a  
 3 State shall have in effect laws or procedures to provide  
 4 for the enforcement of this section within the State. Such  
 5 laws or procedures shall permit aggrieved individuals to  
 6 enforce this section through administrative or judicial  
 7 means.

8       “(d) PREEMPTION.—Nothing in this section shall  
 9 preempt or otherwise affect any other Federal, State or  
 10 local law which provides protection from health hazards  
 11 from environmental tobacco smoke that are as least as  
 12 stringent as those provided for in this section.

13       “(e) REGULATIONS.—The Secretary of Labor is au-  
 14 thorized to promulgate such regulations as the Secretary  
 15 deems necessary to carry out this section.

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

## 19       **TITLE IV—TOBACCO MARKET** 20       **TRANSITION ASSISTANCE**

### 21       **SEC. 401. DEFINITIONS.**

22       In this title:

23               (1) BUYOUT PAYMENT.—The term “buyout  
 24 payment” means a payment made under section  
 25 411, 412, or 413.

1           (2) CONTRACT.—The term “contract” means a  
2       contract entered into under section 411, 412, or  
3       413.

4           (3) LEASE.—The term “lease” means a rental  
5       of quota on either a cash rent or crop share basis.

6           (4) MARKETING YEAR.—The term “marketing  
7       year” means—

8               (A) in the case of Flue-cured tobacco, the  
9       period beginning July 1 and ending the follow-  
10      ing June 30; and

11              (B) in the case of each other kind of to-  
12      bacco, the period beginning October 1 and end-  
13      ing the following September 30.

14           (5) QUOTA OWNER.—The term “quota owner”  
15      means a person that, at the time of entering into a  
16      contract, owns quota provided by the Secretary.

17           (6) PRODUCER OF QUOTA.—The term “pro-  
18      ducer of quota” means a person that during at least  
19      3 of the 1993 through 1997 crops of tobacco (as de-  
20      termined by the Secretary) that were subject to  
21      quota—

22               (A) leased quota;

23               (B) shared in the risk of producing a crop  
24      of tobacco; and

25               (C) marketed the tobacco subject to quota.

1           (7) PRODUCER OF NON-TOBACCO QUOTA.—The  
 2           term “producer of non-tobacco quota” means a per-  
 3           son that during at least 1 of the crop years 1995  
 4           through 1997 grew and marketed tobacco not sub-  
 5           ject to quota.

6           (8) QUOTA.—The term “quota” means basic  
 7           marketing quota for tobacco determined by the Sec-  
 8           retary under the Agricultural Adjustment Act of  
 9           1938 (7 U.S.C. 1281 et seq.).

10          (9) QUOTA HOLDER.—The term “quota holder”  
 11          means a producer that owns a farm for which a to-  
 12          bacco farm marketing quota or farm acreage allot-  
 13          ment was established under the Agricultural Adjust-  
 14          ment Act of 1938 (7 U.S.C. 1281 et seq.) for any  
 15          of the 1994, 1995, or 1996 crop years.

16          (10) QUOTA LESSEE.—The term “quota lessee”  
 17          means—

18                (A) a producer that owns a farm that pro-  
 19                duced tobacco pursuant to a lease and transfer  
 20                to that farm of all or part of a tobacco farm  
 21                marketing quota or farm acreage allotment es-  
 22                tablished under the Agricultural Adjustment  
 23                Act of 1938 (7 U.S.C. 1281 et seq.) for any of  
 24                the 1994, 1995, or 1996 crop years; or



1 (B) a producer that rented land from a  
 2 farm operator to produce tobacco under a to-  
 3 bacco farm marketing quota or farm acreage al-  
 4 lotment established under the Agricultural Ad-  
 5 justment Act of 1938 (7 U.S.C. 1281 et seq.)  
 6 for any of the 1994, 1995, or 1996 crop years.

7 (11) QUOTA TENANT.—The term “quota ten-  
 8 ant” means a producer that—

9 (A) is the principal producer, as deter-  
 10 mined by the Secretary, of tobacco on a farm  
 11 where tobacco is produced pursuant to a to-  
 12 bacco farm marketing quota or farm acreage al-  
 13 lotment established under the Agricultural Ad-  
 14 justment Act of 1938 (7 U.S.C. 1281 et seq.)  
 15 for any of the 1994, 1995, or 1996 crop years;  
 16 and

17 (B) is not a quota holder or quota lessee.

