

105TH CONGRESS
2D SESSION

S. 1648

To amend the Public Health Service Act and the Food, Drug and Cosmetic Act to provide for reductions in youth smoking, for advancements in tobacco-related research, and the development of safer tobacco products, and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 12, 1998

Mr. JEFFORDS (for himself, Ms. COLLINS, and Mr. ENZI) introduced the following bill; which was read twice and referred to the Committee on Labor and Human Resources

A BILL

To amend the Public Health Service Act and the Food, Drug and Cosmetic Act to provide for reductions in youth smoking, for advancements in tobacco-related research, and the development of safer tobacco products, and for other purposes.

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

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

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Preventing Addiction to Smoking among Teens Act” or
6 the “PAST Act”.

- 1 (b) TABLE OF CONTENTS.—The Table of contents
 2 for this Act is as follows:

- Sec. 1. Short title; table of contents.
 Sec. 2. Findings.
 Sec. 3. Goals and purposes.
 Sec. 4. National goals for the reduction in underage tobacco use.

TITLE I—REGULATION OF TOBACCO PRODUCTS AND TOBACCO
 PRODUCT DEVELOPMENT

- Sec. 101. Regulation of tobacco products and tobacco product development.

“CHAPTER IX—HEALTH AND SAFETY REGULATORY
 REQUIREMENTS RELATING TO TOBACCO PRODUCTS

- “Sec. 900. Definitions.

“SUBCHAPTER A—TOBACCO PRODUCT REGULATION

- “Sec. 901. Statement of general duties.
 “Sec. 902. Submission of health information to the Secretary.
 “Sec. 903. Tobacco product health risk reduction standards.
 “Sec. 904. Good manufacturing practice standards.
 “Sec. 905. Tobacco product labeling, warning, and packaging standards.
 “Sec. 906. Restriction on marketing and advertising.
 “Sec. 907. Reduced risk tobacco products.
 “Sec. 908. Tobacco product marketing restrictions.
 “Sec. 909. Tobacco products scientific advisory committee.
 “Sec. 910. Reports.
 “Sec. 911. Judicial review.
 “Sec. 912. Authority to assess and use fees.
 “Sec. 913. Preservation of State and local authority.
 Sec. 102. Technical provisions.
 Sec. 103. Federal licensing of military and other entities.

TITLE II—NATIONAL EFFORTS TO REDUCE YOUTH SMOKING

- Sec. 201. Short title.
 Sec. 202. Amendment to Public Health Service Act.

“TITLE XXVIII—NATIONAL EFFORTS TO REDUCE YOUTH
 SMOKING

- “Sec. 2801. Definitions.

“Subtitle A—Required Reduction in Underage Use of Tobacco Products

- “Sec. 2811. Purpose.
 “Sec. 2812. Determination of underage use base percentages.
 “Sec. 2813. Annual daily incidence of underage use of tobacco products.
 “Sec. 2814. Required reduction in underage tobacco use.
 “Sec. 2815. Application of surcharges.
 “Sec. 2816. Abatement procedures.
 “Sec. 2817. Incentive for exceeding reduction goals.

“Subtitle B—Restrictions on Access to Tobacco Products

- “Sec. 2821. Minors’ access to tobacco products.
- “Sec. 2822. State laws regarding sale of tobacco products to individuals under the age of 18.
- “Sec. 2823. Model State law.
- “Sec. 2824. Funding.
- “Sec. 2825. Regulations.

“Subtitle C—State and Community Action Program

- “Sec. 2831. Funding from Tobacco Settlement Trust Fund.
- “Sec. 2832. Allotments.
- “Sec. 2833. Payments under allotments to States.
- “Sec. 2834. Use of allotments.
- “Sec. 2835. Application for payments; State plan.
- “Sec. 2836. Reports, data, and audits.
- “Sec. 2837. Withholding.
- “Sec. 2838. Nondiscrimination.
- “Sec. 2839. Criminal penalty for false Statements.

“Subtitle D—Smoking Cessation Programs

- “Sec. 2841. Funding from Tobacco Settlement Trust Fund.
- “Sec. 2842. Allotments.
- “Sec. 2843. Payments under allotments to States.
- “Sec. 2844. Use of allotments.
- “Sec. 2845. Application for payments; State plan.
- “Sec. 2846. Reports, data, and audits.
- “Sec. 2847. Withholding.
- “Sec. 2848. Nondiscrimination.
- “Sec. 2849. Criminal penalty for false Statements.

“Subtitle E—Reducing Youth Smoking and Tobacco-Related Diseases Through Research

- “Sec. 2851. Study by the Institute of Medicine.
- “Sec. 2852. National Tobacco Task Force.
- “Sec. 2853. Research activities of the Centers for Disease Control and Prevention.
- “Sec. 2854. Research activities of the National Institutes of Health.

“Subtitle F—Public Health Education and Promotion

- “Sec. 2861. Public health education and promotion.

TITLE III—STANDARDS TO REDUCE INVOLUNTARY EXPOSURE TO TOBACCO SMOKE

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

TITLE IV—MISCELLANEOUS PROVISIONS

- Sec. 401. Severability.

1 **SEC. 2. FINDINGS.**

- 2 Congress makes the following findings:

1 (1) Tobacco is an addictive substance the use of
2 which constitutes the Nation's number 1 preventable
3 cause of death.

4 (2) The use of tobacco products by the nation's
5 children is a serious and growing public health prob-
6 lem that results in new generations of tobacco-de-
7 pendent children and adults.

8 (3) There is a consensus within the scientific,
9 public health, and medical communities that cur-
10 rently marketed tobacco products are inherently un-
11 safe and cause cancer, heart disease, and other seri-
12 ous adverse health effects.

13 (4) Virtually all new users of tobacco products
14 are under the age of 18. Tobacco industry advertis-
15 ing and marketing is directed at adolescents and as
16 such, sweeping new restrictions on the sale, pro-
17 motion, and distribution of such products are need-
18 ed.

19 (5) The Office on Smoking and Health of the
20 Centers for Disease Control and Prevention has
21 found that more than 70 percent of the nation's
22 50,000,000 current smokers have tried unsucces-
23 sfully to quit, and about 20,000,000 try to quit each
24 year, with little success.

1 (6) Current research shows that new and cost-
2 effective treatments are available that could dramati-
3 cally improve the success rate of smoking cessation
4 attempts.

5 (7) While State laboratory models, such as
6 those developed in California and Massachusetts,
7 demonstrate that comprehensive programs to reduce
8 tobacco use can be effective, tobacco-related re-
9 search, including policy-oriented, programmatic, be-
10 havioral, public health, and biomedical research
11 should be a substantial component of a national pro-
12 gram to prevent and reduce the use of tobacco prod-
13 ucts.

14 (8) Enhancing the available prevention, re-
15 search, and treatment resources with respect to to-
16 bacco will allow our Nation to address more effec-
17 tively the problems associated with the use of to-
18 bacco products.

19 (9) States have been instrumental in reducing
20 smoking rates, and States should continue to play a
21 leading role in tobacco control efforts.

22 (10) While the Synar amendment has estab-
23 lished the importance of restricting access to tobacco
24 products as a way to reduce smoking among teens,
25 most teens who smoke buy cigarettes themselves.

1 Thus, greater emphasis must be placed on the en-
2 forcement of effective restrictions on access and the
3 elimination of marketing and advertising to children
4 and teens.

5 **SEC. 3. GOALS AND PURPOSES.**

6 (a) GOALS.—It is a goal of this Act to—

7 (1) decrease and prevent youth smoking and re-
8 duce the marketing of tobacco products to young
9 Americans;

10 (2) decrease and prevent tobacco use by all
11 Americans by encouraging public education and
12 smoking cessation programs and to decrease the ex-
13 posure of individuals to environmental (second-hand)
14 smoke;

15 (3) develop effective strategies to prevent the
16 underage use of tobacco products;

17 (4) advance our knowledge of the health effects
18 of nicotine and tobacco products on the human body,
19 the factors that influence behavior related to the use
20 and nonuse of tobacco products, and the factors that
21 influence successful cessation efforts;

22 (5) establish the authority of the Food and
23 Drug Administration with respect to the types of to-
24 bacco products that may be lawfully sold; and

1 (6) invest tobacco revenues in important public
2 health priorities, such as smoking cessation, public
3 education, counter-advertising.

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

5 (1) provide for the funding by the tobacco in-
6 dustry of an aggressive enforcement program relat-
7 ing to tobacco advertising and distribution, including
8 a State-administered retail licensing system to pre-
9 vent minors from obtaining tobacco products;

10 (2) subject the tobacco industry to severe finan-
11 cial penalties in the event that underage tobacco
12 usage does not decline radically over the next 10
13 years;

14 (3) provide annual payments to the States to
15 fund comprehensive tobacco education and use pre-
16 vention programs at the State and community levels;

17 (4) provide annual payments to States to fund
18 effective smoking cessation treatment efforts at the
19 State and community levels;

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

23 (6) provide certain regulatory powers to the
24 Secretary of Health and Human Services to encour-
25 age the development and marketing by the tobacco

1 industry of “less hazardous tobacco products”, in-
 2 cluding the power to regulate the level of nicotine in
 3 such products;

4 (7) provide for the establishment of a national
 5 education-oriented counter advertising and tobacco
 6 use prevention campaign to be funded through the
 7 National Tobacco Settlement Trust Fund; and

8 (8) establish a minimum Federal standard to
 9 limit smoking in public places, including the halls of
 10 Congress.

11 **SEC. 4. NATIONAL GOALS FOR THE REDUCTION IN UNDER-**
 12 **AGE TOBACCO USE.**

13 (a) IN GENERAL.—With respect to the average an-
 14 nual incidence of the daily use of tobacco products by indi-
 15 viduals who are under 18 years of age, it shall be the na-
 16 tional goals of the United States that such use be reduced
 17 as follows:

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

19 (A) in the fifth and sixth calendar years
 20 after the date of enactment of this Act the per-
 21 centage decrease in the use of cigarette prod-
 22 ucts shall be at least 30 percent;

23 (B) in the seventh, eighth and ninth cal-
 24 endar years after the date of enactment of this

1 Act the percentage decrease in the use of ciga-
2 rette products shall be at least 50 percent; and

3 (C) in the tenth and subsequent calendar
4 years after the date of enactment of this Act
5 the percentage decrease in the use of cigarette
6 products shall be at least 60 percent.

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

9 (A) in the fifth and sixth calendar years
10 after the date of enactment of this Act the per-
11 centage decrease in the use of smokeless to-
12 bacco products shall be at least 25 percent;

13 (B) in the seventh, eighth and ninth cal-
14 endar years after the date of enactment of this
15 Act the percentage decrease in the use of
16 smokeless tobacco products shall be at least 35
17 percent; and

18 (C) in the tenth and subsequent calendar
19 years after the date of enactment of this Act
20 the percentage decrease in the use of smokeless
21 tobacco products shall be at least 45 percent.

22 (b) DETERMINATIONS.—Determinations as to wheth-
23 er the national goals described in subsection (a) have been
24 met shall be made in accordance with the provisions of

1 subtitle A of title XXVIII of the Public Health Service
2 Act (as added by section 202).

3 **TITLE I—REGULATION OF TO-**
4 **BACCO PRODUCTS AND TO-**
5 **BACCO PRODUCT DEVELOP-**
6 **MENT**

7 **SEC. 101. REGULATION OF TOBACCO PRODUCTS AND TO-**
8 **BACCO PRODUCT DEVELOPMENT.**

9 (a) PROHIBITED ACTS.—Section 301 of the Federal
10 Food, Drug, and Cosmetic Act (21 U.S.C. 331) is amend-
11 ed by adding at the end the following:

12 “(x) The introduction or delivery for introduction into
13 interstate commerce of any tobacco product that does not
14 comply with the provisions of chapter IX.

15 “(y) The failure by the manufacturer of a tobacco
16 product to comply with a tobacco product health risk man-
17 agement standard, a good manufacturing practice stand-
18 ard, a tobacco product labeling, warning or packaging
19 standard, or any other requirement of chapter IX.”.

20 (b) INSPECTIONS.—Section 704(a)(1) of the Federal
21 Food, Drug, and Cosmetic Act (21 U.S.C. 374(a)(1)) is
22 amended—

23 (1) in subparagraph (A), by striking “or cos-
24 metics” each place that such appears and inserting
25 “, cosmetics, or tobacco products”; and

1 (2) in the second sentence, by striking “drugs
2 or” each place that such appears and inserting
3 “drugs, tobacco products or”.

4 (c) REGULATION OF TOBACCO PRODUCTS.—The
5 Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301
6 et seq.) is amended—

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

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

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

13 “CHAPTER IX—HEALTH AND SAFETY REGU-
14 LATORY REQUIREMENTS RELATING TO TO-
15 BACCO PRODUCTS

16 “**SEC. 900. DEFINITIONS.**

17 “In this chapter:

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

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

24 “(B) any roll of tobacco wrapped in any
25 substance containing tobacco which, because of

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

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

12 “(3) NICOTINE.—The term ‘nicotine’ means the
13 chemical substance named 3-(1-Methyl-2-
14 pyrrolidinyl)pyridine or $C_{10}H_{14}N_2$, including any salt
15 or complex of nicotine.”.

16 “(4) SMOKELESS TOBACCO.—The term ‘smoke-
17 less tobacco’ means any product that consists of cut,
18 ground, powdered, or leaf tobacco that contains nico-
19 tine and that is intended to be placed in the oral or
20 nasal cavity.

21 “(5) TAR.—The term ‘tar’ means mainstream
22 total particulate matter minus nicotine and water.

23 “(6) TOBACCO ADDITIVE.—The term ‘tobacco
24 additive’ means any substance the intended use of
25 which results or may reasonably be expected to re-

1 sult, directly or indirectly, in the substance becoming
 2 a component of, or otherwise affecting the character-
 3 istics of, any tobacco product, including any sub-
 4 stance that may have been removed from the tobacco
 5 product and then readded in the substance’s original
 6 or modified form.

7 “(7) TOBACCO PRODUCT.—The term ‘tobacco
 8 product’ means cigarettes and smokeless tobacco
 9 products.

10 **“Subchapter A—Tobacco Product Regulation**

11 **“SEC. 901. STATEMENT OF GENERAL DUTIES.**

12 “As part of the comprehensive health promotion and
 13 disease prevention program established under this chapter
 14 and the PAST Act (and the amendments made by such
 15 Act) relating to diseases and conditions associated with
 16 the use of tobacco products, and that places a special em-
 17 phasis on discouraging the use of such products by young
 18 Americans, the Secretary shall—

19 “(1) receive, assess, and provide appropriate
 20 confidentiality regarding information submitted to
 21 the Secretary under section 902;

22 “(2) develop and implement health risk reduc-
 23 tion standards for tobacco products under section
 24 903;

1 “(3) develop and implement good manufactur-
2 ing practice standards for tobacco products under
3 section 904;

4 “(4) develop and implement tobacco product la-
5 beling, warning, and packaging standards under sec-
6 tion 905;

7 “(5) enforce, and as appropriate, revise tobacco
8 product labeling, warning, and packaging standards
9 under section 905;

10 “(6) develop and implement standards that en-
11 courage the development and use of reduced risk to-
12 bacco products under section 907;

13 “(7) develop and implement tobacco product
14 marketing standards under section 908;

15 “(8) establish and oversee a tobacco products
16 scientific advisory committee under section 909 to
17 provide advice on the establishment of tobacco prod-
18 uct marketing standards under section 903, 904,
19 905, and 907; and

20 “(9) submit reports to Congress evaluating the
21 effectiveness of this chapter and the PAST Act as
22 described in section 910.

1 **“SEC. 902. SUBMISSION OF HEALTH INFORMATION TO THE**
2 **SECRETARY.**

3 “(a) REQUIREMENT.—Not later than 6 months after
4 the date of enactment of this chapter, each manufacturer
5 or importer of tobacco products shall submit to the Sec-
6 retary the following information:

7 “(1) A listing of all tobacco ingredients, sub-
8 stances and compounds (other than tobacco, water
9 or reconstituted tobacco sheet made wholly from to-
10 bacco) that are, on such date, added by the manu-
11 facturer to the tobacco, paper, filter or other compo-
12 nent of each tobacco product by brand and by quan-
13 tity in each brand and subbrand.

14 “(2) A description of the nicotine content of
15 each tobacco product measured in milligrams of nic-
16 otine.

17 “(3) All documents (including underlying sci-
18 entific information) relating to research activities,
19 and research findings, conducted or supported by
20 the manufacturer (or agents thereof) on the health
21 effects of tobacco products, their constituents and
22 components, and tobacco additives, described in
23 paragraph (1).

24 “(4) All documents (including underlying sci-
25 entific information) relating to research activities,
26 and research findings, conducted or supported by

1 the manufacturer that bear on the issue of whether
2 a reduction in risk to health from tobacco products
3 can occur upon the employment of technology avail-
4 able or known to the manufacturer.

5 “(5) All documents (including underlying sci-
6 entific information) relating to marketing research
7 involving the use of tobacco products.

8 An importer of a tobacco product not manufactured in the
9 United States shall supply the information required of a
10 manufacturer under this subsection.

11 “(b) ANNUAL SUBMISSION.—A manufacturer or im-
12 porter that is required to submit information under sub-
13 section (a) shall update such information on an annual
14 basis.

15 “(c) TIME FOR SUBMISSION.—

16 “(1) IN GENERAL.—At least 90 days prior to
17 the delivery for introduction into interstate com-
18 merce of a tobacco product not on the market on the
19 date of enactment of this chapter, the manufacturer
20 of such product shall provide the information re-
21 quired under subsection (a).

22 “(2) MODIFICATION OF PRODUCTS.—If at any
23 time a manufacturer adds to its tobacco products a
24 new tobacco additive, increases or decreases the
25 quantity of an existing tobacco additive, or elimi-

1 nates a tobacco additive from any tobacco product,
2 the manufacturer shall within 60 days of such action
3 so advise the Secretary in writing.

4 “(d) CONFIDENTIALITY.—

5 “(1) GENERAL RULE.—Any information that is
6 not required to be disclosed to the public under this
7 section, shall be exempt from disclosure pursuant to
8 subsection (a) of section 552 of title 5, United
9 States Code, by reason of subsection (b)(4) of such
10 section, and shall be considered confidential and
11 shall not be disclosed, except that such information
12 may be disclosed to other officers or employees as
13 provided for in paragraph (4) or when relevant in
14 any proceeding under this chapter.

15 “(2) PETITION BY MANUFACTURER.—Upon the
16 submission of the information required under sub-
17 section (a), or the submission of any other informa-
18 tion under any other provisions of this chapter, a
19 manufacturer may petition the Secretary to exempt
20 certain ingredients, substances, or compounds or
21 other information submitted from public disclosure
22 under this subsection on the basis that such infor-
23 mation should be considered confidential as a trade
24 secret. Such petition may be accompanied by such
25 data as the manufacturer elects to submit.

1 “(3) DETERMINATION.—Not later than 90 days
2 after receiving a petition under paragraph (2), the
3 Secretary shall make a determination with respect to
4 whether the information described in the petition
5 should be exempt from disclosure under paragraph
6 (1) as a trade secret. The Secretary shall provide the
7 manufacturer involved with notice of such deter-
8 mination, but the decision of the Secretary shall be
9 final.

10 “(4) PROCEDURES FOR CONFIDENTIAL INFOR-
11 MATION.—The Secretary shall develop procedures to
12 maintain the confidentiality of information that is
13 treated as a trade secret under a determination
14 under paragraph (3). Such procedures shall in-
15 clude—

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

18 “(B) a requirement that only the Sec-
19 retary, or the authorized agents of the Sec-
20 retary, will have access to the information and
21 shall be instructed to maintain the confidential-
22 ity of such information.

23 “(5) HEALTH DISCLOSURE.—Notwithstanding
24 any other provision of this subsection, the Secretary
25 may require that any ingredient, substance, or com-

1 pound contained in a tobacco product that is deter-
 2 mined to be exempt from disclosure be disclosed if
 3 the Secretary determines that it is in the interest of
 4 public health to disclose such ingredient, substance,
 5 or compound.

6 **“SEC. 903. TOBACCO PRODUCT HEALTH RISK REDUCTION**
 7 **STANDARDS.**

8 “(a) AUTHORITY.—

9 “(1) IN GENERAL.—The Secretary shall by reg-
 10 ulation (promulgated under the authority of section
 11 701(a) and consistent with the procedures described
 12 in section 553 of title 5, United States Code) estab-
 13 lish tobacco product health risk reduction standards.

14 “(2) CONSULTATION.—In developing and pro-
 15 mulgating regulations under this chapter, the Sec-
 16 retary shall consult (as the Secretary determines ap-
 17 propriate) with—

18 “(A) Federal public health and safety offi-
 19 cials; and

20 “(B) other public health and safety ex-
 21 perts, including State and local public health
 22 and safety officials, and other interested mem-
 23 bers of the public and affected parties.

24 “(b) PROCEDURES FOR THE ESTABLISHMENT OF
 25 STANDARDS.—

1 “(1) PUBLICATION OF NOTICE.—

2 “(A) IN GENERAL.—The Secretary shall
3 publish in the Federal Register a notice of pro-
4 posed rulemaking for the establishment, amend-
5 ment, or revocation of any health risk reduction
6 standard for a tobacco product under this sec-
7 tion. The Secretary may publish an advance no-
8 tice of proposed rulemaking in order to solicit
9 broad input at an earlier stage in the rule-
10 making process.

11 “(B) CONTENTS OF NOTICE.—A notice of
12 proposed rulemaking for the establishment or
13 amendment of a health risk reduction standard
14 for a tobacco product shall be accompanied by
15 a justification of the proposed action and
16 shall—

17 “(i) invite interested persons to sub-
18 mit to the Secretary, within 30 days of the
19 publication of the notice, requests for
20 changes in the standard based on new in-
21 formation relevant to the standard; and

22 “(ii) invite interested persons to sub-
23 mit an existing health risk reduction
24 standard for the tobacco product, including
25 a draft or proposed health risk reduction

1 standard, for consideration by the Sec-
2 retary.

3 “(C) NOTICE OF REVOCATION.—A notice
4 of proposed rulemaking for the revocation of a
5 health risk reduction standard shall set forth a
6 finding with supporting justification that the
7 health risk reduction standard is no longer nec-
8 essary with respect to the tobacco product.

9 “(D) COMMENTS.—The Secretary shall
10 provide for a comment period of not less than
11 60 days after the date on which a notice has
12 been published under this paragraph.

13 “(2) REQUEST FOR CHANGE.—If, after the
14 publication of a notice in accordance with paragraph
15 (1), the Secretary receives a request for a change in
16 the health risk reduction standard for a tobacco
17 product, the Secretary shall, within 60 days of the
18 publication of the notice, either deny the request and
19 provide a written response explaining the reasons for
20 the denial, or give notice of an intent to initiate such
21 a change.