18 (12) SECRETARY.—In subtitles A and C, the  
 19 term “Secretary” means the Secretary of  
 20 Agriculture.

21 (13) STATE.—The term “State” means each of  
 22 the several States of the United States, the District  
 23 of Columbia, the Commonwealth of Puerto Rico, and  
 24 any other territory or possession of the United  
 25 States.

1           (14) TOBACCO.—The term “tobacco” means  
2           any kind of tobacco produced and marketed in the  
3           United States.

4           (15) TOBACCO-GROWING STATE.—The term  
5           “tobacco-growing State” means Georgia, Kentucky,  
6           North Carolina, South Carolina, Tennessee, or  
7           Virginia.

8           (16) TRANSITION PAYMENT.—The term “tran-  
9           sition payment” means a payment made to a pro-  
10          ducer under section 411, 412, or 413.

11          (17) UNITED STATES.—The term “United  
12          States”, when used in a geographical sense, means  
13          all of the States.

14   **Subtitle A—Tobacco Quota Buyout**  
15   **Contracts and Producer Transi-**  
16   **tion Payments**

17   **SEC. 411. QUOTA OWNER BUYOUT CONTRACTS.**

18          (a) OFFER.—The Secretary shall offer to enter into  
19          a quota buyout contract with the quota owner on each  
20          farm to which a quota was assigned in 1997.

21          (b) TERMS.—

22               (1) RELINQUISHMENT OF QUOTA.—Under the  
23          terms of the contract, the owner shall agree, in ex-  
24          change for a buyout payment, to permanently relin-  
25          quish the quota.

1           (2) ELIGIBILITY FOR TOBACCO PROGRAM BENE-  
 2           FITS.—Neither the farm, in its current or future  
 3           ownership configuration, nor the contracting owner  
 4           shall be eligible for any tobacco program benefits  
 5           under the Agricultural Adjustment Act of 1938 (7  
 6           U.S.C. 1281 et seq.), or the Agricultural Act of  
 7           1949 (7 U.S.C. 1421 et seq.).

8           (c) PAYMENT CALCULATION.—The total amount of  
 9           the buyout payment made to a quota owner shall be deter-  
 10          mined by multiplying—

11                   (1) \$4; by

12                   (2) the average quantity of basic quota assigned  
 13           to the farm during the period 1995 through 1997.

14   **SEC. 412. PRODUCER TRANSITION PAYMENTS FOR QUOTA**  
 15                   **TOBACCO.**

16           (a) OFFER.—The Secretary shall offer to producers  
 17           of quota tobacco that do not own the quota, but were  
 18           quota lessees or quota tenants in 1997, producer transi-  
 19           tion payment contracts.

20           (b) TERMS.—Under the terms of the transition con-  
 21           tract, the producer shall agree, in exchange for a payment,  
 22           to permanently refrain from growing tobacco for which a  
 23           quota program is in effect.

1 (c) PAYMENT CALCULATION.—The total amount of  
 2 the transition payment made to a producer shall be deter-  
 3 mined by multiplying—

4 (1) \$4; by

5 (2) the average quantity of quota tobacco leased  
 6 or rented from quota owners during the period 1995  
 7 through 1997.

8 **SEC. 413. PRODUCER TRANSITION PAYMENTS FOR NON-**  
 9 **QUOTA TOBACCO.**

10 (a) OFFER.—The Secretary shall offer to producers  
 11 of nonquota tobacco a producer nonquota transition pay-  
 12 ment contract.

13 (b) TERMS.—Under the terms of the transition pay-  
 14 ment, the producer shall agree, in exchange for a payment,  
 15 to permanently refrain from growing tobacco for which a  
 16 quota program is in effect.

17 (c) PAYMENT CALCULATION.—The total amount of  
 18 the transition payment made to a producer shall be deter-  
 19 mined by multiplying—

20 (1) \$4; by

21 (2) the average annual quantity of nonquota to-  
 22 bacco marketed during the period 1995 through  
 23 1997.

1 **SEC. 414. ELEMENTS OF CONTRACTS.**

2 (a) COMMENCEMENT.—To the maximum extent prac-  
3 ticable, the Secretary shall commence entering into con-  
4 tracts under this subtitle not later than 90 days after the  
5 date of enactment of this Act.

6 (b) DEADLINE.—The Secretary may not enter into  
7 a contract under this subtitle after the date that is 3 years  
8 after the date of enactment of this Act.

9 (c) BEGINNING DATE.—A contract under this sub-  
10 title shall take effect and become binding beginning in the  
11 tobacco marketing year following the year in which the  
12 contract is entered into.

13 (d) TIME FOR PAYMENT.—A contract payment shall  
14 be made not later than the date that is the beginning of  
15 the marketing year in which the contract becomes binding,  
16 or at any later time selected by the quota owner or  
17 producer.

18 (e) PROHIBITION OF DOUBLE PAYMENTS.—In no  
19 case shall a contract holder receive overlapping payments  
20 as a quota owner and as a producer on the same tobacco.

21 **Subtitle B—No Net Cost Tobacco**  
22 **Program**

23 **SEC. 421. BUDGET DEFICIT ASSESSMENT.**

24 Section 106(g)(1) of the Agricultural Act of 1949 (7  
25 U.S.C. 1445(g)(1)) is amended—

1           (1) by striking “only for each of the 1994  
2           through 1998 crops” and inserting “for the 1998  
3           and each subsequent crop”; and

4           (2) by striking “equal to—” and all that follows  
5           and inserting “equal to 1 or more amounts deter-  
6           mined by the Secretary that are sufficient to cover  
7           the costs of the administration of the tobacco quota  
8           and price support programs administered by the  
9           Secretary.”.

## 10       **Subtitle C—Tobacco Community** 11       **Empowerment Block Grants**

### 12       **SEC. 431. TOBACCO COMMUNITY EMPOWERMENT BLOCK** 13       **GRANTS.**

14       (a) **AUTHORITY.**—The Secretary shall make grants to  
15       tobacco States in accordance with this section to enable  
16       the States to—

17           (1) empower active tobacco producers and to-  
18           bacco product manufacturing workers by providing  
19           economic alternatives to tobacco; and

20           (2) carry out non-tobacco economic development  
21           initiatives in tobacco communities.

22       (b) **APPLICATION.**—To be eligible to receive payments  
23       under this section, a tobacco State shall prepare and sub-  
24       mit to the Secretary an application at such time, in such

1 manner, and containing such information as the Secretary  
2 may require, including—

3           (1) a description of the activities that the State  
4       will carry out using amounts received under the  
5       grant;

6           (2) a designation of an appropriate State agen-  
7       cy to administer amounts received under the grant;  
8       and

9           (3) a description of the steps to be taken to en-  
10      sure that the funds are distributed in accordance  
11      with subsection (e).

12       (c) AMOUNT OF GRANT.—

13           (1) IN GENERAL.—From the amounts available  
14      to carry out this section for a fiscal year, the Sec-  
15      retary shall allot to each tobacco State an amount  
16      that bears the same ratio to the amounts available  
17      as the total income of the State derived from the  
18      production of tobacco and the manufacture of to-  
19      bacco products during the 1994 through 1996 mar-  
20      keting years (as determined under paragraph (2))  
21      bears to the total income of all tobacco States de-  
22      rived from the production of tobacco and the manu-  
23      facturing of tobacco products during the 1994  
24      through 1996 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 and the manufacture of tobacco products  
5           in each tobacco State and in all tobacco States.

6           (d) PAYMENTS.—

7           (1) IN GENERAL.—A tobacco State that has an  
8           application approved by the Secretary under sub-  
9           section (b) shall be entitled to a payment under this  
10          section in an amount that is equal to its allotment  
11          under subsection (c).

12          (2) FORM OF PAYMENTS.—The Secretary may  
13          make payments under this section to a tobacco State  
14          in installments, and in advance or by way of reim-  
15          bursement, with necessary adjustments on account  
16          of overpayments or underpayments, as the Secretary  
17          may determine.

18          (3) REALLOTMENTS.—Any portion of the allot-  
19          ment of a tobacco State under subsection (c) that  
20          the Secretary determines will not be used to carry  
21          out this section in accordance with an approved  
22          State application required under subsection (b), shall  
23          be reallocated by the Secretary to other tobacco  
24          States in proportion to the original allotments to the  
25          other States.