22 “(3) REGULATION FOR ESTABLISHMENT.—

23 “(A) IN GENERAL.—After the expiration of
24 the period for comment on a notice of proposed
25 rulemaking published under paragraph (1) with

1 respect to a health risk reduction standard, and
2 after consideration of such comments and any
3 report from the tobacco products advisory com-
4 mittee under section 909, the Secretary shall—

5 “(i) promulgate a regulation establish-
6 ing a health risk reduction standard and
7 publish in the Federal Register findings on
8 the matters referred to in subsection (b);
9 or

10 “(ii) publish a notice terminating the
11 proceeding for the development of the
12 standard together with the reasons for
13 such termination.

14 “(B) CONTENTS.—A regulation establish-
15 ing a health risk reduction standard under sub-
16 paragraph (A) shall set forth the date or dates
17 upon which the standard shall take effect, but
18 no such regulation may take effect before the
19 expiration of the 1-year period beginning on the
20 date of its publication unless the Secretary de-
21 termines that an earlier effective date is nec-
22 essary for the protection of the public health.
23 Such date or dates shall be established so as to
24 minimize economic loss to, and disruption or
25 dislocation of, domestic and international trade.

1 “(4) AMENDING OR REVOKING OF STAND-
2 ARDS.—

3 “(A) IN GENERAL.—The Secretary, upon
4 the initiative of the Secretary or upon petition
5 of an interested person, may by regulation, pro-
6 mulgated in accordance with the requirements
7 of paragraphs (1), (2), and (3), amend or re-
8 voke a health risk reduction standard for a to-
9 bacco product.

10 “(B) EFFECTIVENESS OF AMENDMENT.—
11 The Secretary may declare a proposed amend-
12 ment of a health risk reduction standard under
13 this section to be effective on and after its pub-
14 lication in the Federal Register and until the
15 effective date of any final action taken on such
16 amendment if the Secretary determines that
17 making it so effective is in the public interest.
18 A proposed amendment of a health risk reduc-
19 tion standard made so effective under the pre-
20 ceding sentence may not prohibit, during the
21 period in which it is so effective, the introduc-
22 tion or delivery for introduction into interstate
23 commerce of a tobacco product which conforms
24 to such standard without the change or changes
25 provided by such proposed amendment.

1 “(c) REGULATION OF THE COMPOSITION OF TO-
2 BACCO PRODUCTS.—

3 “(1) IN GENERAL.—The Secretary may adopt a
4 health risk reduction standard under this section
5 that requires—

6 “(A) the modification of a tobacco product
7 in a manner that involves—

8 “(i) the gradual reduction of nicotine
9 yields of the product;

10 “(ii) the reduction or elimination of
11 other harmful constituents, ingredients (in-
12 cluding tobacco additives), substances,
13 compounds and properties of the product
14 in accordance with subsection (d)(4)(B),
15 including the establishment of levels of nic-
16 otine and other components, ingredients
17 (including tobacco additives), and constitu-
18 ents of the product, or smoke emitted by
19 such products; or

20 “(iii) other changes to reduce the like-
21 lihood of cigarette induced fires;

22 “(B) effective not earlier than the expira-
23 tion of the 10-year period beginning on the date
24 of enactment of this chapter, the reduction of
25 nicotine yields of a tobacco product to zero; or

1 “(C) effective not earlier than the expira-
2 tion of the 10-year period beginning on the date
3 of enactment of this chapter, the prohibition of
4 cigarettes or smokeless tobacco.

5 “(2) CONSIDERATIONS.—Tobacco product
6 health risk reduction standards established under
7 this section shall—

8 “(A) have as their objective reducing the
9 overall health risks to the public, including the
10 reduction in risk to the consumers of such prod-
11 ucts, individuals who reduce or cease the use of
12 such products, and individuals who do not initi-
13 ate the use of such products;

14 “(B) where necessary to meet the objec-
15 tives in subparagraph (A), include require-
16 ments—

17 “(i) with respect to the construction,
18 components, constituents, ingredients (in-
19 cluding tobacco additives), and properties
20 of the product, including the establishment
21 of levels of nicotine and other components,
22 ingredients (including tobacco additives),
23 and constituents of the product, or smoke
24 emitted by such products taking into ac-

count the technological and commercial feasibility of such requirements;

“(ii) specifying the procedures for the testing of such products, including devising procedures to be used by tobacco product manufacturers, the Secretary, or other appropriate entities, to measure relevant health-related characteristics of such products;

“(iii) for the testing of such products, including devising procedures to be used by manufacturers, the Secretary, or other appropriate entities to measure the relevant health related characteristics of such products to assess the conformity of such products with the applicable health risk reduction standards; and

“(iv) to limit the sale and distribution of tobacco products to the extent authorized by this chapter;

“(C) as required under section 905, prescribe certain conditions pertaining to the labeling and advertising of tobacco products; and

“(D) comply with regulations promulgated by the Secretary that specify the health risk as-

1 sessment procedures for the testing of tobacco
 2 and nontobacco constituents contained in to-
 3 bacco products and determinations concerning
 4 such products under subsection (d).

5 “(3) PROCEDURE FOR GENERAL PROHIBITION
 6 OF TOBACCO PRODUCTS AND ELIMINATION OF NICO-
 7 TINE.—

8 “(A) NONDELEGATION.—The Secretary
 9 may not delegate the authority provided under
 10 this section to promulgate a regulation that re-
 11 sults in a general prohibition of a class of to-
 12 bacco products or elimination of nicotine.

13 “(B) CONGRESSIONAL REVIEW.—In ac-
 14 cordance with section 801 of title 5, United
 15 States Code, Congress shall review, and may
 16 disapprove, any rule of the Secretary establish-
 17 ing, amending, or revoking a tobacco product
 18 health risk reduction standard, except that with
 19 respect to a standard that results in a general
 20 prohibition of cigarettes or smokeless tobacco or
 21 the elimination of nicotine, such standard shall
 22 only take effect upon the date of enactment of
 23 a joint resolution of approval of such standard.
 24 The provisions of section 802 of title 5, United
 25 States Code, relating to certain disapproval res-

1 olutions shall apply to the consideration of any
 2 joint resolution of approval under this sub-
 3 section.

4 “(d) TOBACCO PRODUCTS RISK ASSESSMENT
 5 STANDARDS.—

6 “(1) TOBACCO CONSTITUENTS.—The health
 7 risk reduction standards promulgated under sub-
 8 section (c)(2)(D) with respect to the testing of to-
 9 bacco products shall include provisions relating to
 10 the assessment of the health risks posed by the com-
 11 ponents of tobacco, including but not limited to nico-
 12 tine and tar, and by tobacco use including carbon-
 13 monoxide.

14 “(2) NONTOBACCO INGREDIENTS.—

15 “(A) IN GENERAL.—The health risk reduc-
 16 tion regulations under subsection (c)(2)(D) with
 17 respect to the testing of nontobacco ingredients
 18 used in tobacco products—

19 “(i) during the 5-year period begin-
 20 ning on the date of enactment of this chap-
 21 ter, shall apply to new ingredients (those
 22 ingredients that were not previously used
 23 in such products on such date of enact-
 24 ment) used in such products or such other

1 ingredients for which the Secretary re-
2 quires testing; and

3 “(ii) after the expiration of the 5-year
4 period described in clause (i), shall apply
5 to all ingredients used in such products.

6 “(B) IMPLEMENTATION.—In carrying out
7 this section, all requirements with respect to
8 nontobacco ingredients, substances, and com-
9 pounds shall be implemented in accordance with
10 subparagraph (A).

11 “(3) HEALTH RISK ASSESSMENTS.—

12 “(A) REQUIREMENT.—Not later than 5
13 years after the date of enactment of this chap-
14 ter, and annually thereafter, each manufacturer
15 shall submit to the Secretary a health risk as-
16 sessment for each ingredient, substance, or
17 compound that is listed under section 902(a)(1)
18 with respect to each brand and subbrand of to-
19 bacco product manufactured by each such man-
20 ufacturer.

21 “(B) AVAILABILITY OF NEW INFORMA-
22 TION.—The Secretary may include in the regu-
23 lations promulgated under this section, provi-
24 sions that permit or, as appropriate, require
25 manufacturers to, in subsequent years, revise

1 information that was submitted under subpara-
2 graph (A) in previous years if new data be-
3 comes available to that manufacturer. Such reg-
4 ulations may require that a manufacturer sub-
5 mit a simple notification to the Secretary where
6 the manufacturer determines that no new data
7 has become available during the previous year.

8 “(C) JOINT SUBMISSION.—At the discre-
9 tion of the Secretary, the health risk assess-
10 ments under this paragraph may be conducted
11 by qualified third party organizations on behalf
12 of more than 1 manufacturer for 1 or more
13 product or ingredient, substance or compound if
14 a joint submission is consistent with the public
15 health. Such joint submissions shall be subject
16 to the brand specific requirements of subpara-
17 graph (A).

18 “(D) BASIS OF ASSESSMENT.—The health
19 risk assessment of an ingredient, substance, or
20 compound described in subparagraph (A)
21 shall—

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

1 “(ii) ascertain whether there is a rea-
 2 sonable certainty in the minds of com-
 3 petent scientists that the ingredient, sub-
 4 stance, or compound is not harmful in the
 5 quantities used under the intended condi-
 6 tions of use.

7 “(4) REGULATORY ACTION.—

8 “(A) ABSENCE OF A RISK ASSESSMENT.—
 9 Not later than 12 months after the date of en-
 10 actment of this chapter and subject to the re-
 11 quirements of paragraphs (1) and (3)(A), the
 12 Secretary shall promulgate regulations to pro-
 13 hibit the use of any ingredient, substance, or
 14 compound in the tobacco product of a manufac-
 15 turer if no health risk assessment has been sub-
 16 mitted as required under this subsection by the
 17 manufacturer for the ingredient, substance, or
 18 compound.

19 “(B) REVIEW OF HEALTH RISK ASSESS-
 20 MENTS.—

21 “(i) APPROVAL, CONDITIONAL AP-
 22 PROVAL, OR DISAPPROVAL.—The Secretary
 23 shall approve or disapprove of, or condi-
 24 tion, the use of the ingredient, substance,
 25 or compound that was the subject of the

1 assessment under this subsection within
2 180 days of the date on which the health
3 risk assessment is received and provide no-
4 tice of such approval or disapproval to the
5 manufacturer. The manufacturer may con-
6 tinue to use ingredients, substances, or
7 compounds that are the subject of such an
8 assessment until the Secretary disapproves
9 or conditions such ingredient, substance, or
10 compound. The Secretary shall establish a
11 procedure to allow manufacturers adequate
12 time to comply with any such condition or
13 disapproval.

14 “(ii) GENERAL APPLICABILITY.—At
15 the discretion of the Secretary, the ap-
16 proval, conditional, approval, or dis-
17 approval of a particular ingredient, sub-
18 stance, or compound under clause (i) may
19 by regulation be made generally applicable
20 to tobacco product manufacturers or a sub-
21 group of such manufacturers. In the case
22 of a conditional approval, the Secretary
23 shall develop a procedure to enable manu-
24 facturers to certify that the condition will
25 be complied with.

1 “(iii) INACTION BY SECRETARY.—If
 2 the Secretary fails to act with respect to
 3 an assessment during the period referred
 4 to in clause (i), the manufacturer submit-
 5 ting the assessment may continue to use
 6 the ingredient, substance, or compound in-
 7 volved until such time as the Secretary
 8 makes a final decision, or the succeeding
 9 annual risk assessment is submitted by the
 10 manufacturer and the ingredient, sub-
 11 stance, or compound is subsequently dis-
 12 approved or conditioned. The Secretary
 13 shall establish a procedure to allow manu-
 14 facturers adequate time to comply with
 15 any such condition or disapproval.

16 “(e) COMPLIANCE.—

17 “(1) IN GENERAL.—Health risk reduction
 18 standards under this section shall apply to all to-
 19 bacco products to which such standards are relevant.

20 “(2) LIMITATION.—During the period in which
 21 a regulation promulgated under this section estab-
 22 lishing a health risk reduction standard is in effect,
 23 a tobacco product shall not be considered to be in
 24 violation of section 301 if such product is in compli-

1 ance with such regulation, and the requirements of
2 sections 904 and 905.

3 “(f) EVALUATION.—The Secretary shall periodically
4 evaluate the effectiveness of tobacco product health risk
5 reduction standards to determine whether such standards
6 should be amended to reflect new medical, scientific, or
7 technological information.

8 **“SEC. 904. GOOD MANUFACTURING PRACTICE STANDARDS.**

9 “(a) AUTHORITY.—

10 “(1) IN GENERAL.—The Secretary shall, in ac-
11 cordance with subsections (a) and (b) of section 903,
12 prescribe regulations requiring that the methods
13 used in, and the facilities and controls used for, the
14 manufacture, packing, and storage of a tobacco
15 product conform to current good manufacturing
16 practice, as prescribed in such regulations, to ensure
17 that such products will be in compliance with this
18 chapter.

19 “(2) REGISTRATION.—The regulations promul-
20 gated under paragraph (1) shall require that all to-
21 bacco product manufacturers register with the Sec-
22 retary.

23 “(3) SPECIAL CONSULTATION PROCEDURES.—
24 In developing and promulgating any regulation
25 under paragraph (1) the Secretary shall afford the

1 Tobacco Products Scientific Advisory Committee es-
2 tablished under section 909 an opportunity (with a
3 reasonable time period) to submit recommendations
4 in response to the notice of proposed rulemaking.

5 “(4) LIMITATION.—Good manufacturing prac-
6 tice regulations described in paragraph (1) shall be
7 appropriate for the manufacture of a product de-
8 rived from a raw agricultural commodity for which
9 no therapeutic claim is made.

10 “(b) PESTICIDE RESIDUES.—The regulations pro-
11 mulgated under subsection (a) shall at a minimum re-
12 quire, after consultation with the Administrator of the En-
13 vironmental Protection Agency, the development and ad-
14 herence to applicable tolerances with respect to pesticide
15 chemical residues in finished tobacco products, except that
16 such tolerances shall only apply if the Administrator deter-
17 mines that such tolerances are necessary to prevent such
18 residues from being injurious to health when used in to-
19 bacco products.

20 “(c) PETITIONS FOR EXEMPTIONS AND
21 VARIANCES.—

22 “(1) IN GENERAL.—Any person subject to any
23 requirement prescribed by regulations under sub-
24 section (a) may petition the Secretary for an exemp-
25 tion or variance from such requirement. Such a peti-

tion shall be submitted to the Secretary in such form and manner as the Secretary shall by regulation prescribe and shall—

“(A) in the case of a petition for an exemption from a requirement, set forth the basis for the petitioner’s determination that compliance with the requirement is not required to ensure that the tobacco product is in compliance with section 903;

“(B) in the case of a petition for a variance from a requirement, set forth the methods proposed to be used in, and the facilities and controls proposed to be used for, the manufacture, packing, and storage of the product in lieu of the methods, facilities, and controls prescribed by the requirement; and

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

“(2) TOBACCO PRODUCT REQUIREMENTS WAIVER BOARD.—

“(A) AUTHORITY.—The Secretary shall establish a Tobacco Product Requirements Waiver Board (referred to in this paragraph as the ‘Waiver Board’) to provide advice and make recommendations to the Secretary with respect

1 to the approval or disapproval of petitions sub-
2 mitted under paragraph (1).

3 “(B) MEMBERSHIP.—The Waiver Board
4 shall be composed of 9 members to be ap-
5 pointed by the Secretary, of which—

6 “(i) 3 members shall be appointed
7 from among individuals who are officers or
8 employees of the Federal Government or a
9 State or local government;

10 “(ii) 2 members shall be appointed
11 from among individuals who are represent-
12 atives of the interests of the cigarette and
13 smokeless tobacco industries;

14 “(iii) 2 members shall be appointed
15 from among individuals who are represent-
16 atives of the interests of physicians and
17 other health professionals; and

18 “(iv) 2 members shall be appointed
19 from among individuals who are represent-
20 atives of the interests of the general public.

21 “(C) CHAIRPERSON.—The Secretary shall
22 designate 1 of the members of the Waiver
23 Board to serve as the Chairperson.

24 “(D) COMPENSATION AND EXPENSES.—

1 “(i) COMPENSATION.—Members of
2 the Waiver Board who are not officers or
3 employees of the United States, while at-
4 tending conferences or meetings of the
5 Waiver Board or otherwise serving at the
6 request of the Secretary, shall be entitled
7 to receive compensation at rates to be fixed
8 by the Secretary, which rates may not ex-
9 ceed the daily equivalent of the rate of pay
10 for level 4 of the Senior Executive Sched-
11 ule under section 5382 of title 5, United
12 States Code, for each day (including trav-
13 eltime) they are so engaged.

14 “(ii) EXPENSES.—While conducting
15 the business of the Waiver Board away
16 from their homes or regular places of busi-
17 ness, each member may be allowed travel
18 expenses, including per diem in lieu of sub-
19 sistence, as authorized by section 5703 of
20 title 5 of the United States Code for per-
21 sons in the Government service employed
22 intermittently.

23 “(3) ACTION ON PETITION.—

24 “(A) IN GENERAL.—Not later than 120
25 days of the date on which the Secretary receives

1 the recommendations of the Waiver Board, the
2 Secretary shall issue an order approving or de-
3 nying a petition submitted under paragraph (1).

4 The Secretary may approve—

5 “(i) a petition for an exemption for a
6 tobacco product from a requirement if the
7 Secretary determines that compliance with
8 such requirement is not required to assure
9 that the product will comply with this sec-
10 tion and is otherwise consistent with the
11 public health; and

12 “(ii) a petition for a variance for a to-
13 bacco product from a requirement if the
14 Secretary determines that the methods to
15 be used in, and the facilities and controls
16 to be used for, the manufacture, packing,
17 and storage of the product in lieu of the
18 methods, controls, and facilities prescribed
19 by the requirement are sufficient to ensure
20 that the product will comply with this sec-
21 tion and is otherwise in compliance with
22 the public health.

23 “(B) CONDITIONS.—An order of the Sec-
24 retary approving a petition for a variance shall
25 prescribe such conditions respecting the meth-

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

23 “SEC. 905. TOBACCO PRODUCT LABELING, WARNING, AND
24 PACKAGING STANDARDS.

•S 1648 IS

1 “(1) IN GENERAL.—

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

8 “WARNING: Cigarettes Are Addictive.

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

11 “WARNING: Cigarettes Cause Fatal Lung
12 Disease.

13 “WARNING: Cigarettes Cause Cancer.

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

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

18 “WARNING: Smoking Can Kill You.

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

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

24 “(B) ADVERTISING.—It shall be unlawful
25 for any manufacturer or importer of cigarettes

to advertise or cause to be advertised within the United States any cigarette unless the advertising bears, in accordance with the requirements of this subsection, one of the following statements:

“WARNING: Cigarettes Are Addictive.

“WARNING: Tobacco Smoke Can Harm Your Children.

“WARNING: Cigarettes Cause Fatal Lung Disease.

“WARNING: Cigarettes Cause Cancer.

“WARNING: Cigarettes Cause Strokes And Heart Disease.

“WARNING: Smoking During Pregnancy Can Harm Your Baby.

“WARNING: Smoking Can Kill You.

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

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

“(2) REQUIREMENTS FOR LABEL STATEMENTS.—

“(A) LOCATION.—Each label statement required by subparagraph (A) of paragraph (1)

1 shall be located on the upper portion of the
2 front panel of the cigarette package (or carton)
3 and occupy not less than 25 percent of such
4 front panel.

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

19 “(C) EXCEPTION.—The provisions of sub-
20 paragraph (A) shall not apply in the case of a
21 flip-top cigarette package (offered for sale on
22 April 1, 1997) where the front portion of the
23 flip-top does not comprise at least 25 percent of
24 the front panel. In the case of such a package,
25 the label statement required by subparagraph

1 (A) of paragraph (1) shall occupy the entire
2 front portion of the flip top.

3 “(3) REQUIREMENTS FOR ADVERTISING.—

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

8 “(B) TYPE AND COLOR.—

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

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

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

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

1 “(IV) With respect to half page
2 advertisements on tabloid news-
3 paper—27 point type.

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

6 “(VI) With respect to whole page
7 magazine advertisements—31.5 point
8 type.

9 “(VII) With respect to 28cm x 3
10 column advertisements—22.5 point
11 type.

12 “(VIII) With respect to 20cm x 2
13 column advertisements—15 point
14 type.

15 The Secretary may revise the required type
16 sizes as the Secretary determines appro-
17 priate within the 20 percent requirement.

18 “(ii) COLOR.—All the letters in the
19 label statement under this subparagraph
20 shall appear in conspicuous and legible
21 type, in contrast by typography, layout, or
22 color with all other printed material in the
23 advertisement, and be printed in an alter-
24 nating black-on-white and white-on-black

1 format as determined appropriate by the
2 Secretary.

3 “(4) ROTATION OF LABEL STATEMENTS.—

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

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

24 “(i) IN GENERAL.—A manufacturer
25 or importer of cigarettes may apply to the

1 Secretary to have the rotation schedule de-
2 scribed in clause (iii) apply with respect to
3 a brand style of cigarettes manufactured
4 or imported by such manufacturer or im-
5 porter if—

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

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

19 If an application is approved by the Sec-
20 retary, the rotation schedule described in
21 clause (iii) shall apply with respect to the
22 applicant during the 1-year period begin-
23 ning on the date of the application ap-
24 proval.

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

8 “(iii) OTHER ROTATION REQUIRE-
 9 MENTS.—Under the rotation schedule
 10 which the manufacturer or importer with
 11 an approved application may put into ef-
 12 fect, each of the label statements specified
 13 in subparagraph (A) of paragraph (1) shall
 14 appear on the packages of each brand style
 15 of cigarettes with respect to which the ap-
 16 plication was approved an equal number of
 17 times within the 12-month period begin-
 18 ning on the date of the approval by the
 19 Secretary of the application.

20 “(5) APPLICATION OF REQUIREMENT.—Para-
 21 graph (1) does not apply to a distributor or retailer
 22 of cigarettes who does not manufacture, package, or
 23 import cigarettes for sale or distribution within the
 24 United States.

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

6 “(b) SMOKELESS TOBACCO PRODUCTS.—

7 “(1) IN GENERAL.—

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

15 WARNING: This Product May Cause
 16 Mouth Cancer.

17 WARNING: This Product May Cause
 18 Gum Disease And Tooth Loss.

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

21 WARNING: Smokeless Tobacco Is Addict-
 22 ive.

23 “(B) ADVERTISING.—It shall be unlawful
 24 for any manufacturer or importer of smokeless
 25 tobacco products to advertise or cause to be ad-

vertised within the United States any smokeless tobacco product unless the advertising bears, in accordance with the requirements of this subsection, one of the following statements:

WARNING: This Product May Cause Mouth Cancer.

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

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

WARNING: Smokeless Tobacco Is Addictive.

“(2) REQUIREMENTS FOR LABEL STATEMENTS.—

“(A) LOCATION.—Each label statement required by subparagraph (A) of paragraph (1) shall be located on the principal display panel of the product and occupy not less than 25 percent of such panel.

“(B) TYPE AND COLOR.—With respect to each label statement required by subparagraph (A) of paragraph (1), the phrase ‘WARNING’ shall appear in capital letters and the label statement shall be printed in 17 point type with adjustments as determined appropriate by the

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

9 “(3) ADVERTISING AND ROTATION.—The provi-
10 sions of paragraphs (3) and (4)(A) of subsection (a)
11 shall apply to advertisements for smokeless tobacco
12 products and the rotation of the statements required
13 under paragraph (1)(A) on such products.

14 “(4) APPLICATION OF REQUIREMENT.—Para-
15 graph (1) does not apply to a distributor or retailer
16 of smokeless tobacco products who does not manu-
17 facture, package, or import such products for sale or
18 distribution within the United States.

19 “(5) TELEVISION AND RADIO ADVERTISING.—It
20 shall be unlawful to advertise smokeless tobacco on
21 any medium of electronic communications subject to
22 the jurisdiction of the Federal Communications
23 Commission.

24 “(c) ADDITIONAL TOBACCO PRODUCT STATE-
25 MENTS.—

1 “(1) REQUIREMENT.—Each manufacturer, dis-
 2 tributor, and retailer advertising or causing to be
 3 advertised, disseminating or causing to be dissemi-
 4 nated advertising concerning, tobacco products oth-
 5 erwise permitted under this chapter shall include, in
 6 a type size and format as the Secretary may pre-
 7 scribe in a regulation promulgated under subsection
 8 (d), the product name and a statement of the gen-
 9 eral use of the product as provided for in paragraph
 10 (2).

11 “(2) GENERAL USE STATEMENTS.—

12 “(A) CIGARETTES.—A statement of gen-
 13 eral use for cigarettes or cigarette tobacco is as
 14 follows (whichever is appropriate):

15 ‘Cigarettes—A Dangerous Tobacco Product In-
 16 tended For Use Only By Persons 18 or Older.

17 ‘Cigarette Tobacco—A Dangerous Tobacco
 18 Product Intended For Use Only By Persons 18
 19 or Older.

20 “(B) SMOKELESS TOBACCO.—A statement
 21 of general use for a smokeless tobacco product
 22 is as follows (whichever is appropriate):

23 ‘Loose Leaf Chewing Tobacco—A Dangerous
 24 Tobacco Product Intended For Use Only By
 25 Persons 18 or Older.

1 ‘Plug Chewing Tobacco—A Dangerous Tobacco
2 Product Intended For Use Only By Persons 18
3 or Older.

4 ‘Twist Chewing Tobacco—A Dangerous To-
5 bacco Product Intended For Use Only By Per-
6 sons 18 or Older.

7 ‘Moist Snuff—A Dangerous Tobacco Product
8 Intended For Use Only By Persons 18 or
9 Older.

10 ‘Dry Snuff—A Dangerous Tobacco Product In-
11 tended For Use Only By Persons 18 or Older.

12 “(d) REGULATIONS.—

13 “(1) IN GENERAL.—Not later than 180 days
14 after the date of the enactment of this title, the Sec-
15 retary shall promulgate such regulations as may be
16 necessary to implement subsections (a), (b), and (c).

17 “(2) AUTHORITY TO REVISE TOBACCO PRODUCT
18 LABELING STATEMENTS.—

19 “(A) IN GENERAL.—The Secretary may by
20 informal notice and comment rulemaking
21 change the text of any of the statements re-
22 quired under subsections (a) and (b). A rule
23 promulgated under this subparagraph shall not
24 become effective prior to the expiration of the
25 1-year period beginning on the date on which

1 the final rule is published in the Federal Reg-
2 ister.

3 “(B) LIMITATION.—The Secretary may
4 not promulgate any rule under subparagraph
5 (A) during the 5-year period beginning on the
6 effective date of the PAST Act unless the Sec-
7 retary can demonstrate extraordinary cir-
8 cumstances.

9 “(C) ASSESSMENTS.—The Secretary shall,
10 as scientific data regarding the effectiveness of
11 warning labels in deterring youth smoking be-
12 comes available, periodically (but not more fre-
13 quently than once every 3 years) assess the effi-
14 cacy of current labels and the public health ben-
15 efits of revising such labels.

16 “(3) COMMON OR USUAL NAMES.—The Sec-
17 retary, in accordance with the procedures set forth
18 in section 902, shall promulgate regulations requir-
19 ing the disclosure to the public of the common or
20 usual name of each ingredient (other than tobacco,
21 water, or reconstituted tobacco sheet made wholly
22 from tobacco) contained in a tobacco product in de-
23 scending order of predominance by weight, except
24 that such regulations—

1 “(A) may provide for the disclosure of
2 spices, flavorings, and colorings without naming
3 each spice, flavoring, or coloring; and

4 “(B) may exempt from disclosure inciden-
5 tal additives, including processing aids and
6 chemical preservatives, that are present in a to-
7 bacco product at insignificant levels that the
8 Secretary determines do not have any func-
9 tional effect or health risk.

10 “(e) EXPORTS.—Packages of cigarettes or smokeless
11 tobacco products manufactured, imported, or packaged—

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

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

16 shall be exempt from the requirements of this chapter, but
17 such exemptions shall not apply to cigarettes or smokeless
18 tobacco products manufactured, imported, or packaged for
19 sale or distribution to members or units of the Armed
20 Forces of the United States located outside of the United
21 States.

22 **“SEC. 906. RESTRICTION ON MARKETING AND ADVERTIS-**
23 **ING.**

24 “(a) PROHIBITIONS ON ADVERTISING.—

1 “(1) PROHIBITION ON OUTDOOR ADVERTIS-
2 ING.—

3 “(A) IN GENERAL.—No manufacturer, dis-
4 tributor, or retailer may use any form of out-
5 door tobacco product advertising, including bill-
6 boards, posters, placards, or other fixed or mov-
7 able outdoor product advertising.

8 “(B) STADIA AND ARENAS.—Except as
9 otherwise provided in this chapter, a manufac-
10 turer, distributor, or retailer shall not advertise
11 tobacco products in any arena or stadium where
12 athletic, musical, artistic, or other social or cul-
13 tural events or activities occur.

14 “(2) PROHIBITION ON USE OF HUMAN IMAGES
15 AND CARTOONS.—No manufacturer, distributor, or
16 retailer may use a human image or a cartoon char-
17 acter or cartoon-type character in its advertising, la-
18 beling, or promotional material with respect to a to-
19 bacco product.

20 “(3) PROHIBITION ON ADVERTISING ON THE
21 INTERNET.—No manufacturer, distributor, or re-
22 tailer may use the Internet to advertise tobacco
23 products unless such an advertisement is inaccessible
24 in or from the United States.

1 “(4) PROHIBITION ON POINT-OF-SALE ADVER-
2 TISING.—

3 “(A) IN GENERAL.—Except as otherwise
4 provided in this paragraph, no manufacturer,
5 distributor, or retailer may use point-of-sale ad-
6 vertising of tobacco products.

7 “(B) PERMISSIBLE ADVERTISING.—

8 “(i) IN GENERAL.—Each manufac-
9 turer of tobacco products may display not
10 more than 2 separate point-of-sale adver-
11 tisements in or at each location at which
12 tobacco products are offered for sale.

13 “(ii) MARKET SHARE MANUFACTUR-
14 ERS.—A manufacturer with at least 25
15 percent of the market share of the tobacco
16 product involved may display an additional
17 point-of-sale advertisement in or at each
18 location at which tobacco products are of-
19 fered for sale.

20 “(iii) RETAILERS.—A retailer may
21 have not more than 1 point-of-sale adver-
22 tisement relating to the retailer’s own or
23 its wholesaler’s contracted retailer or pri-
24 vate label brand of tobacco product. No
25 manufacturer or distributor may enter into

1 any arrangement with a retailer to limit
2 the ability of the retailer to display any
3 form of permissible point-of-sale advertise-
4 ment or promotional material originating
5 with another manufacturer or distributor.

6 “(C) LIMITATIONS.—

7 “(i) IN GENERAL.—A point of sale ad-
8 vertisement permitted under this para-
9 graph shall be comprised of a display area
10 that is not larger than 576 square inches
11 (either individually or in the aggregate)
12 and shall consist only of black letters on a
13 white background or other recognized typo-
14 graphical marks. Such advertisement shall
15 not be attached to nor located within 2 feet
16 of any fixture on which candy is displayed
17 for sale.

18 “(ii) AUDIO AND VIDEO FORMATS.—
19 Audio and video advertisements permitted
20 under subsection (c)(3) may be distributed
21 to individuals who are 18 years of age or
22 older at point of sale but may not be
23 played or viewed at such point of sale.

24 “(iii) DISPLAY FIXTURES.—Display
25 fixtures in the form of signs consisting of

1 brand name and price and not larger than
2 2 inches in height are permitted.

3 “(D) DEFINITION.—For purposes of this
4 paragraph, the term ‘point-of-sale advertising’
5 means all printed or graphical materials bearing
6 the brand name (alone or in conjunction with
7 any other word), logo, motto, selling message,
8 recognizable color or pattern of colors, or any
9 other indicia of product identification similar or
10 identical to those used for tobacco products
11 which, when used for its intended purpose, can
12 reasonably be anticipated to be seen by cus-
13 tomers at a location at which tobacco products
14 are offered for sale.

15 “(b) GENERAL RESTRICTIONS.—

16 “(1) RESTRICTION ON PRODUCT NAMES.—A
17 manufacturer shall not use a trade or brand name
18 of a nontobacco product as the trade or brand name
19 for a cigarette or smokeless tobacco product, except
20 for a tobacco product whose trade or brand name
21 was on both a tobacco product and a nontobacco
22 product that were sold in the United States on or
23 before January 1, 1995.

24 “(2) ADVERTISING LIMITED TO FDA SPECIFIED
25 MEDIA.—

1 “(A) IN GENERAL.—A manufacturer, dis-
2 tributor, or retailer may, in accordance with
3 this chapter, disseminate or cause to be dis-
4 seminated advertising or labeling which bears a
5 tobacco product brand name (alone or in con-
6 junction with any other word) or any other indi-
7 cia of tobacco product identification only in
8 newspapers, in magazines, in periodicals or
9 other publications (whether periodic or limited
10 distribution), on billboards, posters and plac-
11 ards in accordance with subsection (a)(1), in
12 nonpoint-of-sale promotional material (including
13 direct mail), in point-of-sale promotional mate-
14 rial, and in audio or video formats delivered at
15 a point-of-sale.

16 “(B) LIMITATION.—A manufacturer, dis-
17 tributor, or retailer that intends to disseminate,
18 or to cause to be disseminated, advertising or
19 labeling for a tobacco product in a medium that
20 is not described in subparagraph (A) shall no-
21 tify the Commissioner not less than 30 days
22 prior to the date on which such medium is to
23 be used. Such notice shall describe the medium
24 and discuss the extent to which the advertising

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

3 “(3) RESTRICTION ON PLACEMENT IN ENTER-
4 TAINMENT MEDIA.—

5 “(A) IN GENERAL.—No payment shall be
6 made by any manufacturer, distributor, or re-
7 tailer for the placement of any tobacco product
8 or tobacco product package or advertisement—

9 “(i) as a prop in any television pro-
10 gram or motion picture produced for view-
11 ing by the general public; or

12 “(ii) in a video or on a video game
13 machine.

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

21 “(4) RESTRICTIONS ON GLAMORIZATION OF TO-
22 BACCO PRODUCTS.—No direct or indirect payment
23 shall be made by any manufacturer, distributor, or
24 retailer to any entity for the purpose of promoting
25 the image or use of a tobacco product through print

1 or film media that appeals to individuals under 18
 2 years of age or through a live performance by an en-
 3 tertainment artist that appeals to such individuals.

4 “(c) FORMAT AND CONTENT REQUIREMENTS FOR
 5 LABELING AND ADVERTISING.—

6 “(1) IN GENERAL.—Except as provided in para-
 7 graphs (2) and (3), each manufacturer, distributor,
 8 and retailer advertising or causing to be advertised,
 9 disseminating or causing to be disseminated, any la-
 10 beling or advertising for a tobacco product shall use
 11 only black text on a white background.

12 “(2) CERTAIN ADVERTISING EXCEPTED.—

13 “(A) IN GENERAL.—Paragraph (1) shall
 14 not apply to advertising—

15 “(i) in any facility where vending ma-
 16 chines and self-service displays are per-
 17 mitted under this chapter if the advertising
 18 involved—

19 “(I) is not visible from outside of
 20 the facility; and

21 “(II) is affixed to a wall or fix-
 22 ture in the facility; and

23 “(ii) that appears in any publication
 24 (whether periodic, limited, or controlled
 25 distribution) that the manufacturer, dis-

1 tributor, or retailer demonstrates is an
2 adult publication.

3 “(B) ADULT PUBLICATION.—For purposes
4 of subparagraph (A)(ii), the term ‘adult publi-
5 cation’ means a newspaper, magazine, periodi-
6 cal, or other publication—

7 “(i) whose readers under 18 years of
8 age constitute 15 percent or less of the
9 total readership as measured by competent
10 and reliable survey evidence; or

11 “(ii) that is read by fewer than
12 2,000,000 individuals who are under 18
13 years of age as measured by competent
14 and reliable survey evidence.

15 “(3) AUDIO OR VIDEO FORMATS.—Each manu-
16 facturer, distributor, and retailer advertising or
17 causing to be advertised any advertising for a to-
18 bacco product in an audio or video format shall com-
19 ply with the following:

20 “(A) With respect to an audio format, the
21 advertising shall be limited to words only with
22 no music or sound effects.

23 “(B) With respect to a video format, the
24 advertising shall be limited to static black text
25 only on a white background. Any audio with the

1 video advertising shall be limited to words only
2 with no music or sound effects.

3 “(d) BAN ON NONTOBACCO ITEMS AND SERVICES,
4 CONTESTS AND GAMES OF CHANCE, AND SPONSORSHIP
5 OF EVENTS.—

6 “(1) BAN ON ALL NONTOBACCO MERCHAN-
7 DISE.—No manufacturer, importer, distributor, or
8 retailer shall market, license, distribute, sell, or
9 cause to be marketed, licensed, distributed or sold
10 any item (other than tobacco products) or service
11 which bears the brand name (alone or in conjunction
12 with any other word), logo, symbol, motto, selling
13 message, recognizable color or pattern of colors, or
14 any other indicia of product identification similar or
15 identifiable to those used for any brand of tobacco
16 products.

17 “(2) GIFTS, CONTESTS, AND LOTTERIES.—No
18 manufacturer, distributor, or retailer shall offer or
19 cause to be offered to any person purchasing tobacco
20 products any gift or item (other than a tobacco
21 product) in consideration of the purchase of such
22 products, or to any person in consideration of fur-
23 nishing evidence, such as credits, proofs-of-purchase,
24 or coupons, of such a purchase.

25 “(3) SPONSORSHIP.—

1 “(A) IN GENERAL.—No manufacturer, dis-
2 tributor, or retailer shall sponsor or cause to be
3 sponsored any athletic, musical, artistic, or
4 other social or cultural event, or any entry or
5 team in any event, in which the brand name
6 (alone or in conjunction with any other word),
7 logo, motto, selling message, recognizable color
8 or pattern of colors, or any other indicia of
9 product identification similar or identical to
10 those used for tobacco products is used.

11 “(B) USE OF CORPORATE NAME.—A man-
12 ufacturer, distributor, or retailer may sponsor
13 or cause to be sponsored any athletic, musical,
14 artistic, or other social or cultural event in the
15 name of the corporation which manufactures
16 the tobacco product if—

17 “(i) both the corporate name and the
18 corporation were registered and in use in
19 the United States prior to January 1,
20 1995; and

21 “(ii) the corporate name does not in-
22 clude any brand name (alone or in con-
23 junction with any other word), logo, sym-
24 bol, motto, selling message, recognizable
25 color or pattern of colors, or any other in-

1 dicia or product identification identical or
 2 similar to, or identifiable with, those used
 3 for any brand of tobacco products.

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

5 “(a) REQUIREMENTS.—

6 “(1) IN GENERAL.—For purposes of this Act,
 7 the term ‘Reduced Risk Tobacco Product’ means a
 8 product that delivers nicotine to the human body
 9 while simultaneously delivering 1 or more other toxic
 10 substances to the human body, and which the Sec-
 11 retary designates as a Reduced Risk Tobacco prod-
 12 uct under paragraph (2).

13 “(2) DESIGNATION.—A product shall be des-
 14 ignated by the Secretary as a Reduced Risk Tobacco
 15 Product if—

16 “(A) the Secretary finds that the product
 17 has the potential to reduce harm to health
 18 caused by a tobacco product, based on an appli-
 19 cation submitted by the manufacturer of the
 20 product (or other responsible person) that—

21 “(i) demonstrates, on the basis of
 22 chemical analysis, that use of such product
 23 results in ingestion or inhalation of a sub-
 24 stantially lower yield of toxic substances
 25 than use of conventional tobacco products

1 in the same category as the proposed re-
2 duced risk product; and

3 “(ii) demonstrates, through testing on
4 animals and short-term human testing,
5 that there is reason to believe that use of
6 the product presents substantially less risk
7 to human health than use of conventional
8 tobacco products; and

9 “(B) the manufacturer (or other person) agrees
10 to conduct studies of the long-term health effects of
11 such product (in accordance with 1 or more proto-
12 cols agreed upon between the manufacturer of the
13 product and the Secretary) and submit the results of
14 such study, together with underlying data, to the
15 Secretary.

16 “(3) MARKETING REQUIREMENTS.—A tobacco
17 product may be marketed as a Reduced Risk To-
18 bacco Product only if such product—

19 “(A) bears a label, prescribed by the Secretary,
20 stating that the product contains toxic substances
21 other than nicotine, that such product should only
22 be used by persons who use tobacco products, and
23 other relevant information;

1 “(B) bears a label, as prescribed by the Sec-
 2 retary, concerning the product’s contribution to re-
 3 ducing harm to health; and

4 “(C) complies with requirements prescribed by
 5 the Secretary relating to marketing and advertising
 6 of the product, and other provisions of this chapter
 7 as prescribed by the Secretary.

8 “(b) REVOCATION OF DESIGNATION.—At any time
 9 after the expiration of the 5-year period beginning on the
 10 date on which a tobacco product is designated as a Re-
 11 duced Risk Tobacco Product under this section, the Sec-
 12 retary may, after providing an opportunity for an informal
 13 hearing, revoke such designation if the Secretary deter-
 14 mines, based on information not available at the time of
 15 the designation, that—

16 “(1) the finding made under subsection
 17 (a)(2)(A) is no longer valid; or

18 “(2) the studies required under subsection
 19 (a)(2)(B) are not conducted on a timely basis.

20 “(c) STUDIES.—The Secretary shall conduct and
 21 support, through grants and contracts, studies of the role
 22 of smoking cessation products and reduced risk tobacco
 23 products in reducing the burden of illness and death in
 24 the United States resulting from the use of tobacco prod-
 25 ucts.

1 “(d) LIMITATION.—A tobacco product that is des-
2 ignated as a Reduced Risk Tobacco Product that is com-
3 pliance with subsection (a) shall not be regulated as a
4 drug or device.

5 “(e) DEVELOPMENT OF REDUCED RISK TOBACCO
6 PRODUCT TECHNOLOGY.—

7 “(1) NOTIFICATION OF SECRETARY.—The man-
8 ufacturer of a tobacco product shall provide written
9 notice to the Secretary upon the development or ac-
10 quisition by the manufacturer of any technology that
11 would reduce the risk of such products to the health
12 of the user.

13 “(2) DETERMINATION.—Within 6 months of
14 the date on which a notice is received by the Sec-
15 retary under paragraph (1), the Secretary shall de-
16 termine whether the technology described in such
17 notice is likely to result in tobacco products that are
18 less hazardous to the health of users.

19 “(3) CONFIDENTIALITY.—The Secretary shall
20 promulgate regulations to provide a manufacturer
21 with appropriate confidentiality protections with re-
22 spect to technology that is the subject of a deter-
23 mination under paragraph (2) that is likely to result
24 in tobacco products that are less hazardous to the
25 health of users.

1 “(4) LICENSING.—

2 “(A) IN GENERAL.—With respect to any
3 technology for which a notification has been
4 provided under paragraph (1), the manufac-
5 turer shall permit the use of such technology by
6 other manufacturers of tobacco products to
7 which this chapter applies if the manufacturer
8 elects not to develop and market such tech-
9 nology.

10 “(B) FEES.—The Secretary of Commerce
11 shall promulgate regulations to provide for the
12 payment of a commercially reasonable fee by
13 each manufacturer that uses the technology de-
14 scribed under subparagraph (A) to the manu-
15 facturer that submits the notice under para-
16 graph (1) for such technology. Such regulations
17 shall contain procedures for the resolution of
18 fee disputes between manufacturers under this
19 subparagraph through the use of expert arbitra-
20 tors.

21 “(f) REQUIREMENT OF MANUFACTURE AND MAR-
22 KETING.—

23 “(1) PURPOSE.—It is the purpose of this sub-
24 section to provide for a mechanism to create incen-
25 tives that help ensure that tobacco products that are

1 designed to be less hazardous to the health of users
2 are developed, tested, and made available to consum-
3 ers.

4 “(2) DETERMINATION.—Upon a determination
5 by the Secretary that the manufacture of a tobacco
6 product that is less hazardous to the health of users
7 is technologically and commercially feasible, the Sec-
8 retary may, in accordance with this subsection and
9 through the issuance or amendment of a health risk
10 reduction standard under section 903—

11 “(A) require the disclosure of the existence
12 of such technology;

13 “(B) prohibit the use of technology that is
14 superseded by such new technology; and

15 “(C) require that manufacturers cease
16 manufacturing and marketing tobacco products
17 that do not incorporate such technology.

18 “(g) BASIS FOR DETERMINATION.—For purposes of
19 subsections (e)(2) and (f)(2), the determination as to
20 whether a tobacco product may be less hazardous to the
21 health of users shall take into account both the reduced
22 risk to the health of the user and its contribution to reduc-
23 ing addiction to tobacco products.

1 **“SEC. 908. TOBACCO PRODUCT MARKETING RESTRICTIONS.**

2 “(a) IN GENERAL.—The Secretary, acting through
3 the Office of Smoking and Health of the Centers for Dis-
4 ease Control and Prevention, shall by regulation imple-
5 ment the prohibitions described in this section concerning
6 the marketing of tobacco products to minors.

7 “(b) SALES TO MINORS PROHIBITED.—No retailer
8 may distribute a tobacco product to any individual who
9 is under 18 years of age.

10 “(c) PHOTO IDENTIFICATION.—

11 “(1) REQUIREMENT.—Except as provided in
12 paragraph (2), each retailer shall verify, by means of
13 a driver’s license or other form of identification
14 issued by a government authority containing the
15 date of birth of the bearer, that no individual pur-
16 chasing a tobacco product is under 18 years of age.

17 “(2) EXCEPTION.—No verification under para-
18 graph (1) is required for any individual who is at
19 least 27 years of age.