1 (e) USE AND DISTRIBUTION OF FUNDS.—

2 (1) IN GENERAL.—Amounts received by a to-  
3 bacco State under this section shall be used to carry  
4 out economic development activities, including—

5 (A) rural business enterprise activities de-  
6 scribed in subsections (c) and (e) of section  
7 310B of the Consolidated Farm and Rural De-  
8 velopment Act (7 U.S.C. 1932);

9 (B) down payment loan assistance pro-  
10 grams that are similar to the program described  
11 in section 310E of the Consolidated Farm and  
12 Rural Development Act (7 U.S.C. 1935);

13 (C) activities designed to help create pro-  
14 ductive farm or off-farm employment in rural  
15 areas to provide a more viable economic base  
16 and enhance opportunities for improved in-  
17 comes, living standards, and contributions by  
18 rural individuals to the economic and social de-  
19 velopment of tobacco communities;

20 (D) activities that expand existing infra-  
21 structure, facilities, and services to capitalize on  
22 opportunities to diversify economies in tobacco  
23 communities and that support the development  
24 of new industries or commercial ventures;

1           (E) activities by agricultural organizations  
2           that provide assistance directly to active tobacco  
3           producers to assist in developing other agricul-  
4           tural activities that supplement tobacco-produc-  
5           ing activities;

6           (F) initiatives designed to create or expand  
7           locally owned value-added processing and mar-  
8           keting operations in tobacco communities;

9           (G) technical assistance activities by per-  
10          sons to support farmer-owned enterprises, or  
11          agriculture-based rural development enterprises,  
12          of the type described in section 252 or 253 of  
13          the Trade Act of 1974 (19 U.S.C. 2342, 2343);  
14          and

15          (H) investments in community colleges and  
16          trade schools to provide skills training to active  
17          tobacco producers and tobacco product manu-  
18          facturing workers and ensure that the off-farm  
19          sector remains vital and robust.

20          (2) TOBACCO COUNTIES.—Assistance may be  
21          provided by a tobacco State under this section only  
22          to assist a county in the State that has been deter-  
23          mined by the Secretary to have in excess of  
24          \$100,000 in income derived from the production of  
25          tobacco and the manufacture of tobacco products

during 1 or more of the 1994 through 1996 marketing years.

(3) DISTRIBUTION.—

(A) ECONOMIC DEVELOPMENT ACTIVITIES.—Not less than 20 percent of the amounts received by a tobacco State under this section shall be used to carry out—

(i) economic development activities described in subparagraph (E) or (F) of paragraph (1); or

(ii) agriculture-based rural development activities described in paragraph (1)(G).

(B) TECHNICAL ASSISTANCE ACTIVITIES.—Not less than 4 percent of the amounts received by a tobacco State under this section shall be used to carry out technical assistance activities described in paragraph (1)(G).

(C) TOBACCO COUNTIES.—To be eligible to receive payments under this section, a tobacco State shall demonstrate to the Secretary that funding will be provided, during the 1999 through 2004 fiscal years, for activities in each county in the State that has been determined under paragraph (2) to have in excess of

\$100,000 in income derived from the production of tobacco and the manufacture of tobacco products, in amounts that are at least equal to the product obtained by multiplying—

(i) the ratio that the tobacco production and tobacco product manufacturing income in the county determined under paragraph (2) bears to the total tobacco production and tobacco product manufacturing income for the State determined under subsection (c); by

(ii) 50 percent of the total amounts received by the State under this section during the 1999 through 2004 fiscal years.

## **TITLE V—MISCELLANEOUS PROVISIONS**

### **SEC. 501. SENSE OF THE SENATE.**

It is the sense of the Senate that, in order to provide funds to carry out this Act, Congress should enact an increase in the excise taxes on tobacco products of approximately \$1.50 per pack of cigarettes (and corresponding increases on taxes on other tobacco products) over a 3-year period, that increases in such tax in future years should be indexed to inflation, and that the payment of such tax should not be considered to be an ordinary and

- 1 necessary expense in carrying on a trade or business and
- 2 should not be deductible.