20 “(3) LOCATION OF PRODUCTS.—Except as pro-
21 vided in subsection (j), a retailer shall ensure that
22 all tobacco products are located in areas where cus-
23 tomers do not have access to the products.

24 “(d) FACE-TO-FACE TRANSACTIONS.—Except as
25 provided in subsection (i)(1), a retailer may sell tobacco

1 products only in a direct, face-to-face exchange without
2 the assistance of any electronic or mechanical device.

3 “(e) OUT-OF-PACKAGE DISTRIBUTION.—No retailer
4 may break or otherwise open a tobacco product to sell or
5 distribute to individuals portions of such product (includ-
6 ing individual cigarettes or a number of cigarettes that
7 is smaller than the quantity in the minimum package size,
8 or any quantity of cigarette tobacco or smokeless tobacco
9 that is smaller than the smallest package distributed by
10 the retailer for individual consumer use).

11 “(f) RETAILER COMPLIANCE WITH RESPECT TO
12 SELF-SERVICE.—Each retailer shall ensure that all to-
13 bacco-related self-service displays, advertising, labeling,
14 and other items that are located in the establishment of
15 the retailer and that do not comply with the requirements
16 of this section are removed or are brought into compliance
17 with the requirements of this section.

18 “(g) MINIMUM CIGARETTE PACKAGE SIZE.—Except
19 as otherwise provided in this section, no manufacturer,
20 distributor, or retailer may sell or cause to be sold, or dis-
21 tribute or cause to be distributed, any cigarette package
22 that contains fewer than 20 cigarettes.

23 “(h) PROHIBITION ON SAMPLING.—No manufac-
24 turer, distributor, or retailer may distribute or cause to
25 be distributed any free samples of any tobacco product.

1 “(i) PROHIBITION ON DISTRIBUTION THROUGH
2 SELF-SERVICE MODES OF SALE.—

3 “(1) VENDING MACHINES.—Except as provided
4 in subsection (j)(1)(B), no manufacturer, distribu-
5 tor, or retailer may distribute or cause to be distrib-
6 uted any tobacco product through a vending ma-
7 chine.

8 “(2) OTHER DISPLAYS.—Except as provided in
9 subsection (j)(1)(C), no manufacturer, distributor,
10 or retailer may distribute or cause to be distributed
11 any tobacco product through a self-service display.

12 “(j) PERMITTED SELF-SERVICE MODES OF SALE.—

13 “(1) IN GENERAL.—Notwithstanding any other
14 provision of this section, the following methods of
15 distributing tobacco products are permitted:

16 “(A) Mail-order sales as provided for in
17 paragraph (2), except that mail-order redemp-
18 tion of coupons and the distribution of free
19 samples through the mail shall be prohibited.

20 “(B) Distribution through vending ma-
21 chines that are located in facilities where the
22 retailer ensures that no individuals under 18
23 years of age are present or permitted to enter
24 at any time.

25 “(2) MAIL-ORDER SALES.—

1 “(A) IN GENERAL.—A manufacturer, dis-
 2 tributor, or retailer may distribute or cause to
 3 be distributed a tobacco product through mail-
 4 order sales only if such sales are subject to a
 5 procedure for verifying that no individual pur-
 6 chasing such products is under 18 years of age.

7 “(B) REVIEW BY SECRETARY.—Not later
 8 than 2 years after the date of enactment of this
 9 section, the Secretary shall review the verifica-
 10 tion procedures implemented under subpara-
 11 graph (A) to determine whether individuals
 12 under 18 years of age are obtaining tobacco
 13 products through the mail. If the Secretary de-
 14 termines that a significant number of underage
 15 individuals are obtaining such products through
 16 the mail, the Secretary may promulgate regula-
 17 tions in accordance with section 902 to prohibit
 18 the distribution of tobacco products through the
 19 mail.

20 **“SEC. 909. TOBACCO PRODUCTS SCIENTIFIC ADVISORY**
 21 **COMMITTEE.**

22 “(a) ESTABLISHMENT.—Not later than 1 year after
 23 the date of enactment of this chapter, the Secretary shall
 24 establish an advisory committee, to be known as the ‘To-
 25 bacco Products Scientific Advisory Committee’, to assist

1 the Secretary in establishing, amending, or revoking a reg-
2 ulation promulgated under section 903, 904, 905, or 907.

3 “(b) MEMBERSHIP.—

4 “(1) IN GENERAL.—The Secretary shall appoint
5 as members of the Tobacco Products Scientific Advi-
6 sory Committee—

7 “(A) individuals with expertise in the med-
8 icine, science, or technology involving the manu-
9 facture and use of tobacco products, who are of
10 appropriately diversified professional back-
11 grounds;

12 “(B) individuals with expertise in law or
13 ethics;

14 “(C) a representative of tobacco product
15 manufacturers;

16 “(D) a representative of the general public
17 selected from public health organizations; and

18 “(E) a representative of the general public
19 selected from pro-tobacco organizations.

20 “(2) LIMITATION.—The Secretary may not ap-
21 point to the Advisory Committee any individual who
22 is in the regular full-time employ of the Federal
23 Government. The Secretary may appoint Federal of-
24 ficials as ex-officio members.

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

4 “(c) DUTIES.—The Tobacco Products Scientific Ad-
5 visory Committee shall—

6 “(1) assist the Secretary in establishing,
7 amending, or revoking regulations under section
8 903, 904, 905, or 907;

9 “(2) examine and make recommendations con-
10 cerning the effects of the alteration of the nicotine
11 yield levels in tobacco products;

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

17 “(4) review other safety, dependence or health
18 issues relating to tobacco products as requested by
19 the Secretary.

20 **“SEC. 910. REPORTS.**

21 “Not later than 18 months after the date of enact-
22 ment of this chapter, and biennially thereafter, the Sec-
23 retary shall prepare and submit to Congress a report con-
24 taining—

1 “(1) a description of the current sales, advertis-
2 ing, and marketing practices associated with tobacco
3 products;

4 “(2) a description of the use patterns of tobacco
5 products, including a report on use by individuals
6 under 18 years of age;

7 “(3) a description of the effects of health pro-
8 motion and disease prevention efforts related to the
9 use of tobacco products;

10 “(4) an evaluation of the health promotion and
11 disease prevention efforts relating to tobacco prod-
12 ucts and the identification of areas appropriate for
13 further research; and

14 “(5) such recommendations for legislation and
15 administrative action relating to tobacco products as
16 the Secretary considers appropriate.

17 **“SEC. 911. JUDICIAL REVIEW.**

18 “(a) APPLICATION OF SECTION.—

19 “(1) IN GENERAL.—Not later than 60 days
20 after the effective date of any regulation under this
21 chapter establishing, amending, or revoking a health
22 risk reduction standard for a tobacco product, any
23 person adversely affected by such regulation may file
24 a petition with the United States Court of Appeals
25 for the District of Columbia or for the circuit where-

1 in such person resides or has its principal place of
2 business for judicial review of such regulation. A
3 copy of the petition shall be transmitted by the clerk
4 of the court to the Secretary or other officer des-
5 ignated by him for that purpose.

6 “(2) RECORD OF PROCEEDING.—The Secretary
7 shall file in the court under paragraph (1) the
8 record of the proceedings on which the Secretary
9 based the regulation involved as provided for in sec-
10 tion 2112 of title 28, United States Code.

11 “(3) DEFINITION.—For purposes of this sec-
12 tion, the term ‘record’ means all notices and other
13 matter published in the Federal Register with re-
14 spect to the regulation reviewed, all information sub-
15 mitted to the Secretary with respect to such regula-
16 tion, proceedings of any panel or advisory committee
17 with respect to such regulation, any hearing held
18 with respect to such regulation, and any other infor-
19 mation identified by the Secretary, in the adminis-
20 trative proceeding held with respect to such regula-
21 tion, as being relevant to such regulation.

22 “(b) ADDITIONAL DATA, VIEWS, AND ARGUMENTS.—
23 If the petitioner applies to the court under this section
24 for leave to adduce additional data, views, or arguments
25 respecting the regulation being reviewed and shows to the

1 satisfaction of the court that such additional data, views,
2 or arguments are material and that there were reasonable
3 grounds for the petitioner's failure to adduce such data,
4 views, or arguments in the proceedings before the Sec-
5 retary, the court may order the Secretary to provide addi-
6 tional opportunity for the oral presentation of data, views,
7 or arguments and for written submissions. The Secretary
8 may modify such findings, or make new findings by reason
9 of the additional data, views, or arguments so taken and
10 shall file with the court such modified or new findings,
11 and the recommendations of the Secretary, if any, for the
12 modification or setting aside of the regulation or order
13 being reviewed, with the return of such additional data,
14 views, or arguments.

15 “(c) STANDARD FOR REVIEW.—Upon the filing of the
16 petition under subsection (a) judicial review of a regula-
17 tion, the court shall have jurisdiction to review the regula-
18 tion in accordance with chapter 7 of title 5, United States
19 Code, and to grant appropriate relief, including interim
20 relief, as provided for in such chapter. A regulation pro-
21 mulgated under this chapter shall not be affirmed if it is
22 found to be arbitrary and capricious.

23 “(d) FINALITY OF JUDGMENTS.—The judgment of
24 the court affirming or setting aside, in whole or in part,
25 any regulation under this section shall be final, subject

1 to review by the Supreme Court of the United States upon
2 certiorari or certification, as provided for in section 1254
3 of title 28, United States Code.

4 “(e) OTHER REMEDIES.—The remedies provided for
5 in this section shall be in addition to and not in lieu of
6 any other remedies provided for by law.

7 “(f) STATEMENT OF REASONS.—To facilitate judicial
8 review under this section or under any other provision of
9 law of a regulation issued under this chapter, each such
10 regulation shall contain a statement of the reasons for its
11 issuance and the basis, in the record of the proceedings
12 held in connection with its issuance, for its issuance.

13 **“SEC. 912. AUTHORITY TO ASSESS AND USE FEES.**

14 “(a) IN GENERAL.—The Secretary shall, not later
15 than 60 days after the date of enactment of this chapter,
16 annually assess and collect fees for submissions made
17 under sections 902, 903, and 907 in accordance with this
18 section to be used as the sole source of funding with re-
19 spect to the regulation and control of tobacco products
20 under chapter 9 this Act.

21 “(b) TOBACCO PRODUCT FEE.—The Secretary shall
22 set the amount of the fees under subsection (a) for a fiscal
23 year to equal \$100,000,000.

“(c) PAYMENT SCHEDULE.—The Secretary shall promulgate regulations to implement procedures for the assessment and collection of fees under this section.

“(d) COLLECTION OF UNPAID FEES.—In any case where the Secretary does not receive payment of a fee assessed under subsection (b) within 30 days after it is due, such fee shall be treated as a claim of the United States Government subject to subchapter II of chapter 37 of title 31, United States Code.

10 “(e) APPORTIONMENT OF FEES.—The Secretary
11 shall, not later than 60 days after the enactment of this
12 chapter, issue regulations apportioning fees under sub-
13 section (a) among submissions required under sections
14 902, 903, and 907.

15 "SEC. 913. PRESERVATION OF STATE AND LOCAL AUTHOR-
16 ITY.

17 “(a) ADDITIONAL REQUIREMENTS.—

“(1) IN GENERAL.—Except as provided in paragraph (3), nothing in this Act shall be construed as prohibiting a State or political subdivision thereof from adopting or enforcing a requirement applicable to a tobacco product that is in addition to, or more stringent than, requirements established under this Act.

1 “(2) APPLICATION OF STATE LAW.—In the case
 2 of a requirement of a State or political subdivision
 3 thereof that is more stringent than a requirement
 4 established under this Act, the requirement of the
 5 State or political subdivision shall apply.

6 “(3) EXCEPTION.—This subsection shall not
 7 apply to requirements under sections 902, 903, 904,
 8 905, 906(a)(1)–(3), 906(b)–(d), and 907.

9 “(b) RULE OF CONSTRUCTION REGARDING PRODUCT
 10 LIABILITY.—No provision of this Act relating to a tobacco
 11 product shall be construed to modify or otherwise affect
 12 any action or the liability of any person under the product
 13 liability law of any State.”.

14 **SEC. 102. TECHNICAL PROVISIONS.**

15 (a) APPLICATION OF FEDERAL CIGARETTE LABEL-
 16 ING AND ADVERTISING ACT.—The provisions of the Fed-
 17 eral Cigarette Labeling and Advertising Act (15 U.S.C.
 18 1331 et seq.) that apply to cigarettes shall be superseded
 19 by the provisions of this title (and the amendments made
 20 by this title).

21 (b) REPEAL.—The Comprehensive Smokeless To-
 22 bacco Health Education Act of 1986 (15 U.S.C. 4401 et
 23 seq.) is repealed.

1 **SEC. 103. FEDERAL LICENSING OF MILITARY AND OTHER**
2 **ENTITIES.**

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

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

10 (2) in any United States embassy;

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

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

16 (5) through any other Federal entity or on any
17 other Federal property as determined appropriate by
18 the Secretary.

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

25 (c) INDIAN TRIBES AND TRIBAL LANDS.—For pur-
26 poses of applying and enforcing the provisions of this title

1 (and the amendments made by this title) to entities that
 2 sell or otherwise distribute tobacco products on Indian res-
 3 ervations (as defined in section 403(9) of the Indian Child
 4 Protection and Family Violence Prevention Act (25 U.S.C.
 5 3202(9))), an Indian tribe or tribal organization shall be
 6 treated as a State.

7 **TITLE II—NATIONAL EFFORTS** 8 **TO REDUCE YOUTH SMOKING**

9 **SEC. 201. SHORT TITLE.**

10 This title may be cited as the “Tobacco Use by Mi-
 11 nors Prevention Act”.

12 **SEC. 202. AMENDMENT TO PUBLIC HEALTH SERVICE ACT**

13 The Public Health Service Act (42 U.S.C. 201 et
 14 seq.) is amended by adding at the end the following:

15 **“TITLE XXVIII—NATIONAL EF-** 16 **FORTS TO REDUCE YOUTH** 17 **SMOKING**

18 **“SEC. 2801. DEFINITIONS.**

19 “For purposes of this title, the definitions contained
 20 in section 900 of the Food, Drug and Cosmetic Act shall
 21 apply.

1 **“Subtitle A—Required Reduction**
 2 **in Underage Use of Tobacco**
 3 **Products**

4 **“SEC. 2811. PURPOSE.**

5 “It is the purpose of this title to encourage the
 6 achievement of dramatic and immediate reductions in the
 7 number of underage consumers of tobacco products
 8 through the imposition of substantial financial surcharges
 9 on participating manufacturers if certain underage to-
 10 bacco-use reduction targets are not met.

11 **“SEC. 2812. DETERMINATION OF UNDERAGE USE BASE PER-**
 12 **CENTAGES.**

13 “(a) CIGARETTES.—For purposes of this section, the
 14 underage use base percentage for cigarettes shall be a per-
 15 centage determined by the Secretary, weighted by the rel-
 16 ative population of the age groups involved as determined
 17 using data compiled in 1995 by the Bureau of the Census,
 18 based on—

19 “(1) the average of the percentages of 12th
 20 graders (individuals who are 16 or 17 years of age)
 21 who used cigarette products on a daily basis for each
 22 of the calendar years 1986 through 1996;

23 “(2) the average of the percentages of 10th
 24 graders (individuals who are 14 or 15 years of age)

1 who used cigarette products on a daily basis for each
2 of the calendar years 1991 through 1996; and

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

7 “(b) SMOKELESS TOBACCO.—For purposes of this
8 section, the underage use base percentage for smokeless
9 tobacco products shall be a percentage determined by the
10 Secretary, weighted by the relative population of the age
11 groups involved as determined using data compiled in
12 1995 by the Bureau of the Census, based on—

13 “(1) the average of the percentages of 12th
14 graders (individuals who are 16 or 17 years of age)
15 who used smokeless tobacco products on a daily
16 basis in 1996;

17 “(2) the average of the percentages of 10th
18 graders (individuals who are 14 or 15 years of age)
19 who used smokeless tobacco products on a daily
20 basis in 1996; and

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

24 “(c) USE OF CERTAIN DATA OR METHODOLOGY.—
25 For purposes of determining the percentages under para-

1 graphs (1) through (3) of subsections (a) and (b), the Sec-
 2 retary shall use the data contained in the National High
 3 School Drug Use Survey entitled Monitoring the Future
 4 by the University of Michigan or such other comparable
 5 index, as determined appropriate by the Secretary after
 6 notice and an opportunity for a hearing, that utilizes
 7 methodology identical to that used by the University of
 8 Michigan in such survey.

9 **“SEC. 2813. ANNUAL DAILY INCIDENCE OF UNDERAGE USE**
 10 **OF TOBACCO PRODUCTS.**

11 “(a) ANNUAL DETERMINATION.—Not later than the
 12 expiration of the 5-year period beginning on the date of
 13 enactment of this Act, and annually thereafter, the Sec-
 14 retary shall determine the average annual incidence of the
 15 daily use of tobacco products by individuals who are under
 16 18 years of age.

17 “(b) CIGARETTES.—With respect to cigarette prod-
 18 ucts, a determination under subsection (a) for a year shall
 19 be based on the percentage, as weighted by the relative
 20 population of the age groups involved as determined using
 21 data compiled in 1995 by the Bureau of the Census, of—

22 “(1) 12th graders (individuals who are 16 or 17
 23 years of age) who used cigarette products on a daily
 24 basis during the year involved;

1 “(2) 10th graders (individuals who are 14 or 15
2 years of age) who used cigarette products on a daily
3 basis during the year involved; and

4 “(3) 8th graders (individuals who are 13 years
5 of age) who used cigarette products on a daily basis
6 during the year involved.

7 “(c) SMOKELESS TOBACCO.—With respect to smoke-
8 less tobacco products, a determination under subsection
9 (a) for a year shall be based on the percentage, as weight-
10 ed by the relative population of the age groups involved
11 as determined using data compiled in 1995 by the Bureau
12 of the Census, of—

13 “(1) 12th graders (individuals who are 16 or 17
14 years of age) who used smokeless tobacco products
15 on a daily basis during the year involved;

16 “(2) 10th graders (individuals who are 14 or 15
17 years of age) who used smokeless tobacco products
18 on a daily basis during the year involved; and

19 “(3) 8th graders (individuals who are 13 years
20 of age) who used cigarette smokeless tobacco on a
21 daily basis during the year involved.

22 “(d) USE OF CERTAIN DATA OR METHODOLOGY.—

23 “(1) IN GENERAL.—For purposes of determin-
24 ing the percentages under paragraphs (1) through
25 (3) of subsections (b) and (c), the Secretary shall

1 use the data contained in the National High School
 2 Drug Use Survey entitled Monitoring the Future by
 3 the University of Michigan (if such survey is still
 4 being undertaken) or such other comparable index,
 5 as determined appropriate by the Secretary after no-
 6 tice and an opportunity for a hearing, that utilizes
 7 methodology identical to that used by the University
 8 of Michigan in such survey.

9 “(2) ALTERATION OF METHODOLOGY.—If the
 10 Secretary determines that the methodology used by
 11 the University of Michigan in the survey referred to
 12 in paragraph (1) has been altered in a material
 13 manner from the methodology used during the pe-
 14 riod from 1986 to 1996 (including by altering States
 15 or regions on which the survey is based), the Sec-
 16 retary, after notice and an opportunity for a hear-
 17 ing, shall use percentages based on an index devel-
 18 oped by the Secretary that utilizes methodology
 19 identical to that used by the University of Michigan
 20 in such survey.

21 **“SEC. 2814. REQUIRED REDUCTION IN UNDERAGE TO-**
 22 **BACCO USE.**

23 “(a) IN GENERAL.—For purposes of assessing sur-
 24 charges under section 405, the Secretary shall determine
 25 whether the required percentage reduction in the underage

1 use of tobacco products for a year (based on the national
2 goals described in section 4 of the PAST Act) has been
3 achieved for the year involved. Such determination shall
4 be based on—

5 “(1) with respect to cigarette products, the av-
6 erage annual incidence of the daily use of tobacco
7 products by individuals who are under 18 years of
8 age for the year involved (as determined under sec-
9 tion 403(b)) as compared to the underage use base
10 percentage for cigarette products (as determined
11 under section 402(a)); and

12 “(2) with respect to smokeless tobacco prod-
13 ucts, the average annual incidence of the daily use
14 of smokeless tobacco products by individuals who are
15 under 18 years of age for the year involved (as de-
16 termined under section 403(c)) as compared to the
17 underage use base percentage for smokeless tobacco
18 products (as determined under section 402(b)).

19 “(b) PERCENTAGE REDUCTION IN UNDERAGE USE
20 OF TOBACCO PRODUCTS.—For purposes of subsection (a),
21 the required percentage reduction in the underage use of
22 tobacco products with respect to each tobacco product
23 shall be determined based on the national goals for the
24 reduction in underage tobacco use under section 4.

1 **“SEC. 2815. APPLICATION OF SURCHARGES.**

2 “(a) IN GENERAL.—If the Secretary determines that
3 the percentage reduction in the underage use of tobacco
4 products for a year has not been achieved as required
5 under section 2814, the Secretary shall impose a sur-
6 charge on the participating manufacturers of the tobacco
7 products involved.

8 “(b) AMOUNT OF SURCHARGE.—

9 “(1) IN GENERAL.—

10 “(A) CIGARETTES.—With respect to ciga-
11 rettes, the amount of any surcharge to be im-
12 posed under this section for a calendar year
13 shall be equal to the product of—

14 “(i) \$80,000,000, and the number of
15 applicable surcharge percentage points as
16 determined under subsection (c) up to 5
17 percentage points;

18 “(ii) \$400,000,000, and the number
19 of applicable surcharge percentage points
20 as determined under subsection (c), if such
21 percentage points are greater than 5 but
22 less than 11 percentage points; and

23 “(iii) \$500,000,000, and the number
24 of applicable surcharge percentage points
25 as determined under subsection (c), if such

1 percentage points are 11 or more percent-
2 age points; and

3 “(B) SMOKELESS TOBACCO.—With respect
4 to smokeless tobacco, the amount of any sur-
5 charge to be imposed under this section for a
6 calendar year shall be equal to the product of—

7 “(i) \$15,000,000, and the number of
8 applicable surcharge percentage points as
9 determined under subsection (c) up to 5
10 percentage points;

11 “(ii) \$30,000,000, and the number of
12 applicable surcharge percentage points as
13 determined under subsection (c), if such
14 percentage points are greater than 5 but
15 less than 11 percentage points; and

16 “(iii) \$45,000,000, and the number of
17 applicable surcharge percentage points as
18 determined under subsection (c), if such
19 percentage points are 11 or more percent-
20 age points.

21 “(2) ADJUSTMENTS.—The amount applicable
22 under paragraph (1) shall be annually adjusted by
23 the Secretary based on with respect to subparagraph
24 (A) of such paragraph—

1 “(A) the proportional percentage increase
2 or decrease, as compared to calendar year
3 1995, in the population of individuals residing
4 in the United States who are at least 13 years
5 of age but less than 18 years of age;

6 “(B) the proportional percentage increase
7 or decrease, as compared to calendar year
8 1996, in the average profit per unit (measured
9 in cents and weighted by annual sales) earned
10 by participating manufacturers for the tobacco
11 product involved (as determined by the Sec-
12 retary through a contract with a nationally rec-
13 ognized accounting firm having no connection
14 to such manufacturers).

15 “(c) DETERMINATION OF APPLICABLE SURCHARGE
16 PERCENTAGE POINTS.—

17 “(1) IN GENERAL.—With respect to a calendar
18 year, the applicable surcharge percentage points
19 shall be equal to the percentage point difference be-
20 tween—

21 “(A) the required incidence goal in the un-
22 derage use of the tobacco product involved for
23 the year (based on the national goals described
24 in section 4 of the PAST Act); and

1 “(B) the number of percentage points by
2 which the average annual incidence of the daily
3 use of the tobacco products involved by individ-
4 uals who are under 18 years of age for the year
5 (as determined under section 2813) is less than
6 the underage use base percentage for such
7 products (as determined under section 2812).

8 “(2) ADJUSTMENT.—If for any calendar year
9 the Secretary determines that the average annual in-
10 cidence of the daily use of the tobacco products in-
11 volved by individuals who are under 18 years of age
12 (as determined under section 2813) is greater than
13 the underage use base percentage for such products
14 (as determined under section 2812), the applicable
15 surcharge percentage point shall be equal to—

16 “(A) the percentage point amount deter-
17 mined under paragraph (1)(A); and

18 “(B) the number of percentage points by
19 which the average annual incidence of the daily
20 use of the tobacco products involved by individ-
21 uals who are under 18 years of age (as deter-
22 mined under section 2813) is greater than the
23 underage use base percentage for such products
24 (as determined under section 2812).

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

4 “(d) JOINT AND SEVERAL OBLIGATION.—Any sur-
5 charge imposed under this section with respect to a to-
6 bacco product (cigarette products or smokeless tobacco
7 products) shall be the joint and several obligation of all
8 participating manufacturers of such product as allocated
9 by the market share of each such manufacturer with re-
10 spect to such product. The market share of each manufac-
11 turer for each such product shall be based on the market
12 share of such product for the year preceding the year for
13 which the determination is being made.

14 “(e) ASSESSMENT.—Not later than May 1 of each
15 year in which a surcharge will be imposed under this sec-
16 tion, the Secretary shall assess, pursuant to subsection
17 (d), to each participating manufacturer the amount for
18 which such manufacturer is obligated. Not later than July
19 1 of any year in which a manufacturer receives an assess-
20 ment under this section, the manufacturer shall pay such
21 assessment in full or be subject to such interest on such
22 amount as the Secretary may by regulation prescribe.

23 “(f) USE OF AMOUNTS.—Amounts received under
24 this section shall be used to further the purposes of this
25 title.

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

5 **“SEC. 2816. ABATEMENT PROCEDURES.**

6 “(a) PETITIONS.—Upon payment by a participating
7 manufacturer of the amount assessed to the manufacturer
8 under section 2815(f), the manufacturer may submit a pe-
9 tition to the Secretary for an abatement of the assessment.
10 A notice of such abatement petition shall be submitted to
11 the attorney general of each State.

12 “(b) HEARING.—The Secretary shall provide for the
13 conduct of a hearing on an abatement petition received
14 under subsection (a) pursuant to the procedures described
15 in sections 554, 556, and 557 of title 5, United States
16 Code. The attorney general of any State shall be permitted
17 to be heard at any hearing conducted under this sub-
18 section.

19 “(c) BURDEN.—The burden at any hearing under
20 subsection (b) shall be on the participating manufacturer
21 to prove, by a preponderance of the evidence, that the
22 manufacturer should be granted the abatement.

23 “(d) BASIS OF DECISION.—Any decision regarding a
24 petition for an abatement under this section shall be based
25 on a determination as to whether—

1 “(1) the participating manufacturer has acted
2 in good faith and in full compliance with this title
3 and any regulations or State or local laws promul-
4 gated in furtherance of this title;

5 “(2) the participating manufacturer has pur-
6 sued all reasonably available measures to attain the
7 reductions;

8 “(3) there is any evidence of any direct or indi-
9 rect action by the participating manufacturer to un-
10 dermine the achievement of the reductions required
11 under section 2814 or to undermine any other provi-
12 sion of this title; and

13 “(4) the participating manufacturer has taken
14 (or failed to take) any other action as determined
15 appropriate by the Secretary.

16 “(e) AMOUNT.—Upon a determination granting an
17 abatement under this section, the Secretary shall order the
18 abatement of not more than 75 percent of the amount paid
19 by the participating manufacturer (as determined by the
20 Secretary), together with interest that may have accrued
21 on such amount during the period between the date on
22 which payment by the manufacturer was made and the
23 date on which the abatement order was granted. Such in-
24 terest shall be equal to that provided for the average 52-
25 week Treasury Bill during the period involved.

1 “(f) AGGRIEVED PARTIES.—Any participating manu-
2 facturer or attorney general of any State that is aggrieved
3 by an abatement that is granted under this section may
4 seek judicial review of the abatement decision within 30
5 days of the date of such decision in the Court of Appeals
6 for the District of Columbia Circuit. Review in such cases
7 shall be subject to the procedures described in sections
8 701 through 706 of title 5, United States Code.

9 “(g) PROHIBITION.—A participating manufacturer
10 may not file a petition under subsection (a) until such time
11 as the manufacturer has fully paid the Secretary the
12 amount assessed to the manufacturer under section
13 405(f).

14 **“SEC. 2817. INCENTIVE FOR EXCEEDING REDUCTION**
15 **GOALS.**

16 “If the Secretary determines that the percentage re-
17 duction in the underage use of tobacco products for a year
18 exceeds 60 percent for cigarettes and 45 percent for
19 smokeless tobacco products for a year as required under
20 section 2814, the Secretary shall adjust the amount of the
21 fee that a participating manufacturer shall be required to
22 pay for such year into the Tobacco Settlement Trust
23 Fund.

1 **“Subtitle B—Restrictions on Access**
 2 **to Tobacco Products**

3 **“SEC. 2821. MINORS’ ACCESS TO TOBACCO PRODUCTS.**

4 “(a) IN GENERAL.—To be eligible to receive funds
 5 under this title a State shall have in effect a law that—

6 “(1) provides that no retailer may sell or other-
 7 wise distribute a tobacco product within the State to
 8 any individual who is under 18 years of age; and

9 “(2) ensures compliance with the requirement
 10 of paragraph (1) through the provisions of this title
 11 and through any other measures determined appro-
 12 priate by the State.

13 “(b) COMPLIANCE.—A State shall be considered to
 14 be in compliance with the requirements of subsection (a)
 15 if the State can demonstrate to the Secretary that fewer
 16 than 10 percent of all individuals under 18 years of age
 17 who attempt to purchase tobacco products in the State
 18 are successful in such purchase.

19 **“SEC. 2822. STATE LAWS REGARDING SALE OF TOBACCO**
 20 **PRODUCTS TO INDIVIDUALS UNDER THE AGE**
 21 **OF 18.**

22 “(a) ELIGIBILITY.—

23 “(1) IN GENERAL.—Subject to paragraph (2),
 24 for fiscal year 2000 and each subsequent fiscal year
 25 a State shall not be eligible for payments under sec-

tion 2824 if that State does not have in effect a State law with the provisions contained in the model State law described in section 2823.

“(2) DELAYED APPLICABILITY FOR CERTAIN STATES.—In the case of a State whose legislature does not convene a regular session in fiscal year 2000, the requirement described in paragraph (1) shall apply only for fiscal year 2001 and subsequent fiscal years.

“(b) ENFORCEMENT.—For the first applicable fiscal year and for each subsequent fiscal year, a State shall—

“(1) certify to the Secretary that such State has designated a State agency with law enforcement or regulatory authority to enforce the State law described in subsection (a)(1);

“(2) certify to the Secretary that the enforcement of such law is treated as a priority by the State and the agency designated under paragraph (1);

“(3) conduct random, unannounced inspections in a manner that will—

“(A) provide statistically significant information concerning the State’s level of compliance with the requirements of section 2821; and

1 “(B) ensure compliance with the State law
2 enacted in accordance with subsection (a)(1);

3 “(4) annually submit to the Secretary a report
4 that—

5 “(A) describes the activities carried out by
6 the State to enforce such law during the fiscal
7 year preceding the fiscal year for which the
8 State is seeking the grant;

9 “(B) describes the steps taken by the State
10 to ensure that enforcement of such law was
11 treated as a priority by State and local law en-
12 forcement or regulatory authorities;

13 “(C) describes the level of compliance
14 among tobacco product licensees with the provi-
15 sions of this subtitle;

16 “(D) describes the extent of success the
17 State has achieved in reducing the availability
18 of tobacco products to individuals under the age
19 of 18, including the results of the inspections
20 conducted under paragraph (3);

21 “(E) describes the strategies to be utilized
22 by the State for enforcing such law during the
23 fiscal year for which the grant is sought;

24 “(F) describes, for the preceding fiscal
25 year, the percentage of the attempts by individ-

1 uals under 18 years of age to purchase tobacco
 2 products in the State that were unsuccessful;
 3 and

4 “(G) includes any other information re-
 5 quired by the Secretary.

6 “(c) FUNDING.—The law specified in subsection
 7 (a)(1) may be administered and enforced by a State
 8 using—

9 “(1) funds received by the State under section
 10 203;

11 “(2) any fees collected for licenses issued pursu-
 12 ant to the law described in subsection (a)(1);

13 “(3) any fines or penalties assessed for viola-
 14 tions of the law specified in subsection (a)(1); or

15 “(4) any other funding source that the legisla-
 16 ture of the State may prescribe by statute.

17 “(d) NONCOMPLIANCE OF STATE.—

18 “(1) IN GENERAL.—The Secretary, acting
 19 through the Director of the Office on Smoking and
 20 Health of the Centers for Disease Control and Pre-
 21 vention, shall make a determination whether the
 22 State has maintained compliance with the provisions
 23 of subsections (a) and (b) and section 2821. If, after
 24 notice to the State and an opportunity for a hearing,
 25 the Secretary determines that the State is not in

1 compliance with such provisions, the Secretary shall
 2 reduce the amount of the State payment under sec-
 3 tion 2824 for the fiscal year involved by an amount
 4 equal to—

5 “(A) in the case of the first applicable fis-
 6 cal year, 10 percent of the amount determined
 7 under section 2824;

8 “(B) in the case of the first fiscal year fol-
 9 lowing such applicable fiscal year, 20 percent of
 10 the amount determined under such sections for
 11 the State for the fiscal year; and

12 “(C) in the case of the second such fiscal
 13 year, 30 percent of the amount determined
 14 under such sections for the State for the fiscal
 15 year.

16 “(2) ELIGIBILITY FOR PAYMENTS.—If, with re-
 17 spect to the third fiscal year following the applicable
 18 year described in paragraph (1)(A), or any subse-
 19 quent fiscal year, the Secretary determines under
 20 paragraph (1) that the State is not in compliance
 21 with the provisions of subsections (a) and (b) and
 22 section 2821, the State shall not be eligible for pay-
 23 ments under section 2824.

24 “(e) ACTION BY SECRETARY.—If the Secretary deter-
 25 mines that a State is not eligible for payments under sec-

tion 2824, the Secretary, in consultation with the Office on Smoking and Health, shall take such actions as may be necessary to ensure compliance with this subtitle in the State.

“(f) DEFINITION.—For purposes of this section, the term ‘first applicable fiscal year’ means—

“(1) fiscal year 2001, in the case of any State described in subsection (a)(2); and

“(2) fiscal year 2000, in the case of any other State.

“SEC. 2823. MODEL STATE LAW.

“The model State law described in this section with respect to a State is the following:

“SECTION 1. ESTABLISHMENT OF PROGRAM.

“‘There is established within the State a program under which a person is required to obtain a State or local license (referred to in this Act as the “licensee”) to sell or otherwise distribute tobacco products directly to consumers.

“SEC. 2. PROHIBITION ON SALE OR DISTRIBUTION OF TOBACCO PRODUCTS TO MINORS.

“‘No person (including a licensee) may sell or otherwise distribute a tobacco product to an individual who is under 18 years of age.

1 **“SEC. 3. REQUIREMENTS FOR DISTRIBUTION.**

2 “(a) IN GENERAL.—No person shall sell or other-
3 wise distribute tobacco products directly to consumers un-
4 less such person has in effect a tobacco license issued or
5 renewed in accordance with the laws of the State in which
6 the products are to be sold or distributed.

7 “(b) PHOTO IDENTIFICATION.—

8 “(1) REQUIREMENT.—Except as provided in
9 paragraph (2), each licensee shall verify, by means
10 of a driver’s license or other form of identification
11 issued by a government authority containing a pho-
12 tograph and the date of birth of the bearer, that no
13 individual purchasing a tobacco product is under 18
14 years of age.

15 “(2) EXCEPTION.—No verification under para-
16 graph (1) is required for any individual who is at
17 least 27 years of age.

18 “(c) LOCATION OF PRODUCTS.—A licensee shall en-
19 sure that all tobacco products are located in areas where
20 customers do not have access to the products.

21 “(d) FACE-TO-FACE TRANSACTIONS.—A licensee
22 may sell tobacco products only in a direct, face-to-face ex-
23 change without the assistance of any electronic or mechan-
24 ical device.

25 “(e) OUT-OF-PACKAGE DISTRIBUTION.—No licensee
26 may break or otherwise open a tobacco product to sell or

1 distribute to individuals portions of such product (includ-
 2 ing individual cigarettes or a number of cigarettes that
 3 is smaller than the quantity in the minimum package size,
 4 or any quantity of cigarette tobacco or smokeless tobacco
 5 that is smaller than the smallest package distributed by
 6 the licensee for individual consumer use).

7 “(f) LICENSEE COMPLIANCE WITH RESPECT TO
 8 SELF-SERVICE.—Each licensee shall ensure that all to-
 9 bacco-related self-service displays, advertising, labeling,
 10 and other items that are located in the establishment of
 11 the licensee and that do not comply with the requirements
 12 of this section are removed or are brought into compliance
 13 with the requirements of this section.

14 “(g) MINIMUM CIGARETTE PACKAGE SIZE.—Except
 15 as otherwise provided in this section, no manufacturer,
 16 distributor, or licensee may sell or cause to be sold, or
 17 distribute or cause to be distributed, any cigarette package
 18 that contains fewer than 20 cigarettes.

19 “(h) PROHIBITION ON SAMPLING.—No manufac-
 20 turer, distributor, or licensee may distribute or cause to
 21 be distributed any free samples of any tobacco product.

22 **“SEC. 4. LICENSING REQUIREMENTS.**

23 “(a) LICENSURE AND NOTICE.—

24 “(1) LICENSURE.—Every person engaged in
 25 the sale or distribution of tobacco products directly

1 to consumers shall obtain a license that is issued by
2 the State. A separate license shall be required for
3 each place of business where tobacco products are
4 distributed or sold at retail.

5 ““(2) NOTICE.—The State shall provide notice
6 to every person who is engaged in the distribution
7 at retail of tobacco products of the licensing require-
8 ments of paragraph (1) and of the date by which
9 such person shall be required to obtain such a li-
10 cense in order to distribute such products.

11 ““(b) FEE.—Each person that desires to obtain a li-
12 cense under subsection (a) shall be assessed an annual li-
13 censing fee in an amount determined appropriate by the
14 State. Such fees shall be used to administer the provisions
15 of this Act with respect to the issuing and renewing of
16 licenses.

17 ““(c) APPLICATION.—

18 ““(1) IN GENERAL.—To be eligible to receive a
19 license (or the renewal of a license) under this sec-
20 tion, a person shall prepare and submit to the State
21 an application, in such form as may be required by
22 the State, that shall contain—

23 ““(A) the name under which the applicant
24 transacts or intends to transact business;

1 “(B) the location of the place of business
2 for which the license is to be issued;

3 “(C) the street address to which all no-
4 tices relevant to the license are to be sent; and

5 “(D) any other information determined
6 appropriate by the State.

7 “(2) ACTION BY STATE.—

8 “(A) IN GENERAL.—Not later than 30
9 days after the date on which a completed appli-
10 cation (and licensing fee) under paragraph (1)
11 is received, the State shall approve or deny the
12 application.

13 “(B) FINDING BY STATE.—The State
14 shall deny an application under paragraph (1)
15 if the State determines that the applicant has
16 failed to comply with the requirements of this
17 Act.

18 “(3) SCOPE AND RENEWAL.—A license under
19 this section shall be valid for a period of time deter-
20 mined appropriate by the State and shall be renewed
21 upon proper application except as otherwise provided
22 in this section.

1 **“SEC. 5. PENALTIES FOR LICENSEES AND EMPLOYEES FOR**
2 **SALE OR DISTRIBUTION IN VIOLATION OF**
3 **LAW.**

4 “(a) CRIMINAL PENALTIES APPLICABLE TO UNLI-
5 CENSED SELLERS.—The owner of any retail establish-
6 ment that sells or otherwise distributes tobacco products
7 to a consumer in the State without a tobacco license shall
8 be subject to a fine of not less than \$500 per outlet, or
9 imprisonment of not less than 30 days, or both.

10 “(b) CIVIL PENALTIES APPLICABLE TO LICENSED
11 PERSONS.—

12 “(1) IN GENERAL.—The State may impose
13 civil penalties on any person that has sold or other-
14 wise distributed tobacco products in violation of the
15 tobacco license of the person or in violation of this
16 Act.

17 “(2) LIMITATIONS.—The civil penalties im-
18 posed under paragraph (1), subject to the provisions
19 of subparagraph (d), shall not be less than the fol-
20 lowing:

21 “(A) For the first offense within any 2-
22 year period, \$100.

23 “(B) For a second offense within any 2-
24 year period, \$250.

1 “(C) For a third offense within any 2-
2 year period, \$250, and a 3-day suspension of
3 the tobacco license.

4 “(D) For a fourth offense within any 2-
5 year period, \$500 and a 7-day suspension of the
6 tobacco license.

7 “(E) For a fifth offense within any 2-year
8 period, \$500, and a 30-day suspension of the
9 tobacco license.

10 “(F) For a sixth offense within any 2-
11 year period, \$10,000, or a 1-year suspension of
12 the tobacco license, or both.

13 “(G) For a seventh and any subsequent
14 offense within any 2-year period, \$10,000, or a
15 3-year revocation of the tobacco license.

16 “(H) For a tenth offense within any 2-
17 year period, the mandatory revocation of the to-
18 bacco license with no possibility of reinstate-
19 ment for a period of 5 years.

20 “(3) DEFENSES.—It shall be a consideration
21 to a charge brought under paragraph (1) that the
22 defendant—

23 “(A) relied upon proof of age that ap-
24 peared on its face to be valid; and

1 “(B) had complied with the requirements
2 of section 9.

3 “(4) OTHER VIOLATIONS.—No civil penalties
4 shall be imposed under this subsection upon a li-
5 censee with respect to a violation, by an employee of
6 the licensee, that occurred at a place of business of
7 the employer subsequent to the occurrence of a prior
8 violation by that same employee unless the licensee
9 has received notice of such prior violation in writing,
10 served personally or by registered mail at the ad-
11 dress to which all notices relevant to the license are
12 to be sent.

13 “(c) CIVIL PENALTIES APPLICABLE TO EMPLOYEES
14 OF LICENSED PERSONS.—

15 “(1) IN GENERAL.—The State may impose
16 civil penalties on any employee of a person with a
17 tobacco license who has sold or otherwise distributed
18 tobacco products in violation of this Act.

19 “(2) LIMITATIONS.—The civil penalties im-
20 posed under paragraph (1) shall not be less than the
21 following:

22 “(A) For the first offense within any 2-
23 year period, \$25.

24 “(B) For a second offense within any 2-
25 year period, \$75.

1 “(C) For a third and any subsequent of-
2 fense within any 2-year period, \$150.

3 “(3) DEFENSES.—It shall be a defense to a
4 charge brought under paragraph (1) that the de-
5 pendent relied upon proof of age that appeared on
6 its face to be valid.

7 “(d) SUSPENSION OR REVOCATION OF LICENSE.—

8 “(1) NOTICE.—Upon a finding that a violation
9 of section 3(b)(1) has occurred for which the State
10 may suspend or revoke the tobacco license involved
11 the State shall, prior to any such suspension or rev-
12 ocation, notify the licensee in writing, personally or
13 by registered mail, at the address to which all no-
14 tices are to be sent that the State is considering
15 such suspension or revocation.

16 “(2) OPPORTUNITY TO BE HEARD.—Within 30
17 days of the date on which a licensee receives a notice
18 under paragraph (1), the State shall give the li-
19 censee an opportunity to show why, based upon the
20 licensee’s efforts to assure compliance with such sec-
21 tion, the suspension or revocation of the license
22 would be unwarranted and unjust. The State shall
23 take into consideration any information provided by
24 the licensee prior to suspending or revoking such li-
25 cense.

1 “(3) WAIVER.—If a licensee demonstrates that
 2 it has made appropriate good faith efforts to assure
 3 compliance with section 3(b)(1), the State may waive
 4 the penalty of suspension or revocation.

5 **“SEC. 6. PURCHASE, RECEIPT, OR POSSESSION BY MINORS**
 6 **PROHIBITED.**

7 “(a) IN GENERAL.—An individual under 18 years
 8 of age shall not purchase or attempt to purchase, receive
 9 or attempt to receive, possess, smoke, or otherwise use or
 10 consume a tobacco product in a public place.

11 “(b) PENALTIES TO MINORS.—A minor found to be
 12 in violation of subsection (a) shall incur a written warning
 13 and may incur—

14 “(1) a civil money penalty of not less than \$25
 15 and not more than \$150 for each violation;

16 “(2) the suspension of his or her motor vehicle
 17 operator’s license; and

18 “(3) any other civil penalty determined appro-
 19 priate by the State.

20 “(c) NOTICE.—A law enforcement agency, upon de-
 21 termining that an individual under 18 years of age alleg-
 22 edly violated subsection (a) shall notify the individual’s
 23 parent or parents, custodian, or guardian as to the nature
 24 of the violation if the name and address of a parent,
 25 guardian, or custodian is reasonably ascertainable by the

1 law enforcement agency. The notice required by this sub-
2 section shall be made not later than 48 hours after the
3 individual who allegedly violated subsection (a) is cited by
4 such agency for the violation. The notice may be made
5 by any means reasonably calculated to give prompt actual
6 notice, including notice in person, by telephone, or by first-
7 class mail.

8 “(d) EMPLOYMENT.—Subsection (a) does not pro-
9 hibit an individual under the age of 18 from possessing
10 a tobacco product during regular working hours and in
11 the course of such individual’s employment if the tobacco
12 product is not possessed for such individual’s consump-
13 tion.

14 **“SEC. 7. ENFORCEMENT.**

15 “(a) RANDOM UNANNOUNCED INSPECTIONS.—The
16 State shall establish procedures to ensure compliance with
17 this Act. Such procedures shall consist of random, unan-
18 nounced inspections of establishments that are licensed to
19 sell tobacco in a fashion that is designed to achieve data
20 that is of statistical significance, and shall engage an indi-
21 vidual under 18 years of age to test compliance with this
22 Act.

23 “(b) ENFORCEMENT AUTHORITY.—The State shall
24 designate an agency within the State with law enforcement
25 or regulatory authority to enforce this Act.

1 “(c) USE OF PENALTIES AND FEES.—Penalties and
2 fees collected under this Act shall be used to defray the
3 costs of the State in administering and enforcing this Act.

4 **“SEC. 8. SIGNAGE.**

5 “(It shall be unlawful for any licensee who sells to-
6 bacco products to fail to post conspicuously a sign commu-
7 nicating that—

8 “(1) the sale of tobacco products to individuals
9 under the age of 18 is prohibited by law,

10 “(2) the purchase of tobacco products by indi-
11 viduals under the age of 18 is prohibited by law, and

12 “(3) proof of age will be demanded of individ-
13 uals under 21 years of age.

14 A licensee who fails to post a sign in violation of this sec-
15 tion is liable for a civil money penalty of \$500.

16 **“SEC. 9. NOTIFICATION OF EMPLOYEES.**

17 “(a) NOTICE TO EMPLOYEES.—Within 90 days of
18 the effective date of this Act, every licensee engaged in
19 the business of distributing tobacco products at retail shall
20 implement a program to notify each employee employed
21 by that licensee who distributes tobacco products that this
22 Act—

23 “(1) prohibits the distribution of tobacco prod-
24 ucts to any individual under 18 years of age and the
25 purchase, receipt, possession, smoking, or other use

1 or consumption of tobacco products by any individ-
2 ual under 18 years of age, and

3 ““(2) prohibits out-of-package distribution of
4 cigarettes and smokeless tobacco products.

5 ““(b) STATEMENT.—It shall be a defense to a charge
6 that an employer or licensee violated subsection (a) of this
7 section that the employee acknowledged in writing receipt
8 of a statement in substantially the following form:

9 “““I understand that State law prohibits the dis-
10 tribution of tobacco products to individuals under 18
11 years of age and out-of-package distribution of ciga-
12 rettes and smokeless tobacco products and permits
13 a defense based on evidence that a recipient’s proof
14 of age was reasonably relied upon and appeared on
15 its face to be valid. I understand that if I sell, give,
16 or voluntarily provide tobacco products to an individ-
17 ual under the age of 18, I may be found responsible
18 for a civil money penalty for each violation. I prom-
19 ise to comply with this Act.”.

20 ““(c) VICARIOUS LIABILITY.—If an employer or li-
21 censee is charged with a violation of subsection (a) and
22 the employer uses as a defense to such charge the defense
23 provided by subsection (b), the employer shall be deemed
24 to be liable for such violation if such employer pays the

1 penalty imposed on the employee involved in such violation
2 or in any way reimburses the employee for such penalty.

3 **“SEC. 10. PENALTY FOR SALE OR DISTRIBUTION OF TO-**
4 **BACCO PRODUCTS WITHOUT A LICENSE.**

5 ““(a) IN GENERAL.—Any person who engages in the
6 distribution at retail of tobacco products without a license
7 required by this Act is liable for a civil money penalty in
8 an amount equal to 2 times the applicable license fee and
9 \$250 for each day on which such distribution continues
10 without a license.

11 ““(b) SUSPENSION OR REVOCATION.—Any person
12 who engages in the distribution at retail of tobacco prod-
13 ucts after a license issued under this Act has been sus-
14 pended or revoked is liable for a civil money penalty of
15 \$500 per day for each day on which such distribution con-
16 tinues after the date such person received notice of such
17 suspension or revocation.

18 **“SEC. 11. EFFECTIVE DATE.**

19 ““No person shall engage in the distribution at retail
20 of tobacco products on or after 180 days after the date
21 of enactment of this Act unless the person is authorized
22 to do so by a license issued pursuant to this section or
23 is an employee or agent of a person who has been issued
24 such a license.’.

1 **“SEC. 2824. FUNDING.**

2 “(a) IN GENERAL.—There shall be made available
 3 from the Tobacco Settlement Trust Fund to carry out this
 4 subtitle \$65,000,000 for each of the fiscal years 1999
 5 through 2008.

6 “(b) ALLOTMENT TO STATES.—From the amount
 7 made available under subsection (a) for any fiscal year,
 8 the Secretary shall allot to each State the applicable per-
 9 centage of such amount in accordance with the following
 10 table:

State	Applicable Percentage
Alabama	1.238619
Alaska	0.500000
Arizona	1.134776
Arkansas	0.732229
California	8.585426
Colorado	1.027658
Connecticut	1.557000
Delaware	0.500000
District of Columbia	0.521120
Florida	3.500870
Georgia	1.956917
Hawaii	0.626458
Idaho	0.500000
Illinois	4.166040
Indiana	1.671714
Iowa	0.739712
Kansas	0.743167
Kentucky	1.828537
Louisiana	1.868947
Maine	0.848964
Maryland	2.000535
Massachusetts	3.607905
Michigan	4.320991
Minnesota	2.412484
Mississippi	0.830156
Missouri	1.617624
Montana	0.500000
Nebraska	0.500000
Nevada	0.500000
New Hampshire	0.538242
New Jersey	3.406803
New Mexico	0.500000
New York	14.166024

North Carolina	2.045166
North Dakota	0.500000
Ohio	4.572863
Oklahoma	0.820915
Oregon	1.065587
Pennsylvania	5.102394
Rhode Island	0.801176
South Carolina	0.861529
South Dakota	0.500000
Tennessee	2.417855
Texas	4.340060
Utah	0.500000
Vermont	0.500000
Virginia	1.339502
Washington	1.749731
West Virginia	0.978560
Wisconsin	2.046211
Wyoming	0.500000
American Samoa	0.008463
N. Mariana Islands	0.001481
Guam	0.006343
U.S. Virgin Islands	0.004683
Puerto Rico	0.188344

1 **“SEC. 2825. REGULATIONS.**

2 “Not later than 12 months after the date of enact-
3 ment of this title, the Secretary, acting through the Office
4 on Smoking and Health of the Centers for Disease Control
5 and Prevention, shall promulgate regulations to implement
6 this subtitle.

7 **“Subtitle C—State and Community**
8 **Action Program**

9 **“SEC. 2831. FUNDING FROM TOBACCO SETTLEMENT TRUST**
10 **FUND.**

11 “(a) IN GENERAL.—There shall be made available
12 from the Tobacco Settlement Trust Fund to carry out this
13 subtitle—

1 “(1) \$145,000,000 for each of the fiscal years
2 1999 and 2000;

3 “(2) \$170,000,000 for fiscal year 2001;

4 “(3) \$240,000,000 for each of the fiscal years
5 2002 and 2003;

6 “(4) \$340,000,000 for each of the fiscal years
7 2004 and 2005;

8 “(5) \$385,000,000 for each of the fiscal years
9 2006 and 2007; and

10 “(6) \$440,000,000 for fiscal year 2008.

11 “(b) SUNSET PROVISION.—This subtitle shall termi-
12 nate on September 30, 2009.

13 **“SEC. 2832. ALLOTMENTS.**

14 “(a) IN GENERAL.—From the amount made avail-
15 able under section 2831 for any fiscal year, the Secretary,
16 acting through the Director of the Office on Smoking and
17 Health of the Centers for Disease Control and Prevention
18 (referred to in this subtitle as the ‘Director’), shall allot
19 to each State the applicable percentage of such amount
20 in accordance with the following table:

State	Applicable Percentage
Alabama	1.238619
Alaska	0.500000
Arizona	1.134776
Arkansas	0.732229
California	8.585426
Colorado	1.027658
Connecticut	1.557000
Delaware	0.500000
District of Columbia	0.521120
Florida	3.500870
Georgia	1.956917

Hawaii	0.626458
Idaho	0.500000
Illinois	4.166040
Indiana	1.671714
Iowa	0.739712
Kansas	0.743167
Kentucky	1.828537
Louisiana	1.868947
Maine	0.848964
Maryland	2.000535
Massachusetts	3.607905
Michigan	4.320991
Minnesota	2.412484
Mississippi	0.830156
Missouri	1.617624
Montana	0.500000
Nebraska	0.500000
Nevada	0.500000
New Hampshire	0.538242
New Jersey	3.406803
New Mexico	0.500000
New York	14.166024
North Carolina	2.045166
North Dakota	0.500000
Ohio	4.572863
Oklahoma	0.820915
Oregon	1.065587
Pennsylvania	5.102394
Rhode Island	0.801176
South Carolina	0.861529
South Dakota	0.500000
Tennessee	2.417855
Texas	4.340060
Utah	0.500000
Vermont	0.500000
Virginia	1.339502
Washington	1.749731
West Virginia	0.978560
Wisconsin	2.046211
Wyoming	0.500000
American Samoa	0.008463
N. Mariana Islands	0.001481
Guam	0.006343
U.S. Virgin Islands	0.004683
Puerto Rico	0.188344

1 “(b) REALLOTMENT.—To the extent that amounts
2 made available under section 2831 for a fiscal year are
3 not otherwise allotted to States because—

1 “(1) 1 or more States have not submitted an
2 application or description of activities in accordance
3 with section 2835 for the fiscal year;

4 “(2) 1 or more States have notified the Sec-
5 retary that they do not intend to use the full amount
6 of their allotment; or

7 “(3) the Secretary has determined that the
8 State is not in compliance with this title, and there-
9 fore is subject to penalties under section 2837;
10 such excess amount shall be reallocated among each of the
11 remaining States in proportion to the amount otherwise
12 allotted to such States for the fiscal year involved without
13 regard to this subsection.

14 “(c) REGULATIONS.—Not later than 18 months after
15 the date of enactment of this title, the Secretary shall pro-
16 mulgate regulations to implement this subtitle. This sub-
17 title shall take effect regardless of the date on which such
18 regulations are promulgated.

19 **“SEC. 2833. PAYMENTS UNDER ALLOTMENTS TO STATES.**

20 “(a) IN GENERAL.—

21 “(1) METHOD OF PAYMENT.—The Secretary
22 shall make payments to States under allotments
23 under this subtitle as provided for under section 203
24 of the Intergovernmental Cooperation Act of 1968.

1 “(2) AVAILABILITY OF FUNDS.—Any amount
2 paid to a State for a fiscal year under this subtitle
3 and remaining unobligated at the end of such year
4 shall remain available to such State for the next fis-
5 cal year for the purposes for which such payment
6 was made.

7 “(b) REDUCTIONS.—The Secretary, at the request of
8 a State, may reduce the amount of payments to the State
9 under subsection (a) by—

10 “(1) the fair market value of any supplies or
11 equipment furnished by the Secretary to the State;
12 and

13 “(2) the amount of the pay, allowances, and
14 travel expenses of any officer or employee of the
15 Federal Government when detailed to the State and
16 the amount of any other costs incurred in connection
17 with the detail of such officer or employee;

18 when the furnishing of such supplies or equipment or the
19 detail of such an officer or employee is for the convenience
20 of and at the request of the State and for the purpose
21 of conducting activities described in section 2834. The
22 amount by which any payment is so reduced shall be avail-
23 able for payment by the Secretary of the costs incurred
24 in furnishing the supplies or equipment or in detailing the
25 personnel, on which reduction of the payment is based,

1 and the amount shall be deemed to be part of the payment
 2 and shall be deemed to have been paid to the State.

3 **“SEC. 2834. USE OF ALLOTMENTS.**

4 “(a) STATE AND COMMUNITY ACTION ACTIVITIES.—

5 “(1) IN GENERAL.—Except as provided in sub-
 6 sections (b) and (c), amounts paid to a State under
 7 section 2833 may be used for the following:

8 “(A) Activities described in the plan of the
 9 State, submitted in accordance with section
 10 2835, including—

11 “(i) evidence-based State and commu-
 12 nity initiatives for tobacco use prevention
 13 and control;

14 “(ii) infrastructure development mod-
 15 eled after the National Cancer Society’s
 16 ASSIST program, or another evidence-
 17 based model approved by the Director;

18 “(iii) to develop effective counter ad-
 19 vertising;

20 “(iv) the development and implemen-
 21 tation of anti-tobacco education programs
 22 and public policy initiatives; and

23 “(v) school-based efforts to prevent
 24 tobacco use and addiction, developed sci-
 25 entifically and approved by the Director.

1 “(B) Planning, administration, and educational
2 activities related to the activities described in sub-
3 paragraph (A).

4 “(C) The monitoring and evaluation of activi-
5 ties carried out under subparagraphs (A) and (B).

6 “(2) TECHNICAL ASSISTANCE.—The Secretary
7 may provide technical assistance to States in plan-
8 ning and operating activities to be carried out under
9 this subtitle.

10 “(b) LIMITATION.—A State may not use amounts
11 paid to the State under section 2833 to—

12 “(1) purchase or improve land, purchase, con-
13 struct, or permanently improve (other than minor
14 remodeling) any building or other facility, or pur-
15 chase major medical equipment;

16 “(2) satisfy any requirement for the expendi-
17 ture of non-Federal funds as a condition of the re-
18 ceipt of Federal funds;

19 “(3) provide financial assistance to any entity
20 other than a public or nonprofit private entity; or

21 “(4) fund educational, recreational, or health
22 activities not scientifically proven to prevent youth
23 smoking or lead to success of cessation efforts
24 among youths.

1 “(c) ADMINISTRATION.—Not more than 10 percent
 2 of the allotment of a State for a the fiscal year under this
 3 subtitle may be used by the State to administer the funds
 4 paid to the State under section 2833. The State shall pay
 5 from non-Federal sources the remaining costs of admin-
 6 istering such funds.

7 **“SEC. 2835. APPLICATION FOR PAYMENTS; STATE PLAN.**

8 “(a) IN GENERAL.—The Secretary may make pay-
 9 ments under section 2833 to a State for a fiscal year only
 10 if—

11 “(1) the State submits to the Secretary an ap-
 12 plication for such payments;

13 “(2) the application contains a State plan in ac-
 14 cordance with subsection (b);

15 “(3) the application contains the certification
 16 described in subsection (c);

17 “(4) the application contains such assurances
 18 as the Secretary may require regarding the compli-
 19 ance of the State with the requirements of this sub-
 20 title (including assurances regarding compliance
 21 with the agreements described in subsection (c));
 22 and

23 “(5) the application is in such form and is sub-
 24 mitted by such date as the Secretary may require.

1 “(b) STATE PLAN.—A State plan required under
2 subsection (a)(2) for a fiscal year is in accordance with
3 this subsection if the plan meets the following conditions:

4 “(1) The plan is developed by the State agency
5 with principal responsibility for public health pro-
6 grams, in consultation with the advisory committee
7 established pursuant to subsection (c)(2).

8 “(2) The plan specifies the activities authorized
9 under section 2834 that are to be carried out with
10 payments made to the State under section 2833.

11 “(3) The plan specifies the amount of such pay-
12 ments to be expended for each of such activities and
13 includes a description of the programs and projects
14 to be carried out.

15 “(4) The plan describes the measurable objec-
16 tives, developed in consultation with the Secretary,
17 that will be used to evaluate program outcomes.

18 “(c) STATE CERTIFICATION.—The certification re-
19 ferred to in subsection (a)(3) for a fiscal year is a certifi-
20 cation to the Secretary by the chief executive officer of
21 the State involved as follows:

22 “(1)(A) In the development of the State plan
23 required in subsection (a)(2)—

24 “(i) the chief health officer of the State
25 held public hearings on the plan; and

1 “(ii) proposals for the plan were made
2 public in a manner that facilitated comments
3 from public and private entities (including Fed-
4 eral and other public agencies).

5 “(B) The State agrees that, if any revisions are
6 made in such plan during the fiscal year, the State
7 will, with respect to the revisions, hold hearings and
8 make proposals public in accordance with subpara-
9 graph (A), and will submit to the Secretary a de-
10 scription of the revisions.

11 “(2) The State has established an advisory
12 committee in accordance with subsection (d).

13 “(3) The State agrees to expend payments
14 under section 2833 only for the activities authorized
15 in section 2834.

16 “(4) The State agrees to expend such payments
17 in accordance with the State plan submitted under
18 subsection (a)(2) (with any revisions submitted to
19 the Secretary under paragraph (1)(B)), including
20 making expenditures to carry out the strategy con-
21 tained in the plan pursuant to subsection (b)(5).

22 “(5)(A) The State agrees that, in the case of
23 each population for which such strategy is carried
24 out, the State will measure the extent of progress

1 being made toward improving the health status of
2 the population.

3 “(B) The State agrees that—

4 “(i) the State will collect and report data
5 in accordance with section 2836(a);

6 “(ii) for purposes of subparagraph (A),
7 progress will be measured through the use of
8 the applicable uniform data items developed by
9 the Secretary under section 2836(a)(2), or if no
10 such items are applicable, through use of the
11 uniform criteria developed by the Secretary
12 under section 2836(a)(3).

13 “(6) With respect to the activities authorized in
14 section 2834, the State agrees to maintain State ex-
15 penditures for such activities at a level that is not
16 less than the average level of such expenditures
17 maintained by the State for the 2-year period pre-
18 ceding the fiscal year for which the State is applying
19 to receive payments under section 2833.

20 “(7) The State agrees to establish reasonable
21 criteria to evaluate the effective performance of enti-
22 ties that receive funds from such payments and pro-
23 cedures for procedural and substantive independent
24 State review of the failure by the State to provide
25 funds for any such entity.

1 “(8) The State agrees to permit and cooperate
2 with Federal investigations undertaken in accord-
3 ance with section 2837.

4 “(d) STATE ADVISORY COMMITTEE.—

5 “(1) IN GENERAL.—For purposes of subsection
6 (c)(2), an advisory committee is in accordance with
7 this subsection if such committee meets the condi-
8 tions described in this subsection.

9 “(2) DUTIES.—A condition under paragraph
10 (1) for a State is that the duties of the committee
11 are—

12 “(A) to hold public hearings on the State
13 plan required under subsection (a)(2); and

14 “(B) to make recommendations pursuant
15 to subsection (b)(1) regarding the development
16 and implementation of such plan, including rec-
17 ommendations on—

18 “(i) the conduct of assessments under
19 the plan;

20 “(ii) which of the activities authorized
21 in section 2834 should be carried out in
22 the State;

23 “(iii) the allocation of payments made
24 to the State under section 2833;

1 “(iv) the coordination of activities car-
2 ried out under such plan with relevant pro-
3 grams of other entities; and

4 “(v) the collection and reporting of
5 data in accordance with section 2836(a).

6 “(3) COMPOSITION.—

7 “(A) IN GENERAL.—A condition under
8 paragraph (1) for a State is that the advisory
9 committee be composed of such members of the
10 general public, and such officials of the health
11 departments of political subdivisions of the
12 State, as may be necessary to provide adequate
13 representation of the general public and of such
14 health departments.

15 “(B) REPRESENTATIVES.—With respect to
16 compliance with subparagraph (A), the mem-
17 bership of the advisory committee established
18 pursuant to subsection (c)(2) may include rep-
19 resentatives of community-based organizations
20 (including minority community-based organiza-
21 tions), schools of public health, and entities to
22 which the State involved awards grants or con-
23 tracts to carry out activities authorized under
24 section 2834.

1 “(4) CHAIRPERSON; MEETINGS.—A condition
 2 under paragraph (1) for a State is that the State
 3 public health officer shall serve as the chairperson of
 4 the advisory committee, and that the committee
 5 meet not less than twice each fiscal year.

6 **“SEC. 2836. REPORTS, DATA, AND AUDITS.**

7 “(a) DATA.—

8 “(1) COLLECTION AND REPORTING.—For pur-
 9 poses of section 2835(c)(5)(B)(i), a State is collect-
 10 ing and reporting data for a fiscal year in accord-
 11 ance with this subsection if the State submits to the
 12 Secretary, not later than February 1 of the succeed-
 13 ing fiscal year a report that—

14 “(A) describes the purposes for which the
 15 State expended payments made to the State
 16 under section 2833;

17 “(B) pursuant to section 2835(c)(5)(A),
 18 describes the extent of progress made by the
 19 State for purposes of such section;

20 “(C) meets the conditions described para-
 21 graph (2); and

22 “(D) contains such additional information
 23 regarding activities authorized under section
 24 2834, and is submitted in such form, as the
 25 Secretary may require.

1 “(2) UNIFORM DATA SETS.—

2 “(A) IN GENERAL.—The Secretary, in con-
3 sultation with the States, shall develop sets of
4 data for uniformly defining levels of youth and
5 adult use of tobacco products (referred to as
6 ‘uniform tobacco product use data items’). The
7 Secretary shall develop formats for the uniform
8 collecting and reporting of information on such
9 items.

10 “(B) LATER FISCAL YEARS.—In the case of fis-
11 cal year 2000 and each subsequent fiscal year, a
12 condition under paragraph (1) for a State is that the
13 State will, in accordance with the applicable format
14 under subparagraph (A), collect during such year,
15 and include in the report under paragraph (1), the
16 necessary information for each of the tobacco prod-
17 uct use data items.

18 “(3) UNIFORM CRITERIA.—The Secretary, in
19 consultation with the States, shall establish criteria
20 for the uniform collection and reporting of data on
21 activities authorized in section 2844 with respect to
22 which no uniform tobacco product use data items
23 under paragraph (2) exist.

24 “(4) PUBLIC INSPECTION OF REPORTS.—A con-
25 dition under paragraph (1) for a fiscal year is that

1 the State involved will make copies of the report
2 submitted under such paragraph for the fiscal year
3 available for public inspection, and will upon request
4 provide a copy of the report to any individual for
5 a charge not exceeding the cost of providing the
6 copy.

7 “(b) AUDITS.—

8 “(1) FISCAL CONTROL AND ACCOUNTING PRO-
9 CEDURES.—Each State shall establish fiscal control
10 and fund accounting procedures as may be necessary
11 to ensure the proper disbursement of and accounting for
12 Federal funds paid to the State under section 2833.

13 “(2) ANNUAL SUBMISSION.—Each State shall
14 annually audit its expenditures from payments re-
15 ceived under section 2833. Such State audits shall
16 be conducted by an entity independent of any agency
17 administering a program funded under this subtitle,
18 and, in so far as practical, in accordance with the
19 Comptroller General’s standards for auditing govern-
20 mental organizations, programs, activities, and func-
21 tions. Within 30 days following the date on which
22 each audit is completed, the chief executive officer of
23 the State shall transmit a copy of that audit to the
24 Secretary.

1 “(3) REPAYMENTS.—Each State shall, after
2 being provided by the Secretary with adequate notice
3 and an opportunity for a hearing within the State,
4 repay to the United States amounts found not to
5 have been expended in accordance with the require-
6 ments of this subtitle or the certification provided by
7 the State under section 2835. If such repayment is
8 not made, the Secretary shall, after providing the
9 State with adequate notice and opportunity for a
10 hearing within the State, offset such amounts
11 against the amount of any allotment to which the
12 State is or may become entitled under this subtitle.

13 “(4) AVAILABILITY.—The State shall make cop-
14 ies of the reports and audits required by this sub-
15 section available for public inspection within the
16 State.

17 “(5) EVALUATION.—The Comptroller General
18 of the United States shall, from time to time, evalu-
19 ate the expenditures by the States of payments
20 under this subtitle in order to ensure that expendi-
21 tures are consistent with the provisions of this sub-
22 title and the certification provide by the State under
23 section 2835.

24 “(6) REPORT BY SECRETARY.—Not later than
25 October 1, 2000, the Secretary shall prepare and

1 submit to the appropriate committees of Congress a
 2 report concerning the activities of the States that
 3 have received funds under this subtitle and may in-
 4 clude in the report any recommendations for appro-
 5 priate changes in legislation.

6 “(c) NONAPPLICATION OF CERTAIN PROVISIONS.—
 7 Title XVII of the Omnibus budget Reconciliation Act of
 8 1981 shall not apply with respect to audits of funds allot-
 9 ted under this subtitle.

10 **“SEC. 2837. WITHHOLDING.**

11 “(a) WITHHOLDING FOR MISUSE.—

12 “(1) IN GENERAL.—The Secretary shall, after
 13 adequate notice and opportunity for a hearing con-
 14 ducted within the affected State, withhold funds
 15 from any State which does not use its allotment in
 16 accordance with the requirements of this subtitle or
 17 the certifications otherwise provided by States under
 18 this subtitle. The Secretary shall withhold such
 19 funds until the Secretary finds that the reason for
 20 the withholding has been removed and there is rea-
 21 sonable assurance that it will not recur.

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

1 its allotment in accordance with the requirements of
2 this subtitle or the certifications otherwise provided
3 under this subtitle. Investigations required by this
4 paragraph shall be conducted within the affected
5 State by qualified investigators.

6 “(3) RESPONSE TO COMPLAINTS.—The Sec-
7 retary shall respond in an expeditious manner to
8 complaints of a substantial or serious nature that a
9 State has failed to use funds in accordance with the
10 requirements of this subtitle or the certifications
11 otherwise provided under this subtitle.

12 “(4) MINOR FAILURES.—The Secretary may
13 not withhold funds under paragraph (1) from a
14 State for a minor failure to comply with the require-
15 ments of this subtitle or certifications otherwise pro-
16 vided under this subtitle.

17 “(b) INVESTIGATIONS.—

18 “(1) BY SECRETARY.—The Secretary shall con-
19 duct in several States in each fiscal year investiga-
20 tions of the use of funds received by the States
21 under this subtitle in order to evaluate compliance
22 with the requirements of this subtitle and certifi-
23 cations otherwise provided under this subtitle.

24 “(2) BY COMPTROLLER GENERAL.—The Comp-
25 troller General of the United States may conduct in-

1 vestigations of the use of funds received under this
2 subtitle by a State in order to insure compliance
3 with the requirements of this subtitle and certifi-
4 cations otherwise provided under this subtitle.

5 “(c) AVAILABILITY OF RECORDS.—Each State, and
6 each entity which has received funds from an allotment
7 made to a State under this subtitle, shall make appro-
8 priate books, documents, papers, and records available to
9 the Secretary or the Comptroller General of the United
10 States, or any of their duly authorized representatives, for
11 examination, copying, or mechanical reproduction on or
12 off the premises of the appropriate entity upon a reason-
13 able request therefore.

14 “(d) LIMITATION.—

15 “(1) IN GENERAL.—In conducting any inves-
16 tigation in a State, the Secretary or the Comptroller
17 General of the United States may not make a re-
18 quest for any information not readily available to
19 such State or an entity which has received funds
20 from an allotment made to the State under this sub-
21 title or make an unreasonable request for informa-
22 tion to be compiled, collected, or transmitted in any
23 form not readily available.

24 “(2) NONAPPLICATION TO JUDICIAL PROCEED-
25 INGS.—Paragraph (1) does not apply to the collec-

1 tion, compilation, or transmittal of data in the
2 course of a judicial proceeding.

3 **“SEC. 2838. NONDISCRIMINATION.**

4 “(a) PROGRAMS AND ACTIVITIES.—

5 “(1) IN GENERAL.—For the purpose of apply-
6 ing the prohibitions against discrimination on the
7 basis of age under the Age Discrimination Act of
8 1975, on the basis of handicap under section 504 of
9 the Rehabilitation Act of 1973, on the basis of sex
10 under title IX of the Education Amendments of
11 1972, or on the basis of race, color, or national ori-
12 gin under title VI of the Civil Rights Act of 1964,
13 programs and activities funded in whole or in part
14 with funds made available under this subtitle are
15 considered to be programs and activities receiving
16 Federal financial assistance.

17 “(2) GENDER OR RELIGION.—No person shall
18 on the ground of gender or religion be excluded from
19 participation in, be denied the benefits of, or be sub-
20 jected to discrimination under, any program or ac-
21 tivity funded in whole or in part with funds made
22 available under this subtitle.

23 “(b) FAILURE TO COMPLY.—Whenever the Secretary
24 finds that a State, or an entity that has received a pay-
25 ment from an allotment to a State under this subtitle, has

1 failed to comply with a provision of law referred to in sub-
 2 section (a)(1), with subsection (a)(2), or with an applica-
 3 ble regulation (including one prescribed to carry out sub-
 4 section (a)(2)), the Secretary shall notify the chief execu-
 5 tive officer of the State and shall request such officer to
 6 secure compliance. If within a reasonable period of time,
 7 not to exceed 60 days, the chief executive officer fails or
 8 refuses to secure compliance, the Secretary may—

9 “(1) refer the matter to the Attorney General
 10 with a recommendation that an appropriate civil ac-
 11 tion be instituted;

12 “(2) exercise the powers and functions provided
 13 by title VI of the Civil Rights Act of 1964, the Age
 14 Discrimination Act of 1975, or section 504 of the
 15 Rehabilitation Act of 1973, as may be applicable; or

16 “(3) take such other action as may be provided
 17 by law.

18 “(c) ACTION BY ATTORNEY GENERAL.—When a
 19 matter is referred to the Attorney General pursuant to
 20 subsection (b)(1), or whenever he has reason to believe
 21 that a State or an entity is engaged in a pattern or prac-
 22 tice in violation of a provision of law referred to in sub-
 23 section (a)(1) or in violation of subsection (a)(2), the At-
 24 torney General may bring a civil action in any appropriate

1 district court of the United States for such relief as may
2 be appropriate, including injunctive relief.

3 **“SEC. 2839. CRIMINAL PENALTY FOR FALSE STATEMENTS.**

4 “Whoever—

5 “(1) knowingly and willfully makes or causes to
6 be made any false statement or representation of a
7 material fact in connection with the furnishing of
8 items or services for which payment may be made by
9 a State from funds allotted to the State under this
10 subtitle; or

11 “(2) having knowledge of the occurrence of any
12 event affecting his or her initial or continued right
13 to any such payment conceals or fails to disclose
14 such event with an intent fraudulently to secure
15 such payment either in a greater amount than is due
16 or when no such payment is authorized;

17 shall be fined not more than \$25,000 or imprisoned for
18 not more than 5 years, or both.

19 **“Subtitle D—Smoking Cessation**
20 **Programs**

21 **“SEC. 2841. FUNDING FROM TOBACCO SETTLEMENT TRUST**
22 **FUND.**

23 “(a) FUNDING.—There shall be made available from
24 the Tobacco Settlement Trust Fund to carry out this sec-
25 tion—

1 “(1) \$1,000,000,000 for each of the fiscal years
2 1999 through 2002; and

3 “(2) \$1,500,000,000 for each of the fiscal years
4 2003 through 2008.

5 “(b) LIMITATION.—Not more than 2 percent of the
6 amount available for any fiscal year under subsection (a)
7 shall be made available to the Secretary to carry out the
8 activity described in section 2842(c).

9 “(c) SUNSET PROVISION.—This subtitle shall termi-
10 nate on September 30, 2009.

11 **“SEC. 2842. ALLOTMENTS.**

12 “(a) IN GENERAL.—From the amount made avail-
13 able under section 2841 for any fiscal year, the Secretary
14 shall allot to each State the applicable percentage of such
15 amount in accordance with the following table:

State	Applicable Percentage
Alabama	1.238619
Alaska	0.500000
Arizona	1.134776
Arkansas	0.732229
California	8.585426
Colorado	1.027658
Connecticut	1.557000
Delaware	0.500000
District of Columbia	0.521120
Florida	3.500870
Georgia	1.956917
Hawaii	0.626458
Idaho	0.500000
Illinois	4.166040
Indiana	1.671714
Iowa	0.739712
Kansas	0.743167
Kentucky	1.828537
Louisiana	1.868947
Maine	0.848964
Maryland	2.000535
Massachusetts	3.607905

Michigan	4.320991
Minnesota	2.412484
Mississippi	0.830156
Missouri	1.617624
Montana	0.500000
Nebraska	0.500000
Nevada	0.500000
New Hampshire	0.538242
New Jersey	3.406803
New Mexico	0.500000
New York	14.166024
North Carolina	2.045166
North Dakota	0.500000
Ohio	4.572863
Oklahoma	0.820915
Oregon	1.065587
Pennsylvania	5.102394
Rhode Island	0.801176
South Carolina	0.861529
South Dakota	0.500000
Tennessee	2.417855
Texas	4.340060
Utah	0.500000
Vermont	0.500000
Virginia	1.339502
Washington	1.749731
West Virginia	0.978560
Wisconsin	2.046211
Wyoming	0.500000
American Samoa	0.008463
N. Mariana Islands	0.001481
Guam	0.006343
U.S. Virgin Islands	0.004683
Puerto Rico	0.188344

1 “(b) REALLOTMENT.—To the extent that amounts
2 made available under section 2831 for a fiscal year are
3 not otherwise allotted to States because—

4 “(1) 1 or more States have not submitted an
5 application or description of activities in accordance
6 with section 2845 for the fiscal year;

7 “(2) 1 or more States have notified the Sec-
8 retary that they do not intend to use the full amount
9 of their allotment; or

1 “(3) the Secretary has determined that the
 2 State is not in compliance with this title, and there-
 3 fore is subject to penalties under section 2847;
 4 such excess amount shall be reallocated among each of the
 5 remaining States in proportion to the amount otherwise
 6 allotted to such States for the fiscal year involved without
 7 regard to this subsection.

8 “(c) ANALYSES.—The Secretary, acting through the
 9 Administrator of the Agency Health Care Policy and Re-
 10 search, shall conduct periodic analyses of the best avail-
 11 able scientific information in the area of smoking and to-
 12 bacco product use cessation.

13 “(d) REGULATIONS.—Not later than 9 months after
 14 the date of enactment of this title, the Secretary shall pro-
 15 mulgate regulations to implement this subtitle. This sub-
 16 title shall take effect regardless of the date on which such
 17 regulations are promulgated.

18 **“SEC. 2843. PAYMENTS UNDER ALLOTMENTS TO STATES.**

19 “(a) IN GENERAL.—

20 “(1) METHOD OF PAYMENT.—The Secretary
 21 shall make payments to States under allotments
 22 under this subtitle as provided for under section 203
 23 of the Intergovernmental Cooperation Act of 1968.

24 “(2) AVAILABILITY OF FUNDS.—Any amount
 25 paid to a State for a fiscal year under this subtitle

1 and remaining unobligated at the end of such year
2 shall remain available to such State for the next fis-
3 cal year for the purposes for which such payment
4 was made.

5 “(b) REDUCTIONS.—The Secretary, at the request of
6 a State, may reduce the amount of payments to the State
7 under subsection (a) by—

8 “(1) the fair market value of any supplies or
9 equipment furnished by the Secretary to the State;
10 and

11 “(2) the amount of the pay, allowances, and
12 travel expenses of any officer or employee of the
13 Federal Government when detailed to the State and
14 the amount of any other costs incurred in connection
15 with the detail of such officer or employee;

16 when the furnishing of such supplies or equipment or the
17 detail of such an officer or employee is for the convenience
18 of and at the request of the State and for the purpose
19 of conducting activities described in section 2844. The
20 amount by which any payment is so reduced shall be avail-
21 able for payment by the Secretary of the costs incurred
22 in furnishing the supplies or equipment or in detailing the
23 personnel, on which reduction of the payment is based,
24 and the amount shall be deemed to be part of the payment
25 and shall be deemed to have been paid to the State.

1 **“SEC. 2844. USE OF ALLOTMENTS.**

2 “(a) STATE AND COMMUNITY ACTION ACTIVITIES.—

3 “(1) IN GENERAL.—Except as provided in sub-
4 sections (b) and (c), amounts paid to a State under
5 section 2843 may be used for the following:

6 “(A) Activities described in the plan of the
7 State, submitted in accordance with section
8 2845, including—

9 “(i) science-based programs designed
10 to assist individuals who to quit their use
11 of tobacco products;

12 “(ii) training in cessation intervention
13 methods for health plans and health pro-
14 fessionals, including physicians, nurses,
15 dentists, and other health care providers;
16 and

17 “(iii) programs to encourage health
18 insurers and health plans to provide cov-
19 erage for science-based tobacco use ces-
20 sation treatment.

21 “(B) Planning, administration, and educational
22 activities related to the activities described in sub-
23 paragraph (A).

24 “(C) The monitoring and evaluation of ac-
25 tivities carried out under subparagraphs (A)
26 and (B).

1 “(2) COORDINATION.—Tobacco use cessation
2 activities permitted under paragraph (1) may be
3 conducted in coordination with the following pro-
4 grams:

5 “(A) The special supplemental food pro-
6 gram under section 17 of the Child Nutrition
7 Act of 1966 (42 U.S.C. 1786)

8 “(B) The Maternal and Child Health Serv-
9 ices Block Grant program under title V of the
10 Social Security Act (42 U.S.C. 701 et seq.).

11 “(C) The State Children’s Health Insur-
12 ance Program of the State under title XXI of
13 the Social Security Act (42 U.S.C. 13397aa et
14 seq.).

15 “(D) A Head Start program under the
16 Head Start Act (42 U.S.C. 9801 et seq.).

17 “(E) The school lunch program under the
18 National School Lunch Act (42 U.S.C. 1751 et
19 seq.).

20 “(F) An Indian Health Service Program.

21 “(G) The community health center pro-
22 gram under section 330 of the Public Health
23 Service Act (42 U.S.C. 254b).

24 “(H) Programs under title X of the Public
25 Health Service Act (42 U.S.C. 300 et seq.).

1 “(I) State-initiated smoking cessation pro-
 2 grams that include provisions for reimbursing
 3 individuals for medications or other therapeutic
 4 techniques.

5 “(J) The substance abuse and mental
 6 health services block grant program, and the
 7 preventive health services block grant program,
 8 under title XIX of the Public Health Service
 9 Act (42 U.S.C. 300w et seq.).

10 “(K) The medicaid program under title
 11 XIX of the Social Security Act (42 U.S.C. 1396
 12 et seq.).

13 “(L) Programs administered by the De-
 14 partment of Veterans Affairs.

15 “(3) TECHNICAL ASSISTANCE.—The Secretary
 16 may provide technical assistance to States in plan-
 17 ning and operating activities to be carried out under
 18 this subtitle.

19 “(b) LIMITATION.—A State may not use amounts
 20 paid to the State under section 2843 to—

21 “(1) make cash payments to intended recipients
 22 of tobacco use cessation services;

23 “(2) purchase or improve land, purchase, con-
 24 struct, or permanently improve (other than minor

1 remodeling) any building or other facility, or pur-
 2 chase major medical equipment;

3 “(3) satisfy any requirement for the expendi-
 4 ture of non-Federal funds as a condition of the re-
 5 ceipt of Federal funds; or

6 “(4) provide financial assistance to any entity
 7 other than a public or nonprofit private entity.

8 “(c) ADMINISTRATION.—Not more than 8 percent of
 9 the allotment of a State for a fiscal year under this sub-
 10 title may be used by the State to administer the funds
 11 paid to the State under section 2843. The State shall pay
 12 from non-Federal sources the remaining costs of admin-
 13 istering such funds.

14 **“SEC. 2845. APPLICATION FOR PAYMENTS; STATE PLAN.**

15 “(a) IN GENERAL.—The Secretary may make pay-
 16 ments under section 2843 to a State for a fiscal year only
 17 if—

18 “(1) the State submits to the Secretary an ap-
 19 plication for such payments;

20 “(2) the application contains a State plan in ac-
 21 cordance with subsection (b);

22 “(3) the application contains the certification
 23 described in subsection (c);

24 “(4) the application contains such assurances
 25 as the Secretary may require regarding the compli-

1 ance of the State with the requirements of this sub-
2 title (including assurances regarding compliance
3 with the agreements described in subsection (c));
4 and

5 “(5) the application is in such form and is sub-
6 mitted by such date as the Secretary may require.

7 “(b) STATE PLAN.—A State plan required in sub-
8 section (a)(2) for a fiscal year is in accordance with this
9 subsection if the plan meets the following conditions:

10 “(1) The plan is developed by the State agency
11 with principal responsibility for public health pro-
12 grams, in consultation with the advisory committee
13 established pursuant to subsection (c)(2).

14 “(2) The plan provides for tobacco use ces-
15 sation treatment consistent with the smoking ces-
16 sation guidelines issued by the Agency for Health
17 Care Policy and Research, or another evidence-based
18 guideline approved by the Secretary.

19 “(3) The plan specifies the populations in the
20 State for which such activities are to be carried out,
21 and specifies the populations in the State that have
22 a disparate need for such activities.

23 “(4) With respect to each population specified
24 under paragraph (3), the plan contains a strategy

1 for expending such payments to carry out such ac-
2 tivities. Such strategy shall include—

3 “(A) a description of the programs and
4 projects to be carried out;

5 “(B) an estimate of the number of individ-
6 uals to be served by the programs and projects;
7 and

8 “(C) an estimate of the number of public
9 health personnel needed to carry out the strat-
10 egy.

11 “(5) The plan specifies the amount of such pay-
12 ments to be expended for each of such activities and,
13 with respect to the activity involved, the amount to
14 be expended for each population specified under
15 paragraph (3).

16 “(6) The plan provides for training in tobacco
17 use cessation intervention methods for health plans
18 and health professionals, including physicians,
19 nurses, dentists, and other health care providers.

20 “(7) The plan ensures access to smoking ces-
21 sation programs for rural and underserved popu-
22 lations.

23 “(8) The plan describes the measurable objec-
24 tives, developed in consultation with the Secretary,
25 that will be used to evaluate program outcomes.

1 “(c) STATE CERTIFICATION.—The certification re-
2 ferred to in subsection (a)(3) for a fiscal year is a certifi-
3 cation to the Secretary by the chief executive officer of
4 the State involved as follows:

5 “(1)(A) In the development of the State plan
6 required in subsection (a)(2)—

7 “(i) the chief health officer of the State
8 held public hearings on the plan; and

9 “(ii) proposals for the plan were made
10 public in a manner that facilitated comments
11 from public and private entities (including Fed-
12 eral and other public agencies).

13 “(B) The State agrees that, if any revisions are
14 made in such plan during the fiscal year, the State
15 will, with respect to the revisions, hold hearings and
16 make proposals public in accordance with subpara-
17 graph (A), and will submit to the Secretary a de-
18 scription of the revisions.

19 “(2) The State has established an advisory
20 committee in accordance with subsection (d).

21 “(3) The State agrees to expend payments
22 under section 2843 only for the activities authorized
23 in section 2844.

24 “(4) The State agrees to expend such payments
25 in accordance with the State plan submitted under

1 subsection (a)(2) (with any revisions submitted to
2 the Secretary under paragraph (1)(B)), including
3 making expenditures to carry out the strategy con-
4 tained in the plan pursuant to subsection (b)(5).

5 “(5)(A) The State agrees that, in the case of
6 each population for which such strategy is carried
7 out, the State will measure the extent of progress
8 being made toward improving the health status of
9 the population.

10 “(B) The State agrees that—

11 “(i) the State will collect and report data
12 in accordance with section 2846(a)

13 “(ii) for purposes of subparagraph (A),
14 progress will be measured through the use of
15 the applicable uniform data items developed by
16 the Secretary under section 2846(a)(2), or if no
17 such items are applicable, through use of the
18 uniform criteria developed by the Secretary
19 under section 2846(a)(3).

20 “(6) With respect to the activities authorized in
21 section 2844, the State agrees to maintain State ex-
22 penditures for such activities at a level that is not
23 less than the average level of such expenditures
24 maintained by the State for the 2-year period pre-

ceding the fiscal year for which the State is applying
to receive payments under section 2843.

“(7) The State agrees to establish reasonable
criteria to evaluate the effective performance of enti-
ties that receive funds from such payments and pro-
cedures for procedural and substantive independent
State review of the failure by the State to provide
funds for any such entity.

“(8) The State agrees to permit and cooperate
with Federal investigations undertaken in accord-
ance with section 2847.

“(d) STATE ADVISORY COMMITTEE.—

“(1) IN GENERAL.—For purposes of subsection
(c)(2), an Advisory Committee is in accordance with
this subsection if such committee meets the condi-
tions described in this subsection.

“(2) DUTIES.—A condition under paragraph
(1) for a State is that the duties of the committee
are—

“(A) to hold public hearings on the State
plan required under subsection (a)(2); and

“(B) to make recommendations pursuant
to subsection (b)(1) regarding the development
and implementation of such plan, including rec-
ommendations on—

1 “(i) the conduct of assessments of the
2 public health;

3 “(ii) which of the activities authorized
4 in section 2844 should be carried out in
5 the State;

6 “(iii) the allocation of payments made
7 to the State under section 2843;

8 “(iv) the coordination of activities car-
9 ried out under such plan with relevant pro-
10 grams of other entities; and

11 “(v) the collection and reporting of
12 data in accordance with section 2846(a).

13 “(3) COMPOSITION.—

14 “(A) IN GENERAL.—A condition under
15 paragraph (1) for a State is that the Advisory
16 Committee be composed of such members of the
17 general public, and such officials of the health
18 departments of political subdivisions of the
19 State, as may be necessary to provide adequate
20 representation of the general public and of such
21 health departments.

22 “(B) REPRESENTATIVES.—With respect to
23 compliance with subparagraph (A), the mem-
24 bership of the advisory committee established
25 pursuant to subsection (c)(2) may include rep-

representatives of community-based organizations (including minority community-based organizations), schools of public health, and entities to which the State involved awards grants or contracts to carry out activities authorized under section 2844.

“(4) CHAIRPERSON; MEETINGS.—A condition under paragraph (1) for a State is that the State public health officer serves as the chairperson of the committee, and that the committee meets not less than twice each fiscal year.

“SEC. 2846. REPORTS, DATA, AND AUDITS.

“(a) DATA.—

“(1) COLLECTION AND REPORTING.—For purposes of section 2845(c)(5)(B)(i), a State is collecting and reporting data for a fiscal year in accordance with this subsection if the State submits to the Secretary, not later than February 1 of the succeeding fiscal year a report that—

“(A) describes the purposes for which the State expended payments made to the State under section 2843;

“(B) pursuant to section 2845(c)(5)(A), describes the extent of progress made by the State for purposes of such section;

1 “(C) meets the conditions described para-
2 graph (2); and

3 “(D) contains such additional information
4 regarding activities authorized under section
5 2844, and is submitted in such form, as the
6 Secretary may require.

7 “(2) UNIFORM DATA SETS.—

8 “(A) IN GENERAL.—The Secretary, in con-
9 sultation with the States, shall develop sets of
10 data for uniformly defining levels of youth and
11 adult use of tobacco products (referred to as
12 ‘uniform tobacco product use data items’). The
13 Secretary shall develop formats for the uniform
14 collecting and reporting of information on such
15 items.

16 “(B) LATER FISCAL YEARS.—In the case of fis-
17 cal year 2000 and each subsequent fiscal year, a
18 condition under paragraph (1) for a State is that the
19 State will, in accordance with the applicable format
20 under subparagraph (A), collect during such year,
21 and include in the report under paragraph (1), the
22 necessary information for each of the tobacco prod-
23 uct use data items.

24 “(3) UNIFORM CRITERIA.—The Secretary, in
25 consultation with the States, shall establish criteria

1 for the uniform collection and reporting of data on
2 activities authorized in section 2844 with respect to
3 which no uniform tobacco product use data items
4 under paragraph (2) exist.

5 “(4) PUBLIC INSPECTION OF REPORTS.—A con-
6 dition under paragraph (1) for a fiscal year is that
7 the State involved will make copies of the report
8 submitted under such paragraph for the fiscal year
9 available for public inspection, and will upon request
10 provide a copy of the report to any individual for a
11 charge not exceeding the cost of providing the copy.

12 “(b) AUDITS.—

13 “(1) FISCAL CONTROL AND ACCOUNTING PRO-
14 CEDURES.—Each State shall establish fiscal control
15 and fund accounting procedures as may be necessary
16 to ensure the proper disbursement of and accounting for
17 Federal funds paid to the State under section 2843
18 and funds transferred for use under this subtitle.

19 “(2) ANNUAL SUBMISSION.—Each State shall
20 annually audit its expenditures from payments re-
21 ceived under section 2843. Such State audits shall
22 be conducted by an entity independent of any agency
23 administering a program funded under this subtitle,
24 and, in so far as practical, in accordance with the
25 Comptroller General’s standards for auditing govern-

1 mental organizations, programs, activities, and func-
2 tions. Within 30 days following the date on which
3 each audit is completed, the chief executive officer of
4 the State shall transmit a copy of that audit to the
5 Secretary.

6 “(3) REPAYMENTS.—Each State shall, after
7 being provided by the Secretary with adequate notice
8 and an opportunity for a hearing within the State,
9 repay to the United States amounts found not to
10 have been expended in accordance with the require-
11 ments of this subtitle or the certification provided by
12 the State under section 2845. If such repayment is
13 not made, the Secretary shall, after providing the
14 State with adequate notice and opportunity for a
15 hearing within the State, offset such amounts
16 against the amount of any allotment to which the
17 State is or may become entitled under this subtitle.

18 “(4) AVAILABILITY.—The State shall make cop-
19 ies of the reports and audits required by this sub-
20 section available for public inspection within the
21 State.

22 “(5) EVALUATION.—The Comptroller General
23 of the United States shall, from time to time, evalu-
24 ate the expenditures by the States of payments
25 under this subtitle in order to ensure that expendi-

1 tures are consistent with the provisions of this sub-
2 title and the certification provide by the State under
3 section 2845.

4 “(6) REPORT BY SECRETARY.—Not later than
5 October 1, 2000, the Secretary shall prepare and
6 submit to the appropriate committees of Congress a
7 report concerning the activities of the States that
8 have received funds under this subtitle and may in-
9 clude in the report any recommendations for appro-
10 prium changes in legislation.

11 “(c) NONAPPLICATION OF CERTAIN PROVISIONS.—
12 Title XVII of the Omnibus Budget Reconciliation Act of
13 1981 shall not apply with respect to audits of funds allot-
14 ted under this subtitle.

15 **“SEC. 2847. WITHHOLDING.**

16 “(a) WITHHOLDING FOR MISUSE.—

17 “(1) IN GENERAL.—The Secretary shall, after
18 adequate notice and opportunity for a hearing con-
19 ducted within the affected State, withhold funds
20 from any State which does not use its allotment in
21 accordance with the requirements of this subtitle or
22 the certifications otherwise provided by States under
23 this subtitle. The Secretary shall withhold such
24 funds until the Secretary finds that the reason for

1 the withholding has been removed and there is rea-
2 sonable assurance that it will not recur.

3 “(2) INVESTIGATION.—The Secretary may not
4 institute proceedings to withhold funds under para-
5 graph (1) unless the Secretary has conducted an in-
6 vestigation concerning whether the State has used
7 its allotment in accordance with the requirements of
8 this subtitle or the certifications otherwise provided
9 under this subtitle. Investigations required by this
10 paragraph shall be conducted within the affected
11 State by qualified investigators.

12 “(3) RESPONSE TO COMPLAINTS.—The Sec-
13 retary shall respond in an expeditious manner to
14 complaints of a substantial or serious nature that a
15 State has failed to use funds in accordance with the
16 requirements of this subtitle or the certifications
17 otherwise provided under this subtitle.

18 “(4) MINOR FAILURES.—The Secretary may
19 not withhold funds under paragraph (1) from a
20 State for a minor failure to comply with the require-
21 ments of this subtitle or certifications otherwise pro-
22 vided under this subtitle.

23 “(b) INVESTIGATIONS.—

24 “(1) BY SECRETARY.—The Secretary shall con-
25 duct in several States in each fiscal year investiga-

1 tions of the use of funds received by the States
2 under this subtitle in order to evaluate compliance
3 with the requirements of this subtitle and certifi-
4 cations otherwise provided under this subtitle.

5 “(2) BY COMPTROLLER GENERAL.—The Comp-
6 troller General of the United States may conduct in-
7 vestigations of the use of funds received under this
8 subtitle by a State in order to insure compliance
9 with the requirements of this subtitle and certifi-
10 cations otherwise provided under this subtitle.

11 “(c) AVAILABILITY OF RECORDS.—Each State, and
12 each entity which has received funds from an allotment
13 made to a State under this subtitle, shall make appro-
14 priate books, documents, papers, and records available to
15 the Secretary or the Comptroller General of the United
16 States, or any of their duly authorized representatives, for
17 examination, copying, or mechanical reproduction on or
18 off the premises of the appropriate entity upon a reason-
19 able request therefore.

20 “(d) LIMITATION.—

21 “(1) IN GENERAL.—In conducting any inves-
22 tigation in a State, the Secretary or the Comptroller
23 General of the United States may not make a re-
24 quest for any information not readily available to
25 such State or an entity which has received funds

1 from an allotment made to the State under this sub-
 2 title or make an unreasonable request for informa-
 3 tion to be compiled, collected, or transmitted in any
 4 form not readily available.

5 “(2) NONAPPLICATION TO JUDICIAL PROCEED-
 6 INGS.—Paragraph (1) does not apply to the collec-
 7 tion, compilation, or transmittal of data in the
 8 course of a judicial proceeding.

9 **“SEC. 2848. NONDISCRIMINATION.**

10 “(a) PROGRAMS AND ACTIVITIES.—

11 “(1) IN GENERAL.—For the purpose of apply-
 12 ing the prohibitions against discrimination on the
 13 basis of age under the Age Discrimination Act of
 14 1975, on the basis of handicap under section 504 of
 15 the Rehabilitation Act of 1973, on the basis of sex
 16 under title IX of the Education Amendments of
 17 1972, or on the basis of race, color, or national ori-
 18 gin under title VI of the Civil Rights Act of 1964,
 19 programs and activities funded in whole or in part
 20 with funds made available under this subtitle are
 21 considered to be programs and activities receiving
 22 Federal financial assistance.

23 “(2) GENDER OR RELIGION.—No person shall
 24 on the ground of gender or religion be excluded from
 25 participation in, be denied the benefits of, or be sub-

1 jected to discrimination under, any program or ac-
2 tivity funded in whole or in part with funds made
3 available under this subtitle.

4 “(b) FAILURE TO COMPLY.—Whenever the Secretary
5 finds that a State, or an entity that has received a pay-
6 ment from an allotment to a State under this subtitle, has
7 failed to comply with a provision of law referred to in sub-
8 section (a)(1), with subsection (a)(2), or with an applica-
9 ble regulation (including one prescribed to carry out sub-
10 section (a)(2)), the Secretary shall notify the chief execu-
11 tive officer of the State and shall request such officer to
12 secure compliance. If within a reasonable period of time,
13 not to exceed 60 days, the chief executive officer fails or
14 refuses to secure compliance, the Secretary may—

15 “(1) refer the matter to the Attorney General
16 with a recommendation that an appropriate civil ac-
17 tion be instituted;

18 “(2) exercise the powers and functions provided
19 by title VI of the Civil Rights Act of 1964, the Age
20 Discrimination Act of 1975, or section 504 of the
21 Rehabilitation Act of 1973, as may be applicable; or

22 “(3) take such other action as may be provided
23 by law.

24 “(c) ACTION BY ATTORNEY GENERAL.—When a
25 matter is referred to the Attorney General pursuant to

1 subsection (b)(1), or whenever he has reason to believe
2 that a State or an entity is engaged in a pattern or prac-
3 tice in violation of a provision of law referred to in sub-
4 section (a)(1) or in violation of subsection (a)(2), the At-
5 torney General may bring a civil action in any appropriate
6 district court of the United States for such relief as may
7 be appropriate, including injunctive relief.

8 **“SEC. 2849. CRIMINAL PENALTY FOR FALSE STATEMENTS.**

9 “Whoever—

10 “(1) knowingly and willfully makes or causes to
11 be made any false statement or representation of a
12 material fact in connection with the furnishing of
13 items or services for which payment may be made by
14 a State from funds allotted to the State under this
15 subtitle; or

16 “(2) having knowledge of the occurrence of any
17 event affecting his or her initial or continued right
18 to any such payment conceals or fails to disclose
19 such event with an intent fraudulently to secure
20 such payment either in a greater amount than is due
21 or when no such payment is authorized;

22 shall be fined not more than \$25,000 or imprisoned for
23 not more than 5 years, or both.

1 **“Subtitle E—Reducing Youth**
 2 **Smoking and Tobacco-Related**
 3 **Diseases Through Research**

4 **“SEC. 2851. STUDY BY THE INSTITUTE OF MEDICINE.**

5 “(a) CONTRACT.—Not later than 60 days after the
 6 date of enactment of this title, the Secretary shall enter
 7 into a contract with the Institute of Medicine for the con-
 8 duct of a study on the framework for a research agenda
 9 and research priorities to be used by the National Tobacco
 10 Task Force established under section 2852.

11 “(b) CONSIDERATIONS.—

12 “(1) IN GENERAL.—In developing the frame-
 13 work for the research agenda and research priorities
 14 under subsection (a) the Institute of Medicine shall
 15 focus on increasing knowledge concerning the bio-
 16 logical, social, and behavioral factors involved in the
 17 prevention of tobacco use, reduction of tobacco use,
 18 and health consequences of tobacco use.

19 “(2) SPECIFIC CONSIDERATIONS.—In the study
 20 conducted under subsection (a), the Institute of
 21 Medicine shall specifically consider—

22 “(A) public health and community research
 23 relating to tobacco use prevention methods, in-
 24 cluding public education, media, community
 25 strategies;

1 “(B) behavioral research relating to addic-
2 tion;

3 “(C) health services research relating to
4 tobacco product prevention and cessation treat-
5 ment methodologies;

6 “(D) surveillance and epidemiology re-
7 search relating to tobacco; and

8 “(E) biomedical, including clinical, re-
9 search relating to prevention and treatment of
10 tobacco-related diseases.

11 “(c) REPORT.—Not later than 10 months after the
12 date on which the Secretary enters into the contract under
13 subsection (a), the Institute of Medicine shall prepare and
14 submit to the Secretary, the National Task Force, the
15 Committee on Labor and Human Resources of the Senate,
16 and the Committee on Commerce of the House of Rep-
17 resentatives, a report that shall contain the findings and
18 recommendations of the Institute for the purposes de-
19 scribed in subsection (b).

20 “(d) AUTHORIZATION OF APPROPRIATIONS.—There
21 are authorized to be appropriated \$750,000 to carry out
22 this section.

23 **“SEC. 2852. NATIONAL TOBACCO TASK FORCE.**

24 “(a) ESTABLISHMENT.—The Secretary shall estab-
25 lish a National Tobacco Task Force (referred to in this

1 subtitle as the ‘National Task Force’) to foster coordina-
2 tion among public health agencies, academic bodies, and
3 community groups that conduct or support tobacco-related
4 biomedical, clinical, behavioral, health services, public
5 health and community, and surveillance and epidemiology
6 research activities.

7 “(b) COMPOSITION.—The National Task Force shall
8 be composed of—

9 “(1) the Surgeon General;

10 “(2) the Director of the Office of Smoking and
11 Health of the Centers for Disease Control and Pre-
12 vention;

13 “(3) the Administrator of the Agency for
14 Health Care Policy and Research;

15 “(4) the Director of the National Institutes of
16 Health;

17 “(5) two representatives from non-governmental
18 public health or tobacco control organizations; and

19 “(6) two representatives from State or local
20 government public health agencies and offices.

21 “(c) CHAIR.—The National Task Force shall be
22 chaired by the Director of the Centers for Disease Control
23 and Prevention, or a designee of the Director, and shall
24 be staffed by the Centers for Disease Control and Preven-
25 tion.

1 “(d) DUTIES.—The Task Force shall—

2 “(1) in accordance with research agenda rec-
3 ommended under section 2851, coordinate and ad-
4 vise tobacco-related research activities among Fed-
5 eral public health service agencies;

6 “(2) collect and make available to States and
7 communities, through publication and other appro-
8 priate means, evidence-based tobacco-related re-
9 search results and recommendations and the prac-
10 tical application of such results; and

11 “(3) report on a biennial basis to the Secretary
12 and the Committee on Labor and Human Resources
13 of the Senate, and the Committee on Commerce of
14 the House of Representatives on the current and
15 planned activities of participating Federal agencies;

16 “(e) RESEARCH ACTIVITIES.—The research activities
17 referred to in subsection (a) shall be designed to address
18 tobacco-related research priorities, and shall include—

19 “(1) the development of effective strategies to
20 prevent the use of tobacco products among youth;

21 “(2) an outline of cost-effective, accessible, and
22 successful methods for tobacco use cessation among
23 adults and youths who want to quit;

24 “(3) the development of breakthroughs in the
25 understanding of the effects on the human body of

1 nicotine and other non-tobacco constituents of to-
 2 bacco products; and

3 “(4) the development of an enhanced ability to
 4 prevent and treat tobacco-related diseases.

5 **“SEC. 2853. RESEARCH ACTIVITIES OF THE CENTERS FOR**
 6 **DISEASE CONTROL AND PREVENTION.**

7 “(a) FUNDING.—There shall be made available from
 8 the Tobacco Settlement Trust Fund to carry out this sec-
 9 tion—

10 “(1) \$290,000,000 for each of the first 3 fiscal
 11 years after the date of enactment of this title;

12 “(2) \$345,000,000 for each of the 4th and 5th
 13 fiscal years after the date of enactment of this title;

14 “(3) \$245,000,000 for each of the 6th and 7th
 15 fiscal years after the date of enactment of this title;

16 “(4) \$200,000,000 for each of the 8th and 9th
 17 fiscal years after the date of enactment of this title;

18 and

19 “(5) \$145,000,000 for the 10th fiscal year after
 20 the date of enactment of this title.

21 “(b) DUTIES.—The Director of the Centers for Dis-
 22 ease Control and Prevention, working in consultation with
 23 National Task Force, shall carry out tobacco-related sur-
 24 veillance and epidemiologic studies and develop tobacco
 25 control and prevention strategies under this section.

1 “(c) TRIGGER.—No expenditures shall be made
2 under this section during any fiscal year in which the an-
3 nual amount appropriated for the Centers for Disease
4 Control and Prevention is less than the amount so appro-
5 priated for the prior fiscal year.

6 **“SEC. 2854. RESEARCH ACTIVITIES OF THE NATIONAL IN-**
7 **STITUTES OF HEALTH.**

8 “(a) FUNDING.—There shall be made available from
9 the Tobacco Settlement Trust Fund to carry out this sec-
10 tion \$2,500,000 for each of the fiscal years 1999 through
11 2008.

12 “(b) NATIONAL CANCER INSTITUTE.—Not less than
13 40 percent of the amount made available for each fiscal
14 year under subsection (a) shall be made available to the
15 Director of the National Cancer Institute.

16 “(c) NATIONAL INSTITUTE ON DRUG ABUSE.—Not
17 less than 30 percent of the amount made available for
18 each fiscal year under subsection (a) shall be made avail-
19 able to the Director of the National Institute on Drug
20 Abuse.

21 “(d) EXPENDITURE OF FUNDS.—Funds made avail-
22 able under subsection (a) shall be expended by the Direc-
23 tor of the National Institutes of Health, the Director of
24 the National Cancer Institute, and the Director of the Na-
25 tional Institute on Drug Abuse, in consultation with the

1 National Task Force, to carry out biomedical and behav-
 2 ioral research into the causes of tobacco use, diseases and
 3 conditions associated with tobacco use, and the develop-
 4 ment of treatments for such diseases and conditions.

5 “(e) TRIGGER.—No expenditure shall be made under
 6 subsection (a) during any fiscal year in which the annual
 7 amount appropriated for the National Institutes of Health
 8 is less than the amount so appropriated for the prior fiscal
 9 year.

10 **“Subtitle F—Public Health** 11 **Education and Promotion**

12 **“SEC. 2861. PUBLIC HEALTH EDUCATION AND PROMOTION.**

13 “(a) ESTABLISHMENT OF BOARD.—

14 “(1) IN GENERAL.—The Secretary shall estab-
 15 lish an independent board to be known as the ‘To-
 16 bacco Use Prevention and Cessation Board’ (re-
 17 ferred to in this section as the ‘Board’) to enter into
 18 contracts with or award grants to eligible public and
 19 nonprofit private entities to carry out public infor-
 20 mational and educational activities designed to re-
 21 duce the use of tobacco products.

22 “(2) APPOINTMENT.—The Board shall be com-
 23 posed of 9 members to be appointed by the Sec-
 24 retary, of which—

1 “(A) at least 3 such members shall be indi-
 2 viduals who are widely recognized by the gen-
 3 eral public for achievement in the athletic, cul-
 4 tural, entertainment, educational, business, or
 5 political field;

6 “(B) at least 3 of whom shall be individ-
 7 uals who are heads of a major public health or-
 8 ganizations; and

9 “(C) at least 2 of whom shall be individ-
 10 uals recognized as experts in the field of adver-
 11 tising and marketing.

12 “(3) TERMS AND VACANCIES.—The members of
 13 the Board shall serve staggered terms as determined
 14 appropriate at the time of appointment by the Sec-
 15 retary. Any vacancy in the Board shall not affect its
 16 powers, but shall be filled in the same manner as the
 17 original appointment.

18 “(4) POWERS.—

19 “(A) HEARINGS.—The Board may hold
 20 such hearings, sit and act at such times and
 21 places, take such testimony, and receive such
 22 evidence as the Board considers advisable to
 23 carry out the purposes of this section.

24 “(B) INFORMATION FROM FEDERAL AGEN-
 25 CIES.—The Board may secure directly from any

1 Federal department or agency such information
2 as the Board considers necessary to carry out
3 the provisions of this section.

4 “(5) 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 “(b) ESTABLISHMENT OF PROGRAM.—The Secretary
12 shall establish a program under which the Board may
13 enter into contracts with or award grants to eligible public
14 and nonprofit private entities to carry out public informa-
15 tional and educational activities designed to reduce the use
16 of tobacco products.

17 “(c) ELIGIBILITY.—To be eligible to receive a grant
18 under this section an entity shall—

19 “(1) be a—

20 “(A) public entity or a State health depart-
21 ment; or

22 “(B) nonprofit private entity that—

23 “(i) is not affiliated with a tobacco
24 product manufacturer or importer;

1 “(ii) has a demonstrated record of
2 working effectively to reduce tobacco prod-
3 uct use; and

4 “(iii) has expertise in conducting a
5 multi-media communications campaign;

6 “(2) prepare and submit to the Secretary an
7 application at such time, in such manner, and con-
8 taining such information as the Secretary may re-
9 quire, including a description of the activities to be
10 conducted using amounts received under the grant
11 or contract;

12 “(3) provide assurances that amounts received
13 under the grant will be used in accordance with sub-
14 section (d); and

15 “(4) meet any other requirements determined
16 appropriate by the Secretary.

17 “(d) USE OF FUNDS.—An entity that receives a
18 grant or contract under this section shall use amounts
19 provided under the grant or contract to conduct multi-
20 media public educational or informational campaigns that
21 are designed to discourage and de-glamorize the use of to-
22 bacco products. Such campaigns shall be designed to dis-
23 courage the initiation of tobacco use by minors and en-
24 courage those using such products to quit.

1 “(e) NEEDS OF CERTAIN POPULATIONS.—In award-
 2 ing grants and contracts under this section, the Board
 3 shall take into consideration the needs of particular popu-
 4 lations.

5 “(f) FUNDING.—There shall be made available from
 6 the Tobacco Settlement Trust Fund to carry out this sec-
 7 tion, \$500,000,000 for each of the fiscal years 1999
 8 through 2008.”.

9 **TITLE III—STANDARDS TO RE-**
 10 **DUCE INVOLUNTARY EXPO-**
 11 **SURE TO TOBACCO SMOKE**

12 **SEC. 301. STANDARDS TO REDUCE INVOLUNTARY EXPO-**
 13 **SURE TO TOBACCO SMOKE.**

14 Section 6 of the Occupational Safety and Health Act
 15 of 1970 (29 U.S.C. 655) is amended by adding at the end
 16 the following:

17 “(h) Not later than 12 months after the date of en-
 18 actment of this subsection, the Secretary shall promulgate
 19 a final standard on indoor air quality in indoor work envi-
 20 ronments in accordance with subsection (b). Such stand-
 21 ard shall include provisions addressing control of environ-
 22 mental tobacco smoke in both industrial and nonindustrial
 23 indoor or enclosed worksites.”.

1 **TITLE IV—MISCELLANEOUS**
2 **PROVISIONS**

3 **SEC. 401. SEVERABILITY.**

4 If any provision of this Act (or an amendment made
5 by this Act) or the application thereof to any person or
6 circumstance is held invalid, the invalidity shall not affect
7 the other provisions of this Act (or amendment) and the
8 application of such provision to other persons or cir-
9 cumstances shall not be affected thereby.

○